

#### **161.520 Payment of accumulated contribution on death.**

Upon the death of an active contributing member or upon the death of a member retired for disability, except as provided in KRS 161.661(6), the survivors of the deceased member in the following named order, may elect to receive a survivor's benefit payable as follows:

- (1) Where there is a surviving widow or widower who is named as the primary beneficiary of the member's retirement account, the benefit shall be:
  - (a) One hundred eighty dollars (\$180) per month with no restriction on other income;
  - (b) Two hundred forty dollars (\$240) per month when the surviving widow or widower's total income from all sources does not exceed six thousand six hundred dollars (\$6,600) per year or five hundred fifty dollars (\$550) per month; or
  - (c) If the deceased member has a minimum of ten (10) years of service credit with the Teachers' Retirement System, the surviving widow or widower may apply for an annuity actuarially equivalent to the annuity that would have been paid to the deceased member when eligibility conditions were met. Eligibility for payments would begin at the time the age of the deceased member would have met the requirements of KRS 161.600(1). In exercising this right, the surviving widow or widower shall be entitled to receive an annuity for life, except as provided in subsection (6) of this section. This subsection applies to surviving spouses of members who die on or after July 1, 1978. A surviving widow or widower of a member who dies after July 1, 1978, shall be eligible for benefit payments provided under paragraphs (a) and (b) of this subsection until they begin receiving payments under this provision;
- (2)
  - (a) Where there are surviving unmarried children under age eighteen (18) or under age nineteen (19) if a full-time student in high school, the benefit shall be two hundred dollars (\$200) per month in the case of one (1) child, three hundred forty dollars (\$340) per month in the case of two (2) children, four hundred dollars (\$400) per month in the case of three (3) children, and four hundred forty dollars (\$440) per month in the case of four (4) or more children. Benefits under this subsection shall apply in addition to benefits which may be payable under subsections (1) and (3) of this section.
  - (b) Notwithstanding any provision of law to the contrary, the surviving spouse may elect to receive a lump-sum refund of the member's account in lieu of the survivorship benefits payable under this subsection and subsection (1) of this section only if the surviving spouse is designated as the primary beneficiary and:
    1. Is a biological or adoptive parent of all children eligible for a benefit under this subsection and has not had his or her parental rights terminated; or
    2. Has been appointed as legal guardian of all of the children eligible under paragraph (a) of this subsection.

- (c) To elect a lump-sum refund of the member's account under paragraph (b) of this subsection, the surviving spouse who is designated as the primary beneficiary must sign a waiver on forms prescribed by the retirement system of his or her rights and the member's children's rights to the survivorship benefits payable under this subsection and subsection (1) of this section. The surviving spouse shall not waive the survivorship benefits available under this subsection or subsections (1) and (6) of this section if any of the member's children have attained age eighteen (18) or older unless all of those children consent in writing on forms prescribed by the retirement system to waive their survivorship benefits available under this subsection;
- (3) (a) Where the survivor is a child age eighteen (18) or older whose mental or physical condition is sufficient to cause his dependency on the deceased member at the time of the member's death, the benefit shall be two hundred dollars (\$200) per month, payable for the life of the child or until the time as the mental or physical condition creating the dependency no longer exists or the child marries. The mental or physical condition of the adult child shall be revealed by a competent examination by a licensed physician and shall be approved by a majority of a medical review committee as defined in KRS 161.661(14). Benefits under this subsection shall apply in addition to benefits which may be payable under subsections (1) and (2) of this section.
- (b) Notwithstanding any provision of law to the contrary, the surviving spouse shall not elect to receive a lump-sum refund of the member's account in lieu of the survivorship benefits payable under this subsection and subsection (1) of this section unless:
  - 1. The surviving spouse is designated as the primary beneficiary;
  - 2. The surviving spouse has been appointed by the court as guardian, conservator, or other fiduciary with sufficient general or specific authority to waive the survivorship benefits available under this subsection for any child or children age eighteen (18) or older who have been adjudicated incompetent to make decisions on their own behalf by a court of law; and
  - 3. Any child or children age eighteen (18) or older who are mentally competent to make decisions on their own behalf as attested to by two (2) physicians' statements consent in writing on forms prescribed by the retirement system to waive their survivorship benefits available under this subsection.
- (c) If eligible to elect a lump-sum refund of the member's account, the surviving spouse shall sign a waiver on forms prescribed by the retirement system of his or her rights and the member's children's rights to the survivorship benefits payable under this subsection and subsections (1) and (2) of this section;
- (4) Where the sole eligible survivors are dependent parents aged sixty-five (65) or over, the benefit shall be two hundred dollars (\$200) per month for one (1) parent or two hundred ninety dollars (\$290) per month for two (2) parents. Dependency of a parent shall be established as of the date of the death of the member;

- (5) Where the sole eligible survivor is a dependent brother or sister, the benefit shall be one hundred sixty five dollars (\$165) per month. In order to qualify the brother or sister must have been a resident of the deceased member's household for at least one (1) full year prior to the member's death or must have been receiving care in a hospital, nursing home, or other institution at the member's expense for same period;
- (6) The benefit to a child as defined in subsection (2) of this section shall terminate upon the attainment of age eighteen (18) or upon reaching age nineteen (19), if a full-time student in high school, or upon marriage, except that benefits shall continue until the attainment of age twenty-three (23) for an unmarried child who is a full-time student in a recognized educational program beyond the high school level. The benefit to a widow, widower, dependent parent, or dependent brother or sister or dependent child age eighteen (18) or older shall terminate upon marriage, or upon termination of the condition creating the dependency;
- (7) The board of trustees shall be the sole judge of eligibility or dependency of any beneficiary, and may require formal application or information relating to eligibility or dependency, including proof of annual income satisfactory to the board. The board of trustees may subpoena records and individuals whenever it deems this action necessary;
- (8) No payment of benefits shall be made unless the board of trustees authorizes the payment. The board shall promulgate administrative regulations for the administration of the provisions in this section and in every case the decision of the board of trustees shall be final as to eligibility, dependency, or disability, and the amount of benefits payable;
- (9) In the event that there are no eligible survivors as defined in subsections (1) to (5) of this section, or in the event that the surviving spouse elects not to receive survivorship benefits on his or her own behalf or on behalf of any of the member's children as permitted under subsections (2) and (3) of this section, the board of trustees shall pay to the estate or the designated beneficiaries of the deceased member a refund of his accumulated contributions as provided in KRS 161.470(7). If the benefits paid or payable under subsections (1) to (5) of this section and KRS 161.661 shall amount to a sum less than the member's accumulated contributions at the time of death, the board of trustees shall pay to the estate or designated beneficiaries of the deceased member the balance of the accumulated contributions;
- (10) Any person who is receiving benefits and becomes disqualified from receiving those benefits under this section shall immediately notify the Teachers' Retirement System of this disqualification in writing and shall return all benefits paid after the date of disqualification. Failure to comply with these provisions shall create an indebtedness of that person to the Teachers' Retirement System. Interest at the rate of eight percent (8%) per annum shall be charged if the debt is not repaid within sixty (60) days after the date of disqualification. Failure to repay this debt creates a lien in favor of the Teachers' Retirement System upon all property of the person who improperly receives benefits and does not repay those benefits; and

- (11) Benefits under subsections (2) and (3) of this section shall apply to a child who is a legally adopted survivor at the time of the death of the member. This provision shall be retroactive to include a child who was born after January 1, 1990, and is a legally adopted survivor of a member whose death occurred prior to July 15, 2008.

**Effective:** July 1, 2008

**History:** Amended 2008 Ky. Acts ch. 67, sec. 1, effective July 15, 2008; and ch. 78, sec. 7, effective July 1, 2008. -- Amended 2006 Ky. Acts ch. 189, sec. 4, effective July 1, 2006. -- Amended 2004 Ky. Acts ch. 121, sec. 9, effective July 1, 2004. -- Amended 1994 Ky. Acts ch. 369, sec. 8, effective July 1, 1994. -- Amended 1992 Ky. Acts ch. 192, sec. 6, effective July 1, 1992. -- Amended 1990 Ky. Acts ch. 442, sec. 7, effective July 1, 1990; and ch. 476, Pt. V, sec. 510, effective July 13, 1990. -- Amended 1988 Ky. Acts ch. 363, sec. 9, effective July 1, 1988. -- Amended 1986 Ky. Acts ch. 440, sec. 7, effective July 1, 1986. -- Amended 1984 Ky. Acts ch. 253, sec. 13, effective July 1, 1984. -- Amended 1980 Ky. Acts ch. 206, sec. 4, effective July 1, 1980; and ch. 246, sec. 15, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 152, sec. 7, effective March 28, 1978. -- Amended 1976 Ky. Acts ch. 351, sec. 10, effective July 1, 1976. -- Amended 1974 Ky. Acts ch. 386, sec. 31; and ch. 395, sec. 10. -- Amended 1972 Ky. Acts ch. 82, sec. 14. -- Amended 1970 Ky. Acts ch. 54, sec. 1. -- Amended 1968 Ky. Acts ch. 136, sec. 6. -- Amended 1966 Ky. Acts ch. 16, sec. 5. -- Amended 1964 Ky. Acts ch. 43, sec. 10. -- Amended 1962 Ky. Acts ch. 64, sec. 10. -- Amended 1958 Ky. Acts ch. 7, sec. 2. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4506b-33.

**Legislative Research Commission Note** (7/15/2008). This section was amended by 2008 Ky. Acts chs. 67 and 78, which do not appear to be in conflict and have been codified together.