

§ 234.18

check, that person's share is payable to his or her estate.

§ 234.18 Payment of a deferred lump-sum to a widow(er).

In certain cases, a deferred LSDP may be payable to the employee's widow(er), even if someone may be entitled to a monthly annuity in the month of the employee's death. A deferred LSDP is the difference between the amount of the LSDP and the total of the monthly survivor annuities paid during the 12-month period which begins in the month of the employee's death.

§ 234.19 Effect of payment on future entitlement.

Payment of an LSDP does not affect the entitlement of survivors to monthly annuities at a later date.

§ 234.20 Computation of the employee's 1937 Act LSDP basic amount.

(a) Definition of terms used in this section:

Average monthly remuneration (AMR) means the amount obtained by adding together the creditable compensation and wages earned by the employee after 1936 and before the LSDP closing date and dividing that sum by three times the number of calendar quarters in that period. (Refer to part 211 of this chapter for a definition of creditable compensation and section 209 of the Social Security Act for a definition of creditable wages.)

Closing date means whichever of the following produce the highest AMR:

(1) The first day of the calendar year in which the employee both attained age 65 and was completely insured;

(2) The first day of the calendar year in which the employee died; or

(3) The first day of the calendar year following the year in which the employee died;

(4) However, if paragraphs (a)(1) through (3) of this definition do not occur before January 1, 1975, the closing date is January 1, 1975.

(b) *LSDP basic amount formula*. The basic amount is computed using the following formula:

(1) Determine 52.4% of the AMR up to and including \$75.00;

(2) Determine 12.8% of the AMR exceeding \$75.00;

(3) Determine 1% of the sum of paragraphs (b)(1) and (2) of this section;

(4) Multiply the result of paragraph (b)(3) of this section by the number of years after 1936 through 1974 in which the employee earned \$200 or more;

(5) Add the results of paragraphs (b)(1), (2) and (3) of this section. If the resulting basic amount is less than \$18.14, increase it to \$18.14.

§ 234.21 Definitions of "living with" and "living in the same household."

(a) *Living with*. A widow(er) is considered "living with" the employee at the time of the employee's death, if one of the following conditions applies:

(1) The employee and spouse were members of the same household;

(2) The spouse was receiving regular contributions for support from the employee; or

(3) The employee was under court order to contribute to the spouse's support.

(b)(1) *Living in the same household*. An employee and spouse were "living in the same household" if they lived together as a married couple in the same residence. However, an employee and spouse, who were temporarily living apart, will be considered "living in the same household" if there was intent to share the same residence had the employee not died. The Board will usually assume that a married couple was living apart temporarily, if the separation was caused by circumstances beyond their control, for example, ill health, financial difficulties, service with the Armed Forces, or confinement in a curative, custodial, or penal institution.

(2) If the employee and spouse were separated solely for medical reasons, the Board will consider them "living in the same household," even if the separation was likely to be permanent.

Subpart C—Annuities Due but Unpaid at Death

§ 234.30 General.

When an applicant or an annuitant dies before being paid any annuities that may be due, the total of those annuities become payable to certain survivors in a lump-sum. Refer to § 234.31

Railroad Retirement Board

§ 234.41

through § 234.34 for information about when and to whom each type of unpaid annuity is payable. An application for an unpaid annuity must be filed within two years after the death of the person originally entitled to the annuity.

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§ 234.31 Regular employee retirement and supplemental annuities.

A regular employee retirement annuity or a supplemental annuity which is unpaid at the death of the employee is payable in the following order and amounts:

(a) A surviving spouse, who was "living with" (see § 234.21) the employee at the time of the employee's death, receives the full amount of the unpaid annuity.

(b) Each person who paid the employee's burial expenses receives a share of the unpaid annuities in the same proportion that he or she paid the burial expenses, but only to the extent that he or she is not reimbursed by the LSDP. If a payer of the employee's burial expenses dies before negotiating his or her check, that payment becomes payable to his or her estate.

(c) Surviving children of the employee receive equal shares.

(d) Surviving grandchildren of the employee receive equal shares.

(e) Surviving parents of the employee each receive equal shares.

(f) Surviving brothers and sisters of the employee receive equal shares. Half blood brothers and sisters share equally with full blood brothers and sisters.

§ 234.32 Spouse or divorced spouse annuities.

A spouse annuity or divorced spouse annuity which is unpaid at the death of the spouse or divorced spouse is paid in the following order and amounts:

(a) The employee receives the full amount.

(b) If the employee died before negotiating the check in payment of the unpaid annuities, the unpaid spouse annuity or divorced spouse annuity is paid in the same order and amounts as described in § 234.31 (b) through (f).

§ 234.33 Survivor annuities.

Any survivor annuity which is unpaid at the death of the survivor is paid in the same order and amounts as described in § 234.31(a) and § 234.31(c) through § 234.31(f).

§ 234.34 When an entitled relative of the employee dies before receiving payment of a due but unpaid annuity.

If a person, who is entitled to unpaid annuities based upon his or her relationship to the employee, dies before negotiating the check in payment of the unpaid annuities, the amount to which he or she was entitled becomes payable to other relatives of the employee in the same degree of relationship. If no relatives in that degree of relationship survive, the amount becomes payable to relatives in the next degree of relationship.

Subpart D—Residual Lump-Sum Payment

§ 234.40 General.

The residual lump-sum (RLS) is the means by which railroad employees and their survivors are guaranteed to receive at least as much in benefits as the employee paid in railroad retirement taxes during the years 1937 through 1974. An RLS payment can be made only if it appears that no other benefits based at least in part on railroad service will be payable under either the Railroad Retirement Act or Social Security Act in the future. The residual is reduced for any retirement benefits that were paid on the basis of the employee's railroad service, and for any survivor benefits based on the employee's earnings already paid by either the Board or the Social Security Administration. A widow(er) or dependent parent can, before attaining age 60, elect to waive future rights to monthly benefits based on the employee's railroad service in order to receive the RLS.

§ 234.41 Persons to whom an RLS is payable.

After the death of an employee, the RLS is payable, in the following order,