



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation

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Lifetime Income Benefits and Death Benefits in the Texas Workers' Compensation System

Background

The 71st Texas Legislature passed Senate Bill 1 (effective January 1, 1991), which adopted a new workers' compensation Act and brought several reforms to the workers' compensation system. Instrumental in the reforms was the creation of a new workers' compensation income benefit structure. As part of this reform, the Texas Legislature created several types of benefits for injured employees:

- Income benefits (Temporary Income Benefits, Impairment Income Benefits, Supplemental Income Benefits and Lifetime Income Benefits);
- Medical benefits;
- Death benefits; and
- Burial benefits.

The benefit structure was established to provide similar benefits to employees who suffer similar injuries and provide benefits proportionate to the severity of the injury. The most severe injuries and fatalities are compensated with Lifetime Income Benefits or Death Benefits.

Lifetime Income Benefits

Lifetime Income Benefits (LIBs) were adopted under Texas Labor Code §408.161 and state: "Lifetime income benefits are paid until the death of the employee for:

- Total and permanent loss of sight in both eyes;
- Loss of both feet at or above the ankle;
- Loss of both hands at or above the wrists;
- Loss of one foot at or above the ankle and the loss of one hand at or above the wrist;
- An injury of the spine that results in permanent and complete paralysis of both arms, both legs or one arm and one leg;
- A physical traumatic injury to the brain resulting in incurable insanity or imbecility; or
- Third degree burns that cover at least 40 percent of the body requiring grafting, or third degree burns covering the majority of both hands or one hand and the face."

An injured employee becomes eligible for LIBs whenever a work-related injury or illness causes the employee to meet the conditions specified above. Injured employees who believe they are eligible for LIBs may file a written request with the insurance carrier. Insurance carriers are required to respond to requests within 60 days of receiving the request. If approved, the injured employee will receive 75 percent of their average weekly wage for the life of the injured employee. Additionally, the insurance carrier is required to apply a 3 percent cost of living increase annually. There are maximum and minimum weekly benefit amount payable to LIBs. Currently, the maximum weekly rate is \$895 and the minimum weekly rate is \$134. Lifetime Income Benefits are not taxable.

Historically, there are less than 100 LIBs claims a year.

Death Benefits

Death Benefits were established under Texas Labor Code §408.181 and are paid to legal beneficiaries, including the spouse, dependent children or grandchildren, or dependent parents or grandparents. If there are no legal beneficiaries, then a portion of these benefits (maximum of 104 weeks) may be paid to non-dependent parents. Texas Labor Code §408.182 outlines the distribution of Death Benefits to eligible beneficiaries. Eligible beneficiaries apply for Death Benefits with the insurance carrier and file notice with the Division of Workers' Compensation (Division). If there are no eligible beneficiaries, the insurance carrier is required to make payment to the Subsequent Injury Fund.

Death Benefits are paid at a rate of 75 percent of the deceased employee's average weekly wage. These benefits are subject to statutory weekly maximums, currently \$895 per week, but are not subject to statutory minimums. Similar to Lifetime Income Benefits, Death Benefits are not taxable.

Historically, there are approximately 200-250 Death Benefit claims a year.

Division of Workers' Compensation Compliance Actions

Since 2013, the Division has conducted performance audits on insurance carriers' duties to timely and accurately pay LIBs and Death Benefits. Prior to these audits, the Division received relatively few complaints about the timely or accurate payment of LIBs or Death Benefits.

To date, the Division has completed 28 performance audits of insurance carriers and will likely continue this type of audit for the next several years. The compliance rate for audited insurance carriers has been low with less than 80 percent of the LIBs and Death Benefit claims being paid accurately. As a result of these audits, the Division has helped return over \$655,000 in income benefits owed, but not previously paid, to injured employees or their beneficiaries. The Division has also issued approximately \$700,000 in monetary penalties to these non-compliant insurance carriers.