

§ 222.3

Permanent home means the employee's true and fixed home (legal domicile); it is the place to which the employee intends to return whenever he or she is absent therefrom.

Relationship means a family connection by blood, marriage, or adoption between the employee and another person who is a claimant.

Spouse means the husband or wife of the employee.

State law means the law of the State in which the employee has his or her permanent home or, in the case of a deceased employee, the law of the State in which the employee had his or her permanent home at the time of his or her death. If the employee's permanent home is not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, the laws of the District of Columbia are applied.

§ 222.3 Other regulations related to this part.

This part is related to a number of other parts of this chapter:

Part 216 describes when a person is eligible for an annuity under the Railroad Retirement Act.

Part 217 describes how to apply for an annuity or for lump-sum payments.

Part 218 sets forth the beginning and ending dates of annuities.

Part 219 sets out what evidence is necessary to prove eligibility and the relationships described in this part.

Part 220 describes when a person is eligible for a disability annuity under the Railroad Retirement Act or a period of disability under the Social Security Act.

Part 225 explains how primary insurance amounts (PIA's) are computed.

Part 226 outlines the computation of employee and spouse annuities.

Part 228 describes how survivor annuities are computed.

Part 229 describes when and how an employee and spouse annuity may be increased under the social security overall minimum provision.

Part 234 describes lump-sum payments under the Railroad Retirement Act.

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§ 222.4 Homicide of employee.

No person convicted of the felonious and intentional homicide of an employee can be entitled to an annuity or lump-sum payment based on the employee's earnings record (service and compensation). Further, the convicted person is considered not to exist in deciding the rights of other persons to annuity or lump-sum payments. A minor may be denied a survivor annuity or lump-sum payment on the earnings record of a parent if the minor was convicted of intentionally causing the parent's death by an act which would be considered a felony if committed by an adult.

Subpart B—Relationship as Wife, Husband, or Widow(er)

§ 222.10 When determinations of relationship as wife, husband, widow or widower of employee are made.

(a) The claimant's relationship as the wife or husband of an employee is determined when the claimant applies for an annuity, or when there is a claim which would include a husband or wife in the computation of the social security overall minimum provision, or when a claim is filed for a lump-sum payment. If a deemed marriage (see § 222.14) is to be determined, the husband, wife, or widow(er) must also be found to be or to have been living in the same household as the employee (see § 222.16).

(b) The claimant's relationship as the widow(er) of an employee is determined as of the date on which the employee died. If the claimant applied for a lump-sum payment as the widow(er) of the employee, one of the following determinations is made:

(1) Whether the widow(er) was living in the same household as the employee, as defined in § 222.16 of this part, at the time of the employee's death, if the claimant is applying for the 1974 Act lump-sum death payment.

(2) Whether the widow(er) was living with the employee, as defined in § 222.15 of this part, at the time of the employee's death, if the claimant is applying for the 1937 Act lump-sum death payment, annuities due but unpaid at death, the residual lump-sum payment, or a lump-sum refund payment.

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(c) In order for a claimant who has applied for a monthly survivor annuity to establish a deemed marriage, the claimant must have been living in the same household as the employee at the time of the employee's death (see § 222.16).

(d) If the husband, wife, widow(er), remarried widow(er), or surviving divorced spouse of the employee is a claimant for a monthly annuity on a basis other than age or disability, a child-in-care determination is required (see §§ 222.17 and 222.18).

§ 222.11 Determination of marriage relationship.

A claimant will be considered to be the husband, wife, or widow(er) of an employee if the law of the State in which the employee has or had a permanent home would recognize that the claimant and employee were validly married, or if a deemed marriage is established.

(a) Generally, State courts will find that a claimant and employee were validly married if—

(1) The employee and claimant were married in a civil or religious ceremony (see § 222.12) or

(2) The employee and claimant live together in a common-law marriage relationship which is recognized under applicable State law (see § 222.13), and no impediment to the marriage existed at the time it took place.

(b) A deemed marriage relationship may be established as described in § 222.14.

§ 222.12 Ceremonial marriage relationship.

A valid ceremonial marriage is one which would be recognized as valid by the courts of the State in which the marriage ceremony took place. Generally, State law provides various procedures which must be followed, such as designation of who may perform the marriage ceremony, what licenses or witnesses are required, and similar rules. A ceremonial marriage may be a civil or religious ceremony, or a ceremony which follows tribal customs, Chinese customs, or similar traditional procedures.

§ 222.13 Common-law marriage relationship.

Under the laws of some States, a common-law marriage is one which is not solemnized in a formal ceremony, but is generally evidenced by a consummated agreement to marry between two persons legally capable of making a marriage contract, followed by cohabitation. The laws of the various States which recognize common-law marriage delineate specific factors which must be present in order to establish a valid common-law marriage in those States.

§ 222.14 Deemed marriage relationship.

If a ceremonial or common-law marriage relationship cannot be established under State law, a claimant may still be found to have the relationship as spouse of an employee based upon a deemed marriage. A claimant is deemed to be the wife, husband, or widow(er) of the employee if the person's marriage to the employee would have been valid under State law except for a legal impediment, and all of the following requirements are met:

(a) The claimant married the employee in a civil or religious ceremony.

(b) The claimant went through the marriage ceremony in good faith. Good faith means that at the time of the ceremony the claimant did not know that a legal impediment existed, or if the claimant did know, he or she thought that it would not prevent a valid marriage.

(c) The claimant was living in the same household as the employee (see § 222.16) when he or she applied for the spouse annuity or when the employee died.

[54 FR 42949, Oct. 19, 1989, as amended at 65 FR 20726, Apr. 18, 2000]

§ 222.15 When spouse is living with employee.

A spouse, or widow(er) is living with the employee if—

(a) He or she and the employee are living in the same household; or

(b) The employee is contributing to the support of the spouse or widow(er); or