

Policy

If a worker dies as a result of a work-related injury/disease, the worker's survivors are entitled to survivors' benefits based on their dependency status and the number of dependants.

Purpose

The purpose of this policy is to provide guidelines respecting the determination of survivors' benefits for the dependents of deceased workers who were injured prior to January 1, 1998 and died as a result of their work-related injury/disease on or after April 1, 1985.

Guidelines

For the definition of dependent children or other dependants, see 20-01-02, Definitions and Application Dates.

If a work-related injury/disease results in death, the WSIB pays funeral expenses as outlined in 20-03-02, Burial Expenses. In addition, the deceased worker's survivors may be entitled to a once-only lump sum payment and/or periodic (monthly) payments as outlined below.

Spouse with no children

A surviving spouse with no children is entitled to a once-only lump sum payment and periodic payments. The periodic payment is based on 40 per cent of the deceased worker's net average earnings (NAE) at the time of the injury, plus 1 per cent of the NAE for each year the spouse is over the age of 40, or minus 1 per cent of the NAE for each year the spouse is under 40. The maximum payable is 60 per cent, and the minimum is 20 per cent.

Spouse with children

If there is a surviving spouse and one or more children of the deceased worker, the spouse receives periodic payments in an amount equal to 90 per cent of the deceased worker's NAE. Once the youngest child turns 19, the spouse is generally entitled to periodic payments the same as a spouse with no children.

Periodic payments in respect of a child of a deceased worker end when the child reaches the age of 19 unless

- the child is an invalid, or
- the WSIB views it advisable for the child to pursue further education (see 20-03-12, Child 19 Years or Older Continuing in Education).

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Children's Aid Society

If the surviving spouse loses custody of the child to the Children's Aid Society, the WSIB determines whether the child has been proclaimed a ward of the society or a ward of the Crown.

If the child is made a ward of the society, the periodic payment to the spouse continues as is, as the loss of custody is temporary.

If the child is made a ward of the Crown, or is adopted, the spouse is generally entitled to periodic payments the same as a spouse with no children based on the spouse's age at the time the child is made a ward of the Crown. This is effective the date the child is made a ward of the Crown or adopted, whichever is earlier.

Dependent children, no spouse

If there is no spouse entitled to periodic payments and the deceased worker is survived by only one dependent child, the child is entitled to periodic payments equal to 30 per cent of the deceased worker's NAE.

If there is no spouse entitled to periodic payments and the deceased worker is survived by more than one dependent child, the children are entitled to periodic payments, as a group, equal to 30 per cent of the NAE, plus an additional 10 per cent for each dependent child to a maximum of 90 per cent of the NAE.

The same criteria of age and continuing education apply as in the case of a spouse with children.

If there is no surviving spouse who is entitled to a lump sum payment, the worker's dependent child or children is/are entitled to receive a once-only lump sum payment.

A child to whom the deceased worker stood "in the role of parent" is not entitled to survivors' benefits as a surviving child of the deceased worker. Such a person is a dependant and may be entitled to survivors' benefits as a dependant.

Invalid child

An invalid child of the deceased worker does not have to be under the age of 19 at the time of the worker's death for survivors' benefits to be paid in respect of that child.

If a child of the deceased worker becomes an invalid while either

- entitled to survivors' benefits as a surviving child, or
- while a surviving spouse is entitled to survivors' benefits in respect of the child, survivors' benefits can be paid in respect of the child. Such an invalid child does not have to be in the care of a spouse.

Separated spouses

A separated spouse is entitled to survivors' benefits as a spouse if there is a separation agreement or judicial order requiring payment.

If no other person is entitled to receive survivors' benefits as a spouse and there is no surviving child or children of the deceased worker, the separated spouse is entitled to survivors' benefits the same as a spouse with no children. If there are surviving children, the separated spouse is entitled to survivors' benefits the same as a spouse with children.

In either case, the amount of benefits to which the separated spouse is entitled is set out in the *Workers' Compensation Act, R.S.O. 1990* and *Workers' Compensation Act, R.S.O. 1980*, and the amount of the support payments makes no difference.

If there is no separation agreement or judicial order, the WSIB considers whether the worker would have been required to make payment if an application had been brought while the worker was alive.

If more than one person is entitled to survivors' benefits as a spouse, the WSIB divides (apportions) benefits among those people when total survivors' benefits exceed the statutory maximum amounts. The total of the lump sum payments to these people is limited to the statutory maximum lump sum amount and the total of the periodic payments is limited to 90 per cent of the deceased worker's NAE.

Apportionment

In apportioning the benefits, the WSIB considers the

- relative degrees of financial and emotional dependence on the deceased worker at the time of the worker's death
- period of separation, if any, from the deceased worker at the time of the worker's death
- size of the relative entitlements of all others entitled under the legislation.

To determine this, the WSIB may consider

- financial statements from the spouses indicating their respective budgets and income
- the extent to which the individual relied upon financial support from the deceased worker
- how well the spouse is able to live without these benefits.

Where there is a surviving spouse, the children of a deceased worker generally have no entitlement to survivors' benefits in their own right. Benefits must be paid to the spouse in respect of the surviving children. The WSIB may not apportion benefits between a surviving spouse and surviving children.

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Person in the role of parent

The WSIB has the discretionary authority to grant periodic payments to a person who is acting "in the role of parent" to a surviving child if

- no one is entitled to receive periodic payments as a spouse
- the child is entitled to periodic payments as a dependant of the deceased worker, and
- the child is being maintained by a suitable person acting "in the role of parent," and the person is doing so in a manner the WSIB considers satisfactory.

NOTE

The WSIB may not apportion benefits between a surviving spouse and a person acting "in the role of parent" to a surviving child.

The periodic payment is the same as if the person was the spouse of the deceased worker. No lump sum is payable.

It may be possible for a series of persons to act "in the role of parent" to the surviving child or children during the period of entitlement.

Where there are two or more surviving children, there may be different people acting "in the role of parent" to each child. The WSIB has the discretionary authority to apportion periodic payments between these people. However, the maximum amount payable remains 90 per cent of the NAE.

Other dependants

The loss incurred by a dependant is the loss of periodic financial support. Such dependants are not entitled to a lump sum payment.

The loss need not merely mean the end of regular, monetary payments by the deceased worker, but may also include the loss of services provided by the deceased worker or payments made by the deceased worker on behalf of the dependant. The service or the payment must have provided the dependant with necessities and basic support. Necessities and basic support are those things which are needed or required to maintain a basic level of existence (such as room and board).

When calculating a loss and the period for which periodic payments should be paid, the WSIB considers

- how long the deceased worker would reasonably have been expected to have continued to provide support to the dependant
- where the deceased worker had regularly been providing services to the dependant, the cost to the dependant of obtaining these services elsewhere
- the dependant's ability to be self-supporting.

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The WSIB determines the periodic payments payable to the dependants by considering

- the deceased worker's NAE at the time of the injury, and
- monthly expenses as substantiated by the surviving dependants.

The periodic payments are payable only so long as the worker could have been reasonably expected to continue to support the dependant(s) had the worker not died.

In no case can the total periodic payments exceed 50 per cent of the deceased worker's NAE, subject to the statutory maximum.

Annual indexing

On January 1 every year, the WSIB indexes ongoing periodic payments by the indexing factor, see 18-01-14, Annual Indexing.

Workers entitled to 100 per cent permanent disability benefits

If a worker with an accident date prior to January 2, 1990 is entitled in one claim to total (100 per cent) permanent disability benefits, and then subsequently dies, a survivor is entitled to the same survivors' benefits as if the worker had died as a result of the work-related injury/disease.

How dependants claim

The WSIB sends a dependency claim form to the dependent(s), which must be completed, signed, witnessed, and returned to the WSIB with any requested documentation. The WSIB is responsible for returning these documents by registered mail. Once all of this information is on file, the claim can be adjudicated.

Application date

This policy applies to all decisions made for entitlement periods on or after January 1, 2018 for a work-related death that occurred on or after April 1, 1985 as a result of an accident that occurred prior to January 1, 1998.

Document history

This document replaces 18-07-08 dated March 3, 2008.

This document was previously published as:

- 18-07-08 dated January 5, 2005
- 18-07-08 dated October 12, 2004
- 05-03-10 dated August 1, 2003.

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References

Legislative authority

Workplace Safety and Insurance Act, 1997, as amended
Section 111

Workers' Compensation Act, R.S.O. 1990, as amended
Sections 1(1), 35, 144, 145, 146

Workers' Compensation Act, R.S.O. 1980, as amended
Sections 36, 45(11)

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