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Understanding workers' compensation death benefits

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Some workplace accidents result in the death of a worker and, while it may be little consolation to the worker's family, the survivors may be entitled to death and funeral benefits under the applicable state or federal workers' compensation law that covers that worker. If the worker has medical costs associated with the accident or is disabled for a period prior to death, the injured worker is entitled to temporary total disability benefits and all medical costs for the period between the accident and death. After death, a new claim accrues in favor of the survivors for death and funeral benefits.

The two are completely separate claims. As with all workers' compensation claims, death benefits do not necessarily continue indefinitely. Each state or when applicable, federal jurisdiction determines how long the decedent worker's family will receive death benefits.

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Funeral or burial expenses are typically paid in a lump sum. Like death benefits, the amount of funeral and burial expenses varies depending on the jurisdiction. The amount due can vary dramatically depending on which state's laws apply. In many states, funeral and burial expenses are capped at a few thousand dollars, whereas in Kentucky, funeral and burial expenses can range up to $85,307. Under the federal Longshore and Harbor Workers' Compensation Act, funeral benefits have been set at $3,000 since the Act was amended in 1984.

Who is entitled to death benefits?

In most jurisdictions, only the surviving spouse and minor children are entitled to death benefits. However, in California, an individual may be eligible for death benefits if they were totally or partially dependent on the decedent worker for financial support at the time of the accident and they were either a member of the decedent worker's household or the decedent worker's close relative.

Accordingly, California does not limit death benefits to only the surviving spouse and minor children, but allows grandparents, grandchildren, parents, siblings, aunts and uncles, and nieces and nephews the right to seek death benefits as well if they meet the dependency requirement.

Capping death benefits at the state level

Like indemnity benefits, death benefits are not typically indefinite. Each state has its own regulations as to how and how long a decedent worker's family will receive death benefits. Some states have capped the amount of death benefits that can be received, while other states allow a surviving spouse to receive death benefits until the spouse dies or remarries.

In Arizona, a surviving spouse without children is eligible to receive support until they die or remarry. If there are children, the surviving spouse receives 35% of the decedent worker's monthly wages, while the children receive 31.66% of the wages, divided between all children until they reach 18. Should a child be in college, payments are made until the age of 22. If the child is incapable of supporting themselves, payments continue until the child is capable of self-support. Once all payments to children end, the payments revert back to the surviving spouse as if there were no children.

Florida has a monetary cap on death benefits at $150,000. If the surviving spouse dies or remarries, death benefits can cease. Death benefits for children cease when the child turns 18, but can continue until the child turns 22 if the child is a student or disabled.

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Georgia places a similar cap on death benefits. A surviving spouse in Georgia is entitled to up to $290,000 in death benefits, with benefits ceasing if they remarry or cohabitate with a new partner. However, if there are children, surviving spouses are entitled to death benefits until the age of 65, or for up to 400 weeks, regardless of the $290,000 cap. Children with disabilities that prevent them from working can receive benefits for as long as they are dependent.

Not all states bar a surviving spouse from receiving death benefits if they remarry, however. In Indiana, while death benefits are paid up to 500 weeks, upon remarriage, the surviving spouse can receive 125 weeks in lump-sum or the remainder of the 500 weeks, whichever is less. Fifteen states allow for a two-year lump-sum payment.

Washington allows for a three-year lump-sum payment if the decedent worker was a law enforcement officer or firefighter. As for marriages on or after Sept. 1, 2017, in Texas, spouses of first responders can receive death benefits for life, regardless of whether they remarry.

Capping benefits at the federal level

Under the Longshore and Harbor Workers' Compensation Act and its extensions, which includes the Outer continental Shelf Lands Act, the Defense Base Act, and the Non-Appropriated Funds Instrumentalities Act, a decedent worker's family is also entitled to death benefits. A surviving spouse receives one half of the decedent worker's average weekly wage ("AWW") for life or until remarriage. Additional compensation of one sixth of the AWW is payable for one or more children.

If there is no surviving spouse, half of the AWW is paid for one child, or two thirds of the AWW if there are two or more children. Benefits are also adjusted annually based on increases in the national average weekly wage, which is set Oct. 1 of each year.

A surviving child's right to death benefits terminates when the child turns18 but may continue until age 23 if they are a full-time student. Death benefits can continue to be paid to an adult child who is totally disabled and incapable of self-support. If there is no surviving spouse or child, death benefits may be payable to other dependents at various rates fixed by the LHWCA.

Conclusion

All workers' compensation systems are designed to protect dependent survivors of a worker killed in the course and scope of employment. The benefits available vary widely as do the definitions of those entitled to benefits, so it's essential to understand the laws of the applicable jurisdiction to determine what benefits should be paid and to whom they are owed.

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