

Paragraph (9) of subdivision (a) of section 300.1 of Title 12 NYCRR is amended to read as follows:

(9) “Prima Facie Medical Evidence” means a medical report referencing an injury, which includes traumas and illnesses, except for an independent livery driver as defined in section 309.1(i) of this Title where it means either (i) a medical report referencing an injury covered by the Independent Livery Driver Benefit Fund as set forth in Executive Law section 160-ddd or, (ii) for injuries resulting from a crime as defined in section 309.1(d) of this Chapter against an independent livery driver, a medical report referencing an injury, and a police report indicating that a crime against an independent livery driver occurred.

A new Part 309 is added to Title 12 NYCRR to read as follows:

Part 309. Independent Livery Driver Benefit Fund.

Section 309.1. Definitions.

As used in this Part:

(a) “Board” means the Workers’ Compensation Board, except as pursuant to Workers’ Compensation Law, the decision of the Board in particular cases may be by a member or panel of the Board or by a Workers’ Compensation Law Judge.

(b) “Chair” means the Chairman, Chairwoman or Chair of the Workers’ Compensation Board.

(c) “Covered services” means all dispatches from a livery base regardless of where the pick-up or discharge occurs, but does not under any circumstances include street hails.

(d) “Crime” means a misdemeanor or felony as those terms are defined in Penal Law Section 10.00 and violations, misdemeanors and felonies as provided in Vehicle and Traffic Law section 1193 for violating Vehicle and Traffic Law section 1192, unless committed by the livery driver. “Crime” does not include violations of the Vehicle and Traffic Law and misdemeanors or felonies resulting from or in a motor vehicle accident, except as provided in the preceding sentence.

(e) “Fund” means the Independent Livery Driver Benefit Fund as established by Executive Law Article 6-G.

(f) “Governing Taxi and Limousine Commission” means the taxi and limousine commission which licenses the livery base or livery driver or regulates the registration of liveries and is either the taxi and limousine commission of New York City, Nassau County or Westchester County or a municipality of Nassau County.

(g) “Independent Livery Base” means a livery base that meets the criteria set forth in Workers’ Compensation Law section 18-c and section 309.2 of this Part.

(h) “Independent Livery Driver” means a livery driver that is dispatched by an independent livery base.

(i) “Livery” means a for-hire vehicle licensed by the taxi and limousine commission of New York City or Westchester County or licensed by a municipality of Nassau County and registered with Nassau County, carrying no more than five passengers or such other vehicle limited number as set by the governing taxi and limousine commission, which charges for services on the basis of flat rate, time, mileage or zones and which is dispatched by a livery dispatch facility, but shall not include a vehicle classified as a black car, as defined in Executive Law Article 6-F, or a vehicle classified as a luxury limousine, as defined by the taxi and limousine commission of New York City or Westchester County or licensed by a municipality of Nassau County and registered with Nassau County.

(j) “Livery base” means a central facility that manages, organizes or dispatches liveries, and is licensed to do so by the taxi and limousine commission of New York City or Westchester County or is located in Nassau County and is not a member of the New York Black Car Operators’ Injury Compensation Fund, Inc.

(k) “Livery driver” means an individual that drives a livery, is dispatched by a livery base, receives compensation for such driving, and is licensed to do so by the taxi and limousine commission of New York City, Nassau County or Westchester County or a municipality of Nassau County.

(l) “New York State Average Weekly Wage” shall have the same meaning as provided in Workers’ Compensation Law §2(16).

Section 309.2. Independent livery base.

(a) A livery base may join the Fund only if it is designated by the Board as an independent livery base.

(b) A livery base will only be designated as an independent livery base if:

(1) The livery base submits to the Board an affirmation sworn to under penalty of perjury by an officer or director on a Board prescribed form attesting that it meets the criteria to be an independent livery base set forth in subdivision (c) of this section;

(2) The livery base agrees to provide the Board and Fund with written notice of any inaccuracies in the information in the affirmation within five business days of discovery or knowledge of the inaccuracies;

(3) The livery base agrees to provide the Board and Fund with written notice of any changes in the information in the affirmation within ten business days of such changes; and

(4) The Board designates the livery base as an independent livery base after receipt and review of the affirmation required by paragraph (1) of this subdivision.

(c) A livery base shall only be designated as an independent livery base if it meets all of the following criteria:

(1) The livery base is not classified by the governing taxi and limousine commission as a black car base or luxury limousine base and is not a member of the New York Black Car Operators' Injury Compensation Fund, Inc.;

(2) All livery drivers dispatched by the livery base provide and determine their own clothing;

(3) All livery drivers dispatched by the livery base set their own hours and days of work;

(4) All livery drivers choose which dispatches or fares to accept, and no livery driver suffers any consequence by the livery base for failing to respond to its dispatch, except that every livery driver must comply with all requirements of his or her governing taxi and limousine commission regarding acceptance of

dispatches, fares, trips, passengers and destinations. A livery base may temporarily deny access to its dispatches for failing to respond to a dispatch in violation of local and state laws or governing taxi and limousine commission rules and regulations regarding refusing dispatches without affecting its ability to be an independent livery base;

(5) All livery drivers may affiliate with one or more other livery bases, except if prohibited by rules or regulations of the governing taxi and limousine commission;

(6) Either the livery driver or livery base may terminate their affiliation at any time, except that a livery base must terminate its relationship with the livery driver in accordance with any rules and regulations of the governing taxi and limousine commission;

(7) The livery base is not, directly or indirectly, including through any director, shareholder, partner, member or officer, the owner or registrant of more than fifty percent of the liveries dispatched by the livery base;

(8) The livery base is not, directly or indirectly, including through any director, shareholder, partner, member or officer, paying or participating in paying for the purchase, maintenance, repair, insurance, licensing, or fuel, of more than fifty percent of the liveries dispatched by the livery base;

(9) No livery driver dispatched by the livery base receives an Internal Revenue Service form W-2 from such base, or is subject to the withholding of any federal income taxes by the livery base, except as provided in paragraph (10) of this subdivision;

(10) If the livery base is the owner or registrant of less than fifty (50) percent of the liveries dispatched by that livery base and it issues an Internal Revenue Service form W-2 to a livery driver or livery drivers, or withholds any federal income taxes for a livery driver or livery drivers, such livery base must provide workers' compensation coverage for that livery driver or those livery drivers that is separate from the Fund; and

(11) The livery base does not impose any fines or penalties or both on any livery drivers, except the livery base may impose fines or penalties or both on a livery driver for violating the rules and regulations of the

governing taxi and limousine commission regarding the conduct of livery drivers while performing their duties as livery drivers and in order to recover the cost of any fines or penalties or both imposed on the livery base by the governing taxi and limousine commission due to the behavior of that livery driver that violated the rules and regulations of the governing taxi and limousine commission.

(d) Termination of membership in the Fund.

(1) Nonpayment. If an independent livery base fails to pay the annual payment, any additional payment or any part of such payments pursuant to an installment agreement to the Fund, the Fund, its insurance carrier, or other designated agent may terminate the independent livery base's membership in the Fund by sending written notice to the livery base that its membership in the Fund will be terminated on a date, specified in the notice, that is no less than ten days after the date the notice was served on the independent livery base and the Chair. The notice must state that upon the termination of its membership in the Fund, the livery base will be deemed the employer of all of its livery drivers and must obtain workers' compensation coverage for them. If service is made by mail, the Fund must allow five days for delivery. Failure to provide written notice to the livery base that its membership in the Fund will be terminated on a date, specified in the notice, that is no less than ten days after the date the notice was served on the independent livery base, will result in the livery base's membership in the Fund continuing until such notice can be provided in accordance with this paragraph, unless the Fund, its insurance carrier, or other designated agent can show actual notice by the livery base of the termination of its membership in the Fund. A copy of the written notice shall be sent to the governing taxi and limousine commission on the same date it is sent to the livery base and the Chair.

(2) Designation revoked. Before revoking a livery base's designation as an independent livery base, the Board will provide written notice of the charges to the independent livery base and conduct a hearing to determine the validity of the charges. If the Board revokes a livery base's designation as an independent livery base, the Board will send a copy of the decision revoking the designation to the Fund at the same time it sends

the decision to the livery base. The Fund upon receiving the decision revoking the designation of the livery base as an independent livery base will send written notice to the livery base, the Board and the governing taxi and limousine commission that the livery base will cease to be a member of the Fund thirty days after the date of the notice. The notice will also state that the livery base is not entitled to the return of money paid to the Fund. Within twenty days after the Board issues its decision revoking a livery base's designation as an independent livery base, a livery base may appeal that decision to the Third Department of the Appellate Division. Failure to provide written notice to the livery base that it will cease to be a member of the Fund thirty days after the date in the notice, will result in the livery base's membership in the Fund continuing until such notice can be provided in accordance with this paragraph, unless the Fund, its insurance carrier, or other designated agent can show actual notice by the livery base that its membership in the Fund ceased.

(3) If an independent livery base decides to terminate its membership in the Fund, it must provide written notice to the Fund, Chair, and governing taxi and limousine commission at least thirty days prior to the date its membership in the Fund will end. The notice must state the date its membership in the Fund will terminate, whether it will continue to operate as a livery base, and if it will continue to operate as a livery base information regarding how it will provide workers' compensation coverage for its livery drivers, including but not limited to, name of provider of workers' compensation coverage, policy number, effective date of coverage and, if applicable, proof that all affiliated drivers will be or have been added to existing workers' compensation coverage. Failure to provide at least thirty days written notice to the Fund, Chair and governing taxi and limousine commission will result in the livery base's membership in the Fund continuing until such notice can be provided in accordance with this paragraph.

(e) Any livery base that is not designated by the Board as an independent livery base shall be deemed an employer for purposes of the Workers' Compensation Law of any livery driver it dispatches and therefore is responsible for providing workers' compensation coverage for such livery drivers.

(f) Any livery base that is designated by the Board as an independent livery base and that has joined the Fund shall not charge any driver for any portion of the cost of joining and/or being a member of the Fund.

Section 309.3. Livery drivers.

(a) Independent livery drivers.

(1) A livery driver is an independent livery driver when he or she is licensed to drive a livery by the appropriate governing taxi and limousine commission and is dispatched by an independent livery base with which he or she is affiliated.

(2) An independent livery driver that sustains injury as a result of the use or operation of a livery during a dispatch by an independent livery base shall be eligible to receive any benefits for which such driver is eligible under Insurance Law Article 51 and shall not be entitled to workers' compensation benefits except as set forth in Executive Law section 160-ddd and paragraph (3) of this subdivision.

(3) Workers' compensation benefits shall be provided by the Fund for independent livery drivers dispatched by independent livery bases for deaths of such drivers arising out of and in the course of providing covered services, and all injuries sustained by such drivers arising out of and in the course of providing covered services either:

(i) Resulting from a crime committed against such livery driver as evidenced by a police report; or

(ii) Resulting in the following conditions:

(a) Amputation or physical loss of an arm, leg, hand, foot, multiple fingers, index finger, multiple toes, ear or nose;

(b) Paraplegia or quadriplegia; or

(c) Total and permanent blindness or deafness.

(4) Workers' compensation benefits shall not be provided by the Fund if the independent livery driver was not performing covered services or was in violation of the rules and regulations of the governing taxi and limousine commission regarding the solicitation or picking up of passengers at the time the crime was committed against him or her or when his or her death or injury occurred.

(5) All claims of independent livery drivers for workers' compensation benefits as provided in Executive Law section 160-ddd and paragraph (3) of this section must be filed in this State with the Board, regardless of the location of the incident.

(6) An independent livery driver that may be entitled to workers' compensation benefits as provided in Executive Law section 160-ddd and paragraph (3) of this section, or someone on his or her behalf, must provide written notice to the Fund in accordance with Workers' Compensation Law section 18.

(7) Presumptive wages. (i) Independent livery drivers are presumed to receive annual wages of thirteen thousand (\$13,000) dollars for an average weekly wage of two hundred fifty dollars. An independent livery driver or the Fund may rebut the presumptive annual or average weekly wage by submitting competent evidence to the Board that the independent livery driver's actual wages for covered services were different. Competent evidence includes state or federal income tax returns or financial or business records of comparable probative value to income tax returns. State or federal income tax returns which should have been filed as of the date of the injury or death but had not then been filed shall not be sufficient to overcome the presumptive wage without other evidence. The Board shall evaluate any other evidence of earnings in light of its probative value and reliability.

(ii) For deaths and injuries occurring on or after July first, two thousand eleven, and on or after July first of each succeeding year, the presumptive wage shall increase by the percentage increase in the New York State Average Weekly Wage between the year in which it is reported and the previous year. If there is no increase in

the New York State Average Weekly Wage in a particular year, then the presumptive wage shall remain unchanged.

(b) A livery driver that is not an independent livery driver is not entitled to any benefits from the Fund but is deemed an employee of the livery base with which he or she is affiliated and workers' compensation benefits shall be paid for any death or injury arising out of and in the course of employment as provided by the Workers' Compensation Law.