

§221. Coordination of benefits

1. Application. This section applies when either weekly or lump sum payments are made to an employee as a result of liability pursuant to section 212 or 213 with respect to the same time period for which the employee is also receiving or has received payments for:

- A. Old-age insurance benefit payments under the United States Social Security Act, 42 United States Code, Sections 301 to 1397f; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]
- B. Payments under a self-insurance plan, a wage continuation plan, paid time off or a disability insurance policy provided by the employer; or [PL 2019, c. 344, §10 (AMD).]
- C. Pension or retirement payments pursuant to a plan or program established or maintained by the employer. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

This section does not apply to payments made to an employee as a result of liability pursuant to section 212, subsection 2 or 3 for the specific loss period set forth by law. It is the intent of the Legislature that, because benefits under section 212, subsections 2 and 3 are benefits that recognize human factors substantially in addition to the wage loss concept, coordination of benefits should not apply to such benefits.

[PL 2019, c. 344, §10 (AMD).]

2. Definitions. As used in this section, the following terms have the following meanings.

A. "After-tax amount" means:

(1) For benefits paid on claims for which the date of injury is prior to January 1, 2013, the gross amount of any benefit under subsection 3, paragraph A, subparagraph (2), (3), (4) or (5) reduced by the prorated weekly amount that would have been paid, if any, under the Federal Insurance Contributions Act, 26 United States Code, Sections 3101 to 3126, state income tax and federal income tax, calculated on an annual basis using as the number of exemptions the disabled employee's dependents plus the employee, and without excess itemized deductions. In determining the after-tax amount the tables provided for in section 102, subsection 1 must be used. The gross amount of any benefit under subsection 3, paragraph A, subparagraph (2), (3), (4) or (5) is presumed to be the same as the average weekly wage for purposes of the table. The applicable 80% of after-tax amount as provided in the table, multiplied by 1.25, is conclusive for determining the after-tax amount of benefits under subsection 3, paragraph A, subparagraph (2), (3), (4) or (5); and

(2) For benefits paid on claims for which the date of injury is on or after January 1, 2013, 2/3 of the gross weekly old-age insurance benefit or benefit under an employee benefit plan multiplied by 1.25. [PL 2023, c. 205, §5 (AMD).]

B. "Disability insurance policy" does not include a life insurance policy that includes a disability feature if the policy was put in place as a result of collective bargaining. [PL 2009, c. 521, §1 (NEW); PL 2009, c. 521, §2 (AFF).]

[PL 2023, c. 205, §5 (AMD).]

3. Coordination of benefits. Benefit payments subject to this section must be reduced in accordance with the following provisions.

A. The employer's obligation to pay or cause to be paid weekly benefits other than benefits under section 212, subsection 2 or 3 is reduced by the following amounts:

(1) Fifty percent of the amount of the old-age insurance benefits received or being received under the United States Social Security Act. For injuries occurring on or after October 1, 1995,

such a reduction may not be made if the old-age insurance benefits had started prior to the date of injury or if the benefits are spouse's benefits;

(2) The after-tax amount of the payments received or being received under a self-insurance plan, paid time off or a wage continuation plan or under a disability insurance policy provided by the same employer from whom benefits under section 212 or 213 are received if the employee did not contribute directly to the plan or to the payment of premiums regarding the disability insurance policy. If the self-insurance plans, paid time off, wage continuation plans or disability insurance policies are entitled to repayment in the event of a workers' compensation benefit recovery, the insurance carrier shall satisfy the repayment out of funds the insurance carrier has received through the coordination of benefits provided for under this section;

(3) The proportional amount, based on the ratio of the employer's contributions to the total insurance premiums for the policy period involved, of the after-tax amount of the payments received or being received by the employee pursuant to a disability insurance policy provided by the same employer from whom benefits under section 212 or 213 are received, if the employee did contribute directly to the payment of premiums regarding the disability insurance policy;

(5) The proportional amount, based on the ratio of that employer's contributions to the total contributions to the plan or program, of the after-tax amount of the pension or retirement payments received or being received by the employee pursuant to a plan or program established or maintained by the same employer from whom benefits under section 212 or 213 are received, regardless of whether the employee contributed directly to the pension or retirement plan or program; and

(6) For those employers who do not provide a pension plan, the proportional amount, based on the ratio of the employer's contributions to the total contributions made to a qualified profit sharing plan under the United States Internal Revenue Code, Section 401(a) or any successor to the United States Internal Revenue Code, Section 401(a) covering a profit sharing plan that provides for the payment of benefits only upon retirement, disability, death, or other separation of employment to the extent that benefits are vested under the plan. [PL 2019, c. 344, §11 (AMD).]

B. A credit or reduction under this section may not occur because of an increase granted by the Social Security Administration as a cost-of-living adjustment granted after the benefits are coordinated. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. A credit or reduction under this section may not occur because of an increase in a pension or retirement plan or program granted after the benefits are coordinated. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

D. Except as provided in subsections 6 and 7, a credit or reduction of benefits otherwise payable for any week may not be taken under this section until there has been a determination of the benefit amount otherwise payable to the employee under section 212 or 213 and the employee has begun receiving the benefit payments. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

E. Disability insurance benefit payments under the Social Security Act are considered payments from funds provided by the employer and are considered primary payments on the employer's obligation under section 212 or 213 as old-age benefit payments under the Social Security Act are considered pursuant to this section. However, social security disability insurance benefits may only be so considered if section 224 of the Social Security Act, 42 United States Code, Section 424a, is revised so that a reduction of social security disability insurance benefits is not made because of the receipt of workers' compensation benefits by the employee. The coordination of social security

disability benefits commences on the date of the award certificate of the social security disability benefits. Any accrued social security disability benefits may not be coordinated. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

F. No savings or insurance of the injured employee independent of this Act may be taken into consideration in determining the compensation to be paid, nor may benefits derived from any source other than the employer be considered in fixing the compensation due. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

G. The employer shall pay or cause to be paid to the employee the balance due in either weekly or lump sum payments to satisfy any obligations remaining under section 212 or 213 after the application of this section. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

H. An employer may not offset paid time off under this subsection if the use of paid time off is mandated by the employer or if it is paid upon separation from the employer. [PL 2019, c. 344, §12 (NEW).]

[PL 2019, c. 344, §§11, 12 (AMD).]

4. Notification and release of social security benefit information. The board shall adopt rules to provide for notification by an employer to an employee of possible eligibility for social security benefits and the requirements for establishing proof of application for those benefits. Notification must be promptly mailed to the employee after the date on which by reason of age the employee may be entitled to social security benefits. A copy of the notification of possible eligibility must be filed with the board by the employer. Within 30 days after receipt of the notification of possible employee eligibility the employee shall:

A. Make application for social security benefits; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. Provide the employer or carrier with proof of that application; and [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. Provide the employer or carrier with an authority for release of information which may be used by the employer to obtain necessary benefit entitlement and amount information from the social security administration. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

The authority for release of information is effective for one year.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

5. Release of benefit information. Within 30 days after either the date of first payment of compensation benefits under section 212 or 213 or 30 days after the date of application for any benefit under subsection 3, paragraph A, subparagraph (2), (3), (4) or (5), whichever is later, the employee shall provide the employer with a properly executed authority for release of information which may be used by the employer to obtain necessary benefit entitlement and amount information from the appropriate source. The authority for release of information is effective for one year.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

6. New authority for release of information. If the employer is required to submit a new authority for release of information under subsection 4 or 5 in order to receive information necessary to comply with this section, the employee shall provide the new authority for release of information within 30 days of a request by the employer or insurance carrier.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

7. Failure to provide release or application. If the employee fails to provide the proof of application or the authority for release of information required in subsection 4 or fails to provide the

authority for release of information required in subsection 5 or 6, the employer may, with the approval of the board, discontinue the compensation benefits payable to the employee under section 212 or 213 until the proof of application and the authority for release of information is provided. Compensation benefits withheld must be reimbursed to the employee when the required proof of application, or the authority for release of information, or both, has been provided.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

8. Early retirement. Nothing in this section may be considered to compel an employee to apply for early federal social security old-age insurance benefits or to apply for early or reduced pension or retirement benefits.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

9. Reports. The employer taking a credit or making a reduction as provided in this section shall immediately report to the board the amount of any credit or reduction and, as requested by the board, furnish to the board satisfactory proof of the basis for a credit reduction.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

10. Exceptions for certain disability payments. This section does not apply to any payments received or to be received under a disability insurance plan provided by the same employer if that plan is in existence on December 31, 1992. Any disability insurance plan entered into or renewed on or after January 1, 1993 may provide that the payments under that plan provided by the employer may not be coordinated pursuant to this section. With respect to volunteer firefighter and volunteer emergency medical services persons who are considered employees for purposes of this Act pursuant to section 102, the reduction of weekly benefits provided for disability insurance payments under subsection 3, paragraph A, subparagraphs (2) and (3) and subsection 3, paragraph D may be waived by the employer. An employer that is not a self-insurer may make the waiver provided for under this subsection only at the time a workers' compensation insurance policy is entered into or renewed.

[PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 1995, c. 76, §1 (AMD). PL 2009, c. 521, §1 (AMD). PL 2009, c. 521, §2 (AFF). PL 2011, c. 647, §15 (AMD). PL 2013, c. 152, §1 (AMD). PL 2019, c. 344, §§10-12 (AMD). PL 2023, c. 205, §5 (AMD).

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