S T A T E O F N E W Y O R K

508

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to providing that any injury or illness, including future manifestations, even after retirement, for occurrences directly related to the terrorist attack on September eleventh, two thousand one be presumptively eligible for compensation under the workers' compensation law

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The workers' compensation law is amended by adding a new section 21-b to read as follows:

S 21-B. SPECIAL PRESUMPTIONS; INJURY OR ILLNESS DIRECTLY RELATED TO THE TERRORIST ATTACK ON SEPTEMBER ELEVENTH, TWO THOUSAND ONE. 1. NOTWITHSTANDING ANY PROVISIONS OF THIS CHAPTER OR OF ANY GENERAL, SPECIAL, OR LOCAL LAW, CHARTER, ADMINISTRATIVE CODE, OR RULE OR REGULATION TO THE CONTRARY, ANY DEATH OR CONDITION OR IMPAIRMENT OF HEALTH CAUSED BY A QUALIFYING CONDITION OR IMPAIRMENT OF HEALTH RESULTING IN DEATH OR DISABILITY TO AN EMPLOYEE WHO PARTICIPATED IN WORLD TRADE CENTER RESCUE, RECOVERY, OR CLEANUP OPERATIONS FOR A MINIMUM OF FORTY HOURS SHALL BE PRESUMPTIVE EVIDENCE THAT IT WAS INCURRED IN THE PERFORMANCE AND DISCHARGE OF DUTY AND THE NATURAL AND PROXIMATE RESULT OF AN ACCIDENT NOT CAUSED BY SUCH EMPLOYEE'S OWN WILLFUL NEGLIGENCE, UNLESS THE CONTRARY BE PROVED BY COMPETENT EVIDENCE. AN EMPLOYEE SHALL BE ELIGIBLE FOR THE PRESUMPTION PROVIDED FOR UNDER THIS SECTION NOTWITHSTANDING THE FACT THAT THE EMPLOYEE DID NOT PARTICIPATE IN WORLD TRADE CENTER RECOVERY AND CLEANUP OPERATIONS FOR A MINIMUM OF FORTY HOURS, PROVIDED THAT: (A) THE EMPLOYEE PARTICIPATED IN THE RESCUE, RECOVERY, OR CLEANUP OPERATIONS AT THE WORLD TRADE CENTER SITE BETWEEN SEPTEMBER ELEVENTH, TWO THOUSAND ONE AND SEPTEMBER TWELFTH, TWO THOUSAND ONE; (B) THE EMPLOYEE DIED OR SUSTAINED A DOCUMENTED PHYSICAL INJURY AT THE WORLD

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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TRADE CENTER SITE BETWEEN SEPTEMBER ELEVENTH, TWO THOUSAND ONE AND SEPTEMBER TWELFTH, TWO THOUSAND ONE THAT IS A QUALIFYING CONDITION OR IMPAIRMENT OF HEALTH RESULTING IN DISABILITY TO THE EMPLOYEE THAT PREVENTED THE EMPLOYEE FROM CONTINUING TO PARTICIPATE IN WORLD TRADE CENTER RESCUE, RECOVERY, OR CLEANUP OPERATIONS FOR A MINIMUM OF FORTY HOURS, OR THE EMPLOYEE DIED AFTER SEPTEMBER TWELFTH, TWO THOUSAND ONE AS A RESULT OF SUSTAINING A DOCUMENTED PHYSICAL INJURY AT THE WORLD TRADE CENTER SITE BETWEEN SEPTEMBER ELEVENTH, TWO THOUSAND ONE AND SEPTEMBER TWELFTH, TWO THOUSAND ONE THAT IS A QUALIFYING CONDITION OR IMPAIRMENT OF HEALTH RESULTING IN DISABILITY TO THE EMPLOYEE THAT PREVENTED THE EMPLOYEE FROM CONTINUING TO PARTICIPATE IN WORLD TRADE CENTER RESCUE, RECOVERY, OR CLEANUP OPERATIONS FOR A MINIMUM OF FORTY HOURS; AND (C) THE DEATH OR DOCUMENTED PHYSICAL INJURY THAT RESULTED IN A DISABILITY TO THE EMPLOYEE THAT PREVENTED THE EMPLOYEE FROM CONTINUING TO PARTICIPATE IN WORLD TRADE CENTER RESCUE, RECOVERY, OR CLEANUP OPERATIONS FOR A MINIMUM OF FORTY HOURS IS THE QUALIFYING CONDITION OR IMPAIRMENT OF HEALTH WHICH THE EMPLOYEE SEEKS TO BE ELIGIBLE FOR THE PRESUMPTION PROVIDED FOR UNDER THIS SECTION.

2. IN ORDER TO BE ELIGIBLE FOR THE PRESUMPTION PROVIDED FOR UNDER SUBDIVISION ONE OF THIS SECTION, AN EMPLOYEE MUST HAVE SUCCESSFULLY PASSED A PHYSICAL EXAMINATION FOR ENTRY INTO PUBLIC SERVICE WHICH FAILED TO DISCLOSE EVIDENCE OF THE QUALIFYING CONDITION OR IMPAIRMENT OF HEALTH THAT FORMED THE BASIS FOR THE DISABILITY.

3. FOR PURPOSES OF THIS SECTION, "QUALIFYING CONDITION OR IMPAIRMENT OF HEALTH" SHALL INCLUDE:

(A) DISEASES OF THE UPPER RESPIRATORY TRACT AND MUCOSAE, INCLUDING CONDITIONS SUCH AS CONJUNCTIVITIS, RHINITIS, SINUSITIS, PHARYNGITIS, LARYNGITIS, VOCAL CORD DISEASE, UPPER AIRWAY HYPER-REACTIVITY AND TRACHEO-BRONCHITIS, OR A COMBINATION OF SUCH CONDITIONS;

(B) DISEASES OF THE LOWER RESPIRATORY TRACT, INCLUDING BUT NOT LIMITED TO BRONCHITIS, ASTHMA, REACTIVE AIRWAY DYSFUNCTION SYNDROME, AND DIFFERENT TYPES OF PNEUMONITIS, SUCH AS HYPERSENSITIVITY, GRANULOMATOUS, OR EOSINOPHILIC;

(C) DISEASES OF THE GASTROESOPHAGEAL TRACT, INCLUDING ESOPHAGITIS AND REFLUX DISEASE, EITHER ACUTE OR CHRONIC, CAUSED BY EXPOSURE OR AGGRAVATED BY EXPOSURE;

(D) DISEASES OF THE PSYCHOLOGICAL AXIS, INCLUDING POST-TRAUMATIC STRESS DISORDER, ANXIETY, DEPRESSION, OR ANY COMBINATION OF SUCH CONDITIONS;

(E) DISEASES OF THE SKIN SUCH AS CONTACT DERMATITIS OR BURNS, EITHER ACUTE OR CHRONIC IN NATURE, INFECTIOUS, IRRITANT, ALLERGIC, IDIOPATHIC OR NON-SPECIFIC REACTIVE IN NATURE, CAUSED BY EXPOSURE OR AGGRAVATED BY EXPOSURE; OR

(F) NEW ONSET DISEASES RESULTING FROM EXPOSURE AS SUCH DISEASES OCCUR IN THE FUTURE, INCLUDING CANCER, CHRONIC OBSTRUCTIVE PULMONARY DISEASE, ASBESTOS-RELATED DISEASE, HEAVY METAL POISONING, MUSCULOSKELETAL DISEASE, AND CHRONIC PSYCHOLOGICAL DISEASE;

4. FOR PURPOSES OF THIS SECTION, "PARTICIPATED IN WORLD TRADE CENTER RESCUE, RECOVERY, OR CLEANUP OPERATIONS" SHALL MEAN ANY EMPLOYEE WHO:

(A) PARTICIPATED IN THE RESCUE, RECOVERY, OR CLEANUP OPERATIONS AT THE WORLD TRADE CENTER SITE BETWEEN SEPTEMBER ELEVENTH, TWO THOUSAND ONE AND SEPTEMBER TWELFTH, TWO THOUSAND TWO, OR

(B) WORKED AT THE FRESH KILLS LAND FILL IN NEW YORK BETWEEN SEPTEMBER ELEVENTH, TWO THOUSAND ONE AND SEPTEMBER TWELFTH, TWO THOUSAND TWO, OR

(C) WORKED AT THE NEW YORK CITY MORGUE OR THE TEMPORARY MORGUE ON PIER LOCATIONS ON THE WEST SIDE OF MANHATTAN BETWEEN SEPTEMBER ELEVENTH, TWO THOUSAND ONE AND SEPTEMBER TWELFTH, TWO THOUSAND TWO, OR

(D) WORKED ON THE BARGES BETWEEN THE WEST SIDE OF MANHATTAN AND THE FRESH KILLS LAND FILL IN NEW YORK BETWEEN SEPTEMBER ELEVENTH, TWO THOUSAND ONE AND SEPTEMBER TWELFTH, TWO THOUSAND TWO. FOR THE PURPOSES OF THIS SECTION, "WORLD TRADE CENTER SITE" SHALL MEAN ANYWHERE BELOW A LINE STARTING FROM THE HUDSON RIVER AND CANAL STREET; EAST ON CANAL STREET TO PIKE STREET; SOUTH ON PIKE STREET TO THE EAST RIVER; AND EXTENDING TO THE LOWER TIP OF MANHATTAN.

5. IN ORDER TO BE ELIGIBLE FOR CONSIDERATION FOR SUCH PRESUMPTION, SUCH EMPLOYEE MUST FILE A WRITTEN AND SWORN STATEMENT WITH THE BOARD ON A FORM PROVIDED BY THE BOARD INDICATING THE DATES AND LOCATIONS OF EMPLOYMENT. SUCH STATEMENT MUST BE FILED NOT LATER THAN TWO YEARS FOLLOWING THE EFFECTIVE DATE OF THIS SECTION.

6. THE CHAIRPERSON IS HEREBY AUTHORIZED TO PROMULGATE RULES AND REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

S 2. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after September 11, 2001.