



## **Arizona Workers' Compensation Death Benefits**

Unfortunately, despite society's best efforts to maintain safe working environments, individuals will continue to die as a result of industrial injuries. Under the authority of A.R.S. § 23-1046(A-C), the State of Arizona provides specific benefits for certain dependents of deceased workers. A careful analysis of this statute offers an understanding of the types of benefits available to the families of deceased workers.

Of course, workers' compensation would cover the cost of appropriate medical treatment tendered to the deceased as a result of the industrial injury leading to his or her death. Wage replacement benefits, referred to as temporary total disability payments and subject to a statutory maximum, would also be payable through the date of death. Furthermore, the aforementioned statute also provides a burial allowance of up to \$5,000. It is payable either directly to the undertaker or any other person, upon the presentation of appropriate receipts, who incurred burial expenses on behalf of the deceased. In a similar fashion, a burial allowance of up to \$800 is available for a family member who dies while receiving death compensation benefits.

A somewhat confusing aspect of A.R.S. § 23-1046(A) are the statutory limitations regarding who is entitled to death compensation benefits. Under Arizona law, *only* the following individuals are *potentially* eligible for death compensation benefits: a surviving spouse, minor children or stepchildren, parents or stepparents, and minor siblings. Furthermore, the statute is hierarchal; it mandates that a surviving spouse and children are given priority over all other potential beneficiaries. In other words, if the deceased is survived by a spouse or children, parents and siblings are automatically ineligible to receive death compensation benefits. If the deceased was single with no children, then the surviving parents can become eligible, as long as one or both can demonstrate partial or total financial dependence on the deceased. Finally, if no parents can assert a claim for death compensation benefits, then the deceased's siblings under the age of 18 can become eligible. Again, however, the siblings must demonstrate total or partial monetary dependence on the deceased.

A few important statutory exceptions apply to the provision of death compensation benefits. First, children's and stepchildren's eligibility for benefits can be extended until they reach the age of 22, as long as they are continually enrolled as a full-time student in an accredited educational institution. Otherwise, the benefit ceases on their eighteenth birthday. However, if a child or stepchild has a physical and/or mental handicap that prevents him or her from becoming financially independent, benefits could be payable throughout the child's entire life. Second, no surviving child is eligible for benefits if he or she has been adopted by another person prior to the employee's death. Finally, when the spouse of a deceased employee remarries, his or her entitlement to benefits terminates after the issuance of a lump sum payment that equates to two years of payments at his or her current monthly death benefit rate. If a spouse never remarries, the entitlement to a monthly death benefit continues for the remainder of his or her life.

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### **ARIZONA MUNICIPAL RISK RETENTION POOL**

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The statutory death benefits for the various beneficiaries described above are as follows: (Please note that the state's current maximum average monthly wage [AMW] for injuries occurring in 2012 is \$4,062.29.)

**Surviving Spouse with no Children:** 66.67 percent of the deceased's AMW. For example, with a maximum AMW of \$4,062.29, the spouse would receive \$2,708.33 a month until his or her death or remarriage.

**Surviving Spouse with Children:** 35 percent of the deceased's AMW to the spouse, with the remaining 31.67 percent of the AMW being allocated to one or evenly split among multiple surviving children. Once no surviving children are eligible for death benefits, the spouse would then receive 66.67 percent of the AMW until his or her death or remarriage.

**Surviving Children with no Surviving Spouse:** 25 percent of the AMW for one child (and 15 percent for each additional eligible child, to be divided equally) up to a maximum of 66.67 percent of the AMW.

**Parents:** 25 percent of the AMW for one wholly dependent parent, 40 percent of the AMW if both parents are totally dependent. If one or both is only partially dependent, 15 percent of the AMW is divided equally between the two.

**Siblings:** 25 percent of the AMW to one brother or sister who is totally dependent. If more than one brother or sister is totally dependent, 35 percent of the AMW is split evenly among all the siblings. If none of the siblings are totally dependent, but one or more are partially dependent, 15 percent of the AMW is evenly split between all the individuals.

Significantly, under A.R.S. § 25-111, the State of Arizona does not recognize a common law marriage formulated via a mutual agreement between a man and a woman and/or their cohabitation without a civil or religious ceremony. (A.R.S. § 25-101 specifically prohibits marriages between two people of the same sex, as well as marriages between individuals with a certain degree of blood-relation.) A.R.S. § 25-111 mandates that a legally valid marriage can only exist after the issuance of an appropriate license by the state. Then, the marriage must be solemnized by an individual legally entrusted with that authority before the license's expiration. Furthermore, a legally valid marriage cannot exist simply by a contractual agreement between a man and a woman without a marriage ceremony. As a result, two individuals of differing sexes who have simply cohabitated in Arizona are not legally married, so neither individual would be eligible for death benefits as a surviving spouse in the event of a work-related death of their partner.

On the other hand, under the authority of A.R.S. § 25-112, Arizona does recognize common law marriages between a man and a woman validly contracted under the laws of another state, even if the statutory requirements of A.R.S. § 25-111 are not met. Therefore, when two individuals of differing sexes have met their respective state's legal requirements to formulate a common law marriage, the validity of that marriage must be recognized should the couple

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move to Arizona at a later date. Under this scenario, if one party to the marriage dies as a result of a workplace injury, the other individual would be eligible for death benefits as a surviving spouse because the marriage is legally valid in Arizona.

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