

P.L. 2021, CHAPTER 55, *approved April 19, 2021*
Senate, No. 2476

1 AN ACT concerning certain workers' compensation benefits for
2 surviving dependents of employees deemed essential during
3 coronavirus disease 2019 pandemic and supplementing chapter 15
4 of Title 34 of the Revised Statutes.

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

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9 1. a. Beginning on January 1, 2020, and in each fiscal year
10 thereafter, a dependent of an essential employee, who is receiving
11 weekly benefits pursuant to R.S.34:15-13 for a death that occurred
12 after March 1, 2020 due to the contraction of coronavirus disease
13 2019 in the course of employment, and who is not entitled to receive
14 special adjustment benefits pursuant to section 1 of P.L.1980, c.83
15 (C.34:15-95.4), shall be entitled to receive weekly supplemental
16 benefits from the Second Injury Fund during the period in which the
17 dependent is eligible to receive the initially-awarded weekly benefits,
18 whenever the amount of the initially-awarded weekly benefits is less
19 than the total amount of weekly benefits that would be payable to the
20 dependent if that total amount included weekly supplemental benefits
21 calculated in the manner indicated in subsection b. of this section. In
22 making the determination of the aggregate annual surcharge for the
23 Second Injury Fund to be levied pursuant to paragraph (4) of
24 subsection c. of R.S.34:15-94 for calendar year 2020 and each
25 subsequent calendar year, the Commissioner of Labor and Workforce
26 Development shall include the anticipated additional amounts,
27 including administrative costs, required for payment of supplemental
28 benefits pursuant to this section during the fiscal year which begins
29 on July 1 of the respective calendar year.

30 b. The base amount of the weekly supplemental benefits to be
31 paid pursuant to this section during each fiscal year shall be
32 calculated in a manner so that when it is added to the workers'
33 compensation weekly death benefits initially awarded, the sum of the
34 initial award and the base weekly supplemental benefits shall bear
35 the same percentage relationship to the maximum workers'
36 compensation death benefit rate for the current fiscal year that the
37 dependent's initial weekly death benefits bore to the maximum
38 workers' compensation death benefit rate in effect at the time of the
39 death, except that:

40 (1) The actual amount of the supplemental benefits paid pursuant
41 to this section to any dependent shall be reduced by an amount equal
42 to the dependent's benefit payable under the Federal Old-Age,
43 Survivors' and Disability Insurance Act, excluding any disability
44 benefits paid to that dependent under that act and any cost of living

1 increases in benefits paid to that dependent under that act, or Black
2 Lung benefits;

3 (2) A supplemental benefit shall not be paid if the actual amount
4 of the benefit to be paid is calculated to be less than \$5 per week; and

5 (3) A supplemental benefit shall not be paid to a dependent who
6 elects to not receive benefits under the Federal Old Age, Survivors
7 and Disability Insurance Act for which the dependent is eligible.

8 c. Notwithstanding any other provision of this section, weekly
9 supplemental benefits paid pursuant to this section shall not be paid
10 in a manner which in any way changes or modifies the provisions of
11 section 1 or 9 of P.L.1980, c.83 (C.34:15-95.4 or 34:15-95.5).

12 d. An insurance carrier or self-insured employer responsible for
13 the payment of workers' compensation death benefits to a dependent
14 shall notify the Division of Workers' Compensation of the need to
15 have the Second Injury Fund make supplemental benefit payments to
16 the dependent pursuant to this section not later than the 60th day after
17 the date on which it is determined that the payment of supplemental
18 benefits is required pursuant to this section. If the insurance carrier
19 or self-insured employer fails to notify the division and that failure
20 results in the payment of an incorrect amount of benefits, the liability
21 for the payment of the supplemental benefits shall be transferred from
22 the Second Injury Fund to the employer until the time at which the
23 insurance carrier or self-insured employer provides the required
24 notice.

25 e. For the purposes of this section, "essential employee" means
26 an employee in the public or private sector who, during a state of
27 emergency:

28 (1) is a public safety worker or first responder, including any fire,
29 police or other emergency responders;

30 (2) is involved in providing medical and other healthcare
31 services, emergency transportation, social services, and other care
32 services, including services provided in health care facilities,
33 residential facilities, or homes;

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

40 (4) is any other employee deemed an essential employee by the
41 public authority declaring the state of emergency.

42 If the state of emergency does not apply to the entire State, an
43 employee shall be regarded as an essential employee only if the
44 employee is working in the area subject to the state of emergency.

45 f. The Commissioner of Labor and Workforce Development
46 shall promulgate rules and regulations as are necessary to effectuate
47 the purposes of this act.

1 2. This act shall take effect immediately.

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STATEMENT

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6 This bill provides supplemental benefit payments to the
7 dependents of essential employees who died in the course of
8 employment due to the contraction of coronavirus disease 2019. The
9 bill provides a cost of living adjustment (COLA) to the spouse or
10 dependent's workers' compensation death benefit if that employee
11 dies from the coronavirus. This adjustment is intended to mirror, to
12 the extent possible, the COLA already in place for benefits for
13 dependents of public safety workers killed in the line of duty.

14 The bill provides for the COLA to be an amount such that, when
15 added to the workers' compensation weekly benefit rate initially
16 awarded, the sum will bear the same percentage relationship to the
17 maximum benefit rate at the time of the adjustment that the initial
18 rate bore to the maximum rate at the time of the initial award, except
19 that:

20 (1) the bill reduces the amount of the adjustment as much as
21 necessary to ensure that the sum of the adjustment and the amount
22 initially awarded does not exceed the amount which would cause any
23 reduction of Social Security disability benefits;

24 (2) in cases which are not subject to the provisions of point one
25 above, the bill reduces the supplemental workers' compensation
26 benefits (but not regular workers' compensation) for claimants
27 injured after 1979 by the amount of any Social Security benefits
28 (other than Social Security disability benefits and any cost of living
29 increases in Social Security benefits), Black Lung benefits, or the
30 employer's share of disability pension payments received from or on
31 account of an employer; and

32 (3) the bill requires that the COLA benefits will not be paid to
33 any individual who elects to not receive benefits under the Federal
34 Old Age, Survivors and Disability Insurance Act for which the
35 individual is eligible.

36 These reductions parallel the reductions provided under current
37 law for claimants who were injured before 1980. The bill also
38 provides that no supplemental benefits will be paid in any case in
39 which they are calculated to be less than \$5 per week.

40 Under the bill, "essential employee" is defined as an employee in
41 the public or private sector who, during a state of emergency:

42 (1) is a public safety worker or first responder, including any fire,
43 police or other emergency responders;

44 (2) is involved in providing medical and other healthcare
45 services, emergency transportation, social services, and other care
46 services, including services provided in health care facilities,
47 residential facilities, or homes;

1 (3) performs functions which involve physical proximity to
2 members of the public and are essential to the public's health, safety,
3 and welfare, including transportation services, financial services, and
4 the production, preparation, storage, sale, and distribution of
5 essential goods such as food, beverages, medicine, fuel, and supplies
6 for conducting essential business and work at home; or
7 (4) is any other employee deemed an essential employee by the
8 public authority declaring the state of emergency.

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13 Concerns certain workers' compensation supplemental benefits for
14 surviving dependents of essential employees who die in course of
15 employment.