

CHAPTER 132: DEATH BENEFITS--DEATH AND BURIAL BENEFITS
28 TAC §132.7

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) adopts an amendment to §132.7, relating to Duration of Death Benefits for Eligible Spouse. The purpose of this amendment is to align the rule with Texas Labor Code §408.183, as amended by House Bill (HB) 2503, 86th Legislature, Regular Session (2019), effective September 1, 2019. The Legislature amended §408.183 to expand eligibility of spouses who may receive death benefits for life, regardless of remarriage, to spouses of peace officers as described in Texas Code of Criminal Procedures Article 2.12, intrastate fire mutual aid system team members and regional incident management team members.

REASONED JUSTIFICATION. Amended §132.7(f) adds the words "or an individual described by Government Code §615.003(1) or Labor Code §501.001(5)(F)." The amendment also adds the words in §132.7(f)(1) "of first responders, as defined by Labor Code §504.055" to include those eligible spouses. New subsection §132.7(f)(2) is added, which states the amendment applies to "eligible spouses of individuals, as defined by Government Code §615.003(1) or Labor Code §501.001(5)(F), who remarry on or after September 1, 2019."

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.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: DWC received two comments. The Office of Injured Employee Counsel commented in support of the proposal. United Fire Group Insurance commented against the proposal.

Comment on §132.7. Commenter supports the proposed amendments to conform with the statutory changes in Labor Code §408.183, which the Texas Legislature amended under HB 2503, effective September 1, 2019. DWC's actions to conform the rules with amendments to the Labor Code benefits the injured employees of Texas.

Agency Response to Comment on §132.7. DWC acknowledges the supportive comment.

Comment on §132.7. Commenter opposes the amendment to §132.7. Commenter states that workers' compensation benefits were created to provide benefit to an injured employee or wage replacement to a beneficiary in the event of a spouse's fatality on the job. Commenter explains that the long-standing rule and intent of workers' compensation has been that, when a widow or widower remarries, the earning capacity of a relationship is restored, and the wage loss is no longer applicable. As proposed, commenter believes this amendment to §132.7 is prejudicial to the industry because it breaches the law of indemnification by creating a windfall for the surviving spouse.

Agency Response to Comment on §132.7. DWC acknowledges the comment and currently declines to make a change to the text. The amendment to §132.7 conforms the existing rule with statutory amendments to Labor Code §408.183, which became effective September 1, 2019.

CHAPTER 132. DEATH BENEFITS--DEATH AND BURIAL BENEFITS.

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STATUTORY AUTHORITY. The commissioner of workers' compensation adopts the amendments to 28 TAC §132.7 under Government Code §615.003, and Labor Code §§401.011, 402.00111, 402.00116, 402.061, 408.181, 408.182, 408.183, 408.184, 415.002, and 501.001:

Government Code §615.003 lists the various eligible survivors and the applicability of Chapter 615 to eligible individuals.

Labor Code §401.011 provides general definitions under the Texas Workers' Compensation Act.

Labor Code §402.00111 provides that the commissioner of workers' compensation will exercise all executive authority, including rulemaking authority under Labor Code Title 5.

Labor Code §402.00116 provides that the commissioner will administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation will adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

Labor Code §408.181 provides the obligation an insurance carrier must satisfy in paying death and burial benefits.

Labor Code §408.182 provides how the insurance carrier should distribute the death benefits and defines eligible beneficiaries.

Labor Code §408.183 outlines the duration of death benefits for legal beneficiaries.

Labor Code §408.184 provides for the redistribution of death benefits if necessary.

Labor Code §415.002 outlines insurance carrier administrative violations.

Labor Code §501.001 defines a peace officer employed by a political subdivision, while the peace officer is exercising authority granted under the Code of Criminal Procedure Article 2.12 or the Code of Criminal Procedure Articles 14.03(d) and (g).

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, or an individual described by Government Code §615.003(1) or Labor Code §501.001(5)(F), 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 of first responders, as defined by Labor Code §504.055:

(A) who remarry on or after September 1, 2017; and

(B) 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; and

(2) eligible spouses of individuals, as defined by Government Code §615.003(1) or Labor Code §501.001(5)(F), who remarry on or after September 1, 2019.

CERTIFICATION. This agency certifies that legal counsel has reviewed the adoption and found to be valid exercise of the agency's legal authority.

Issued at Austin, Texas, on August 19, 2020.



Kara Mace
Deputy Commissioner for Legal Services
TDI, Division of Workers' Compensation

The commissioner adopts the amendment to 28 TAC §132.7.



Cassie Brown
Commissioner
TDI, Division of Workers' Compensation

Commissioner's Order No.