

WAC 415-108-432 PERS Plan 1 duty disability benefits. This section covers benefits provided for in RCW 41.40.200 through 41.40.220 for PERS Plan 1 members who incur a disability in the line of duty. You may also be eligible for benefits from the Washington state departments of labor and industries and social and health services, the U.S. Social Security Administration, your employer, and other disability insurers.

(1) **Am I eligible for a PERS Plan 1 duty disability benefit?** You are eligible for a PERS Plan 1 duty disability benefit if the department determines that all of the following are true:

- (a) You are a member of PERS Plan 1;
- (b) You have separated from PERS employment;
- (c) At the time you separated from PERS employment, you were totally incapacitated to perform the duties of your job or any other position for which you are qualified by training or experience;
- (d) You are under sixty years of age;
- (e) Your disability is the result of:
 - (i) An accident that occurred in the performance of duty; or
 - (ii) An occupational disease as defined in RCW 51.08.140 for which you qualify to receive workers' compensation benefits under Title 51 RCW. To "qualify" means that you have received a formal determination from the department of labor and industries that you are eligible to receive Title 51 RCW benefits on account of an occupational disease.

(f) Your disability is not the result of willful negligence on your part;

(g) Your disability is not the result of your criminal conduct committed after April 21, 1997. See RCW 41.40.054; and

(h) You apply for benefits within the specific time limits set forth in subsection (5) of this section.

(2) **What is the PERS Plan 1 duty disability benefit?** If you qualify to receive a duty disability benefit, you will receive the following for as long as you remain eligible:

(a) A monthly benefit of three hundred fifty dollars or two-thirds of your monthly average final compensation, whichever is less, until you attain the age of sixty.

(i) The degree of your disability or impairment will not affect the amount of your benefit.

(ii) Your monthly disability benefit will be reduced by any amounts you receive for the same disability under workers' compensation or similar law. See RCW 41.40.300.

Example: Tiegan is a member of PERS Plan 1. Due to a work-related accident, she separated from service and began receiving a Title 51 RCW benefit in the amount of \$1,500 from the department of labor and industries (L&I). She then qualified for a duty disability benefit of \$350 per month from DRS. Because her duty disability benefit is offset by her Title 51 RCW benefit, Tiegan will receive, per month, \$0 from DRS and \$1,500 from L&I.

Example: Jennifer is a member of PERS Plan 1. Due to a work-related accident, she separated from service and began receiving a duty disability benefit of \$350 per month from DRS. Jennifer then began receiving a Title 51 RCW benefit from L&I in the amount of \$100 per month. Because her duty disability benefit will be offset by her Title 51 RCW benefit, Jennifer will receive, per month, \$250 from DRS and \$100 from L&I.

(b) One month of service credit for each month you receive a monthly benefit. You will accrue service credit even if your monthly benefit is totally offset by benefits you receive from other sources.

(3) **How do I apply?** To apply for a PERS Plan 1 duty disability the following documents must be submitted to the department:

(a) A properly completed three-part disability retirement application, consisting of:

(i) Part 1: Application for disability retirement. You must complete and sign the application.

(ii) Part 2: Employer's statement and report. You must complete the member information portion. The remainder must be completed, signed, and returned directly to the department by your employer.

(iii) Part 3: Medical report. You must complete the member information portion. The remainder must be completed, signed, and returned directly to the department by a person licensed according to Washington state law to practice medicine and/or surgery (including osteopathic medicine and/or surgery), advanced nursing, or psychology.

(b) Additional information, such as vocational and/or occupational information, requested by the department; and

(c) Any other material you want the department to consider.

(4) **Who is responsible for expenses related to my application?** You are responsible for all costs associated with your application for a benefit.

(5) **What is the time limit for filing a PERS Plan 1 duty disability application?** In general, you have two years to file an application for a duty disability benefit. You are considered an applicant for a duty disability benefit when the department receives Part 1 of your application. If your disability is the result of:

(a) An **accident**, you must apply within two years from the date you know or should know that you are totally incapacitated and cannot return to work.

Example: Linda is a member of PERS Plan 1 and was injured on the job. After her injury, Linda resumed employment. Three years after the injury, her condition unexpectedly worsened and she could no longer work. Although more than two years had passed since her duty-related injury, Linda had no way of knowing that the injury would eventually cause her to be totally incapacitated to perform the duties of her job. Linda may apply for a duty disability benefit because the two-year time limit began when Linda knew she could no longer perform the duties for which she has training or experience.

Example: Hunter is a member of PERS Plan 1. He is injured on the job and knows immediately that he cannot return to work. Hunter goes on sick leave for two months, followed by two years of unpaid leave of absence. At the end of the unpaid leave, he applies for duty disability retirement. He is not eligible because more than two years have passed from the time he knew that his injury was such that he could not return to work.

(b) An **occupational disease**, you must apply within two years from separation of service. The two-year time limit begins running on the last day you are reported as an employee by your employer. If you are on an authorized leave of absence (paid or unpaid) you have not separated from service.

Example: Celina is a member of PERS Plan 1. She falls ill and goes on unpaid leave of absence for twenty-six months. At the end of the twenty-six months, she is diagnosed with a disease caused by her occupation and terminates her employment. Celina may apply for a duty disability benefit because the two-year time limit starts on the last day her employer reports her as an employee to the department.

(6) **What information will the department use to determine whether I am entitled to a duty disability benefit?** To determine your eligibility for a duty disability benefit, the department will consider any relevant information submitted by you, your employer, your physician, or otherwise available, including:

- (a) Information and determinations by the department of labor and industries or a self-insurer;
- (b) Medical, vocational, and other information about your disability;
- (c) Your job description;
- (d) Your membership records, maintained by the department; and
- (e) Any other relevant information.

(7) **If I am eligible for a service retirement under RCW 41.40.180, may I still apply for a disability retirement?** Yes, you may apply for a disability retirement if you are eligible for a service retirement, as long as you are under age sixty. If you are sixty years old or older, you must apply for a service retirement; see subsection (14) of this section.

(8) **When will the department evaluate my eligibility for a duty disability benefit?** The department will evaluate your eligibility for a duty disability benefit once it receives:

- (a) All three parts of your properly completed application and supporting documentation;
- (b) If your disability is the result of an occupational disease, written documentation from L&I that you have qualified for benefits under Title 51 RCW; and
- (c) Other documentation requested by the department.

(9) **If my application is approved, when will my benefit begin?** If your application for a duty disability benefit is approved, your benefit will accrue from the first day of the calendar month following the month you separate from service.

(a) If you separate from service **before** your application is approved, your disability benefit accrues from the first day of the calendar month following the date you separate from service. You will be eligible for a retroactive payment of the benefits that accrued between your separation from service and the approval of your application.

(b) If you separate from service **after** your application is approved, your disability benefit will not begin to accrue until you separate from service. If you are on an approved leave of absence (either paid or unpaid) at the time of your application for benefits, you have not separated from service.

(i) If you do not separate from service within ninety days of the department's approval of your application, the approval will lapse.

(ii) If your approval for a benefit lapses while you are still on an authorized leave of absence, you may request a reinstatement of approval. The department will reinstate its approval only if your employer verifies that you have been on an authorized leave of absence continuously from the time your application was first approved.

(10) **What are my options if my application is denied?** If your application for a duty disability benefit is denied, you have the following options:

(a) If you continue to work in a PERS position, you may reapply for a duty disability benefit at a later time if your condition worsens. You must submit new information to the department that shows you were totally incapacitated at the time of your separation from employment.

(b) You may petition for review of the department's decision according to the provisions of chapter 415-04 WAC.

(11) **What happens if I am receiving a duty disability benefit and I die before age sixty?** If you are receiving a duty disability benefit and you die before you reach age sixty, your beneficiary will receive a lump sum distribution of the accumulated contributions in your account; please see RCW 41.40.220(3).

(12) **What information must I provide to the department if I am receiving a duty disability benefit?** If you are receiving a duty disability benefit, you must report the following to the department:

(a) Any compensation you are eligible to receive under workers' compensation or similar law for the same disability;

(b) Any improvement in your condition. Your doctor is also responsible to report any improvements; and

(c) If you resume employment, either public or private, the name of your employer and amount of compensation, regardless of the number of hours you work.

(13) **Is my medical condition monitored while I am receiving disability retirement?** The department may require comprehensive medical examinations, pursuant to RCW 41.40.310, to reevaluate your eligibility for disability benefits. The department will pay the medical fees associated with these examinations.

(14) **How long will I receive a monthly disability benefit?** You will receive a monthly disability benefit until you reach age sixty. Your benefit may be recalculated or discontinued under certain circumstances. At age sixty you will become eligible for a service retirement as provided in RCW 41.40.220(2).

(a) Your benefit will be recalculated if you return to employment; see subsection (15) of this section for more information.

(b) Your benefit will be discontinued if:

(i) You return to active PERS membership;

(ii) A doctor determines that you are no longer totally incapacitated; or

(iii) You refuse to submit to medical examinations required by RCW 41.40.310.

(c) When you become eligible for a service retirement at age sixty, you must apply for your retirement benefit; it will not start automatically. The service credit used to calculate your service retirement benefit includes both the service credit earned for services performed and the service credit credited to your account during your period of duty disability.

(15) **If I return to employment, how will my monthly disability benefit be recalculated?** The recalculation of your disability benefit is based on whether your current compensation is greater than your allowable earnings. Your "allowable earnings" are the difference between your compensation at retirement, adjusted for inflation, and your monthly disability benefit.

(a) If your current compensation is **greater** than your allowable earnings your monthly disability benefit will be reduced or discontinued.

(i) If the difference between your current compensation and your allowable earnings is less than \$350, your disability benefit will be **reduced** by this difference.

Example: Due to a work-related accident, Martha separated employment and began receiving \$350 per month in duty disability benefits. Martha became gainfully employed in a new job earning \$1,800 per month. Martha's compensation at the time of separation adjusted for inflation is \$2,000. Because Martha's current compensation (\$1,800) is greater than her allowable earnings ($\$2,000 - \$350 = \$1,650$) by \$150 (an amount less than \$350) her benefit will be reduced by \$150. Martha's reduced disability benefit will be \$200 ($\$350 - \150).

(ii) Your benefit will be **discontinued** if your current compensation is greater than your allowable earnings by an amount equal to or greater than your disability benefit.

Example: Due to a work-related accident, Rebecca separated employment and began receiving \$350 per month in duty disability benefits. Rebecca became gainfully employed in a new job earning \$2,750 per month. Rebecca's compensation at the time of separation adjusted for inflation is \$2,500. Because Rebecca's current compensation (\$2,750) is greater than her allowable earnings ($\$2,500 - \$350 = \$2,150$) by an amount (\$600) that is greater than her disability benefit (\$350), her benefit will be discontinued.

(b) If your current compensation is **less** than your allowable earnings your benefit will not be reduced or discontinued.

Example: Ted separated employment due to a work-related accident and began receiving \$350 per month in duty disability benefits. Ted became gainfully employed in a new job earning \$1,000 per month. Ted's compensation at the time of separation adjusted for inflation is \$3,000. Because Ted's current compensation (\$1,000) is less than his allowable earnings ($\$3,000 - \$350 = \$2,650$), his benefit will not be reduced.

(16) **Is my PERS Plan 1 duty disability benefit taxable?** You should consult with your tax advisor regarding all payments you receive from the department. The department does not:

(a) Guarantee that payments are exempt from federal income tax;

(b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;

(c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its determination; or

(d) Assume any liability for your compliance with the Internal Revenue Code.

(17) **Are PERS Plan 1 duty disability benefits subject to court or administrative orders?** Your PERS Plan 1 duty disability benefits may be subject to court or administrative orders. For more information, see RCW 41.40.052(3) or contact the department.

(18) **If I am a member of more than one retirement system, does my eligibility for a PERS Plan 1 duty disability benefit make me eligible**

for a benefit from the other system? If you are a member of more than one retirement system, your PERS Plan 1 duty disability benefit does not qualify you to receive a benefit from any other system. See chapters 41.54 RCW and 415-113 WAC.

[Statutory Authority: RCW 41.50.050(5), 41.40.200, 41.40.210, 41.40.220. WSR 09-18-051, § 415-108-432, filed 8/27/09, effective 9/27/09.]