

## **28 TAC §§132.6, 132.9, 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, 132.9, and 132.11 of this title (relating to Eligibility of Other Surviving Dependents To Receive Death Benefits, Duration of Death Benefits for an Eligible Grandchild and any Other Eligible Dependents, and Distribution of Death Benefits, respectively). These amendments are adopted without changes to the proposed text published in the August 1, 2008 issue of the *Texas Register* (33 TexReg 6058).

**2. REASONED JUSTIFICATION.** These adopted amendments are necessary in order to implement amendments made by House Bill (HB) 724, enacted by the 80<sup>th</sup> Legislature, Regular Session, effective September 1, 2007, to Labor Code provisions governing death benefits, specifically Labor Code §408.182 and §408.183.

HB 724 adds "eligible parents" to the class of legal beneficiaries entitled to receive death benefits under the Texas Workers' Compensation Act (the "Act"). Labor Code §408.182(f)(4), added by HB 724, defines "eligible parent" to mean the mother or the father of a deceased employee, including an adoptive parent or a stepparent, who receives burial benefits under Labor Code §408.186. A parent whose parental rights have been terminated is specifically excluded from this

definition of “eligible parent.” Labor Code §408.182(d-1), added by HB 724, provides that 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 of the deceased. Labor Code §408.183(f-1), added by HB 724, 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. The payment of death benefits to an eligible parent(s), according to Labor Code §408.182(d-1), may not exceed one payment per household and may not exceed 104 weeks.

HB 724 also added Labor Code §408.182(d-2) which provides that in order to be eligible to receive death benefits, an eligible parent must file a claim with the Division not later than the first anniversary of the date of the injured employee's death. This subsection further provides that a claim for death benefits must designate all eligible parents and necessary information for payment to the eligible parents. An insurance carrier will not be liable for payment to any eligible parent who is not designated on the claim. Finally, Labor Code §408.182(d-2) permits the Commissioner to extend the time period for filing a claim for death benefits by an eligible parent if the eligible parent submits proof satisfactory to the Commissioner of a compelling reason for the delay.

Chapter 132 of this title (relating to Death Benefits – Death and Burial Benefits) contains the Division's rules that govern death benefits for all legal beneficiaries. These adopted amendments to §§132.6, 132.9, and 132.11 of this title incorporate HB 724's provisions regarding an eligible parent's entitlement to death benefits into Chapter 132 of this title. Published elsewhere in this edition of the *Texas Register* are adopted amendments to §122.100 of this title (relating to Claim for Death Benefits). Section 122.100 of this title governs how a legal beneficiary initiates a claim for death benefits under the Act. Section 122.100 of this title will also apply to eligible parents.

The adopted amendments to §132.6 of this title incorporate into that rule the definition of "eligible parent" and the conditions that must be met in order for an eligible parent to be entitled to death benefits under the Act. The title of this rule is also amended to add "eligible parents". These adopted amendments define "eligible parent" to mean 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 (relating to Burial Benefits), but does not include a parent whose parental rights have been terminated. These adopted amendments further provide that an eligible parent is entitled to 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. These adopted amendments are consistent with

provisions of HB 724 that define “eligible parent” and that set out when an eligible parent is entitled to death benefits under the Act.

The adopted amendments to §132.6 of this title also require a person seeking entitlement to death benefits as an eligible parent to submit proof of eligible parent status. This proof of eligible parent status is necessary in order to allow for a determination of whether the person seeking death benefits qualifies as an eligible parent. These adopted amendments require the person seeking entitlement as an eligible parent to provide proof of the relationship to the deceased. This proof shall consist of certified copies of applicable birth certificates, decrees of adoption, or proof of marriage. If this evidence does not exist, baptismal records, court orders establishing paternity, voluntary admissions of paternity, or affidavits of persons who have personal knowledge of the relationship to the deceased qualify as sufficient proof of relationship. These adopted amendments also require the eligible parent to designate all eligible parents on the claim for death benefits as required by HB 724. An insurance carrier will not be liable for payment to an eligible parent who is not designated on the claim for death benefits.

Finally, the adopted amendments to §132.6 of this title require a person seeking entitlement as an eligible parent to submit proof of receipt of burial benefits. This proof will not be required if the eligible parent files the claim for burial benefits with the insurance carrier at the same time the parent files the

claim for death benefits with the Division or the eligible parent has filed a claim for burial benefits and that claim is still pending at the time the parent files the claim for death benefits. Allowing a parent to file the claim for death benefits simultaneously with the claim for burial benefits or while the claim for burial benefits is pending is necessary because both claims have the same filing deadline, within one year of the date of the deceased employee's death. There are foreseeable situations where a claim for burial benefits filed with the insurance carrier will not be finally determined before the expiration of the filing deadline for the claim for death benefits. For example, a claim for burial benefits may be filed one day before one year filing deadline but not finally decided before the one year filing deadline for the claim for death benefits. In such a situation, the parent will be permitted to file the claim for death benefits at the same time the claim for burial benefits is filed in order to meet the filing deadline for the death benefits claim.

The adopted amendment to §132.9 of this title sets forth the duration of death benefits to be paid to an eligible parent. It provides that death benefits are to be paid to the eligible parent until the earlier of the date of the eligible parent's death or the date of the expiration of 104 weeks of death benefit payments. This adopted amendment also amends the title of this section to reflect its applicability to eligible parents. This adopted amendment to §132.9 of this title is consistent

with provisions of HB 724 governing the duration of death benefits for eligible parents.

The adopted amendments to §132.11 of this title provide that death benefits shall be paid in equal shares to surviving eligible parents 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. These adopted amendments also provide that the amount paid may not exceed one payment per household and may not exceed 104 weeks. These adopted amendments to §132.11 of this title are consistent with provisions of HB 724 governing the distribution of death benefits to eligible parents.

**3. HOW THE SECTION(S) WILL FUNCTION.** The adopted amendments to §132.6 of this title amends the title of this section to reflect its applicability to eligible parents. These adopted amendments redesignate subsection (b) of §132.6 of this title as subsection (c) and adds a new subsection (b). Subsequent subsections are redesignated accordingly. New §132.6(b) defines “eligible parent” and provides when an “eligible parent” is entitled to receive death benefits. The adopted amendment to §132.6(c) requires a person applying for death benefits as an “eligible parent” to submit proof of relationship to the deceased. It also requires the person to submit proof of receipt of burial benefits

unless the claim for death benefits is filed at the same time as the claim for burial benefits or the claim for burial benefits is pending at the time the claim for death benefits is filed.

The adopted amendment to §132.9 of this title adds subsection (d) which sets out the duration of death benefits that are to be paid to an eligible parent. This adopted amendment also amends the title of this section to reflect its applicability to eligible parents.

The adopted amendments to §132.11 of this title amend subsection (d) of that section to clarify that subsection (d) applies to legal beneficiaries who are surviving dependents of the deceased. These adopted amendments redesignate subsection (e) and (f) as subsection (f) and (g), respectively, and creates a new subsection (e). New subsection (e) provides for how death benefits are to be distributed to eligible parents.

#### **4. SUMMARY OF COMMENTS AND AGENCY'S RESPONSE.**

**Comment:** A commenter states that §132.6 improperly interprets the definition of "eligible parent" set out in Tex. Labor Code §408.182(f)(4). This commenter states that the definition of "eligible parent" should be interpreted to require only adoptive parents and stepparents to receive burial benefits in order to establish entitlement to death benefits. The commenter interprets the "eligible parent"

definition to not require a biological parent to receive burial benefits in order to establish entitlement to death benefits.

**Agency Response:** The Division disagrees with this commenter's interpretation of "eligible parent" in Tex. Labor Code §408.182(f)(4). Tex. Labor Code §408.182(f)(4) defines "eligible parent" as "the mother or the father of a deceased employee, including an adoptive parent or a stepparent, who receives burial benefits under Section 408.186." This statute then goes on to specifically exclude parents whose parental rights have been terminated. Tex. Labor Code §408.182(f)(4) clearly sets out two requirements a person must meet in order to qualify as an "eligible parent." First, the person must be the mother or the father of the deceased employee. Adoptive parents and stepparents qualify as a mother or father. Parents whose parental rights have been terminated do not qualify. Second, the parent must receive burial benefits under Tex. Labor Code §408.186. The phrase "including adoptive parents and stepparents" in Tex. Labor Code §408.182(f)(4) must be interpreted to mean "mother" and "father" includes adoptive parents and stepparents in addition to biological parents. According to the Code Construction Act, specifically Tex. Gov't Code §311.005(13), "[i]ncludes' and 'including' are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded." "Including adoptive parents and stepparents" should not be read to mean that only adoptive parents

and stepparents must receive burial benefits in order to qualify as an eligible parent.

**Comment:** A commenter recommends that the term “eligible parent” be more clearly defined. The commenter also requests clarification on whether the stepparent is required to be married to the natural or adoptive parent at the time of the injured employee’s death in order to be considered an “eligible parent.”

**Agency Response:** The Division does not agree that a further definition of “eligible parent” is necessary. The definition of “eligible parent” in §132.6(b) tracks the definition of “eligible parent” in Tex. Labor Code §408.182(f)(4). This definition is not vague. It uses terms of common understanding. “Eligible parent” is the mother or the father of the deceased employee, including an adoptive parent or a stepparent, who receives burial benefits. A parent whose parental rights have been terminated is not an “eligible parent.” With regard to the commenter’s request for clarification regarding stepparents, the Division does not agree that any further definition or clarification of stepparent in this rule is necessary. Stepparent is a term that has a commonly accepted meaning. A stepparent is the spouse of a person’s mother or father by a later marriage. If a person is not married to the deceased employee’s biological or adoptive parent by a later marriage at the time of the employee’s death, then that person is not the stepparent of the deceased employee.

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

**For:** The Boeing Company

**For with changes:** None

**Against:** None

**Neither for nor against, with recommended changes:** Office of Injured  
Employee Counsel

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

Labor Code §402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under Labor Code Title 5. 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 §408.181 requires an insurance carrier to pay death benefits to the legal beneficiary if a compensable injury results in death. Labor Code §408.182 requires death benefits to be paid to surviving eligible parents of the deceased employee 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 §408.183 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.

## **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. 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 (relating to Burial Benefits), but does not include a parent whose parental rights have been terminated.

(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 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 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 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.

**§132.9. Duration of Death Benefits for an Eligible Grandchild, Eligible Dependent, and Eligible Parent**

(a) A grandchild, who is eligible to receive death benefits and is a minor at the time of the employee's death, is entitled to receive benefits until the earlier of:

- (1) the date on which the grandchild turns 18; or
- (2) the date of death of the grandchild.

(b) A grandchild, who is eligible to receive death benefits and is not a minor at the time of the employee's death, is entitled to receive benefits until the earlier of:

- (1) the date of death of the grandchild; or
- (2) the expiration of 364 weeks of death benefit payments.

(c) Any other dependent, including a parent, stepparent, sibling, or grandparent of the deceased employee, who is entitled to death benefits shall receive benefits until the earlier of:

- (1) the date of death of the beneficiary; or
- (2) the expiration of 364 weeks of death benefit payments.

(d) An eligible parent who is entitled to receive death benefits shall receive benefits until the earlier of:

- (1) the date the eligible parent dies; or
- (2) the date of the expiration of 104 weeks of death benefit payments.

**§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 may not exceed 104 weeks.

(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 \_\_\_\_\_, 2008.

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Stanton K. Strickland  
Deputy Commissioner, Legal Services  
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, 132.9, and 132.11 specified herein, concerning eligible parents and death benefits, are adopted.

**AND IT IS SO ORDERED**

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ROD BORDELON  
COMMISSIONER OF WORKERS' COMPENSATION

ATTEST:

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Stanton K. Strickland  
Deputy Commissioner, Legal Services

COMMISSIONER'S ORDER NO.