

Death and Burial Benefits

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Information for Beneficiaries from the Division of Workers' Compensation

**Texas Labor Code §§408.181 – 408.187,
28 Texas Administrative Code §§122.100; 132.1 – 132.17**

Death and Burial Benefits

Death benefits may be available to replace a portion of family income that is lost when an employee dies because of a work-related injury or occupational illness. A surviving spouse, minor children, dependent grandchildren or other dependents of the deceased employee may be eligible to receive death benefits.

Death benefits may be paid to:

- surviving spouse;
- minor child(ren);
- child(ren) enrolled in an accredited educational institution who is less than 25 years old;
- dependent grandchild(ren);
- other dependent family member(s); or
- non-dependent parents — only when there are no surviving eligible dependent family members.

How to File For Death Benefits

To file a claim for death benefits, a beneficiary must complete and submit a DWC Form-042, *Claim for Workers' Compensation Death Benefits* to the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) within one year of the death of the employee.

When Death Benefits Begin and End

A legal beneficiary becomes eligible for death benefits the day after the employee's death. Death benefits are paid until the beneficiary no longer meets the entitlement requirements.

Distribution and Duration of Death Benefits to Eligible Beneficiaries

A surviving spouse may receive death benefits for the remainder of his or her life unless the spouse remarries. However, a surviving spouse of a first responder that remarries may still receive death benefits for the remainder of his or her life. If there are dependent children at the time the employee dies, the death benefits are distributed one half to the surviving spouse, and the remaining half is distributed among the eligible children.

A surviving spouse, with the exception of a spouse of a first responder, that remarries will receive a lump sum payment of death benefits equal to two years (104 weeks) of the benefits. If there are dependent children that still qualify for the death benefits after the expiration of the 104 weeks, the entire benefit will be re-distributed and divided equally among the dependent children if there is more than one child.

A child is eligible to receive death benefits until he or she reaches 18, or until age 25 if the child is enrolled as a full-time student in an accredited educational institution. If there is more than one eligible child, as one child loses eligibility the benefits are re-distributed equally among the remaining eligible children. Children over 18 will need to show evidence of ongoing enrollment in an accredited educational institution, to remain eligible to receive the benefits.

A child with physical or mental disability who is a dependent on the date the deceased employee died may receive death benefits until the date the child dies or no longer has the disability. An eligible child with a physical or mental disability will need to provide the insurance carrier documentation of the disability for the remainder of his or her life. An adult child who is a dependent of the deceased employee for a reason other than physical or mental disability may remain eligible for death benefits for 364 weeks after the date the deceased employee died. An eligible adult child claiming death benefits will need to provide documentation to the insurance carrier to establish dependent status, and evidence of ongoing eligibility, such as medical records, to remain eligible to receive the benefits.

Grandchild(ren) may be eligible to receive death benefits if the grandchild was at least 20 percent dependent on the deceased employee at the time of the employee's death, unless the grandchild's own parent is eligible for the benefit. An eligible grandchild can receive death benefits until the grandchild reaches age 18. A grandchild that is eligible to receive death benefits and is not a minor at the time of the employee's death may

**For further assistance,
call 800-252-7031 or visit**

www.tdi.texas.gov/wc/employee/index.html

be eligible to receive no more than 364 weeks of death benefits.

Other dependent family members, such as a dependent parent, stepparent, sibling, or grandparent of the deceased employee may also qualify for death benefits, but only if there is no eligible surviving spouse, child, or grandchild. The duration of these benefits is limited to 364 weeks.

Non-dependent parents may qualify as eligible beneficiaries if there is no eligible surviving spouse, child, or grandchild, and there are no surviving dependents that are parents, siblings, or grandparents of the deceased. The duration of these benefits is limited to 104 weeks.

When There Are No Surviving Eligible Beneficiaries

If at any time, there are no eligible beneficiaries, or the eligible beneficiaries are no longer eligible and at least 364 weeks have not been paid by the insurance carrier,

the remaining benefits are paid to the Subsequent Injury Fund administered by TDI-DWC.

Amount of Death Benefits

Death benefits equal 75 percent of the deceased employee's average weekly wage and are subject to minimum and maximum benefit amount restrictions. For example, if the deceased employee's average weekly wages were \$500, death benefits would equal \$375 per week:

$$75 \text{ percent of } \$500 (.75 \times \$500) = \$375$$

How To File For Burial Benefits

Burial benefits may also be available to pay some of the deceased employee's burial expenses. Burial benefits are only paid to the person(s) that paid the burial expenses. The maximum burial benefit amount is \$10,000.

DEATH BENEFITS EXAMPLE SCENARIO AND TIMELINE

An employee who is not a first responder dies because of a work-related injury or occupational illness.

The deceased employee was married with two children; one child was one year old and the other child was three years old.

Day after death benefits begin —

Half to spouse and half to the parent of the dependent one-year-old and three-year-old minor children on behalf of the minor.

3 years later —

Spouse remarries and insurance carrier pays 104 weeks of half of the death benefits in a lump sum payment to the spouse. If qualified, the children continue to receive half of the benefits for those 104 weeks.

2 years after the spouse of the deceased employee remarries (104 weeks) —

Insurance carrier begins to pay full death benefit amount to the minor children.

When oldest child turns 18, but does not enroll in college —

Eligibility for death benefits for that child stops and the insurance carrier continues to pay the full benefit amount to the remaining minor child.