

SENATE, No. 1522

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED MAY 16, 2002

Sponsored by:
Senator RICHARD J. CODEY
District 27 (Essex)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/10/2002)

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1 AN ACT concerning workers' compensation for occupational disease
2 claims and workers' compensation benefit rates for surviving
3 dependents and amending R.S.34:15-13, R.S.34:15-30 and
4 R.S.34:15-32 and repealing R.S.34:15-33.

5

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

8

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

10 34:15-13. Except as hereinafter provided, in case of death,
11 compensation shall be computed, but not distributed, on the following
12 basis:

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

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

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

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

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

22 f. The term "dependents" shall apply to and include any or all of
23 the following who are dependent upon the deceased at the time of
24 accident or the occurrence of occupational disease, or at the time of
25 death, namely: husband, wife, parent, stepparents, grandparents,
26 children, stepchildren, grandchildren, child in esse, posthumous child,
27 illegitimate children, brothers, sisters, half brothers, half sisters, niece,
28 nephew. Legally adopted children shall, in every particular, be
29 considered as natural children. Dependency shall be conclusively
30 presumed as to the decedent's spouse and to any natural child of a
31 decedent under 18 years of age or, if enrolled as a full-time student,
32 under 23 years of age, who was actually a part of the decedent's
33 household at the time of the decedent's death. Every provision of this
34 article applying to one class shall be equally applicable to the other.
35 Should any dependent of a deceased employee die during the period
36 covered by such weekly payments the right of such dependent to
37 compensation under this section shall cease, but should the surviving
38 spouse of a deceased employee remarry during such period and before
39 the total compensation is paid, the spouse shall be entitled to receive
40 the remainder of the compensation which would have been due the
41 spouse had the spouse not remarried, or 100 times the amount of
42 weekly compensation paid immediately preceding the remarriage,

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.

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

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

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

41 i. In computing compensation to those named in this section,
42 except husband, wife, parents and stepparents, and except as otherwise
43 provided in this section, only those under 18 or over 40 years of age
44 shall be included and then only for that period in which they are under
45 18 or over 40; provided, however, that payments to such physically or
46 mentally deficient persons as are for such reason dependent shall be

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1 made during the full compensation period of 450 weeks.

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

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

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17 2. R.S.34:15-30 is amended to read as follows:

18 34:15-30. When employer and employee have accepted the
19 provisions of this article as aforesaid, compensation for personal
20 injuries to or for death of [such] the employee by any compensable
21 occupational disease arising out of and in the course of his
22 employment, as hereinafter defined, shall be made by the employer to
23 the extent hereinafter set forth and without regard to the negligence of
24 the employer, except that no compensation shall be payable when the
25 injury or death by occupational disease is caused by willful
26 self-exposure to a known hazard or by the employee's willful failure to
27 make use of a reasonable and proper guard or personal protective
28 device furnished by the employer which has been clearly made a
29 requirement of the employee's employment by the employer and which
30 an employer can properly document that despite repeated warnings,
31 the employee has willfully failed to properly and effectively utilize,
32 provided, however, this latter provision shall not apply where there is
33 such imminent danger or need for immediate action which does not
34 allow for appropriate use of personal protective device or devices.
35 The employee or the surviving dependents of the employee may obtain
36 full compensation for injury or death by a compensable occupational
37 disease from any employer or employers, if the employee was, in the
38 course of employment with that employer or those employers, exposed
39 to a deleterious substance which is a cause of the occupational disease,
40 and it shall not be a defense to the claim that an employer was not the
41 last employer or that the latency period for the exposure is not
42 adequate.

43 (cf: P.L.1979, c.283, s.9)

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45 3. R.S.34:15-32 is amended to read as follows:

46 34:15-32. The compensation payable for death or disability total

1 in character and permanent in quality resulting from an occupational
2 disease shall be the same in amount and duration and shall be payable
3 in the same manner and to the same persons as would have been
4 entitled thereto had the death or disability been caused by an accident
5 arising out of and in the course of the employment, except that for any
6 employee or dependent who is not entitled to receive special
7 adjustment benefits pursuant to section 1 of P.L.1980, c.83 (C.34:15-
8 95.4):

9 a. In the case of disability total in character and permanent in
10 quality which manifests itself after the last date of exposure with the
11 liable employer, the weekly benefit amount shall be calculated as if the
12 employee had continued working until the date of manifestation, and
13 be based on the amount that the employee's weekly wage would have
14 been at the time of manifestation, which shall be determined by
15 increasing the employee's weekly wages received prior to the last date
16 of exposure with the liable employer by the percentage increase in the
17 average weekly wage for all workers covered by the "unemployment
18 compensation law" (R.S.43:21-1 et seq.) from that last date of
19 exposure to the date of manifestation.

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

30 In determining the duration of temporary and permanent partial
31 disability, either or both, and the duration of payment for the disability
32 due to occupational diseases, the same rules and regulations as are
33 now applicable to accident or injury occurring under this article shall
34 apply, except that in the case of an occupational disease which
35 manifests itself after the last date of exposure with the liable employer,
36 the weekly benefit amount shall be calculated as if the employee had
37 continued working until the date of manifestation, and be based on the
38 amount that the employee's weekly wage would have been at the time
39 of manifestation, which shall be determined by increasing the
40 employee's weekly wages received prior to the last date of exposure
41 with the liable employer by the percentage increase in the average
42 weekly wage for all workers covered by the "unemployment
43 compensation law" (R.S.43:21-1 et seq.) from that last date of
44 exposure to the date of manifestation.

1 4. R.S.34:15-33 is repealed.

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3 5. This act shall take effect immediately.

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STATEMENT

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8 This bill permits a worker or the surviving dependents of the
9 worker to obtain workers' compensation from any employer or
10 employers, if the worker was, in the course of employment with that
11 employer or those employers, exposed to a deleterious substance
12 which is a cause of the occupational disease, without regard to the
13 latency period for the exposure or whether the employer was the last
14 employer of the worker. The current practice of limiting responsibility
15 to the last employer, when combined with the long latency periods of
16 some occupational diseases, often prevents the recovery of any
17 compensation.

18 The bill also changes the procedures for calculating the weekly
19 benefit amount in an occupational disease claim in which the disease
20 manifests itself or causes death after the last date of exposure with the
21 liable employer. Current law calculates benefit rates on the basis of
22 the worker's weekly wage at the time of last exposure with a liable
23 employer. The bill instead requires that benefit rates be calculated as
24 if the worker had worked until the time of manifestation, or of death,
25 in the case of benefits for surviving dependents, and be based on the
26 amount that the worker's weekly wage would have been at the time of
27 manifestation or death. The bill makes an exception for cases of death
28 or permanent total disability occurring prior to January 1, 1980,
29 because current law already provides for a cost of living adjustment in
30 those cases.

31 In addition, the bill repeals R.S.34:15-33, which currently requires
32 the worker or the worker's dependents to notify the employer within
33 five months after an exposure to an occupational disease ends, or 90
34 days after the worker knew, or should have known, about the disease
35 and its relation to the employment, whichever is later. Any claimant
36 for compensation would still be subject to the requirements if
37 R.S.34:15-34 that a claim for compensation for occupational disease
38 be filed within two years after the date when the claimant first knew
39 the nature of the disability and its relation to the employment.

40 Finally, the bill increases the benefit rate surviving dependents of a
41 worker who dies because of occupational illness or injury to 70% of
42 the worker's weekly wage without regard to the number of
43 dependents.