FILE NAME: New York State & NY Times (NY)

DATE: 1944

DOC#: NY082

DOCUMENT DESCRIPTION: New Jersey Workers' Compensation Law [See 2b]

[Port Authority was a Member of ASME 1934-1935]

CHAPTER 88

AN ACT establishing an elective system of compensation for the occupational diseases known as silicosis and asbestosis, and regulating procedure for the determination of liability and compensation thereunder, and supplementing chapter fifteen of Title 34 of the Revised Statutes.

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

C. 34:15-35.1. May elect to accept provisions of act.

1. Employer and employee may elect to accept or not to accept the provisions of this act. Such election in respect to the provisions of this act may be made in like manner as provided in sections 34:15–7 to 34:15–11 of the Revised Statutes in respect to accidents. When employer and employee have accepted the provisions of this act every such employee who, in the regular course of his employment, suffers total disability or death as the result of silicosis or asbestosis, as hereinafter defined, shall be entitled to workmen's compensation, as hereinafter provided in this act.

C. 34:15-35.2. Definitions, "Silicosis."

2. Definitions: (a) "Silicosis" means a disease of the lungs, due to breathing air containing silicon dioxide (SiO_2) dust, characterized anatomically by generalized fibrotic changes in the lungs, with a development of miliary nodulation, demonstrable by X-ray examination or by autopsy, resulting from any process or occupation involving the inhalation of silicon dioxide (SiO_2) dust.

"Asbestosis."

(b) "Asbestosis" means a disease of the lungs, due to breathing air containing asbestos dust, characterized anatomically by generalized fibrotic changes in the lungs, demonstrable by X-ray examination or by autopsy, resulting from any process or occupation involving the inhalation of asbestos dust.

(c) The word "disability" means the state of an employee's being actually incapacitated, because of silicosis or asbestosis, from performing his work in the last occupation in which he was injuriously exposed to the hazards of such disease. The word "disablement" means the event of being so incapacitated. "Disability."

3. Where an employee suffers from silicosis or asbestosis as defined in section two of this act, and is thereby totally disabled, as disability is herein defined, or dies as a result of such disease, and the disease was due to the nature of said last occupation, in which he was employed within the period previous to his disablement as limited in this section and in sections four and five of this act, if he and his employer in such occupation were then subject to this act, the employee, or in case of his death his dependents shall, except as otherwise provided in this act, be entitled to compensation in the amount and payable in the manner provided in article two of chapter fifteen of Title 34 of the Revised Statutes, as if such total disability, as herein defined, or death resulted from injury by accident. C. 34:15-35.3. Entitled to compensation.

No compensation shall be payable for silicosis or asbestosis if the employee, at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, falsely represented himself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise, because of either of such diseases. No compensation payable.

Where silicosis or asbestosis is aggravated by any other disease or injury, not itself compensable, or where disability from any other cause, not itself compensable, is aggravated, prolonged, accelerated or in anywise contributed to by silicosis or asbestosis, or where death from any other cause, not itself compensable, is accelerated or in anywise contributed to by silicosis or asbestosis, the compensation payable shall be reduced and limited to such proportion only of the compensation that would be payable if silicosis or asbestosis Compensation reduced.

were the sole cause of the disability, as herein defined, or death, as silicosis or asbestosis, as a causative factor, bears to all the causes of such disability or death, such reduction in compensation to be effected by reducing the number of weekly or monthly payments or the amount of such payments, as indicated by the circumstances of the particular case.

C. 34:15-35.4. No compensation for death.

4. No compensation for death from silicosis or asbestosis shall be payable to any person whose relationship to the deceased, which, under the provisions of this act would give a right to compensation, arose subsequent to the beginning of the first compensable disability, as herein defined, save only to afterborn children.

Where compensation is payable for silicosis or asbestosis under this act, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease for sixty days or more, and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer, shall alone be liable therefor; the amount of the compensation shall be based upon the wages, as defined in section 34:15–37 of the Revised Statutes, of the employee when last so exposed under such employer; and the notice of injury and claim for compensation, as hereinafter required in section six of this act, shall be given and made to such employer.

Amount of compensation.

Employer not liable.

An employer shall not be liable for any compensation for silicosis or asbestosis unless such disease shall be due to the nature of an employment in which the hazards of such disease actually exist and are characteristic of and peculiar to the trade, occupation, process or employment, and was actually incurred in his employment, and unless total disability, as herein defined, or death results within three years after the last injurious exposure to such disease in such employment, or, in case of death, unless death follows continuous total disability, as herein defined, from such disease, commencing within the period above limited, for which

compensation has been paid or awarded or claim filed as provided in this act and results within seven years after such last exposure.

C. 34:15-35.5. Absence of conclusive evidence.

5. In the absence of conclusive evidence in favor of the claim, disability, as herein defined, or death shall be presumed in fact not to be due to the nature of any occupation within the provisions of section two of this act, unless during the ten years immediately preceding the date of disablement the employee has been exposed to the inhalation of silicon dioxide (SiO_2) dust or asbestos dust, as the case may be, over a period of not less than five years, one year of which shall have been in this State, under a contract of employment existing in this State; *provided, however,* that if the employee shall have been employed by the same employer during the whole of such five-year period, his right to compensation against such employer shall not be affected by the fact that he had been employed during any part of such period outside of this State.

Proviso.

Compensation or damages.

Neither compensation nor damages shall be payable for partial disability due to silicosis or asbestosis in respect to any employee subject to the provisions of this act, nor shall there be any liability in tort for damages for total disability or for death from silicosis or asbestosis. In the event of total disability, as herein defined, or death from uncomplicated silicosis or asbestosis, compensation shall, except as otherwise provided in this act, be payable to employees and their dependents as follows:

Compensation for total disability.

(a) Compensation for total disability, as herein defined, or death shall be paid as specified in paragraph b of section 34:15–12 of the Revised Statutes; except as provided in paragraph (b) of this section.

Compensation payable.

(b) If disablement occurs, or, in the case of no claim for prior disablement, if death occurs, in the calendar month in which this act becomes effective, the total compensation payable, whether for disability, as herein defined, or death or both, shall not

exceed the sum of one thousand dollars ($1,000.00). If disablement occurs, or, in the case of no claim for prior disablement, if death occurs, during the next calendar month, the total compensation payable shall not exceed one thousand and fifty dollars ($1,050.00). Thereafter the total amount of compensation for death and total disability, as herein defined, shall increase at the rate of fifty dollars ($50.00) per month; the aggregate amount payable to be limited according to the foregoing formula for the month in which total disability, as herein defined, occurs, or, in case of no claim for prior disability, in which death occurs. Such progressive increase in the limitation of the total amount in any event payable for total disability, as herein defined, and death due to silicosis or asbestosis shall continue only until such total amount equals but does not exceed the sums which would be payable to the particular employee or his dependents had such total disability, as herein defined, and death been due to an injury by accident.

C. 34:15-35.6. Written notice given.

6. Unless the employer during the continuance of the employment shall have actual knowledge that the employee has contracted silicosis or asbestosis, or unless the employee or someone on his behalf, or some of his dependents, or someone on their behalf, shall give the employer written notice that the employee has contracted a compensable disease, which notice to be effective must be given within three years and ninety days after his last injurious exposure to such disease in such employment, and also in case of death from silicosis or asbestosis unless written notice of such death shall be given to the employer within ninety days thereafter, no compensation shall be payable on account of the death or disability, as herein defined, of the employee caused by silicosis or asbestosis.

Claims barred.

All claims for compensation for silicosis or asbestosis shall be forever barred unless a petition is filed in duplicate with the secretary of the workmen's compensation bureau, at the State House in Trenton, within one year from the date of disable-

ment or death, as the case may be, or in case an agreement of compensation for silicosis or asbestosis has been made between such employer and such claimant, then within one year after the failure of the employer to make payment pursuant to the terms of such agreement; or in case a part of the compensation has been paid by such employer, then within one year after the last payment of compensation.

Whenever total disability, as herein defined, from silicosis or asbestosis occurs to any employee it shall be the duty of the employer promptly upon obtaining knowledge or notice thereof to at once report such disability in the manner specified in article six of chapter fifteen of Title 34 of the Revised Statutes; but nothing in such report shall be construed to amount to an admission of fact on the part of the employer of anything therein reported. Report disability.

This act shall not apply to cases of silicosis or asbestosis in which the last injurious exposure to the hazards of such diseases occurred before the effective date of this act. Act not to apply.

7. Any employer, employee, beneficiary or person feeling aggrieved by any decision of the workmen's compensation bureau affecting his interests under this act may appeal the same in the manner provided in sections 34:15–66, 34:15–66.1 and 34:15–67 of the Revised Statutes. C. 34:15-35.7. Appeal.

8. Except as otherwise provided in this act, the provisions of articles two to six, both inclusive, of chapter fifteen of Title 34 of the Revised Statutes applicable to workmen's compensation for injury or death by accident, including compulsory insurance, insurance carriers, and insurance rates, shall apply to employers, employees and insurance carriers subject to this act. C. 34:15-35.8. Apply to carriers.

9. This act shall take effect on January first, one thousand nine hundred and forty-five. C. 34:15-35.9. Effective.

Approved April 10, 1944.