

TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 132: BENEFITS—DEATH AND BURIAL PAYMENTS

Title 28 TAC §132.7

INTRODUCTION

The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts, with change, an amendment to §132.7, *Duration of Death Benefits for Eligible Spouse*. The proposed amendment was published in the Texas Register on October 12, 2018, (43 TexReg 6805) and will be republished. The only change made to the proposed language was a minor change in subsection (f) to provide clarity in the rule.

This amendment aligns the rule with Labor Code §408.183, as amended by House Bill (HB) 2119, 85th Legislature, Regular Session (2017), effective September 1, 2017. HB 2119 amended §408.183 to allow eligible spouses of first responders to remain eligible for death benefits for life after remarrying, regardless of the date on which the death of the first responder occurred, if the first responder died as a result of an injury in the course and scope of employment or while providing services as a volunteer. The change to §408.183 applies only to eligible spouses who remarried on or after September 1, 2017.

Two comments were received, and both were in support of the amendment. No public hearing was requested.

REASONED JUSTIFICATION

Amended §132.7(f) deletes the words, "This subsection only applies to claims based on a compensable injury that occurs on or after September 1, 2015," and adds the following words and

the following new language: “This subsection applies to: (1) eligible spouses who remarry on or after September 1, 2017; and (2) eligible spouses who remarried between September 1, 2015, and August 31, 2017, if the claim is based on a compensable injury that occurred on or after September 1, 2015.”

The amendment does not alter the distribution of death benefits under §132.11 or the redistribution of death benefits under §132.12. If there is an eligible child or grandchild and an eligible spouse, death benefits continue to be divided between the beneficiaries, with half paid to the eligible spouse and half paid in equal shares to the eligible children.

RESPONSE TO COMMENTS

Comments were received from the Insurance Council of Texas and the Office of Injured Employee Counsel (OIEC). Both were in support of the rule, and the amendment is adopted without changes. OIEC recommended that DWC provide guidance on applying the two different tests in the rule to more fully explain possible scenarios for the surviving spouses of first responders. DWC appreciates the suggestion and has provided additional information on DWC’s first responder frequently asked questions web page available at www.tdi.texas.gov/wc/employee/firstresp.html.

STATUTORY AUTHORITY

The amendment is adopted under Texas Labor Code §§402.00111, 402.061, and 408.183. The adopted amendment supports the implementation of the Texas Workers' Compensation Act, Labor Code Title 5, Subtitle A. Section 402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code. Section 402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary for the implementation and enforcement of the Workers' Compensation Act. Section 408.183 outlines the duration of death benefits for legal beneficiaries.

Other provisions of the Labor Code relating to Rule 132.7 include §§401.011(13) and (29), 415.002(a), 408.181, 408.182, and 408.184. Section 401.011(13) defines death benefits. Section 401.011(29) defines legal beneficiary. Section 415.002(a)(11) states that an insurance carrier or its representative commits an administrative violation if they fail to process claims promptly in a reasonable and prudent manner, and (a)(12) states that an insurance carrier or its representative commits an administrative violation if they fail to initiate or reinstate benefits when due if a legitimate dispute does not exist as to the liability of the insurance carrier. Section 408.181 requires an insurance carrier to pay death benefits to a legal beneficiary if a compensable injury to the employee results in death. Section 408.182 outlines the requirements for distribution of death benefits. Section 408.184 outlines the requirements for redistribution of death benefits.

TEXT

§132.7. Duration of Death Benefits for Eligible Spouse.

(a) Except as provided in subsection (f) of this section, a spouse who is determined eligible for death benefits is entitled to receive benefits until the date of the spouse's death or until remarriage. The insurance carrier shall notify the eligible spouse of the requirements of this section within 60 days of initiating benefits to that spouse.

(b) An eligible spouse who enters into a ceremonial or informal marriage is entitled to receive a lump-sum payment of 104 weeks of death benefits.

(c) An eligible spouse shall notify the division and the insurance carrier in writing within 30 days of the date of remarriage. The notice shall include the name and social security number of the deceased employee, the date of death, the workers' compensation claim file number, and the date of remarriage.

(d) The amount of the lump-sum payment shall be calculated by multiplying the amount paid to the spouse the week prior to the remarriage by 104. If the insurance carrier paid any weekly benefits to the eligible spouse after the remarriage, the total amount of such payments shall be deducted from the amount of the commuted payment.

(e) An eligible spouse who knowingly accepts death benefits after remarriage in excess of the amount allowed by this section, and who does not notify the division or the insurance carrier of remarriage, may be subject to administrative penalties.

(f) An eligible spouse who remarries is eligible for death benefits for life if the employee was a first responder, as defined by Labor Code §504.055, who died as a result of an injury in the course and scope of employment or while providing services as a volunteer. Subsections (b) - (e) of this section do not apply to an eligible spouse under this subsection. This subsection applies to:

(1) eligible spouses who remarry on or after September 1, 2017;

and

(2) eligible spouses who remarried between September 1, 2015, and August 31, 2017, if the claim is based on a compensable injury that occurred on or after September 1, 2015.

CERTIFICATION

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on the 30th day of November, 2018.

Cassie Brown
Commissioner of Workers' Compensation

COMMISSIONER'S ORDER NO. _____

ATTEST:

Nicholas Canaday III
General Counsel
Texas Department of Insurance,
Division of Workers' Compensation