

**NOTICE OF PUBLIC MEETING
WORKERS' COMPENSATION
MANAGEMENT-LABOR ADVISORY COMMITTEE
SUBCOMMITTEE**

April 11, 2008
1:00 p.m. – 3:00 p.m.
Conference Room 260, Labor & Industries Building
350 Winter Street NE, Salem, Oregon
(A map is available upon request)

Committee Members Present:

Tracy Brill, Portland Fire Fighters Association, Portland
Lon Holston, Laborers' International, Local 483, Portland
John Kirkpatrick, IUPAT District Council, Portland
Greg Miller, Gunderson LLC, Portland
Mike O'Rourke, Plumbing and Steamfitters UA 290, Tualatin
Sheri Sundstrom, Hoffman Construction Company, Portland

Committee Members Excused:

Linda Barno, ESIS, Inc., Portland
Ellen Cutler, Harry and David Operations Corp., Medford
Bob Shiprack, Oregon Building Trades Council, Portland
Cory Streisinger, Ex-Officio Member, Department of Consumer and Business Services, Salem

DEATH BENEFITS SUBCOMMITTEE

Sheri Sundstrom, subcommittee chair, called the meeting to order at 1:03 p.m.

The committee reviewed the March 14, 2008 MLAC death benefits meeting minutes. Cara Filsinger, acting committee administrator, received a request by Dan Schmelling to make a correction to the minutes. The committee approved the minutes with the corrections.

Statutory Beneficiaries for Fatal Benefits – Mary Schwabe, Workers' Compensation Division (WCD)

Mary Schwabe, manager of the Compliance Section of WCD, presented information regarding statutory beneficiaries for fatal benefits. Ms. Schwabe provided a memo and chart explaining the current statutory categories of beneficiaries (see next page).

Spouse and Children		
	<i>Formula for Monthly Benefit</i>	<i>statute</i>
Burial	Up to 10 x AWW ¹	204(1)
Spouse		
Surviving spouse until remarriage	4.35 x 66 2/3 % AWW	204(2)(a)
Remarriage allowance	36 x monthly benefit (lump sum)	204(3)
Children and surviving spouse		
Each child up to age 18 (or 23 if in school) when child is substantially dependent on spouse for support	4.35 x 10% AWW	204(2)(b) 204(2)(e) 204(7) 204(8)
Each child up to age 18 (or 23 if in school) when child is <u>not</u> dependent on surviving spouse	4.35 x 25% AWW	204(2)(c) 204(2)(e) 204(7) 204(8)
If surviving spouse dies, payment changes for each child up to 18 (or 23 if in school)	4.35 x 25% AWW	204(2)(d) 204(2)(e) 204(7) 204(8)
Maximum total benefit for spouse and child benefit (unless no surviving spouse)	4.35 x 133 1/3% AWW	204(2)(f)
Children and no surviving spouse		
Each child up to age 18 (or 23 if in school)	4.35 x 25% AWW (Maximum 4.35 x 133 1/3% AWW)	204(4) 204(4)(c) 204(8)

Other Dependents		
	<i>Formula for Monthly Benefit</i>	<i>statute</i>
Other dependents ² up to age 18 (or 23 if in school)	50 percent of the average monthly support actually received by the dependent from the worker in the 12 months before the death	204(5)(a) and (b)
Cohabitants and children (over one year prior to injury, with children living as a result of relationship)	Same benefits as if legally married	226
Maximum total benefit for other dependents	4.35 x 10% AWW	204(5)(c)

¹ AWW = state average weekly wage, currently \$756.80

² 656.005(10) "Dependent" means any of the following-named relatives of a worker whose death results from any injury: Father, mother, grandfather, grandmother, stepfather, stepmother, grandson, granddaughter, brother, sister, half sister, half brother, niece or nephew, who at the time of the accident, are dependent in whole or in part for their support upon the earnings of the worker. Unless otherwise provided by treaty, aliens not residing within the United States at the time of the accident other than father, mother, husband, wife or children are not included within the term "dependent."

Ms. Schwabe said in terms of fatality benefits in Oregon it is fairly straight forward with two groups as beneficiaries: the surviving spouse and minor children (with accommodation for education). There are additional provisions for dependent relatives based on how much support they received in the last year. She said there is no provision in Oregon law or benefits other than the burial allowance to a non-dependents.

Ms. Sundtrom asked under 'other dependents' it says, "50 percent of the average monthly support actually received by the dependent from the worker in the 12 months before the death" - what if 50% of the average monthly support is more than what they would get as a spouse or children?

Ms. Schwabe replied that last line under 'other dependents' has a maximum on the last line. Based on the current average weekly wage, the maximum amount would come out to \$329.00 so the insurer would look for evidence of what type of support had been paid on average of each month. This would then be calculated up to a maximum of \$329 a month for only one dependent. If there are multiple other dependents, the law for spouse, surviving children and dependents works to reduce the children's benefits proportionately to stay within that maximum amount.

Ms. Filsinger clarified that there are two maximums. One maximum for the spouse and children benefit and another for other dependents.

Ms. Schwabe explained under the 'spouse and children' chart there is a maximum total benefit for spouse and child at 133 1/3%. She calculated it out to just under \$4400.00 per month and based on the maximums this would cover a spouse and six children. There could also be scenarios where there are other dependents being paid based on the 'other dependent' maximum.

Ms. Schwabe looked into the statutory definitions on children, which are referring to when the child has been substantially dependent for support. This term is not defined in statute. What insurers typically do, which is seen at audit, at the time of initially processing the fatality benefits they ask the surviving spouse for documentation that the children have been on tax returns claimed as dependents or that there was a court order for child support. Not all insurers do this – it is on a case by case basis. Ms. Schwabe mentioned the auditors have said that it has never really been an issue in terms of road blocks for biological parents but they do look for that kind of documentation when the relationships are different.

States with Death Benefit Payments to Non-dependents – Mary Schwabe, WCD

Ms. Schwabe presented information regarding states with death benefit payments to non-dependents that was provided by Mike Manley, Research Coordinator for the Information Management Division. At the request of the subcommittee, laws, rules, and other information from different states were examined to determine what happens in the situation where a worker dies leaving no current dependents. Twenty-one states were identified that allowed benefits to be paid to non-dependent parties, which include the workers' estate, non-dependent parents, children or other relatives and in some cases a state agency or special fund.

Ms. Schwabe explained the charts (see below) provided by Mr. Manley. In the first chart, seventeen states provide fixed benefit amounts when there are no dependents otherwise being paid for that fatality. Of the seventeen states, eight of them allow the benefits to be paid to the estate and 5 to a state fund.

Table 1. States with Death benefits in fixed amounts, payable to non-dependents, when no dependent benefits are payable.		
State	Amount	Paid to:
Alabama	\$7,500	Estate
Alaska	\$10,000	State fund
Colorado	\$15,000	Parents or state fund
Georgia	\$10,000	State fund
Idaho	\$10,000	State fund
Iowa	\$45,000	Estate
Kansas	\$25,000	Estate
Kentucky	\$50,000	Estate
Louisiana	\$75,000	Each parent
Maine	\$3,000	Estate
Minnesota	\$60,000	Estate
Montana	\$3,000	Parents
New York	\$50,000	Parents or estate
North Dakota	\$12,500	To surviving nondependent child or children; then parents, then to living brothers and sisters, then grandparents, if any.
Oklahoma	\$5,000	Heirs-at-law
Tennessee	\$20,000	Estate
Wisconsin	\$20,000	State fund
MEDIAN	\$15,000	n/a

Ms. Schwabe said the second chart reflects four additional states that have variable amounts based on a formula that varies. In cases where no benefits are otherwise paid to other dependents two other states allow the benefits to go to a state fund. Among the twenty-one states there are seven that allow the monies to go to a state fund and 8 that allow the funds to be paid to the estate.

Table 2. States with Death benefits in variable amounts determined by formula, payable to non-dependents, when no dependent benefits are payable.		
State	Payment	Paid to:
California	Accrued and unpaid compensation	The Department of Industrial Relations.
Hawaii	If no dependent, then 25% of 312 weeks times \$678 (currently \$52,884) to the nondependent parents	Other state fund

Table 2. States with Death benefits in variable amounts determined by formula, payable to non-dependents, when no dependent benefits are payable.		
<i>(Continued on next page)</i>		
South Carolina	Commuted value of periodic benefits at 66 2/3% of the deceased worker's AWW	To surviving nondependent children; if none then to surviving parents; if none to the deceased's personal representative the actual costs for burial expenses and the administration of the deceased's estate, remainder to the commission.
Texas	75% of 312 (234 weeks) x average weekly wage	Other state fund

Mr. Kirkpatrick asked for the state fund examiner is there a common thread to state fund for payouts and amounts for eligible beneficiaries?

Ms. Schwabe did not have an answer as Mike Manley was not able to attend the meeting. Ms. Filsinger said staff looked at the laws for each state and did not look specifically at how each one works in practice. She said staff could research this further for the next subcommittee meeting.

Ms. Sundstrom clarified in states like Texas, if someone dies and they do not have any dependents then the death benefits go directly to the state fund.

Ms. Schwabe said in other state's statutes where it references parents get the benefit, the chart is referencing non-dependents, it is unclear how these states are defining parents. Does this include step parents or other arrangements? Also it is unclear whether they are ever considered dependents in those states or like Oregon it is a matter of if support has been paid to them or not.

Ms. Sundstrom said the dependents in the statutes are listed clearly however this does not cover the Wilbergers that testified before the committee. The Wilbergers had a daughter with loans that the family co-signed for and they would not fall into the category. They would not fall under categories in statutes as beneficiaries.

Ms. Filsinger mentioned the Behurst family would also not fall into the beneficiaries category. They do not fall under the dependent definition as it is written now.

Mr. Kirkpatrick said to address the Behurst's issue an alternate system would need to be established, which some of the other states have, where a set amount would go to the estate. Through the estate the benefits would go to the dependents such as parents that are dependent 50% of the time.

Ms. Sundstrom said she is interested to know more about Colorado, New York, Montana, Oklahoma – states where death benefits go to the parents or the estate. She asked for Oklahoma, what does the term heirs-at-law mean?

Ms. Schwabe pointed out that at least in one state the benefit is not given to beneficiaries at all but go straight to preferred worker or handicapped worker fund.

Ms. Filsinger said if there was a death on the job then there is a penalty paid to the fund. In some states this is how the dollar amount is used.

Ms. Sundstrom pointed out Hawaii, if there are no dependents then a portion goes to the non-dependent parents. In the cases of the Wilbergers and Behurst's they were non-dependent parents. She is curious to know more about Hawaii's death benefit payments.

Mr. Kirkpatrick questioned how the states come up with all the amounts for death benefit payments. He thought the amounts seemed to be scattered all over the board. Ms. Sundstrom agreed with this observation.

Ms. Filsinger said if Mike Manley were there to present this he would remind the committee that each state has a compilation of benefits and this might or might not be the only benefit depending on the state. This chart is simply selecting out the question that arose in the last meeting regarding in the case of the non-dependent situation what do other states do? This might explain some of the dollar variation among states.

Ms. Sundstrom requested that the division provide more details regarding what other states do for non-dependent benefits.

Mr. Kirkpatrick said he wondered in the life of a benefit what is the monetary expectation? How does Oregon compare to amounts paid for death benefits in other states? Ms. Filsinger offered to do research regarding this issue.

Mr. Kirkpatrick said the Wilbergers and Behurst's point is well taken. The state is getting off the hook when, like in these families' situations, when a young single person is killed on the job there is not really any class of beneficiary there. There is only a check for the funeral expense and that is it. Parents are left with potential situations. He didn't think anyone intended it to be that way. Mr. Miller agreed with Mr. Kirkpatrick.

Ms. Sundstrom said the next meeting will be specific to dollar amounts, discussion on the burial funeral expense and what the benefits actually are. She requested the hand out from January to be redistributed regarding burial benefits by state. Also, adding the information for those states that have other benefits if its not already in the chart produced by Mike Manley.

Mr. Miller appreciates the information from other states. He said this is something that is not talked about very much and needs to be looked at.

Ms. Sundstrom asked about burial max for other states, same as the other benefits, do they take in the receipts and that's how they pay out? Ms. Filsinger said the division is compiling similar information that was requested at the last meeting: are benefits given in a lump-sum or are they like Oregon where

they have a maximum? The division is putting together this follow up information for the next meeting.

Mr. Miller believes it is up to the family to decide what is appropriate. Burials can be over \$5000 dollars, while cremation is less than \$1000 dollars. An average burial is \$7000 dollars. Maybe pay the balance of the benefit if a family chooses to do a cremation to do with as they will. He said the issue is that some families make burial decisions because they cannot afford it.

Ms. Sundstrom said it is great that Jennifer Flood, Ombudsman for Injured Workers, is involved because people may not even know that they get a burial benefit.

The next subcommittee meeting will be on June 9th at 9 a.m. in conference room 260 in the Labor & Industries building.

The meeting was adjourned at 10:55 a.m.