

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2002
PUBLIC LAW 107-107

SEC. 3151. IMPROVEMENTS TO ENERGY EMPLOYEES OCCUPATIONAL ILLNESS
COMPENSATION PROGRAM.

(a) Amendments to Energy Employees Program.--The Energy Employees Occupational Illness Compensation Program Act of 2000 (title XXXVI of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (as enacted into law by

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Public Law 106-398; 114 Stat. 1654A-394); 42 U.S.C. 7384 et seq.) is amended as follows:

(1) Certain leukemia as specified cancer.--Section 3621(17) (114 Stat. 1654A-502; 42 U.S.C. 7384l(17)), as amended by section 2403 of the Supplemental Appropriations Act, 2001 (Public Law 107-20; 115 Stat. 175), is further amended by adding at the end the following new subparagraph:

“(D) Leukemia (other than chronic lymphocytic leukemia), if initial occupational exposure occurred before 21 years of age and onset occurred more than two years after initial occupational exposure.”.

(2) Additional members of special exposure cohort.--Section 3626(b) (114 Stat. 1654A-505; 42 U.S.C. 7384q(b)) is amended in the matter preceding paragraph (1) by inserting after “Department of Energy facility” the following: “, or at an atomic weapons employer facility,”.

(3) Establishment of chronic silicosis.--Section 3627(e)(2)(A) (114 Stat. 1654A-506; 42 U.S.C. 7384r(e)(2)(A)) is amended by striking “category 1/1” and inserting “category 1/0”.

(4) Survivors.--

(A) Section 3628(e) (114 Stat. 1654A-506; 42 U.S.C. 7384s(e)) is amended to read as follows:

“(e) Payments in the Case of Deceased Persons.--(1) In the case of a covered employee who is deceased at the time of payment of compensation under this section, whether or not the death is the result of the covered employee's occupational illness, such payment may be made only as follows:

“(A) If the covered employee is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

``(B) If there is no surviving spouse described in subparagraph (A), such payment shall be made in equal shares to all children of the covered employee who are living at the time of payment.

``(C) If there is no surviving spouse described in subparagraph (A) and if there are no children described in subparagraph (B), such payment shall be made in equal shares to the parents of the covered employee who are living at the time of payment.

``(D) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B) or parents described in subparagraph (C), such payment shall be made in equal shares to all grandchildren of the covered employee who are living at the time of payment.

``(E) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B), parents described in subparagraph (C), or grandchildren described in subparagraph (D), then such payment shall be made in equal shares to the grandparents of the covered employee who are living at the time of payment.

``(F) Notwithstanding the other provisions of this paragraph, if there is--

``(i) a surviving spouse described in subparagraph (A); and

``(ii) at least one child of the covered employee who is living and a minor at the time of payment and who

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is not a recognized natural child or adopted child of such surviving spouse,
then half of such payment shall be made to such surviving spouse, and the other half of such payment shall be made in equal shares to each child of the covered employee who is living and a minor at the time of payment.

``(2) If a covered employee eligible for payment dies before filing a claim under this title, a survivor of that employee who may receive payment under paragraph (1) may file a claim for such payment.

``(3) For purposes of this subsection--

``(A) the `spouse' of an individual is a wife or husband of that individual who was married to that individual for at least one year immediately before the death of that individual;

``(B) a `child' includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child

relationship, and an adopted child;

“(C) a ‘parent’ includes fathers and mothers through adoption;

“(D) a ‘grandchild’ of an individual is a child of a child of that individual; and

“(E) a ‘grandparent’ of an individual is a parent of a parent of that individual.”.

(B) Section 3630(e) (114 Stat. 1654A-507; 42 U.S.C. 7384u(e)) is amended to read as follows:

“(e) Payments in the Case of Deceased Persons.--(1) In the case of a covered employee who is deceased at the time of payment of compensation under this section, whether or not the death is the result of the covered employee's occupational illness, such payment may be made only as follows:

“(A) If the covered employee is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

“(B) If there is no surviving spouse described in subparagraph (A), such payment shall be made in equal shares to all children of the covered employee who are living at the time of payment.

“(C) If there is no surviving spouse described in subparagraph (A) and if there are no children described in subparagraph (B), such payment shall be made in equal shares to the parents of the covered employee who are living at the time of payment.

“(D) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B) or parents described in subparagraph (C), such payment shall be made in equal shares to all grandchildren of the covered employee who are living at the time of payment.

“(E) If there is no surviving spouse described in subparagraph (A), and if there are no children described in subparagraph (B), parents described in subparagraph (C), or grandchildren described in subparagraph (D), then such payment shall be made in equal shares to the grandparents of the covered employee who are living at the time of payment.

“(F) Notwithstanding the other provisions of this paragraph, if there is--

“(i) a surviving spouse described in subparagraph (A); and

“(ii) at least one child of the covered employee who is living and a minor at the time of payment and who is not a recognized natural child or adopted child of such surviving spouse, then half of such payment shall be made to such surviving spouse, and the other half of such payment shall be made in equal shares to each child of the covered employee who is living and a minor at the time of payment.

“(2) If a covered employee eligible for payment dies before filing a claim under this title, a survivor of that employee who may receive payment under paragraph (1) may file a claim for such payment.

“(3) For purposes of this subsection--

“(A) the ‘spouse’ of an individual is a wife or husband of that individual who was married to that individual for at least one year immediately before the death of that individual;

“(B) a ‘child’ includes a recognized natural child, a stepchild who lived with an individual in a regular parent-child relationship, and an adopted child;

“(C) a ‘parent’ includes fathers and mothers through adoption;

“(D) a ‘grandchild’ of an individual is a child of a child of that individual; and

“(E) a ‘grandparent’ of an individual is a parent of a parent of that individual.”.

(C) Paragraph (18) of section 3621 (114 Stat. 1654A-502; 42 U.S.C. 7384l) is repealed.

(D) <<NOTE: Effective date. 42 USC 7384l note.>>

The amendments made by this paragraph shall take effect on July 1, 2001.

(5) Election of remedies.--Section 3645 (114 Stat. 1654A-510; 42 U.S.C. 7385d) is amended by amending subsections (a) through (d) to read as follows:

“(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 subtitle B.

“(2) If such tort case remained pending as of the date of the enactment of the National Defense Authorization Act for Fiscal Year 2002, 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 the date of the enactment of the National Defense Authorization Act for Fiscal Year 2002, 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.

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``(B) The date that is 30 months after the date the individual first becomes aware that an illness covered by subtitle B of a covered employee may be connected to the exposure of the covered employee in the performance of duty under section 3623.

``(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 the date of the enactment of the National Defense Authorization Act for Fiscal Year 2002, 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 subtitle B of a covered employee may be connected to the exposure of the covered employee in the performance of duty under section 3623.

``(d) Covered Tort Cases.--A tort case specified in this subsection is a tort case alleging a claim referred to in section 3643 against a beryllium vendor or atomic weapons employer."

(6) Attorney fees.--Section 3648 (114 Stat. 1654A-511; 42

U.S.C. 7385g) is amended--

(A) in subsection (a), by inserting after "the claim of an individual" the following: "for payment of lump-sum compensation";

(B) in subsection (b)(1), by inserting after "initial claim" the following: "for payment of lump-sum compensation";

(C) in subsection (b)(2), by striking "with respect to any claim" and all that follows through the period at the end and inserting "with respect to objections to a recommended decision denying payment of lump-sum compensation.";

(D) by redesignating subsection (c) as subsection (d); and

(E) by inserting after subsection (b) the following new subsection (c):

"(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."

(b) <<NOTE: 42 USC 7384 note.>> Study of Residual Contamination of Facilities.--(1) The National Institute for Occupational Safety and Health shall, with the cooperation of the Department of Energy and the Department of Labor, carry out a study on the following matters:

(A) Whether or not significant contamination remained in any atomic weapons employer facility or facility of a beryllium vendor after such facility discontinued activities relating to the production of nuclear weapons.

(B) If so, whether or not such contamination could have caused or substantially contributed to the cancer of a covered

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employee with cancer or a covered beryllium illness, as the case may be.

(2)(A) The National Institute for Occupational Safety and Health shall submit to the applicable congressional committees the following reports:

(i) <<NOTE: Deadline.>> Not later than 180 days after the date of the enactment of this Act, a report on the progress made as of the date of the report on the study required by paragraph (1).

(ii) Not later than one year after the date of the enactment of this Act, a final report on the study required by paragraph

(1).

(B) In this paragraph, the term "applicable congressional committees" means--

(i) the Committee on Armed Services, Committee on Appropriations, Committee on the Judiciary, and Committee on Health, Education, Labor, and Pensions of the Senate; and

(ii) the Committee on Armed Services, Committee on Appropriations, Committee on the Judiciary, and Committee on Education and the Workforce of the House of Representatives.

(3) Amounts for the study under paragraph (1) shall be derived from amounts authorized to be appropriated by section 3614(a) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (114 Stat. 1654A-498).

(4) In this subsection:

(A) The terms "atomic weapons employer facility", "beryllium vendor", "covered employee with cancer", and "covered beryllium illness" have the meanings given those terms in section 3621 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (114 Stat. 1654A-498; 42 U.S.C. 7384l).

(B) The term "contamination" means the presence of any--

(i) material that emitted radiation and was used in the production of an atomic weapon, excluding uranium mining and milling; or

(ii) beryllium dust, particles, or vapor, exposure to which could cause or substantially contribute to the cancer of a covered employee with cancer or a covered beryllium illness, as the case may be.