

SENATE, No. 2872

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED SEPTEMBER 14, 2020

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator JOSEPH P. CRYAN

District 20 (Union)

SYNOPSIS

Establishes Essential Employees Hazard Compensation and Employer Liability Limitation Program; affords COVID-19 liability protections and provides financial incentives to certain employers that provide hazard pay to eligible employees; makes an appropriation.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT establishing the Essential Employees Hazard
2 Compensation and Employer Liability Limitation Program,
3 supplementing various parts of the statutory law, and making an
4 appropriation.
5

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

9 1. As used in P.L. , c. (C.) (pending before the
10 Legislature as this bill):

11 "Authority" means the New Jersey Economic Development
12 Authority established pursuant to section 4 of P.L.1974, c.80
13 (C.34:1B-4).

14 "Covered employer" means a person or entity that employs one
15 or more individuals in New Jersey in relation to the operation of
16 one of the following:

- 17 a. a grocery store;
- 18 b. a pharmacy;
- 19 c. any other retailer serving basic human needs;
- 20 d. a wholesale distributor making deliveries to a retailer that is
21 a covered employer;
- 22 e. a trash collection or waste management service;
- 23 f. a janitorial service that provides cleaning or janitorial
24 services to another covered employer;
- 25 g. an assisted living residence;
- 26 h. a nursing home;
- 27 i. a residential care home;
- 28 j. a therapeutic community residence;
- 29 k. a health care facility or a physician's office;
- 30 l. a child care facility that provides child care services to
31 essential service providers;
- 32 m. a vocational rehabilitation service provider;
- 33 n. a dentist's office or a dental facility;
- 34 o. a homeless shelter;
- 35 p. a home health agency;
- 36 q. a qualified health center, health clinic, or clinic for the
37 uninsured;
- 38 r. a residential treatment program;
- 39 s. an ambulance service or first responder service;
- 40 t. a funeral establishment or crematory establishment;
- 41 u. providers of necessities and services to vulnerable or
42 disadvantaged populations; or
- 43 v. any other business deemed an essential business by the
44 authority, in consultation with the Department of Labor and
45 Workforce Development.

46 "Covered employer" does not include the State, a political
47 subdivision of the State, or the federal government.

1 "Eligible employee" means an individual who:

2 a. is employed in this State by a covered employer that has
3 enrolled in the program;

4 b. earns an average hourly wage of \$20.00 or less; and

5 c. meets at least one of the following qualifications:

6 (1) is involved in providing medical or other healthcare services,
7 emergency medical transportation, social services, or other care
8 services, including services provided in health care facilities,
9 residential facilities, or homes;

10 (2) performs functions which involve physical proximity to
11 members of the public and are essential to the public's health,
12 safety, and welfare, including transportation services, hotel and
13 other residential services, financial services, and the production,
14 preparation, storage, sale, and distribution of essential goods such
15 as food, beverages, medicine, fuel, and supplies for conducting
16 essential business and work at home; or

17 (3) is any other employee deemed an essential employee by the
18 authority, in consultation with the Department of Labor and
19 Workforce Development.

20 "Hazard pay" means a verifiable increase in wages to be paid by
21 a covered employer to an eligible employee, equivalent to an
22 average hourly wage increase of at least \$3.00 per hour.

23 "Liability limitation period" means the period for which a
24 covered employer's acts or omissions shall qualify for the liability
25 protections offered pursuant to P.L. , c. (C.) (pending
26 before the Legislature as this bill), extending from the date of
27 enrollment under the program established pursuant to
28 P.L. , c. (C.) (pending before the Legislature as this bill)
29 until the current public health emergency, declared by the Governor
30 pursuant to Executive Order No. 103 of 2020, or any extension
31 thereof, expires or is rescinded.

32 "Monthly period" means a calendar month during the program
33 period.

34 "Program" means the Essential Employees Hazard Compensation
35 and Employer Liability Limitation Program established pursuant to
36 section 2 of P.L. , c. (C.) (pending before the Legislature
37 as this bill).

38 "Program Period" the period of time from the effective date of
39 P.L. , c. (C.) (pending before the Legislature as this bill)
40 until the current public health emergency, declared by the Governor
41 pursuant to Executive Order No. 103 of 2020, or any extension
42 thereof, expires or is rescinded.

43 "Small business" means a covered employer with not more than
44 50 employees, including, but not limited to, eligible employees.

45

46 2. a. There is established the Essential Employees Hazard
47 Compensation and Employer Liability Limitation Program to

1 incentivize covered employers to provide hazard pay to eligible
2 employees who, during the program period, perform work in
3 essential jobs that subject them to an elevated risk of being exposed
4 to coronavirus disease or contracting COVID-19. The New Jersey
5 Economic Development Authority shall administer the program.

6 b. (1) The authority shall, in consultation with the Attorney
7 General, the Department of Health, the Department of Labor and
8 Workforce Development, and the Director of the Division of
9 Consumer Affairs within the Department of Law and Public Safety,
10 and as provided in section 11 of P.L. , c. (C.) (pending
11 before the Legislature as this bill), adopt rules and regulations to
12 establish minimum health and safety protocols for covered
13 employers under the program and concerning legal liability
14 protections for covered employers during the time of the liability
15 limitation period. The rules may establish different minimum
16 health and safety protocols for different categories of covered
17 employers. The rules shall provide that a covered employer that
18 meets or exceeds the minimum health and safety protocols and
19 provides hazard pay to eligible employees shall not, except as
20 otherwise provided for pursuant to the workers' compensation law,
21 R.S.34:15-1 et seq., be liable for injury or death alleged to have
22 been caused by any act or omission by the covered employer related
23 to exposure of any person to coronavirus disease or contraction of
24 COVID-19 by any person that occurs during the liability limitation
25 period and is within the scope of the powers and duties provided
26 under, P.L. , c. (C.) (pending before the Legislature as this
27 bill), including any order, rule, or regulation adopted pursuant
28 thereto.

29 (2) A covered employer, agent, officer, employee, servant,
30 representative, or volunteer does not have limited liability under
31 this section for an injury that results from an act that is outside the
32 scope of the powers and duties set forth in P.L. , c. (C.)
33 (pending before the Legislature as this bill), for conduct that is
34 subject to the workers' compensation law, R.S.34:15-1 et seq., or
35 for conduct that constitutes a crime, actual fraud, actual malice,
36 gross negligence, or willful misconduct.

37 c. The authority shall, at a minimum, require that:

38 (1) a covered employer participating in the program pay hazard
39 pay to all eligible employees from the date of the covered
40 employer's enrollment through the remainder of the program period
41 pursuant to the provisions of P.L. , c. (C.) (pending before
42 the Legislature as this bill) and pursuant to a schedule and
43 procedures approved by the authority;

44 (2) comply with all requirements, guidelines, and procedures
45 that the authority adopts in relation to the program; and

46 (3) comply with all requirements of P.L. , c. (C.)
47 (pending before the Legislature as this bill).

1 d. The authority may, at the authority's discretion, contract
2 with any person or political subdivision of the State to assist in
3 administration of the program, including, but not limited to,
4 performing inspections of any covered employer facility or
5 operations to verify that the covered employer is in compliance with
6 the minimum health and safety protocols applicable to the covered
7 employer.

8
9 3. a. A covered employer seeking to enroll in the program
10 shall submit a program application to the authority no later than 60
11 days following the effective date of P.L. , c. (C.) (pending
12 before the Legislature as this bill).

13 b. (1) In order to enroll in the program, a covered employer
14 shall submit to the authority a notice of enrollment in a form
15 specified by the authority and certify that the covered employer's
16 operations meet or exceed any minimum health and safety protocols
17 applicable to the covered employer.

18 (2) The authority shall require employers to provide information
19 demonstrating that the employer qualifies as a covered employer.

20 (3) As a condition of enrolling in the program, each covered
21 employer shall agree:

22 (a) to allow the covered employer's facilities and operations to
23 be inspected, at the discretion of the authority, to ensure compliance
24 with the minimum health and safety protocols applicable to the
25 covered employer;

26 (b) to make all books and records related to work performed by
27 eligible employees during the program period available upon
28 request to the authority and the Attorney General for inspection;

29 (c) not to require any eligible employee to pay an administrative
30 fee or other charge in relation to the employer providing hazard pay
31 to the employee;

32 (d) not to reduce the hourly compensation, including any related
33 bonuses or premiums, of any eligible employee during the program
34 period; and

35 (e) to remain subject to any otherwise applicable State or
36 municipal regulatory standards, oversight, and enforcement actions.

37 c. (1) A covered employer that has enrolled in the program
38 shall submit hazard pay information in a form specified by the
39 authority for each monthly period during the program period
40 according to a schedule established by the authority.

41 (2) The authority shall specify the information that a covered
42 employer is required to provide for each eligible employee.

43 d. A covered employer shall issue hazard pay to eligible
44 employees according to a schedule approved by the authority, and
45 the authority shall certify the amount of hazard pay issued by a
46 covered employer to eligible employees during a given privilege
47 period or taxable year, and during each monthly period for each

1 small business applying for hazard compensation grants pursuant to
2 section 6 of P.L. , c. (C.) (pending before the Legislature
3 as this bill).

4 e. (1) Each eligible employee shall be provided with a
5 detailed written notice that the covered employer is receiving legal
6 liability protections under the program and that the hazard pay may
7 be subject to income tax and that the eligible employee's payment is
8 subject to withholding.

9 (2) All procedures specified by 26 U.S.C. chapter 24 and the
10 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.,
11 pertaining to the withholding of income tax shall be followed in
12 relation to the payments made pursuant to this section.

13 f. Nothing in this section shall be construed to require an
14 employer to enroll in the program.
15

16 4. a. A taxpayer that is a covered employer enrolled in the
17 Essential Employees Hazard Compensation and Employer Liability
18 Limitation Program established pursuant to section 2 of
19 P.L. , c. (C.) (pending before the Legislature as this bill),
20 shall be allowed a credit against the tax imposed pursuant to section
21 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to 20 percent
22 of the certified amount that the covered employer paid to eligible
23 employees as hazard pay during a privilege period.

24 b. The amount of the credit applied under this section against
25 the tax imposed pursuant to section 5 of P.L.1945, c.162
26 (C.54:10A-5), for a privilege period, when taken together with any
27 other credits allowed against the tax imposed pursuant to section 5
28 of P.L.1945, c.162 (C.54:10-5), shall not reduce the tax liability to
29 an amount less than the statutory minimum provided in subsection
30 (e) of section 5 of P.L.1945, c.162 (C.54:10A-5(e)).

31 c. The order of priority of the application of the tax credit
32 allowed pursuant to this section, and any other credits allowed by
33 law, shall be determined by the director.

34 d. The amount of the credit otherwise allowable under this
35 section which cannot be applied for the privilege period due to the
36 limitations of this section may be carried forward, if necessary, to
37 the seven privilege periods following the privilege period for which
38 the tax credit was allowed.
39

40 5. a. A taxpayer that is a covered employer enrolled in the
41 Essential Employees Hazard Compensation and Employer Liability
42 Limitation Program established pursuant to section 2 of
43 P.L. , c. (C.) (pending before the Legislature as this bill),
44 shall be allowed a credit against the tax imposed pursuant to the
45 "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an
46 amount equal to 20 percent of the certified amount that the covered

1 employer paid to eligible employees as hazard pay during a taxable
2 year.

3 b. The order of priority of the application of the credit allowed
4 pursuant to this section and any other credits allowed against the
5 New Jersey gross income tax due pursuant to N.J.S.54A:1-1 et seq.
6 for a taxable year shall be as prescribed by the director.

7 c. The amount of the credit applied against the New Jersey
8 gross income tax due pursuant to N.J.S.54A:1-1 et seq. shall not
9 reduce a taxpayer's New Jersey gross income tax liability to an
10 amount less than zero.

11 d. A business entity classified as a partnership for federal
12 income tax purposes shall not be allowed a credit directly under the
13 New Jersey gross income tax, but the amount of credit of a taxpayer
14 in respect of a distributive share of partnership income shall be
15 determined by allocating to the taxpayer that proportion of the
16 credit acquired by the partnership that is equal to the taxpayer's
17 share, whether or not distributed, of the total distributive income or
18 gain of the partnership for its taxable year ending within or with the
19 taxpayer's taxable year.

20 A New Jersey S Corporation shall not be allowed a credit
21 directly under the New Jersey gross income tax, but the amount of
22 credit of a taxpayer in respect of a pro rata share of S Corporation
23 income shall be determined by allocating to the taxpayer that
24 proportion of the credit acquired by the New Jersey S Corporation
25 that is equal to the taxpayer's share, whether or not distributed, of
26 the total pro rata share of S Corporation income of the New Jersey S
27 Corporation for its privilege period ending within or with the
28 taxpayer's taxable year.

29 e. The amount of the credit otherwise allowable under this
30 section which cannot be applied for the tax year due to the
31 limitations of this section may be carried forward, if necessary, to
32 the seven taxable years following the taxable year for which the tax
33 credit was allowed.

34

35 6. a. In lieu of being allowed a tax credit pursuant to section 4
36 or section 5 of P.L. , c. (C. or C.) (pending before the
37 Legislature as this bill), a covered employer that is a small business
38 may elect to apply for a hazard compensation grant under the
39 program.

40 b. The authority shall administer a small business hazard
41 compensation grant component under the program to provide an
42 incentive to small businesses, during the current public health
43 emergency, to provide hazard pay to eligible employees.

44 c. A small business seeking to participate in the grant
45 component of the program shall submit an application in such form
46 as required by the authority. The application shall include such

1 information as the authority shall determine is necessary to
2 administer the grant component of the program.

3 d. The authority shall review and may approve an application
4 for a small business to receive benefits under the grant component
5 of the program.

6 e. The authority shall issue a grant to a small business that
7 enters into a hazard compensation grant agreement with the
8 authority, following the submission of proof by an approved small
9 business of the number of eligible employees paid hazard pay under
10 the program and proof of the amount of hazard pay issued by the
11 small business.

12 f. The value of a grant shall be equal to 20 percent of the
13 amount that the covered employer pays to eligible employees as
14 hazard pay during a monthly period, as certified pursuant to
15 subsection d. of section 3 of P.L. , c. (C.) (pending before
16 the Legislature as this bill).

17 g. If a small business has been approved to receive a hazard
18 compensation grant under the program, but the authority lacks
19 sufficient funds to pay all or part of the hazard compensation grant,
20 the small business shall be allowed to claim the remaining amount,
21 not paid as a grant, as a tax credit, as otherwise provided pursuant
22 to section 4 or section 5 of P.L. , c. (C. or C.)
23 (pending before the Legislature as this bill).

24
25 7. There is established in the Department of the Treasury, to be
26 administered by the authority, a "Small Business Hazard
27 Compensation Grant Fund." The authority shall use money in the
28 fund to provide grants to small businesses in accordance with
29 section 6 of P.L. , c. (C.) (pending before the Legislature
30 as this bill).

31
32 8. The total combined value of all incentives to be awarded or
33 allowed pursuant sections 4 through 6 of
34 P.L. , c. (C. through C.) (pending before the
35 Legislature as this bill) shall not exceed \$3,000,000 for any covered
36 employer and shall not exceed \$600,000 for any individual business
37 location operated by the covered employer.

38
39 9. a. Within 180 day after the public health emergency,
40 declared by the Governor pursuant to Executive Order No. 103 of
41 2020, or any extension thereof, expires or is rescinded, the authority
42 shall submit a written report to the Governor and the Legislature,
43 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), with the
44 following information:

45 (1) the total number of covered employers that participated in
46 the program;

- 1 (2) the total number of eligible employees who received hazard
2 pay through the program;
- 3 (3) the aggregate dollar amount of hazard pay issued for each
4 monthly period during the program period;
- 5 (4) the aggregate dollar amount of hazard pay issued for the
6 entire program period; and
- 7 (5) any other information regarding the program that the
8 authority determines is pertinent.
- 9 b. A covered employer that participates in the program shall:
- 10 (1) keep its books and records related to the program available
11 for audit as required by the authority during the public health
12 emergency and for three years thereafter;
- 13 (2) make all books and records related to the program available
14 to the authority, the Attorney General, and the State Auditor upon
15 request; and
- 16 (3) make its books and records available for review or audit
17 upon request by any State or federal authority with jurisdiction, or a
18 person or entity appointed by such a State or federal authority.
- 19
- 20 10. a. A person shall not intentionally make a false statement or
21 representation related to the qualifying criteria for hazard pay for an
22 eligible employee or meeting the minimum health and safety
23 standards applicable to a covered employer under
24 P.L. , c. (C.) (pending before the Legislature as this bill).
- 25 b. The Attorney General may enforce the provisions of, and the
26 rules adopted pursuant to, P.L. , c. (C.) (pending before the
27 Legislature as this bill) by restraining prohibited acts, obtaining
28 assurances of discontinuance, and conducting investigations in
29 accordance with the law.
- 30
- 31 11. Notwithstanding the provisions of the "Administrative
32 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
33 contrary, the New Jersey Economic Development Authority may,
34 consistent with subsection b. of section 2 of P.L. , c. (C.)
35 (pending before the Legislature as this bill), adopt immediately
36 upon filing with the Office of Administrative Law such rules and
37 regulations as the authority shall determine to be necessary to
38 effectuate the purposes of P.L. , c. (C.) (pending before the
39 Legislature as this bill), which rules and regulations shall be
40 effective for a period not exceeding 180 days following the
41 effective date of P.L. , c. (C.) (pending before the
42 Legislature as this bill) and may thereafter be amended, adopted, or
43 readopted by the authority in accordance with the requirements of
44 P.L.1968, c.410 (C.52:14B-1 et seq.).
- 45
- 46 12. There is appropriated from the General Fund to the "Small
47 Business Hazard Compensation Grant Fund," established pursuant

1 to section 7 of P.L. , c. (C.) (pending before the Legislature
2 as this bill), the sum of \$50,000,000 from a portion of those federal
3 block grant funds allocated to the State from the federal
4 “Coronavirus Relief Fund,” established pursuant to the federal
5 “Coronavirus Aid, Relief, and Economic Security Act,” Pub.L.116-
6 136, for use by the authority to provide financial assistance in the
7 form of grants to an owner or operator of a small business to offset
8 a portion of the hazard pay that the small business pays to eligible
9 employees pursuant to the Essential Employees Hazard
10 Compensation and Employer Liability Limitation Program.

11
12 13. This act shall take effect immediately.

13
14
15 STATEMENT

16
17 This bill establishes the Essential Employees Hazard
18 Compensation and Employer Liability Limitation Program
19 (program) to incentivize covered employers to provide hazard pay
20 to eligible employees who perform work in essential jobs that
21 subject them to an elevated risk of being exposed to coronavirus
22 disease or contracting COVID-19 from the time of their employer’s
23 enrollment in the program through the end of the current public
24 health emergency. The New Jersey Economic Development
25 Authority (EDA) is to administer the program.

26 The bill requires the EDA to adopt rules and regulations, in
27 consultation with the Attorney General, the Department of Health,
28 the Department of Labor and Workforce Development, and the
29 Director of the Division of Consumer Affairs within the Department
30 of Law and Public Safety, to establish minimum health and safety
31 protocols for covered employers under the program and concerning
32 legal liability protections for covered employers during the period
33 of the State’s public health emergency. The rules may provide for
34 different minimum health and safety protocols for different
35 categories of covered employers. The rules are to provide that a
36 covered employer that meets or exceeds the minimum health and
37 safety protocols and provides recognition payments to eligible
38 employees shall not be liable for injury or death alleged to have
39 been caused by any act or omission by the covered employer related
40 to exposure of any person to coronavirus disease or contraction of
41 COVID-19 by any person, that occurs during the public health
42 emergency and is within the scope of the powers and duties
43 provided under the bill.

44 A covered employer, agent, officer, employee, servant,
45 representative, or volunteer does not have limited liability, under
46 the program, for an injury that is outside the scope of the powers
47 and duties set forth in the bill, for conduct that is subject to the

1 workers' compensation law, or for conduct that constitutes a crime,
2 actual fraud, actual malice, gross negligence or willful misconduct.
3 Under the bill, the EDA is permitted to contract with any person or
4 political subdivision of the State to assist in program administration
5 and specifically to perform inspections of any covered employer
6 facilities and operations to verify that the covered employer is in
7 compliance with the minimum health and safety protocols
8 applicable to the covered employer.

9 In order to enroll in the program, a covered employer is required
10 to: submit to the EDA a notice of enrollment and certify that the
11 covered employer's operations meet or exceed any minimum health
12 and safety protocols applicable to the covered employer; provide
13 information demonstrating that the employer qualifies as a covered
14 employer; agree to allow the covered employer's facilities,
15 operations, and books to be inspected; and to meet additional
16 requirements specified in the bill. The bill specifies that an
17 employer is not required to enroll in the program. Under the bill, a
18 covered employer participating in the program is required to
19 provide hazard pay, equivalent to an average wage increase of at
20 least \$3.00 per hour, to every eligible employee from the date of the
21 covered employer's enrollment in the program through the end of
22 the current public health emergency. The bill specifies that an
23 eligible employee means individuals who are employed in this State
24 by a covered employer, who earn an average hourly wage of \$20.00
25 or less, and who meet at least one of the following qualifications:

26 (1) is involved in providing medical and other healthcare
27 services, emergency medical transportation, social services, or other
28 care services, including services provided in health care facilities,
29 residential facilities, or homes;

30 (2) performs functions which involve physical proximity to
31 members of the public and are essential to the public's health,
32 safety, and welfare, including transportation services, hotel and
33 other residential services, financial services, and the production,
34 preparation, storage, sale, and distribution of essential goods such
35 as food, beverages, medicine, fuel, and supplies for conducting
36 essential business and work at home; or

37 (3) is any other employee deemed an essential employee by the
38 authority, in consultation with the Department of Labor and
39 Workforce Development.

40 The bill requires that hazard pay be paid by a covered employer
41 according to a schedule approved by the authority, and that each
42 eligible employee be provided with a detailed written notice that the
43 covered employer is receiving legal liability protections under the
44 program and that the payment may be subject to income tax and that
45 the eligible employee's payment is subject to withholding.

46 Under the bill, a covered employer enrolled in the program is
47 allowed to claim a tax credit against the covered employer's

1 Corporation Business Tax or New Jersey Gross Income Tax liability
2 in an amount equal to 20 percent of the hazard pay provided by the
3 covered employer to eligible employees, as certified by the
4 authority. The bill further provides that a small business, with 50 or
5 fewer employees and which qualifies as a covered employer, may
6 apply to receive hazard compensation grants in lieu of being
7 allowed a tax credit under the program.

8 The bill appropriates \$50 million to a new “Small Business
9 Hazard Compensation Grant Fund,” established pursuant to the bill,
10 to provide grants to qualified small businesses. The bill limits the
11 total value of incentives that any covered employer can receive
12 under the bill to not more than \$3 million overall and not more than
13 \$600,000 per business location of a covered employer.

14 The bill requires the EDA to submit a written report to report to
15 the Governor and the Legislature related to the operation of the
16 program.