

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:

1 Section 1. The workers' compensation law is amended by adding a new
2 section 21-b to read as follows:
3 S 21-B. SPECIAL PRESUMPTIONS; INJURY OR ILLNESS DIRECTLY RELATED TO
4 THE TERRORIST ATTACK ON SEPTEMBER ELEVENTH, TWO THOUSAND ONE. 1.
5 NOTWITHSTANDING ANY PROVISIONS OF THIS CHAPTER OR OF ANY GENERAL,
6 SPECIAL, OR LOCAL LAW, CHARTER, ADMINISTRATIVE CODE, OR RULE OR REGU-
7 LATION TO THE CONTRARY, ANY DEATH OR CONDITION OR IMPAIRMENT OF HEALTH
8 CAUSED BY A QUALIFYING CONDITION OR IMPAIRMENT OF HEALTH RESULTING IN
9 DEATH OR DISABILITY TO AN EMPLOYEE WHO PARTICIPATED IN WORLD TRADE
10 CENTER RESCUE, RECOVERY, OR CLEANUP OPERATIONS FOR A MINIMUM OF FORTY
11 HOURS SHALL BE PRESUMPTIVE EVIDENCE THAT IT WAS INCURRED IN THE PERFORM-
12 ANCE AND DISCHARGE OF DUTY AND THE NATURAL AND PROXIMATE RESULT OF AN
13 ACCIDENT NOT CAUSED BY SUCH EMPLOYEE'S OWN WILLFUL NEGLIGENCE, UNLESS
14 THE CONTRARY BE PROVED BY COMPETENT EVIDENCE. AN EMPLOYEE SHALL BE
15 ELIGIBLE FOR THE PRESUMPTION PROVIDED FOR UNDER THIS SECTION NOTWITH-
16 STANDING THE FACT THAT THE EMPLOYEE DID NOT PARTICIPATE IN WORLD TRADE
17 CENTER RECOVERY AND CLEANUP OPERATIONS FOR A MINIMUM OF FORTY HOURS,
18 PROVIDED THAT: (A) THE EMPLOYEE PARTICIPATED IN THE RESCUE, RECOVERY, OR
19 CLEANUP OPERATIONS AT THE WORLD TRADE CENTER SITE BETWEEN SEPTEMBER
20 ELEVENTH, TWO THOUSAND ONE AND SEPTEMBER TWELFTH, TWO THOUSAND ONE; (B)
21 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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1 TRADE CENTER SITE BETWEEN SEPTEMBER ELEVENTH, TWO THOUSAND ONE AND
2 SEPTEMBER TWELFTH, TWO THOUSAND ONE THAT IS A QUALIFYING CONDITION OR
3 IMPAIRMENT OF HEALTH RESULTING IN DISABILITY TO THE EMPLOYEE THAT
4 PREVENTED THE EMPLOYEE FROM CONTINUING TO PARTICIPATE IN WORLD TRADE
5 CENTER RESCUE, RECOVERY, OR CLEANUP OPERATIONS FOR A MINIMUM OF FORTY
6 HOURS, OR THE EMPLOYEE DIED AFTER SEPTEMBER TWELFTH, TWO THOUSAND ONE AS
7 A RESULT OF SUSTAINING A DOCUMENTED PHYSICAL INJURY AT THE WORLD TRADE
8 CENTER SITE BETWEEN SEPTEMBER ELEVENTH, TWO THOUSAND ONE AND SEPTEMBER
9 TWELFTH, TWO THOUSAND ONE THAT IS A QUALIFYING CONDITION OR IMPAIRMENT
10 OF HEALTH RESULTING IN DISABILITY TO THE EMPLOYEE THAT PREVENTED THE
11 EMPLOYEE FROM CONTINUING TO PARTICIPATE IN WORLD TRADE CENTER RESCUE,
12 RECOVERY, OR CLEANUP OPERATIONS FOR A MINIMUM OF FORTY HOURS; AND (C)
13 THE DEATH OR DOCUMENTED PHYSICAL INJURY THAT RESULTED IN A DISABILITY TO
14 THE EMPLOYEE THAT PREVENTED THE EMPLOYEE FROM CONTINUING TO PARTICIPATE
15 IN WORLD TRADE CENTER RESCUE, RECOVERY, OR CLEANUP OPERATIONS FOR A
16 MINIMUM OF FORTY HOURS IS THE QUALIFYING CONDITION OR IMPAIRMENT OF
17 HEALTH WHICH THE EMPLOYEE SEEKS TO BE ELIGIBLE FOR THE PRESUMPTION
18 PROVIDED FOR UNDER THIS SECTION.

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

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

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

30 (B) DISEASES OF THE LOWER RESPIRATORY TRACT, INCLUDING BUT NOT LIMITED
31 TO BRONCHITIS, ASTHMA, REACTIVE AIRWAY DYSFUNCTION SYNDROME, AND DIFFER-
32 ENT TYPES OF PNEUMONITIS, SUCH AS HYPERSENSITIVITY, GRANULOMATOUS, OR
33 EOSINOPHILIC;

34 (C) DISEASES OF THE GASTROESOPHAGEAL TRACT, INCLUDING ESOPHAGITIS AND
35 REFLUX DISEASE, EITHER ACUTE OR CHRONIC, CAUSED BY EXPOSURE OR AGGRA-
36 VATED BY EXPOSURE;

37 (D) DISEASES OF THE PSYCHOLOGICAL AXIS, INCLUDING POST-TRAUMATIC
38 STRESS DISORDER, ANXIETY, DEPRESSION, OR ANY COMBINATION OF SUCH CONDI-
39 TIONS;

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

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

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

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

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

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

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

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

16 6. THE CHAIRPERSON IS HEREBY AUTHORIZED TO PROMULGATE RULES AND REGU-
17 LATIONS TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

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