

**NJ Department of Labor
Division of Workers' Compensation**

**Task Force on the Uninsured Employers Fund
FINAL REPORT**

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**NJ Department of Labor
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**Task Force on the Uninsured Employers Fund
List of Members**

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REPORT OF THE UEF TASK FORCE

The Director/Chief Judge of the Division of Workers' Compensation established the Uninsured Employers Fund task force to review and evaluate the procedures, functioning and efficiency of the system created to provide benefits to the most vulnerable injured workers-those whose employers are operating on violation of the law by not having appropriate insurance.

The UEF has been in existence for almost 15 years and in that time has provided millions of dollars in benefits in the form of temporary disability payments and medical treatment. The staff of the UEF has performed admirably in this task when one considers the size of that staff as well as the number of claims and amounts of money processed. For the first time in four years, there will be an UEF surcharge on insurance premiums in 2003.

The task force met on two occasions and as a result of extensive input and discussion, makes the following recommendations:

1. Amend the rules of the UEF to read as set forth in the attachment.

The committee felt that the existing rules are too restrictive and discourage attorneys from filing claims when there is the potential of an uninsured employer. Because of this, there may be many injured workers who are not receiving their benefits, which places an added burden on the social welfare and health care system.
2. Continue the recently changed protocol and list UEF cases as soon as possible.
3. Listing of cases be consistent throughout the State, i.e. MTNUF, UNHG, etc.
4. ICLE seminar should be done to educate attorneys
5. Educate judges and attorneys that time is of the essence when there is a possibility of bankruptcies and/or criminal sanctions. Encourage the parties to bifurcate the issues of employment and insurance and have an order issued so that the cases may be referred to the Attorney General's office for prosecution and/or defense of creditor status in bankruptcy court.
6. Make efforts to enforce the requirement for workers' compensation insurance coverage. This could be done by contacting various licensing agencies, i.e. ABC, DMV, DEP and municipalities and requesting that they add the requirement of proof of workers' compensation coverage upon initial or renewal licensing applications.
7. Prepare information for professional organizations to forward to its members regarding workers' compensation coverage requirement, i.e. accountants, insurance brokers, attorneys.
8. Seek amendment to Statute allowing UEF to pay permanent disability benefits provided that appropriate funding becomes available.
9. Prepare an informational advertising campaign to educate the general public on the necessity of workers' compensation coverage.

SUBCHAPTER 7. UNINSURED EMPLOYERS FUND

12:235-7.1 Purpose; scope

- (a) The Uninsured Employers Fund (UEF) has been established pursuant to N.J.S.A. 34:15-120.1 to provide for the payment of certain awards of medical and temporary benefits entered against uninsured defaulting employers. This subchapter sets forth the procedures by which the UEF will be operated.
- (b) Benefits for temporary disability and medical costs shall be provided in accordance with N.J.S.A. 34:15-120.1 et seq.
- (c) The UEF shall be a party to proceedings under this subchapter. However, no judgment or order for the payment of benefits shall be entered against the UEF.
- (d) The UEF may relax or dispense with requirements under this subchapter where appropriate and with the consent of the judge hearing the case.
- (e) The UEF shall be provided a copy of a notice of appeal of any order or judgment in which the UEF is a party.

12:235-7.2 Filing notice of an uninsured claim; personal service; subpoena duces tecum; third party joinder

- [b] **(a)** Petitioner's attorney shall contact the Compensation Rating and Inspection Bureau **in writing** within 15 days **after the worker or his/her attorney knew or should have known that the employer was uninsured** [in writing] to receive confirmation that the employer is uninsured. A copy of the Rating Bureau's response shall be included in the motion to join the UEF.
- [a] **(b)** An injured worker or his/her attorney shall notify the UEF within 30 days after the worker or his/her attorney knew or should have known that the employer was uninsured, or receives confirmation of non-insurance from the Compensation Rating and Inspection Bureau that benefits may be sought.
- (c) In order to secure reimbursement of a petitioner's temporary disability benefits from the Uninsured Employers Fund, the petitioner shall file a motion to join the UEF in an action brought by or against the uninsured employer.
 - 1. Petitioner's attorney, or the petitioner shall file a motion to join the UEF. When filing a motion to join the UEF, the petitioner's attorney or petitioner shall attach a copy of the inquiry and response of the Compensation Rating and Inspection Bureau.
 - 2. The motion to join the UEF shall be filed in the vicinage in which the case is assigned.

3. A copy of the motion to join the UEF shall be served upon the Fund in the Office of Special Compensation Funds, [CN-399] **P.O. Box 399**, Trenton, New Jersey 08625-0399.
- (d) Petitioner's attorney may make personal service of the claim petition and the motion to join the UEF on respondent.
1. Proof of service shall be filed with the Division and with the attorney representing the UEF.
 2. If respondent is unable to be served, petitioner's attorney shall make a motion with the Judge of Compensation for substituted service pursuant to Rules of Civil Practice. The motion shall be supported by convincing evidence that the petitioner has made all reasonable attempts to serve the respondent.
- (e) The UEF shall have the authority to join a third-party and the third-party's insurance carrier when it appears that such party is or may be liable for the benefits sought.
- (f) In reviewing claims submitted to the Uninsured Employers Fund for payment pursuant to N.J.S.A. 34:15-120.4, the Commissioner may consider the extent of delay in notification to the Uninsured Employers Fund by the petitioner and/or his/her attorney from the time they knew or should have known the respondent employer was uninsured.

12:235-7.5 Certification

- (a) Petitioner[']s attorney] shall submit a certification when filing a motion for an uninsured claim. The certification shall be specific, and shall contain the following information **if known to the petitioner and should be supplemented as such information becomes available to the petitioner:**
1. The last date of hire **immediately preceding the date of the accident, injury or occupational condition;**
 2. The length of employment. If not continuous, list all dates of employment.
 3. Copies of petitioner's W-2 for all dates of employment during the year in which the accident, injury or occupational condition occurred;
 4. Pay stubs for all salary received from respondent for [previous] **the six months immediately preceding the date of the accident, injury or occupational condition;**
 5. The total wages received from respondent for 12 months preceding the accident, injury or occupational condition;
 6. The name, address (business and personal) and phone number of the respondent and any officer or manager of the company;

7. Any documents relating to the employer-employee relationship or lack thereof;
8. A statement of facts which establish the employer-employee relationship;
9. The name, address and phone number of all persons with knowledge of the existence of an employer-employee relationship between petitioner and respondent;
10. The place where the injury occurred, including the name of the owner of the property and the reason why the employee was at the location where the injury occurred;
11. The name, address and phone number of all witnesses to the accident, injury or occupational condition, and whereabouts of respondent when the accident, injury or occupational condition occurred;
12. The name, address and phone number of all persons with any knowledge of the accident, injury or occupational condition;
13. [How soon after the accident, injury or occupational condition was] **The date on which** a physician **was** first contacted **concerning injuries sustained in the accident, injury or occupational condition;**
14. The name and address of all treating physicians and the name and address of any hospital, laboratory or other facility where treatment was received?
15. Copies of all medical reports from the hospitals and treating physicians;
16. Medical insurance coverage for employee and/or spouse, and if available, the name and address of the company and the policy number;
17. [Any] **A detailed listing of** medical expenses which have been paid **and the source of such payments; and**
- [18. Who paid the medical expenses; and]
- [19.] **18.** Whether the petitioner is receiving Social Security benefits.

12:235-7.4 Medical bills; physician's examination

- (a) The UEF shall have the opportunity to review all medical bills and charges to determine if the costs incurred were reasonable and necessary.
- (b) The UEF may order an independent medical examination of a petitioner by a physician at any time when the UEF is involved or when it appears the UEF may become involved in a case. The examining physician will be asked to offer an opinion on:

1. The appropriateness of petitioner's current medical treatment;
 2. The prognosis for the petitioner;
 3. Whether petitioner is able to return to work; and
 4. Whether petitioner requires further treatment.
- (c) Fees for the independent medical evaluation **ordered by the UEF** will be paid by the UEF.
- (d) If it appears that the petitioner may be entitled to benefits from the UEF, then the UEF may direct the petitioner to the appropriate authorized treating physician for treatment.
1. Treatment obtained by petitioner from any physician other than the one **or more** authorized by the UEF shall be deemed to be unauthorized treatment, and costs for such treatment shall not be [chargeable to] **payable by** the UEF.

12:235-7.5 Assignment of cases; schedules

- (a) The Director shall assign the UEF cases for hearing.
- (b) The Director shall establish the vicinages in which the cases shall be heard.
- (c) The Director shall establish the hearing dates and schedules for all uninsured employer cases.

12:235-7.6 Payments from the UEF

Payments from the UEF shall be made only in accordance with N.J.S.A. 34:15-120.4

12:235-7.7 Attorney fees

- (a) An attorney fee may be payable from the UEF to the petitioner's attorney when the petitioner is found eligible for UEF benefits by the Commissioner **and such fee shall be based upon such benefits as payable from the UEF.**
- (b) An attorney shall make an application to the Commissioner for payment of the attorney fee awarded by the Judge of Compensation for obtaining the medical and/or temporary benefits assessed against the respondent.
 - [1. The application shall be supported by an affidavit of services in a form and manner as prescribed by the Director.]