

Filing a Fatality Claim

The NYS Workers' Compensation Board recognizes the unique and pressing needs of families who lose a loved one due to a work-related injury or illness. We strive to quickly resolve fatality claims and minimize effort for the surviving family to access this workers' compensation insurance benefit.

Survivors can file a fatality claim when a worker dies suddenly due to a new incident. They can also file a fatality claim when they believe a worker who had received workers' compensation benefits dies as a result of an existing, established incident. Fatality claims must be filed within two years of the worker's death. Immigration status is not a factor, nor is the location of the surviving family.

Benefits

The benefits below are payable by the employer's workers' compensation insurer when the claim is established. They can be awarded back to the date of death.

Funeral or Memorial Expenses

Funeral or memorial costs are reimbursable, based on location and the actual charges incurred.

- Up to \$12,500 in New York City, Long Island, Westchester and Rockland counties.
- Up to \$10,500 in all other NYS counties.

Indemnity Benefit

The indemnity (lost wage) benefit is calculated and paid based on weekly earnings.

1. The worker's average weekly wage over the preceding 52 weeks is established.
2. The benefit is $\frac{2}{3}$ of that amount, tax free, up to the maximum benefit in effect on the date of death.

Eligibility

Most commonly, indemnity benefits are awarded to family members as follows:

1. **Spouse.** Spouses who are lawfully married at the time of death are eligible for the benefit for life. If the spouse remarries, the spousal benefit ends with one lump-sum payment

of two years of benefits. If there are eligible children or dependents, the spouse shares the benefit with them. The spouse receives the full benefit if children become ineligible due to age. Divorced spouses are not eligible.

2. **Children and disabled, blind or other dependents.** Children up to age 18 and children up to age 23 who are full-time students at an accredited institution of higher education are eligible to receive benefits. Disabled, blind and other dependents can receive benefits for life. These survivors share the whole amount if there is no spouse. Otherwise, they share it with the spouse, as specified by the Workers' Compensation Law.
3. **Worker's parents.** If there is no spouse, children, or dependents, the worker's parents receive a \$50,000 payment. If divorced, they share the payment equally.
4. **Worker's estate.** If none of the survivors listed above exists, the deceased worker's estate receives a \$50,000 payment. The executor will complete the claim process.

Medical Expenses

While there are no medical benefits in a death claim, if the worker had a separate claim for the at-work injury, medical benefits may be payable out of that claim.

EXAMPLE 1

Worker's average weekly wage is \$1,200

Indemnity benefit is \$800 per week

Spouse, only eligible survivor, receives \$800 per week for life or until remarriage

Upon remarriage, benefits end with a final payment of two years' worth of benefits (\$83,200 in this example)

EXAMPLE 2

Worker's average weekly wage is \$1,200

Indemnity benefit is \$800 per week

Spouse receives \$440 per week

Child receives \$360 per week while eligible (distribution per the Workers' Compensation Law)

When the child is no longer eligible, the spousal benefit increases to \$800 per week for life or until remarriage

Required forms

Fatality claims use the specific set of forms and documents listed below. Gathering all required information up front and filing these materials together will save time and effort for grieving families. The required fields on each form must be completed.

- *Claim for Compensation in Death Case (Form C-62)*
- *Proof of Death by Physician Last in Attendance on Deceased (Form C-64)*
- *Proof of Expenses for Burials, Funerals and Memorial Services by Undertaker (Form C-65)*
- *Affidavit For Death Benefits (Form AFF-1)*

These forms are available in the **Workers and/or the Forms** sections of the Board's website, wcb.ny.gov.

Supporting documents

The supporting documents needed for the claim depend on the relationship of the survivors to the deceased worker. (Please see the **Benefits** section for eligibility.) To claim benefits, some or all of the following may be necessary:

- Death certificate – Available through the funeral director
- Worker's birth certificate
- Marriage certificate (if applicable)
- Divorce decree (if applicable)
- Birth certificates of eligible children and/or dependents
- Proof of enrollment in an accredited educational institution (if applicable)
- Social Security award letter (if applicable)

Help is available

The Office of the Advocate for Injured Workers helps surviving families access workers' compensation death benefits. If you receive the packet of forms from the Advocate's office, please return the completed forms to:

Workers' Compensation Board
Centralized Mailing Address
PO Box 5205
Binghamton, NY 13902-5205

Forms can also be downloaded from the Board's website, wcb.ny.gov.

**For help with the process,
 please call the Office of the
 Advocate for Injured Workers
 at (800) 580-6665 or email
AdvInjWkr@wcb.ny.gov**

This process moves most quickly when surviving families who are legally represented work with their counsel to provide the most complete information.

The New York State Workers' Compensation Board protects the rights of employees and employers by ensuring the proper delivery of benefits and by promoting compliance with the law. To learn more about the Workers' Compensation Board, visit wcb.ny.gov.