

<b>State Snapshot</b>		<b>New Jersey</b>
<b>Exclusive-remedy provision</b>		

## **BASIC RULE**

Worker's compensation is the sole remedy for employees who suffer injuries that arise out of and in the course of employment. N.J. Rev. Stat. § 34:15-7

This means that the employee cannot sue the employer in tort, such as by claiming that the employer was negligent.

This includes lawsuits that are based on injuries caused by coworkers and that occur while both individuals are in the same employ (except for intentional wrongs). *Jameel v. Dember*, Docket No. A-1225-23 (N.J. Super. Ct. 04/28/25).

## **INTENTIONAL WRONG EXCEPTION**

### **Rule**

Employees whose injuries arise out of and in the course of employment can sue their employers for an intentional wrong. N.J.S.A. 34:15-8.

### **Elements of an intentional wrong claim**

In determining whether there has been an intentional wrong, courts consider both the employer's conduct and the context in which the conduct occurs.

To establish an intentional wrong claim, the employee must show that:

1. The employer knew that its actions were substantially certain to result in injury or death; and
2. The resulting injury and the circumstances of its infliction on the worker are:
  - a. Plainly beyond the ordinary facts of industrial life; and
  - b. Not something the legislature intended to immunize.

*Richter v. Oakland Bd. of Educ.*, 246 N.J. 507, 536, 252 A.3d 161 (2021)

**“Substantially certain”**

It's not enough to show that the employer knew about and appreciated that there was a risk that the employee would get injured because of its conduct. This may amount to negligence. If the risk is truly great, it may even amount to reckless or gross negligence.. But that's not enough to meet the substantial certainty standard.

### **“Plainly beyond the ordinary facts of industrial life”**

Plainly beyond the ordinary facts of industrial life means that:

- The injury is not typical for the particular industry; or
- The injury goes beyond what most people would reasonably foresee occurring as part of the particular job.

### **Difficulty of establishing intentional wrong**

The injured employee has the burden of establishing that there has been an intentional wrong. This is a very high bar to meet. Courts interpret this exclusion in a very narrow manner. An employer need not subjectively desire to harm an employee. However, unless the employer was virtually certain that its actions would result in injury, it is not considered an intentional harm.

## **CLAIMS THAT FALL OUTSIDE OF THE WCA**

### **Lawsuits against third parties**

Employees can sue a third party whose negligence contributed to a workplace injury.

For example, employees can both receive workers' compensation benefits and sue a manufacturer or property owner whose negligence contributed to the injury. This might occur, for instance, where the employee was injured as a result of using defective equipment supplied by an outside manufacturer.

### **New Jersey Law Against Discrimination claims**

The exclusivity rule does not apply to an employee's lawsuit brought under the New Jersey Law Against Discrimination. This includes a lawsuit that addresses physical injuries resulting from discrimination. Further, the employee does not need to show intentional wrong when bringing a NJLAD claim. *Richter v. Oakland Board of Education* (N.J. 06/01/21).

## **RECENT CASES**

**Lopez v. Carousel Auto Repair Inc., 732 F. Supp. 3d 383 (D.N.J. 2024).**

An auto repairman suffered burns after his employer placed a drip pan under a car to catch dripping gas and asked him to help push the car, sparking a fire. The court held that the employer did not engage in an intentional wrong by placing the drip pan under the car. “[K]nowing that placing a drip pan creates ‘a danger of fire’ is not the same as knowing that placing a drip pan creates a ‘substantial certainty’ of injury or death,” the court said.

The court also held that the employer’s conduct of panicking and spraying the employee with wiper fluid that increased the flames was not an intentional harm. Finally, the failure of the employer to possess proper fire control equipment was not an intentional harm.

**Alexander v. Northwest Sweepers, No. A-1486-23 (N.J. Super. Ct. 06/19/25, unpublished)**

While working in an active construction zone on the New Jersey Turnpike, the employee was killed when a sweeper truck hit him. His estate failed to show that the employer committed an intentional wrong within the meaning of the WCA when it allegedly knew about but ignored needed safety protocols, such as work lighting, properly functioning mirrors, the use of spotters, and a written traffic control plan.