

Sec. 8133. Compensation in case of death

(a) If death results from an injury sustained in the performance of duty, the United States shall pay a monthly compensation equal to a percentage of the monthly pay of the deceased employee in accordance with the following schedule:

- (1) To the widow or widower, if there is no child, 50 percent.
- (2) To the widow or widower, if there is a child, 45 percent and in addition 15 percent for each child not to exceed a total of 75 percent for the widow or widower and children.
- (3) To the children, if there is no widow or widower, 40 percent for one child and 15 percent additional for each additional child not to exceed a total of 75 percent, divided among the children share and share alike.
- (4) To the parents, if there is no widow, widower, or child, as follows--
 - (A) 25 percent if one parent was wholly dependent on the employee at the time of death and the other was not dependent to any extent;
 - (B) 20 percent to each if both were wholly dependent; or
 - (C) a proportionate amount in the discretion of the Secretary of Labor if one or both were partly dependent.

If there is a widow, widower, or child, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, and children, will not exceed a total of 75 percent.

(5) To the brothers, sisters, grandparents, and grandchildren, if there is no widow, widower, child, or dependent parent, as follows--

- (A) 20 percent if one was wholly dependent on the employee at the time of death;
- (B) 30 percent if more than one was wholly dependent, divided among the dependents share and share alike; or
- (C) 10 percent if no one is wholly dependent but one or more is partly dependent, divided among the dependents share and share alike.

If there is a widow, widower, child, or dependent parent, so much of the percentages are payable as, when added to the total percentages payable to the widow, widower, children, and dependent parents, will not exceed a total of 75 percent.

(b) The compensation payable under subsection (a) of this section is paid from the time of death until--

- (1) a widow, or widower dies or remarries before reaching age 55;
- (2) a child, a brother, a sister, or a grandchild dies, marries, or becomes 18 years of age, or if over age 18 and incapable of self-support becomes capable of self-support; or
- (3) a parent or grandparent dies, marries, or ceases to be dependent.

Notwithstanding paragraph (2) of this subsection, compensation payable to or for a child, a brother or sister, or grandchild that would otherwise end because the child, brother or sister, or grandchild has reached 18 years of age shall continue if he is a student as defined by section 8101 of this title at the time he reaches 18 years of age for so

long as he continues to be such a student or until he marries. A widow or widower who has entitlements to benefits under this title derived from more than one husband or wife shall elect one entitlement to be utilized.

(c) On the cessation of compensation under this section to or on account of an individual, the compensation of the remaining individuals entitled to compensation for the unexpired part of the period during which their compensation is payable, is that which they would have received if they had been the only individuals entitled to compensation at the time of the death of the employee.

(d) When there are two or more classes of individuals entitled to compensation under this section and the apportionment of compensation under this section would result in injustice, the Secretary may modify the apportionment to meet the requirements of the case.

(e) In computing compensation under this section, the monthly pay is deemed not less than the minimum rate of basic pay for GS-2. However, the total monthly compensation may not exceed--

(1) the monthly pay computed under section 8114 of this title, except for increases authorized by section 8146a of this title; or

(2) 75 percent of the monthly pay of the maximum rate of basic pay for GS-15.

(f) Notwithstanding any funeral and burial expenses paid under section 8134, there shall be paid a sum of \$200 to the personal representative of a deceased employee within the meaning of section 8101(1) of this title for reimbursement of the costs of termination of the decedent's status as an employee of the United States.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 547; Pub. L. 90-83, Sec. 1(62), Sept. 11, 1967, 81 Stat. 211; Pub. L. 93-416, Secs. 16(a), 17, 18, Sept. 7, 1974, 88 Stat. 1147, 1149; Pub. L. 101-303, Sec. 3(1), May 29, 1990, 104 Stat. 251.)

Historical and Revision Notes

1966 Act

Derivation	U.S. Code	Revised Statutes and Statutes at Large
	5 U.S.C. 760 (less last 23 words of 1st sentence in (B); and less (H) and (L)).	Sept. 7, 1916, ch. 458, Sec. 10 (less last 15 words of 1st sentence in (B); and less (H) and (L)), 39 Stat. 744.
		Feb. 12, 1927, ch. 110, Sec. 3, 44 Stat. 1087.
		July 28, 1945, ch. 328, Secs. 2 (less last 24 words), 3, 59 Stat. 503.
		Oct. 14, 1949, ch. 691, Sec. 106 (less last 23 words of 1st sentence in ``B)'' of (c); and less

(e)), 63 Stat. 859.
..... Sept. 13, 1960, Pub.
L. 86-767, Sec.
102, 74 Stat. 906.

In subsection (a), the words ``an injury sustained in the performance of duty'' are substituted for ``the injury'' to clearly identify the type of injury to which the section refers.

Administration of this subchapter was transferred to the Secretary of Labor by section 1 of 1950 Reorg. Plan. No. 19, 64 Stat. 1271 (see section 8145).

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 Act

Section of title 5	Source (U.S. Code)	Source (Statutes at Large)
8133(b).....	5 App.: 760(G) (last sentence).	July 4, 1966, Pub. L. 89-488, Sec. 7(a), 80 Stat. 253.
8133(e).....	5 App.: 760(K).	July 4, 1966, Pub. L. 89-488, Sec. 3(c), 80 Stat. 252.

In subsection (b), the words ``Notwithstanding paragraph (3) of this subsection'' are substituted for ``Notwithstanding any other provision of this section'' for clarity. The words ``section 8101 of this title'' are substituted for ``section 10(M) of this Act'' to reflect the codification of that section in title 5.

In subsection (e), the words ``is deemed'' are substituted for ``shall be considered to be''. The words ``minimum rate of basic pay for GS-2'' and ``maximum rate of basic pay for GS-15'' are substituted for ``lowest rate of basic compensation provided for grade 2 by the General Schedule of the Classification Act of 1949'' and ``highest rate of basic compensation provided for grade 15 of the General Schedule of the Classification Act of 1949,'' respectively, for consistency of style and to reflect the codification of the Classification Act of 1949 in title 5. The words ``under section 8114 of this title'' are substituted for ``as provided in section 12'' to reflect the codification of that section in title 5.

Amendments

1990--Subsec. (b)(1). Pub. L. 101-303 substituted ``age 55'' for ``age 60''.

1974--Subsec. (a)(1). Pub. L. 93-416, Sec. 16(a), substituted ``50'' for ``45''.

Subsec. (a)(2). Pub. L. 93-416, Sec. 16(a), substituted ``45'' for ``40''.

Subsec. (a)(3). Pub. L. 93-416, Sec. 16(a), substituted ``40'' for ``35''.

Subsec. (b). Pub. L. 93-416, Sec. 16(a), inserted ``before reaching

age 60'' after ``remarries'' in par. (1), struck out par. (2) referring to widower who dies, remarries or becomes capable of self-support, redesignated pars. (3) and (4) as (2) and (3), respectively, changed the reference in closing paragraph from paragraph (3) of this subsection to paragraph (2) of this subsection, and inserted provision for election by widower or widow of benefits derived from more than one husband or wife.

Subsec. (e)(1). Pub. L. 93-416, Sec. 17, inserted `` , except for increases authorized by section 8146a of this title'' before ``; or''.

Subsec. (f). Pub. L. 93-416, Sec. 18, added subsec. (f).

Effective Date of 1974 Amendment

Amendment by sections 16(a) and 17 of Pub. L. 93-416 applicable to cases where injury or death occurred prior to Sept. 7, 1974 but only to a period beginning on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

Amendment by section 18 of Pub. L. 93-416 effective on Sept. 7, 1974, and applicable to any injury or death occurring on or after Sept. 7, 1974, see section 28(a) of Pub. L. 93-416, set out as a note under section 8101 of this title.

Gratuity for Death of Civilian Employee From Injury Sustained in Line of Duty

Pub. L. 104-208, div. A, title I, Sec. 101(f) [title VI, Sec. 651], Sept. 30, 1996, 110 Stat. 3009-314, 3009-368, provided that:

``Notwithstanding section 8116 of title 5, United States Code, and in addition to any payment made under 5 U.S.C. 8101 et seq., beginning in fiscal year 1997 and thereafter, the head of any department or agency is authorized to pay from appropriations made available to the department or agency a death gratuity to the personal representative (as that term is defined by applicable law) of a civilian employee of that department or agency whose death resulted from an injury sustained in the line of duty on or after August 2, 1990: Provided, That payments made pursuant to this section, in combination with the payments made pursuant to sections 8133(f) and 8134(a) of such title 5 and section 312 of Public Law 103-332 (108 Stat. 2537) [5 U.S.C. 8134 note], may not exceed a total of \$10,000 per employee.''

Personnel Not Affected by 1967 Increase

Increases authorized under amendment by section 1(62)(B) of Pub. L. 90-83 not applicable to specified personnel, see section 7 of Pub. L. 90-83, set out as a note under section 8103 of this title.