

# ASSEMBLY, No. 6195

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED DECEMBER 9, 2021

**Sponsored by:**

**Assemblywoman JOANN DOWNEY**

**District 11 (Monmouth)**

**SYNOPSIS**

Expands workers' compensation coverage to parking areas provided by employer.

**CURRENT VERSION OF TEXT**

As introduced.



A6195 DOWNEY

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1 AN ACT concerning workers' compensation and amending  
2 R.S.34:15-36.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

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7 1. R.S.34:15-36 is amended to read as follows:

8 34:15-36. "Willful negligence" within the intent of this chapter  
9 shall consist of (1) deliberate act or deliberate failure to act, or (2)  
10 such conduct as evidences reckless indifference to safety, or (3)  
11 intoxication, operating as the proximate cause of injury, or (4)  
12 unlawful use of a controlled dangerous substance as defined in the  
13 "New Jersey Controlled Dangerous Substances Act," P.L.1970,  
14 c.226 (C.24:21-1 et seq.).

15 "Employer" is declared to be synonymous with master, and  
16 includes natural persons, partnerships, and corporations;  
17 "employee" is synonymous with servant, and includes all natural  
18 persons, including officers of corporations, who perform service for  
19 an employer for financial consideration, exclusive of (1) employees  
20 eligible under the federal "Longshore and Harbor Workers'  
21 Compensation Act," 44 Stat.1424 (33 U.S.C. s.901 et seq.), for  
22 benefits payable with respect to accidental death or injury, or  
23 occupational disease or infection; and (2) casual employments,  
24 which shall be defined, if in connection with the employer's  
25 business, as employment the occasion for which arises by chance or  
26 is purely accidental; or if not in connection with any business of the  
27 employer, as employment not regular, periodic or recurring;  
28 provided, however, that forest fire wardens and forest firefighters  
29 employed by the State of New Jersey shall, in no event, be deemed  
30 casual employees.

31 A self-employed person, partners of a limited liability  
32 partnership, members of a limited liability company or partners of a  
33 partnership who actively perform services on behalf of the self-  
34 employed person's business, the limited liability partnership, limited  
35 liability company or the partnership shall be deemed an "employee"  
36 of the business, limited liability partnership, limited liability  
37 company or partnership for purposes of receipt of benefits and  
38 payment of premiums pursuant to this chapter, if the business,  
39 limited liability partnership, limited liability company or  
40 partnership elects, when the workers' compensation policy of the  
41 business, limited liability partnership, limited liability company or  
42 partnership is purchased or renewed, to obtain coverage for the  
43 person, the limited liability partners, the limited liability company  
44 members or the partners. If the business, limited liability  
45 partnership, limited liability company or partnership elects to obtain

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 coverage for the self-employed person, limited liability partners,  
2 limited liability company members or the partners, the election may  
3 only be made at purchase or at renewal and may not be withdrawn  
4 during the policy term. If the business, limited liability partnership,  
5 limited liability company or partnership performs services covered  
6 under a homeowner's policy or other policies providing  
7 comprehensive personal liability insurance for domestic servants,  
8 household employees or the dependents thereof, the workers'  
9 compensation policy of the business, limited liability partnership,  
10 limited liability company or partnership shall have primary  
11 responsibility for the payment of benefits. Notwithstanding the  
12 provisions of R.S.34:15-71 and 34:15-72, the business, limited  
13 liability partnership, limited liability company or partnership shall  
14 not be required to purchase a policy unless the business, limited  
15 liability partnership, limited liability company or partnership is an  
16 "employer" of a least one employee as defined in this section who is  
17 not a self-employed person, limited liability partner, limited  
18 liability company member or partner actively performing services  
19 on behalf of the business, limited liability partnership, limited  
20 liability company or partnership.

21 Notwithstanding any other provision of law to the contrary, no  
22 insurer or insurance producer as defined in section **2** of P.L.1987,  
23 c.293 (C.17:22A-2) **3** of P.L.2001, c.210 (C.17:22A-28) shall be  
24 liable in an action for damages on account of the failure of a  
25 business, limited liability partnership, limited liability company or  
26 partnership to elect to obtain workers' compensation coverage for a  
27 self-employed person, limited liability partner, limited liability  
28 company member or partner, unless the insurer or insurance  
29 producer causes damage by a willful, wanton or grossly negligent  
30 act of commission or omission. Every application for workers'  
31 compensation made on or after the effective date of this amendatory  
32 act shall include notice, as approved by the Commissioner of  
33 Banking and Insurance, concerning the availability of workers'  
34 compensation coverage for self-employed persons, limited liability  
35 partners, limited liability company members or partners. That  
36 application shall also contain a notice of election of coverage and  
37 shall clearly state that coverage for self-employed persons, limited  
38 liability partners, limited liability company members and partners  
39 shall not be provided under the policy unless the application  
40 containing the notice of election is executed and filed with the  
41 insurer or insurance producer. The application containing the notice  
42 of election shall also contain a statement that the insurer or  
43 insurance producer shall not be liable in an action for damages on  
44 account of the failure of a business, limited liability partnership,  
45 limited liability company or partnership to elect to obtain workers'  
46 compensation coverage for a self-employed person, limited liability  
47 partner, limited liability company member or partner, unless the  
48 insurer or insurance producer causes damage by a willful, wanton or

1 grossly negligent act of commission or omission. The failure of a  
2 self-employed person, limited liability partnership, limited liability  
3 company or partnership to elect to obtain workers' compensation  
4 coverage for the self-employed person, the limited liability partners,  
5 the limited liability company members or the partners shall not  
6 affect benefits available under any other accident or health policy.

7 Employment shall be deemed to commence when an employee  
8 arrives at the employer's place of employment to report for work  
9 and shall terminate when the employee leaves the employer's place  
10 of employment, excluding areas not under the control of the  
11 employer; provided, however, when the employee is required by the  
12 employer to be away from the employer's place of employment, the  
13 employee shall be deemed to be in the course of employment when  
14 the employee is engaged in the direct performance of duties  
15 assigned or directed by the employer; but the employment of  
16 employee paid travel time by an employer for time spent traveling  
17 to and from a job site or of any employee who utilizes an employer  
18 authorized vehicle shall commence and terminate with the time  
19 spent traveling to and from a job site or the authorized operation of  
20 a vehicle on business authorized by the employer. Travel by a  
21 policeman, fireman, or a member of a first aid or rescue squad, in  
22 responding to and returning from an emergency, shall be deemed to  
23 be in the course of employment.

24 Employment shall also be deemed to commence when an  
25 employee is traveling in a ridesharing arrangement between his or  
26 her place of residence or terminal near such place and his or her  
27 place of employment, if one of the following conditions is satisfied:  
28 the vehicle used in the ridesharing arrangement is owned, leased or  
29 contracted for by the employer, or the employee is required by the  
30 employer to travel in a ridesharing arrangement as a condition of  
31 employment.

32 Employment shall also be deemed to commence, if an employer  
33 provides or designates a parking area for use by an employee, when  
34 an employee arrives at the parking area prior to reporting for work  
35 and shall terminate when an employee leaves the parking area at the  
36 end of a work period; provided that, if the site of the parking area is  
37 separate from the place of employment, an employee shall be  
38 deemed to be in the course of employment while the employee  
39 travels directly from the parking area to the place of employment  
40 prior to reporting for work and while the employee travels directly  
41 from the place of employment to the parking area at the end of a  
42 work period.

43 "Disability permanent in quality and partial in character" means  
44 a permanent impairment caused by a compensable accident or  
45 compensable occupational disease, based upon demonstrable  
46 objective medical evidence, which restricts the function of the body  
47 or of its members or organs; included in the criteria which shall be  
48 considered shall be whether there has been a lessening to a material

1 degree of an employee's working ability. Subject to the above  
2 provisions, nothing in this definition shall be construed to preclude  
3 benefits to a worker who returns to work following a compensable  
4 accident even if there be no reduction in earnings. Injuries such as  
5 minor lacerations, minor contusions, minor sprains, and scars which  
6 do not constitute significant permanent disfigurement, and  
7 occupational disease of a minor nature such as mild dermatitis and  
8 mild bronchitis shall not constitute permanent disability within the  
9 meaning of this definition.

10 "Disability permanent in quality and total in character" means a  
11 physical or neuropsychiatric total permanent impairment caused by  
12 a compensable accident or compensable occupational disease,  
13 where no fundamental or marked improvement in such condition  
14 can be reasonably expected.

15 Factors other than physical and neuropsychiatric impairments  
16 may be considered in the determination of permanent total  
17 disability, where such physical and neuropsychiatric impairments  
18 constitute at least 75% or higher of total disability.

19 "Ridesharing" means the transportation of persons in a motor  
20 vehicle, with a maximum carrying capacity of not more than 15  
21 passengers, including the driver, where such transportation is  
22 incidental to the purpose of the driver. This term shall include such  
23 ridesharing arrangements known as carpools and vanpools.

24 "Medical services, medical treatment, physicians' services and  
25 physicians' treatment" shall include, but not be limited to, the  
26 services which a chiropractor is authorized by law to perform and  
27 which are authorized by an employer pursuant to the provisions of  
28 R.S.34:15-1 et seq.

29 (cf: P.L.1999, c.383, s.1)

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31 2. This act shall take effect immediately.

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#### STATEMENT

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36 This bill provides that, for purposes of coverage under workers'  
37 compensation law, R.S.34:15-1 et seq., if an employer provides or  
38 designates a parking area for use by an employee, then employment  
39 is deemed to commence when an employee arrives at the parking  
40 area prior to reporting for work and ends when an employee leaves  
41 the parking area at the end of a work period. The bill further  
42 provides that, if the site of the parking area is separate from the  
43 place of employment, an employee is deemed to be in the course of  
44 employment while traveling directly from the parking area to the  
45 place of employment prior to reporting for work and while traveling  
46 directly from the place of employment to the parking area at the end  
47 of a work period.

1       Therefore, the bill provides that an injury is compensable under  
2 the workers' compensation law if it occurs in a parking area  
3 provided or designated by the employer, or it occurs when an  
4 employee is traveling directly between the parking area and the  
5 place of employment.

6       Currently, the workers' compensation law provides that  
7 employment commences when an employee arrives at the place of  
8 employment and ends when an employee leaves the place of  
9 employment. The law excludes any travel to or from the place of  
10 employment and the site of any parking area separate from the place  
11 of employment provided by an employer. Therefore, an injury  
12 occurring when an employee is traveling between the parking area  
13 and the place of employment is not now covered by workers'  
14 compensation.