

SUMMARY OF LINE-OF-DUTY DEATH BENEFITS FOR FIREFIGHTERS IN ILLINOIS

October 2010 revision

Families suffering tremendous grief may not be aware of their potential eligibility to receive these benefits. Time is always important in all legal matters and may be critically short once families become aware of their eligibility. The author prays that your family (and his) never has to refer to this, but, if they must, he sincerely hopes that they find that this is helpful.

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The material contained herein is intended to provide a summary of benefits that may be available to a firefighter's loved ones following a line-of-duty death. This summary is not intended to give individual legal advice, but rather general information concerning benefits that might be available. It is a product of gathering information from publicly available sources and not the result of any independent legal analysis. Anyone reviewing this summary should not rely on the accuracy of this information and is strongly encouraged to consult a legal and/or financial professional before making any investments or major commitments, financial or otherwise.

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CONTACTS TO CONSIDER

The National Fallen Firefighters Association
P.O. Drawer 498
Emmitsburg, MD 21727
Hotline: (866) 736-5868
Telephone: (301) 447-1365
Fax: (301) 447-1645
URL: <http://firehero.org>

Illinois Fire Chiefs Association
P.O. Box 7
Skokie, IL 60076-0007
Telephone: (800) 622-0732
Fax: (847) 966-0782
URL: <http://www.illinoisfirechiefs.org>

Illinois Professional Firefighters Association
188 W. Industrial Drive, Suite 438
Elmhurst, IL 60126
Telephone: (630) 833-2405
URL: www.ipfaonline.org

Illinois Firefighters Memorial Foundation
URL: <http://www.sfm.illinois.gov/public/memorial.aspx>

QUICK REFERENCES FOR FUNERALS

<http://firehero.org/resources/departments/tcool/>

<http://www.illinoisfirechiefs.org/service.asp?id=25>

http://www.nvfc.org/pdf/funeral_procedures.pdf

<http://www.ladder54.com/IAFFFuneral.htm>

<http://www.affihonorguard.com/>

SEE ALSO

http://www.illinoisfirechiefs.org/mydata/service/LODDDeathBenefitsGuide_111.pdf

http://www.ksffa.com/KS%20LODD%20Info/specialized_resources.htm

PUBLIC SAFETY OFFICERS' BENEFITS ACT

42 U.S.C. § 3796, *et seq.*

Death Benefits

The United States' Public Safety Officers' Benefits ("PSOB") Program, administered through the Department of Justice ("DOJ"), is designed to provide death benefits in the form of a one-time financial payment to the eligible survivors of public safety officers whose deaths are the direct and proximate result of a traumatic injury sustained in the line of duty or certain eligible heart attacks or strokes.¹ A public safety officer is defined to be any individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, police, corrections, probation, parole and judicial officer, firefighter, rescue squad member or ambulance crew member.

Benefits are provided as follows: 100% to the spouse if there are no children; 50% to the spouse and 50% to the children in equal shares; 100% to the children in equal shares if there is no spouse; if there is no spouse or children, then to the individual(s) designated as beneficiary on file with the public safety officer's agency;² and, if there is no spouse or children and no designation of anyone else, then to the individual(s) designated as the beneficiary on the most recently executed life insurance policy on file with the public safety officer's agency.

Since October 15, 1988, the benefit has been adjusted each year on October 1 to reflect the percentage of change in the Consumer Price Index. The award amount is solely determined by the actual date of the officer's death. As of October 1, 2009, the benefit amount was \$311,810.

Survivors must comply with the PSOB Office's administrative review process. The PSOB Office works closely with the National Fallen Firefighters Foundation (NFFF), which provides an array of support services that may be helpful to the survivors immediately after a line-of-duty death. Visit their web site, <http://firehero.org/resources/benefits/psobclaimprocess.html>, for more information.

Eligible survivors may file claims with the DOJ's PSOB Office through the public agency in which the public safety officer served. A protocol is available on the DOJ's web site, http://www.ojp.usdoj.gov/BJA/grant/psob/psob_main.html.

¹ Fire departments should strongly consider arranging for an autopsy after a fatality occurs.

² A sample form is attached.

Following approval of a death benefits claim, the eligible survivors will be paid the benefit in a lump sum. This payment is made through the U.S. Department of the Treasury in the order listed above.

Disability Benefits

The PSOB Program is also designed to provide disability benefits for public safety officers who have been permanently and totally disabled by a catastrophic injury sustained in the line of duty if that injury permanently prevents the officer from performing any gainful work.³ (Medical retirement for a line-of-duty disability does not, in and of itself, establish eligibility for PSOB benefits.) Disability benefits are beyond the scope of this summary. Visit the DOJ's web site, http://www.ojp.usdoj.gov/BJA/grant/psob/psob_disability.html, for more information.

Education Benefits

The PSOB Program also includes the Public Safety Officers' Educational Assistance (PSOEA) Program, which provides financial assistance for higher education for the spouses and children of federal, state, and local public safety officers who have been permanently disabled or killed in the line of duty. This program is designed to enhance the appeal of service in public service agencies; to extend the benefits of higher education to qualified and deserving people who, by virtue of the death or total disability of an eligible officer, may not otherwise be able to afford it; and to allow family members of eligible officers to attain the vocational and educational status that they would have attained had the parent or spouse not been killed or disabled in the line of duty.

Educational assistance through the PSOEA Program is only available to the spouse or children of a public safety officer after the PSOB death or disability claim process has been completed and benefits have been awarded. The educational assistance may be used to defray relevant expenses, including tuition and fees, room and board, books, supplies, and other education-related costs. As of October 1, 2009, the maximum award for a full-time student was \$925 per month of class attendance. All PSOEA awards must, by law, be reduced by the amount of other governmental assistance that a student is eligible to receive.

³ 42 U.S.C. § 3796a provides that no benefit shall be paid under certain circumstances, such as "(1) if the death or catastrophic injury was caused by the intentional misconduct of the public safety officer or by such officer's intention to bring about his death or catastrophic injury;" "(2) if the public safety officer was voluntarily intoxicated at the time of his death or catastrophic injury;" or "(3) if the public safety officer was performing his duties in a grossly negligent manner at the time of his death or catastrophic injury[.]"

Educational assistance through the PSOEA Program is available to the spouse or children of a public safety officer after the PSOB death or disability claim process has been completed and benefits have been awarded. The spouse of a public safety officer is eligible to receive PSOEA funds for educational expenses at any time during his or her lifetime. However, for a child of the deceased or disabled officer, eligibility is limited to educational expenses that occur prior to his or her 27th birthday. Also, a spouse or child is eligible to receive PSOEA funds for a period no greater than 45 months of full-time education or a proportionate period of a part-time program.

Because there is a maximum amount that can be paid, assistance from the PSOEA Program often covers only a portion of the student's expenses. Applicants may be eligible for retroactive assistance for all semesters already completed. PSOEA award payments are made through the U.S. Department of the Treasury and sent directly to the claimant. Additional information is available through the Department of Justice's web site, http://www.ojp.usdoj.gov/BJA/grant/psob/psob_education.html.

ILLINOIS LINE OF DUTY COMPENSATION ACT 820 ILCS 315/1, *et seq.*

Death Benefits

The Line of Duty Compensation Act defines "fireman" as "any person employed by the State or a local governmental entity as, or otherwise serving as, a member or officer of a fire department either for the purpose of the prevention or control of fire or the underwater recovery of drowning victims, including volunteer firemen." Death must occur within one year from the date the injury was received. The Act provides that, if a claim is made within one year of the date of death of the firefighter, "compensation shall be paid to the person designated" by the firefighter.⁴

If no beneficiary is designated, or if the designated beneficiary does not survive the death of the firefighter, the compensation shall be paid in accordance with a legally binding will left by the firefighter. If the firefighter does not leave a legally binding will, the compensation shall be paid 100% in the following order: (1) to the surviving spouse, (2) if there is no surviving spouse, then to the surviving descendants of the firefighter in equal shares,⁵ (3) if there is neither a

⁴ A sample form is attached.

⁵ Special provisions may apply to children born out of wedlock and not adopted.

surviving spouse nor a surviving descendant, then the sum shall be paid to the parents of the firefighter in equal shares, or to the surviving parent if one is dead, and then (4) to the surviving brothers or sisters, or their descendants, who were dependents of the firefighter. If there is no one who falls in any of these categories, then no compensation shall be payable.

For deaths on or after January 1, 2003, the amount shall be the rate for the previous calendar year plus the percentage increase in the Consumer Price Index. As of January 2010, the amount was \$313,878.96.

An application is available online through the Illinois Secretary of State's Office at http://www.cyberdriveillinois.com/publications/pdf_publications/cc92.pdf. Instructions are included on the form.

The Act provides that "No part of such compensation may be paid to any other person for efforts in securing such compensation." Please be aware that there are people out there who would try to take advantage of a family's grief. However, an attorney can perform immeasurable service to the family of a firefighter killed in the line of duty by advising them of available benefits and assisting them in the process of requesting compensation. Keep in mind that there are strict filing requirements in order to take advantage of this program. Once an application is received, the Illinois Attorney General conducts an investigation to substantiate the information provided and prepares a report before distribution is considered.

Funeral Benefits

Burial benefits up to a maximum of \$10,000 are available.

Limitations

The law provides that, "The compensation provided for in this Act is in addition to, and not exclusive of, any pension rights, death benefits or other compensation otherwise payable by law."

ILLINOIS WORKERS' COMPENSATION ACT

820 ILCS 305/1, *et seq.*

Death Benefits

Workers' compensation should cover all first-aid, medical, and hospital expenses connected with fatal injury. A benefit based on a percentage of the

deceased's gross average weekly wage⁶ "shall be payable during the life of the widow or widower and if any surviving child or children shall not be physically or mentally incapacitated then until the death of the widow or widower or until the youngest child shall reach the age of 18, whichever shall come later". If a child or children are enrolled full-time in any accredited educational institution, "the payments shall continue until such child has attained the age of 25. In the event any surviving child or children shall be physically or mentally incapacitated, the payments shall continue for the duration of such incapacity." If the spouse remarries and there are no surviving children who are entitled to compensation, the surviving spouse will receive a lump sum equal to two years of benefits, and the surviving spouse's rights to further compensation "shall be extinguished."

Funeral Benefits

Burial benefits are available.

Limitations

Volunteers in particular should check with their departments to determine the scope of coverage. Are volunteers covered from the time of the page until the time that they return to their points of origin, or is a separate rider or additional policy needed to insure for times and places other than at the scene of an emergency? For example, if a volunteer slips and falls on his icy driveway before leaving his home or after returning from a call, is he covered by workers' compensation?

ILLINOIS HIGHER EDUCATION STUDENT ASSISTANCE ACT 110 ILCS 947/1, *et seq.*

The spouse or child of an Illinois fire officer who is killed or becomes at least 90% disabled in the line of duty may be eligible for benefits under the Grant Program for Dependents of Police or Fire Officers. This grant provides assistance toward college tuition and mandatory fees for undergraduate or graduate study at an Illinois college approved by the Illinois Student Assistance Commission ("ISAC"). The equivalent of 8 semesters or 12 quarters of assistance may be received. Recipients do not need to be an Illinois resident at the time of enrollment. See http://www.collegezone.com/studentzone/407_633.htm for more information.

⁶ Volunteer firefighters are compensated based on the average weekly wage in their regular employment.

Eligibility

Eligibility requirements are listed on the ISAC web site listed above. The number of grants made through this program, as well as the individual dollar amount awarded, are subject to sufficient annual appropriations by the General Assembly and the Governor.⁷ Recipients attending approved public colleges in Illinois receive full payment of tuition and mandatory fees on their behalf.⁸ Students may be responsible for payment until program funds are received by the college, and recipients should contact the college's Financial Aid Office or Business office to determine the college's policy.

How To Apply

An application for this grant is available at most high school guidance counselors' offices, at most college financial aid offices, and online at http://www.collegezone.com/studentzone/407_582.htm. Filing deadlines apply.

OTHER CONSIDERATIONS

The National Fallen Firefighters Foundation

The National Fallen Firefighters Foundation is a tax-exempt, § 501(c)(3) organization that provides survivors with a place to turn in a very difficult situation. *Upon request*, a Local Assistance State Team will be deployed to provide assistance and comfort to the family and the department coping with a line-of-duty death, from helping with funeral arrangements to properly honor the fallen firefighter, to helping file for federal, state, and other benefits. Their information is included at the beginning of this summary. The hotline number is (866) 736-5868. Visit their web site, <http://firehero.org>.

The Importance of a Will

Anyone who owns any property should consider having a Will. If you do not, Illinois has, in effect, made one for you in the statute of descent and distribution. You might be surprised who will receive your estate in the absence of a Will.

⁷ Scholarships are also available through the Office of State Fire Marshal.

⁸ Recipients attending approved private colleges in Illinois shall receive payment of tuition and mandatory fees in an amount not to exceed the maximum grant payable to a student enrolled in the most expensive comparable program of study at a public college in Illinois.

Anyone who has children should seriously consider having a Will in order to declare his or her wishes as to who will become the children's guardian. Without a Will, the surviving family members might fight over your children in court. By declaring your wishes, you can designate who you want to serve as guardian of your children.

Wills do not dispose of jointly-titled property (such as bank accounts, real estate, or motor vehicles) or property subject to a valid beneficiary designation (such as life insurance). While thinking about these sobering things, you might also consider how your property is titled and whether your beneficiary designations are as you want them.

Health Insurance

A federal law known as COBRA provides for continuation of employer-sponsored health insurance coverage for spouses and dependents. This law applies to group health plans maintained by employers who had 20 or more employees on more than 50% of the business days in the prior calendar year, and plans sponsored by state and local governments. Employers must notify plan administrators within 30 days after an employee's death, and the administrators then have 14 days after being notified to contact the survivors and offer COBRA coverage. However, to protect yourself, you should be sure to notify the employer and/or insurer to preserve your continuation rights. In most cases, survivors must pay for the coverage themselves, including the part that was paid by the employer. Continued coverage is available for up to 36 months. For more information, visit http://www.dol.gov/ebsa/faqs/faq_consumer_cobra.HTML and <http://www.insurance.illinois.gov/HealthInsurance/continueCobra.asp>.

For a volunteer whose employer has less than 20 employees, the Illinois Continuation Law (known as mini-COBRA) may be the only option. The employer is required to notify you in writing within 10 days, and you must request continuation of coverage within 30 days after the date of the written notice. To be eligible for continued coverage, the employee and eligible dependents must have been continuously covered for 3 months. For more information, visit <http://www.insurance.illinois.gov/HealthInsurance/ContinueIL.asp>.

Social Security Benefits

Some of the deceased's family members may be eligible to receive Social Security benefits if the deceased person worked long enough under Social Security to qualify for benefits. Social Security should be notified as soon as possible. Often, the funeral director will report the person's death. A one-time lump sum of \$255 can be paid to the surviving spouse. Monthly survivors benefits can also be paid to

certain family members, including the surviving spouse, dependent children, or dependent parents. How much depends on the deceased's average lifetime earnings. For more information, visit the Social Security Administration's web site, <http://www.ssa.gov>.

Victims of Crime Act

The DOJ supports state programs to provide compensation and assistance to victims of crime. If a firefighter's death is associated with a criminal act, such as arson, benefits may be available. The Office of Attorney General's Crime Victims Division investigates the claim and files a report and proposed order with the Illinois Court of Claims, and the Court of Claims renders a decision. Up to \$27,000 in financial assistance may be available (with certain limits) for things such as medical expenses, lost wages, and funeral costs. For more information, visit <http://www.ag.state.il.us/victims/cvc.html>.

Tax Consequences

Some of the above benefits may be taxable, and others not. In some cases, the benefit might be offset or reduced by tax withholdings. In others, your family might have to write a check for the taxes when filing their tax returns. Survivors should do their best to determine the potential tax implications and secure written confirmation of such during the application process. Otherwise, survivors should consider securing the assistance of a trusted tax professional or a tax attorney so that they can properly prepare for any tax liability that might result from the receipt of any benefits and avoid the shock of having to write a large check later on.

DESIGNATION OF BENEFICIARY

Printed name

I hereby designate the following person or persons as beneficiary or beneficiaries in the event that compensation or other benefits are payable in accordance with state or federal law, including but not limited to the provisions of the Illinois "Line of Duty Compensation Act", 820 ILCS 315/1, *et seq.* and/or the Public Safety Officers Benefits Act, 42 U.S.C. § 3796, *et seq.*:

Complete name and address of each beneficiary	Relationship, if any	Cash amount or percentage

Print your name (first, middle, last) _____

Your address: _____

Your date of birth: _____ Your SSN: _____

Title or designation of position _____

Local government entity and address: _____

Your signature: _____

Signature of witness 1: _____

Printed name & address of witness 1: _____

Signature of witness 2: _____

Printed name & address of witness 2: _____

DATE: _____

The original of this document should be placed on file with the firefighter's agency.