

## CHAPTER 253

**AN ACT** concerning workers' compensation for certain occupational disease claims and workers' compensation benefit rates for surviving dependents, amending R.S.34:15-13, supplementing Title 34 of the Revised Statutes and repealing R.S.34:15-33.

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

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

Death benefits, burial expenses; computation and distribution.

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

- a. For one or more dependents, 70% of wages.
- b. (Deleted by amendment, P.L.2003, c.253).
- c. (Deleted by amendment, P.L.2003, c.253).
- d. (Deleted by amendment, P.L.2003, c.253).
- e. (Deleted by amendment, P.L.2003, c.253).
- f. The term "dependents" shall apply to and include any or all of the following who are dependent upon the deceased at the time of accident or the occurrence of occupational disease, or at the time of death, namely: husband, wife, parent, stepparents, grandparents, children, stepchildren, grandchildren, child in esse, posthumous child, illegitimate children, brothers, sisters, half brothers, half sisters, niece, nephew. Legally adopted children shall, in every particular, be considered as natural children. Dependency shall be conclusively presumed as to the decedent's spouse and to any natural child of a decedent under 18 years of age or, if enrolled as a full-time student, under 23 years of age, who was actually a part of the decedent's household at the time of the decedent's death. Every provision of this article applying to one class shall be equally applicable to the other. Should any dependent of a deceased employee die during the period covered by such weekly payments the right of such dependent to compensation under this section shall cease, but should the surviving spouse of a deceased employee remarry during such period and before the total compensation is paid, the spouse shall be entitled to receive the remainder of the compensation which would have been due the spouse had the spouse not remarried, or 100 times the amount of weekly compensation paid immediately preceding the remarriage, whichever is the lesser. The foregoing schedule applies only to persons wholly dependent, and in the case of persons only partially dependent, except in the case of the surviving spouse and children who were actually a part of the decedent's household at the time of death, the compensation shall be such proportion of the scheduled percentage as the amounts actually contributed to them by the deceased for their support constituted of his total wages and the provision as to a minimum of 20% of the average weekly wage as set forth in subsection a. of R.S.34:15-12 shall not apply to such compensation. In determining the number of dependents, where the deceased employee was a minor, the number of persons dependent upon the deceased employee shall be determined in the same way as if the deceased employee were an adult, notwithstanding any rule of law as to the person entitled to a minor's wages.

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

- h. If death results from the accident or occupational disease, whether there be dependents or not, expenses of the last sickness of the deceased employee shall be paid in accordance with the provisions for medical and hospital service as set forth in R.S.34:15-15. In addition, the cost of burial and of a funeral, not to exceed \$3,500 shall be paid to the dependent or other person having paid the costs of burial and the funeral. In the event that the dependent or other person has paid less than \$3,500 for the costs of burial and the funeral, the dependent or other person shall be reimbursed in the amount paid and, if the costs of burial and the funeral exceed the amount so paid, the difference between the said amount and \$3,500 or so much thereof as may be necessary to pay the cost of burial and the funeral, shall be paid to the undertaker or embalmer or the dependent or other person having paid the costs of burial and the funeral. In

the event that no part of the costs of burial and the funeral have been paid, the amount of such cost of burial and the funeral, not to exceed \$3,500, shall be paid to the undertaker or embalmer or the dependent or other person who is to pay the costs of burial and the funeral.

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

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

C.34:15-33.3 Application to uninsured employer's fund for certain claims for exposure to asbestos.

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

b. In the case of any claim paid by the uninsured employer's fund pursuant to this section, the fund shall have the right of subrogation against (1) any insurer or employer identified as liable as set forth under the provisions of subsection a. of this section; or (2) against the stock workers' compensation security fund, or the mutual workers' compensation security fund, if an insolvent insurer is determined to be liable; or (3) against the New Jersey Self-Insurers Guaranty Association if an insolvent self-insurer is determined to be liable.

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

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

e. To ensure sufficient funding for the payment of claims under this section, the State Treasurer shall, within 30 days following the effective date of P.L.2003, c.253 (C.34:15-33.3 et al.) and upon request of the Commissioner of Labor, transfer an amount not to exceed \$500,000 from the Second Injury Fund to the uninsured employer's fund. At the end of the first calendar quarter immediately following that effective date and at the end of each calendar quarter thereafter, the State Treasurer shall, upon request of the Commissioner of Labor, transfer from the Second Injury Fund to the uninsured employer's fund an amount estimated by the Commissioner of Labor to be required by the uninsured employer's fund for payment of such claims for the next following calendar quarter. Amounts transferred from the Second Injury Fund under the provisions of this subsection shall be included in the determination of surcharges and assessments for the Second Injury Fund and shall be excluded from the determination of surcharges and assessments for the uninsured employer's fund.

f. The Commissioner of Labor shall, within 180 days following the effective date of

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P.L.2003, c.253 (C.34:15-33.3 et al.), promulgate rules and regulations as necessary to effectuate the purposes of that act.

Repealer.

3. R.S.34:15-33 is repealed.

4. This act shall take effect immediately.

Approved January 14, 2004.