

graph (1) shall not be paid. Instead, the survivor of that employee shall receive compensation as follows:

(A) Except as provided in subparagraph (B), the survivor of that employee shall receive contractor employee compensation under this part in accordance with section 7385s-3 of this title.

(B) In a case in which the employee's death occurred after the employee applied under this part and before compensation was paid under paragraph (1), and the employee's death occurred from a cause other than the covered illness of the employee, the survivor of that employee may elect to receive, in lieu of compensation under subparagraph (A), the amount of contractor employee compensation that the employee would have received in accordance with section 7385s-2 of this title if the employee's death had not occurred before compensation was paid under paragraph (1).

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3672], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2178.)

**§ 7385s-2. Compensation schedule for contractor employees**

**(a) Compensation provided**

The amount of contractor employee compensation under this part for a covered DOE contractor employee shall be the sum of the amounts determined under paragraphs (1) and (2), as follows:

**(1) Impairment**

(A) The Secretary shall determine—

(i) the minimum impairment rating of that employee, expressed as a number of percentage points; and

(ii) the number of those points that are the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility.

(B) The employee shall receive an amount under this paragraph equal to \$2,500 multiplied by the number referred to in clause (ii) of subparagraph (A).

**(2) Wage loss**

(A) The Secretary shall determine—

(i) the calendar month during which the employee first experienced wage loss as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility;

(ii) the average annual wage of the employee for the 36-month period immediately preceding the calendar month referred to in clause (i), excluding any portions of that period during which the employee was unemployed; and

(iii) beginning with the calendar year that includes the calendar month referred to in clause (i), through and including the calendar year during which the employee attained normal retirement age (for purposes of the Social Security Act [42 U.S.C. 301 et seq.]—

(I) the number of calendar years during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee's annual wage exceeded 50 percent of the average annual wage determined under clause (ii), but did not exceed 75 percent of the average annual wage determined under clause (ii); and

(II) the number of calendar years during which, as the result of any covered illness contracted by that employee through exposure to a toxic substance at a Department of Energy facility, the employee's annual wage did not exceed 50 percent of the average annual wage determined under clause (ii).

(B) The employee shall receive an amount under this paragraph equal to the sum of—

(i) \$10,000 multiplied by the number referred to in clause (iii)(I) of subparagraph (A); and

(ii) \$15,000 multiplied by the number referred to in clause (iii)(II) of subparagraph (A).

**(b) Determination of minimum impairment rating**

For purposes of subsection (a), a minimum impairment rating shall be determined in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3673], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2179.)

**Editorial Notes**

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(2)(A)(iii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

**§ 7385s-3. Compensation schedule for survivors**

**(a) Categories of compensation**

The amount of contractor employee compensation under this part for the survivor of a covered DOE contractor employee shall be determined as follows:

**(1) Category one**

The survivor shall receive the amount of \$125,000, if the Secretary determines that—

(A) the employee would have been entitled to compensation under section 7385s-4 of this title for a covered illness; and

(B) it is at least as likely as not that exposure to a toxic substance at a Department of Energy facility was a significant factor in aggravating, contributing to, or causing the death of such employee.

**(2) Category two**

The survivor shall receive the amount of \$150,000, if paragraph (1) applies to the employee and the Secretary also determines that