

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3641], Oct. 30, 2000, 114 Stat. 1654, 1654A-509; Pub. L. 108-375, div. C, title XXXI, §3162(a), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Pub. L. 108-375 substituted “this subchapter” for “part B” and “on account of the exposure for which compensation is payable under this subchapter” for “on account of the exposure of a covered beryllium employee, covered employee with cancer, covered employee with chronic silicosis (as defined in section 7384r of this title), or covered uranium employee (as defined in section 7384u of this title), while so employed, to beryllium, radiation, silica, or radiation, respectively”.

§ 7385a. Subrogation of the United States

Upon payment of compensation under this subchapter, the United States is subrogated for the amount of the payment to a right or claim that the individual to whom the payment was made may have against any person on account of injuries referred to in section 7385 of this title.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3642], Oct. 30, 2000, 114 Stat. 1654, 1654A-509; Pub. L. 108-375, div. C, title XXXI, §3162(b), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Pub. L. 108-375 substituted “this subchapter” for “part B”.

§ 7385b. Payment in full settlement of claims

Except as provided in part E, the acceptance by an individual of payment of compensation under part B with respect to a covered employee shall be in full satisfaction of all claims of or on behalf of that individual against the United States, against a Department of Energy contractor or subcontractor, beryllium vendor, or atomic weapons employer, or against any person with respect to that person’s performance of a contract with the United States, that arise out of an exposure referred to in section 7385 of this title.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3643], Oct. 30, 2000, 114 Stat. 1654, 1654A-509; Pub. L. 108-375, div. C, title XXXI, §3162(c), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Pub. L. 108-375 substituted “Except as provided in part E, the acceptance” for “The acceptance”.

§ 7385c. Exclusivity of remedy against the United States and against contractors and subcontractors

(a) In general

The liability of the United States or an instrumentality of the United States under this subchapter with respect to a cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death related thereto of a covered employee is exclusive and instead of all other liability—

- (1) of—
 - (A) the United States;
 - (B) any instrumentality of the United States;

(C) a contractor that contracted with the Department of Energy to provide management and operation, management and integration, or environmental remediation of a Department of Energy facility (in its capacity as a contractor);

(D) a subcontractor that provided services, including construction, at a Department of Energy facility (in its capacity as a subcontractor); and

(E) an employee, agent, or assign of an entity specified in subparagraphs (A) through (D);

(2) to—

(A) the covered employee;

(B) the covered employee’s legal representative, spouse, dependents, survivors, and next of kin; and

(C) any other person, including any third party as to whom the covered employee, or the covered employee’s legal representative, spouse, dependents, survivors, or next of kin, has a cause of action relating to the cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death, otherwise entitled to recover damages from the United States, the instrumentality, the contractor, the subcontractor, or the employee, agent, or assign of one of them,

because of the cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death in any proceeding or action including a direct judicial proceeding, a civil action, a proceeding in admiralty, or a proceeding under a tort liability statute or the common law.

(b) Applicability

This section applies to all cases filed on or after October 30, 2000.

(c) Workers’ compensation

This section does not apply to an administrative or judicial proceeding under a Federal or State workers’ compensation law.

(d) Applicability to part E

This section applies with respect to part E to the covered medical condition or covered illness or death of a covered DOE contractor employee on the same basis as it applies with respect to part B to the cancer (including a specified cancer), chronic silicosis, covered beryllium illness, or death of a covered employee.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3644], Oct. 30, 2000, 114 Stat. 1654, 1654A-509; Pub. L. 108-375, div. C, title XXXI, §3162(d), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Subsec. (d). Pub. L. 108-375 added subsec. (d).

§ 7385d. Election of remedy for beryllium employees and atomic weapons employees

(a) Effect of tort cases filed before enactment of original law

(1) Except as provided in paragraph (2), if an otherwise eligible individual filed a tort case specified in subsection (d) before October 30, 2000, such individual shall be eligible for compensation and benefits under part B.

(2) If such tort case remained pending as of December 28, 2001, and such individual does not dismiss such tort case before December 31, 2003, such individual shall not be eligible for such compensation or benefits.

(b) Effect of tort cases filed between enactment of original law and enactment of 2001 amendments

(1) Except as provided in paragraph (2), if an otherwise eligible individual filed a tort case specified in subsection (d) during the period beginning on October 30, 2000, and ending on December 28, 2001, such individual shall not be eligible for such compensation or benefits.

(2) If such individual dismisses such tort case on or before the last permissible date specified in paragraph (3), such individual shall be eligible for such compensation or benefits.

(3) The last permissible date referred to in paragraph (2) is the later of the following dates:

(A) April 30, 2003.

(B) The date that is 30 months after the date the individual first becomes aware that an illness covered by part B of a covered employee may be connected to the exposure of the covered employee in the performance of duty under section 7384n of this title.

(c) Effect of tort cases filed after enactment of 2001 amendments

(1) If an otherwise eligible individual files a tort case specified in subsection (d) after December 28, 2001, such individual shall not be eligible for such compensation or benefits if a final court decision is entered against such individual in such tort case.

(2) If such a final court decision is not entered, such individual shall nonetheless not be eligible for such compensation or benefits, except as follows: If such individual dismisses such tort case on or before the last permissible date specified in paragraph (3), such individual shall be eligible for such compensation and benefits.

(3) The last permissible date referred to in paragraph (2) is the later of the following dates:

(A) April 30, 2003.

(B) The date that is 30 months after the date the individual first becomes aware that an illness covered by part B of a covered employee may be connected to the exposure of the covered employee in the performance of duty under section 7384n of this title.

(d) Covered tort cases

A tort case specified in this subsection is a tort case alleging a claim referred to in section 7385b of this title against a beryllium vendor or atomic weapons employer.

(e) Workers' compensation

This section does not apply to an administrative or judicial proceeding under a State or Federal workers' compensation law.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3645], Oct. 30, 2000, 114 Stat. 1654, 1654A-510; Pub. L. 107-107, div. C, title XXXI, §3151(a)(5), Dec. 28, 2001, 115 Stat. 1374.)

AMENDMENTS

2001—Subsecs. (a) to (d). Pub. L. 107-107 amended headings and text of subsecs. (a) to (d) generally, sub-

stituting present provisions for provisions relating to election to file suit in subsec. (a), applicable time limits in subsec. (b), dismissal of claims in subsec. (c), and dismissal of pending suit in subsec. (d).

§ 7385e. Certification of treatment of payments under other laws

Compensation or benefits provided to an individual under this subchapter—

(1) shall be treated for purposes of the internal revenue laws of the United States as damages for human suffering; and

(2) shall not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31 or the amount of such benefits.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3646], Oct. 30, 2000, 114 Stat. 1654, 1654A-510; Pub. L. 108-375, div. C, title XXXI, §3162(e), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Pub. L. 108-375 substituted “this subchapter” for “part B”.

§ 7385f. Claims not assignable or transferable; choice of remedies

(a) Claims not assignable or transferable

No claim cognizable under this subchapter shall be assignable or transferable.

(b) Choice of remedies

No individual may receive more than one payment of compensation under part B.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3647], Oct. 30, 2000, 114 Stat. 1654, 1654A-511; Pub. L. 108-375, div. C, title XXXI, §3162(f), Oct. 28, 2004, 118 Stat. 2186.)

AMENDMENTS

2004—Subsec. (a). Pub. L. 108-375 substituted “this subchapter” for “part B”.

§ 7385g. Attorney fees

(a) General rule

Notwithstanding any contract, the representative of an individual may not receive, for services rendered in connection with the claim of an individual for payment of lump-sum compensation under part B, more than that percentage specified in subsection (b) of a payment made under part B on such claim.

(b) Applicable percentage limitations

The percentage referred to in subsection (a) is—

(1) 2 percent for the filing of an initial claim for payment of lump-sum compensation; and

(2) 10 percent with respect to objections to a recommended decision denying payment of lump-sum compensation.

(c) Inapplicability to other services

This section shall not apply with respect to services rendered that are not in connection with such a claim for payment of lump-sum compensation.

(d) Penalty

Any such representative who violates this section shall be fined not more than \$5,000.