

## **CHAPTER ONE**

### **AN OVERVIEW OF THE NEW JERSEY ACT**

This manual is designed for workers' compensation attorneys, insurance carriers, physicians, employers, third-party administrators, and safety and human resource personnel. The goal of the manual is twofold: both to provide insight into common questions regarding the New Jersey Workers' Compensation Act and to help practitioners develop strategies to handle compensation claims. It is not a summary of the workers' compensation statute in every detail, but rather a practical guide for those who handle the general problems and issues that arise in the field of workers' compensation.

The chapters have been organized according to the author's assessment of significant issues facing workers' compensation professionals. The cases cited in this manual are not the only ones which stand for a given proposition. Rather, they have been chosen to explain or illustrate a given issue. There is also a sample quiz with answers at the end of this manual based on the materials covered for training purposes, as well as several useful forms.

The following is a general summary of the New Jersey Workers' Compensation Act:

#### **A. NO-FAULT CONCEPT**

The New Jersey Workers' Compensation Act was passed in 1911 and has been amended on several occasions, the most significant modern amendments taking place in 1979 with more recent amendments occurring in 2008 to a lesser degree. Significant amendments to the occupational disease statute occurred in 2019 and 2020 with respect to the Thomas P. Canzanella Law and L. 2020, c. 84 pertaining to COVID-19 claims. Like all other compensation laws, the New Jersey Act sets up a state remedy whereby workers are compensated for their injuries regardless of fault. All workers in New Jersey are covered by the compensation act titled N.J.S.A. 34:15-7 et seq. unless they specifically opt out of the act's coverage provisions. Workers' compensation is an exclusive remedy, which means that the injured worker may not bring a civil action against his or her employer. The only remedy against the employer is through workers' compensation.

The no-fault exceptions to the coverage provided to employees are rare. Employees are specifically excluded from coverage under N.J.S.A. 34:15-7 when they intentionally injure themselves. By the same token, when an employer intentionally injures an employee, the employee can go outside the compensation remedy and sue civilly. However, the standard for intentional conduct by an employer is a very high one (see Chapter Fifteen).

## **B. LIMITED BENEFITS IN NEW JERSEY**

There are only three remedies in the New Jersey system of compensation: *medical benefits*, *temporary disability benefits*, and *permanent disability benefits*. New Jersey does not have a statutory provision for partial temporary disability benefits; nor does it contain a requirement that injured workers be rehabilitated as a condition for termination of benefits. Vocational rehabilitation is addressed, however, before the involvement of the Second Injury Fund under N.J.S.A. 34:15-12(b).

Benefits are deemed to be consecutive in nature, medical benefits coming first. The hallmark of the New Jersey system of compensation is that the employer can direct medical benefits. The two other benefits available to injured workers, namely temporary disability benefits and permanent disability benefits, are cash payments to the injured worker. In New Jersey the injured worker is referred to as the petitioner, while the employer is referred to as the respondent.

## **C. TWO RECOGNIZED CLASSES OF CLAIMS: TRAUMATIC AND OCCUPATIONAL**

Before considering the law with respect to each benefit available to injured workers in New Jersey, it is important to appreciate that there are two classifications of claims recognized by the New Jersey Act. The first is traumatic injury claims, governed by N.J.S.A. 34:15-7. Such claims involve one-time trauma, physical or psychiatric in nature. One Supreme Court case defined “accident” as an “unlooked-for mishap or untoward event which is not expected or designed.” *Dudley v. Victor Lynn Lines, Inc.*, 32 N.J. 479 (1960). The second is occupational disease claims under N.J.S.A. 34:15-31, which involve injuries caused by repetitive activity or exposures over a period of days, months, or even years. Chapter Three of this manual is devoted to the defense of occupational disease claims. The standard of proof is different between traumatic and occupational disease claims, and there are also distinct statute of limitations for each class of claims.

The first step a practitioner should take in setting up a claim is to distinguish the nature of the claim. If it is an occupational disease claim the analysis and defense will involve more than just the following two issues in traumatic injury claims:

1. Whether the claim occurs during the course of work, (time concept);
2. Whether the disease arises out of work, (causation concept);

Occupational disease claims require proof of both of the above elements, but they also require the claimant to prove two additional criteria:

3. That the disease is “due ... to causes and conditions which are or were characteristic of or peculiar to a particular trade, occupation, process or place of employment;” and

4. That the contribution of work to the disease is “in a material degree.” A practitioner should review carefully the claim petition, first report of injury, and medical records available to decide whether the claim is occupational or traumatic in nature since there are major differences between these classes of claims in terms of proofs and statute of limitations provisions. If no specific date is referred to but only work stresses or activities over a period of time or period of exposure, the claim ordinarily is occupational. When it is unclear whether the injury is from a specific event or repetitive exposures, the claimant will generally file both an occupational claim petition and a traumatic claim petition.

## **D. HEARING PROCEDURE**

### **1. *Formal and Informal Claims***

There are two types of claim petitions that are filed in New Jersey: formal and informal claim petitions. A very small number of petitions are informal, and these claims are reserved for very minor matters. The advantage of an informal claim is that it is listed quickly and may be resolved at the first listing. Expert reports are not required in informal claim petitions and counsel fees assessed against the claimant are limited to 10%. In addition, the entire counsel fee is assessed against the claimant, with respondent paying no portion of that fee. The vast majority of claim petitions in New Jersey are formal claims.

All New Jersey cases are listed on three-week cycles. Trials are therefore generally spread out over a fairly long period of time. While appellate courts have disapproved this procedure, the vast majority of trials continue to be handled in this manner, with one witness or two each cycle. The case is then adjourned a number of cycles (one cycle = three weeks; two cycles = six weeks, etc.) until the remaining witnesses finish testifying.

Cases are placed on lists organized by defense attorney or carrier. A law firm may have a certain “day” in a given vicinage when all of that firm’s cases are listed together to promote efficiency.

Motions for medical and temporary disability benefits take precedence over all other matters because they involve workers who are not receiving medical or temporary disability benefits, or both. These cases take priority over other trials, pretrials, and other motions. The rules for motions for medical and temporary disability benefits were revised in 1997 and are covered in detail in Chapter Five of this manual.

Cases may be closed one of four ways:

1. a judgment from the court,
2. an order approving settlement,
3. a Section 20 disposition, or,
4. a dismissal with or without prejudice.