

CHAPTER 131. BENEFITS--LIFETIME INCOME BENEFITS

§131.2. Calculation of Lifetime Income Benefits.

- (a) Lifetime income benefits shall be calculated by multiplying the employee's average weekly wage by .75. The lifetime income benefit payable each week under this formula shall not exceed the weekly maximum benefit under the Workers' Compensation Act, §4.11, for the first year of benefits.
- (b) Each year on the anniversary date of the day lifetime income benefits began to accrue, the amount of those benefits being paid shall be increased by 3.0%. The employee is entitled to the annual increase without regard to the limits imposed by the maximum weekly benefit. The increase shall be paid without further action by the commission.

The provisions of this §131.2 adopted to be effective April 15, 1991, 16 TexReg 1885.

§131.3. Carrier's Petition for Payment of Benefits by the Subsequent Injury Fund.

- (a) When an insurance carrier reasonably believes that an injured employee may be eligible for lifetime benefits from the subsequent injury fund, the insurance carrier shall petition the commission for payment of lifetime income benefits from the subsequent injury fund. The petition shall be in writing and contain the following:
 - (1) the employee's name and social security number;
 - (2) the date of each injury;
 - (3) the workers' compensation number assigned to the claim (if any) for each injury;
 - (4) the name and address of the employer for whom the employee was working at the time of each injury; and
 - (5) any information upon which the carrier bases its request.
- (b) The commission shall order the payment of lifetime income benefits from the subsequent injury fund if it finds that the effects of the two injuries combined entitle the employee to lifetime income benefits.
- (c) The insurance carrier shall pay to the employee weekly benefits as ordered by the commission.
- (d) The subsequent injury fund shall compensate the employee for the remaining lifetime income benefits for which the insurance carrier is not liable.

The provisions of this §131.3 adopted to be effective April 15, 1991, 16 TexReg 1885.

§131.4. Change in Payment Period; Purchase of Annuity for Lifetime Income Benefits.

- (a) Upon the request of an injured employee entitled to lifetime income benefits (LIBs) as defined in the Act, the insurance carrier and an injured employee may agree to change the frequency of LIBs payments from the standard weekly period to a monthly period. The agreement to change the payment frequency must be in writing and is only required to be filed with the Commission if the Commission requests a copy. To relieve the insurance carrier of the responsibility to pay LIBs weekly a valid written agreement must include the following terms and conditions:
 - (1) the agreement for the monthly payment of LIBs shall be effective the first calendar day of the month following the month in which the written agreement was entered into by the insurance carrier and the injured employee;

- (2) monthly LIBs shall be issued on or before the seventh day of the month for which benefits are due;
 - (3) weekly LIBs payments shall continue through the end of the month in which the agreement was signed;
 - (4) payment of the last week of LIBs to transition from weekly payment of LIBs to monthly payments shall be prorated to the end of the month to ensure the injured employee receives LIBs through the last day of the month;
 - (5) the monthly compensation rate shall be calculated by multiplying the weekly compensation rate by 4.34821;
 - (6) if less than the maximum weekly compensation rate in effect on the date of the compensable injury is being paid, a completed Employer's Wage Statement must be included with the injured employee's copy of the written agreement; and
 - (7) A clear statement regarding the due date of the annual three percent increase in LIBs must be included.
- (b) At any time after signing the agreement for the monthly payment of LIBs, the injured employee or the insurance carrier may notify the other party in writing that it no longer agrees to the monthly payment of LIBs. In this case, the insurance carrier shall pay all accrued but unpaid LIBs at the end of the current monthly cycle and shall continue to pay LIBs weekly as and when they accrue and are due. The last monthly payment shall be prorated to ensure the insurance carrier pays the appropriate amount of LIBs.
 - (c) The insurance carrier and the injured employee entitled to LIBs may agree that the carrier will purchase an annuity for payment of LIBs. An application for payment of LIBs by annuity must be submitted to the Commission for approval in the form, format, and manner required by the Commission. If less than the maximum weekly compensation rate in effect on the date of the compensable injury is being paid, a complete Employer's Wage Statement must be included with the application.
 - (d) An annuity for the payment of LIBs shall meet the following terms and conditions.
 - (1) LIBs payments shall be initiated no later than the 45th day after the date the written agreement was approved by the Commission.
 - (2) The company providing an annuity for the payment of LIBs must be licensed to do business in Texas and must have a current A. M. Best rating of B+ or better or have a Standard & Poor's rating of claims paying ability of A or better.
 - (3) The workers' compensation insurance carrier must guarantee the payments provided by the annuity company in the event of default.
 - (4) The annuity contract must include funds for payment of the annual three percent increase in LIBs required by the Act, compounded annually.
 - (5) The injured employee, or guardian if applicable, shall not be allowed to assign the right to receive LIBs from an annuity. All LIBs must be paid to the order of the injured employee or the legal guardian, if applicable.
 - (6) An annuity cannot be purchased to fund the payment of medical costs incurred by an injured employee entitled to LIBs.
 - (7) The annuity company shall pay LIBs either weekly or monthly as indicated in the application for payment of LIBs by annuity.

- (8) If monthly payments are agreed to by the insurance carrier and the injured employee, the transition from weekly to monthly benefits paid by annuity shall be the same as that for LIBs paid by the responsible insurance carrier set out in subsection (a) of this section.
- (e) This section applies only to agreements entered into on or after January 1, 2000, for payment of LIBs under the provisions of the Act.

The provisions of this §131.4 adopted to be effective December 26, 1999, 24 TexReg 11449.