

P.L. 2021, CHAPTER 334, *approved January 10, 2022*
Senate, No. 771

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:

6
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

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7 only be made at purchase or at renewal and may not be withdrawn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

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

1 of election shall also contain a statement that the insurer or
2 insurance producer shall not be liable in an action for damages on
3 account of the failure of a business, limited liability partnership,
4 limited liability company or partnership to elect to obtain workers'
5 compensation coverage for a self-employed person, limited liability
6 partner, limited liability company member or partner, unless the
7 insurer or insurance producer causes damage by a willful, wanton or
8 grossly negligent act of commission or omission. The failure of a
9 self-employed person, limited liability partnership, limited liability
10 company or partnership to elect to obtain workers' compensation
11 coverage for the self-employed person, the limited liability partners,
12 the limited liability company members or the partners shall not
13 affect benefits available under any other accident or health policy.

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

31 Employment shall also be deemed to commence when an
32 employee is traveling in a ridesharing arrangement between his or
33 her place of residence or terminal near such place and his or her
34 place of employment, if one of the following conditions is satisfied:
35 the vehicle used in the ridesharing arrangement is owned, leased or
36 contracted for by the employer, or the employee is required by the
37 employer to travel in a ridesharing arrangement as a condition of
38 employment.

39 Employment shall also be deemed to commence, if an employer
40 provides or designates a parking area for use by an employee, when
41 an employee arrives at the parking area prior to reporting for work
42 and shall terminate when an employee leaves the parking area at the
43 end of a work period; provided that, if the site of the parking area is
44 separate from the place of employment, an employee shall be
45 deemed to be in the course of employment while the employee

1 travels directly from the parking area to the place of employment
2 prior to reporting for work and while the employee travels directly
3 from the place of employment to the parking area at the end of a
4 work period.

5 "Disability permanent in quality and partial in character" means
6 a permanent impairment caused by a compensable accident or
7 compensable occupational disease, based upon demonstrable
8 objective medical evidence, which restricts the function of the body
9 or of its members or organs; included in the criteria which shall be
10 considered shall be whether there has been a lessening to a material
11 degree of an employee's working ability. Subject to the above
12 provisions, nothing in this definition shall be construed to preclude
13 benefits to a worker who returns to work following a compensable
14 accident even if there be no reduction in earnings. Injuries such as
15 minor lacerations, minor contusions, minor sprains, and scars which
16 do not constitute significant permanent disfigurement, and
17 occupational disease of a minor nature such as mild dermatitis and
18 mild bronchitis shall not constitute permanent disability within the
19 meaning of this definition.

20 "Disability permanent in quality and total in character" means a
21 physical or neuropsychiatric total permanent impairment caused by
22 a compensable accident or compensable occupational disease,
23 where no fundamental or marked improvement in such condition
24 can be reasonably expected.

25 Factors other than physical and neuropsychiatric impairments
26 may be considered in the determination of permanent total
27 disability, where such physical and neuropsychiatric impairments
28 constitute at least 75% or higher of total disability.

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

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

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

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41 2. This act shall take effect immediately.

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