

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, 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)(i) 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, 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.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3675], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2181.)

Editorial Notes

REFERENCES IN TEXT

Section 7385o of this title, referred to in subsec. (b), was repealed by Pub. L. 108-375, div. C, title XXXI, §3162(i), Oct. 28, 2004, 118 Stat. 2186.

§ 7385s-5. Applicability to certain uranium employees

(a) In general

This part shall apply to—

(1) a section 5 payment recipient who contracted a section 5 illness through a section 5 exposure at a section 5 facility, or

(2) a section 5 uranium worker determined under section 7385s-4(c) of this title to have contracted a covered illness through exposure to a toxic substance at a section 5 mine or mill,

(or to the survivor of that employee, as applicable) on the same basis as it applies to a Department of Energy contractor employee determined under section 7385s-4 of this title to have contracted a covered illness through exposure to a toxic substance at a Department of Energy facility (or to the survivor of that employee, as applicable).

(b) Definitions

In this section:

(1) The term “section 5 payment recipient” means an individual who receives, or has received, \$100,000 under section 5 of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note) for a claim made under that Act.

(2) The terms “section 5 exposure”, “section 5 facility”, and “section 5 illness” mean the exposure, facility, and illness, respectively, to which an individual’s status as a section 5 payment recipient relates.

(3) The term “section 5 uranium worker” means an individual to whom subsection (a)(1)(A)(i) of section 5 of the Radiation Exposure Compensation Act applies (whether directly or by reason of subsection (a)(2)).

(4) The term “section 5 mine or mill” means the mine or mill to which an individual’s status as a section 5 uranium worker relates.

(Pub. L. 106-398, §1 [div. C, title XXXVI, §3676], as added Pub. L. 108-375, div. C, title XXXI, §3161, Oct. 28, 2004, 118 Stat. 2182.)

Editorial Notes

REFERENCES IN TEXT

The Radiation Exposure Compensation Act, referred to in subsec. (b), is Pub. L. 101-426, Oct. 15, 1990, 104 Stat. 920, which is set out as a note under section 2210 of this title.