

NEW JERSEY HORSE RACING INJURY COMPENSATION BOARD

Workers' Compensation Insurance Coverage for Horse Racing Industry Employees

Proposed Readoption With Amendments N.J.A.C. 13:73

Authorized By: New Jersey Horse Racing Injury Compensation Board,
Frank Zanzuccki, Chairman

Authority: N.J.S.A. 34:15-129 et seq., specifically 34:15-133f.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2005-41

Submit written comments by April 8, 2005 to:

Frank Zanzuccki, Chairman
N.J. Horse Racing Injury Compensation Board
140 East Front Street
P.O. Box 088
Trenton, New Jersey 08625-0088

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1c, N.J.A.C. 13:73 is scheduled to expire on June 18, 2005. These rules have been reviewed pursuant to Executive Order No. 66 (1978) and the New Jersey Horse Racing Injury Compensation Board (the Board) finds them to continue to be reasonable, necessary, and effective for the purposes for which they were originally promulgated, namely, that it is in the public interest to ensure that workers' compensation insurance coverage is available to persons employed in the thoroughbred and standardbred horse racing industries in New Jersey.

In enacting the New Jersey Horse Racing Injury Compensation Act, N.J.S.A. 34:15-129 et seq., the Legislature requires the Board to secure workers' compensation insurance coverage for horse racing industry employees, who were defined as "a jockey, jockey apprentice, exercise personnel, driver, driver/trainer performing services for an owner in connection with the exercising or racing of a horse in New Jersey." N.J.S.A. 34:15-131.

In doing so, the Legislature authorizes the Board to assess and collect sufficient funds to pay the costs of the workers' compensation insurance, or provide self-insurance coverage, required by the Act and by the workers' compensation law of this State, including sufficient funds to pay any additional costs necessary to carry out the Board's other duties. N.J.S.A. 34:15-134 The Board ascertains the total funding necessary, establishes the sums that are to be paid and establishes, by regulation, the method of assessing and collecting these funds. Ibid.

In 1997, the Legislature amended the Act to require the Board to also secure workers' compensation insurance for horse racing industry employees of trainers. Subsequently, the Board prepared new rules regarding the horse racing industry employees of both owners and trainers that contain, in addition to the method of assessment and collection of funds, rules concerning scope, purpose, definitions, power of the Board, calculation, purchase, penalties and appeals.

In 2001, the legislation again amended the act to eliminate coverage of employees of trainers at the request of the industry that resulted in the definition of horse racing industry employee for purpose of the act to be a jockey, jockey apprentice or driver engaged in performing services for an owner in connection with the racing of a horse in New Jersey.

The cost of workers' compensation insurance coverage premium is based upon the estimated total payroll of horse racing employees of owners. Information regarding the actual salaries of thoroughbred jockeys and standardbred drivers is available through the horsemen's bookkeeper at each racetrack. See N.J.A.C. 13:70-3.46 and 13:71-6.31.

Once the estimated payroll of horse racing industry employees is calculated for the prior calendar year, the Board utilizes procedures established by the Bureau of Risk Management in the Department of Treasury pursuant to N.J.S.A. 52:27B-62 to obtain premium quotations from insurers who are interested in providing workers' compensation insurance coverage. The Board also computes the costs of obtaining workers' compensation insurance coverage as well as any additional costs necessary to carry out all of its other duties. The Board obtains separate quotations for the Thoroughbred and Standardbred industries. The sum of these costs and the worker's compensation insurance is then assessed upon owners in their respective industries. The cost of workers' compensation insurance or self-insurance coverage for horse racing industry employees employed by owners of horses is assessed upon owners through a percentage deduction from that portion of gross overnight purses paid to owners which shall not exceed three percent.

The chapter proposed for readoption contain 6 subchapters, described as follows:

Subchapter 1, General Rules, contains the chapter's rules of general applicability, including the purpose of the rules.

Subchapter 2, Definitions, provides definitions for the terms used in the chapter including those covered under the rules as "horse racing industry employee."

Subchapter 3, Assessment And Collection, defines the powers of the Board and the methods to be used for assessing and collecting payments for coverage costs.

Subchapter 4, Purchase, provides that the Board review quotations of premiums for insurance coverage and select the type of coverage and the insurer.

Subchapter 5, is reserved

Subchapter 6, Appeals, details the appeals procedure including request for hearing process.

The Board is also proposing an amendment to N.J.A.C. 13:73-2.1, Definitions, and Calculation of cost of workers' compensation insurance or self-insurance coverage for horse racing industry employees of owners. Those proposed amendments reflect an amendment to the New Jersey Horse Racing Injury Compensation Act P.L. 1995, c.329 that requires inclusion of exercise riders of thoroughbred horses as covered employees of the Board.

As the Board has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

Through the adoption of the Act, the Legislature has determined that it is in the public interest to ensure that workers' compensation insurance or self-insurance is available to persons employed in the thoroughbred and standardbred industries in New Jersey by collectively securing coverage for horse racing industry employees. This determination was made with the urging and support of the racing industry to, first and foremost, eliminate the possibility of lapses in coverage that previously occurred to the detriment of injured employees, and to hopefully allow owners to obtain group

insurance coverage at lower cost than securing comparable insurance on an individual basis.

The readoption of these rules ensures that adequate workers' compensation insurance coverage is in place at all times throughout the calendar year and hopefully at a lower cost to owners. This provides a positive impact on the racing industry, especially racetrack industry employees who have the comfort of knowing that workers' compensation insurance is available when a job-related injury occurs.

Additionally, the proposed amendments to N.J.A.C. 13:73-2.1 and 3.3 provide for the expansion of the definition of horse racing industry employee to include exercise riders of thoroughbred horses working at New Jersey racetracks. This provides a positive social benefit to the racing industry by including over 100 industry employees in the high risk category in the workers' compensation coverage offered by the Board. These individuals will have the comfort of knowing that insurance is available if a job related injury occurs.

Economic Impact

It is anticipated that the cost of assessment will continue to be less than the previous cost of workers' compensation insurance coverage prior to adoption of the Act.

In addition, the rules proposed for readoption ensure that horse racing industry employees, whether full-time or part-time, are covered and are no longer in a situation where they may have to pay for costs associated with these injuries. Additionally, if the coverage obtained by the Board is secured at a lower cost to owners, they also benefit economically.

The proposed amendments will provide an economic benefit to some industry employees who now provide workers' compensation coverage for exercise riders in their individual policies. By being included in coverage under the Board's plan, coverage should be available at a lower cost than under individual policies, thus resulting in an economic benefit.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments are authorized by the provisions of the New Jersey Horse Racing Injury Compensation Board Act, N.J.S.A. 13:15-129 et seq; and are not subject to any Federal requirements or standards.

Jobs Impact

There is no direct impact upon the number of persons employed in the racing industry as a result of rules proposed for readoption with amendments. However, there could be an indirect result of an increase in jobs by virtue of having low cost group workers' compensation insurance coverage available to horse owners racing in New Jersey since other states have experienced a problem with job retention in their jurisdiction as a result of the high cost of workers' compensation insurance. The proposed rule amendments do not require racetracks to retain additional bookkeepers in order to include exercise riders as covered employee resulting in no creation or loss of jobs in this specific case.

Agriculture Industry Impact

The availability of horse racing in this State, and the advantageous impact of the Board's rules that ensure that horse racing industry employees are covered under workers' compensation insurance in a cost effective manner, indirectly benefits the agriculture industry in that it encourages the establishment of and maintenance of

horse farms, as well as horse breeding facilities in New Jersey. Accordingly, while the rules proposed for readoption with amendments will not have any new impact on the agriculture industry, their proposed readoption will result in these continued benefits to the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments continues to affect owners licensed in the State of New Jersey. Some of these owners may be “a business... independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees.” N.J.S.A. 52:14B-17. While some owners may be incorporated and may meet the definition of “small business,” the Board has no access to such information to determine the extent that those “small business(es)” exist. However, any small business, as well as all other owners, is currently required to ensure that its horse racing industry employees are covered by workers’ compensation insurance. It is anticipated that the cost of assessment under this program will continue to be less than the aggregate cost of individual policies and, therefore, have little, if any, impact upon businesses of any size. Finally, these rules proposed for readoption with amendments do not impose any reporting or recordkeeping requirements on small businesses nor do they require use of additional outside professional services.

Smart Growth Impact

The rules proposed for readoption with amendments continue to have a positive effect on the smart growth policies associated with the implementation of the State Development and Redevelopment Plan as defined under Executive Order No. 4 (2002). Retention and/or increase in open space are major components of the plan. Breeding farms and training facilities occupy substantial amounts of open space in New Jersey at present. Providing for continual cost-effective workers’ compensation insurance

through the readoption of these rules with amendments assists in maintaining or perhaps increasing the amount of open space dedicated to the horse racing industry.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:73.

Full text of the proposed amendments follow (additions indicated in boldface thus, deletions indicated in brackets [thus]).

13:73-2.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Horse racing industry employee” means a jockey, jockey apprentice, or driver engaged in performing services for an owner in connection with the racing of a horse in New Jersey. “Horse racing industry employee” also means an exercise rider of a thoroughbred horse for the period of time during which he or she is employed as an exercise rider of a thoroughbred horse at a horse racetrack in this State who is licensed by the Commission and from whose wages deductions and withholdings as required or authorized by State or Federal law are taken and [A] a trainer who otherwise would be considered an employee of the owner pursuant to N.J.S.A. 34:15-1 et seq., [is a horse racing industry employee as defined in N.J.S.A. 34:15-131] as well as any person assisting such trainer who is required to be licensed by the Commission.

13:73-3.3 Calculation of cost of workers’ compensation insurance or self-insurance coverage for horse racing industry employees of owners

(a) (No change)

(b) In calculating the total payroll of horse racing industry employees of owners, the Board shall ascertain, to the extent possible, the number of horse racing industry employees of owners and the total salaries of these employees. The Board shall use information regarding the number of horse racing industry employees of owners and the total of their salaries from the 12 months prior to the date on which the assessment is being calculated.

1. (No change)

2. In estimating the salaries of owner employees, the Board may utilize, to the extent necessary, information regarding the average or actual annual salaries of thoroughbred jockeys, [or] jockey apprentices, exercise riders and standardbred drivers within the meaning of the definition of “horse racing industry employee” set forth in N.J.S.A. 34:15-131 and N.J.A.C. 13:73-2.1.

i.-iii. (No change)

3.-4. (No change)