

**§186. Injuries sustained in connection with military duty**

**1. Compensation as state employee.** A member of the state military forces receives compensation as a state employee according to the provisions of Title 39-A and this section.

A. Duty status is as follows.

(1) The types of duty that are covered are:

(a) Active state service as defined by section 101-A, whether performed with or without compensation.

(2) The types of duty that are not covered are:

(d) Federal technician civilian duty under the United States Code, Title 32, Section 709; and

(e) Military duty performed pursuant to the United States Code, Title 10. [PL 2001, c. 662, §24 (AMD).]

B. Types of injuries cognizable are as follows:

(1) The injury, disability or disease must have been received, incurred or contracted while in active state service;

(2) Service members must be under the control and supervision of the military. Incidents occurring during periods of leave or pass are not compensable; and

(3) An injury, disability or disease received not incident to duty or contracted with willful negligence or misconduct is not compensable. [PL 2001, c. 662, §24 (AMD).]

C. Preconditions for benefits under Title 39-A are as follows:

(1) Federal income maintenance benefits must be applied for and, if they exceed comparable Title 39-A benefits, must be exhausted by the member before receiving weekly compensation benefits under Title 39-A. Medical care at military or Veterans' Administration facilities, civilian care paid for by the military forces and other benefits furnished by the military force or the Veterans' Administration, including military programs offered to retrain or occupationally rehabilitate the service member, must be used before entitlement to benefits under Title 39-A. Military programs are fully creditable under Title 39-A in an approved plan of rehabilitation; and

(2) Title 39-A benefits are based on inability to perform the service member's usual occupation. [PL 2001, c. 662, §24 (AMD).]

D. For the purpose of calculation of compensation, average weekly wage must be computed solely on the earning capacity of the injured member in the occupation in which that member is regularly engaged. In case of death, dependents are entitled to compensation as provided in Title 39-A and any amendments to that Title. [PL 2001, c. 662, §24 (AMD).]

E. If the member is eligible for military or Veterans' Administration care and knowingly declines or through the member's actions forfeits rights to federal care benefits, the member is not entitled to compensation for civilian care under Title 39-A. [PL 2001, c. 662, §24 (AMD).]

F. All federal benefits received by the member as a result of an injury, disability or disease are considered to be derived from the employer and constitute a setoff to compensation awarded as a result of this section. A dollar-for-dollar setoff is authorized for all benefits to include continuation of federal pay and allowances, incapacitation pay, severance pay, disability retirement pay, Veterans' Administration disability payments and military and Veterans' Administration death benefits. [PL 2001, c. 662, §24 (AMD).]

G. Reporting pursuant to Title 39-A does not have to be initiated until a final decision is reached on the injured service member's entitlement to federal benefits or while military or veterans' disability benefits are received in lieu of compensation under Title 39-A, whichever ceases first. Veterans' disability benefits provided in this subsection include state military duty pay received under section 143, federal continuation pay or incapacitation pay in lieu of benefits under Title 39-A. The time provisions of Title 39-A commence upon notification to the service member that federal benefits are not authorized, or the gross monetary federal benefits are determined to be less than the entitlements under Title 39-A without taking into account the setoff prescribed in paragraph E. [PL 2001, c. 662, §24 (AMD).]

[PL 2001, c. 662, §24 (AMD).]

**2. Average weekly wage; death benefits.**

[PL 1987, c. 271 (RP).]

**3. Setoff.**

[PL 1987, c. 271 (RP).]

**4. Federal pay status.**

[PL 1987, c. 271 (RP).]

**SECTION HISTORY**

PL 1983, c. 460, §3 (NEW). PL 1987, c. 271 (RPR). PL 1987, c. 769, §§A162,A163 (AMD). PL 1991, c. 885, §E44 (AMD). PL 1991, c. 885, §E47 (AFF). PL 1995, c. 196, §B3 (AMD). PL 2001, c. 662, §24 (AMD).

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