

Distribution of Benefits in a Death Claim

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Media Contact

Powers Tanis
Director of Strategic Marketing and
Communications 803.221.4907
email@mgclaw.com

When a worker dies from an injury by accident within the course of his employment, there is a statutory scheme for the distribution of that worker's compensation. This article is intended to outline the distribution scheme after a proper dependency investigation and hearing to determine which persons were "dependent" upon the employee for support.

S. C. Code Ann. § 42-9-290 provides that upon the death of an employee from an accident (and within certain timeframes), the employer shall cause to be paid to those "wholly dependent" on the employee 500 weeks of compensation, plus burial expenses of not more than \$2500. The employee's spouse and children (under the age of 18 or dependent upon the employee, or age 19+ and enrolled in an educational institution) are statutorily presumed to be "wholly dependent," upon the deceased for support, however please note that illegitimate children, step children, and adopted children may be treated differently than legitimate, biological children. See S.C. Code Ann. § 42-9-110 and §42-1-70. In situations where the employee dies leaving a wife and two or more children, the wife can receive no less than one-half ($\frac{1}{2}$) of the benefits.

As to other cases of dependency including dependency in whole or part, the dependents may still be entitled to compensation, but they must prove their dependency for more than three months prior to the accident. See S.C. Code Ann. §42-9-120. If there are wholly dependent persons, they take to the exclusion of any person that is partly dependent. See S.C. Code Ann. § 42-9-130. If there are no wholly dependent persons, then partial dependents shall take in shares designed to approximate their degree of dependency.

Where the employee leaves no whole dependents, the compensation (or the commuted value thereof) is distributed as follows:

1. Where there are partial dependents: the partial dependent(s) take in their share of dependence, plus no more than \$2500 for funeral expenses. For instance, a partially dependent child who receives \$30/week out of the employee's average weekly wage of \$300 would receive 10% of the employee's compensation. The employer would also be liable for up to \$2500 in funeral expenses. The remainder of the compensation would be distributed first to the non-dependent children of the employee; and then if there were no surviving non-dependent children, then to the employee's surviving parents. In cases without partial dependents, funeral expenses are deducted from the 500 weeks of compensation.
2. Where there are no partial dependents: the compensation is first distributed equally amongst the non-dependent children, less burial expenses. If there are no non-dependent children, then the compensation is paid to the employee's surviving parents.
3. Where there are no surviving dependents or non-dependents, then the

funeral costs and costs of estate administration are paid to the employee's personal representative; and the remainder is paid to the Commission.

4. If any amount is owing to a parent in the above items, either parent may bring a motion to limit or prevent benefits to the other parent upon a showing that the parent failed to provide support to the employee prior to death. See S.C. Code Ann. §42-9-140.

Often times the distribution is sorted out by the Commission, but it is still important to understand how the distribution scheme works. In the event the proper procedures have not been followed, it is possible for an employer (and its carrier) to be subject to multiple liabilities. See *Airco, Inc. v. Hollington*, 269 S.C. 152, 236 S.E.2d 804 (1977).

ABOUT THE AUTHOR

Patrick Martin is an attorney with McAngus Goudelock & Courie. Mr. Martin may be reached at 864.239.4030 or at patrick.martin@mgclaw.com.

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