



Workers' Compensation

BY BRIANA CHUA

The recognition of same-sex marriage in Arizona affects workers' compensation law in the areas of death benefits, dependent benefits, and the assignment of benefits.

Death Benefits

If an employee dies as a result of work injuries, the surviving spouse to whom he or she was legally married at the time of the injury, as well as children, parents, and siblings, may be eligible to receive death benefits. A marriage is valid under workers' compensation law if it is valid under the domestic relations laws of Arizona.¹ As same-sex marriages are now recognized in Arizona, a surviving same-sex spouse is

living same-sex spouse who would not have previously had any claim to death benefits but would now have priority.

Pursuant to A.R.S. § 23-1064(A)(1-2), a husband or wife is conclusively presumed to be totally dependent for support upon a deceased employee if he or she has not voluntarily abandoned the deceased at the time of the injury. Under A.R.S. § 23-1046, the surviving spouse, if the decedent has no children, may receive 66-2/3 percent of the deceased employee's average monthly wage until the surviving spouse's death or remarriage. Should the surviving spouse

remarry, then he or she would receive two years of compensation in a lump sum. If the deceased employee had eligible children, then the surviving spouse would receive 35 percent of the deceased worker's average monthly wage, and the children would share 31-2/3 percent. When all surviving children are no longer eligible for benefits, the surviving spouse shall be

paid as if there were no children. A.R.S. § 23-1046 also makes surviving dependent parents and siblings of deceased employees eligible to receive death benefits if there is no eligible spouse or child.

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the insurance carrier's wage recommendation and the Industrial Commission of Arizona's notice of average monthly wage.

Assignment of Benefits

Finally, under A.R.S. § 23-1068, a claimant's workers' compensation benefits are generally exempt from attachment, garnishment, and execution and do not pass to another person by operation of law. One exception is that a claimant's benefits are subject to an assignment for the payment of spousal maintenance. Therefore, with same-sex marriage being legally recognized, a same-sex ex-spouse or soon-to-be ex-spouse may now also obtain an assignment for spousal maintenance against an injured worker's disability benefits.

Of course, there are new issues and questions that may be raised in workers' compensation cases as a result of the recognition of same-sex marriage. But, as with all unusual fact patterns, they will ultimately be addressed on a case-by-case basis.²



now eligible for death benefits that would have previously been unpaid or paid to surviving dependent children, parents, or siblings. Conversely, surviving dependent children, parents, or siblings may receive less or no death benefits if there is a sur-

Dependent Benefits

A.R.S. § 23-1045(A)(2) provides an injured employee with additional compensation if he or she is (1) married at the time of the injury and (2) entitled to temporary total disability benefits.² Therefore, if a claimant is legally married at the time of the injury, his or her average monthly wage should reflect the dependent benefit on

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endnotes

1. *Gamez v. Industrial Comm'n*, 559 P.2d 1094 (Ariz. 1976); *Putvain v. Industrial Comm'n*, 680 P.2d 1214 (Ariz. Ct. App. 1983).
2. A.R.S. § 23-1064 addresses presumptions of dependency in the event of a deceased employee's death. In addition, effective Jan. 1, 1991, A.R.S. § 23-1045(A)(2) was amended to delete the requirement that a dependent be "totally" dependent upon the employee at the time of the injury in order for the employee to receive dependent benefits while on temporary total disability.