

**393.082 Special expendable trust fund for unclaimed sums under KRS 393.080(3) - Administration and distribution of fund -- Claims procedures.**

- (1) Unclaimed sums delivered to the Kentucky State Treasurer pursuant to KRS 393.080(3) shall be placed in a special expendable trust fund established by the Kentucky Workers' Compensation Funding Commission. The Kentucky Workers' Compensation Funding Commission shall establish a separate trust account with respect to each final determination or order providing for a refund that the Attorney General determines to have a reasonable relationship to the workers' compensation liability of a bankrupt employer.
- (2) The commissioner of the Department of Workers' Claims shall be the administrator of the resulting trust fund established pursuant to this section. The commissioner or his or her designee shall be authorized to determine the value of all workers' compensation claims against the bankrupt employer and to prepare a comprehensive distribution plan. Eligible claimants may elect to participate in a comprehensive distribution plan in exchange for the release of all related claims against the Commonwealth and all of its cabinets, departments, offices, bureaus, agencies, officers, agents, and employees, with the exception of the special fund in the Labor Cabinet. A claimant shall agree as part of a release under this section not to file any future motions to reopen the named workers' compensation claim or claims, and not to file new claims with respect to the same injury or occupational disease.
- (3) A comprehensive distribution plan for unclaimed utility refunds placed in a trust account pursuant to this section shall consist of the full payment of workers' compensation income benefits for eligible claimants until the fund is exhausted, subject to the exceptions noted in KRS 393.080 and this section, and may include lump-sum settlements in addition to biweekly payment plans. An initial distribution shall be made to eligible claimants after the commissioner of the Department of Workers' Claims, or the commissioner's designee, has made an initial determination of the number of eligible claimants, the amount of income benefits due, and the amount to be retained as a reserve for pending claims. The initial distribution shall include payment of all past due income benefits, without interest, for eligible claimants.
- (4) Neither the special fund nor the uninsured employers' fund shall be considered to be claimants for the purposes of this section. Medical and related benefits shall not be considered in the valuation of the claims unless the amount available in the trust fund clearly exceeds the estimated value of income benefits for all claims. If a workers' compensation surety bond, letter of credit, or other form of security for the payment of the workers' compensation liabilities of a bankrupt employer has been collected by the commissioner of the Department of Workers' Claims or the Workers' Compensation Board for distribution to claimants in a manner to be determined by court order, it may be assumed in the valuation of the claims in a comprehensive distribution plan that the security will be distributed by the court on a pro rata basis and an appropriate deduction may be taken.
- (5) In preparing the valuation of claims for inclusion in a comprehensive distribution plan, the commissioner or the commissioner's designee shall deduct special fund

payments. Settlement of a workers' compensation claim as part of a comprehensive distribution plan under this section shall not accelerate the date on which the special fund's liability becomes due.

- (6) If the bankrupt employer ceased business operations at least three (3) years prior to establishment of a trust account pursuant to this section, only claimants who file workers' compensation claims within sixty (60) days of the establishment of the trust account or before shall be eligible to receive payments from the trust fund.
- (7) All claimants shall cooperate with information requests from the Department of Workers' Claims concerning prior payments of workers' compensation benefits. The commissioner of the Department of Workers' Claims or his or her designee may subpoena witnesses, including present or past managers and officers of the bankrupt employer, and may conduct evidentiary hearings under oath relating to the past and present workers' compensation liabilities of the bankrupt employer or information relevant to unpaid workers' compensation benefits. Administrative subpoenas issued under the authority of the commissioner of the Department of Workers' Claims for this purpose may be enforced in the Franklin Circuit Court.
- (8) The Attorney General shall provide representation of the comprehensive distribution plan as a named defendant in the event the establishment of the trust fund is challenged.
- (9) The provisions of KRS 393.080(3) or this section shall not be construed to constitute an admission of the validity of any workers' compensation claims, nor shall these provisions be interpreted in a manner that would transfer or create liability on behalf of the commissioner of the Department of Workers' Claims, any agency, or employee, beyond that expressly set forth in a comprehensive distribution plan.
- (10) The special fund shall issue trust fund checks in the amounts and to the claimants or claimants' representatives as directed by the commissioner of the Department of Workers' Claims.
- (11) The personnel and other costs of administering a trust fund established pursuant to this section shall be paid out of the investment income of the trust fund.
- (12) Attorney fees shall be subject to the limitations and maximum amounts for the payment of attorney's fees established by KRS 342.320, as well as the approval of the commissioner or his or her designee.
- (13) If a workers' compensation claimant elects not to participate in a comprehensive distribution plan proposed by the commissioner of the Department of Workers' Claims or the commissioner's designee, that claimant shall not be entitled to any portion of the utility refund for the payment of the workers' compensation benefits. A claimant shall have sixty (60) days following issuance of a comprehensive distribution plan in which to make an election to participate or not.

**Effective:** July 15, 2010

**History:** Amended 2010 Ky. Acts ch. 24, sec. 1921, effective July 15, 2010. -- Amended 1996 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 72, effective December 12, 1996. -- Created 1996 Ky. Acts ch. 116, sec. 2, effective March 28, 1996.

**Legislative Research Commission Note** (3/28/96). This section "expire[s] on July 15, 1998, unless continued or modified by law, except that the administration and distribution of trust accounts established prior to that date shall continue until the final payments to eligible claimants have been made." See 1996 Ky. Acts ch. 116, sec. 3.