

**Chapter 132 - Death Benefits--Death and Burial Benefits
28 TAC §132.6 and §132.11**

1. INTRODUCTION. The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance, Division of Workers' Compensation (Division) adopts amendments to §132.6 and §132.11 of this title (relating to Eligibility of Other Surviving Dependents and Eligible Parents To Receive Death Benefits and Distribution of Death Benefits, respectively). These amendments are adopted without changes to the proposed text published in the December 18, 2009 issue of the *Texas Register* (34 TexReg 9097). The public comment period ended on January 18, 2010. The Division did not receive a request for a public hearing.

2. REASONED JUSTIFICATION. These adopted amendments to §132.6 and §132.11 are necessary due to legislative amendments made by House Bill (HB) 1058, enacted by the 81st Legislature, Regular Session, effective September 1, 2009.

HB 1058 amended provisions in the Texas Workers' Compensation Act (Act) that apply to "eligible parents" and their entitlement to death benefits under the Act. These adopted amendments to §132.6 and §132.11 concern HB 1058's amendments to the definition of "eligible parent" and provisions governing the distribution of death benefits to eligible parents. The Division is publishing elsewhere in this issue of the *Texas Register* adopted amendments to §122.100

of this title (relating to Claim for Death Benefits) that concern the legal standard an eligible parent must meet in order to file a death benefits claim after the one year filing deadline.

Prior to HB 1058's effective date of September 1, 2009, Labor Code §408.182(f)(4) defined "eligible parent" to require a nondependent parent to receive burial benefits under the Act in order to qualify for death benefits. HB 1058 amended Labor Code §408.182(f)(4) by removing the requirement that a nondependent parent receive burial benefits as a condition to receiving death benefits. HB 1058 also amended Labor Code §408.182(d-1) by clarifying that total payments of death benefits to eligible parents may not exceed 104 weeks regardless of the number of surviving eligible parents.

Section 2 of HB 1058 provides that its amendments to Labor Code §408.182 apply only to a claim for death benefits based on a compensable injury that occurs on or after September 1, 2009. Thus, the new definition of "eligible parent" will apply only to death benefits claims that are based on a compensable injury occurring on or after September 1, 2009. Section 2 further provides that a claim for death benefits based on a compensable injury that occurs before September 1, 2009 is governed by the law in effect on the date that the compensable injury occurred, and the former law is continued in effect for that purpose. Thus, the prior definition of "eligible parent" which requires the receipt of burial benefits will continue to apply to death benefits claims that are based on a compensable injury occurring prior to September 1, 2009 but on or after

September 1, 2007, the date House Bill 724 of the 80th Texas Legislature, Regular Session, added eligible parents to the Act as legal beneficiaries.

The adopted amendments to §132.6 first remove from §132.6(b) the definition of "eligible parent." The adopted amendments next add to §132.6 new subsections (e) and (f) which define the term "eligible parent." Adopted §132.6(e) defines "eligible parent" for compensable injuries occurring on or after September 1, 2007 but prior to September 1, 2009. This new subsection carries forward the law as it existed prior to HB 1058 and requires a nondependent parent whose claim for death benefits is based on a compensable injury occurring in this timeframe to receive burial benefits in order to qualify as an eligible parent. Adopted §132.6(f) defines "eligible parent" for compensable injuries occurring on or after September 1, 2009. This subsection defines "eligible parent" consistently with HB 1058 and will not require a nondependent parent to receive burial benefits in order to qualify as an eligible parent.

The adopted amendments to §132.6(c) requires a nondependent parent whose death benefits claim is based on a compensable injury occurring prior to September 1, 2009 to submit proof that the parent received burial benefits. This proof will not be required if the burial benefits claim is submitted at the same time as the death benefits claim or the burial benefits claim is still pending when the death benefits claim is submitted.

The adopted amendments to §132.11(e) clarify that total payments of death benefits to eligible parents may not exceed 104 weeks regardless of the number of surviving eligible parents.

3. HOW THE SECTION(S) WILL FUNCTION. The adopted amendments to §132.6(b) remove from that subsection the definition of “eligible parent.”

The adopted amendments to §132.6 add new subsections (e) and (f) which define the term “eligible parent.” Adopted §132.6(e) defines “eligible parent” for compensable injuries occurring on or after September 1, 2007 but prior to September 1, 2009. This definition requires a nondependent parent with a death benefits claim based on a compensable injury occurring in this time period to receive burial benefits in order to qualify for the death benefits. Adopted §132.6(f) defines “eligible parent” for compensable injuries occurring on or after September 1, 2009. This definition defines “eligible parent” consistently with HB 1058 and does not require a nondependent parent to receive burial benefits in order to qualify for death benefits.

The adopted amendments to §132.6(c) requires a nondependent parent seeking death benefits for a compensable injury occurring prior to September 1, 2009 to submit with the death benefits claim proof that the parent received burial benefits. This proof will not be required if the burial benefits claim is submitted at the same time the death benefits claim is submitted or the burial benefits claim is still pending at the time the death benefits claim is submitted.

The adopted amendments to §132.11(e) clarify that total payments of death benefits may not exceed 104 weeks regardless of the number of surviving eligible parents.

4. SUMMARY OF COMMENTS AND AGENCY'S RESPONSE.

Comment: A commenter recommends that these rules be adopted as proposed and states that their adoption will implement HB 1058's goal of providing compensation to the parents of deceased employees.

Agency Response: The Division agrees.

Comment: A commenter believes that the proposed amendments are within the rulemaking authority of the Division and do not conflict with HB 1058 and Labor Code §408.182.

Agency Response: The Division agrees.

Comment: A commenter agrees with the changes to §132.6(b) and with the changes to §132.6(e) and (f) regarding excluding parents whose parental rights have been terminated from the definition of eligible parent.

Agency Response: The Division agrees.

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

For: Office of Injured Employee Counsel, Texas Mutual Insurance Company,
and Property Casualty Insurers Association of America

For with changes: None

Against: None

Neither for nor against, with recommended changes: None

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

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. Labor Code §408.182 requires death benefits to be paid to surviving eligible parents, as defined by that section, of the deceased 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 §408.182 also provides that total payments under that section may not exceed 104 weeks regardless of the number of surviving eligible parents. Labor Code §408.181 requires an insurance carrier to pay death benefits to the legal beneficiary if a compensable injury to the employee results in death. 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 §402.00111 provides that the

Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under Labor Code Title 5.

7. TEXT.

§132.6. Eligibility of Other Surviving Dependents and Eligible Parents To Receive Death Benefits

(a) A parent, stepparent, sibling, or grandparent of a deceased employee who was dependent on the employee on the day of death is entitled to receive death benefits, only if there is no eligible spouse, child, or grandchild.

(b) A surviving eligible parent is entitled to receive death benefits only 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.

(c) A person claiming to be a beneficiary under subsection (a) or (b) of this section is required to present proof of the relationship to the deceased employee to the insurance carrier or along with the claim for death benefits. The evidence presented as proof of a relationship shall include certified copies of applicable birth certificates, or decrees of adoption, or proof of marriage. If these documents do not exist, the claimant shall submit other proof of relationship, such as baptismal records, court orders establishing paternity, voluntary admissions of paternity, or affidavits of persons who have personal knowledge of the relationship to the deceased employee. A person claiming to be a beneficiary

under subsection (a) of this section shall submit evidence of dependence on the deceased employee as defined in §132.2 of this title (relating to Determination of Facts of Dependent Status). A person claiming to be a beneficiary under subsection (b) of this section shall designate all eligible parents on the claim for death benefits. An insurance carrier is not liable for payment to any eligible parent not designated on the claim for death benefits. A person claiming to be a beneficiary under subsection (b) of this section who is required to receive burial benefits in order to qualify as an eligible parent as provided in subsection (e) of this section shall also submit proof of receipt of burial benefits unless the claim for burial benefits is filed with the insurance carrier pursuant to §132.13 of this title (relating to Burial Benefits) at the same time the claim for death benefits is filed with the division or the claim for burial benefits has been filed with the insurance carrier but is still pending at the time the claim for death benefits is filed with the division.

(d) The term "sibling" means a brother or sister who shares at least one parent, through birth or adoption, with the deceased employee.

(e) For a compensable injury occurring on or after September 1, 2007 but prior to September 1, 2009 that results in the death of the employee, the term "eligible parent" means the mother or the father of a deceased employee, including an adoptive parent or a stepparent, who receives burial benefits under §132.13 of this title, but does not include a parent whose parental rights have been terminated.

(f) For a compensable injury occurring on or after September 1, 2009 that results in the death of the employee, the term "eligible parent" means the mother or the father of a deceased employee, including an adoptive parent or a stepparent, but does not include a parent whose parental rights have been terminated.

§132.11. Distribution of Death Benefits

(a) All of the death benefits shall be paid to the eligible spouse if the deceased employee had no eligible children or eligible grandchildren.

(b) Death benefits shall be paid in equal shares to each eligible child per capita and to each eligible grandchild per stirpes if there is no eligible spouse.

(c) If there is an eligible spouse and an eligible child or eligible grandchild, half of the death benefits shall be paid to the eligible spouse. The remaining half shall be paid:

(1) if there are no eligible grandchildren, in equal shares to the eligible children;

(2) if there are no eligible children, per stirpes to the eligible grandchildren; or

(3) if there are eligible children and eligible grandchildren, the eligible children shall be paid equal shares per capita and the eligible grandchildren shall be paid per stirpes.

(d) If there is no eligible spouse, child, or grandchild, the death benefits shall be paid in equal shares to any surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased. The amount to be paid to each surviving dependent shall be calculated by dividing the weekly death benefit by the number of surviving dependents.

(e) 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. The amount paid may not exceed one payment per household and total payments may not exceed 104 weeks regardless of the number of surviving eligible parents.

(f) If the deceased employee has no legal beneficiaries as defined by the rules and the Texas Workers' Compensation Act, the death benefits shall be paid to the subsequent injury fund, as set out in §132.10 of this title (relating to Payment of Death Benefits to the Subsequent Injury Fund).

(g) The term "per stirpes" means that the grandchildren shall be entitled to share in only the amount of benefits that the parent of those grandchildren would have received had the parent been alive or otherwise eligible to receive 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 _____, 2010.

Dirk Johnson
General Counsel
Texas Department of Insurance,
Division of Workers' Compensation

IT IS THEREFORE THE ORDER of the Commissioner of Workers' Compensation that the amendments to §132.6 and §132.11 specified herein, concerning eligible parents and death benefits, are adopted.

AND IT IS SO ORDERED

ROD BORDELON
COMMISSIONER OF WORKERS' COMPENSATION

ATTEST:

Dirk Johnson
General Counsel

COMMISSIONER'S ORDER NO.