

Manager/Supervisor Risk Management

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A twice weekly e-mail training for YCPARMIA members

TOPIC: WORKERS' COMPENSATION –DEATH BENEFITS

When an industrial injury causes or hastens death, the employee's dependents receive a sum payable in weekly installments as a death benefit. In statutory language the Labor Code lays out the amount of the benefit and how it will be divided. A claimant for these monies must be a person who was dependent on the deceased employee at the time of the injury that led to the death and have a family or household relationship. If there are no heirs or dependents the money goes to the State.

The amount of the death benefit varies based on the number of dependents/claimants, but is currently about \$300,000. It is generally paid out on a weekly basis at the maximum temporary disability rate of \$1010.50. If, after the statutory amount has been paid out, there are still dependent children under the age of 18 the Labor Code provides for a continuation allowance with payments continuing until they turn 18. Lastly, the death benefit includes a payment for the reasonable cost of burial, not to exceed \$5,000.

There is only one death benefit to be divided, and the statute is fairly straight forward on how it will be done. Generally any disputes in death claims arise among the potential claimants over the issues of dependency. Is the person a dependent, and if so are they totally dependent, or partially dependent? Evidence such as a marriage license, birth certificate, financial records or letters from the deceased employee are all used to prove the validity of a claim. The minor children of a deceased employee are entitled to a conclusive presumption of total dependency.

In its thirty-four years of existence YCPARMIA has had five or six death claims. The causes of death have varied, and include shootings, cancer, heart attack and a vehicle accident.

Let me conclude by drawing a distinction between a civil claim for wrongful death, and a workers' compensation death claim. In the civil action the amount of damages would be uncertain, subject to negotiation, and would include both special/out of pocket amounts, and general damages such as emotional distress. In the workers' compensation claim for statutory benefits the "damages" elements are irrelevant. The total value of the claim is set by statute, the frequency and amounts of payment are known, and there is little, if any, opportunity to negotiate.

Next topic: Workers' Compensation – Vocational Rehabilitation