SENATE, No. 2872



STATE OF NEW JERSEY

219th LEGISLATURE



INTRODUCED SEPTEMBER 14, 2020

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator JOSEPH P. CRYAN

District 20 (Union)

SYNOPSIS

Establishes Essential Employees Hazard Compensation and Employer Liability Limitation Program; affords COVID-19 liability protections and provides financial incentives to certain employers that provide hazard pay to eligible employees; makes an appropriation.

CURRENT VERSION OF TEXT

As introduced.



An Act establishing the Essential Employees Hazard Compensation and Employer Liability Limitation Program, supplementing various parts of the statutory law, and making an appropriation.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. As used in P.L. , c. (C. ) (pending before the Legislature as this bill):

"Authority" means the New Jersey Economic Development Authority established pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).

"Covered employer" means a person or entity that employs one or more individuals in New Jersey in relation to the operation of one of the following:

a. a grocery store;

b. a pharmacy;

c. any other retailer serving basic human needs;

d. a wholesale distributor making deliveries to a retailer that is a covered employer;

e. a trash collection or waste management service;

f. a janitorial service that provides cleaning or janitorial services to another covered employer;

g. an assisted living residence;

h. a nursing home;

i. a residential care home;

j. a therapeutic community residence;

k. a health care facility or a physician’s office;

l. a child care facility that provides child care services to essential service providers;

m. a vocational rehabilitation service provider;

n. a dentist’s office or a dental facility;

o. a homeless shelter;

p. a home health agency;

q. a qualified health center, health clinic, or clinic for the uninsured;

r. a residential treatment program;

s. an ambulance service or first responder service;

t. a funeral establishment or crematory establishment;

u. providers of necessities and services to vulnerable or disadvantaged populations; or

v. any other business deemed an essential business by the authority, in consultation with the Department of Labor and Workforce Development.

"Covered employer" does not include the State, a political subdivision of the State, or the federal government.

"Eligible employee" means an individual who:

a. is employed in this State by a covered employer that has enrolled in the program;

b. earns an average hourly wage of $20.00 or less; and

c. meets at least one of the following qualifications:

(1) is involved in providing medical or other healthcare services, emergency medical transportation, social services, or other care services, including services provided in health care facilities, residential facilities, or homes;

(2) performs functions which involve physical proximity to members of the public and are essential to the public's health, safety, and welfare, including transportation services, hotel and other residential services, financial services, and the production, preparation, storage, sale, and distribution of essential goods such as food, beverages, medicine, fuel, and supplies for conducting essential business and work at home; or

(3) is any other employee deemed an essential employee by the authority, in consultation with the Department of Labor and Workforce Development.

"Hazard pay" means a verifiable increase in wages to be paid by a covered employer to an eligible employee, equivalent to an average hourly wage increase of at least $3.00 per hour.

"Liability limitation period" means the period for which a covered employer’s acts or omissions shall qualify for the liability protections offered pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill), extending from the date of enrollment under the program established pursuant to P.L.    , c.    (C.        ) (pending before the Legislature as this bill) until the current public health emergency, declared by the Governor pursuant to Executive Order No. 103 of 2020, or any extension thereof, expires or is rescinded.

"Monthly period" means a calendar month during the program period.

"Program" means the Essential Employees Hazard Compensation and Employer Liability Limitation Program established pursuant to section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill).

"Program Period" the period of time from the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) until the current public health emergency, declared by the Governor pursuant to Executive Order No. 103 of 2020, or any extension thereof, expires or is rescinded.

"Small business" means a covered employer with not more than 50 employees, including, but not limited to, eligible employees.

2. a. There is established the Essential Employees Hazard Compensation and Employer Liability Limitation Program to incentivize covered employers to provide hazard pay to eligible employees who, during the program period, perform work in essential jobs that subject them to an elevated risk of being exposed to coronavirus disease or contracting COVID-19. The New Jersey Economic Development Authority shall administer the program.

b. (1) The authority shall, in consultation with the Attorney General, the Department of Health, the Department of Labor and Workforce Development, and the Director of the Division of Consumer Affairs within the Department of Law and Public Safety, and as provided in section 11 of P.L. , c. (C. ) (pending before the Legislature as this bill), adopt rules and regulations to establish minimum health and safety protocols for covered employers under the program and concerning legal liability protections for covered employers during the time of the liability limitation period. The rules may establish different minimum health and safety protocols for different categories of covered employers. The rules shall provide that a covered employer that meets or exceeds the minimum health and safety protocols and provides hazard pay to eligible employees shall not, except as otherwise provided for pursuant to the workers' compensation law, R.S.34:15-1 et seq., be liable for injury or death alleged to have been caused by any act or omission by the covered employer related to exposure of any person to coronavirus disease or contraction of COVID-19 by any person that occurs during the liability limitation period and is within the scope of the powers and duties provided under, P.L. , c. (C. ) (pending before the Legislature as this bill), including any order, rule, or regulation adopted pursuant thereto.

(2) A covered employer, agent, officer, employee, servant, representative, or volunteer does not have limited liability under this section for an injury that results from an act that is outside the scope of the powers and duties set forth in P.L. , c. (C. ) (pending before the Legislature as this bill), for conduct that is subject to the workers' compensation law, R.S.34:15-1 et seq., or for conduct that constitutes a crime, actual fraud, actual malice, gross negligence, or willful misconduct.

c. The authority shall, at a minimum, require that:

(1) a covered employer participating in the program pay hazard pay to all eligible employees from the date of the covered employer’s enrollment through the remainder of the program period pursuant to the provisions of P.L. , c. (C. ) (pending before the Legislature as this bill) and pursuant to a schedule and procedures approved by the authority;

(2) comply with all requirements, guidelines, and procedures that the authority adopts in relation to the program; and

(3) comply with all requirements of P.L. , c. (C. ) (pending before the Legislature as this bill).

d. The authority may, at the authority’s discretion, contract with any person or political subdivision of the State to assist in administration of the program, including, but not limited to, performing inspections of any covered employer facility or operations to verify that the covered employer is in compliance with the minimum health and safety protocols applicable to the covered employer.

3. a. A covered employer seeking to enroll in the program shall submit a program application to the authority no later than 60 days following the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill).

b. (1) In order to enroll in the program, a covered employer shall submit to the authority a notice of enrollment in a form specified by the authority and certify that the covered employer’s operations meet or exceed any minimum health and safety protocols applicable to the covered employer.

(2) The authority shall require employers to provide information demonstrating that the employer qualifies as a covered employer.

(3) As a condition of enrolling in the program, each covered employer shall agree:

(a) to allow the covered employer’s facilities and operations to be inspected, at the discretion of the authority, to ensure compliance with the minimum health and safety protocols applicable to the covered employer;

(b) to make all books and records related to work performed by eligible employees during the program period available upon request to the authority and the Attorney General for inspection;

(c) not to require any eligible employee to pay an administrative fee or other charge in relation to the employer providing hazard pay to the employee;

(d) not to reduce the hourly compensation, including any related bonuses or premiums, of any eligible employee during the program period; and

(e) to remain subject to any otherwise applicable State or municipal regulatory standards, oversight, and enforcement actions.

c. (1) A covered employer that has enrolled in the program shall submit hazard pay information in a form specified by the authority for each monthly period during the program period according to a schedule established by the authority.

(2) The authority shall specify the information that a covered employer is required to provide for each eligible employee.

d. A covered employer shall issue hazard pay to eligible employees according to a schedule approved by the authority, and the authority shall certify the amount of hazard pay issued by a covered employer to eligible employees during a given privilege period or taxable year, and during each monthly period for each small business applying for hazard compensation grants pursuant to section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill).

e. (1) Each eligible employee shall be provided with a detailed written notice that the covered employer is receiving legal liability protections under the program and that the hazard pay may be subject to income tax and that the eligible employee’s payment is subject to withholding.

(2) All procedures specified by 26 U.S.C. chapter 24 and the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., pertaining to the withholding of income tax shall be followed in relation to the payments made pursuant to this section.

f. Nothing in this section shall be construed to require an employer to enroll in the program.

4. a. A taxpayer that is a covered employer enrolled in the Essential Employees Hazard Compensation and Employer Liability Limitation Program established pursuant to section 2 of P.L.    , c.    (C.        ) (pending before the Legislature as this bill), shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) in an amount equal to 20 percent of the certified amount that the covered employer paid to eligible employees as hazard pay during a privilege period.

b. The amount of the credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), for a privilege period, when taken together with any other credits allowed against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10-5), shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5(e)).

c. The order of priority of the application of the tax credit allowed pursuant to this section, and any other credits allowed by law, shall be determined by the director.

d. The amount of the credit otherwise allowable under this section which cannot be applied for the privilege period due to the limitations of this section may be carried forward, if necessary, to the seven privilege periods following the privilege period for which the tax credit was allowed.

5. a. A taxpayer that is a covered employer enrolled in the Essential Employees Hazard Compensation and Employer Liability Limitation Program established pursuant to section 2 of P.L.    , c.    (C.        ) (pending before the Legislature as this bill), shall be allowed a credit against the tax imposed pursuant to the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., in an amount equal to 20 percent of the certified amount that the covered employer paid to eligible employees as hazard pay during a taxable year.

b. The order of priority of the application of the credit allowed pursuant to this section and any other credits allowed against the New Jersey gross income tax due pursuant to N.J.S.54A:1-1 et seq. for a taxable year shall be as prescribed by the director.

c. The amount of the credit applied against the New Jersey gross income tax due pursuant to N.J.S.54A:1-1 et seq. shall not reduce a taxpayer’s New Jersey gross income tax liability to an amount less than zero.

d. A business entity classified as a partnership for federal income tax purposes shall not be allowed a credit directly under the New Jersey gross income tax, but the amount of credit of a taxpayer in respect of a distributive share of partnership income shall be determined by allocating to the taxpayer that proportion of the credit acquired by the partnership that is equal to the taxpayer’s share, whether or not distributed, of the total distributive income or gain of the partnership for its taxable year ending within or with the taxpayer’s taxable year.

A New Jersey S Corporation shall not be allowed a credit directly under the New Jersey gross income tax, but the amount of credit of a taxpayer in respect of a pro rata share of S Corporation income shall be determined by allocating to the taxpayer that proportion of the credit acquired by the New Jersey S Corporation that is equal to the taxpayer’s share, whether or not distributed, of the total pro rata share of S Corporation income of the New Jersey S Corporation for its privilege period ending within or with the taxpayer’s taxable year.

e. The amount of the credit otherwise allowable under this section which cannot be applied for the tax year due to the limitations of this section may be carried forward, if necessary, to the seven taxable years following the taxable year for which the tax credit was allowed.

6. a. In lieu of being allowed a tax credit pursuant to section 4 or section 5 of P.L. , c. (C. or C. ) (pending before the Legislature as this bill), a covered employer that is a small business may elect to apply for a hazard compensation grant under the program.

b. The authority shall administer a small business hazard compensation grant component under the program to provide an incentive to small businesses, during the current public health emergency, to provide hazard pay to eligible employees.

c. A small business seeking to participate in the grant component of the program shall submit an application in such form as required by the authority. The application shall include such information as the authority shall determine is necessary to administer the grant component of the program.

d. The authority shall review and may approve an application for a small business to receive benefits under the grant component of the program.

e. The authority shall issue a grant to a small business that enters into a hazard compensation grant agreement with the authority, following the submission of proof by an approved small business of the number of eligible employees paid hazard pay under the program and proof of the amount of hazard pay issued by the small business.

f. The value of a grant shall be equal to 20 percent of the amount that the covered employer pays to eligible employees as hazard pay during a monthly period, as certified pursuant to subsection d. of section 3 of P.L. , c. (C. ) (pending before the Legislature as this bill).

g. If a small business has been approved to receive a hazard compensation grant under the program, but the authority lacks sufficient funds to pay all or part of the hazard compensation grant, the small business shall be allowed to claim the remaining amount, not paid as a grant, as a tax credit, as otherwise provided pursuant to section 4 or section 5 of P.L. , c. (C. or C. ) (pending before the Legislature as this bill).

7. There is established in the Department of the Treasury, to be administered by the authority, a “Small Business Hazard Compensation Grant Fund.” The authority shall use money in the fund to provide grants to small businesses in accordance with section 6 of P.L. , c. (C. ) (pending before the Legislature as this bill).

8. The total combined value of all incentives to be awarded or allowed pursuant sections 4 through 6 of P.L.    , c.    (C.         through C.        ) (pending before the Legislature as this bill) shall not exceed $3,000,000 for any covered employer and shall not exceed $600,000 for any individual business location operated by the covered employer.

9. a. Within 180 day after the public health emergency, declared by the Governor pursuant to Executive Order No. 103 of 2020, or any extension thereof, expires or is rescinded, the authority shall submit a written report to the Governor and the Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), with the following information:

(1) the total number of covered employers that participated in the program;

(2) the total number of eligible employees who received hazard pay through the program;

(3) the aggregate dollar amount of hazard pay issued for each monthly period during the program period;

(4) the aggregate dollar amount of hazard pay issued for the entire program period; and

(5) any other information regarding the program that the authority determines is pertinent.

b. A covered employer that participates in the program shall:

(1) keep its books and records related to the program available for audit as required by the authority during the public health emergency and for three years thereafter;

(2) make all books and records related to the program available to the authority, the Attorney General, and the State Auditor upon request; and

(3) make its books and records available for review or audit upon request by any State or federal authority with jurisdiction, or a person or entity appointed by such a State or federal authority.

10. a. A person shall not intentionally make a false statement or representation related to the qualifying criteria for hazard pay for an eligible employee or meeting the minimum health and safety standards applicable to a covered employer under P.L.    , c.    (C.        ) (pending before the Legislature as this bill).

b. The Attorney General may enforce the provisions of, and the rules adopted pursuant to, P.L. , c. (C. ) (pending before the Legislature as this bill) by restraining prohibited acts, obtaining assurances of discontinuance, and conducting investigations in accordance with the law.

11. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the New Jersey Economic Development Authority may, consistent with subsection b. of section 2 of P.L. , c. (C. ) (pending before the Legislature as this bill), adopt immediately upon filing with the Office of Administrative Law such rules and regulations as the authority shall determine to be necessary to effectuate the purposes of P.L. , c. (C. ) (pending before the Legislature as this bill), which rules and regulations shall be effective for a period not exceeding 180 days following the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) and may thereafter be amended, adopted, or readopted by the authority in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

12. There is appropriated from the General Fund to the “Small Business Hazard Compensation Grant Fund,” established pursuant to section 7 of P.L. , c. (C. ) (pending before the Legislature as this bill), the sum of $50,000,000 from a portion of those federal block grant funds allocated to the State from the federal “Coronavirus Relief Fund,” established pursuant to the federal “Coronavirus Aid, Relief, and Economic Security Act,” Pub.L.116-136, for use by the authority to provide financial assistance in the form of grants to an owner or operator of a small business to offset a portion of the hazard pay that the small business pays to eligible employees pursuant to the Essential Employees Hazard Compensation and Employer Liability Limitation Program.

13. This act shall take effect immediately.

STATEMENT

This bill establishes the Essential Employees Hazard Compensation and Employer Liability Limitation Program (program) to incentivize covered employers to provide hazard pay to eligible employees who perform work in essential jobs that subject them to an elevated risk of being exposed to coronavirus disease or contracting COVID-19 from the time of their employer’s enrollment in the program through the end of the current public health emergency. The New Jersey Economic Development Authority (EDA) is to administer the program.

The bill requires the EDA to adopt rules and regulations, in consultation with the Attorney General, the Department of Health, the Department of Labor and Workforce Development, and the Director of the Division of Consumer Affairs within the Department of Law and Public Safety, to establish minimum health and safety protocols for covered employers under the program and concerning legal liability protections for covered employers during the period of the State’s public health emergency. The rules may provide for different minimum health and safety protocols for different categories of covered employers. The rules are to provide that a covered employer that meets or exceeds the minimum health and safety protocols and provides recognition payments to eligible employees shall not be liable for injury or death alleged to have been caused by any act or omission by the covered employer related to exposure of any person to coronavirus disease or contraction of COVID-19 by any person, that occurs during the public health emergency and is within the scope of the powers and duties provided under the bill.

A covered employer, agent, officer, employee, servant, representative, or volunteer does not have limited liability, under the program, for an injury that is outside the scope of the powers and duties set forth in the bill, for conduct that is subject to the workers' compensation law, or for conduct that constitutes a crime, actual fraud, actual malice, gross negligence or willful misconduct. Under the bill, the EDA is permitted to contract with any person or political subdivision of the State to assist in program administration and specifically to perform inspections of any covered employer facilities and operations to verify that the covered employer is in compliance with the minimum health and safety protocols applicable to the covered employer.

In order to enroll in the program, a covered employer is required to: submit to the EDA a notice of enrollment and certify that the covered employer’s operations meet or exceed any minimum health and safety protocols applicable to the covered employer; provide information demonstrating that the employer qualifies as a covered employer; agree to allow the covered employer’s facilities, operations, and books to be inspected; and to meet additional requirements specified in the bill. The bill specifies that an employer is not required to enroll in the program. Under the bill, a covered employer participating in the program is required to provide hazard pay, equivalent to an average wage increase of at least $3.00 per hour, to every eligible employee from the date of the covered employer’s enrollment in the program through the end of the current public health emergency. The bill specifies that an eligible employee means individuals who are employed in this State by a covered employer, who earn an average hourly wage of $20.00 or less, and who meet at least one of the following qualifications:

(1) is involved in providing medical and other healthcare services, emergency medical transportation, social services, or other care services, including services provided in health care facilities, residential facilities, or homes;

(2) performs functions which involve physical proximity to members of the public and are essential to the public's health, safety, and welfare, including transportation services, hotel and other residential services, financial services, and the production, preparation, storage, sale, and distribution of essential goods such as food, beverages, medicine, fuel, and supplies for conducting essential business and work at home; or

(3) is any other employee deemed an essential employee by the authority, in consultation with the Department of Labor and Workforce Development.

The bill requires that hazard pay be paid by a covered employer according to a schedule approved by the authority, and that each eligible employee be provided with a detailed written notice that the covered employer is receiving legal liability protections under the program and that the payment may be subject to income tax and that the eligible employee’s payment is subject to withholding.

Under the bill, a covered employer enrolled in the program is allowed to claim a tax credit against the covered employer’s Corporation Business Tax or New Jersey Gross Income Tax liability in an amount equal to 20 percent of the hazard pay provided by the covered employer to eligible employees, as certified by the authority. The bill further provides that a small business, with 50 or fewer employees and which qualifies as a covered employer, may apply to receive hazard compensation grants in lieu of being allowed a tax credit under the program.

The bill appropriates $50 million to a new “Small Business Hazard Compensation Grant Fund,” established pursuant to the bill, to provide grants to qualified small businesses. The bill limits the total value of incentives that any covered employer can receive under the bill to not more than $3 million overall and not more than $600,000 per business location of a covered employer.

The bill requires the EDA to submit a written report to report to the Governor and the Legislature related to the operation of the program.