



Remarriage Prohibition

Final Proposal
December 17, 2014

Issue

A policy inconsistency exists between Workers' Compensation benefits and retirement benefits

A survivor who remarries will continue to receive retirement benefits but may lose Workers' Compensation benefits

Overview

Remarriage is not prohibited in any state administered retirement plan

Issue was addressed in 2007-2010

- 2007 & 2008, HB 1545 by Representative Kirby
- 2009 Interim
 - Legislature requested information from L&I
 - Studied by LEOFF 2 Board
- 2010, SB 6407 by LEOFF 2 Board

Background

Retirement Benefits for Survivors

- If a survivor selects a monthly benefit and remarries, there is no impact on their receipt of survivor benefits
- This is true for ALL state plans, not just LEOFF

Background

Worker's Compensation Benefits for Survivors

- **Immediate work-related death:** surviving spouses receive a monthly benefit, until they remarry.
- **Totally disabled, then die and it was related to the claim:** surviving spouses receive a monthly benefit, until they remarry.
 - Final lump sum settlement
 - Decline settlement, keep it in trust
- **Totally disabled, then die and it was not related to the claim:** benefits do not stop if a survivor option was chosen, even if the survivor remarries.

Background

Board Study

- In 2009 found 4 states without Remarriage Prohibition
- One had a specific exemption for LEOs and FFs

Administrative Issues

- Removing the prohibition from the Department of Labor and Industries (LNI) statutes could assist the agency
 - Challenges tracking survivor remarriages = overpayments

Options

Option 1 - Take no further action

Option 2 - Pursue Legislation with included Bill Language

Questions?

Contact:

Ryan Frost

Research Analyst

(360) 586-2325

ryan.frost@leoff.wa.gov



December 17, 2014

Remarriage Prohibition

FINAL PROPOSAL

By Ryan Frost

Research Analyst

360-586-2325

ryan.frost@leoff.wa.gov

ISSUE

A policy inconsistency exists between Workers' Compensation benefits and retirement benefits.

A survivor who remarries will continue to receive retirement benefits but may lose Workers' Compensation benefits.

OVERVIEW

None of the current Washington state administered retirement plans contain a prohibition on remarriage for a survivor receiving pension benefits. If a survivor remarries, their survivor pension benefits continue. However, Workers' Compensation benefits provided by the Department of Labor and Industries (LNI) to a survivor of a line of duty death can cease if the survivor remarries.

The Legislature has twice considered bills (HB 1545 in 2007 and 2008 introduced by Representative Steve Kirby, and HB 1212 in 2009 by the LEOFF Plan 2 Board) addressing the policy of terminating worker's compensation death benefits when the surviving spouse of certain public safety employees remarries. Neither bill passed. In the interim of 2009, several Legislative members requested LNI study the issue and to report back.

Also in the interim of 2009, the Board conducted a nationwide search in 2009 and found four states without remarriage prohibition on Worker's Compensation benefits. In fact, for one of those states there was a specific exemption for law enforcement officers and fire fighters.

In 2010, the Board introduced SB 6407 which provided several duty-related death benefits to LEOFF 2 members, including the elimination of the remarriage prohibition of Worker's Compensation benefits. It was overwhelmingly passed in the House, but the provision containing the elimination of remarriage prohibition was removed by the Senate before passing. No action has been taken by the Board since.

Administratively, removing the prohibition from LNI statues could assist the agency, as there has been challenges tracking survivor remarriages, resulting in overpayments.

At the September 24, 2012 Board meeting, a survivor of a law enforcement officer killed in the line of duty came to the Board and asked it to consider another attempt at passing a bill. At that time, the Board asked the staff to provide this follow-up.

BACKGROUND & POLICY ISSUES

Unlike retirement benefits, surviving spouses who are receiving Workers' Compensation death benefits cannot continue to receive the benefit after remarriage. The LEOFF Plan 2 Retirement Board has been contacted by survivors of members killed in the line duty regarding this policy.

Retirement Benefits for Survivors

If a member dies in the line of duty and has 10 or more years of service credit or is eligible to retire, the surviving spouse may choose between the following two benefits:

1. A lump sum payment of 150 percent of the member's accumulated contributions, or
2. A monthly benefit calculated as if the member had elected the Joint and 100% Survivor Option.

If the survivor elects the continuing benefit, the survivor will continue to receive the benefit for their lifetime; the benefit is actuarially reduced to reflect the cost of providing the benefit over the survivor's lifetime.

If a survivor remarries, it has no impact on the survivor's receipt of retirement benefits. Since inception, LEOFF Plan 2 has not contained any provisions with a prohibition on remarriage for survivors.

LEOFF Plan 1 at one point contained a prohibition on remarriage, that provision was removed from the plan by the Legislature in 1977. In 2002, a provision was added to LEOFF Plan 1 to make the 1977 legislation retroactive, allowing pre-1977 survivors to remarry and continue receiving survivor retirement benefits.

Workers' Compensation Benefits for Survivors

If a worker dies from a work-related injury or occupational disease, a surviving spouse receives a monthly benefit from Workers' Compensation. The amount of 60% of the worker's monthly wages at the time of death. No actuarial reductions are applied to this survivor benefit.

If the disabled worker dies and the death is related to their disabling work-related injury or occupational disease, the amount the survivor receives is also 60% of the worker's wages, but from the time of disablement. No actuarial reductions are applied to this survivor benefit.

If a surviving spouse in either case remarries, monthly benefit payments stops at the end of the month in which they remarry.

At the time of remarriage, survivors have two options:

1. Receive a final settlement and receive no further benefits under the claim.
2. Leave the settlement in trust with Workers' Compensation.
 - a. If the new marriage ends in death, annulment or divorce, the survivor can apply to reinstate the benefit as of the date of death or date the divorce becomes final.
 - b. Should the survivor die while the settlement is in trust, the survivor's estate is paid 50 percent of the remaining pension reserve or the settlement amount, whichever is less.

If the death is not related to the claim and a survivor option was selected, monthly survivor benefit payments do not stop. Similar to survivor retirement benefits, the worker's benefit was actuarially reduced to reflect the cost of continuing the benefit over the survivor's lifetime.

Legislative History

The Legislature has twice considered bills (HB 1545 – 2007-08, HB 1212 – 2009) addressing the policy of terminating worker's compensation death benefits when the surviving spouse of certain public safety employees remarries.

2007-08 Legislative Session. Legislation first introduced during the 2007 Legislative Session by Representative Steve Kirby would have allowed surviving spouses of LEOFF Plan 2 members, who are receiving Workers' Compensation death benefits, to continue to receive the benefit after remarriage. The 2007 bill did not receive a hearing. During the 2008 session, the bill was passed unanimously by the House of Representatives, but the bill did not move past the Senate Rules Committee. A Fiscal Note from the Department of Labor and Industries estimated the cost of the bill at \$201,662 in the 2007-09 biennium and \$21,536 in each of the 2009-11 and 2011-13 biennia.

2009 Legislative Session. New legislation was introduced in the 2009 session allowing the continuation of workers' compensation benefits after remarriage for surviving spouses of LEOFF Plan 2 members and Washington State Patrol Retirement System members who died in the course of employment or whose death is due to an occupational disease.

The bill passed the House of Representatives, but was amended in the Senate before being passed. The amendment requires the Workers' Compensation Advisory Committee to study issues relating to allowing a surviving spouse to continue to receive industrial insurance death benefits after remarriage. The amended bill was sent to Conference Committee, but did not proceed any further. The bill was returned to the House of Representatives for consideration during the 2010 session.

2009 Interim. Following the 2009 Legislative Session, Representative Steve Conway, Chair of the House Commerce and Labor Committee and Senator Jeanne Kohl-Welles, Chair of the Senate Labor, Commerce, and Consumer Protection Committee, sent a joint letter to Judy Schurke, Director of Labor and Industries requesting a study on the policy of terminating survivors' benefits upon remarriage. LNI's response can be found as Appendix A.

2010 Legislative Session. Legislation, which targeted taking care of the families of law enforcement officers' killed in line of duty during late 2009 and early 2010, was introduced during the 2010 session. This bill provides a comprehensive package of benefits to augment the existing duty-related death benefits.

As introduced, this legislation included a provision which would have eliminated the remarriage prohibition for workers' compensation benefits on surviving spouses of public safety employees killed in the course of employment. Surviving spouses who have already had their benefits suspended due to remarriage would have their benefits resume.

The legislation, as introduced, passed overwhelmingly out of the House of Representatives. However, a Senate amendment removed the remarriage prohibition provision of the bill. In place of the prohibition, the Senate increased the potential lump-sum payout a survivor could choose to take in the case of remarriage¹. Ultimately, the House concurred with the Senate amendment and passed the legislation without the remarriage prohibition.

¹ The surviving spouse may receive a lump sum of thirty-six times (increased from twenty-four times) the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself or fifty percent of the remaining annuity value of his or her pension, whichever is the lesser. HB 2519 (2010), Sec 3.

Administrative Issues

The requirement to determine eligibility for continuing benefits has created administrative challenges for the Department of Labor and Industries. In fact, the Department of Labor and Industries received an audit finding from the State Auditor's Office in 2006² for paying benefits to survivors who were no longer eligible due to remarriage. Eliminating this requirement may help the Department of Labor and Industries.

Policy Treatment in Other States

Preliminary research by the LEOFF Plan 2 Retirement Board has identified at least four states that do not stop survivor benefits upon remarriage. Those states include: Kansas, Minnesota, Nevada, and North Dakota. In the case of Nevada, the continuation of benefits after remarriage is an exception for surviving spouses of police officers or firefighters. See Appendix A.

POLICY OPTIONS

Option 1: Take no further action.

Option 2: Pursue Legislation with included Bill Language

SUPPORTING INFORMATION

Appendix A: Bill Draft

Appendix B: States Allowing Continuation of Benefits after Survivor Remarriage (2009)

² WA State Auditor's Office, Audit Report 6541, Released May 5, 2006

Appendix A
Bill Draft

Sec. 1. RCW 51.32.050 is amended to read as follows:

(1) Where death results from the injury the expenses of burial not to exceed two hundred percent of the average monthly wage in the state as defined in RCW 51.08.018 shall be paid.

(2)(a) Where death results from the injury, a surviving spouse of a deceased worker eligible for benefits under this title shall receive monthly for life, except as provided in (b) of this subsection, or until remarriage payments according to the following schedule:

(i) If there are no children of the deceased worker, sixty percent of the wages of the deceased worker;

(ii) If there is one child of the deceased worker and in the legal custody of such spouse, sixty-two percent of the wages of the deceased worker;

(iii) If there are two children of the deceased worker and in the legal custody of such spouse, sixty-four percent of the wages of the deceased worker;

(iv) If there are three children of the deceased worker and in the legal custody of such spouse, sixty-six percent of the wages of the deceased worker;

(v) If there are four children of the deceased worker and in the legal custody of such spouse, sixty-eight percent of the wages of the deceased worker; or

(vi) If there are five or more children of the deceased worker and in the legal custody of such spouse, seventy percent of the wages of the deceased worker.

(b) A surviving spouse of a member of the law enforcement officers' and firefighters' retirement system under chapter 41.26 RCW or the state patrol retirement system under chapter 43.43 RCW who is entitled to benefits under this section must continue to receive benefits under this section monthly for life.

(c) Where the surviving spouse does not have legal custody of any child or children of the deceased worker or where after the death of the worker legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children. The amount of such payments shall be five percent of the monthly benefits payable as a result of the worker's death for each such child but such payments shall not exceed twenty-five percent. Such payments on account of such child or children shall be subtracted from the amount to which such surviving spouse would have been entitled had such surviving spouse had legal custody of all of the children and the surviving spouse shall receive the remainder after such payments on account of such child or children have been subtracted. Such payments on account of a child or children not in the legal custody of such surviving spouse shall be apportioned equally among such children.

~~((e))~~ (d) Except as provided in (b) of this subsection, payments to the surviving spouse of the deceased worker shall cease at the end of the month in which remarriage occurs: PROVIDED, That a monthly

payment shall be made to the child or children of the deceased worker from the month following such remarriage in a sum equal to five percent of the wages of the deceased worker for one child and a sum equal to five percent for each additional child up to a maximum of five such children. Payments to such child or children shall be apportioned equally among such children. Such sum shall be in place of any payments theretofore made for the benefit of or on account of any such child or children. If the surviving spouse does not have legal custody of any child or children of the deceased worker, or if after the death of the worker, legal custody of such child or children passes from such surviving spouse to another, any payment on account of such child or children not in the legal custody of the surviving spouse shall be made to the person or persons having legal custody of such child or children.

~~((d))~~ (e) In no event shall the monthly payments provided in subsection (2) of this section: (i) Exceed the applicable percentage of the average monthly wage in 16 the state as computed under RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

(ii) For dates of injury or disease manifestation after July 1, 2008, be less than fifteen percent of the average monthly wage in the state as computed under RCW 51.08.018 plus an additional ten dollars per month for a surviving spouse and an additional ten dollars per month for each child of the worker up to a maximum of five children. However, if the monthly payment computed under this subsection(2)~~((d))~~ (e)(ii) is greater than one hundred percent of the wages of the deceased worker as determined under RCW 51.08.178, the monthly payment due to the surviving spouse shall be equal to the greater of the monthly wages of the deceased worker or the minimum benefit set forth in this section on June 30, 2008.

~~((e))~~ (f) In addition to the monthly payments provided for in subsection (2)(a) through ~~((e))~~ (d) of this section, a surviving spouse or child or children of such worker if there is no surviving spouse, or dependent parent or parents, if there is no surviving spouse or child or children of any such deceased worker shall be forthwith paid a sum equal to one hundred percent of the average monthly wage in the state as defined in RCW 51.08.018, any such children, or parents to share and share alike in said sum.

~~((f))~~ (g) Upon remarriage of a surviving spouse the monthly payments for the child or children shall continue as provided in this section, but the monthly payments to such surviving spouse shall cease at the end of the month, except as provided in (b) of this subsection. However, after September 8, 1975, an otherwise eligible surviving spouse of a worker who died at any time prior to or after September 8, 1975, shall have an option of:

(i) Receiving, once and for all, a lump sum of twenty-four times the monthly compensation rate in effect on the date of remarriage allocable to the spouse for himself or herself pursuant to subsection

(2)(a)(i) of this section and subject to any modifications specified under subsection (2)((~~d~~)) (~~e~~) of this section and RCW 51.32.075(3) or fifty percent of the then remaining annuity value of his or her pension, whichever is the lesser: PROVIDED, That if the injury occurred prior to July 28, 1991, the remarriage benefit lump sum available shall be as provided in the remarriage benefit schedules then in effect; or

(ii) If a surviving spouse does not choose the option specified in subsection (2)((~~f~~)) (g)(i) of this section to accept the lump sum payment, the remarriage of the surviving spouse of a worker shall not bar him or her from claiming the lump sum payment authorized in subsection (2)((~~f~~)) (g)(i) of this section during the life of the remarriage, or shall not prevent subsequent monthly payments to him or to her if the remarriage has been terminated by death or has been dissolved or annulled by valid court decree provided he or she has not previously accepted the lump sum payment.

(iii) After the effective date of this act, the monthly payments to the terminated under this section surviving spouse of a member of the law enforcement officers' and firefighters' retirement system under chapter 41.26 RCW or the state patrol retirement system under chapter 43.43 RCW shall resume regardless of remarriage.

((~~g~~)) (h) If the surviving spouse during the remarriage should die without having previously received the lump sum payment provided in subsection (2)((~~f~~)) (g)(i) of this section, his or her estate shall be entitled to receive the sum specified under subsection (2)((~~f~~))(g)(i) of this section or fifty percent of the then remaining annuity value of his or her pension whichever is the lesser.

((~~h~~)) (i) The effective date of resumption of payments under subsection (2)((~~f~~)) (g)(ii) of this section to a surviving spouse based upon termination of a remarriage by death, annulment, or dissolution shall be the date of the death or the date the judicial decree of annulment or dissolution becomes final and when application for the payments has been received.

((~~i~~)) (j) If it should be necessary to increase the reserves in the reserve fund or to create a new pension reserve fund as a result of the amendments in chapter 45, Laws of 1975-'76 2nd ex. sess., the amount of such increase in pension reserve in any such case shall be transferred to the reserve fund from the supplemental pension fund.

(3) If there is a child or children and no surviving spouse of the deceased worker or the surviving spouse is not eligible for benefits under this title, a sum equal to thirty-five percent of the wages of the deceased worker shall be paid monthly for one child and a sum equivalent to fifteen percent of such wage shall be paid monthly for each additional child, the total of such sum to be divided among such children, share and share alike: PROVIDED, That benefits under this subsection or subsection (4) of this section shall not exceed the lesser of sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018, as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%

June 30, 1995 115%
June 30, 1996 120%

(4) In the event a surviving spouse receiving monthly payments dies, the child or children of the deceased worker shall receive the same payment as provided in subsection (3) of this section.

(5) If the worker leaves no surviving spouse or child, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty percent of the average monthly support actually received by such dependent from the worker during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed the lesser of sixty-five percent of the wages of the deceased worker at the time of his or her death or the applicable percentage of the average monthly wage in the state as defined in RCW 51.08.018 as follows:

AFTER	PERCENTAGE
June 30, 1993	105%
June 30, 1994	110%
June 30, 1995	115%
June 30, 1996	120%

If any dependent is under the age of eighteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent reaches the age of eighteen years except such payments shall continue until the dependent reaches age twenty-three while permanently enrolled at a full time course in an accredited school. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

(6) For claims filed prior to July 1, 1986, if the injured worker dies during the period of permanent total disability, whatever the cause of death, leaving a surviving spouse, or child, or children, the surviving spouse or child or children shall receive benefits as if death resulted from the injury as provided in subsections (2) through (4) of this section. Upon remarriage or death of such surviving spouse, the payments to such child or children shall be made as provided in subsection (2) of this section when the surviving spouse of a deceased worker remarries.

(7) For claims filed on or after July 1, 1986, every worker who becomes eligible for permanent total disability benefits shall elect an option as provided in RCW 51.32.067.

Appendix B

States Allowing Continuation of Benefits after Survivor Remarriage (2009)

Kansas	<p><u>44-510b. Compensation where death results from injury; compensation upon remarriage; apportionment; burial expenses; limitations on compensation; annual statement by surviving spouse.</u></p> <p>(1) If the employee leaves a surviving legal spouse or a wholly dependent child or children, or both, who are eligible for benefits under this section, then all death benefits shall be paid to such surviving spouse or children, or both, and no benefits shall be paid to any other wholly or partially dependent persons.</p> <p>(2) A surviving legal spouse shall be paid compensation benefits for life, except as otherwise provided in this section.</p> <p>(4) If the employee leaves no legal spouse or dependent children eligible for benefits under this section but leaves other dependents wholly dependent upon the employee's earnings, such other dependents shall receive weekly compensation benefits as provided in this subsection until death, remarriage or so long as such other dependents do not receive more than 50% of their support from any other earnings or income or from any other source, except that the maximum benefits payable to all such other dependents, regardless of the number of such other dependents, shall not exceed a maximum amount of \$18,500.</p> <p style="padding-left: 40px;">(g) The marriage or death of any dependent shall terminate all compensation, under this section, to such dependent except the marriage of the surviving legal spouse shall not terminate benefits to such spouse. Upon the death of the surviving legal spouse or the marriage or death of a dependent child, the compensation payable to such spouse or child shall be reapportioned to those, among the surviving legal spouse and dependent children, who remain eligible to receive compensation under this section.</p>
<p>Minnesota</p> <p>Per MN worker's comp staff, benefits do not cease or suspend due to remarriage after 10/1/83, per Ott v. Krans</p>	<p><u>176.111 Dependents, allowances.</u></p> <p>Subd. 1. Persons wholly dependent, presumption. For the purposes of this chapter the following persons are conclusively presumed to be wholly dependent: (a) spouse, unless it be shown that the spouse and decedent were voluntarily living apart at the time of the injury or death;</p> <p>Subd. 6. Spouse, no dependent child. If the deceased employee leaves a dependent surviving spouse and no dependent child, there shall be paid to the spouse weekly workers' compensation benefits at 50 percent of the weekly wage at the time of the injury for a period of ten years, including adjustments as provided in section 176.645.</p> <p>Subd. 9a. Remarriage of spouse. A surviving spouse who remarries and is receiving benefits under subdivision 6, 7, or 8 shall continue to be eligible to receive weekly benefits for the remaining period that the spouse is entitled to receive benefits pursuant to this section.</p> <p><i>Winter, deceased by Winter Ott v. D.J. Kranz, 3/31/04* DOD: 11/24/97</i></p> <p>Dependency Benefits – Remarriage of Spouse Minnesota Statutes §176.111, subd. 8 Minnesota Statutes §176.111, subd. 9a Minnesota Statutes §176.111, subd. 16</p> <p>The purpose of Minnesota Statutes §176.111 is to provide wage replacement benefits to a surviving spouse and dependent children. We cannot conclude the phrase “continue to be eligible to receive” requires that benefits to the surviving spouse be suspended upon remarriage. Rather, the dependency statute, as amended effective Jan. 1, 1984, continues to provide for the continuation of benefits to a surviving spouse upon remarriage. Affirmed.</p>

Nevada	<p><u>NRS 616C.505 Amount and duration of compensation.</u></p> <p>1. If an injury by accident arising out of and in the course of employment causes the death of an employee in the employ of an employer, within the provisions of chapters 616A to 616D, inclusive, of NRS, the compensation is known as a death benefit and is payable as follows:</p> <p>2. Except as otherwise provided in subsection 3 and NRS 616C.507, to the surviving spouse of the deceased employee, 66 2/3 percent of the average monthly wage is payable until his death or remarriage, with 2 years' compensation payable in one lump sum upon remarriage.</p> <p><u>NRS 616C.507 Duration of compensation for surviving spouse of police officer or firefighter.</u></p> <p>1. Except as otherwise provided in this section, if the surviving spouse of a deceased police officer or firefighter who died while actively employed as a police officer or firefighter is entitled to be paid compensation pursuant to subsection 2 of NRS 616C.505 or NRS 617.453, 617.455, 617.457, 617.485 or 617.487, the surviving spouse:</p> <p style="padding-left: 40px;">(a) Must be paid that compensation until the death of the surviving spouse, whether or not the surviving spouse remarries; and</p> <p style="padding-left: 40px;">(b) Must not be paid any compensation pursuant to subsection 2 of NRS 616C.505 or NRS 617.453, 617.455, 617.457, 617.485 or 617.487 in one lump sum upon remarriage.</p> <p>(Added to NRS by 2007, 678)</p>
North Dakota	<p><u>65-05-21. Marriage settlement to spouse.</u></p> <p>If a spouse who receives compensation under the provisions of subsection 1 of section 65-05-17 remarries, there shall be paid to such spouse a lump sum equal to one hundred four weeks' compensation. If, prior to such marriage, such spouse has received a partial lump sum settlement which covers all or any portion of the said one hundred four weeks following such spouse's marriage, the amount of such partial lump sum settlement which covers all or any part of the said one hundred four weeks following such spouse's marriage shall be deducted from such marriage settlement, and the spouse shall receive only the remainder, if any, over and above such deduction. Any judgment annulling such marriage shall not reinstate the right of such spouse to compensation if the action for annulment is instituted more than six months after the marriage. The provisions of this section apply only to remarriages that occur before August 1, 2003, regardless of the date of injury or date of death of the decedent.</p>