



House of Representatives

General Assembly

File No. 458

February Session, 2022

Substitute House Bill No. 5356

House of Representatives, April 13, 2022

The Committee on Labor and Public Employees reported through REP. PORTER of the 94th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING PANDEMIC PAY FOR ESSENTIAL WORKERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (*Effective from passage*) (a) As used in this section:
- 2 (1) "Essential worker" means any person who (A) (i) worked during
3 the period of the public health and civil preparedness emergency
4 declared by the Governor on March 10, 2020, or any extension of such
5 declaration, or (ii) worked during any new public health and civil
6 preparedness emergency declared by the Governor as a result of a
7 COVID-19 outbreak in this state, and (iii) was in a category
8 recommended by the Centers for Disease Control and Prevention's
9 Advisory Committee on Immunization Practices, as of February 20,
10 2021, to receive a COVID-19 vaccination in phase 1a, 1b or 1c of the
11 COVID-19 vaccination program, (B) is included in the Cybersecurity
12 and Infrastructure Security Agency's Guidance on the Essential Critical
13 Infrastructure Workforce: Ensuring Community and National

14 Resilience in COVID-19 Response, issued on March 19, 2020, or any
15 subsequent version of such guidance, or (C) was covered by the
16 Governor's Executive Order No. 7H, issued on March 10, 2020. All
17 workers who fall into this category, regardless of immigration status,
18 shall be deemed eligible for payment from the Connecticut Essential
19 Workers' Pandemic Pay program established pursuant to subsection (b)
20 of this section;

21 (2) "Administrator" means an employee of the office of the
22 Comptroller, or a third-party administrator;

23 (3) "Full-time" means any essential worker who worked thirty hours
24 or more per week for not less than three weeks;

25 (4) "Part-time" means any essential worker who worked less than
26 thirty hours per week for not less than three weeks; and

27 (5) "Pandemic pay" means moneys payable by the Comptroller from
28 the Connecticut Essential Workers' Pandemic Pay program, established
29 pursuant to subsection (b) of this section, to recognize and compensate
30 essential workers for their service pursuant to this section.

31 (b) (1) There is established the Connecticut Essential Workers
32 Pandemic Pay program. The program shall provide two thousand
33 dollars to each full-time essential worker and one thousand dollars to
34 each part-time essential worker, within available funds, on a first-come,
35 first-served basis, pending verification of eligibility, except no assistance
36 shall be paid to any essential worker after June 30, 2024. The program
37 shall be administered by the office of the Comptroller, or a third party
38 under contract with said office to act as an administrator.

39 (2) The administrator shall accept applications for assistance on and
40 after the effective date of this section. For the purposes of this section,
41 the administrator shall be authorized to: (A) Determine whether an
42 essential worker meets the requirements for eligibility for compensation
43 under this section; (B) summon and examine under oath such witnesses
44 who may provide information relevant to the eligibility of an essential

45 worker; (C) direct the production of, and examine or cause to be
46 produced or examined, such books, records, vouchers, memoranda,
47 documents, letters, contracts or other papers in relation to any matter at
48 issue as the administrator may find proper; and (D) take or cause to be
49 taken affidavits or depositions within or without the state.

50 (c) There is established an account to be known as the "Connecticut
51 essential worker pandemic pay account" which shall be a separate,
52 nonlapsing account within the General Fund. The account shall contain
53 any moneys required by law to be deposited in the account. Moneys in
54 the account shall be expended by the Comptroller at the direction of the
55 administrator for purposes of: (1) Compensation provided under the
56 Connecticut Essential Workers Pandemic Pay program; and (2) costs
57 and expenses of operating the program, including hiring of necessary
58 employees and the expense of public outreach and education regarding
59 the program and account. Not more than five per cent of the total
60 moneys received by the account shall be used for any administrative
61 costs, including hiring of temporary or durational staff or contracting
62 with a third-party administrator, or other costs and expenses incurred
63 by the administrator or Comptroller in connection with carrying out the
64 provisions of this section. The administrator shall make all reasonable
65 efforts to limit the costs and expenses of operating the program without
66 compromising essential workers' access to the program.

67 (d) To apply for compensation from the Connecticut Essential
68 Workers Pandemic Pay program, an essential worker shall submit a
69 claim to the administrator, in such form and manner as required by the
70 administrator, not later than January 1, 2023. Any such claim shall
71 include: (1) Proof of employment as an essential worker from March 10,
72 2020, to the effective date of this section, as determined by an essential
73 worker's proof of earnings; and (2) any additional information as
74 requested or required by the administrator. An essential worker may
75 submit, as proof of employment, official payroll records or another form
76 of proof including, but not limited to, a letter from an employer stating
77 the essential worker's dates of work, or a declaration from an individual
78 with personal knowledge of the essential worker's employment.

79 (e) The administrator shall promptly review all applications for
80 compensation submitted pursuant to this section. The administrator
81 shall evaluate each application and determine, on the basis of the
82 information provided by the essential worker, or additional information
83 provided at the request of the administrator, whether or not such
84 application shall be approved. The administrator shall provide such
85 determination, in writing, to each applicant not later than sixty business
86 days after the date the application is submitted, or, if the administrator
87 requested additional information, not later than ten business days after
88 the administrator receives such additional information from the
89 applicant. If such claim is approved, the administrator shall direct the
90 Comptroller to pay two thousand dollars to a full-time essential worker
91 or one thousand dollars to a part-time essential worker not later than
92 ten business days after such approval. For those who are deemed part-
93 time, the rate will be prorated down from twenty-nine to one hour per
94 week at a rate of thirty-three dollars per hour, with twenty-nine hours
95 per week receiving the maximum amount of one thousand dollars.

96 (f) An essential worker may request that a determination made
97 pursuant to subsection (e) of this section be reconsidered by filing a
98 request with the administrator, on a form prescribed by the
99 administrator, not later than twenty business days after the mailing of
100 the notice of such determination. The administrator shall, not later than
101 three business days after receipt of such request for reconsideration,
102 designate an individual to conduct such reconsideration and shall
103 submit to such designated individual all documents relating to such
104 essential worker's application and request for reconsideration. The
105 administrator's designee shall reconsider each determination requested
106 by an essential worker pursuant to this subsection. Such review shall
107 consist of a de novo review of all relevant evidence and shall be
108 completed not later than twenty business days after such individual's
109 request for reconsideration. Such designee shall issue a decision
110 affirming, modifying or reversing the decision of the administrator not
111 later than twenty business days after the designee's reconsideration of
112 the determination and shall submit such decision, in writing, to the
113 administrator and the applicant. The decision shall include a short

114 statement of findings that shall specify if pandemic pay shall be paid to
115 the applicant in accordance with subsection (e) of this section.

116 (g) Any statement, document, information or matter may be
117 considered by the administrator or, on reconsideration, by the
118 administrator's designee, if, in the opinion of the administrator or
119 designee, it contributes to a determination of the claim, whether or not
120 the same would be admissible in a court of law.

121 (h) Notwithstanding sections 4-183 and 51-197b of the general
122 statutes, there shall be no right of appeal by any applicant following the
123 final decision of the administrator's designee issued pursuant to
124 subsection (f) of this section.

125 (i) (1) To the extent properly includable in gross income for federal
126 income tax purposes, for the taxable year commencing on or after
127 January 1, 2023, but prior to January 1, 2025, any payments received by
128 an individual under subsections (d) to (f), inclusive, of this section
129 during the applicable taxable year shall be subtracted from adjusted
130 gross income under chapter 229 of the general statutes.

131 (2) Any such payments shall not be considered income for the
132 purposes of determining an individual's eligibility for any program
133 administered by the state.

134 (j) If a payment is made to a program applicant erroneously, or as a
135 result of wilful misrepresentation by such applicant, the administrator
136 may seek repayment of benefits from the applicant having received such
137 payment and may also, in the case of wilful misrepresentation, seek
138 payment of a penalty in the amount of fifty per cent of the benefits paid
139 as a result of such misrepresentation.

140 (k) On or before September 1, 2022, and monthly thereafter, and any
141 other time at the request of the administrator, the Comptroller shall
142 submit a report to the administrator indicating the value of the
143 Connecticut essential workers pandemic pay account at the time of the
144 report.

145 (l) On or before September 1, 2022, and at least quarterly thereafter,
146 the administrator shall submit a report, in accordance with the
147 provisions of section 11-4a of the general statutes, to the joint standing
148 committee of the General Assembly having cognizance of matters
149 relating to labor on the financial condition of the Connecticut essential
150 workers pandemic pay account. Such report shall include: (1) An
151 estimate of the account's value as of the date of the report; (2) the effect
152 of scheduled payments on the account's value; (3) an estimate of the
153 monthly administrative costs necessary to operate the program and the
154 account; and (4) any recommendations for legislation to improve the
155 operation or administration of the program and the account.

156 Sec. 2. (NEW) (*Effective from passage*) (a) No employer shall: (1)
157 Discharge, or cause to be discharged, or in any manner discipline or
158 discriminate against any employee because the employee has filed an
159 application for pandemic pay pursuant to section 1 of this act, or (2)
160 deliberately misinform or deliberately dissuade an employee from filing
161 an application for payment from the Connecticut Essential Workers
162 Pandemic Pay program.

163 (b) Any employee who is so discharged, disciplined or discriminated
164 against or who has been deliberately misinformed or deliberately
165 dissuaded from filing an application for payment from the Connecticut
166 Essential Workers Pandemic Pay program may bring a civil action in the
167 superior court for the judicial district where the employer has its
168 principal office for the reinstatement to the employee's position of
169 employment, payment of back wages, reestablishment of employee
170 benefits to which the employee would have otherwise been entitled if
171 the employee had not been discriminated against or discharged and any
172 other damages caused by such discrimination or discharge. The
173 superior court may also award punitive damages. Any employee who
174 prevails in such a civil action shall be awarded reasonable attorney's fees
175 and costs.

176 Sec. 3. (*Effective from passage*) The sum of seven hundred fifty million
177 dollars is appropriated to the office of the Comptroller from the General

178 Fund, for the fiscal year ending June 30, 2023, to fund the Connecticut
 179 essential workers pandemic pay account. When applicable, allotted
 180 funds from the American Rescue Plan Act of 2021, P.L. 117-2, as
 181 amended from time to time, or any future federal COVID-19 relief
 182 moneys received by the state may be used to fund such account.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage</i>	New section

Statement of Legislative Commissioners:

In Section 1(a)(1), "for payment from the Connecticut Essential Workers' Pandemic Pay program established pursuant to subsection (b) of this section" was added for clarity; in Section 1(b)(2), a subparagraph designator was added for clarity; in Section 1(c)(2), the clause was divided into two sentences for clarity and proper grammar; and in Section 1(h), "Notwithstanding sections 4-183 and 51-197b of the general statutes," was added for accuracy.

LAB *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 23 \$	FY 24 \$
Comptroller	GF - Cost	\$750 million	See Below
Department of Revenue Services	GF - Precludes Revenue Gain	None	\$21.4 million

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill appropriates \$750 million to the Pandemic Pay for Essential Workers program. The Comptroller will incur costs to administer the program. The bill specifies up to 5% of the funds can be used to support administrative costs (\$37.5 million).

The bill specifies that any payments made to recipients under the program are exempt from the state personal income tax, which precludes a revenue gain estimated at \$21.4 million in FY 24.¹

sHB 5037, the revised FY 23 budget bill, as favorably reported by the Appropriations Committee, is under the spending cap by \$4.6 million in FY 23. The appropriation contained in the bill would result in the budget being over the spending cap by \$745.4 million in FY 23.

The Out Years

The bill appropriates funding for FY 23 upfront for use until all

¹ This estimate assumes program payments would be fully disbursed by December 31, 2023 and reportable as federally taxable income for the 2023 income year.

funding is distributed.

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)