

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

there was an aggregate period of not less than 10 years, before the employee attained normal retirement age (for purposes of the Social Security Act [42 U.S.C. 301 et seq.]), 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 of that employee, as determined under section 7385s-2(a)(2)(A)(ii) of this title.

**(3) Category three**

The survivor shall receive the amount of \$175,000, if paragraph (1) applies to the employee and the Secretary also determines that there was an aggregate period of not less than 20 years, before the employee attained normal retirement age (for purposes of the Social Security Act [42 U.S.C. 301 et seq.]), 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 of that employee, as determined under section 7385s-2(a)(2)(A)(ii) of this title.

**(b) One amount only**

The survivor of a covered DOE contractor employee to whom more than one amount under subsection (a) applies shall receive only the highest such amount.

**(c) Determination and allocation of shares**

The amount under subsection (a) shall be paid only as follows:

(1) If a covered spouse is alive at the time of payment, such payment shall be made to such surviving spouse.

(2) If there is no covered spouse described in paragraph (1), such payment shall be made in equal shares to all covered children who are alive at the time of payment.

(3) Notwithstanding the other provisions of this subsection, if there is—

(A) a covered spouse described in paragraph (1); and

(B) at least one covered child of the employee who is living at the time of payment and who is not a recognized natural child or adopted child of such covered spouse,

then half of such payment shall be made to such covered spouse, and the other half of such payment shall be made in equal shares to each covered child of the employee who is living at the time of payment.

**(d) Definitions**

In this section:

(1) The term "covered spouse" means a spouse of the employee who was married to the employee for at least one year immediately before the employee's death.

(2) The term "covered child" means a child of the employee who, as of the employee's death—

(A) had not attained the age of 18 years;

(B) had not attained the age of 23 years and was a full-time student who had been continuously enrolled as a full-time student in one or more educational institutions since attaining the age of 18 years; or

(C) had been incapable of self-support.

(3) The term "child" includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3674], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2180.)

**Editorial Notes**

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(2), (3), 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-4. Determinations regarding contraction of covered illnesses**

**(a) Cases determined under part B**

A determination under part B that a Department of Energy contractor employee is entitled to compensation under that part for an occupational illness shall be treated for purposes of this part as a determination that the employee contracted that illness through exposure at a Department of Energy facility.

**(b) Cases determined under former part D**

In the case of a covered illness of an employee with respect to which a panel has made a positive determination under section 7385o(d) of this title and the Secretary of Energy has accepted that determination under section 7385o(e)(2) of this title, or with respect to which a panel has made a negative determination under section 7385o(d) of this title and the Secretary of Energy has found significant evidence to the contrary under section 7385o(e)(2) of this title, that determination shall be treated for purposes of this part as a determination that the employee contracted the covered illness through exposure at a Department of Energy facility.

**(c) Other cases**

(1) In any other case, a Department of Energy contractor employee shall be determined for purposes of this part to have contracted a covered illness through exposure at a Department of Energy facility if—

(A) 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 illness; and

(B) it is at least as likely as not that the exposure to such toxic substance was related to employment at a Department of Energy facility.

(2) A determination under paragraph (1) shall be made by the Secretary.

**(d) Applications by spouses and children**

If a spouse or child of a Department of Energy contractor employee applies for benefits under this part, the Secretary shall make a determination under this section with respect to that employee without regard to whether the spouse is a "covered spouse", or the child is a "covered child", under this part.