

**61.621 Fred Capps Memorial Act -- Eligibility for benefits for duty-related injury -- Benefits for surviving spouse and dependent children -- Receipt of benefits pending final determination.**

- (1) Notwithstanding any provision of any statutes to the contrary, effective June 1, 2000, any employee participating in one (1) of the state-administered retirement systems who is not in a hazardous duty position, as defined in KRS 61.592 or 78.5520, shall be eligible for minimum benefits equal to the benefits payable under this section or KRS 61.702 or 78.5536, as applicable, if the employee dies or becomes totally and permanently disabled to engage in any occupation for remuneration or profit as a result of a duty-related injury.
- (2) (a) For purposes of this section, "duty-related injury" means:
  1. a. A single traumatic event that occurs while the employee is performing the duties of his or her position; or
  - b. A single act of violence committed against the employee that is found to be related to his or her job duties, whether or not it occurs at his or her job site; and
  2. The event or act of violence produces a harmful change in the human organism evidenced by objective medical findings.
- (b) "Duty-related injury" does not include the effects of the natural aging process, a communicable disease unless the risk of contracting the disease is increased by nature of the employment, or a psychological, psychiatric, or stress-related change in the human organism unless it is the direct result of a physical injury.
- (3) (a) If the employee dies as a result of a duty-related injury and is survived by a spouse, the surviving spouse shall be the beneficiary, and this shall supersede the designation of all previous beneficiaries of the deceased employee's retirement account, except as provided in KRS 61.542(2)(e).
- (b) The surviving spouse, provided he or she supersedes all previously designated beneficiaries, may elect to receive the benefits payable under KRS 61.640 or other applicable death benefit statutes, or may elect to receive a lump-sum payment of ten thousand dollars (\$10,000) and a monthly payment equal to seventy-five percent (75%) of the member's monthly average pay beginning in the month following the member's death and continuing each month until the death of the surviving spouse.
- (c) In addition, if the member is also survived by dependent children, monthly payments shall be made for each dependent child equal to ten percent (10%) of the deceased member's monthly average pay, except that the combined maximum payment made to the:
  1. Surviving spouse and dependent children under this subsection shall not exceed one hundred percent (100%) of the deceased member's monthly average pay; and
  2. Dependent children, while the surviving spouse is living, shall not exceed twenty-five percent (25%) of the deceased member's monthly average pay.

Payments made to the dependent children under this subsection shall be divided equally among all the dependent children.

- (4) If the employee dies as a result of a duty-related injury and is not survived by a spouse but is survived by a dependent child or children, the following benefits shall be paid to the dependent child or children:
- (a) Fifty percent (50%) of the deceased member's monthly average pay, if the deceased member has one (1) dependent child;
  - (b) Sixty-five percent (65%) of the deceased member's monthly average pay, if the deceased member has two (2) dependent children; or
  - (c) Seventy-five percent (75%) of the deceased member's monthly average pay, if the deceased member has three (3) or more dependent children.

Payments made to the dependent children under this subsection shall be divided equally among all the dependent children.

- (5) If the employee is determined to be disabled as provided in KRS 61.600, or other applicable disability statutes in any other state-administered retirement system, as the result of a duty-related injury, the employee may elect to receive benefits determined under the provisions of KRS 61.605, or other applicable disability statutes in any other state-administered retirement system, except that:
- (a) If an employee is working in a nonhazardous position that could be certified as a hazardous position based upon KRS 61.592, the monthly retirement allowance shall not be less than seventy-five percent (75%) of the employee's monthly average pay; or
  - (b) If an employee is working in a nonhazardous position that could not be certified as a hazardous position based upon KRS 61.592, the monthly retirement allowance shall not be less than twenty-five percent (25%) of the employee's monthly final rate of pay.

For purposes of determining a disability that is the result of a duty related injury, the service requirement in KRS 61.600(1)(a), or other applicable statutes in any other state-administered retirement system, shall be waived.

- (6) (a) In the period of time following the disability of a member covered by subsection (5)(a) of this section during which dependent children survive, a monthly payment shall be made for each dependent child who is alive which shall be equal to ten percent (10%) of the disabled member's monthly average pay, except that:
- 1. Member and dependent children payments under this section shall not exceed one hundred percent (100%) of the member's monthly average pay; and
  - 2. Total maximum dependent children's benefits shall not exceed twenty-five percent (25%) of the member's monthly average pay while the member is living and forty percent (40%) of the disabled member's monthly average pay after the member's death. The payment shall commence in the month following the date of disability of the member and shall be payable to the

dependent children, or to a legally appointed guardian, or as directed by the system and shall be divided equally among all dependent children.

- (b) In the period of time following the disability of a member covered by subsection (5)(b) of this section during which dependent children survive, a monthly payment shall be made for each dependent child who is alive which shall be equal to ten percent (10%) of the disabled member's monthly final rate of pay; except that total maximum dependent children's benefits shall not exceed forty percent (40%) of the disabled member's monthly final rate of pay at the time any particular payment is due. The payment shall commence in the month following the date of disability of the member and shall be payable to the dependent children, or to a legally appointed guardian, or as directed by the system.
- (7) Benefits for death as a result of a duty-related injury to a dependent child shall be payable under this section notwithstanding an election by a surviving spouse or beneficiary to withdraw the deceased member's accumulated account balance as provided in KRS 61.625 or benefits under any other provisions of KRS 61.515 to 61.705 or other applicable death benefit statutes in any other state-administered retirement system.
- (8)
  - (a) A spouse applying for benefits under this section who is also eligible for benefits under KRS 61.640 or 78.5532 may elect to receive benefits under KRS 61.640(2)(a) or (b) or 78.5532(2)(a) or (b) while the application for benefits under this section is pending.
  - (b) If a final determination results in a finding of eligibility for benefits under this section, the system shall recalculate the benefits due the spouse in accordance with this subsection.
  - (c) If the spouse has been paid less than the amount of benefits to which the spouse was entitled to receive under this section, the system shall pay the additional funds due to the spouse.
  - (d) If the spouse has been paid more than the benefit the spouse was eligible to receive under this section, then the system shall deduct the amount owed by the spouse from the ten thousand dollars (\$10,000) lump-sum payment and from the monthly retirement allowance payments until the amount owed to the systems has been recovered.
- (9) For purposes of this section, "dependent child" has the same meaning as in KRS 16.505.
- (10) This section shall be known as "The Fred Capps Memorial Act."

**Effective:** June 29, 2021

**History:** Amended 2021 Ky. Acts ch. 102, sec. 64, effective April 1, 2021; and ch. 106, sec. 3, effective June 29, 2021. -- Amended 2020 Ky. Acts ch. 46, sec. 2, effective March 27, 2020. -- Amended 2018 Ky. Acts ch. 151, sec. 5, effective April 13, 2018. -- Amended 2016 Ky. Acts ch. 114, sec. 2, effective April 13, 2016. -- Amended 2013 Ky. Acts ch. 120, sec. 61, effective July 1, 2013. -- Amended 2004 Ky. Acts ch. 36, sec. 19, effective July 13, 2004. -- Amended 2002 Ky. Acts ch. 176, sec. 1, effective July 15, 2002. -- Created 2001 Ky. Acts ch. 7, sec. 1, effective June 21, 2001.

**2020-2022 Budget Reference.** See State/Executive Branch Budget, 2021 Ky. Acts ch. 169, Pt. IV, 5 at 1155.

**Legislative Research Commission Note (6/29/2021).** This statute was amended by 2021 Ky. Acts chs. 102 and 106, which do not appear to be in conflict and have been codified together.

**Legislative Research Commission Note (6/29/2021).** See 2021 Ky. Acts ch. 106, secs. 10, 11, 12, and 13 for information regarding the application of the amendments to this statute made in that Act.

**Legislative Research Commission Note (3/27/2020).** KRS 16.601 and 61.621 were amended in 2020 Ky. Acts ch. 46, secs. 1 and 2, respectively. Section 3 of that Act reads as follows:

"Notwithstanding KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852, 161.220 to 161.716, or any provision of Section 1 or 2 of this Act to the contrary:

- (1) In the month following the effective date of this Act, the surviving spouse, if the spouse is receiving a monthly benefit due to a member's death that was determined by the systems to be a direct result of an act in line of duty as defined in KRS 16.505(19) or whose death resulted from a duty-related injury as defined in Section 2 of this Act, and who following the member's death has subsequently remarried prior to the effective date of this Act and had their retirement benefit reduced due to remarriage, shall have his or her monthly benefit increased to the amount specified by Section 1 or 2 of this Act, as applicable, as if the remarriage had occurred after the effective date of this Act, except that the amount shall not be increased above a level that exceeds one hundred percent (100%) of the member's monthly average pay when combined with any dependent child payments from the systems.
- (2) In the month following the effective date of the Act, the surviving spouse of a member whose death was determined by the systems to be a direct result of an act in line of duty as defined in KRS 16.505(19) or whose death resulted from a duty-related injury as defined in Section 2 of this Act, but who chose to receive lifetime monthly benefits otherwise payable under KRS 16.578 or 61.640 in lieu of the benefits payable under subsection (1) of Section 1 of this Act or subsection (3) of Section 2 of this Act, shall have his or her monthly benefit increased to the amount specified by Section 1 or 2 of this Act, as applicable, except that the amount shall not be increased above a level that exceeds one hundred percent (100%) of the member's monthly average pay when combined with any dependent child payments from the systems.
- (3) The Kentucky Retirement Systems shall establish by administrative regulation a process by which a surviving spouse of a member who died prior to retirement and prior to April 13, 2018, may apply for the death benefits established by Section 1 and 2 of this Act, provided the surviving spouse:
  - (a) Is currently receiving a monthly benefit from the systems;
  - (b) Did not prior to April 13, 2018, seek a determination by the systems of whether or not the death was a direct result of an act in line of duty as defined in KRS 16.505(19) or resulted from a duty-related injury as defined in Section 2 of this Act; and
  - (c) Submits an application developed by the systems on or before January 1, 2021.

If the systems determines the death was a direct result of an act in line of duty as defined in KRS 16.505(19) or resulted from a duty-related injury as defined in Section 2 of this Act, then in the month following the determination, the systems shall adjust the surviving spouse monthly benefits prospectively in accordance with Section 1 or 2 of this Act except that the amount shall not be increased above a level that exceeds one hundred percent (100%) of the

members monthly average pay when combined with any dependent child payments from the systems.

- (4) In the month following the effective date of this Act, the surviving spouse, if the spouse is receiving a monthly benefit due to a member's death that was determined by the systems to be a direct result of an act in line of duty as defined in KRS 16.505(19) or whose death resulted from a duty-related injury as defined in Section 2 of this Act, and who following the member's death subsequently remarried prior to April 13, 2018, shall have his or her monthly benefit increased to the amount specified by Section 1 or 2 of the Act, as applicable, except that the amount shall not be increased above a level that exceeds one hundred percent (100%) of the member's monthly average pay when combined with any dependent child payments from the systems."

**Legislative Research Commission Note (3/27/2020).** KRS 16.601 and 61.621 were amended in 2020 Ky. Acts ch. 46, secs. 1 and 2, respectively. Section 4 of that Act reads as follows:

"The provisions of Sections 1 to 3 of this Act shall not reduce any benefits payable to any surviving spouse or dependent children of a member who died prior to the effective date of this Act and whose death was determined by the systems to be the direct result of an act in line of duty as defined in KRS 16.505(19) or resulted from a duty-related injury as defined in Section 2 of this Act."

**Legislative Research Commission Note (4/13/2018).** This statute was amended in 2018 Ky. Acts ch. 151, sec. 5. Section 8 of that Act reads as follows:

"Notwithstanding KRS 16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852, 161.220 to 161.716, or any provision of Sections 1 to 7 of this Act to the contrary, the Kentucky Retirement Systems shall provide the following benefit adjustments to surviving spouses and dependent children of those members who died prior to the effective date of this Act [April 13, 2018] and whose death was determined by the systems to be a direct result of an act in line of duty as defined in subsection (19) of Section 1 of this Act [KRS 16.505] or whose death resulted from a duty-related injury as defined in Section 5 of this Act [KRS 61.621]:

- (1) In the month following the effective date of this Act [April 13, 2018], the surviving spouse, if the spouse is receiving a monthly benefit due to a member's death, shall have his or her monthly benefit increased to the amount specified by Section 2 or 5 of this Act [this statute or KRS 61.621], as applicable, except that the amount shall not be increased above a level that exceeds 100 percent of the member's monthly average pay when combined with any dependent child payments from the systems;
- (2) In the month following the effective date of this Act [April 13, 2018], any dependent child who is receiving a monthly benefit due to a member's death shall have his or her monthly benefit increased to the amount specified by Section 2 or 5 of this Act [this statute or KRS 61.621], as applicable, if the member was not married at the time of death;
- (3) In the month following the effective date of this Act [April 13, 2018], a surviving spouse who was married to the deceased member at the time of death but who was ineligible for monthly benefits payable to the surviving spouse under KRS 16.601 as codified prior to the effective date of this Act [April 13, 2018], shall receive the monthly benefit payable to the surviving spouse in Section 2 of this Act [this statute], provided the member's death occurred on or after January 1, 2017; and
- (4) In the month following the effective date of this Act [April 13, 2018], any surviving spouse and any dependent child of a deceased member who is receiving a monthly benefit shall be eligible for the health benefits specified by Section 6 of this Act [KRS 61.702].

The provisions of this section shall only be construed to provide benefit adjustments to surviving spouses and dependent children of those members who died prior to the effective date of this Act [April 13, 2018] and only in situations where the member's death was determined by the systems to be the direct result of an act in line of duty as defined in subsection (19) of Section 1 of this Act [KRS 16.505] or resulted from a duty-related injury as defined in Section 5 of this Act [KRS 61.621]."