

Office of Personnel Management
Retirement and Insurance Group



1920



1954



1959



1986

Benefits Administration Letter

*Number:*96-109

Date: October 16, 1996

Subject: New Death Gratuity Payment Authority

Attached is a memorandum from James B. King, Director of the Office of Personnel Management, concerning a new death gratuity payment authority created by Public Law 104-208. As indicated in that memorandum, the Office of Workers Compensation Programs has provided OPM with names of employees who died in service on or after August 2, 1990, for whom OWCP has made a payment. These lists are being distributed to Directors of Personnel.

Please note that OWCP has cautioned us that, in some cases no one applied for any payment from them, so there may be qualifying cases that do not appear on a list your agency receives. If you want to cross-check against OPM files or have other questions, please call your liaison officer in the Agency Services Division.

A handwritten signature in black ink that reads "Mary M. Sugar". The signature is written in a cursive, flowing style.

Mary M. Sugar, Chief
Agency Services Division



UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, DC 20415-0001

OFFICE OF THE DIRECTOR

MEMORANDUM FOR HEADS OF DEPARTMENTS AND INDEPENDENT
AGENCIES

FROM: JAMES B. KING [Signed Oct 15, 1996]
DIRECTOR

SUBJECT: New Death Gratuity Payment Authority

Introduction

Section 651 of Public Law 104-208, the Omnibus Consolidated Appropriations Act, effective September 30, 1996, gives department and agency heads the authority to pay up to \$10,000 as a death gratuity to the personal representative of an employee who dies from an injury sustained in the line of duty.

This is an important new way to help meet the needs of the survivors of Federal employees who have made the ultimate sacrifice in the line of duty. While the authority is discretionary, we strongly encourage all department and agency heads to make full use of this new authority as soon as possible.

Eligibility for the Gratuity

The gratuity is payable to the personal representative of any Federal employee who dies from an injury that was sustained on or after August 2, 1990, in the line of duty. This includes a department or agency employee who dies after separation from service, if the death is the result of an injury sustained in the line of duty.

For this purpose, the personal representative of the deceased employee would generally be the formally designated executor or administrator of the employee's estate under State law. The department or agency head determines who is the personal representative in any particular case.

We believe that the gratuity would be unwarranted if the department or agency determines that the employee's death was the result of willful misconduct.

Payment of the Gratuity

The gratuity is to be paid from appropriations made available to the department or agency in an amount, when combined with certain other payments, that does not exceed \$10,000. The other payments that must be considered in determining the amount of the gratuity are:

- \$200 payable under 5 U.S.C. § 8133(f), for reimbursement of the costs of termination of the decedent's status as an employee of the United States;
- up to \$800 payable under 5 U.S.C. § 8134(a), for funeral and burial expenses in cases of employees who died as a result of an injury sustained in the performance of duty; and
- any amount paid under section 312 of Public Law 103-332, the Department of the Interior and Related Agencies Appropriations Act, 1995. This authority provides for payment of up to \$10,000 in reimbursement for burial costs and related out-of-pocket expenses for employees killed in the line of duty in agencies that receive appropriations under a Department of the Interior and Related Agencies Appropriations Act for fiscal year 1995 and thereafter.

The amount paid under these three authorities, plus the gratuity paid under the new authority, may not total more than \$10,000. The gratuity is not reduced by any other amounts, including other benefits payable under the Federal Employees' Compensation Act.

Personal representatives who have received reimbursement of less than \$10,000 under the authority of section 312 of Public Law 103-332 may seek additional payment at this time under the new authority. In these cases, we encourage department and agency heads to pay any additional amounts now available under section 651 of Public Law 104-208, subject to the \$10,000 total limit.

Tax Status of the Gratuity

We have asked the Internal Revenue Service to determine whether the gratuity payment is subject to Federal income tax. The IRS now has this question under study. We will disseminate the final IRS ruling as soon as it is available. However, the IRS has informed us that payment of the gratuity is not subject to Federal income tax withholding.

Any payments made after the calendar year of the death of the employee are not subject to FICA taxes for Social Security and Medicare. Also, the Internal Revenue Code

provides that any payments made in the same calendar year as the death of the employee are not wages subject to FICA taxes if the payments are made by the agency or department head under a plan to make the death gratuity payments for a class of deceased employees. The IRS has orally advised us that if agency heads use objective criteria in making gratuity payments under section 651, the payment will not be subject to FICA tax withholding.

Where to Find Out More About Payment of the Gratuity

To assist agencies in identifying employees who have died following an injury sustained in service on or after August 2, 1990, OPM will distribute a list of cases to each agency. The list will contain names of cases identified by the Office of Workers' Compensation Programs (OWCP) of the Department of Labor, in which a claim was filed.

In most cases in which the gratuity is payable, the benefits payable under 5 U.S.C. §§ 8133(f) and 8134(a) will also be paid by OWCP. OWCP maintains records of all claims under these provisions and can advise agencies about the benefits paid that must be offset from the \$10,000 gratuity. Agencies should contact:

Thomas Markey
Director, Federal Employees' Compensation Division
Office of Workers' Compensation Programs
U.S. Department of Labor
Employment Standards Administration
200 Constitution Avenue, N.W., Room S3229
Washington, DC 20210
Phone: (202) 219-7552

To assist agencies in identifying the personal representative eligible to receive payment under the new authority, OWCP will also be able to advise agencies concerning the determination it has made as to the personal representative eligible for the payments under 5 U.S.C. §§ 8133(f) and 8134(a).

Any additional questions concerning the gratuity may be directed to James S. Green, OPM's Associate General Counsel (Compensation), at (202) 606-1700.
