

**SUBCHAPTER B. Claims Procedure for
Beneficiaries of Injured Employees
28 TAC §122.100**

1. INTRODUCTION. The Commissioner of Workers' Compensation ("Commissioner"), Texas Department of Insurance, Division of Workers' Compensation ("Division") adopts amendments to §122.100 of this title (relating to Claim for Death Benefits). These amendments are adopted with changes to the proposed text published in the August 1, 2008 issue of the *Texas Register* (33 TexReg 6056).

2. REASONED JUSTIFICATION. The adopted amendments to §122.100 of this title are necessary in order to implement amendments made by House Bill (HB) 724, enacted by the 80th Legislature, Regular Session, effective September 1, 2007, to Labor Code provisions governing death benefits, specifically Labor Code §408.182 and §408.183.

HB 724 amends Labor Code §408.182 and §408.183 by adding "eligible parents" to the class of legal beneficiaries entitled to receive death benefits under the Texas Workers' Compensation Act (the "Act"). Labor Code §408.182(f)(4), added by HB 724, defines "eligible parent" as the mother or the father of a deceased employee, including an adoptive parent or a stepparent, who receives burial benefits under Labor Code §408.186. A parent whose parental rights have been terminated is specifically excluded from this definition of "eligible parent."

Labor Code §408.182(d-1), added by HB 724, provides that if there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased, the death benefits shall be paid in equal shares to surviving eligible parents of the deceased. Labor Code §408.183(f-1), added by HB 724, provides that an eligible parent is entitled to receive death benefits until the earlier of the date the eligible parent dies or the date of the expiration of 104 weeks of death benefit payments. The payment of death benefits to an eligible parent(s) may not, according to Labor Code §408.182(d-1), exceed one payment per household and may not exceed 104 weeks.

HB 724 added Labor Code §408.182(d-2) which provides that in order to be eligible to receive death benefits, an eligible parent must file a claim with the Division not later than the first anniversary of the date of the injured employee's death. This subsection further provides that a claim for death benefits must designate all eligible parents and necessary information for payment to the eligible parents. An insurance carrier will not be liable for payment to any eligible parent who is not designated on the claim. Finally, Labor Code §408.182(d-2) permits the Commissioner to extend the time period for filing a claim for death benefits by an eligible parent if the eligible parent submits proof satisfactory to the Commissioner of a compelling reason for the delay.

Also published in this edition of the *Texas Register* are adopted amendments to §§132.6, 132.9, and 132.11 of this title (relating to Eligibility of Other Surviving Dependents To Receive Death Benefits, Duration of Death Benefits for an Eligible Grandchild and any Other Eligible Dependents, and Distribution of Death Benefits, respectively). Those rules also incorporate and reflect the HB 724 amendments to the Labor Code discussed above regarding “eligible parents”.

Section 122.100 of this title governs how a legal beneficiary initiates a claim for death benefits and is amended in order to implement the provisions of HB 724. Section 122.100 of this title requires a legal beneficiary, which will include an eligible parent, seeking death benefits under the Act to file a written claim for death benefits with the Division. Section 122.100(b) and (c) of this title sets out the necessary information that is to be included in the claim.

This section further requires a claim for death benefits to be filed no later than one year from the date of the injured employee's death. It also provides that failure to file a claim for death benefits within one year of the date of the employee's death bars the claim of the legal beneficiary, unless the legal beneficiary is a minor or otherwise legally incompetent, or good cause exists for failure to file the claim in a timely manner. The adopted amendments to §122.100(e) of this title incorporate into that section the compelling reason exception to the one year filing deadline prescribed by Labor Code §408.182(d-2)

for eligible parents. These adopted amendments provide that the good cause exception applies to legal beneficiaries other than eligible parents. The good cause exception will not apply to an eligible parent because it is a lesser standard than the compelling reason standard and Labor Code §408.182(d-2) specifically prescribes the compelling reason standard for eligible parents. These adopted amendments further provide that an eligible parent's failure to file a claim for death benefits within the one year time period will not bar the claim if the eligible parent submits proof satisfactory to the Commissioner of a compelling reason for the delay in filing the claim.

As stated above, Labor Code §408.182(d-2) requires a claim for death benefits to designate all eligible parents. An insurance carrier will not be liable for payment to any eligible parent who is not designated on the claim. Section 122.100(d) of this title requires each beneficiary to file a separate claim for death benefits, unless the claim expressly includes or is made on behalf of another person. An eligible parent who is designated on a claim for death benefits filed by another eligible parent is considered expressly included under §122.100(d) of this title.

These adopted amendments to §122.100 of this title also replace all references to the "commission" in that section with references to the "Division." These adopted amendments are due to HB 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005, which abolished the Texas

Workers' Compensation Commission and transferred the powers and duties of that former agency to the Division of Workers' Compensation of the Texas Department of Insurance. The proposed text did not replace the reference to "commission" in §122.100(c)(1) with "Division." These adopted amendments make this change in §122.100(c)(1). This change, however, does not introduce new subject matter or affect persons in addition to those subject to the proposal as published.

3. HOW THE SECTION(S) WILL FUNCTION. The adopted amendments amend §122.100(e)(2) to state that the good cause exception to the one year filing deadline applies to a legal beneficiary other than an eligible parent.

The adopted amendments add §122.100(e)(3) which provides that an eligible parent's failure to file a claim for death benefits within the one year time period does not bar the parent's claim if the parent submits proof satisfactory to the Commissioner of a compelling reason for the delay in filing the claim for death benefits.

The adopted amendments replace "commission" in §122.100(a), (b), (c), and (c)(1) of this title with "Division."

4. SUMMARY OF COMMENTS AND AGENCY'S RESPONSE.

Comment: A commenter recommends that the Division define the phrase “submits proof satisfactory to the Commissioner of Workers’ Compensation of a compelling reason for the delay in filing the claim for death benefits” in §122.100(e)(3). The commenter argues that a further definition is necessary in order to provide guidance to potential “eligible parent” beneficiaries on the showing they would have to make and the evidence they could submit to extend the one year filing deadline.

Agency Response: The Division does not agree that a definition for this provision is necessary. This provision, which mirrors the provision in Tex. Labor Code §408.182(d-2), is not vague. It uses words of common understanding and thus provides eligible parents with clear notice of what they have to provide and prove to the Commissioner in order to obtain an extension of the one year filing deadline. Reasons for delay in filing a claim for death benefits and the proof available to support such reasons for delay will vary greatly from case to case. These decisions by the Commissioner will therefore have to be made on a case by case basis. Tex. Labor Code §408.182(d-2) and §122.100(e)(3) provides a clear standard upon which the Commissioner can determine these types of requests for a filing extension.

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For: The Boeing Company

For with changes: None

Against: None

Neither for nor against, with recommended changes: Office of Injured
Employee Counsel

6. STATUTORY AUTHORITY. These amendments are adopted under Labor Code §§402.00111, 402.061, 408.181, 408.182, and 408.183.

Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under Labor Code Title 5. Labor Code §402.061 provides that the Commissioner of Workers' Compensation shall adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act. Labor Code §408.181 requires an insurance carrier to pay death benefits to the legal beneficiary if a compensable injury results in death. Labor Code §408.182 requires death benefits to be paid to surviving eligible parents of the deceased employee if there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased. Labor Code §408.183 provides that an eligible parent is entitled to receive death benefits until the earlier of the date the eligible parent dies or the date of the expiration of 104 weeks of death benefit payments.

7. TEXT.

§122.100. Claim for Death Benefits

(a) In order for a legal beneficiary, other than the subsequent injury fund, to receive the benefits available as a consequence of the death of an employee which results from a compensable injury, a person shall file a written claim for compensation with the Division within one year after the date of the employee's death.

(b) The claim should be submitted to the Division either on paper or via electronic transmission, in the form, format, and manner prescribed by the Division, and should include the following:

(1) the claimant's name, address, telephone number (if any), social security number, and relationship to the deceased employee;

(2) the deceased employee's name, last address, social security number (if known) and workers' compensation claim number (if any); and

(3) other information, as follows:

(A) a description of the circumstances and nature of the injury (if known);

(B) the name and location of the employer at the time of the injury;

(C) the date of the compensable injury, and date of death;

and

(D) other known legal beneficiaries.

(c) A claimant shall file with the Division a copy of the deceased employee's death certificate and any additional documentation or other evidence that establishes that the claimant is a legal beneficiary of the deceased employee.

(1) If the claim is filed with the Division in paper format, the additional evidence regarding legal beneficiary status shall be filed at the same time as the claim.

(2) If the claim is filed via electronic transmission, the additional evidence regarding legal beneficiary status may be filed separately in paper format and sent either by mail, facsimile, or hand delivery.

(d) Each person must file a separate claim for death benefits, unless the claim expressly includes or is made on behalf of another person.

(e) Failure to file a claim for death benefits within one year after the date of the employee's death shall bar the claim of a legal beneficiary, other than the subsequent injury fund, unless:

(1) that legal beneficiary is a minor or otherwise legally incompetent;

(2) for a legal beneficiary other than an eligible parent, good cause exists for failure to file the claim in a timely manner; or

(3) for a legal beneficiary who is an eligible parent, the parent submits proof satisfactory to the Commissioner of Workers' Compensation of a compelling reason for the delay in filing the claim for death benefits.

CERTIFICATION. This agency hereby certifies that the adopted amendments have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas on _____, 2008.

Stanton K. Strickland
Deputy Commissioner, Legal Services
Texas Department of Insurance,
Division of Workers' Compensation

IT IS THEREFORE THE ORDER of the Commissioner of Workers' Compensation that the amendments to §122.100 specified herein, concerning claims for death benefits, are adopted.

AND IT IS SO ORDERED

ROD BORDELON
COMMISSIONER OF WORKERS' COMPENSATION

TITLE 28. INSURANCE
Part 2. Texas Department of Insurance,
Division of Workers' Compensation
Chapter 122. Compensation Procedure--Claimants

Adopted Amendments
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ATTEST:

Stanton K. Strickland
Deputy Commissioner, Legal Services

COMMISSIONER'S ORDER NO.