

# Workers' Compensation: Wildland Firefighter

## 8 CCR 1507-35

A seasonal wildland firefighter who dies while performing their duties is entitled to death benefits from the Division of Fire Protection and Control.

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### Death Benefits for Seasonal Wildland Firefighters

#### Applicability

These rules and regulations govern the payment of lump-sum death benefits to survivors of seasonal wildland firefighters who die while acting in the line of duty in Colorado.

#### Article 1 - Authority

1.1 The Director of the Division of Fire Prevention and Control is authorized by the provisions of Section 24-33.5-1203.5, C.R.S., to promulgate rules in order to carry out the duties of the Division of Fire Prevention and Control.

1.2 Pursuant to Section 24-33.5-1229, C.R.S. the Director of the Division of Fire Prevention and Control is authorized to promulgate rules governing the payment of death benefits for seasonal wildland firefighters who have died as the direct and proximate result of an injury sustained in the line of duty in Colorado.

1.3 These rules are adopted consistent with the requirements of the State Administrative Procedure Act, section 24-4-101 et seq. (the "APA"), C.R.S.

#### Article 2 - Definitions

2.1 The definitions provided in 24-33.5-1202, C.R.S., apply to these rules. The following definitions also apply:

"Child" or "children" mean biological children, stepchildren, legally adopted children, and includes children born posthumously.

"Director" means the Director of the Division of Fire Prevention and Control in the Department of Public Safety.

"Division" or "DFPC" means the Division of Fire Prevention and Control in the Department of Public Safety.

"Acting In the Line of Duty" means a seasonal wildland firefighter acting in the performance of his or her duties if such duties are performed at the direction of, or with the knowledge of, a supervisor with the regulating authority, or when immediate action is required during the course of fire suppression or firefighting activities.

"Intoxication" means a disturbance of mental or physical capacities resulting from the introduction of any substance into the body.

#### Article 3 - Initiation of Review

3.1 Upon the death of a seasonal wildland firefighter acting in the line of duty, the supervisor of the unit in which the firefighter was a member shall notify the Division of the death immediately via the Notification of the Death of a Seasonal Wildland Firefighter form.

3.1.1 Upon receipt of Notification of the Death of a Seasonal Wildland Firefighter the Director shall initiate a review of eligibility for the payment of death benefits.

3.2 Prior to receiving the notification, the Director may, at his or her own initiation, begin the process of reviewing the eligibility for the payment of death benefits upon information and understanding that a wildland firefighter has been killed acting in the line of duty.

#### Article 4 - Review of Eligibility

4.1 Upon the initiation of review, the Director shall make a determination of eligibility for the payment of death benefits. The Director shall take into account all relevant information, including, but not limited to:

4.1.1 The circumstances surrounding the death or catastrophic injury of the deceased, including the cause of such death.

4.1.2 Whether the deceased was voluntarily intoxicated or under the influence of an illegal substance.

4.1.3 Whether the deceased was engaged in intentional misconduct.

4.1.4 Whether the deceased was engaged in activities considered to be acting in the line of duty.

4.2 The Director may review an autopsy or other informational report completed to aid in the determination of eligibility and may coordinate with any investigating agency in the generation or review of information.

4.3 The Director shall make such determination of eligibility within 30 business days of initiation of review or 30 business days after receipt of all necessary information

#### Article 5 - Post-Employment Death

5.1 If a seasonal wildland firefighter dies after separation from services with the governing agency body as described in 24-33.5-1229(2)(a), the unit supervisor, spouse, child, or designated beneficiary may request that the Director make a determination of eligibility for the payment of death benefits.

5.2 The Director may make an affirmative determination of eligibility for benefits if any injury sustained in the line of duty is the direct or proximate cause of the death. The Director may review any and all information available before making such eligibility determination.

#### Article 6 - Notice

6.1 The Division shall notify any prospective beneficiaries in writing within ten (10) calendar days of a decision regarding eligibility. If the determination is negative, the notice shall:

6.1.1 Describe the reasons for the decision; and

6.1.2 Inform the prospective beneficiary of his or her rights and responsibilities regarding the decision.

#### Article 7 - Payment

7.1 Upon an affirmative finding of eligibility by the Director, the Division shall issue to the designated beneficiary or beneficiaries the lump-sum benefit according to the proportion described in 24- 33.5-1229(1), CRS or, if 24-33.5-1229(1), CRS does not apply, as indicated in the most recent Designation of Beneficiary.

7.1.1 Any seasonal wildland firefighter may provide his or her hiring agency or authority with a Designation of Beneficiary at any time.

7.1.2 If a conflict arises between the beneficiary or beneficiaries appointed in the decedents Designation of

Beneficiary and those described in the provisions of 24-33.5-1229(1), CRS, the provisions of the statute will control.

#### Article 8 - Appeal of Eligibility Determination

8.1 Any aggrieved spouse, child, or designated beneficiary may appeal a negative determination of eligibility by the Director.

8.2 Notice of such appeal must be submitted to the Division in writing and be received within 30 days of the date of issuance of the notice of negative determination of eligibility.

8.2.1 The notice of appeal must contain the factual basis explaining why the determination was incorrect.

8.3 The Director shall hold a hearing to review such appeal and take final action in accordance with 24-4-105, CRS.

Final agency action shall be subject to judicial review pursuant to 24-4-106, CRS.

#### Article 9 - Severability

9.1 If any provision or application of these rules is held invalid, all other provisions and applications of these rules will remain in effect.

#### Article 10 - Inquiries

10.1 All questions or requests for interpretation of these rules should be submitted in writing to the Colorado Division of Fire Prevention and Control, Wildland Fire Section Chief at 690 Kipling St., Suite 2000, Lakewood, CO 80215.