

**78.5534 Death in the line of duty of member in hazardous position -- Payments to surviving spouse, dependent children, and designated beneficiaries -- Election -- Receipt of benefits under KRS 78.5532 pending final determination.**

The provisions of this section shall apply to members in a hazardous position.

- (1) If a member dies as a direct result of an act in line of duty as defined in KRS 78.510 and is survived by a spouse:
  - (a) The surviving spouse shall be the beneficiary, and this shall supersede the designation of all previous beneficiaries of the deceased member's retirement account except as provided in KRS 61.542(2)(e);
  - (b) The surviving spouse, provided he or she supersedes all previously designated beneficiaries, may elect to receive a lump-sum payment of ten thousand dollars (\$10,000) and a monthly payment equal to seventy-five percent (75%) of the member's monthly average pay beginning in the month following the member's death and continuing each month until the death of the surviving spouse; and
  - (c) In addition, if the member is also survived by dependent children, monthly payments shall be made for each dependent child equal to ten percent (10%) of the deceased member's monthly average pay, except that the combined maximum payment made to the:
    1. Surviving spouse and dependent children under this subsection shall not exceed one hundred percent (100%) of the deceased member's monthly average pay; and
    2. Dependent children, while the surviving spouse is living, shall not exceed twenty-five percent (25%) of the deceased member's monthly average pay. Payments made to the dependent children under this subsection shall be divided equally among all the dependent children.
- (2) If a member dies as a result of an act in line of duty as defined in KRS 78.510 and is not survived by a spouse but is survived by a dependent child or children, the following benefits shall be paid to the dependent child or children:
  - (a) Fifty percent (50%) of the deceased member's monthly average pay, if the deceased member has one (1) dependent child;
  - (b) Sixty-five percent (65%) of the deceased member's monthly average pay, if the deceased member has two (2) dependent children; or
  - (c) Seventy-five percent (75%) of the deceased member's monthly average pay, if the deceased member has three (3) or more dependent children.Payments made to the dependent children under this subsection shall be divided equally among all the dependent children.
- (3) If a member dies as a direct result of an act in line of duty as defined in KRS 78.510 and the member has on file in the retirement office at the time of his or her death a written designation of only one (1) beneficiary other than his or her spouse who has not been superseded by the surviving spouse as provided by subsection (1)(a) of this section, and who is a dependent receiving at least one-half (1/2) of his or her support from the deceased member, the beneficiary

may elect to receive a lump-sum payment of ten thousand dollars (\$10,000).

- (4) The payments provided by this section shall commence in the month following the date of death of the member and shall be payable to the spouse, dependent children, beneficiaries, or to a legally appointed guardian or as directed by the system. Benefits to a dependent child under this section shall be payable notwithstanding an election by a surviving spouse or beneficiary to withdraw the deceased member's accumulated account balance as provided in KRS 61.625 or to elect benefits under any other provisions of KRS 78.510 to 78.852.
- (5) A surviving spouse or beneficiary eligible for benefits under subsection (1) or (3) of this section who is also eligible for benefits under any other provisions of KRS 78.510 to 78.852 may elect benefits under this section or any other section of KRS 78.510 to 78.852 but cannot elect to receive both.
- (6)
  - (a) A surviving spouse or beneficiary applying for benefits under subsection (1) or (3) of this section who is also eligible for benefits under KRS 78.5532 may elect to receive benefits under KRS 78.5532(2)(a) or (b) while the application for benefits under subsection (1) or (3) of this section is pending.
  - (b) If a final determination results in a finding of eligibility for benefits under subsection (1) or (3) of this section, the system shall recalculate the benefits due the surviving spouse or beneficiary in accordance with this subsection.
  - (c) If the surviving spouse or beneficiary has been paid less than the amount of benefits which the surviving spouse or beneficiary was entitled to receive under this section, the system shall pay the additional funds due to the surviving spouse or beneficiary.
  - (d) If the surviving spouse or beneficiary has been paid more than the amount of benefits which the surviving spouse or beneficiary was entitled to receive under this section, the system shall deduct the amount overpaid to the surviving spouse or beneficiary from the ten thousand dollars (\$10,000) lump-sum payment and from the monthly retirement allowance payments until the amount owed to the systems has been recovered.

**Effective:** April 1, 2021

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