
OLR Bill Analysis

sHB 5356

AN ACT CONCERNING PANDEMIC PAY FOR ESSENTIAL WORKERS.

SUMMARY

This bill establishes the Connecticut Essential Workers Pandemic Pay program to be administered by the Office of the Comptroller (OTC) or a third-party administrator under contract with OTC. The program must provide \$2,000 to each full-time essential worker (i.e., worked at least 30 hours a week) and up to \$1,000 to each part-time essential worker, within available funds on a first-come, first-served basis, pending verification of eligibility, through June 30, 2024.

The bill establishes a non-lapsing program account along with application and payment processes. It also:

1. allows an essential worker to request a reconsideration of a denied application,
2. prohibits appeals on reconsideration decisions,
3. makes payments exempt from state income tax,
4. prohibits employer retaliation against employees for applying for pandemic pay, and
5. requires a quarterly reports to the Labor Committee.

Lastly, the bill appropriates \$750 million to OTC for FY 23 for the account.

EFFECTIVE DATE: Upon passage

ESSENTIAL WORKER DEFINED

There are two ways under the bill to qualify as an “essential worker.”

One way considers whether someone worked during a declared emergency and with certain jobs and the other just considers the job type.

Under the first way, the bill defines an “essential worker” as anyone who:

1. worked during (a) the public health and civil preparedness emergency the governor declared on March 10, 2020, or any declaration extension, or (b) any new public health and civil preparedness emergency the governor declares; and
2. the Centers for Disease Control (CDC) and Prevention’s Advisory Committee on Immunization Practices recommended, as of February 20, 2021, to receive a COVID-19 vaccination in phase 1a, 1b, or 1c of the COVID-19 vaccination program. (These include, among others, health care personnel, firefighters, police officers, employees required to work in congregate settings or with persons infected with COVID-19, personal care assistants, food and agricultural workers, U.S. Postal Service workers, manufacturing workers, grocery store workers, public transit workers, education sector workers, and child care workers.)

Under the other way, the bill defines an “essential worker” as anyone:

1. included in the Cybersecurity and Infrastructure Security Agency’s (CISA) Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response, issued on March 19, 2020, or any subsequent version of it (names critical sectors of the U.S. economy), or
2. covered by the Governor's Executive Order No. 7H, issued on March 10, 2020 (this named the federal Department of Homeland Security’s (DHS) essential workers in 16 broad critical sectors).

There is significant overlap between the CDC’s vaccination rollout workforce and the CISA infrastructure workforce. The CDC document

indicates it is based on the CISA guidance. Also, the DHS guidance cited by Executive Order No. 7H comes from the same CISA document as CISA is part of DHS.

Under the bill, those who qualify as essential workers are eligible regardless of immigration status.

PROGRAM ADMINISTRATION

Under the bill, the program administrator must begin accepting applications upon the bill's passage. OTC must administer the program or contract with a third party to act administer it.

The administrator may: (1) determine whether an essential worker meets the eligibility requirements for compensation; (2) summon and examine under oath relevant witnesses; (3) direct the production of, and examine any books, records, letters, contracts, or other documents he or she finds proper; and (4) take affidavits or depositions.

PROGRAM ACCOUNT

The bill establishes the "Connecticut essential worker pandemic pay account" as a separate, non-lapsing account in the General Fund to contain any money the law requires to be deposited in it.

The bill appropriates \$750 million for the account and specifies that American Rescue Plan Act funds can be used, if applicable, for some of the funding.

The comptroller must expend moneys in the account at the administrator's direction for the following purposes:

1. payments to eligible applicants under the pandemic pay program and
2. program operating expenses, including for (a) hiring employees and (b) public outreach and education about the program and account.

Under the bill, no more than 5% of the total amount the account receives can be used for administrative costs, including hiring

temporary or durational staff or contracting with a third-party administrator. The administrator must make all reasonable efforts to limit operating costs and expenses without compromising essential workers' access to the program.

APPLICATIONS

To apply, the bill requires an essential worker to submit a claim to the administrator by January 1, 2023, in a form and manner that the administrator requires. Claims must include: (1) proof of employment as an essential worker between March 10, 2020, and when the bill passes, as determined by an essential worker's proof of earnings, and (2) any additional information the administrator requires. Proof of employment can include official payroll records or another form of proof including a letter from an employer stating the essential worker's dates of work, or a declaration from an individual with personal knowledge of the essential worker's employment.

Under the bill, the administrator must promptly review and evaluate all applications and determine, based on the information the essential worker provided, or additional information provided at the administrator's request, whether or not the application will be approved. The administrator must provide a written determination to each applicant within 60 business days after the application submission date, or, if the administrator requested additional information, within 10 business days after the administrator receives the additional information.

PAYMENTS

If a claim is approved, the administrator must direct the comptroller to pay \$2,000 to a full-time essential worker or \$1,000 to a part-time essential worker within 10 business days after approval. For those who are deemed part-time, the rate must be prorated down from 29 to one hour per week, depending upon hours worked, at a rate of \$33 dollars per hour, except someone who worked 29 hours per week must receive the maximum amount of \$1,000.

APPEALS

Under the bill, an essential worker can request that a determination be reconsidered by filing a request with the administrator, on a form the administrator prescribes, within 20 business days after the determination notice is mailed.

Within three business days after receiving the request, the administrator must designate someone to conduct the reconsideration and give him or her all documents related to the worker's claim. The designee must conduct the reconsideration as a de novo review of all relevant evidence within 20 business days after the request.

The bill requires the designee to issue a written decision affirming, modifying, or reversing the administrator's decision within 20 business days and submit it to the administrator and the worker. The decision must include a short statement of findings that specifies whether pandemic pay will be paid to the worker as required by the bill. Regardless of the laws under the Uniform Administrative Procedure Act or administrative appeals, a worker cannot further appeal a case beyond the administrator's designee.

Under the bill, any statement, document, information, or matter may be considered by the administrator or, on reconsideration, by the administrator's designee if, in his or her opinion, it contributes to a determination of the claim, regardless of whether it would be admissible in a court.

PAYMENTS NOT TAXABLE UNDER STATE LAW

The bill exempts program payments from the state income tax. To the extent that the payments must be properly included in gross income for federal income tax purposes (for the taxable years starting on or after January 1, 2023, and January 1, 2024), any payments a worker received under the bill during the applicable taxable year must be subtracted from adjusted gross income under Connecticut state income tax law (Chapter 229). Additionally, the payments must not be considered income when determining an individual's eligibility for any state-administered program.

ERRONEOUS PAYMENTS AND FRAUD

If a claim is paid to an affected person erroneously or due to the person's willful misrepresentation, the bill allows the administrator to seek repayment of benefits from the affected person. In the case of willful misrepresentation, the administrator may also seek payment of a penalty equal to 50% of the benefits paid because of the misrepresentation.

REPORTS

The bill requires certain regular reports to the program administrator and the legislature.

On or before September 1, 2022, and each following month, and any time the administrator requests, the comptroller must submit a report to the administrator indicating the current value of the pandemic pay account.

Starting September 1, 2022, and at least each following quarter, the administrator must submit a report to the Labor and Public Employees Committee on the account's financial condition. The report must include:

1. an estimate of the account value as of the report's date,
2. the effect of scheduled payments on the account value,
3. an estimate of the monthly administrative costs needed to operate the program and the account, and
4. any recommendations for legislation to improve the program's or account's operation or administration.

ANTI-RETALIATION

The bill prohibits an employer from (1) discharging or causing to be discharged, disciplining, or discriminating against a worker because he or she applied for pandemic pay under the bill or (2) deliberately misinforming or dissuading a worker from filing an application.

It also authorizes any employee who was discharged, disciplined,

discriminated against, or deliberately misinformed or dissuaded from filing a pandemic pay application, to bring a civil action in the Superior Court in the district where the employer has its principal office. The action can seek reinstatement to the worker's position, payment of back wages, reestablishment of any lost benefits the employee was otherwise entitled to, and any other damages caused by the discrimination or discharge. The bill specifies that an employee who prevails in civil action must be awarded reasonable attorney's fees and costs. Under the bill, the court can also award punitive damages.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 8 Nay 4 (03/24/2022)