

P.L. 2003, CHAPTER 253, *approved January 14, 2004*
Senate, No. 1522 (*Second Reprint*)

1 AN ACT concerning workers' compensation for ¹certain¹ occupational
2 disease claims and workers' compensation benefit rates for
3 surviving dependents ¹[and]¹ amending R.S.34:15-13,
4 ¹[R.S.34:15-30 and R.S.34:15-32] supplementing Title 34 of the
5 Revised Statutes¹ and repealing R.S.34:15-33.
6

7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:

9
10 1. R.S.34:15-13 is amended to read as follows:

11 34:15-13. Except as hereinafter provided, in case of death,
12 compensation shall be computed, but not distributed, on the following
13 basis:

14 a. For one [dependent, 50%] or more dependents, 70% of wages.

15 b. [For two dependents, 55% of wages] (Deleted by amendment,
16 P.L. _____, c. _____).

17 c. [For three dependents, 60% of wages] (Deleted by amendment,
18 P.L. _____, c. _____).

19 d. [For four dependents, 65% of wages] (Deleted by amendment,
20 P.L. _____, c. _____).

21 e. [For five or more dependents, 70% of wages] (Deleted by
22 amendment, P.L. _____, c. _____).

23 f. The term "dependents" shall apply to and include any or all of
24 the following who are dependent upon the deceased at the time of
25 accident or the occurrence of occupational disease, or at the time of
26 death, namely: husband, wife, parent, stepparents, grandparents,
27 children, stepchildren, grandchildren, child in esse, posthumous child,
28 illegitimate children, brothers, sisters, half brothers, half sisters, niece,
29 nephew. Legally adopted children shall, in every particular, be
30 considered as natural children. Dependency shall be conclusively
31 presumed as to the decedent's spouse and to any natural child of a
32 decedent under 18 years of age or, if enrolled as a full-time student,
33 under 23 years of age, who was actually a part of the decedent's
34 household at the time of the decedent's death. Every provision of this
35 article applying to one class shall be equally applicable to the other.
36 Should any dependent of a deceased employee die during the period
37 covered by such weekly payments the right of such dependent to
38 compensation under this section shall cease, but should the surviving

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SLA committee amendments adopted January 27, 2003.

² Senate SBA committee amendments adopted March 17, 2003.

1 spouse of a deceased employee remarry during such period and before
2 the total compensation is paid, the spouse shall be entitled to receive
3 the remainder of the compensation which would have been due the
4 spouse had the spouse not remarried, or 100 times the amount of
5 weekly compensation paid immediately preceding the remarriage,
6 whichever is the lesser. The foregoing schedule applies only to
7 persons wholly dependent, and in the case of persons only partially
8 dependent, except in the case of the surviving spouse and children who
9 were actually a part of the decedent's household at the time of death,
10 the compensation shall be such proportion of the scheduled percentage
11 as the amounts actually contributed to them by the deceased for their
12 support constituted of his total wages and the provision as to a
13 minimum of 20% of the average weekly wage as set forth in subsection
14 a. of R.S.34:15-12 shall not apply to such compensation. In
15 determining the number of dependents, where the deceased employee
16 was a minor, the number of persons dependent upon the deceased
17 employee shall be determined in the same way as if the deceased
18 employee were an adult, notwithstanding any rule of law as to the
19 person entitled to a minor's wages.

20 g. Compensation shall be computed upon the foregoing basis.
21 Distribution shall be made among dependents, if more than one,
22 according to the order of the Division of Workers' Compensation,
23 which shall, when applied to for that purpose, determine, upon the
24 facts being presented to it, the proportion to be paid to or on behalf of
25 each dependent according to the relative-dependency. Payment on
26 behalf of infants shall be made to the surviving parent, if any, or to the
27 statutory or testamentary guardian.

28 h. If death results from the accident or occupational disease,
29 whether there be dependents or not, expenses of the last sickness of
30 the deceased employee shall be paid in accordance with the provisions
31 for medical and hospital service as set forth in R.S.34:15-15. In
32 addition, the cost of burial and of a funeral, not to exceed \$3,500 shall
33 be paid to the dependent or other person having paid the costs of
34 burial and the funeral. In the event that the dependent or other person
35 has paid less than \$3,500 for the costs of burial and the funeral, the
36 dependent or other person shall be reimbursed in the amount paid and,
37 if the costs of burial and the funeral exceed the amount so paid, the
38 difference between the said amount and \$3,500 or so much thereof as
39 may be necessary to pay the cost of burial and the funeral, shall be
40 paid to the undertaker or embalmer or the dependent or other person
41 having paid the costs of burial and the funeral. In the event that no
42 part of the costs of burial and the funeral have been paid, the amount
43 of such cost of burial and the funeral, not to exceed \$3,500, shall be
44 paid to the undertaker or embalmer or the dependent or other person
45 who is to pay the costs of burial and the funeral.

46 i. In computing compensation to those named in this section,

1 except husband, wife, parents and stepparents, and except as otherwise
2 provided in this section, only those under 18 or over 40 years of age
3 shall be included and then only for that period in which they are under
4 18 or over 40; provided, however, that payments to such physically or
5 mentally deficient persons as are for such reason dependent shall be
6 made during the full compensation period of 450 weeks.

7 j. The maximum compensation in case of death shall be subject to
8 the maximum compensation as stated in subsection a. of R.S.34:15-12
9 and a minimum of 20% of average weekly wages per week as set forth
10 in subsection a. of R.S.34:15-12, except in the case of partial
11 dependency as provided in this section. This compensation shall be
12 paid, in the case of a surviving spouse, during the entire period of
13 survivorship or until such surviving spouse shall remarry and, in the
14 case of other dependents, during 450 weeks and if at the expiration of
15 450 weeks there shall be one or more dependents under 18 years of
16 age, compensation shall be continued for such dependents until they
17 reach 18 years of age, or 23 years of age while enrolled as a full-time
18 student, at the schedule provided under [subsections] subsection a.
19 [to e.] of this section.

20 (cf: P.L.1995, c.185, s.1)

21

22 ¹[2. R.S.34:15-30 is amended to read as follows:

23 34:15-30. When employer and employee have accepted the
24 provisions of this article as aforesaid, compensation for personal
25 injuries to or for death of [such] the employee by any compensable
26 occupational disease arising out of and in the course of his
27 employment, as hereinafter defined, shall be made by the employer to
28 the extent hereinafter set forth and without regard to the negligence of
29 the employer, except that no compensation shall be payable when the
30 injury or death by occupational disease is caused by willful
31 self-exposure to a known hazard or by the employee's willful failure to
32 make use of a reasonable and proper guard or personal protective
33 device furnished by the employer which has been clearly made a
34 requirement of the employee's employment by the employer and which
35 an employer can properly document that despite repeated warnings,
36 the employee has willfully failed to properly and effectively utilize,
37 provided, however, this latter provision shall not apply where there is
38 such imminent danger or need for immediate action which does not
39 allow for appropriate use of personal protective device or devices.
40 The employee or the surviving dependents of the employee may obtain
41 full compensation for injury or death by a compensable occupational
42 disease from any employer or employers, if the employee was, in the
43 course of employment with that employer or those employers, exposed
44 to a deleterious substance which is a cause of the occupational disease,
45 and it shall not be a defense to the claim that an employer was not the
46 last employer or that the latency period for the exposure is not

1 adequate.

2 (cf: P.L.1979, c.283, s.9)]¹

3
4 ¹2. (New section) a. In the case of a claim for compensation for
5 an occupational disease resulting in injury or death from an exposure
6 to asbestos, if after due diligence, the standards for which shall be set
7 forth by the Director of the Division of Workers' Compensation: (1)
8 the workers compensation insurer of an employer, the employer, or the
9 principals of the employer where the claimant was last exposed cannot
10 be located; or (2) the employee making the claim worked for more
11 than one employer, during which time the exposure to asbestos may
12 reasonably be deemed to have taken place but the employer or
13 employers where the petitioner was last exposed cannot reasonably be
14 identified, an application shall be made to the ²[Second Injury Fund]
15 uninsured employer's fund², created pursuant to ²[R.S. 34:15-95]
16 section 10 of P.L.1966, c.126 (C.34:15-120.1)², and any award by a
17 judge of compensation shall be payable from the fund. For the
18 purposes of this section "occupational disease resulting in injury or
19 death from an exposure to asbestos" means asbestosis or any asbestos-
20 induced cancer, including mesothelioma.

21 b. In the case of any claim paid by the ²[Second Injury Fund]
22 uninsured employer's fund² pursuant to this section, the fund shall
23 have the right of subrogation against (1) any insurer or employer
24 identified as liable as set forth under the provisions of subsection a. of
25 this section; or (2) against the stock workers' compensation security
26 fund, or the mutual workers' compensation security fund, if an
27 insolvent insurer is determined to be liable ²; or (3) against the New
28 Jersey Self-Insurers Guaranty Association if an insolvent self-insurer
29 is determined to be liable².

30 c. The fund shall have a lien pursuant to R.S.34:15-40 against any
31 award received by the claimant from a third party resulting from the
32 exposure to asbestos.

33 d. Compensation shall be based on the last date of exposure, if
34 known, or if the last date of exposure cannot be known, the judge shall
35 establish an appropriate date.¹

36 ²e. To ensure sufficient funding for the payment of claims under
37 this section, the State Treasurer shall, within 30 days following the
38 effective date of P.L. _____, c. _____ (C. _____) (now pending before the
39 Legislature as this bill) and upon request of the Commissioner of
40 Labor, transfer an amount not to exceed \$500,000 from the Second
41 Injury Fund to the uninsured employer's fund. At the end of the first
42 calendar quarter immediately following that effective date and at the
43 end of each calendar quarter thereafter, the State Treasurer shall, upon
44 request of the Commissioner of Labor, transfer from the Second Injury
45 Fund to the uninsured employer's fund an amount estimated by the
46 Commissioner of Labor to be required by the uninsured employer's

1 fund for payment of such claims for the next following calendar
2 quarter. Amounts transferred from the Second Injury Fund under the
3 provisions of this subsection shall be included in the determination of
4 surcharges and assessments for the Second Injury Fund and shall be
5 excluded from the determination of surcharges and assessments for the
6 uninsured employer's fund.

7 f. The Commissioner of Labor shall, within 180 days following the
8 effective date of P.L. _____, c. _____ (C. _____) (now pending before the
9 Legislature as this bill), promulgate rules and regulations as necessary
10 to effectuate the purposes of that act.²

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12 ¹[3. R.S.34:15-32 is amended to read as follows:

13 34:15-32. The compensation payable for death or disability total
14 in character and permanent in quality resulting from an occupational
15 disease shall be the same in amount and duration and shall be payable
16 in the same manner and to the same persons as would have been
17 entitled thereto had the death or disability been caused by an accident
18 arising out of and in the course of the employment, except that for any
19 employee or dependent who is not entitled to receive special
20 adjustment benefits pursuant to section 1 of P.L.1980, c.83 (C.34:15-
21 95.4):

22 a. In the case of disability total in character and permanent in
23 quality which manifests itself after the last date of exposure with the
24 liable employer, the weekly benefit amount shall be calculated as if the
25 employee had continued working until the date of manifestation, and
26 be based on the amount that the employee's weekly wage would have
27 been at the time of manifestation, which shall be determined by
28 increasing the employee's weekly wages received prior to the last date
29 of exposure with the liable employer by the percentage increase in the
30 average weekly wage for all workers covered by the "unemployment
31 compensation law" (R.S.43:21-1 et seq.) from that last date of
32 exposure to the date of manifestation.

33 b. In the case of death from occupational disease which occurs
34 after the last date of exposure with the liable employer, the weekly
35 benefit amount shall be calculated as if the employee had continued
36 working until the date of death, and be based on the amount that the
37 employee's weekly wage would have been at the time of death, which
38 shall be determined by increasing the employee's weekly wages
39 received prior to the last date of exposure with the liable employer by
40 the percentage increase in the average weekly wage for all workers
41 covered by the "unemployment compensation law" (R.S.43:21-1 et
42 seq.) from that last date of exposure to the date of death.

43 In determining the duration of temporary and permanent partial
44 disability, either or both, and the duration of payment for the disability
45 due to occupational diseases, the same rules and regulations as are
46 now applicable to accident or injury occurring under this article shall

1 apply, except that in the case of an occupational disease which
2 manifests itself after the last date of exposure with the liable employer,
3 the weekly benefit amount shall be calculated as if the employee had
4 continued working until the date of manifestation, and be based on the
5 amount that the employee's weekly wage would have been at the time
6 of manifestation, which shall be determined by increasing the
7 employee's weekly wages received prior to the last date of exposure
8 with the liable employer by the percentage increase in the average
9 weekly wage for all workers covered by the "unemployment
10 compensation law" (R.S.43:21-1 et seq.) from that last date of
11 exposure to the date of manifestation.]¹

12

13 ¹[4.] 3.¹ R.S.34:15-33 is repealed.

14

15 ¹[5.] 4.¹ This act shall take effect immediately.

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20 Concerns workers' compensation for occupational disease claims and
21 workers' compensation benefit rates for surviving dependents.