



December 13, 2023
Duty Related Death Benefit

FINAL PROPOSAL

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ISSUE STATEMENT

LEOFF Plan 2 beneficiaries have been denied a one-time special death benefit because they missed the Department of Labor and Industries deadline for application.

OVERVIEW

LEOFF Plan 2 beneficiaries are eligible for a one-time lump sum special death benefit if the member died because of a workplace injury or occupational disease. The Department of Labor and Industries (LNI) determines the beneficiary's eligibility for this benefit while the Department of Retirement Systems (DRS) pays the benefit. LEOFF 2 beneficiaries have been denied this benefit because they missed LNI's application deadline. Beneficiaries and survivors who are denied this benefit by LNI for timeliness are also denied corresponding duty death related benefits administered by DRS.

BACKGROUND AND POLICY ISSUES

Beneficiaries of LEOFF 2 members have several benefits available to them should the member die in the line of duty. One benefit is the "special death benefit," a one-time, lump sum payment established in 1996 and payable to the member's estate or person (or persons) designated by the member as beneficiary.¹ If the member did not designate a beneficiary in writing, then the surviving spouse or legal representative receives payment. This benefit was initially paid only if the member sustained workplace injuries that resulted in death but, with the Board's endorsement, expanded in 2006 to include deaths from occupational disease or infection.²

¹ [1996 Wash. Laws ch. 226](#).

² [2006 Wash. Laws ch. 351](#).

For several years the benefit amount was \$150,000, but in 2010 the Board endorsed legislation to increase the minimum benefit to \$214,000, with an annual cost of living adjustment.³ The benefit payout is currently \$287,781.⁴

When the special death benefit was initially created and the eligibility determination was given to LNI, duty disability benefits did not exist for LEOFF 2. Now that DRS makes duty disability determinations for LEOFF 2, the Board may consider it more appropriate for DRS to also make the determination whether a death was duty related or not for purposes of a LEOFF 2 survivor receiving the special death benefit. DRS uses the determination by LNI for the lump sum special death benefit to determine other duty death related LEOFF 2 benefits that a survivor or beneficiary may be eligible for if the member has died in the line of duty. These other benefits include, but may not be limited to:

- The option to select an unreduced survivor pension benefit;
- Benefit enhancement minimum lump sum payment of \$20,000;
- Access to PEBB health insurance with premium reimbursement; and
- Tuition reimbursement.

Procedurally, DRS provides the application for this benefit to the beneficiary or survivor only when it is notified of a potential line of duty death. The beneficiary must return the completed application to DRS along with the death certificate and if available, autopsy report or other medical records supporting the claim that the death resulted from a workplace injury or illness. DRS forwards the application and supporting documents to LNI for review and determination of eligibility. LNI determines eligibility “consistent with Title 51 RCW”.⁵ LNI then provides written notice of its decision to both DRS and the beneficiary.

If the application is approved, DRS provides payment to the beneficiary or surviving spouse. If the application is denied, the beneficiary may protest or appeal the decision through LNI’s administrative process. LNI provides notice of its appeal process with its denial.

The issue brought to the Board’s attention is that unlike other pension benefits this benefit has a one-year statute of limitations (from the date of death) for deaths resulting from a workplace injury and a two-year statute of limitations for deaths resulting from occupational diseases. This

³ [2010 Wash. Laws ch. 261](#)

⁴ For deaths occurring after July 1, 2023. For deaths occurring July 1, 2022 through June 30, 2023, the benefit payout was \$279,399.

⁵ [RCW 41.26.048\(2\)](#).

statute of limitations is not explicitly in the special death benefit statute; however, it has been applied by LNI as being “consistent with Title 51 RCW”.

According to DRS, who has been in communication with LNI to attempt to resolve these denials, LNI has cited *Cordova v. City of Seattle and LNI, Case No. 81947-0-1*, in support of their decisions to deny this benefit for beneficiaries who do not apply within the statute of limitations under Title 51 RCW. In *Cordova*, the court did not decide on whether the LNI statute of limitations should apply to the LEOFF 2 special death benefit. The issue with the court was whether a widow who had made a claim with DRS for the Special Death Benefit, which was then forwarded to LNI by DRS, had filed timely for LNI benefits separate from the Special Death Benefit. The Court held that *Cordova* had not filed for LNI benefits timely. According to DRS,

LNI has pointed it out as the case they are using to support their contention that:

1. 1 year time limit in RCW 51. RCW 51.32.040(2)(c) is applicable to all death claims, including the DRS one-time lump sum death benefit, and
2. Applying for one benefit, whether DRS death benefit or LNI benefits, is not notice that you are applying for the other independent benefit.

In the dissenting opinion for *Cordova*, Judge Dwyer, discusses how in a similar case he “urged that either the legislature cure the problem by statute or that the Supreme Court ride to the rescue [...]”. He added that:

As with most such exhortations by intermediate appellate court judges, my jurisprudential call to arms failed to inspire legislative rescue. And the Justices remained dismounted.

Judge Dwyer explains why he believes that LNI receiving the filing from DRS should have been enough to meet the statutory requirement to file with LNI. He concludes his dissent by stating that: “Widows are not supposed to have to hire lawyers in order to receive widow’s benefits. This area of law is confused enough without conflating the issues at hand.”

Earlier this year, at the request of the LEOFF 2 Board, DRS agreed to discuss with LNI these denials and the current practice of applying the statute of limitations to the Special Death Benefit. Since then, Board staff has been informed by DRS that LNI will continue to apply its statute of limitations to the Special Death Benefit and that they were willing to review the current denials to see if they could reverse any of them. LNI has reversed one of its denials so far (See Appendix B). The minor and his guardian grandmother in this case hired an attorney who successfully pursued the appeal with LNI. In this case the grandmother filed with LNI

within 1 year of LNI deciding that her daughter's death was in the line of duty. LNI had initially denied the grandmother because she did not file within one year of her daughter's death.

There is no requirement for LNI or DRS to notify beneficiaries that they may be eligible for the benefit and that there is a statute of limitations to apply. Also, there is no standardized process for beneficiaries to be notified of their potential eligibility for this benefit. There is a patchwork of ways in which a beneficiaries could find out that they may be eligible for this benefit, including the LEOFF 2 Board Benefit Ombuds, DRS Death and Disability staff, employers, unions, and others. In previous years this patchwork has appeared to work successfully, but in the last year there have been multiple instances of survivors being denied benefits for missing LNI deadlines.

Data

The LEOFF 2 Board requested data from DRS on the number of Special Death Benefit from 2010 to the present that were approved and the number at were denied. For the denials DRS provided the reason for denial. During this time 72 out of 85 applications were approved, while 13 were denied. Three of those denials were for timeliness. For the data provided, prior to 2022, no beneficiaries were denied a Special Lump Sum Death Benefit for timeliness. It is unclear from the information LEOFF 2 staff have gathered why timeliness has become an issue in the last year.

LEOFF 2 staff has been unable to locate a data source that identifies the number of survivors that were eligible for this benefit but never applied for it. DRS does not have data on the number of retirees whose death was duty related and LEOFF 2 staff has been unable to identify a data source that would identify the potential number of survivors who may have been eligible for this benefit but did not apply for it.

If a beneficiary calls DRS and lets DRS know that they believe the member death was duty related, DRS sends a packet of information to the beneficiary, which includes information about the Special Death Benefit. DRS has a form that survivors or beneficiaries may fill out notifying DRS of a member death. This form has a box to identify if they believe the death was duty related. However, this data field is not inputted into any DRS IT systems and is instead used to provided additional information to the survivor/beneficiaries. Moreover, the form is not required to be filled out and most survivors/beneficiaries do not fill out the form. Instead, DRS typically receives notice of a death either through data share agreements with Department of Health and Social Security or with a phone call from a beneficiary. DRS does have a data field in

the member IT system that identifies duty death, but it is only identified in the system when LNI provides notification to DRS that the death was duty related.

Actuarial Analysis

OSA provided the Board with analysis (see Appendix C), based on the bill draft and additional data on the beneficiaries' denied benefits by LNI for not filing their claim timely. OSA identified the following impacts of the bill draft:

Under current law, survivors must file for duty-related death benefits within one year of a member's death. The proposal removes the one-year deadline to provide current survivors a second opportunity to apply for duty-related death benefits. Where applicable, enhanced benefits include:

- a lump sum payment (\$279,398.54 as of June 30, 2022)
- the option to select an unreduced survivor pension by repaying any prior return of contributions received in lieu of a pension;
- retroactive pension payments to the member's date of death;
- access to PEBB health insurance with premium reimbursement; and,
- benefits available under SHB 1701.

The proposal also shifts determination of eligibility for duty-related death benefits paid from the LEOFF 2 trust from LNI to DRS.

| Preliminary Pricing Results | |
|--|----------------|
| <i>(Dollars in Millions)</i> | |
| Change in Present Value of Benefits (PVFB) | \$1.5 |
| Net Lump Sum Payments* | 1.1 |
| Change in Unfunded PVFB | \$2.6 |
| Unrounded Employee Rate Impact | 0.0045% |

**Includes the duty-death lump sum, retroactive pension payments, lump sum from SHB 1701, and repayment of past return of contributions.*

Highlights of Actuarial Analysis

- The preliminary pricing impacts do not result in a rounded supplemental rate impact. However, any additional costs that may arise from clarifications in benefit administration, changes to the proposal, or additional eligible survivors beyond those we priced, could result in a supplemental rate.

- The lump sum death benefit provided to survivors is approximately 30 percent of the total estimated cost. The remaining 70 percent of the cost consists of a combination of monthly pension and OPEB premium reimbursement benefits.
- The proposal modifies statutes for death benefits administered by DRS and paid from the LEOFF 2 trust. Our analysis captures the cost increase in these benefits and does not consider benefits paid outside the trust.

POLICY OPTIONS

Option 1: Shift determination of benefit eligibility from LNI to DRS

This policy option would align the special death benefit with the rest of the LEOFF 2 pension benefits, which are administered by DRS. This would apply retroactively to beneficiaries who were denied by LNI for timeliness.

Option 2: Remove LNI statute of limitations for the LEOFF 2 death benefits

This policy option would keep the determination of a death being duty related with LNI; however, it would remove the LNI statute of limitations. This would apply retroactively to beneficiaries who were denied by LNI for timeliness.

Option 3: No action

SUPPORTING INFORMATION

Appendix A: *Cordova v. City of Seattle and LNI, Case No. 81947-0-1.*

Appendix B: Report of Proceeding Agreement Elizabeth Hoover 9-27-23.

Appendix C: Email from OSA analysis of LEOFF 2 Duty Death Benefit Proposal.

Appendix D: LNI Pension and Survivor Benefits.

Appendix E: Bill Draft – Duty Related Death Benefits – DRS.

Appendix F: Bill Draft – Duty Related Death Benefits – LNI.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

| | | |
|----------------------------|---|---------------------|
| RONALD CORDOVA, DEC'D, |) | No. 81947-0-I |
| |) | |
| Appellant, |) | DIVISION ONE |
| |) | |
| v. |) | |
| |) | |
| CITY OF SEATTLE and THE |) | |
| DEPARTMENT OF LABOR AND |) | UNPUBLISHED OPINION |
| INDUSTRIES OF THE STATE OF |) | |
| WASHINGTON, |) | |
| |) | |
| Respondents. |) | |

BOWMAN, J. — A workers' compensation application need not be formal or highly technical but it must, within a year of a worker's injury or death, notify the Department of Labor and Industries (DLI) that the applicant seeks workers' compensation benefits. Because Tracy Cordova's application to the Department of Retirement Services (DRS) for a one-time death benefit did not notify DLI that she also sought workers' compensation, we conclude that the Board of Industrial Insurance Appeals (BIIA) properly denied her subsequent DLI claim as untimely. We affirm the superior court's order on summary judgment affirming the decision of the BIIA.

FACTS

Ronald Cordova worked for the city of Seattle (City) as a police detective. He died at home on April 30, 2017 from a ruptured cerebral aneurysm. His wife

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Tracy¹ believed “unusual stress” from Ronald’s job led to his aneurysm, so she timely applied for a “lump sum benefit payment” through DRS under the Washington Law Enforcement Officers’ and Fire Fighters’ Retirement System Act (LEOFF), chapter 41.26 RCW. The application titled “One-Time Duty-Related Death Benefit” bore the DRS logo and “Washington State Department of Retirement Systems” on the first page and identified DRS on each subsequent page.

Per statute, DRS sent Tracy’s application to DLI to process on its behalf.² DLI through its “Pension Adjudicator Section” denied Tracy’s claim. In its December 2017 order, pension adjudicator Noreen Currier denied the application for the one-time death benefit “because the cause of death is not related to either an injury sustained in the course of employment or an occupational disease.” The order displays DRS claim number “DRS0202.”

Tracy hired an attorney, who wrote a letter in January 2018 protesting the denial of DRS benefits. The letter identified Tracy’s DRS application by claim number DRS0202 but described the retirement benefits application as a “Labor and Industries claim.” The attorney mailed the letter to the general DLI post-office box address but did not identify the Pension Adjudication Section as the intended recipient.

¹ For clarity, we refer to Tracy Cordova and Ronald Cordova by their first names. We intend no disrespect.

² DLI determines an individual’s eligibility for a one-time death benefit claim under RCW 41.26.048 and WAC 415-02-710(3).

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DLI responded that it was “unable to locate a claim for this injured worker” and requested Tracy’s attorney add a “current state fund claim number” and provide a “report of accident.” Tracy’s attorney replied by resending his original letter with the DRS0202 claim number but added “Attn: Noreen” in the upper right corner. The DLI Pension Adjudicator Section confirmed receipt of the second letter and on May 9, 2018, affirmed the December 2017 order denying Tracy’s claim “for death benefits provided under RCW 41.26.048,” finding Ronald’s death was not duty-related. Tracy timely appealed the ruling to the BIIA.

Tracy asserts that on September 11, 2018, she realized for the first time that she had not applied for Title 51 RCW workers’ compensation benefits with either the City or DLI. So on September 25, 2018, nearly 17 months after Ronald died, Tracy applied to the City for Title 51 RCW benefits.³ On October 30, 2018, DLI denied Tracy’s claim because she did not file it within the one-year statutory period and because she did not establish an employment-related injury.⁴

Tracy protested the decision and the BIIA assigned her case to an industrial appeals judge (IAJ). Tracy and the City cross moved for summary judgment on timeliness grounds. DLI joined the City’s motion. The IAJ granted summary judgment for the City and DLI. The IAJ also rejected Tracy’s argument that the BIIA should equitably estop DLI from rejecting her application for Title 51 RCW benefits as untimely.

³ Because Ronald worked for the City, a self-insured employer, the DLI oversees applications for workers’ compensation, though the City is directly responsible for the costs. RCW 51.14.010, .020; RCW 41.26.048.

⁴ The issue of whether Ronald’s death was employment-related is not before us.

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The BIIA also denied Tracy's petition for review. Tracy then appealed to the Snohomish County Superior Court. Tracy and the City again cross moved for summary judgment on timeliness grounds. DLI responded to both motions, arguing the court should grant the City's motion and deny Tracy's. The superior court granted summary judgment for the City, affirming the BIIA and dismissing Tracy's appeal. The superior court determined that Tracy's claim was untimely and such untimeliness "cannot be excused under the doctrine of equity."

Tracy appeals.

ANALYSIS

Timeliness

Tracy argues the superior court erred in granting the City's summary judgment motion because the BIIA erred by rejecting her claim for Title 51 RCW benefits as untimely. She claims the "information and documents [she] submitted to DRS and delivered to DLI, along with her counsel's subsequent letters to DLI," amount to a timely application for workers' compensation benefits under RCW 51.28.020. We disagree.

We review a superior court's grant of summary judgment de novo, engaging in the same inquiry as the superior court. Hill v. Dep't of Labor & Indus., 161 Wn. App. 286, 292, 253 P.3d 430 (2011); Rabey v. Dep't of Labor & Indus., 101 Wn. App. 390, 393-94, 3 P.3d 217 (2000). A party is entitled to summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). The moving party must establish its right to judgment as a matter of law, and we view

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the facts in the light most favorable to the nonmoving party. Romo v. Dep't of Labor & Indus., 92 Wn. App. 348, 354, 962 P.2d 844 (1998). In our review, we rely exclusively on the certified BIIA record. Watson v. Dep't of Labor & Indus., 133 Wn. App. 903, 909, 138 P.3d 177 (2006); RCW 51.52.115. We accept the BIIA's decision as prima facie correct, and the party challenging the decision must support its challenge by a preponderance of the evidence. Watson, 133 Wn. App. at 909; Hill, 161 Wn. App. at 291.

Title 51 RCW governs claims for industrial insurance and workers' compensation. Under RCW 51.28.030, a party making a workers' compensation claim "shall make application for the same . . . accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation." Under RCW 51.28.050, "[n]o application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the rights of dependents or beneficiaries accrued."

We construe Title 51 RCW liberally "for the purpose of reducing to a minimum the suffering and economic loss arising from injuries and/or death occurring in the course of employment." RCW 51.12.010. In that regard, we have determined that an application for Title 51 RCW benefits need not be as formal and highly technical as a pleading. Magee v. Rite Aid, 144 Wn. App. 1, 8, 182 P.3d 429 (2008). Any writing seeking Title 51 RCW benefits "filed with the Industrial Commission that challenges its attention, and causes it to act, is sufficient to put in motion the process of the Industrial Commission to see that

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compensation is paid.” Magee, 144 Wn. App. at 9 (citing Nelson v. Dep’t of Labor & Indus., 9 Wn.2d 621, 630, 115 P.2d 1014 (1941)).

Citing Nelson, Tracy argues her May 4, 2017 DRS LEOFF application along with her attorney’s letters notified DLI that she was also seeking workers’ compensation benefits. In Nelson, a logger broke his ankle and fell on his neck and upper back while working in the forest. Nelson, 9 Wn.2d at 623. The logger timely applied for workers’ compensation related to his broken ankle and DLI approved his claim. Nelson, 9 Wn.2d at 623. Less than a year after his injury, the logger petitioned DLI for a rehearing, seeking additional compensation for “increasing pain in his spine and head, dizziness and weakness in his back due to said injury and the fall upon his back.” Nelson, 9 Wn.2d at 624-25.⁵

Our Supreme Court held that the logger’s petition amounted to an application for additional Title 51 RCW benefits. Nelson, 9 Wn.2d at 628-29. It reasoned that the petition was a writing “filed with the department” that “reasonably directs its attention to the fact that an injury with its particulars has been sustained and that compensation is claimed.” Nelson, 9 Wn.2d at 629. Because the logger first notified DLI of his injuries within the one-year statute of limitations, he timely “challenged the attention of the department.” Nelson, 9 Wn.2d at 629-30.

Tracy’s claim is distinguishable from the petition in Nelson. In Nelson, the logger petitioned for additional compensation in an existing Title 51 RCW claim. But here, Tracy had no existing Title 51 RCW claim. Her May 2017 application was titled “One-Time Duty-Related Death Benefit” and bore either the DRS logo

⁵ Emphasis omitted.

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and/or “Department of Retirement Systems” on each page. It made no mention of workers’ compensation benefits and sought only an LEOFF one-time death payout—a separate benefit from a different government agency.

Neither did the protest letters sent by Tracy’s attorney notify DLI that she was also claiming workers’ compensation.⁶ Though her attorney asserted that he “represents Tracy . . . with regard to the Labor and Industries claim referenced above,” the “claim referenced” was DRS0202, the case number DRS assigned to her one-time death benefit application. In trying to clarify the discrepancy, DLI told the attorney that it was “unable to locate a claim for this injured worker” and requested a current state fund claim number and a copy of an accident report. Still, Tracy’s attorney made no effort to explain that Tracy was seeking both LEOFF and Title 51 RCW benefits. Instead, he sent his original protest letter again but wrote “Attn: Noreen”—the first name of the DLI pension adjudicator who processes DRS death benefit claims—on the upper right corner. As a result, DLI forwarded the letter to their Pension Adjudication Section and processed the claim for only DRS benefits.

We agree with DLI that this case is more like Magee. In that case, Rite Aid employee Magee claimed her supervisor sexually assaulted her. Magee, 144 Wn. App. at 4. She petitioned for an antiharassment order against her supervisor and sued him civilly. Magee, 144 Wn. App. at 4-5. Rite Aid was not a named party to either civil action but it received copies of the antiharassment

⁶ As much as Tracy argues that applications for an LEOFF payout and workers’ compensation benefits are coextensive, her argument is unsupported by citation to legal authority, so we do not consider it. RAP 10.3(a)(6); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (argument unsupported by reference to the record or citation to authority will not be considered).

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order and Magee's answer to the supervisor's counter suit and participated in settling the lawsuit. Magee, 144 Wn. App. at 5-6. Magee later sought workers' compensation for her injuries and claimed that Rite Aid's receipt of the antiharassment order and her answer was sufficient timely notice that she would be seeking workers' compensation under Title 51 RCW.⁷ Magee, 144 Wn. App. at 9. We concluded that under Nelson, the documents did not amount to an application for Title 51 RCW benefits. Magee, 144 Wn. App. at 11.⁸ Because the documents sought only civil damages for Magee's injuries, Rite Aid could not "reasonably infer that a claim for workers' compensation [wa]s being made." Magee, 144 Wn. App. at 11.

Like the documents in Magee, Tracy's DRS application did not notify DLI that she was seeking workers' compensation. She filed her application with DRS seeking an LEOFF one-time death benefit. Nothing in the application would reasonably cause DLI in their role as DRS pension adjudicator to conclude that Tracy was also seeking workers' compensation benefits.

Tracy argues that Magee "is readily distinguishable" because notice of the claim there was "wholly unrelated to statutory benefits," while her application sought a specific, though different, statutory benefit. But she fails to explain how notice of Ronald's death in the form of a DRS application for a one-time death benefit differs in any meaningful way from notice of Magee's injury in the form of

⁷ Rite Aid was a self-insured employer under RCW 51.14.020. Magee, 144 Wn. App. at 13.

⁸ We expressed our concern that the notice requirement established in Nelson is outdated given "the many changes to workers' compensation law that have taken place over the past seven decades" and urged legislative review of the statutory scheme to prevent future similar outcomes. Magee, 144 Wn. App. at 15-16 (Dwyer, J., concurring). To date, neither the Supreme Court nor the legislature has acted.

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a civil lawsuit seeking money damages. Neither notifies the insurer of a claim for Title 51 RCW benefits. We conclude that the BIIA properly determined that the sum of Tracy's communications with DLI did not amount to an application for workers' compensation benefits and the superior court did not err in granting the City's summary judgment motion.

Equitable Estoppel

Tracy argues that even if the information she submitted to DRS did not amount to an application for benefits under Title 51 RCW, "DLI should be [equitably] estopped from denying that her claim was timely made." We disagree.

The trial court has broad discretion, exercised in light of the facts and circumstances of a particular case, to determine whether a party is entitled to equitable relief. Rabey, 101 Wn. App. at 396; Heckman Motors, Inc. v. Gunn, 73 Wn. App. 84, 88, 867 P.2d 683 (1994). In industrial insurance cases, a trial court may grant equitable relief only in the limited circumstances where (1) a claimant's competency to understand orders, procedures, and time limits affects the communication process and (2) DLI engaged in misconduct. Rabey, 101 Wn. App. at 395 (citing Kingery v. Dep't of Labor & Indus., 132 Wn.2d 162, 174, 937 P.2d 565 (1997)); Lynn v. Dep't of Labor & Indus., 130 Wn. App. 829, 839, 125 P.3d 202 (2005); Harman v. Dep't of Labor & Indus., 111 Wn. App. 920, 924, 47 P.3d 169 (2002). We review a superior court's decision whether to fashion an equitable remedy for an abuse of discretion. Harman, 111 Wn. App. at 923.

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Tracy contends that DLI engaged in misconduct because it failed to notify her of her rights under RCW 51.28.010. That statute compels DLI to notify workers or beneficiaries of their statutory rights after receiving an accident report from an employer:

(1) Whenever any accident occurs to any worker it shall be the duty of such worker or someone in his or her behalf to forthwith report such accident to his or her employer . . . and of the employer to at once report such accident and the injury resulting therefrom to [DLI]

(2) Upon receipt of such notice of accident, [DLI] shall immediately forward to the worker or his or her beneficiaries or dependents notification, in nontechnical language, of their rights under this title.

RCW 51.28.010. But DLI did not receive an accident report from Ronald's employer. Instead, it received notice of his death in the form of an application for DRS benefits provided to its Pension Adjudication Section. As a result, the application did not trigger the notice requirement under RCW 51.28.010. And even if we construed the statute so broadly as to trigger a duty to notify on receipt of a report of injury from any source, DLI's failure to interpret the statute likewise does not amount to misconduct.

Tracy also asserts that DLI engaged in misconduct by obscuring from her its role in processing DRS applications. The record does not support her assertion.

DLI's letter accompanying its order denying Tracy's application for LEOFF benefits identifies Noreen Currier as the "Pension Adjudicator" and explains that DLI "received your application for death benefits through the Department of Retirement Systems." It then explains that DLI "determines eligibility for the

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death benefit you have filed for.” And the order itself states that “[t]he application for the death benefit provided under RCW 41.26.048 . . . is hereby denied.” The order displays DRS claim number DRS0202. And it includes addresses for both the “Dept. of Retirement Systems LEOFF” and “Dept. of Labor and Industries Pension Adjudicator Section.” The record shows that DLI adequately identified its role as Pension Adjudicator for DRS when communicating with Tracy.

Because Tracy’s DRS application did not also amount to an application for Title 51 RCW benefits and she was not entitled to equitable relief, the BIIA did not err in concluding her application for workers’ compensation was untimely. We affirm the superior court order granting the City’s summary judgment motion to dismiss Tracy’s appeal.

A handwritten signature in black ink, appearing to read "Benjamin J. Smith", written over a horizontal line.

I CONCUR:

A handwritten signature in black ink, appearing to read "Smith, J.", written over a horizontal line.

APPENDIX A

Cordova v. City of Seattle, No. 81947-0-I

DWYER, J. (concurring and dissenting) — More than a dozen years ago, in a case referenced in the majority opinion, I expressed my dismay at the state of the law concerning the requirement that a writing be filed with the Department of Labor and Industries in order to pursue a workers' compensation claim. See Magee v. Rite Aid, 144 Wn. App. 1, 12, 182 P.3d 429 (2008) (Dwyer, J., concurring). My premise then was simple: the legislature had not chosen to define a "claim" or to delineate that which was required to constitute a "claim," and the Supreme Court's formulations of such requirements as explicated in Nelson v. Dep't of Labor & Industries, 9 Wn.2d 621, 115 P.2d 1014 (1941), were anti-worker, inconsistent with the evolution of workers' compensation law, and unjust. I urged that either the legislature cure the problem by statute or that the Supreme Court ride to the rescue and alter its Nelson decision.

As with most such exhortations by intermediate appellate court judges, my jurisprudential call to arms failed to inspire legislative rescue. And the Justices remained dismounted.

As to the content of the notices given to the Department of Labor and Industries herein, the majority imposes an injustice by correctly applying the law. As I observed 13 years ago, "[t]hus, with a reluctance outweighed only by my obligation to the law, I concur"¹ in that decision.

¹ Magee, 144 Wn. App. at 16 (Dwyer, J., concurring).

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However, there is more to this case. Both the Board of Industrial Insurance Appeals and the superior court ruled that Tracy Cordova did not file a writing with the Department of Labor and Industries within one year of Detective Ronald Cordova's death, as required by statute. See RCW 51.28.050. To reach its decision, the majority does not need to address this issue and understandably does not do so.

But I disagree with both the Board and the superior court on this question. And here is why.

The statutory requirement is merely that a writing be filed with the Department of Labor and Industries. See RCW 51.28.010. As conceded at oral argument in this court, *any* employee of the Department of Labor and Industries can be the recipient of the filing. The statute does not provide otherwise. Moreover, to "file" the writing does not require action akin to service of process in a civil action. To the contrary, the writing can be mailed to *anyone* employed by the Department of Labor and Industries or to the Department itself.

Here, such a filing happened twice. It first happened when an employee of the Department of Retirement Systems transmitted documents sent to them by Tracy Cordova to the Department of Labor and Industries for claim handling. It happened a second time when Tracy Cordova's attorney wrote and mailed his January 2018 letter, which was received by an employee of the Department of Labor and Industries.

I recognize that the majority rejects these filings as insufficient in their *content*—but that is a separate question. Tracy Cordova unquestionably filed—

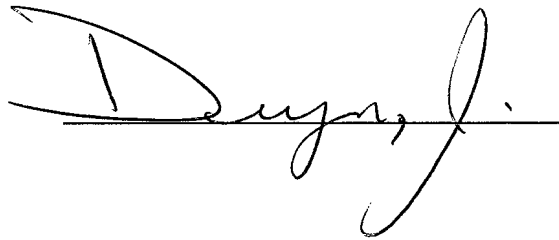
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twice—a writing with the Department of Labor and Industries in a timely manner. Her claims were *timely* even if their content was insufficient under the Nelson requirements.

It is important that we recognize this distinction. Widows are not supposed to have to hire lawyers in order to receive widow's benefits. This area of law is confused enough without conflating the issues at hand.

Both the Board and the superior court erred in their rulings on this question.

A handwritten signature in black ink, appearing to read "D. J. Dwyer", is written over a horizontal line. The signature is fluid and cursive, with a large initial "D" and a long, sweeping tail.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

| | | |
|--|-----------------------|--|
| IN RE: ELIZABETH A. HOOVER, DEC'D CLAIM NO. DRS0269 |))))) | DOCKET NO. 23 L0000 REPORT OF PROCEEDING . AGREEMENT OF PARTIES |
|--|-----------------------|--|

Appearances:

Beneficiary, Corran K Hanley, by Putnam Lieb Potvin Dailey, per Dustin J. Dailey
 Department of Retirement Systems, LEOFF (did not appear)
 Department of Labor and Industries, by Office of the Attorney General,
 per Alexandra Syssoeva Fair, Paralegal

I, Industrial Appeals Judge David W. Swan or the Board of Industrial Insurance, held a conference on August 30, 2023, with notice to all parties. Dustin J. Dailey and Alexandra Syssoeva Fair have provided additional communications by electronic mail requesting the Board issue this Order on Agreement of Parties

INTRODUCTION

The beneficiary, Corran K Hanley, filed a timely protest with the Department of Labor and Industries. The Department forwarded this to the Board of Industrial Insurance Appeals as an appeal on April 6, 2023. Corran K. Hanley appeals January 11, 2023 Department of Labor and Industries order that affirmed denial of Corran K Hanley's request for a special death benefit under RCW 41.26.048 on grounds the request was untimely pursuant to RCW 51.32.040(2)(c). The Department order is **REVERSED AND REMANDED**.

AGREEMENT

The requesting special death benefit beneficiary, Corran Hanley, and the Department of Labor and Industries agree: (1) The one-year limitations period for death benefits claims stated in RCW 51.32.040(2) is not separately applicable in this matter to Corran Hanley's special death benefit claim under RCW 41.26.048, (2) Corran K Hanley was, within a year of Elizabeth Hoover's death, recognized by the Department of Retirement Systems as having a cognizable claim for special death benefits under RCW 41.26.048, and this claim should be further adjudicated as a timely claim by the Department of Labor and Industries as directed by RCW 41.26.048(2), and, (3) the parties request the Board issue the following Order

ORDER

The Board of Industrial Insurance Appeals has jurisdiction in this timely appeal. The January 11, 2023 Department of Labor and Industries order is reversed and remanded to the Department of Labor and Industries with directions to determine the request of Corran Hanley for a

APPENDIX B

1 special death benefit under RCW 41 26 048 was timely and with directions to determine on the
2 merits whether Corran K Hanley's request should be granted
3

4 I certify that this is a true and accurate report of proceedings
5

6 Dated September 20, 2023, at Centralia, Washington
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12 David W. Swan
13 Industrial Appeals Judge
14 Board of Industrial Insurance Appeals
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**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

**IN RE: ELIZABETH A. HOOVER,
DEC'D**

CLAIM NO. DRS0269

DOCKET NO. 23 L0000

ORDER ON AGREEMENT OF PARTIES

The parties to this appeal have reached an agreement that is set out in the attached. ***Report of Proceeding Agreement of Parties dated September 20, 2023*** The parties have requested that the Board issue an Order on Agreement of Parties

The appeal was timely filed The agreement is in conformity with the facts and the law. Therefore, the Board issues this order in accordance with the parties' agreement The agreement is incorporated as part of this order.

Dated September 20, 2023.

BOARD OF INDUSTRIAL INSURANCE APPEALS



HOLLY A. KESSLER, Chairperson



ISABELA M. COLE, Member



JACK S. ENG, Member

APPENDIX C

From: [DeCamp, Mitch](#)
To: [White, Jacob \(LEOFF\)](#)
Cc: [Won, Lisa](#); [Nelsen, Steve \(LEOFF\)](#); [Harbour, Michael](#)
Subject: LEOFF 2 Duty-Death Benefit Proposal
Date: Friday, December 1, 2023 3:17:30 PM
Attachments: [Bill Draft - Lump Sum Special Death Benefit.docx](#)

External Email

Jacob,

As requested, please see below for preliminary pricing results for the duty-death benefit proposal under consideration by the Board.

Pricing Request

We priced the attached draft bill language provided to OSA on November 17, 2023. The draft bill modifies RCWs [41.26.048](#) and [41.26.510](#) related to duty-death lump sum and annuity benefits, respectively. We prepared this preliminary analysis to assist the LEOFF 2 Retirement Board in evaluating this proposal at their December 2023 meeting.

Summary and Highlights

This proposal provides eligible survivors of LEOFF 2 members with enhanced duty-related death benefits if denied by LNI for failing to meet the statute of limitations. Under current law, survivors must file for duty-related death benefits within one year of a member's death. The proposal removes the one-year deadline to provide current survivors a second opportunity to apply for duty-related death benefits. Where applicable, enhanced benefits include:

- a lump sum payment (\$279,398.54 as of June 30, 2022)
- the option to select an unreduced survivor pension by repaying any prior return of contributions received in lieu of a pension
- retroactive pension payments to the member's date of death
- access to PEBB health insurance with premium reimbursement
- benefits available under SHB 1701

The proposal also shifts determination of eligibility for duty-related death benefits paid from the LEOFF 2 trust from LNI to DRS.

Preliminary Pricing Results

(Dollars in Millions)

| | |
|--|----------------|
| Change in Present Value of Benefits (PVFB) | \$1.5 |
| Net Lump Sum Payments* | 1.1 |
| Change in Unfunded PVFB | \$2.6 |
| Unrounded Employee Rate Impact | 0.0045% |

**Includes the duty-death lump sum, retroactive pension payments, lump sum from SHB 1701, and repayment of past return of contributions.*

Highlights of Actuarial Analysis

- The preliminary pricing impacts do not result in a rounded supplemental rate impact. However, any additional costs that may arise from clarifications in benefit administration, changes to the proposal, or additional eligible survivors beyond those we priced, could result in a supplemental rate.
- The lump sum death benefit provided to survivors is approximately 30 percent of the total estimated cost. The remaining 70 percent of the cost consists of a combination of monthly pension and OPEB premium reimbursement benefits.
- The proposal modifies statutes for death benefits administered by DRS and paid from the LEOFF 2 trust. Our analysis captures the cost increase in these benefits and does not consider benefits paid outside the trust.

Assumptions, Methods, and Data

Unless otherwise noted below, we relied on the same assumptions, methods, and data as the [2022 Actuarial Valuation Report](#).

- DRS provided data on three survivors potentially impacted by this proposal. We relied on the data file as complete and accurate.
- We assumed the three survivors identified by DRS would receive the lump sum payment. We also assumed the two records with eligible surviving spouses would elect the unreduced survivor pension, retroactive to the member's date of death, and receive PEBB health insurance with premium reimbursement prospectively under this proposal. We assumed the record without an eligible spouse will only receive the lump sum payment.
- This analysis considers the cost increases from benefits under the RCWs identified in the bill draft, which are administered by DRS and paid from the LEOFF 2 trust. If other benefits are identified that will also be paid by the trust, then the costs would be higher than what is noted in this communication.
- We assumed shifting the duty-related death determination from LNI to DRS would not change the number of future deaths considered duty-related. However, actual experience could be higher or lower if DRS administration differs from LNI. We will consider the impact of more or less duty-related deaths in a full fiscal note under the sensitivity section.

Disclosures

We prepared this analysis based on the draft bill language provided to our office in November 2023. Any changes to the draft bill language or data relied on for this analysis may result in materially different pricing results than provided here.

We believe the actuarial assumptions, methods, and data are reasonable for the purposes of this pricing exercise. We checked the data provided by DRS for reasonableness and found it appropriate for this analysis. If this bill were to advance during session, we would create an Actuarial Fiscal Note (AFN). The results of that AFN may change from what we have shown above, but we do not expect any changes to be significant.

The actual costs under this proposal could differ from our estimate. For example, costs would increase if additional survivors not included in the data were eligible for duty-related benefits under this proposal. This analysis does not assume any other proposed changes to the retirement plan. The

combined effect of several changes could exceed the sum of the individual components.

We prepared this analysis to assist the LEOFF Plan 2 Retirement Board in evaluating the costs of this proposal at their December 2023 meeting. Do not use these results for other purposes. Please replace this analysis if a 2024 Session fiscal note becomes available.

Lisa Won, ASA, FCA, MAAA served as the reviewing and certifying actuary for this pricing and is available to answer any questions regarding the analysis presented.

Please let us know if you have questions or need additional information.

Mitch DeCamp | *Senior Actuarial Analyst*

Office of the State Actuary

PO Box 40914 | Olympia, WA 98504

mitch.decamp@leg.wa.gov | Office 360.786.6157 | Cell 509.679.7931

[OSA website](#)

"Supporting financial security for generations."

Pension and Survivor Benefits

*In Washington State's Workers'
Compensation Program*



A summary for workers and families
needing these benefits



Washington State Department of
Labor & Industries

Workers' Compensation Services

This booklet is a guide to our services. While it tells you how to file for pension benefits, explains your rights and responsibilities and what to expect from us, it is not a legal interpretation of the law.

Upon request, foreign language support and formats for persons with disabilities are available. Call 1-800-547-8367. TDD users, call 711. L&I is an equal opportunity employer.

PUBLICATION F242-352-909 [01-2023]

Introduction

If you are reading this booklet it very likely means that you were seriously injured on the job and no longer can work, or someone you love died from a work-related injury or illness. This can be a very emotional time. However, it's also a time when you will be making crucial decisions about your future, so it's important that you understand the pension system.

This booklet answers the most commonly asked questions people have about pension and survivor benefits from Washington's workers' compensation program.

- The first part describes benefits for people who no longer can work because of a workplace injury or occupational disease.
- The second part explains benefits for survivors of workers who died from a workplace injury or occupational disease. Many of the questions are the same or similar in both sections.

If you are an injured worker with a spouse and/or dependent children, you may want to read through this brochure together. That's because some of the decisions you make about the level of pension benefits you will receive could very well impact the benefits your survivors would be entitled to should you die.

If, after reading the booklet, you have further questions, please contact us at:

360-902-5119

**Pension Benefits Section
Department of Labor & Industries
PO Box 44281
Olympia WA 98504-4281**

Injured Worker's Pension

What does a pension award mean to me?

A pension is a monthly payment made to you if you are permanently and totally disabled from a workplace injury or occupational disease.

Now that I am receiving a pension, are there any forms I must sign?

Yes. Once a year, the Department of Labor & Industries (L&I) will send a "Declaration of Entitlement" form to you. It asks for updated marital status and dependent information and asks if you have returned to work. To continue receiving pension payments, you must completely fill out the form, have it notarized and return it to L&I.

You must answer truthfully. If you do not and you continue to accept pension benefit checks, you could face severe penalties or criminal charges.

Will I still be entitled to medical coverage for my injury?

In general, coverage for medical treatment ends on the date your pension goes into effect. An exception can be made in cases where continued treatment is needed to protect an injured worker's life. You will be notified in writing if we grant discretionary treatment.

Will my family be entitled to medical coverage?

No. There is no provision in the law for providing medical coverage for dependents through workers' compensation.

Do I have to pay federal income tax on my pension?

Not under current federal law. Refer to the section of your income tax form under "Examples of Income You Do Not Report." As long as it continues to list "workers'

compensation,” your pension benefits are considered non-reportable income.

What is my pension reserve?

This is the amount of money set aside by L&I or the self-insurer as necessary to cover the anticipated cost of your pension.

Do I have the option to request my pension reserve in a lump sum instead of monthly payments?

No. The reserve amount cannot be paid in a lump sum.

Can I cash out my pension?

You can request in writing that your pension be cashed out at any time. If approved by the department and you accept the cash-out, no further benefits will be payable under the claim. By law, the maximum cash-out amount for a pension is \$8,500. In most cases, cashing out for \$8,500, or less, is not in your best interest when compared to a guaranteed income for the remainder of your life. The department grants cash-outs in very limited circumstances.

If the money reserved for my pension is used up before I die, will my benefits stop?

No. The benefits are payable as long as you remain totally disabled.

Can I receive my pension payment by direct deposit or onto an L&I debit card?

Yes, as long as your financial institution is in the United States and is a member of the Automated Clearing House. We will provide you with a Payment Method Authorization form when we notify you that pension has been granted. If you would like more information regarding electronic payments, please contact Electronic Benefit Payment Services at 360-902-4675 or 1-844-728-5204.

When will I receive my check?

You should receive your first payment about the 15th of the month following the effective date of the pension, as long as L&I has received all necessary documents and information. This includes a copy of your marriage certificate, information regarding birth dates for you and your spouse, birth certificates for any minor children, verification of full-time school enrollment for dependent children between the ages of 18 and 23, and a copy of your legal documents awarding custody of minor children, if applicable.

Your first payment will include the period from the effective date of the pension through the 15th of the month it is being paid. Thereafter, pension payments should be received by you on or about the 16th of each month.

Delivery of mail is sometimes delayed. Call if you haven't received the check by the end of the month it is due. The replacement of lost or stolen checks takes up to 30 days.

Will my monthly pension check be the same amount as I received for time-loss compensation?

If your claim was filed on or after July 1, 1986, your compensation rate may be reduced depending on your chosen option. See "Pension Options" on Page 8 for further information. There may be some reduction, however, if you previously received awards for permanent partial disability.

To avoid mail delay or possible stolen checks, consider having your pension check deposited directly into your bank account or onto an L&I debit card. Call Electronic Benefit Payment Services at 360-902-4675 or 1-844-728-5204 for assistance.

Will receiving Social Security affect my pension benefits?

If you begin receiving Social Security disability or retirement benefits you should immediately notify our Pension Benefits Section in Tumwater. Your future benefits may be reduced depending upon the effective date of your pension and your highest year's wages. Even if you are drawing benefits from both agencies, the total amount you receive will not be less than you would be entitled to receive from Labor & Industries alone. (Social Security survivor benefits do not affect your pension rate.)

If I receive Social Security and my pension benefits are reduced, what happens if my Social Security is terminated?

Your full pension benefits will be restored. Send us a copy of the "Social Security Termination Notice" and your rate will be corrected effective the month following termination of the federal benefits.

Will my pension increase in future years?

Cost-of-living increases are considered each July 1 and are based on the increase in the average wage in the State of Washington for the previous calendar year. Any increase appears on the August check.

Not all pensions increase. For example, if your benefits are partially offset because of Social Security income, you may not be entitled to the cost-of-living adjustment. However, you will receive all of the Social Security cost-of-living increases. If you do not receive the increase, your pension will be reviewed every three years to determine whether these federal increases have kept your combined benefit amount in line with the increase in the national wage level.

Will my pension benefits be affected if I return to part- or full-time work?

Yes. You should notify our Pension Benefits Section immediately if you go back to work. In the event you return to some type of work, we may suspend or terminate the pension award. Failure to notify us about returning to work could result in severe penalties and/or criminal charges.

Will my pension benefits be affected if I am incarcerated?

Yes. You cannot receive pension benefits if you are confined in an institution under conviction and sentence.

If I marry while I am receiving pension benefits, are my benefits increased?

No.

Will my benefits change if I get a divorce?

They might.

- Your benefits could change if your spouse was awarded custody of minor children. The children's portion of the benefit will be sent to the individual who has legal custody. A copy of the legal documents awarding custody should be furnished to us.
- If your former spouse was your beneficiary and you had selected Pension Option II or III, you may change to Pension Option I. (See Pages 8–9.) You must apply for the change and provide certified documentation of your marriage dissolution. This is a one-time, **permanent** adjustment and does not benefit everyone. You should contact your pension benefits specialist for details.

- The date the change takes effect is:
 - The date of the marriage dissolution. OR
 - Up to one year prior to the date L&I receives the application if the dissolution occurred more than one year before the application.

Will my benefits change if my spouse dies?

If your spouse was your beneficiary and you had selected Pension Option II or III, you may change to Pension Option I. (See Pages 8–9.) You must apply for the change and provide a certified copy of the death certificate. This is a one-time, **permanent** adjustment and does not benefit everyone. You should contact your pension benefits specialist for details.

The date the change takes effect is:

- The date of death. OR
- Up to one year prior to the date L&I receives the application if the death occurred more than one year before the application.

If I am no longer able to handle my own affairs, what should I do?

You can give someone you trust a written authorization called a “power of attorney.” This person can sign checks on your behalf. A copy of the “power of attorney” should be sent to us. The other alternative is to have a legal guardian appointed. Upon receipt of guardianship papers, we would make the check payable to your appointed guardian.

If I die, will my spouse be entitled to benefits?

The pension paid to you ends with your death and does not automatically transfer to your spouse or dependents. It is the responsibility of your spouse or family member to notify us of your death. We will assist them in applying for further benefits under their own entitlement.

A spouse who continues to accept a worker's pension checks after the worker's death without notifying us may be subject to severe penalties or even criminal charges.

To be considered for payment, your spouse would need to submit an application for benefits within one year of your death (two years from a physician's written notice of the right to file if death was due to an occupational disease) together with copies of your certified marriage and death certificates.

If your death is due to the covered injury or occupational disease, pension benefits continue to your spouse and/or eligible dependent children (under 18, or up to 23 while a full-time student). If your death is due to a cause unrelated to the covered injury or occupational disease, and:

- Your claim was filed prior to July 1, 1986, your spouse and/or eligible dependent children (under 18 or under 23 while a full-time student) are eligible to apply to continue receiving pension benefits.
- Your claim was filed on or after July 1, 1986, your spouse or eligible beneficiary may be entitled, depending on which option you selected at the time you began receiving your pension. Refer to the "Pension Options" section below for further clarification.

Pension options for claims filed on or after July 1, 1986

If your claim was filed on or after July 1, 1986, you will be required to select a pension option. The pension option selected determines the benefit amount payable to you and your designated beneficiary upon your death, if your death was not related to your injury or occupational disease.

The option you choose is final 60 days after L&I sends you written confirmation of the choice you made.

Three options currently exist. Before you receive your first pension payment, you will be given additional information including details about the amount you and your designated eligible beneficiary would be paid under each of these options. You must choose one of the following:

- Full rate paid to the worker. No survivor benefits are payable.
- A reduced rate paid to the worker. The same rate is paid to the designated beneficiary.
- A reduced rate paid to the worker, with one-half of the reduced rate paid to the designated beneficiary.

For all options, the rate could change if the worker received Social Security benefits.

If you die before choosing an option, the department will choose Pension Option II for any qualified beneficiaries.

The pension option applies only if your death is unrelated to the accepted injury or occupational disease.

What if I have questions that have not been answered?

If you have other questions, please contact us at:

360-902-5119

Pension Benefits Section
Department of Labor & Industries
PO Box 44281
Olympia WA 98504-4281

Be sure to include the claim number and pension folio number in all correspondence.

Survivor Benefits

If you are the surviving spouse or dependent of a worker who has died from a workplace injury or occupational disease, you may be eligible for a monthly survivor pension.

This section answers the most commonly asked questions about your survivor benefits.

It is important to note that workplace injury or occupational disease claims filed on or after July 1, 1986, have a survivor's benefit option even if the death is not related to the accepted injury or occupational disease.

Do I have to apply to receive survivor's benefits?

Yes. A survivor must submit an application for benefits within one year from the date of the worker's death due to an injury, or within two years of receiving written notice from a physician that death was due to an occupational disease and that a claim may be filed.

We also will need the following documentation: certified marriage certificate, death certificate, certified state birth certificates of minor children, and, if applicable, legal documents showing custody of any minor children.

Are survivors' medical bills covered?

No. Survivors do not receive medical benefits.

What is the 'first survivor benefit paid'?

We make a one-time "immediate" payment after approving a beneficiary's application — if the worker's death resulted from the workplace injury or disease. (For workers' compensation claims filed on or before July 1, 1986, this payment is made regardless of the cause of death.)

The amount of the immediate payment depends on the date of the injury.

Are burial benefits paid?

A burial benefit is paid when death is directly related to the workplace injury or occupational disease. The amount is determined by the date of death.

How long does a survivor pension last?

Several factors affect this answer:

- If the worker's death was related to the condition that resulted in a pension, the surviving spouse's benefit is for life, unless he or she remarries.
- If a worker dies from causes other than the condition that resulted in a pension, and a survivor option was chosen, the surviving spouse's benefit is for life even if he or she remarries.
- For claims filed before July 1, 1986, a surviving spouse's benefit ends if he or she remarries, otherwise it continues for life.

For surviving children, benefits cease at age 18 (they may continue up to age 23 if the child is enrolled full-time in an accredited school). For other dependents, benefits cease when the need that caused dependency ends.

How is the monthly survivor pension determined?

The amount varies depending upon whether there is a surviving spouse, children or other dependents, and whether or not a survivor benefit option has been chosen. The benefits also can be different if the worker's death was unrelated to the workplace injury or occupational disease. The variations are:

Survivor pension options

When an injured worker begins receiving a pension, and the claim was filed on or after July 1, 1986, the worker is required to select a

pension option. The option selected determines the benefit level payable to the worker and designated beneficiary upon the worker's death if the death is not related to the workplace injury or occupational disease. The pension option selected at that time is final and cannot be changed at a later date.

Pension options apply only when the worker's death was unrelated to the injury or occupational disease. If death was due to the injury or occupational disease, benefits are paid at the full beneficiary rate.

If the worker's claim was filed on or after July 1, 1986, one of the following three survivor options was chosen:

- Full rate paid to the worker. No survivor benefits are payable.
- A reduced rate paid to the worker. The same rate is paid to the designated beneficiary.
- A reduced rate paid to the worker, with one-half of the reduced rate paid to the designated beneficiary.

All three of the above options only apply if the death was not related to the workplace injury or occupational disease.

Surviving spouse

(where pension option does not apply)

For recent injuries, a surviving spouse receives 60% of the worker's wage at the time of injury up to the maximum level allowed by law. If the worker had minor children, an additional 2% per child is paid, up to an additional maximum of 10%.

Minor children of the worker living in another household are entitled to 5% of the total entitlement per child up to a maximum of 25%.

The remainder of the benefit is paid to the surviving spouse and children residing in the deceased worker’s household.

Children’s benefits

(where there is not an eligible spouse and where pension options don’t apply)

A monthly benefit of 35% of the worker’s wage is paid to the guardian of a minor dependent. Another 15% of the wage is paid for each additional child up to a maximum benefit equal to 65% of the wage at the time of injury. Where there is more than one child, benefits are divided equally among them.

What is the maximum benefit?

The maximum benefit is a percentage of the statewide average wage for the year prior to the pension award. The date of injury affects the percentage. See table below.

| Date of Injury | Percentage |
|-------------------------------------|------------|
| July 1, 1988, through June 30, 1993 | 100% |
| July 1, 1993, through June 30, 1994 | 105% |
| July 1, 1994, through June 30, 1995 | 110% |
| July 1, 1995, through June 30, 1996 | 115% |
| On or after July 1, 1996 | 120% |

Are benefits payable to other dependents?

If the pension option does not apply, qualified dependents can receive payments if they were necessarily dependent on the worker’s earnings. Dependents can include a father, mother, grandparents, grandchildren, brothers, sisters, nieces and nephews.

The benefit is equal to half of the average monthly support received by the dependent during the year preceding the injury. The benefit limit is 65% of the worker’s wage or the maximum benefit level, whichever is less.

The payments end when the necessity that created the dependency would have ended had the injury not occurred. Benefits also end for minor dependents when they reach age 18 (up to 23 if they are full-time students in an accredited school).

Are my survivor pension benefits affected if I am working?

No. A surviving spouse or children can work and earn wages and continue to receive survivor benefits.

If a survivor pension option doesn't apply, are my benefits affected if I remarry?

You would receive benefits through the end of the month in which you remarry. You then have the option to receive a final settlement, or to leave the settlement in trust with us. If you accept the settlement, no further benefits are paid to you under this claim. If you leave your settlement in trust with us and your new marriage ends in death, annulment or divorce, you can apply to reinstate the pension as of the date of death or date the divorce becomes final.

Should you die while your settlement is in trust with us, your estate is paid 50% of the remaining pension reserve or the settlement amount, whichever is less.

You must notify us immediately if you remarry. If you do not, and you continue to accept pension benefit checks after remarriage, you could face severe penalties or even criminal charges.

What effect does remarriage have on our children's benefit?

Where the pension option does not apply and remarriage settlement is paid, children generally are entitled to benefits until they

reach the age of 18. They still may be eligible until age 23 if they are enrolled in an accredited school as a full-time student.

Will my survivor pension increase in the future?

Cost-of-living increases are based on the increase in the average wage in the State of Washington for the previous calendar year. The adjustment is considered each July 1 and any increase appears on the August check.

Will receiving Social Security affect my survivor pension?

No.

Will my survivor pension be affected if I am incarcerated?

Yes. You cannot receive pension benefits if you are confined in an institution under conviction and sentence.

If I no longer am able to handle my own affairs, what should I do?

You may give someone you trust a written authorization called a “power of attorney.”

This person can sign your checks. A copy of the power of attorney should be sent to the Pension Benefits Section.

Another alternative is to have a legal guardian appointed.

Upon receipt of the guardian papers, however, the check will be made out to the appointed guardian.

Can I receive my survivor pension payment by direct deposit or onto an L&I debit card?

Yes, as long as your financial institution is in the United States and is a member of the Automated Clearing House.

We will provide you with a Payment Method Authorization form when we notify you that pension has been granted. If you would like more information regarding electronic payments, please contact Electronic Benefit Payment Services at 360-902-4675 or 1-844-728-5204.

When will I receive survivor pension payments?

Survivor payments are made once a month and should be received by you on or about the 16th of each month. Delivery of mail is sometimes delayed, but call us if you haven't received payment by the end of the month it is due.

To avoid mail delay or possible stolen checks, consider having your pension check deposited directly into your bank account or onto an L&I debit card. Call Electronic Benefit Payment Services at 360-902-4675 or 1-844-728-5204 for assistance.

Do I have to pay federal income tax on my pension benefits?

Under current federal law, survivors' benefits are not taxable. Refer to the section of your income tax form under "Examples of Income You Do Not Report." As long as it lists "workers' compensation," it is considered non-reportable income.

360-902-5119

Pension Benefits Section
Department of Labor & Industries
PO Box 44281
Olympia, WA 98504-4281

Beneficios de pensión y para sobrevivientes

*del Programa de compensación
para trabajadores de Washington*



Un resumen para los trabajadores y las
familias que necesiten estos beneficios



Washington State Department of
Labor & Industries

Workers' Compensation Services

Esta es una guía de nuestros servicios. Aunque le indica cómo hacer una solicitud para beneficios de pensión, le explica sus derechos y responsabilidades y que es lo que puede esperar de nosotros, no es una interpretación legal de la ley.

A petición del cliente, hay ayuda disponible para personas que hablan otros idiomas y otros formatos alternos de comunicación para personas con discapacidades. Llame al 1-800-547-8367. Usuarios de dispositivos de telecomunicaciones para sordos (TDD, por su sigla en inglés) llamen al 711. L&I es un empleador con igualdad de oportunidades.

Introducción

Si está leyendo esta guía es probable que usted haya sido gravemente lesionado en el trabajo y que ya no pueda trabajar o que alguien a quien ama haya muerto debido a una lesión o enfermedad relacionada con el trabajo. Este puede ser un tiempo muy difícil emocionalmente. Sin embargo, también es un tiempo en el que tomará decisiones importantes sobre su futuro, así que es importante que usted entienda como funciona el sistema de pensión.

Esta guía responde a las preguntas más comunes que hacen las personas sobre los beneficios de pensión y para sobrevivientes del programa de compensación para trabajadores de Washington.

- La primera sección describe los beneficios para las personas que ya no pueden trabajar debido a una lesión en el lugar de trabajo o por una enfermedad ocupacional.
- La segunda parte explica los beneficios para los sobrevivientes de los trabajadores que murieron debido a una lesión en el lugar de trabajo o enfermedad ocupacional. Muchas de las preguntas en las dos secciones son iguales o muy similares.

Si usted es un trabajador lesionado con un cónyuge y/o hijos dependientes, sería útil si ustedes leen esta guía juntos. Esto es porque algunas de las decisiones que tome sobre el nivel de beneficios de pensión que recibirá pueden afectar los beneficios a los cuales sus sobrevivientes podrían tener derecho si usted muriera.

Si tiene otras preguntas después de leer la guía, por favor comuníquese con nosotros al:

360-902-5119

**Pension Benefits Section
Department of Labor & Industries
PO Box 44281
Olympia WA 98504-4281**

Pensión del trabajador lesionado

¿Qué significa para mí una indemnización de pensión?

Una pensión es un pago mensual para usted si está discapacitado permanente y totalmente por una lesión en el lugar de trabajo o por una enfermedad ocupacional.

Ahora que estoy recibiendo una pensión, ¿existen algunos formularios que yo debo firmar?

Sí. El Departamento de Labor e Industrias (L&I) le enviará un formulario de “Declaración de Derechos” (Declaration of Entitlement) una vez al año. Este requiere información actualizada sobre su estado civil y sus dependientes y pide que nos informe si ha regresado a trabajar. Para continuar recibiendo los pagos de pensión, debe completar el formulario, legalizarlo ante un notario y devolverlo a L&I.

Usted debe responder con la verdad. Si no lo hace y continúa recibiendo pagos de beneficios de pensión, usted podría enfrentar sanciones severas o cargos criminales.

¿Continuaré teniendo derecho a la cobertura médica por mi lesión?

En general, la cobertura para tratamiento médico termina cuando su pensión entra en vigencia. Se podría hacer una excepción en ciertos casos donde se necesite tratamiento continuo a fin de proteger la vida del trabajador lesionado. Se le notificará por escrito si se aprueba la cobertura discrecional.

¿Tendrá mi familia derecho a cobertura médica?

No. No hay estipulación alguna de la ley para proporcionar cobertura médica para dependientes a través de la compensación del trabajador.

¿Tengo que pagar impuestos federales por ingresos (income tax) sobre mi pensión?

No bajo las leyes federales actuales. Revise la sección de su formulario de impuestos sobre los ingresos “Ejemplos de ingresos que usted no necesita reportar” (Examples of Income You Do Not Report). Siempre y cuando continúe indicando “compensación para los trabajadores,” sus beneficios de pensión serán considerados como ingresos que no tienen que ser reportados.

¿Qué es mi reserva de pensión?

Es la cantidad de dinero establecida por L&I o el seguro privado del empleador, según sea necesario para cubrir el costo previsto de su pensión.

¿Puedo solicitar mi reserva de pensión en un solo pago en vez de pagos mensuales?

No. La cantidad de la reserva no puede pagarse en un solo pago.

¿Puedo cobrar mi pensión en una liquidación final?

Usted puede solicitar por escrito que se le pague su pensión en una liquidación final en cualquier momento. Si es aprobado por el Departamento y usted acepta la liquidación final, no se pagarán otros beneficios bajo el reclamo. Por ley, la máxima cantidad en efectivo para una pensión es de \$8,500 dólares. En la mayoría de los casos, el cobrar los \$8,500 dólares, o menos, no es lo más conveniente si se compara con un ingreso garantizado por el resto de su vida. El departamento concede liquidaciones finales en situaciones muy limitadas.

Si el dinero reservado para mi pensión se usa antes de que yo muera, ¿se detendrán mis beneficios?

No. Los beneficios se pagarán mientras usted permanezca totalmente discapacitado.

¿Puedo recibir mi pago de pensión por depósito directo en una tarjeta de débito de L&I?

Sí, siempre y cuando su institución financiera esté en los Estados Unidos y sea miembro del "Automated Clearing House." Le proporcionaremos un formulario de Autorización de método de pago cuando le notifiquemos sobre la concesión de la pensión. Si desea recibir más información sobre los pagos electrónicos, comuníquese con los Servicios de Pago de Beneficios Electrónicos al 360-902-4675 o al 1-844-728-5204.

¿Cuándo recibiré mi cheque?

Usted deberá recibir su primer pago alrededor del día 15 del mes después de la fecha en que la pensión sea efectiva, siempre y cuando L&I haya recibido toda la documentación e información necesaria. Esto incluye una copia de su acta de matrimonio, fechas de nacimiento de usted y de su cónyuge, actas de nacimiento de sus hijos menores de edad, comprobante de que sus hijos dependientes, entre 18 y 23 años de edad están inscritos en la escuela tiempo completo y una copia de sus documentos legales en los cuales se le concede la custodia de sus hijos menores, si es el caso.

Su primer pago incluirá el período desde la fecha de vigencia de la pensión hasta el día 15 del mes que esté siendo pagado. A partir de entonces, deberá recibir los pagos de pensión en o alrededor del día 16 de cada mes.

La entrega del correo algunas veces se retrasa. Llámenos si no ha recibido su cheque a fin de mes. El reemplazo de cheques robados o perdidos toma hasta 30 días.

¿Mi cheque mensual de pensión será por la misma cantidad que recibí por compensación de tiempo perdido?

Si su reclamo se registró en o después del 1 de julio de 1986, su tarifa de compensación podría reducirse dependiendo de la opción que usted eligió. Para más información, vea las “Opciones de Pensión” en la página 8. Sin embargo podría existir alguna reducción si recibió indemnizaciones anteriormente por discapacidades parciales permanentes.

Para evitar retrasos en el correo o posibles robos de cheques, considere solicitar que el cheque de su pensión se deposite directamente en su cuenta de banco o en una tarjeta de débito de L&I. Llame a Servicios de Pago de Beneficios Electrónicos al 360-902-4675 o al 1-844-728-5204 para recibir ayuda.

¿Afectará mis beneficios de pensión el recibir Seguro Social?

Si usted empieza a recibir beneficios de discapacidad o jubilación del Seguro Social, debe notificarle a nuestra Sección de Beneficios de Pensión (Pension Benefit Section) en Tumwater inmediatamente. Sus beneficios futuros podrían reducirse, dependiendo de la fecha de vigencia de su pensión y de sus ingresos anuales más altos. Incluso si recibe beneficios de ambas agencias, la cantidad total que reciba no será menor de la que tenga derecho a recibir de Labor & Industrias. (Los beneficios de Seguro Social para los familiares de una persona fallecida no afectarán la tarifa de su pensión).

Si recibo Seguro Social y se reducen mis beneficios de pensión, ¿qué sucederá si se termina mi Seguro Social?

Se restituirán todos sus beneficios de pensión. Envíenos una copia de la “Notificación que termina los beneficios del Seguro Social” (Social Security Termination Notice) y se corregirá su tarifa al mes siguiente de que terminen los beneficios federales.

¿Se incrementará mi pensión en los próximos años?

Los ajustes de costo de vida se evalúan cada 1 de julio y se basan en el incremento del salario promedio del estado de Washington del año (entre enero y diciembre) anterior. Cualquier ajuste se agregará en el cheque de agosto.

No todas las pensiones aumentan. Por ejemplo, si sus beneficios de pensión se ajustan parcialmente debido a su ingreso del Seguro Social, es posible que usted no tenga derecho al ajuste de costo de vida. Sin embargo usted recibirá todos los incrementos de costo de vida del Seguro Social. Si usted no recibe el aumento, su pensión se revisará cada tres años para determinar si estos incrementos federales han mantenido su cantidad de beneficio combinado de acuerdo con el aumento del nivel de salario nacional.

¿Serán afectados mis beneficios de pensión si vuelvo a trabajar por tiempo parcial o tiempo completo?

Sí. Debe notificar inmediatamente a nuestra Sección de Beneficios de Pensión si regresa al trabajo. En caso de que vuelva a algún tipo de trabajo, podríamos suspender o terminar su indemnización de pensión. Si no nos notifica sobre su regreso al trabajo, puede ocasionar severas penalidades y/o cargos criminales.

¿Serán afectados mis beneficios de pensión si estoy encarcelado?

Sí. Usted no puede recibir beneficios de pensión si está encarcelado bajo sentencia condenatoria.

Si me caso mientras estoy recibiendo beneficios de pensión, ¿se incrementarán mis beneficios?

No.

¿Cambiarán mis beneficios si me divorcio?

Es posible.

- Sus beneficios pueden cambiar si su cónyuge obtiene custodia de los hijos menores de edad. La porción de beneficios de los niños se enviará a la persona que tenga la custodia legal. Deberá proporcionarnos una copia de los documentos legales que otorguen custodia si están involucrados niños menores de edad.
- Si su cónyuge anterior era su beneficiario y usted seleccionó la Opción de pensión II o III, usted puede cambiarse a la Opción I. (Vea las páginas 8–9). Usted debe solicitar el cambio y proporcionar documentos certificados de su disolución de matrimonio. Este es un ajuste **permanente** de una sola vez y no beneficia a todos. Usted debe comunicarse con su especialista de beneficios de pensión para más detalles.
- La fecha en la que toma efecto el cambio es:
 - Fecha de disolución del matrimonio. O
 - Hasta un año antes de la fecha en que L&I reciba la solicitud si la disolución ocurrió más de un año antes de la solicitud.

¿Cambiarán mis beneficios si muere mi cónyuge?

Si su cónyuge era su beneficiario y usted seleccionó la Opción de pensión II o III, usted puede cambiar a la Opción I. (Vea las páginas 8–9). Usted deberá

solicitar el cambio y proporcionar una copia certificada del certificado de defunción. Este es un ajuste **permanente** de una sola vez y no beneficia a todos. Usted debe comunicarse con su especialista de beneficios de pensión para más detalles.

La fecha en la que toma efecto el cambio es:

- La fecha de muerte. O
- Hasta un año antes de la fecha en que L&I reciba la solicitud, si la muerte ocurrió más de un año antes de la solicitud.

Si ya no puedo manejar mis propios asuntos, ¿qué debo hacer?

Usted puede darle a alguien de confianza una autorización por escrito llamada “poder notarial” (Power of Attorney). Esta persona puede firmar los cheques a su nombre. Deberá enviarnos una copia del “poder notarial.” La otra alternativa sería nombrar a un tutor legal. Después de recibir los documentos de custodia, enviaremos los cheques a nombre de su tutor legal designado.

Si muero, ¿tendrá mi cónyuge derecho a los beneficios?

La pensión pagada a usted termina con su muerte y no se transfiere automáticamente a su cónyuge o a sus dependientes. Es responsabilidad de su cónyuge o familiares notificarnos sobre su muerte. Nosotros les ayudaremos a solicitar otros beneficios a los cuales tengan derecho. Un cónyuge que continúe aceptando cheques de pensión de un trabajador después de su muerte sin notificarnos podría estar sujeto a penalidades severas o también a cargos criminales.

Para que pueda ser considerado para recibir pagos, su cónyuge deberá presentar una solicitud de beneficios dentro de un año a partir de su muerte (dentro de dos años de la notificación escrita del médico sobre el derecho

de registrar si la muerte ocurrió por causa de una enfermedad ocupacional), junto con copias de sus actas de matrimonio y de defunción.

Si su muerte ocurrió debido a la enfermedad ocupacional o lesión que estaba cubierta, los beneficios de pensión continuarán con su cónyuge y/o sus hijos dependientes que reúnan los requisitos (menores de 18 años o hasta 23 años, si son estudiantes de tiempo completo). Si su muerte se debe a una causa no relacionada con la lesión o enfermedad ocupacional y:

- Si registró su reclamo antes del 1 de julio de 1986, su cónyuge y/o hijos dependientes que reúnan los requisitos (menores de 18 años o menores de 23, si son estudiantes de tiempo completo) pueden solicitar continuar recibiendo beneficios de pensión.
- Si registró su reclamo en o después del 1 de julio de 1986, su cónyuge o beneficiario que reúnan los requisitos podría tener derecho, dependiendo de la opción que eligió en el momento de empezar a recibir su pensión. Refiérase a la sección de “Opciones de Pensión” en la siguiente página para mayores aclaraciones.

Opciones de pensión para reclamos registrados en o después del 1 de julio de 1986.

Si se registró su reclamo en o después del 1 de julio de 1986, tendrá que elegir una opción de pensión. La opción de pensión seleccionada determina la cantidad de beneficios que se le pagará a usted y a su beneficiario designado después de su muerte, si su muerte no está relacionada con su lesión o enfermedad ocupacional.

Su elección de opciones será final 60 días después de que Labor e Industrias le envíe su confirmación escrita de la elección que hizo.

Actualmente existen tres opciones. Antes de recibir su primer pago de pensión, recibirá información adicional que incluye detalles sobre la cantidad que usted y su beneficiario (que reúna los requisitos) designado recibirán bajo cada una de esas opciones. Debe elegir una de las siguientes:

- La tarifa completa se le pagará al trabajador. No se pagará beneficios a los sobrevivientes.
- Se le pagará una tarifa reducida al trabajador. Se le pagará la misma tarifa al beneficiario designado.
- Se le pagará al trabajador una tarifa reducida, con la mitad de la tarifa reducida pagada al beneficiario designado.

Para todas las opciones, la tarifa podría cambiar si el trabajador recibe beneficios de Seguro Social.

Si usted muere antes de elegir una opción, el departamento designará la Opción II de pensión para cualquier beneficiario que reúna los requisitos.

La opción de pensión se aplica solamente si su muerte no está relacionada con la lesión o la enfermedad ocupacional aceptada.

¿Qué sucede si tengo preguntas que no han sido respondidas?

Si tiene otras preguntas, por favor llámenos al 360-902-5119 o escriba a:

Pension Benefits Section
Department of Labor & Industries
PO Box 44281
Olympia WA 98504-4281.

Asegúrese de incluir el número de reclamo y el número de la pensión en toda la correspondencia.

Beneficios para los sobrevivientes de un trabajador fallecido

Si usted es el cónyuge sobreviviente o dependiente de un trabajador que murió por una lesión en el trabajo o enfermedad ocupacional, podría tener derecho a una pensión mensual.

Esta sección responde a las preguntas más comunes acerca de sus beneficios como sobreviviente.

Es importante saber que los reclamos de lesiones en el trabajo o enfermedades ocupacionales registrados en o después del 1 de julio de 1986 tienen una opción de beneficios para sobrevivientes, aunque la muerte no esté relacionada con la lesión o enfermedad ocupacional aceptada.

¿Tengo que presentar una solicitud para recibir beneficios que se le pagan a los familiares de una persona fallecida?

Sí. Un sobreviviente debe presentar una solicitud de beneficios dentro del plazo de un año desde la fecha de la muerte del trabajador por causa de una lesión o dentro del plazo de dos años de recibir una notificación escrita de un médico en la cual se estipule que la muerte se debió a una enfermedad ocupacional y que se puede registrar un reclamo.

También necesitaremos los siguientes documentos: acta de matrimonio certificado, acta de defunción, acta(s) de nacimiento certificado (estatal) de los niños menores de edad y si se aplica, los documentos legales que demuestre la custodia de cualquier niño menor de edad.

¿Están las facturas médicas de los sobrevivientes cubiertas?

No. No se pagan beneficios médicos para los sobrevivientes.

¿Cuál es el primer beneficio que se le paga al sobreviviente?

Nosotros hacemos un pago único “inmediato” después de haber aprobado la solicitud del beneficiario — si la muerte del trabajador se debió a una lesión o enfermedad del trabajo. (Para los reclamos de compensación a los trabajadores en o antes del 1 de julio de 1986, este pago se hace sin importar la causa de la muerte).

La cantidad del pago inmediato depende de la fecha de la lesión.

¿Se pagan beneficios por gastos funerarios?

Se pagan beneficios por gastos funerarios cuando la muerte está relacionada directamente con una lesión en el trabajo o enfermedad ocupacional. La cantidad se determina por la fecha de fallecimiento.

¿Cuánto dura una pensión de sobreviviente?

Hay varios factores que afectan esta respuesta:

- Si la muerte del trabajador estaba relacionada con la condición que resultó en una pensión, los beneficios para el cónyuge sobreviviente serán de por vida a menos que el/ella se vuelva a casar.
- Si el trabajador muere por causas no relacionadas a la condición que resultó en una pensión y se ha escogido una opción de sobreviviente, el beneficio para el cónyuge sobreviviente será de por vida aunque el o ella se vuelva a casar.
- Para reclamos presentados antes del 1 de julio de 1986, el beneficio del cónyuge sobreviviente terminará si el o ella se vuelve a casar, de otra manera continuará de por vida.

Para los hijos sobrevivientes, los beneficios terminan a la edad de 18 años (podrían continuar hasta los 23 si el hijo está matriculado de tiempo

completo en una escuela acreditada). Para otros dependientes, los beneficios terminan cuando termine la necesidad que causó la dependencia.

¿Cómo se determinan los beneficios mensuales de sobrevivientes?

La cantidad de los beneficios mensuales de sobreviviente varía, dependiendo de si existe un cónyuge sobreviviente, hijos u otros dependientes y si se ha elegido o no una opción de beneficios de sobrevivientes. Asimismo, los beneficios pueden variar si la muerte del trabajador no estuvo relacionada con una lesión en el trabajo o con una enfermedad ocupacional. Las variaciones son:

Opciones de pensión de sobrevivientes

Cuando un trabajador lesionado empieza a recibir una pensión y se registró el reclamo en o después del 1 de julio de 1986, el trabajador debe seleccionar una opción de pensión. La opción seleccionada determina el nivel de beneficios que se le paga al trabajador y a su beneficiario designado cuando muere el trabajador, si la muerte no se relaciona con una lesión en el trabajo o con una enfermedad ocupacional. La opción de pensión elegida en ese momento es final y no puede ser cambiada después.

Las opciones de pensión se aplican solamente cuando la muerte del trabajador no está relacionada con la lesión o enfermedad ocupacional. Si la muerte se debió a la lesión o enfermedad ocupacional, se pagan los beneficios completos al beneficiario.

Si el reclamo del trabajador se registró a partir del 1 de julio de 1986, se elige una de las siguientes tres opciones:

- Cantidad total pagada al trabajador. No se pagan beneficios a los sobrevivientes.
- Una cantidad reducida pagada al trabajador. La misma cantidad se paga al beneficiario designado.

- Una cantidad reducida pagada al trabajador, con una mitad de la cantidad reducida pagada al beneficiario designado.

Las tres opciones mencionadas solamente se aplican si la muerte no está relacionada con una lesión en el trabajo o enfermedad ocupacional.

Cónyuge sobreviviente

(cuando no se aplique la opción de pensión)

Para lesiones recientes, el cónyuge sobreviviente recibe el 60% del ingreso del trabajador en el momento de la lesión, hasta el máximo nivel permitido por ley. Si el trabajador tiene hijos menores de edad, se paga un 2% adicional por cada hijo, hasta un máximo adicional de 10%.

Los hijos menores de edad del trabajador que vivan en otro hogar tienen derecho a un 5% de la cantidad total por cada hijo, hasta un máximo de 25%. El resto del beneficio se paga al cónyuge sobreviviente y a los hijos que vivan en el hogar del trabajador fallecido.

Beneficios para los hijos

(cuando no existe un cónyuge que cumpla con los requisitos y no se apliquen las opciones de pensión)

Un beneficio mensual del 35% del salario del trabajador se pagará al tutor legal de un dependiente menor de edad. Otro 15% del salario se pagará por cada hijo adicional, hasta un beneficio máximo igual al 65% del salario en el momento de la lesión. Cuando hay más de un hijo, los beneficios se dividen en cantidades iguales entre ellos.

¿Cuál es el beneficio máximo?

El beneficio máximo es un porcentaje del salario promedio estatal del año anterior a la indemnización de pensión. La fecha de la lesión afecta el porcentaje. Vea la siguiente tabla.

| Fecha de la lesión | Porcentaje |
|---|-------------------|
| 1 de julio de 1988 hasta junio 30 de 1993 | 100% |
| 1 de julio de 1993 hasta junio 30 de 1994 | 105% |
| 1 de julio de 1994 hasta junio 30 de 1995 | 110% |
| 1 de julio de 1995 hasta junio 30 de 1996 | 115% |
| En o después del 1 de julio de 1996 | 120% |

¿Se pagan beneficios a otros dependientes?

Si la opción de pensión no se aplica, los dependientes con derecho a recibir beneficios pueden recibir pagos si son necesariamente dependientes de los ingresos del trabajador. Los dependientes pueden ser parientes, como el padre, madre, abuelos, nietos, hermanos, hermanas, sobrinas y sobrinos.

El beneficio es igual a la mitad del apoyo económico mensual promedio recibido por el dependiente durante el año anterior a la lesión. El límite del beneficio es de 65% del salario del trabajador o el nivel máximo de beneficios, lo que sea menor.

Los pagos terminan cuando hubiera terminado la necesidad que creó la dependencia, si es que no hubiera ocurrido la lesión. Asimismo, los beneficios terminan para los dependientes menores de edad cuando cumplan la edad de 18 años (o 23 años, si son estudiantes de tiempo completo en una escuela acreditada).

¿Serán afectados mis beneficios de pensión si trabajo?

No. Un cónyuge sobreviviente o los hijos pueden trabajar y tener ingresos y continuar recibiendo beneficios de sobreviviente.

Si una opción de pensión no se aplica, ¿serán afectados mis beneficios si vuelvo a casarme?

Usted recibirá beneficios hasta el fin del mes en el cual se vuelva a casar. Después, tendrá la opción de recibir una liquidación final o dejar la liquidación a nuestro cargo. Si acepta

la liquidación, ya no se le pagarán beneficios bajo este reclamo. Si deja su liquidación a nuestro cargo y su nuevo matrimonio termina en muerte, anulación o divorcio, puede solicitar reinstituir la pensión a partir de la fecha de defunción o del divorcio.

Si usted muere mientras su liquidación esté a nuestro cargo, pagaremos a sus herederos un 50% de la reserva restante de pensión o la cantidad de la liquidación, lo que sea menor.

Usted debe notificarnos inmediatamente si se vuelve a casar. Si no lo hace y continúa aceptando los cheques de beneficios de pensión después de su matrimonio, podría tener penalidades severas o incluso cargos criminales.

¿Qué efecto tendrá un nuevo matrimonio en los beneficios de nuestros hijos?

Cuando no se aplique la opción de pensión y se pague indemnización por un nuevo matrimonio generalmente los hijos menores de edad tienen derecho a los beneficios hasta los 18 años de edad. Aún podrían tener derecho a beneficios hasta los 23 años si están matriculados en una escuela acreditada como estudiantes de tiempo completo.

¿Se incrementarán en el futuro mis beneficios de pensión?

Los ajustes del costo de vida se basan en el incremento del salario promedio del estado de Washington del año anterior (entre enero y diciembre). Cada 1 de julio se efectúa un ajuste y se agregará a su cheque de agosto.

Afectará mis beneficios de pensión el recibir Seguro Social?

No.

¿Serán afectados mis beneficios de pensión si estoy en la cárcel?

Sí. Usted no puede recibir beneficios de pensión si está encarcelado en una institución bajo sentencia condenatoria.

Si ya no puedo manejar mis propios asuntos, ¿qué debo hacer?

Usted puede darle a alguien de confianza una autorización por escrito llamada “poder notarial” (power of attorney).

Esta persona puede firmar sus cheques. Deberá enviarnos una copia del poder notarial a la Sección de Beneficios de Pensión (Pension Benefits Section).

Otra alternativa será nombrar a un tutor legal.

Sin embargo, después de recibir los documentos del tutor legal, el cheque será enviado a nombre del tutor legal designado.

¿Puedo recibir mi pago de pensión de sobreviviente por depósito directo o en una tarjeta de débito de L&I?

Sí, siempre y cuando su institución financiera esté en los Estados Unidos y sea miembro del “Automated Clearing House.”

Le proporcionaremos un formulario de Autorización de método de pago cuando le notifiquemos sobre la concesión de la pensión. Si desea recibir más información sobre los pagos electrónicos, comuníquese con los Servicios de Pago de Beneficios Electrónicos al 360-902-4675 o al 1-844-728-5204.

¿Cuándo recibiré mis pagos de pensión?

Los pagos de sobreviviente se efectúan una vez por mes y usted los debe recibir alrededor del día 16 de cada mes. El correo a veces se retrasa, pero llámenos si no ha recibido el pago a fin de mes.

Para evitar retrasos en el correo o posibles robos de cheques, considere solicitar que el cheque de su pensión se deposite directamente en su cuenta de banco o en una tarjeta de débito de L&I. Llame a Servicios de Pago de Beneficios Electrónicos al 360-902-4675 o al 1-844-728-5204 para recibir ayuda.

¿Tengo que pagar impuestos federales por ingresos (income tax) sobre mis beneficios de pensión?

Bajo las leyes federales actuales, no hay impuestos sobre los beneficios de sobrevivientes. Refiérase a la sección de su formulario de impuestos por ingresos bajo “Ejemplos de ingresos que no necesita reportar” (Examples of Income You Do Not Report). Siempre y cuando continúe indicando “compensación para trabajadores,” se considera como ingresos que no tienen que ser reportados.

360-902-5119

Pension Benefits Section
Department of Labor & Industries
PO Box 44281
Olympia WA 98504-4281

APPENDIX E

An act related to the LEOFF Plan 2 special death benefit;

Sec. 1. RCW 41.26.048 is amended to read as follows:

(1) A two hundred fourteen thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's death benefit shall be paid to the member's surviving spouse or domestic partner as if in fact such spouse or domestic partner had been nominated by written designation, or if there be no such surviving spouse or domestic partner, then to such member's legal representatives.

(2) The benefit under this section shall be paid only when death occurs: (a) As a result of injuries sustained in the course of employment; or (b) as a result of an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title **51** RCW, except without a statute of limitations for applying for the benefit, by the department of labor and industries. ~~The department of labor and industries shall notify the department of retirement systems by order under RCW **51.52.050**.~~

(3) The department shall determine eligibility under subsection (2) for the special death benefit for any beneficiaries who were denied the special death benefit for failing to meet the statute of limitations under Title 51 RCW. If the department of labor and industries determines the beneficiary is eligible for the special death benefit the department must provide the beneficiary an option to reelect their pension benefit under RCW 41.26.510(2) and if the member elects an ongoing pension benefit the department must pay the beneficiary retroactive to the date of the member's death.

(3)(a) Beginning July 1, 2010, and every year thereafter, the department shall determine the following information:

- (i) The index for the 2008 calendar year, to be known as "index A;"
- (ii) The index for the calendar year prior to the date of determination, to be known as "index B;" and
- (iii) The ratio obtained when index B is divided by index A.

(b) The value of the ratio obtained shall be the annual adjustment to the original death benefit and shall be applied beginning every July 1st. In no event, however, shall the annual adjustment:

- (i) Produce a benefit which is lower than two hundred fourteen thousand dollars;
- (ii) Exceed three percent in the initial annual adjustment; or

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(iii) Differ from the previous year's annual adjustment by more than three percent.

(c) For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index — Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

Sec. 2. RCW 41.26.510 is amended to read as follows:

(1) Except as provided in RCW [11.07.010](#), if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW [41.50.670](#), shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW [41.50.670](#), shall be paid to the member's surviving spouse or domestic partner as if in fact such spouse or domestic partner had been nominated by written designation, or if there be no such surviving spouse or domestic partner, then to such member's legal representatives.

(2) Except as provided in subsection (4) of this section, if a member who is killed in the course of employment or a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse, domestic partner, or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW [41.26.430](#), actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW [41.50.670](#) and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW [41.26.460](#) and if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW [41.26.430](#); if a surviving spouse or domestic partner who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse or domestic partner, share and share alike, until such child or children reach the age of majority;

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if there is no surviving spouse or domestic partner eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated as herein provided making the assumption that the ages of the spouse or domestic partner and member were equal at the time of the member's death; or

(b)(i) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW [41.50.670](#); or

(ii) If the member dies on or after July 25, 1993, one hundred fifty percent of the member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW [41.50.670](#). Any accumulated contributions attributable to restorations made under RCW [41.50.165](#)(2) shall be refunded at one hundred percent.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies after October 1, 1977, and is not survived by a spouse, domestic partner, or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW [41.50.670](#), shall be paid:

(a) To an estate, a person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) The retirement allowance of a member:

(a) Who is killed in the course of employment consistent with Title 51 RCW, except without a statute of limitations for applying for the benefit, as determined by the department director of the department of labor and industries,

(b) Who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW [41.04.005](#), or

(c) Who has left the employ of an employer due to service in the national guard, military reserves, federal emergency management agency, or national disaster medical system of the United States department of health and human services and dies while performing service in response to a disaster, major emergency, special event, federal exercise, or official training on or after March 22, 2014, is not subject to an actuarial reduction for early retirement as provided in RCW [41.26.430](#) or an actuarial reduction to reflect a joint and one hundred percent

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survivor option under RCW [41.26.460](#). The member's retirement allowance is computed under RCW [41.26.420](#), except that the member shall be entitled to a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five.

(5) The retirement allowance paid to the spouse or domestic partner and dependent children of a member who is killed in the course of employment consistent with Title 51 RCW, except without a statute of limitations for applying for the benefit, as determined by the department set forth in RCW ~~41.05.011~~(5), shall include reimbursement for any payments of premium rates to the Washington state health care authority pursuant to RCW [41.05.080](#).

(6) In addition to the benefits provided in subsection (4) of this section, if the surviving spouse or domestic partner of a member who is killed in the course of employment is not eligible to receive industrial insurance payments pursuant to RCW [51.32.050](#) due to remarriage, the surviving spouse or domestic partner shall receive an amount equal to the benefit they would receive pursuant to RCW [51.32.050](#) but for the remarriage. This subsection applies to surviving spouses and domestic partners whose benefits pursuant to RCW [51.32.050](#) were suspended or terminated due to remarriage prior to July 24, 2015. The monthly payments to any surviving spouse or domestic partner who received a lump sum payment pursuant to RCW [51.32.050](#) shall be actuarially reduced to reflect the amount of the lump sum payment.

APPENDIX F

An act related to the LEOFF Plan 2 special death benefit;

Sec. 1. RCW 41.26.048 is amended to read as follows:

(1) A two hundred fourteen thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's death benefit shall be paid to the member's surviving spouse or domestic partner as if in fact such spouse or domestic partner had been nominated by written designation, or if there be no such surviving spouse or domestic partner, then to such member's legal representatives.

(2) The benefit under this section shall be paid only when death occurs: (a) As a result of injuries sustained in the course of employment; or (b) as a result of an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. The determination of eligibility for the benefit shall be made consistent with Title **51** RCW, except without a statute of limitations for applying for the benefit, by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW **51.52.050**.

(3) The department of labor and industries shall determine eligibility under subsection (2) for the special death benefit for any beneficiaries who were denied the special death benefit for failing to meet the statute of limitations under Title 51 RCW. If the department of labor and industries determines the beneficiary is eligible for the special death benefit the department must provide the beneficiary an option to reelect their pension benefit under RCW 41.26.510(2) and if the member elects an ongoing pension benefit the department must pay the beneficiary retroactive to the date of the member's death.

(3)(a) Beginning July 1, 2010, and every year thereafter, the department shall determine the following information:

(i) The index for the 2008 calendar year, to be known as "index A;"
(ii) The index for the calendar year prior to the date of determination, to be known as "index B;" and

(iii) The ratio obtained when index B is divided by index A.

(b) The value of the ratio obtained shall be the annual adjustment to the original death benefit and shall be applied beginning every July 1st. In no event, however, shall the annual adjustment:

(i) Produce a benefit which is lower than two hundred fourteen thousand dollars;

(ii) Exceed three percent in the initial annual adjustment; or

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(iii) Differ from the previous year's annual adjustment by more than three percent.

(c) For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index — Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.



Duty Related Death Benefits

Final Proposal
December 13, 2023

Issue

- **LEOFF Plan 2 beneficiaries have been denied a one-time special death benefit because they missed the LNI deadline for application**

Issue History

- Brought to the Board's attention by impacted beneficiaries
- Initial Briefing in July
- Comprehensive Briefing in November, Board motioned for final briefing on policy option to:
 - Shift determination of duty death LEOFF 2 benefit eligibility from LNI to DRS so that the LNI statute of limitations would no longer apply and the LEOFF 2 plan administrator, DRS, would be responsible for these LEOFF 2 benefit eligibility determinations
 - Apply this change retroactively to beneficiaries that have been denied special death benefits for not meeting LNI statute of limitations

Other Benefits Impacted

- LEOFF 2 benefits impacted by a death being determined duty related
 - The option to select an unreduced survivor pension benefit
 - Benefit enhancement minimum lump sum payment of \$20,000
 - Access to PEBB health insurance with premium reimbursement

DRS Data

- Since 2010, 72 of 85 applications were approved
- 13 were denied
- 3 denied for timeliness
- 1 denial has been reversed
- Prior to 2022 no known instances of beneficiaries being denied a Special Lump Sum Death Benefit for timeliness

OSA Analysis

| Preliminary Pricing Results | |
|--|----------------|
| <i>(Dollars in Millions)</i> | |
| Change in Present Value of Benefits (PVFB) | \$1.5 |
| Net Lump Sum Payments* | 1.1 |
| Change in Unfunded PVFB | \$2.6 |
| Unrounded Employee Rate Impact | 0.0045% |

**Includes the duty-death lump sum, retroactive pension payments, lump sum from SHB 1701, and repayment of past return of contributions.*

- Based on 3 beneficiaries DRS provided to OSA
- Does not result in supplemental rate impact
- Actuarial assumptions and disclosures are included in Board materials

LNI/DRS Update

- Update on ongoing discussions between LNI, DRS, and LEOFF 2 Board staff

Next Steps

1. **Motion to endorse legislation (Option 1) shifting determination of benefit eligibility from LNI to DRS**
 - This policy option would align the special death benefit with the rest of the LEOFF 2 pension benefits, which are administered by DRS. This would apply retroactively to beneficiaries who were denied by LNI for timeliness.
2. **Motion to endorse legislation (Option 2) removing LNI statute of limitations for the LEOFF 2 death benefits, keep determination of eligibility with LNI**
 - This policy option would keep the determination of a death being duty related with LNI; however, it would remove the LNI statute of limitations. This would apply retroactively to beneficiaries who were denied by LNI for timeliness.
3. **Motion for (Option 3) No action**



Thank You

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