

ASSEMBLY, No. 5170

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED DECEMBER 17, 2020

Sponsored by:

Assemblywoman VERLINA REYNOLDS-JACKSON
District 15 (Hunterdon and Mercer)

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.

48 "Eligible employee" means an individual who:

- 1 a. is employed in this State by a covered employer that has
2 enrolled in the program;
- 3 b. earns an average hourly wage of \$20.00 or less; and
- 4 c. meets at least one of the following qualifications:
- 5 (1) is involved in providing medical or other healthcare services,
6 emergency medical transportation, social services, or other care
7 services, including services provided in health care facilities,
8 residential facilities, or homes;
- 9 (2) performs functions which involve physical proximity to
10 members of the public and are essential to the public's health,
11 safety, and welfare, including transportation services, hotel and
12 other residential services, financial services, and the production,
13 preparation, storage, sale, and distribution of essential goods such
14 as food, beverages, medicine, fuel, and supplies for conducting
15 essential business and work at home; or
- 16 (3) is any other employee deemed an essential employee by the
17 authority, in consultation with the Department of Labor and
18 Workforce Development.
- 19 "Hazard pay" means a verifiable increase in wages to be paid by
20 a covered employer to an eligible employee, equivalent to an
21 average hourly wage increase of at least \$3.00 per hour.
- 22 "Liability limitation period" means the period for which a
23 covered employer's acts or omissions shall qualify for the liability
24 protections offered pursuant to P.L. , c. (C.) (pending
25 before the Legislature as this bill), extending from the date of
26 enrollment under the program established pursuant to
27 P.L. , c. (C.) (pending before the Legislature as this bill)
28 until the current public health emergency, declared by the Governor
29 pursuant to Executive Order No. 103 of 2020, or any extension
30 thereof, expires or is rescinded.
- 31 "Monthly period" means a calendar month during the program
32 period.
- 33 "Program" means the Essential Employees Hazard Compensation
34 and Employer Liability Limitation Program established pursuant to
35 section 2 of P.L. , c. (C.) (pending before the Legislature
36 as this bill).
- 37 "Program Period" the period of time from the effective date of
38 P.L. , c. (C.) (pending before the Legislature as this bill)
39 until the current public health emergency, declared by the Governor
40 pursuant to Executive Order No. 103 of 2020, or any extension
41 thereof, expires or is rescinded.
- 42 "Small business" means a covered employer with not more than
43 50 employees, including, but not limited to, eligible employees.
- 44
- 45 2. a. There is established the Essential Employees Hazard
46 Compensation and Employer Liability Limitation Program to
47 incentivize covered employers to provide hazard pay to eligible
48 employees who, during the program period, perform work in

1 essential jobs that subject them to an elevated risk of being exposed
2 to coronavirus disease or contracting COVID-19. The New Jersey
3 Economic Development Authority shall administer the program.

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

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

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

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

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

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

46 d. The authority may, at the authority's discretion, contract
47 with any person or political subdivision of the State to assist in
48 administration of the program, including, but not limited to,

1 performing inspections of any covered employer facility or
2 operations to verify that the covered employer is in compliance with
3 the minimum health and safety protocols applicable to the covered
4 employer.

5

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

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

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

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

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

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

26 (c) not to require any eligible employee to pay an administrative
27 fee or other charge in relation to the employer providing hazard pay
28 to the employee;

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

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

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

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

40 d. A covered employer shall issue hazard pay to eligible
41 employees according to a schedule approved by the authority, and
42 the authority shall certify the amount of hazard pay issued by a
43 covered employer to eligible employees during a given privilege
44 period or taxable year, and during each monthly period for each
45 small business applying for hazard compensation grants pursuant to
46 section 6 of P.L. , c. (C.) (pending before the Legislature
47 as this bill).

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

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

10 f. Nothing in this section shall be construed to require an
11 employer to enroll in the program.

12

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

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

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

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

36

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

46 b. The order of priority of the application of the credit allowed
47 pursuant to this section and any other credits allowed against the

1 New Jersey gross income tax due pursuant to N.J.S.54A:1-1 et seq.
2 for a taxable year shall be as prescribed by the director.

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

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

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

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

30

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

36 b. The authority shall administer a small business hazard
37 compensation grant component under the program to provide an
38 incentive to small businesses, during the current public health
39 emergency, to provide hazard pay to eligible employees.

40 c. A small business seeking to participate in the grant
41 component of the program shall submit an application in such form
42 as required by the authority. The application shall include such
43 information as the authority shall determine is necessary to
44 administer the grant component of the program.

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

1 e. The authority shall issue a grant to a small business that
2 enters into a hazard compensation grant agreement with the
3 authority, following the submission of proof by an approved small
4 business of the number of eligible employees paid hazard pay under
5 the program and proof of the amount of hazard pay issued by the
6 small business.

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

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

19
20 7. There is established in the Department of the Treasury, to be
21 administered by the authority, a "Small Business Hazard
22 Compensation Grant Fund." The authority shall use money in the
23 fund to provide grants to small businesses in accordance with
24 section 6 of P.L. , c. (C.) (pending before the Legislature
25 as this bill).

26
27 8. The total combined value of all incentives to be awarded or
28 allowed pursuant sections 4 through 6 of
29 P.L. , c. (C. through C.) (pending before the
30 Legislature as this bill) shall not exceed \$3,000,000 for any covered
31 employer and shall not exceed \$600,000 for any individual business
32 location operated by the covered employer.

33
34 9. a. Within 180 day after the public health emergency,
35 declared by the Governor pursuant to Executive Order No. 103 of
36 2020, or any extension thereof, expires or is rescinded, the authority
37 shall submit a written report to the Governor and the Legislature,
38 pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), with the
39 following information:

40 (1) the total number of covered employers that participated in
41 the program;

42 (2) the total number of eligible employees who received hazard
43 pay through the program;

44 (3) the aggregate dollar amount of hazard pay issued for each
45 monthly period during the program period;

46 (4) the aggregate dollar amount of hazard pay issued for the
47 entire program period; and

1 (5) any other information regarding the program that the
2 authority determines is pertinent.

3 b. A covered employer that participates in the program shall:

4 (1) keep its books and records related to the program available
5 for audit as required by the authority during the public health
6 emergency and for three years thereafter;

7 (2) make all books and records related to the program available
8 to the authority, the Attorney General, and the State Auditor upon
9 request; and

10 (3) make its books and records available for review or audit
11 upon request by any State or federal authority with jurisdiction, or a
12 person or entity appointed by such a State or federal authority.

13

14 10. a. A person shall not intentionally make a false statement or
15 representation related to the qualifying criteria for hazard pay for an
16 eligible employee or meeting the minimum health and safety
17 standards applicable to a covered employer under
18 P.L. , c. (C.) (pending before the Legislature as this bill).

19 b. The Attorney General may enforce the provisions of, and the
20 rules adopted pursuant to, P.L. , c. (C.) (pending before the
21 Legislature as this bill) by restraining prohibited acts, obtaining
22 assurances of discontinuance, and conducting investigations in
23 accordance with the law.

24

25 11. Notwithstanding the provisions of the "Administrative
26 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
27 contrary, the New Jersey Economic Development Authority may,
28 consistent with subsection b. of section 2 of P.L. , c. (C.)
29 (pending before the Legislature as this bill), adopt immediately
30 upon filing with the Office of Administrative Law such rules and
31 regulations as the authority shall determine to be necessary to
32 effectuate the purposes of P.L. , c. (C.) (pending before the
33 Legislature as this bill), which rules and regulations shall be
34 effective for a period not exceeding 180 days following the
35 effective date of P.L. , c. (C.) (pending before the
36 Legislature as this bill) and may thereafter be amended, adopted, or
37 readopted by the authority in accordance with the requirements of
38 P.L.1968, c.410 (C.52:14B-1 et seq.).

39

40 12. There is appropriated from the General Fund to the "Small
41 Business Hazard Compensation Grant Fund," established pursuant
42 to section 7 of P.L. , c. (C.) (pending before the Legislature
43 as this bill), the sum of \$50,000,000 from a portion of those federal
44 block grant funds allocated to the State from the federal
45 "Coronavirus Relief Fund," established pursuant to the federal
46 "Coronavirus Aid, Relief, and Economic Security Act," Pub.L.116-
47 136, for use by the authority to provide financial assistance in the
48 form of grants to an owner or operator of a small business to offset

1 a portion of the hazard pay that the small business pays to eligible
2 employees pursuant to the Essential Employees Hazard
3 Compensation and Employer Liability Limitation Program.

4
5 13. This act shall take effect immediately.

6
7
8 STATEMENT

9
10 This bill establishes the Essential Employees Hazard
11 Compensation and Employer Liability Limitation Program
12 (program) to incentivize covered employers to provide hazard pay
13 to eligible employees who perform work in essential jobs that
14 subject them to an elevated risk of being exposed to coronavirus
15 disease or contracting COVID-19 from the time of their employer's
16 enrollment in the program through the end of the current public
17 health emergency. The New Jersey Economic Development
18 Authority (EDA) is to administer the program.

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

37 A covered employer, agent, officer, employee, servant,
38 representative, or volunteer does not have limited liability, under
39 the program, for an injury that is outside the scope of the powers
40 and duties set forth in the bill, for conduct that is subject to the
41 workers' compensation law, or for conduct that constitutes a crime,
42 actual fraud, actual malice, gross negligence or willful misconduct.
43 Under the bill, the EDA is permitted to contract with any person or
44 political subdivision of the State to assist in program administration
45 and specifically to perform inspections of any covered employer
46 facilities and operations to verify that the covered employer is in
47 compliance with the minimum health and safety protocols
48 applicable to the covered employer.

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

18 (1) is involved in providing medical and other healthcare
19 services, emergency medical transportation, social services, or other
20 care services, including services provided in health care facilities,
21 residential facilities, or homes;

22 (2) performs functions which involve physical proximity to
23 members of the public and are essential to the public's health,
24 safety, and welfare, including transportation services, hotel and
25 other residential services, financial services, and the production,
26 preparation, storage, sale, and distribution of essential goods such
27 as food, beverages, medicine, fuel, and supplies for conducting
28 essential business and work at home; or

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

32 The bill requires that hazard pay be paid by a covered employer
33 according to a schedule approved by the authority, and that each
34 eligible employee be provided with a detailed written notice that the
35 covered employer is receiving legal liability protections under the
36 program and that the payment may be subject to income tax and that
37 the eligible employee's payment is subject to withholding.

38 Under the bill, a covered employer enrolled in the program is
39 allowed to claim a tax credit against the covered employer's
40 Corporation Business Tax or New Jersey Gross Income Tax liability
41 in an amount equal to 20 percent of the hazard pay provided by the
42 covered employer to eligible employees, as certified by the
43 authority. The bill further provides that a small business, with 50 or
44 fewer employees and which qualifies as a covered employer, may
45 apply to receive hazard compensation grants in lieu of being
46 allowed a tax credit under the program.

47 The bill appropriates \$50 million to a new "Small Business
48 Hazard Compensation Grant Fund," established pursuant to the bill,

A5170 REYNOLDS-JACKSON

12

1 to provide grants to qualified small businesses. The bill limits the
2 total value of incentives that any covered employer can receive
3 under the bill to not more than \$3 million overall and not more than
4 \$600,000 per business location of a covered employer.

5 The bill requires the EDA to submit a written report to report to
6 the Governor and the Legislature related to the operation of the
7 program.