

825

2013-2014 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 9, 2013

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Introduced by M. of A. KEARNS -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to providing for cost-of-living adjustments to death benefits and increasing certain wage percentages for calculation of benefits

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 16 of the workers' compensation law, as amended by  
2 chapter 550 of the laws of 1978, subdivision 1 as amended by chapter 245  
3 of the laws of 2005, subdivisions 1-a, 1-b, 1-c, 2, 3, 3-a and 4 as  
4 amended by chapter 168 of the laws of 1979, subdivisions 1-d, 2-b, 3-b,  
5 4-c and 4-d as added and subdivision 5 as amended by chapter 689 of the  
6 laws of 2007, subdivision 2-a as amended by chapter 174 of the laws of  
7 1981, subdivision 4-a as amended by chapter 509 of the laws of 1985 and  
8 subdivision 4-b as added by chapter 296 of the laws of 1990, is amended  
9 to read as follows:

10     S 16. Death benefits. If the injury causes death, the compensation  
11 shall be known as a death benefit and shall be payable in the amount and  
12 to or for the benefit of the persons following:

13     1. Funeral expenses. The chair shall prepare and establish a schedule  
14 for the state or schedules limited to defined localities of maximum  
15 charges and fees for such funeral expenses, to be determined in accord-  
16 ance with, and to be subject to change pursuant to[, ] rules promulgated  
17 by the chair. Before preparing such schedule for the state or schedules  
18 for limited localities, the chair shall request the president of the New  
19 York state funeral directors' association to submit to the chair a  
20 report on the amount of remuneration deemed by such association to be  
21 fair and adequate for the types of funeral services rendered under this  
22 chapter, but consideration shall also be given to the views of other  
23 interested parties. The amounts payable by the employer for such

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [ ] is old law to be omitted.

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1 services shall be the actual fees and charges up to the maximum estab-  
2 lished by such schedule. Provided, however, no such schedule of charges  
3 and fees shall apply where a firefighter dies from injuries received in  
4 the line of duty as a direct result of firefighting or where a police  
5 officer dies from injuries received in the line of duty as a direct  
6 result of law enforcement activities, where such funeral expenses are  
7 reasonable. If such funeral expenses shall have been paid by the claim-  
8 ants entitled to compensation under this section or by others, the  
9 funeral expenses awarded shall be made payable to such claimants or  
10 others, otherwise they shall be made payable to the undertaker who shall  
11 have provided burial. Funeral expenses shall be awarded in case of all  
12 injuries causing death including cases in which there are no persons  
13 entitled to other compensation under this chapter.

14 1-a. For the purpose of this section, (1) the term "dependent blind or  
15 physically disabled" as used herein in relation to dependent children  
16 shall be deemed to mean totally blind or physically disabled children  
17 whose disablement is total and permanent, (2) the term "surviving  
18 spouse" shall be deemed to mean the legal spouse but shall not include a  
19 spouse who has abandoned the deceased, and (3) the term "abandoned"  
20 shall be deemed to mean such an abandonment as would be sufficient under  
21 section two hundred of the domestic relations law to sustain a judgment  
22 of separation on that ground PROVIDED THAT A SPOUSE WHO RECONCILED WITH  
23 THE DECEASED PRIOR TO THE DATE OF THE DEATH SHALL NOT BE CONSIDERED TO  
24 HAVE ABANDONED THE DECEASED.

25 1-b. If there be a surviving spouse and no child of the deceased under  
26 the age of eighteen years and no child of any age dependent blind or  
27 physically disabled, and the death occurs on or after July first, nine-  
28 teen hundred forty-eight, and prior to January first, nineteen hundred  
29 seventy-eight, to such spouse forty per centum of the average wages of  
30 the deceased, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS,  
31 during widowhood or widowerhood with two years' compensation in one sum,  
32 upon remarriage; and where the death occurred prior to July first, nine-  
33 teen hundred forty-eight, to such wife (or dependent husband) thirty per  
34 centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUST-  
35 MENTS, during widowhood (or dependent widowerhood) with two years'  
36 compensation in one sum, upon remarriage.

37 1-c. If there be a surviving spouse and no child of the deceased under  
38 the age of eighteen years or under the age of twenty-three years if  
39 enrolled and attending as a full time student in an accredited educa-  
40 tional institution and such enrollment and full time attendance is  
41 certified by such institution and no child of any age dependent blind or  
42 physically disabled, and the death occurs on or after January first,  
43 nineteen hundred seventy-eight, to such spouse [sixty-six and two-  
44 thirds] SEVENTY-FIVE per centum of the average wages of the deceased,  
45 TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, during widowhood or  
46 widowerhood with two years' compensation, in one sum, upon remarriage.  
47 Where the death occurs on or after January first, nineteen hundred  
48 seventy-eight, and the spouse is receiving the survivors insurance bene-  
49 fits under the social security act, the death benefit payable under this  
50 section shall be reduced in accordance with the provisions of table No.  
51 1 below by five per centum of the spouse's share of the survivor's  
52 insurance benefits under the social security act for each ten dollars of  
53 deceased's average weekly wage in excess of one hundred dollars provided  
54 that in no case shall such reduction exceed fifty per centum of said  
55 spouse's share of the survivors insurance benefits under the social  
56 security act. COST-OF-LIVING ADJUSTMENTS SHALL NOT BE INCLUDED IN THE

1 CALCULATION OF THE DECEASED'S AVERAGE WEEKLY WAGE FOR PURPOSES OF CALCU-  
 2 LATION OF THE OFFSET REDUCTION.

3 TABLE No. I

4 Offset provisions applicable in death benefits  
 5 where there is a sole surviving spouse

| 6 AVERAGE WEEKLY WAGE                         | 7 PERCENTAGE OF SPOUSE'S |
|-----------------------------------------------|--------------------------|
| 8                                             | 8 SHARE OF SURVIVORS     |
|                                               | 8 INSURANCE BENEFITS     |
| 9 over \$100 up to and including \$110 .....  | 5                        |
| 10 over \$110 up to and including \$120 ..... | 10                       |
| 11 over \$120 up to and including \$130 ..... | 15                       |
| 12 over \$130 up to and including \$140 ..... | 20                       |
| 13 over \$140 up to and including \$150 ..... | 25                       |
| 14 over \$150 up to and including \$160 ..... | 30                       |
| 15 over \$160 up to and including \$170 ..... | 35                       |
| 16 over \$170 up to and including \$180 ..... | 40                       |
| 17 over \$180 up to and including \$190 ..... | 45                       |
| 18 over \$190 up to and including \$200 ..... | 50                       |
| 19 over \$200 .....                           | 50                       |

20 1-d. If there be a surviving spouse of an employee of a private volun-  
 21 tary hospital killed in a World Trade Center rescue, who passed a phys-  
 22 ical examination upon employment as a rescue worker that failed to  
 23 reveal evidence of a condition that was the proximate cause of death,  
 24 and no child of the deceased under the age of eighteen years, or under  
 25 the age of twenty-three years if enrolled and attending as a full-time  
 26 student in an accredited educational institution and such enrollment and  
 27 full-time attendance is certified by such institution, and no child of  
 28 any age dependent blind or physically disabled, to such spouse seventy-  
 29 five per centum of the average wages of the deceased, TOGETHER WITH  
 30 APPLICABLE COST-OF-LIVING ADJUSTMENTS, during widowhood or widowerhood,  
 31 with two years' compensation, in one sum, upon remarriage. Where such  
 32 death occurs, and the spouse is receiving the survivors insurance bene-  
 33 fits under the social security act, the death benefit payable under this  
 34 section shall be reduced in accordance with the provisions of table No.  
 35 I in subdivision one-c of this section by five per centum of the  
 36 spouse's share of the survivor's insurance benefits under the social  
 37 security act for each ten dollars of deceased's average weekly wage in  
 38 excess of one hundred dollars; provided that in no case shall such  
 39 reduction exceed fifty per centum of such spouse's share of the survi-  
 40 vors insurance benefits under the social security act. COST-OF-LIVING  
 41 ADJUSTMENTS SHALL NOT BE INCLUDED IN THE CALCULATION OF THE DECEASED'S  
 42 AVERAGE WEEKLY WAGE FOR PURPOSES OF CALCULATION OF THE OFFSET REDUCTION.

43 2. If there be a surviving spouse and a surviving child or children of  
 44 the deceased under the age of eighteen years or a surviving child or  
 45 children of any age dependent blind or physically disabled, and the  
 46 death occurs on or after July first, nineteen hundred forty-eight, and  
 47 prior to January first, nineteen hundred seventy-eight, to such spouse  
 48 [thirty] FORTY per centum of the average wages of the deceased, TOGETHER  
 49 WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, during widowhood or widower-  
 50 hood with two years' compensation in one sum, upon remarriage; and the  
 51 additional amount of [twenty] THIRTY-FIVE per centum of such wages,  
 52 TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, for each such child  
 53 until the age of eighteen years or until the removal of the dependency

1 of the blind or physically disabled child or children; in case of the  
2 subsequent death or remarriage of such surviving spouse any surviving  
3 child of the deceased employee, at the time under eighteen years of age  
4 or dependent through mental or physical infirmity, shall have his  
5 compensation increased to [thirty] THIRTY-FIVE per centum of such wages,  
6 TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, and the same shall  
7 be payable until he shall reach the age of eighteen years or until such  
8 dependent blind or physically disabled condition shall have been  
9 removed; provided that the total amount payable shall in no case exceed  
10 [sixty-six and two-thirds] SEVENTY-FIVE per centum of such wages.  
11 COST-OF-LIVING ADJUSTMENTS SHALL NOT BE INCLUDED IN THE CALCULATION OF  
12 THE DECEASED'S AVERAGE WEEKLY WAGE FOR PURPOSES OF CALCULATION OF THE  
13 MAXIMUM AMOUNT PAYABLE. Upon statutory termination of compensation  
14 payments to all such children, the compensation of the surviving spouse  
15 shall be increased to [forty] SEVENTY-FIVE per centum of such wages,  
16 TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, with two years'  
17 compensation, at such rate, in one sum, upon remarriage.

18 If there be a surviving wife (or dependent husband) and any of the  
19 aforementioned surviving children, and the death occurred prior to July  
20 first, nineteen hundred forty-eight, to such wife (or dependent husband)  
21 [thirty] FORTY per centum of the average wages of the deceased, TOGETHER  
22 WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, during widowhood (or depend-  
23 ent widowerhood) with two years' compensation in one sum, upon remar-  
24 riage; and the additional amount of ten per centum of such wages,  
25 TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, for each such child  
26 until eighteen years of age or until the removal of the dependency of  
27 the blind or physically disabled child or children; in case of the  
28 subsequent death or remarriage of such surviving wife (or dependent  
29 husband) any surviving child of the deceased shall have his compensation  
30 increased to fifteen per centum of such wages, TOGETHER WITH APPLICABLE  
31 COST-OF-LIVING ADJUSTMENTS, until he shall reach the age of eighteen  
32 years or until such dependent blind or physically disabled condition  
33 shall have been removed; provided that the total amount payable shall in  
34 no case exceed [sixty-six and two-thirds] SEVENTY-FIVE per centum of  
35 such wages. COST-OF-LIVING ADJUSTMENTS SHALL NOT BE INCLUDED IN THE  
36 CALCULATION OF THE DECEASED'S AVERAGE WEEKLY WAGE FOR PURPOSES OF CALCU-  
37 LATION OF THE MAXIMUM AMOUNT PAYABLE.

38 The board may in its discretion require the appointment of a guardian  
39 for the purpose of receiving the compensation of a minor child or a  
40 dependent blind or physically disabled child. In the absence of such a  
41 requirement by the board the appointment of a guardian for such purposes  
42 shall not be necessary.

43 2-a. If there be a surviving spouse and a surviving child under the  
44 age of eighteen years or under the age of twenty-three years if enrolled  
45 and attending as a full time student in an accredited educational insti-  
46 tution and such enrollment and full time attendance is certified by such  
47 institution or a surviving child of any age dependent blind or phys-  
48 ically disabled and the death occurs on or after January first, nineteen  
49 hundred seventy-eight, to such spouse [thirty-six and two-thirds] FORTY  
50 per centum of the average wages of the deceased, TOGETHER WITH APPLICA-  
51 BLE COST-OF-LIVING ADJUSTMENTS, during widowhood or widowerhood with two  
52 years' compensation in one sum, upon remarriage; and [thirty]  
53 THIRTY-FIVE per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-  
54 LIVING ADJUSTMENTS, to such child under the age of eighteen years or  
55 under the age of twenty-three years if enrolled and attending as a full  
56 time student in an accredited educational institution and such enroll-

ment and full time attendance is certified by such institution or a surviving child of any age dependent blind or physically disabled; in the case of the subsequent death of such surviving spouse the surviving child shall have his compensation increased to [sixty-six and two-thirds] SEVENTY-FIVE per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, and the same shall be payable so long as he is under the age of eighteen years or under the age of twenty-three years if enrolled and attending as a full time student in an accredited educational institution and such enrollment and full time attendance is certified by such institution or a surviving child of any age dependent blind or physically disabled; upon statutory termination of compensation payable to such child, the compensation of the surviving spouse shall be increased to [sixty-six and two-thirds] SEVENTY-FIVE per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, with two years' compensation, at such rate, in one sum, upon remarriage. Upon remarriage of such surviving spouse, the surviving child shall continue to receive [thirty] THIRTY-FIVE per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS. Where the death occurs on or after January first, nineteen hundred seventy-eight and the spouse is receiving survivors insurance benefits under the social security act, the death benefit payable under this section shall be reduced by five per centum of the spouse's share of the survivors insurance benefits under the social security act for each ten dollars of deceased's average weekly wage in excess of one hundred dollars provided that in no case shall such reduction exceed fifty per centum of said spouse's share of the survivors insurance benefits under the social security act as set forth in table No. I below. COST-OF-LIVING ADJUSTMENTS SHALL NOT BE INCLUDED IN THE CALCULATION OF THE DECEASED'S AVERAGE WEEKLY WAGE FOR PURPOSES OF CALCULATION OF THE OFFSET REDUCTION.

## TABLE No. I

Offset provisions applicable in death benefits  
where there is a surviving spouse and one child

| AVERAGE WEEKLY WAGE                  | PERCENTAGE OF SPOUSE'S<br>SHARE OF SURVIVORS<br>INSURANCE BENEFITS |
|--------------------------------------|--------------------------------------------------------------------|
| over \$100 up to and including \$110 | 5                                                                  |
| over \$110 up to and including \$120 | 10                                                                 |
| over \$120 up to and including \$130 | 15                                                                 |
| over \$130 up to and including \$140 | 20                                                                 |
| over \$140 up to and including \$150 | 25                                                                 |
| over \$150 up to and including \$160 | 30                                                                 |
| over \$160 up to and including \$170 | 35                                                                 |
| over \$170 up to and including \$180 | 40                                                                 |
| over \$180 up to and including \$190 | 45                                                                 |
| over \$190 up to and including \$200 | 50                                                                 |
| over \$200                           | 50                                                                 |

If there be a surviving spouse and two or more surviving children under the age of eighteen years or under the age of twenty-three years if enrolled and attending as a full time student in an accredited educational institution and such enrollment and full time attendance is certified by such institution or a surviving child or children of any age dependent blind or physically disabled and a death occurs on or after January first, nineteen hundred seventy-eight, to such spouse

1 [thirty-six and two-thirds] FORTY per centum of the average wage of the  
 2 deceased, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, during  
 3 widowhood or widowerhood with two years' compensation in one sum upon  
 4 remarriage; and [thirty] THIRTY-FIVE per centum of such wages, TOGETHER  
 5 WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, to such children under the  
 6 age of eighteen years or under the age of twenty-three years if enrolled  
 7 and attending as a full time student in an accredited educational insti-  
 8 tution and such enrollment and full time attendance is certified by such  
 9 institution or a surviving child or children of any age dependent blind  
 10 or physically disabled, share and share alike; in case of the subsequent  
 11 death of such surviving spouse the surviving children shall have their  
 12 compensation increased to [sixty-six and two-thirds] SEVENTY-FIVE per  
 13 centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUST-  
 14 MENTS, and the aggregate sum shall be payable, share and share alike, so  
 15 long as they are under the age of eighteen years or under the age of  
 16 twenty-three years if enrolled and attending as a full time student in  
 17 an accredited educational institution and such enrollment and full time  
 18 attendance is certified by such institution or a surviving child or  
 19 children of any age dependent blind or physically disabled. Upon remar-  
 20 riage of such surviving spouse, if there be two surviving children each  
 21 shall receive [twenty-five] THIRTY-SEVEN AND ONE-HALF per centum of such  
 22 wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, and if there  
 23 are surviving more than two children under the age of eighteen years or  
 24 under the age of twenty-three if enrolled and attending as a full time  
 25 student in an accredited educational institution and such enrollment and  
 26 full time attendance is certified by such institution or a surviving  
 27 child or children of any age dependent blind or physically disabled  
 28 [sixty-six and two-thirds] SEVENTY-FIVE per centum of such wages,  
 29 TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, share and share  
 30 alike. Upon statutory termination of compensation payable to such chil-  
 31 dren, the compensation of the surviving spouse shall be increased to  
 32 [sixty-six and two-thirds] SEVENTY-FIVE per centum of such wages,  
 33 TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, with two years'  
 34 compensation, at such rate, in one sum, upon remarriage. Where the death  
 35 occurs on or after January first, nineteen hundred seventy-eight, and  
 36 the spouse is receiving survivors insurance benefits under the social  
 37 security act, the death benefits payable under this section shall be  
 38 reduced by five per centum of the spouse's share of the survivors insur-  
 39 ance benefits under the social security act for each ten dollars of  
 40 deceased's average weekly wage in excess of one hundred fifty dollars  
 41 provided that in no case shall such reduction exceed fifty per centum of  
 42 said spouse's share of the survivors insurance benefits under the social  
 43 security act as set forth in table No. II below. COST-OF-LIVING ADJUST-  
 44 MENTS SHALL NOT BE INCLUDED IN THE CALCULATION OF THE DECEASED'S AVERAGE  
 45 WEEKLY WAGE FOR PURPOSES OF CALCULATION OF THE OFFSET REDUCTION.

46 TABLE No. II

47 Offset provisions applicable in death benefits  
 48 where there is a surviving spouse and two or more children

| 49 AVERAGE WEEKLY WAGE                        | PERCENTAGE OF SPOUSE'S<br>50 SHARE OF SURVIVORS<br>51 INSURANCE BENEFITS |
|-----------------------------------------------|--------------------------------------------------------------------------|
| 52 over \$150 up to and including \$160 ..... | 5                                                                        |
| 53 over \$160 up to and including \$170 ..... | 10                                                                       |

|    |                                                                          |    |
|----|--------------------------------------------------------------------------|----|
| 1  | over \$170 up to and including \$180 .....                               | 15 |
| 2  | over \$180 up to and including \$190 .....                               | 20 |
| 3  | over \$190 up to and including \$200 .....                               | 25 |
| 4  | over \$200 up to and including \$210 .....                               | 30 |
| 5  | over \$210 up to and including \$220 .....                               | 35 |
| 6  | over \$220 up to and including \$230 .....                               | 40 |
| 7  | over \$230 up to and including \$240 .....                               | 45 |
| 8  | over \$240 up to and including \$250 .....                               | 50 |
| 9  | over \$250 .....                                                         | 50 |
| 10 | 2-b. If there be a surviving spouse of an employee of a private volun-   |    |
| 11 | tary hospital killed in a World Trade Center rescue, who passed a phys-  |    |
| 12 | ical examination upon employment as a rescue worker that failed to       |    |
| 13 | reveal evidence of a condition that was the proximate cause of death,    |    |
| 14 | and a surviving child under the age of eighteen years, or under the age  |    |
| 15 | of twenty-three years if enrolled and attending as a full-time student   |    |
| 16 | in an accredited educational institution and such enrollment and full-   |    |
| 17 | time attendance is certified by such institution, or a surviving child   |    |
| 18 | of any age dependent blind or physically disabled, to such spouse forty  |    |
| 19 | per centum of the average wages, TOGETHER WITH APPLICABLE COST-OF-LIVING |    |
| 20 | ADJUSTMENTS, of the deceased during widowhood or widowerhood, with two   |    |
| 21 | years' compensation in one sum, upon remarriage; and thirty-five per     |    |
| 22 | centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUST-    |    |
| 23 | MENTS, to such child under the age of eighteen years, or under the age   |    |
| 24 | of twenty-three years if enrolled and attending as a full-time student   |    |
| 25 | in an accredited educational institution and such enrollment and full-   |    |
| 26 | time attendance is certified by such institution, or a surviving child   |    |
| 27 | of any age dependent blind or physically disabled; in the case of the    |    |
| 28 | subsequent death of such surviving spouse the surviving child shall have |    |
| 29 | his or her compensation increased to seventy-five per centum of such     |    |
| 30 | wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, and the same |    |
| 31 | shall be payable so long as he or she is under the age of eighteen       |    |
| 32 | years, or under the age of twenty-three years if enrolled and attending  |    |
| 33 | as a full-time student in an accredited educational institution and such |    |
| 34 | enrollment and full-time attendance is certified by such institution, or |    |
| 35 | a surviving child of any age dependent blind or physically disabled;     |    |
| 36 | upon statutory termination of compensation payable to such child, the    |    |
| 37 | compensation of the surviving spouse shall be increased to seventy-five  |    |
| 38 | per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING        |    |
| 39 | ADJUSTMENTS, with two years' compensation, at such rate, in one sum,     |    |
| 40 | upon remarriage. Upon remarriage of such surviving spouse, the surviving |    |
| 41 | child shall continue to receive thirty-five per centum of such wages,    |    |
| 42 | TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS. Where such death    |    |
| 43 | occurs, and the spouse is receiving survivors insurance benefits under   |    |
| 44 | the social security act, the death benefit payable under this section    |    |
| 45 | shall be reduced by five per centum of the spouse's share of the survi-  |    |
| 46 | vors insurance benefits under the social security act for each ten       |    |
| 47 | dollars of deceased's average weekly wage in excess of one hundred       |    |
| 48 | dollars; provided that in no case shall such reduction exceed fifty per  |    |
| 49 | centum of such spouse's share of the survivors insurance benefits under  |    |
| 50 | the social security act as set forth in table No. I in subdivision one-c |    |
| 51 | of this section. COST-OF-LIVING ADJUSTMENTS SHALL NOT BE INCLUDED IN     |    |
| 52 | THE CALCULATION OF THE DECEASED'S AVERAGE WEEKLY WAGE FOR PURPOSES OF    |    |
| 53 | CALCULATION OF THE OFFSET REDUCTION. If there be a surviving spouse of   |    |
| 54 | an employee of a private voluntary hospital killed in a World Trade      |    |
| 55 | Center rescue, who passed a physical examination upon employment as a    |    |
| 56 | rescue worker that failed to reveal evidence of a condition that was the |    |

1 proximate cause of death, and two or more surviving children under the  
2 age of eighteen years, or under the age of twenty-three years if  
3 enrolled and attending as a full-time student in an accredited educa-  
4 tional institution and such enrollment and full-time attendance is  
5 certified by such institution, or a surviving child or children of any  
6 age dependent blind or physically disabled and a death occurs on or  
7 after September eleventh, two thousand one, to such spouse forty per  
8 centum of the average wage of the deceased, TOGETHER WITH APPLICABLE  
9 COST-OF-LIVING ADJUSTMENTS, during widowhood or widowerhood with two  
10 years' compensation in one sum upon remarriage; and thirty-five per  
11 centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUST-  
12 MENTS, to such children under the age of eighteen years, or under the  
13 age of twenty-three years if enrolled and attending as a full-time  
14 student in an accredited educational institution and such enrollment and  
15 full-time attendance is certified by such institution, or a surviving  
16 child or children of any age dependent blind or physically disabled,  
17 share and share alike; in case of the subsequent death of such surviving  
18 spouse the surviving children shall have their compensation increased to  
19 seventy-five per centum of such wages, TOGETHER WITH APPLICABLE  
20 COST-OF-LIVING ADJUSTMENTS, and the aggregate sum shall be payable,  
21 share and share alike, so long as they are under the age of eighteen  
22 years, or under the age of twenty-three years if enrolled and attending  
23 as a full-time student in an accredited educational institution and such  
24 enrollment and full-time attendance is certified by such institution, or  
25 a surviving child or children of any age dependent blind or physically  
26 disabled. Upon remarriage of such surviving spouse, if there be two  
27 surviving children each shall receive thirty-seven and one-half per  
28 centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUST-  
29 MENTS, and if there are surviving more than two children under the age  
30 of eighteen years, or under the age of twenty-three if enrolled and  
31 attending as a full-time student in an accredited educational institu-  
32 tion and such enrollment and full-time attendance is certified by such  
33 institution, or a surviving child or children of any age dependant blind  
34 or physically disabled, seventy-five per centum of such wages, TOGETHER  
35 WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, share and share alike. Upon  
36 statutory termination of compensation payable to such children, the  
37 compensation of the surviving spouse shall be increased to seventy-five  
38 per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING  
39 ADJUSTMENTS, with two years' compensation, at such rate, in one sum,  
40 upon remarriage. Where the death occurs on or after September eleventh,  
41 two thousand one, and the spouse is receiving survivors insurance bene-  
42 fits under the social security act, the death benefits payable under  
43 this section shall be reduced by five per centum of the spouse's share  
44 of the survivors insurance benefits under the social security act for  
45 each ten dollars of deceased's average weekly wage in excess of one  
46 hundred fifty dollars; provided that in no case shall such reduction  
47 exceed fifty per centum of said spouse's share of the survivors insur-  
48 ance benefits under the social security act as set forth in table No. II  
49 in subdivision two-a of this section. COST-OF-LIVING ADJUSTMENTS SHALL  
50 NOT BE INCLUDED IN THE CALCULATION OF THE DECEASED'S AVERAGE WEEKLY WAGE  
51 FOR PURPOSES OF CALCULATION OF THE OFFSET REDUCTION.

52 3. If there be a surviving child or children of the deceased under the  
53 age of eighteen years or a dependent blind or physically disabled child  
54 or children of any age, but no surviving spouse then where the death  
55 occurs on or after July first, nineteen hundred forty-eight, and prior  
56 to January first, nineteen hundred seventy-eight, for the support of

1 each such child until the age of eighteen years, or until the removal of  
2 the dependency of such blind or physically disabled child or children,  
3 thirty per centum of the wages of the deceased, TOGETHER WITH APPLICABLE  
4 COST-OF-LIVING ADJUSTMENTS, and where the death occurred prior to July  
5 first, nineteen hundred forty-eight, for the support of each such child  
6 until the age of eighteen years, or until the removal of the dependency  
7 of such blind or physically disabled child or children, [fifteen] THIR-  
8 TY-FIVE per centum of the wages, TOGETHER WITH APPLICABLE COST-OF-LIVING  
9 ADJUSTMENTS, of the deceased; provided that the aggregate shall in no  
10 case exceed [sixty-six and two-thirds] SEVENTY-FIVE per centum of such  
11 wages. COST-OF-LIVING ADJUSTMENTS SHALL NOT BE INCLUDED IN THE CALCU-  
12 LATION OF THE DECEASED'S AVERAGE WEEKLY WAGE FOR PURPOSES OF CALCULATION  
13 OF THE MAXIMUM AMOUNT PAYABLE.

14 3-a. If there be a surviving child or children of the deceased under  
15 the age of eighteen years or under the age of twenty-three years if  
16 enrolled and attending as a full time student in an accredited educa-  
17 tional institution and such enrollment and full time attendance is  
18 certified by such institution or a dependent blind or physically disa-  
19 bled child or children of any age, but no surviving spouse then where  
20 the death occurs on or after January first, nineteen hundred seventy-  
21 eight, for the support of such child or children until the age of eigh-  
22 teen years, or under the age of twenty-three years if enrolled and  
23 attending as a full time student in an accredited educational institu-  
24 tion and such enrollment and full time attendance is certified by such  
25 institution or until the removal of the dependency of such blind or  
26 physically disabled child or children, [sixty-six and two-thirds] SEVEN-  
27 TY-FIVE per centum of the wages of the deceased, TOGETHER WITH APPLICA-  
28 BLE COST-OF-LIVING ADJUSTMENTS. Where there are two or more children,  
29 the compensation payable shall be divided among such children share and  
30 share alike.

31 3-b. If there be a surviving child or children, of an employee of a  
32 private voluntary hospital killed in a World Trade Center rescue, who  
33 passed a physical examination upon employment as a rescue worker that  
34 failed to reveal evidence of a condition that was the proximate cause of  
35 death, under the age of eighteen years, or under the age of twenty-three  
36 years if enrolled and attending as a full-time student in an accredited  
37 educational institution and such enrollment and full-time attendance is  
38 certified by such institution, or a dependent blind or physically disa-  
39 bled child, or children of any age, but no surviving spouse then, where  
40 such death occurs, for the support of each such child until the age of  
41 eighteen years, or under the age of twenty-three years if enrolled and  
42 attending as a full-time student in an accredited educational institu-  
43 tion and such enrollment and full-time attendance is certified by such  
44 institution or until the removal of the dependency of such blind or  
45 physically disabled child or children, seventy-five per centum of the  
46 wages of the deceased, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUST-  
47 MENTS. Where there are two or more children, the compensation payable  
48 shall be divided among such children share and share alike.

49 4. If there be no surviving spouse or child under the age of eighteen  
50 years, or dependent blind or physically disabled child of any age, or if  
51 the amount payable to surviving spouse and to children under the age of  
52 eighteen years or such dependent blind or physically disabled children  
53 shall be less in the aggregate than [sixty-six and two-thirds] SEVENTY-  
54 FIVE per centum of the average wages of the deceased EXCLUSIVE OF APPLI-  
55 CABLE COST-OF-LIVING ADJUSTMENTS, then where the death occurs on or  
56 after July first, nineteen hundred forty-eight, and prior to January

1 first, nineteen hundred seventy-eight, for the support of grandchildren  
2 or brothers and sisters under the age of eighteen years, if dependent  
3 upon the deceased at the time of the accident, twenty-five per centum of  
4 such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, for the  
5 support of each such person until the age of eighteen years; and for the  
6 support of each parent, or grandparent, of the deceased if dependent  
7 upon him at the time of the accident, forty per centum of such wages  
8 during such dependency; and where the death occurred prior to July  
9 first, nineteen hundred forty-eight, to such dependent grandchildren or  
10 brothers and sisters, fifteen per centum of such wages until eighteen  
11 years of age, and to such dependent parent or grandparent, twenty-five  
12 per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING  
13 ADJUSTMENTS, during dependency. But in no case shall the aggregate  
14 amount payable under this subdivision exceed the difference between  
15 [sixty-six and two-thirds] SEVENTY-FIVE per centum of such wages, and  
16 the amount payable as hereinbefore provided to surviving spouse or for  
17 the support of surviving child or children. COST-OF-LIVING ADJUSTMENTS  
18 SHALL NOT BE INCLUDED IN THE CALCULATION OF THE DECEASED'S AVERAGE WEEK-  
19 LY WAGE FOR PURPOSES OF CALCULATION OF THE MAXIMUM AMOUNT PAYABLE.

20 4-a. If there be no surviving spouse or child under the age of eigh-  
21 teen years or under the age of twenty-three years if enrolled and  
22 attending as a full time student in an accredited educational institu-  
23 tion and such enrollment and full time attendance is certified by such  
24 institution or dependent blind or physically disabled child of any age,  
25 then where the death occurs on or after January first, nineteen hundred  
26 seventy-eight, for the support of grandchildren or brothers and sisters  
27 if dependent upon the deceased at the time of the accident, under the  
28 age of eighteen years, or under the age of twenty-three years if  
29 enrolled and attending as a full time student in an accredited educa-  
30 tional institution and such enrollment and full time attendance is  
31 certified by such institution, or blind or physically disabled grand-  
32 children or brothers and sisters of any age, twenty-five per centum of  
33 such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, for the  
34 support of each such person until the age of eighteen years; or until  
35 the age of twenty-three years if enrolled and attending as a full time  
36 student in an accredited educational institution or until the removal of  
37 the dependency of such blind or physically disabled grandchildren or  
38 brothers and sisters, and such enrollment and full time attendance is  
39 certified by such institution and for the support of each parent, or  
40 grandparent, of the deceased if dependent upon him or her at the time of  
41 the accident, forty per centum of such wages, TOGETHER WITH APPLICABLE  
42 COST-OF-LIVING ADJUSTMENTS, during such dependency. But in no case shall  
43 the aggregate amount payable under this subdivision exceed [sixty-six  
44 and two-thirds] SEVENTY-FIVE per centum of such wages. COST-OF-LIVING  
45 ADJUSTMENTS SHALL NOT BE INCLUDED IN THE CALCULATION OF THE DECEASED'S  
46 AVERAGE WEEKLY WAGE FOR PURPOSES OF CALCULATION OF THE MAXIMUM AMOUNT  
47 PAYABLE.

48 4-b. If there be no surviving spouse or child under the age of eigh-  
49 teen years or under the age of twenty-three years if enrolled and  
50 attending as a full time student in an accredited educational institu-  
51 tion and such enrollment and full time attendance is certified by such  
52 institution or dependent blind or physically disabled child of any age  
53 or grandchildren or brothers and sisters if dependent upon the deceased  
54 at the time of the accident, under the age of eighteen years, or under  
55 the age of twenty-three years if enrolled and attending as a full time  
56 student in an accredited educational institution and such enrollment and

1 full time attendance is certified by such institution or disabled blind  
2 or physically disabled grandchildren or brothers and sisters of any age,  
3 then a sum of fifty thousand dollars shall be paid to the deceased's  
4 surviving parents or if there be no surviving parents to the deceased's  
5 estate.

6 4-c. If there be no surviving spouse or child, or children of an  
7 employee of a private voluntary hospital killed in a World Trade Center  
8 rescue, who passed a physical examination upon employment as a rescue  
9 worker that failed to reveal evidence of a condition that was the proximate  
10 cause of death, under the age of eighteen years, or under the age  
11 of twenty-three years if enrolled and attending as a full-time student  
12 in an accredited educational institution and such enrollment and full-  
13 time attendance is certified by such institution, or dependent blind or  
14 physically disabled child of any age, then where the death occurs on or  
15 after September eleventh, two thousand one, for the support of grand-  
16 children or brothers and sisters if dependent upon the deceased at the  
17 time of the accident, under the age of eighteen years, or under the age  
18 of twenty-three years if enrolled and attending as a full-time student  
19 in an accredited educational institution and such enrollment and full-  
20 time attendance is certified by such institution, or blind or physically  
21 disabled grandchildren or brothers and sisters of any age, twenty-five  
22 per centum of such wages, TOGETHER WITH APPLICABLE COST-OF-LIVING  
23 ADJUSTMENTS, for the support of each such person until the age of eigh-  
24 teen years; or until the age of twenty-three years if enrolled and  
25 attending as a full-time student in an accredited educational institu-  
26 tion, or until the removal of the dependency of such blind or physically  
27 disabled grandchildren or brothers and sisters, and such enrollment and  
28 full-time attendance is certified by such institution and for the  
29 support of each parent, or grandparent, of the deceased if dependent  
30 upon him or her at the time of the accident, forty per centum of such  
31 wages, TOGETHER WITH APPLICABLE COST-OF-LIVING ADJUSTMENTS, during such  
32 dependency. But in no case shall the aggregate amount payable under this  
33 subdivision exceed seventy-five per centum of such wages. COST-OF-LIV-  
34 ING ADJUSTMENTS SHALL NOT BE INCLUDED IN THE CALCULATION OF THE  
35 DECEASED'S AVERAGE WEEKLY WAGE FOR PURPOSES OF CALCULATION OF THE MAXI-  
36 MUM AMOUNT PAYABLE.

37 4-d. If there be no surviving spouse or child, or children of an  
38 employee of a private voluntary hospital killed in a World Trade Center  
39 rescue, who passed a physical examination upon employment as a rescue  
40 worker that failed to reveal evidence of a condition that was the proximate  
41 cause of death, under the age of eighteen years, or under the age  
42 of twenty-three years if enrolled and attending as a full-time student  
43 in an accredited educational institution and such enrollment and full-  
44 time attendance is certified by such institution, or dependent blind or  
45 physically disabled child of any age, or grandchildren or brothers and  
46 sisters if dependent upon the deceased at the time of the accident,  
47 under the age of eighteen years, or under the age of twenty-three years  
48 if enrolled and attending as a full-time student in an accredited educa-  
49 tional institution and such enrollment and full-time attendance is  
50 certified by such institution, or disabled blind or physically disabled  
51 grandchildren or brothers and sisters of any age, then a sum of fifty  
52 thousand dollars shall be paid to the deceased's surviving parents or if  
53 there be no surviving parents to the deceased's estate.

54 5. Any excess of wages over: (1) seven hundred fifty dollars shall not  
55 be taken into account in computing compensation under this section in  
56 cases where the death occurs on or after July first, two thousand seven,

(2) eight hundred twenty-five dollars shall not be taken into account in computing compensation under this section in cases where the death occurs on or after July first, two thousand eight, (3) nine hundred dollars shall not be taken into account in computing compensation under this section in cases where the death occurs on or after July first, two thousand nine, and (4) where the death occurs on or after July first, two thousand ten, or when the death occurs on or after July first of each succeeding year, an amount equal to the New York state average weekly wage for the year in which it is reported shall not be taken into account in computing compensation under this section. Any excess of wages over five hundred ten dollars and five cents per week shall not be taken into account in computing compensation under this section in cases where the death occurs on or after July first, nineteen hundred ninety, nor shall any excess of wages over five hundred twenty-five dollars per week be taken into account in computing compensation pursuant to this section in cases where death occurs on or after July first, nineteen hundred ninety-one, nor shall any excess of wages over six hundred dollars per week be taken into account in computing compensation pursuant to this section in cases where death occurs on or after July first, nineteen hundred ninety-two with the exception that wages earned over six hundred dollars per week shall be taken into account in computing compensation under this section in cases involving an employee of a private voluntary hospital resulting from a World Trade Center rescue, who passed a physical examination upon employment as a rescue worker that failed to reveal evidence of a condition that was the proximate cause of death; nor shall any excess of wages over three hundred eighty-two dollars and fifty cents per week be taken into account in computing compensation under this section in cases where the death occurs on or after July first, nineteen hundred eighty-three, nor shall any excess of wages over four hundred twelve dollars and fifty cents per week be taken into account in computing compensation under this section in cases where the death occurs on or after July first, nineteen hundred eighty-four, nor shall any excess of wages over four hundred fifty dollars per week be taken into account in computing compensation under this section in cases where the death occurs on or after July first, nineteen hundred eighty-five; nor shall any excess of wages over one hundred eighty-seven dollars and fifty cents per week on or after January first, nineteen hundred seventy-eight or over two hundred seventy dollars per week on or after July first, nineteen hundred seventy-eight or over three hundred twenty-two dollars and fifty cents per week on or after January first, nineteen hundred seventy-nine, and prior to July first, nineteen hundred eighty-three, be taken into account in computing compensation under this section nor shall any excess of wages over six hundred and seventeen dollars and fifty cents a month be taken into account in computing compensation under this section in cases where the death occurred on or after July first, nineteen hundred seventy-four, and prior to January first, nineteen hundred seventy-eight, nor shall any excess of wages over five hundred and twenty dollars a month be taken into account in computing compensation in cases where death occurred on or after July first, nineteen hundred seventy and prior to July first, nineteen hundred seventy-four, nor shall any excess of wages over four hundred and fifty-five dollars a month be taken into account in computing compensation in cases where death occurred on or after July first, nineteen hundred sixty-eight and prior to July first, nineteen hundred seventy, nor shall any excess of wages over three hundred and ninety dollars a month be taken into account in computing compensation in cases

1 where death occurred on or after July first, nineteen hundred sixty-five  
2 and prior to July first, nineteen hundred sixty-eight, nor shall any  
3 excess of wages over three hundred and fifty-seven dollars and fifty  
4 cents a month be taken into account in computing compensation in cases  
5 where death occurred on or after July first, nineteen hundred sixty-two  
6 and prior to July first, nineteen hundred sixty-five, nor shall any  
7 excess of wages over three hundred and twenty-five dollars a month be  
8 taken into account in computing compensation in cases where death  
9 occurred on or after July first, nineteen hundred sixty and prior to  
10 July first, nineteen hundred sixty-two, nor shall any excess of wages  
11 over two hundred and ninety-two dollars and fifty cents a month be taken  
12 into account in computing compensation where death occurred on or after  
13 July first, nineteen hundred fifty-eight and prior to July first, nine-  
14 teen hundred sixty, nor shall any excess of wages over two hundred and  
15 sixty dollars a month be taken into account in computing compensation  
16 where death occurred on or after July first, nineteen hundred fifty-four  
17 and prior to July first, nineteen hundred fifty-eight, nor shall any  
18 excess of wages over two hundred and twenty-seven dollars and fifty  
19 cents a month be taken into account in computing compensation where  
20 death occurred on or after July first, nineteen hundred forty-eight and  
21 prior to July first, nineteen hundred fifty-four, nor shall any excess  
22 of wages over one hundred and eighty-two dollars a month be taken into  
23 account in computing compensation where the death occurred on or after  
24 June first, nineteen hundred forty-six and prior to July first, nineteen  
25 hundred forty-eight. When death occurred on or after July first, nine-  
26 teen hundred forty-eight and prior to January first, nineteen hundred  
27 seventy-eight, computing compensation to the widow or widower and chil-  
28 dren of a deceased employee in no event shall wages be deemed to be less  
29 than one hundred and thirty dollars a month. All questions of dependency  
30 shall be determined as of the time of the accident. When death occurred  
31 on or after January first, nineteen hundred seventy-eight, in no event  
32 shall wages be deemed to be less than forty-five dollars a week in  
33 computing compensation to the widow or widower and/or children of the  
34 deceased employee.

35 6. If there be a person entitled to death benefits under the  
36 provisions of this section, who shall be under the age of eighteen  
37 years, and who shall be an inmate of any institution and a public charge  
38 upon the department of social services of the city of New York, or any  
39 other department or body, the benefits allowed hereunder WITH REGARD TO  
40 SUCH PERSON shall be payable to the said department of public welfare of  
41 the city of New York or any other department or body to the extent of  
42 the reasonable charges for the care and maintenance, during the contin-  
43 uance as a public charge in said institution, of said beneficiary and  
44 until the said person shall have attained the age of eighteen years. Any  
45 sum or sums remaining after the said payment out of the benefits shall  
46 be distributed as provided by the other subdivisions of this section.

47 7. In computing the offsets under subdivisions one-c and two-a of this  
48 section any increase in survivors insurance benefits under social secu-  
49 rity that occurs after the date of death shall not be considered, and  
50 any such offset shall be equally applicable to the survivors insurance  
51 benefits under the social security act which are received retroactively  
52 but such offset shall not apply to increases of such benefits received  
53 retroactively.

54 8. COST-OF-LIVING ADJUSTMENTS OF DEATH BENEFITS. A. NOTWITHSTANDING  
55 ANY OTHER PROVISION OF LAW, IN ADDITION TO ANY OTHER AMOUNT RECEIVED  
56 PURSUANT TO THIS ARTICLE AS DEATH BENEFITS, A DEPENDENT OF A DECEASED

1 EMPLOYEE ENTITLED TO BENEFITS UNDER THIS SECTION SHALL BE ENTITLED TO AN  
2 ADDITIONAL ALLOWANCE, TO BE KNOWN AS A COST-OF-LIVING ADJUSTMENT ALLOW-  
3 ANCE, WHICH SHALL BE PAYABLE ANNUALLY.  
4 B. THE COST-OF-LIVING ADJUSTMENT ALLOWANCE SHALL BE COMPUTED ANNUALLY  
5 BY THE BOARD ON FEBRUARY FIRST AND SHALL BE BASED ON SIXTY-SEVEN PERCENT  
6 OF THE INCREASE IN THE CONSUMER PRICE INDEX AS FOR THE PRECEDING CALEN-  
7 DAR YEAR AS PROMULGATED BY THE UNITED STATES DEPARTMENT OF LABOR. IF THE  
8 CONSUMER PRICE INDEX FOR THE PRECEDING YEAR IS LESS THAN TWO PERCENT, NO  
9 COST-OF-LIVING ADJUSTMENT ALLOWANCE SHALL BE PAYABLE, PROVIDED THAT, IF  
10 NO COST-OF-LIVING INCREASE IS PAYABLE IN A GIVEN YEAR BECAUSE THE  
11 CONSUMER PRICE INDEX FOR THE PRECEDING YEAR WAS LESS THAN TWO PERCENT,  
12 THE NEXT SUCCEEDING ANNUAL CALCULATION SHALL CONSIDER THE CHANGE IN THE  
13 CONSUMER PRICE INDEX OVER THE PRECEDING TWO CALENDAR YEARS. NO INCREASE  
14 SHALL EXCEED THE SUM OF TWENTY DOLLARS PER WEEK IN ANY YEAR. THE COST-  
15 OF-LIVING ALLOWANCE THUS COMPUTED SHALL BE PAYABLE FOR THE TWELVE-MONTH  
16 PERIOD BEGINNING THE FOLLOWING JULY FIRST.  
17 C. THIS SUBDIVISION SHALL NOT BE DEEMED OR CONSTRUED TO DIMINISH THE  
18 RIGHT OF ANY BENEFICIARY TO ANY BENEFITS TO WHICH SUCH BENEFICIARY WOULD  
19 OTHERWISE BE ENTITLED PURSUANT TO LAW.  
20 S 2. This act shall take effect January 1, 2014 and shall apply to all  
21 claims for payment of death benefits pursuant to section 16 of the work-  
22 ers' compensation law, regardless of the date of death.