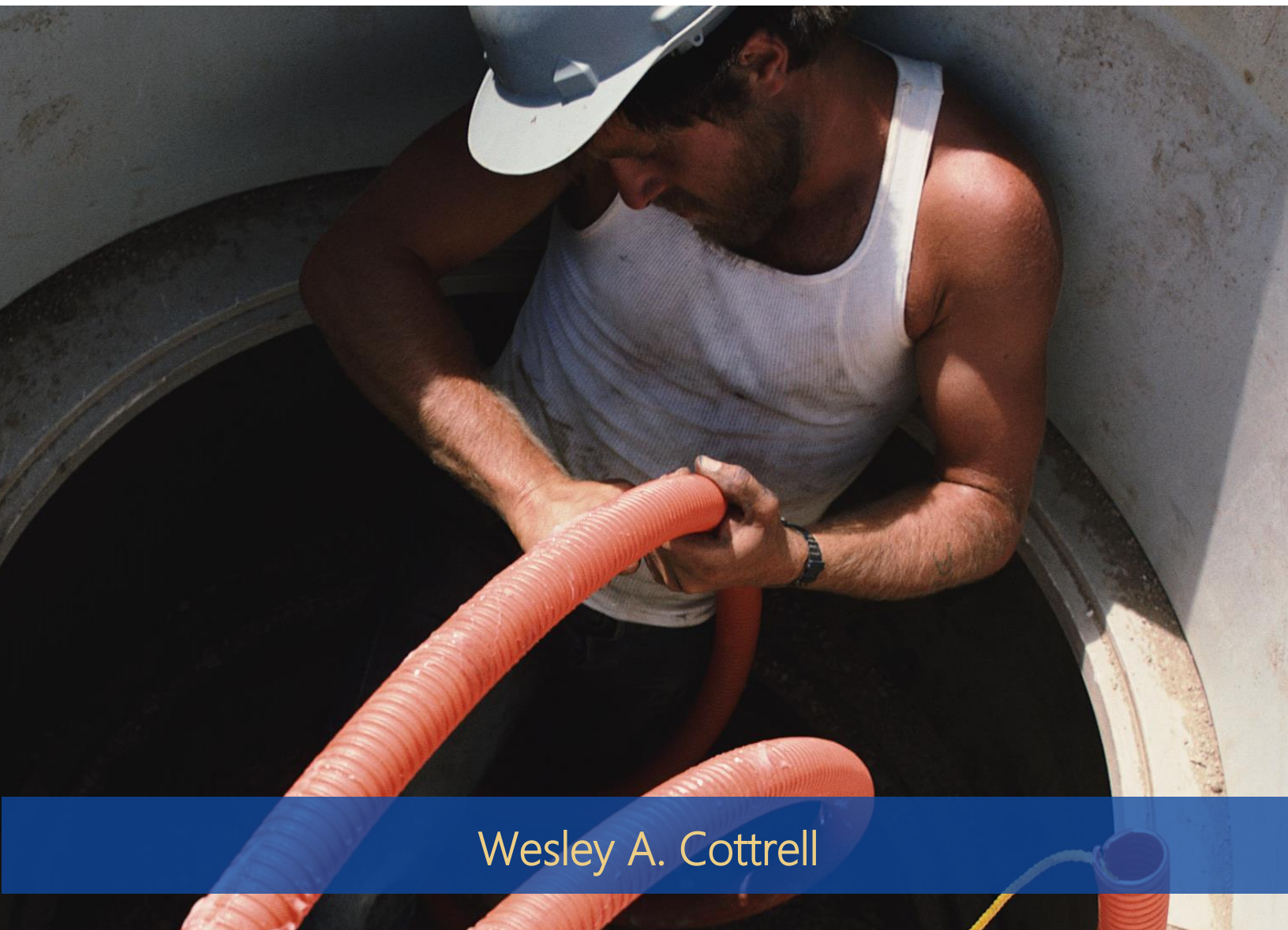


WORKERS' COMPENSATION SURVIVOR BENEFITS IN MISSOURI

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Wesley A. Cottrell



When an employee dies, after suffering a work injury compensable under Worker's Compensation laws, surviving family members may be entitled to certain benefits. The type and amount of the benefit are determined, in part, by the cause of the employee's death.

Each state, including Missouri, has its own set of rules established in the worker's compensation laws, regarding who can receive survivor benefits after the death of an employee eligible for benefits under Worker's Compensation.

When are survivor benefits usually available?



There are generally three situations where a surviving spouse or dependent may be eligible for benefits through Worker's Compensation. Obviously, when an employee dies as a result of a workplace or work-related injury, his or her surviving spouse and/or dependents are entitled to benefits. In some cases, survivors are also entitled to benefits, even if the employee's death is unrelated to work; this includes when the employee suffers a compensable permanent partial disability at work and subsequently dies, and when the employee suffers permanent total disability from a work related injury and then dies.

What benefits are available?

When an employee dies while on the job, or as a result of a work-related injury or accident, the survivors are entitled to weekly benefits at 66 2/3% of the



deceased employee's average weekly salary or wage. This amount is determined based on the wages received for the year immediately preceding death, subject to a maximum set by law. The employer will also pay funeral expenses up to \$5,000.00.

On the other hand, when the employee dies from a cause that is wholly unrelated to his or her workplace injury, the survivors are only entitled to any accrued benefits to which the deceased was entitled.

Who is responsible for paying the benefits?

As with standard Worker's Compensation benefits, the employer and its Worker's Compensation insurance carrier are responsible for paying survivor benefits. If the employer did not have Worker's Compensation insurance, in Missouri, the Second Injury Fund will pay the benefits.

Which survivors are entitled to benefits?

The general rule is that “total dependents,” as the term is legally defined, are entitled to survivor benefits. This would include a surviving spouse and dependent children under age eighteen. Benefits may be continued for a dependent child, who is older than 18, if the child is a full-time student, incapacitated and unable to earn a wage, or has served on active duty in the military. Total dependents share the weekly benefit, and when one dependent is no longer eligible for benefits, the remaining shares are adjusted.



How long do survivor benefits last?

A surviving spouse is entitled to the weekly benefit for his or her lifetime, unless he or she remarries. When the surviving spouse gets married, he or she receives a lump sum equal to two years of benefits. A dependent child, only receives benefits until age 18, unless one of the above exceptions applies. However, if

the dependent child is physically or mentally incapacitated, the weekly benefit may continue for life, unless their incapacity resolves itself.



How to claim survivor benefits

Usually, the employer of the deceased employee will contact the family and begin paying benefits automatically. However, if this does not happen, and you feel you should be entitled to survivor benefits, you can contact the employer or the employer's Worker's Compensation insurance carrier to inquire about possible benefits. You can also file a Workers' Compensation Claim for Compensation, which your attorney can assist you in filing.

Can an employer or insurance company deny or reduce survivor benefits?



When you are dealing with a fatal work-related injury, the same rules apply as in cases that result in non-fatal injuries. First, the employer must be subject to Missouri's Workers' Compensation laws, and the accident causing death must be a compensable accident under the law. This means that there must be proof that the work-related injury was the fundamental reason for the death. If this cannot be proven, the claim for survivor benefits may be denied.

There may also be some dispute regarding other aspects of the claim, such as the employee's average weekly wage amount or the identity of the total

dependents. If these types of disputes arise, they are usually resolved through an evidentiary hearing presided over by an administrative law judge.

If you have questions regarding survivor benefits, or any other Workers' Compensation concerns, call the Cottrell Law Office at (800) 364-8305.

About the Author



Wesley A. Cottrell

Wesley A. Cottrell has been successfully practicing law for over 29 years. Born in Springdale, Arkansas and raised in Baxter Springs, Kansas, Wes is licensed to practice law in Arkansas, Kansas, Missouri, and Oklahoma.

Wes earned his B.A. from Pittsburg State University in 1981 and his J.D. from the Washburn University School of Law in Topeka, Kansas in 1985. He was admitted to practice law in Kansas in 1986, in Missouri in 1987, in Arkansas in 1989, and Oklahoma in 1993.

He is licensed to practice law in the United States District Court for the District of Kansas, eastern Arkansas, western Arkansas, and western Missouri. He was Deputy Prosecuting Attorney in Crawford County, Kansas from 1987-1989.

Wes lives in Rogers, Arkansas with his wife, Shelly, and their two daughters, Kennedy and Gabby. He is active in his community, and is regularly asked to teach courses to other attorney on personal injury and workers' compensation litigation.

Memberships and Associations:

National Organization of Social Security Representatives
Benton County Bar Association
Arkansas Bar Association
The Missouri Bar
Kansas Bar Association
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