Chapter 415-108 WAC
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

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WAC

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415-108-0102 Normally—Definition. [Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-108-0102, filed 7/25/95, effective 8/25/95.] Repealed by WSR 01-21-090, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW.

415-108-0103 Project position—Definition. [Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-108-0103, filed 7/25/95, effective 8/25/95.] Repealed by WSR 01-21-090, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW.

415-108-0104 Report—Definition. [Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-108-0104, filed 7/25/95, effective 8/25/95.] Repealed by WSR 01-21-090, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW.

415-108-0105 Retirement plan—Definition. [Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-108-0105, filed 7/25/95, effective 8/25/95.] Repealed by WSR 01-21-090, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW.

415-108-0106 Union—Definition. [Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-108-0106, filed 7/25/95, effective 8/25/95.] Repealed by WSR 01-21-090, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW.

415-108-0107 Union employer—Definition. [Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-108-0107, filed 7/25/95, effective 8/25/95.] Repealed by WSR 01-21-090, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW.

415-108-0108 Year—Definition. [Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-108-0108, filed 7/25/95, effective 8/25/95.] Repealed by WSR 01-21-090, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW.

415-108-0109 System acronyms—Definition. [Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. WSR 01-01-059, § 415-108-0109, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-108-0109, filed 7/25/95, effective 8/25/95.] Repealed by WSR 01-21-090, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW.

415-108-0110 Reportable compensation—Definition. [Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-0110, filed 4/17/98, effective 5/18/98.] Repealed by WSR 01-21-090, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW.

415-108-0111 Annual leave—Definition. [Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-0111, filed 4/17/98, effective 5/18/98.] Repealed by WSR 01-21-090, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW.

415-108-040 Appeals—Disability cases. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-040, filed 2/15/78. Formerly WAC 184-05-010.] Repealed by WSR 02-12-084, filed 6/4/02, effective 7/5/02. Statutory Authority: RCW 41.50.050(5), 41.50.060, 41.50.770, 41.50.780, 2001 c 42. Later promulgation, see chapter 415-08 WAC.

415-108-050 Appeal to superior court—Notice. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-050, filed 2/15/78. Formerly WAC 184-09-010.] Repealed by WSR 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.

415-108-060 Appeal to superior court—Certification of record. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-060, filed 2/15/78. Formerly WAC

184-09-020.] Repealed by WSR 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.

415-108-100 Members. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-100, filed 2/15/78. Formerly WAC 184-01-010.] Repealed by WSR 93-11-077, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4)(a).

415-108-110 Administration—Officers. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-110, filed 2/15/78. Formerly WAC 184-01-020.] Repealed by WSR 93-11-077, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4)(a).

415-108-120 Function. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-120, filed 2/15/78. Formerly WAC 184-01-030.] Repealed by WSR 93-11-077, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4)(a).

415-108-130 Location. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-130, filed 2/15/78.] Repealed by WSR 93-11-077, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4)(a).

415-108-150 Meetings. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-150, filed 2/15/78. Formerly WAC 184-01-050.] Repealed by WSR 93-11-077, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4)(a).

415-108-160 Office of chairman. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-160, filed 2/15/78. Formerly WAC 184-01-060.] Repealed by WSR 93-11-077, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4)(a).

415-108-170 Business hours. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-170, filed 2/15/78. Formerly WAC 184-01-060.] Repealed by WSR 22-22-087, filed 11/1/22, effective 12/2/22. Statutory Authority: RCW 41.50.050.

415-108-180 Correspondence. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-180, filed 2/15/78. Formerly WAC 184-01-070.] Repealed by WSR 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.

415-108-181 How does the department comply with Internal Revenue Code distribution rules? [Statutory Authority: RCW 41.50.050(5), chapter 41.40 RCW and IRS regulations. WSR 02-14-009, § 415-108-181, filed 6/20/02, effective 7/21/02.] Repealed by WSR 10-24-099, filed 12/1/10, effective 1/1/11. Statutory Authority: RCW 41.50.050(5).

415-108-182 What are the IRS limitations on maximum benefits and maximum contributions? [Statutory Authority: RCW 41.50.050(5), chapter 41.40 RCW and IRS regulations. WSR 02-14-009, § 415-108-182, filed 6/20/02, effective 7/21/02.] Repealed by WSR 10-24-099, filed 12/1/10, effective 1/1/11. Statutory Authority: RCW 41.50.050(5).

415-108-183 Assets for exclusive benefit of members and beneficiaries. [Statutory Authority: RCW 41.50.050(5), chapter 41.40 RCW and IRS regulations. WSR 02-14-009, § 415-108-183, filed 6/20/02, effective 7/21/02.] Repealed by WSR 10-24-099, filed 12/1/10, effective 1/1/11. Statutory Authority: RCW 41.50.050(5).

415-108-190 Nominations. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-190, filed 2/15/78. Formerly WAC 184-01-07001.] Repealed by WSR 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.

415-108-195 Identification. [WSR 97-19-035, Recodified as § 415-108-195, filed 9/9/97, effective 9/9/97. Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-300, filed 2/15/78. Formerly WAC 184-03-120.] Repealed by WSR 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.

415-108-200 Disability and benefit claims. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-200, filed 2/15/78. Formerly WAC 184-03-010.] Repealed by WSR 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.

415-108-210 Disability and benefit claims—Acknowledgment and forms. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-210, filed 2/15/78. Formerly WAC 184-03-020.] Repealed by WSR 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.

415-108-220 Disability and benefit claims—Processing applications. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-220, filed 2/15/78. Formerly WAC 184-03-030.] Repealed by WSR 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.

415-108-230 Disability and benefit claims—Recording. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-230, filed 2/15/78. Formerly WAC 184-03-040.] Repealed by WSR 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.

415-108-240 Disability and benefit claims—Legal examination. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-240, filed 2/15/78. Formerly WAC 184-03-050.] Repealed by WSR 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.

415-108-250 Disability and benefit claims—Medical examination. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-250, filed 2/15/78. Formerly WAC 184-03-060.] Repealed by WSR 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.

415-108-260 Disability and benefit claims—Medical recommendation. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-260, filed 2/15/78. Formerly WAC 184-03-070.] Repealed by WSR 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.

415-108-270 Disability and benefit claims—Recommendation and conclusion. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-270, filed 2/15/78. Formerly WAC 184-03-080.] Repealed by WSR 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.

415-108-280 Disability and benefit claims—Board decision on application. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-280, filed 2/15/78. Formerly WAC 184-03-090.] Repealed by WSR 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.

415-108-290 Disability and benefit claims—Notification of member. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-290, filed 2/15/78. Formerly WAC 184-03-100.] Repealed by WSR 99-21-031, filed 10/14/99, effective 11/14/99. Statutory Authority: RCW 41.50.050.

415-108-300 Identification. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-300, filed 2/15/78. Formerly WAC 184-03-120.] Decodified by WSR 97-19-035, filed 9/9/97, effective 9/9/97. Recodified as § 415-108-195.

415-108-320 Background and purpose. [Statutory Authority: RCW 34.05.050 and 1990 c 249. WSR 91-03-015, § 415-108-320, filed 1/7/91, effective 2/7/91.] Repealed by WSR 96-01-047, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660.

415-108-322 Definitions for purposes of WAC 415-108-320 through 415-108-326. [Statutory Authority: RCW 34.05.050 and 1990 c 249. WSR 91-03-015, § 415-108-322, filed 1/7/91, effective 2/7/91.] Repealed by WSR 96-01-047, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660.

415-108-324 I am married—Do I need my spouse's consent on the retirement option I choose? [Statutory Authority: RCW 41.50.050(5), 41.40.188(2), 41.40.660(2), 41.40.845(2). WSR 02-03-120, § 415-108-324, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. WSR 99-14-008, § 415-108-324, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660. WSR 96-01-047, § 415-108-324, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249. WSR 91-03-015, § 415-108-324, filed 1/7/91, effective 2/7/91.] Repealed by WSR 20-06-040, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050.

415-108-450 Compensation earnable for Plan I PERS members. [Statutory Authority: RCW 41.40.010(8). WSR 88-11-030 (Order 88-11), § 415-108-450, filed 5/13/88.] Repealed by WSR 98-09-059, filed 4/17/98, effective 5/18/98. Statutory Authority: RCW 41.50.050.

415-108-460 Compensation earnable for Plan II PERS members. [Statutory Authority: RCW 41.40.010(8). WSR 88-11-030 (Order 88-11), § 415-108-460, filed 5/13/88.] Repealed by WSR 98-09-059, filed 4/17/98, effective 5/18/98. Statutory Authority: RCW 41.50.050.

415-108-461 Standby pay—Location restricted compensation. [Statutory Authority: RCW 41.50.050 and 41.40.020. WSR 94-16-086, § 415-108-461, filed 8/1/94, effective 8/1/94.] Repealed by WSR 96-01-046, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 41.50.050.

415-108-462 Location restricted compensation—Employer policy. [Statutory Authority: RCW 41.50.050 and 41.40.020. WSR 94-16-086, § 415-108-462, filed 8/1/94, effective 8/1/94.] Repealed by WSR 96-01-046, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 41.50.050.

415-108-490 Back pay award or settlement—Definition—Allocated by the department for retirement system purposes. [Statutory Authority: RCW 41.40.010(8) and 41.40.020. WSR 87-17-061 (Order DRS 87-08), § 415-108-490, filed 8/19/87.] Repealed by WSR 98-09-059, filed 4/17/98, effective 5/18/98. Statutory Authority: RCW 41.50.050.

415-108-500 Public employees' retirement board. [Statutory Authority: RCW 41.40.120(17). WSR 86-13-023 (Order 86-3), § 415-108-500, filed 6/10/86.] Decodified by WSR 97-19-035, filed 9/9/97, effective 9/9/97. Recodified as § 415-108-730.

415-108-530 Calculation of retirement allowance pursuant to *Bowles v. Retirement Systems*—Eligibility—Procedure. [Statutory Authority: RCW 41.50.050 and Bowles v. Retirement Systems, 121 Wn.2d 52 (1993). WSR 94-11-009, § 415-108-530, filed 5/5/94, effective 6/5/94.] Decodified by WSR 97-19-035, filed 9/9/97, effective 9/9/97. Recodified as § 415-108-810.

415-108-540 Interim retirement allowance—Employer final compensation report—Final computation of retirement allowance—Adjustment of retirement allowance for errors. [Statutory Authority: RCW 41.50.050 and Bowles v. Retirement Systems, 121 Wn.2d 52 (1993). WSR 94-11-009, § 415-108-540, filed 5/5/94, effective 6/5/94.] Decodified by WSR 97-19-035, filed 9/9/97, effective 9/9/97. Recodified as § 415-108-820.

415-108-580 Actuarial recomputation of retirement allowance upon retirement following reemployment. [Statutory Authority: RCW 41.50.050. WSR 94-09-040, § 415-108-580, filed 4/19/94, effective 5/20/94.] Decodified by WSR 97-19-035, filed 9/9/97, effective 9/9/97. Recodified as § 415-108-830.

415-108-671 Administration of early retirement. [Statutory Authority: RCW 41.50.050. WSR 93-20-020, § 415-108-671, filed 9/24/93, effective 10/25/93.] Repealed by WSR 99-12-041, filed 5/26/99, effective 6/26/99. Statutory Authority: RCW 41.50.050.

DEFINITIONS

WAC 415-108-010 Definitions in the public employees' retirement system. All definitions in RCW 41.40.010 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.40 RCW are defined in this chapter.

(1) **Annual leave** means leave provided by an employer for the purpose of taking regularly scheduled work time off with pay. Annual

leave does not usually include leave for illness, personal business if in addition to and different from vacation leave, or other paid time off from work. However, if an employer authorizes only one type of leave, covering paid leave for vacation, illness, and any other excused absence from work, such leave will be considered annual leave for purposes of RCW 41.50.150.

(2) **Level of union organization** means a union or a lodge or division of a union.

(3) **Normally** as used in the definition of eligible position under RCW 41.40.010 means a position is eligible if it is expected to require at least five months of seventy or more hours of compensated service each month during each of two consecutive years. Once a position is determined to be eligible, it will continue to be eligible if it requires at least five months of seventy or more hours of compensated service during at least one year in any two-year period.

(4) **Project position** means a position, established by an employer, which has a specific goal and end date.

(5) **Public corporation** means a public corporation created under RCW 35.21.730. A public corporation may be admitted as an "employer" under the definition in RCW 41.40.010.

(6) **Report** means an employer's reporting of an employee's hours of service, compensation and contributions to the department on the monthly transmittal report.

(7) **Reportable compensation** means compensation earnable as that term is defined in RCW 41.40.010.

(8) **Retirement plan** as used in RCW 41.40.023 and in this chapter, means any plan operated wholly or in part by the state or a political subdivision. This includes, but is not limited to:

(a) The retirement systems listed under RCW 41.50.030;

(b) The retirement systems of the cities of Seattle, Spokane and Tacoma; or

(c) Any higher education plan authorized under RCW 28B.10.400.

(9) **System acronyms** used in this chapter are defined as follows:

(a) "PERS" means the public employees' retirement system.

(b) "TRS" means the teachers' retirement system.

(c) "SERS" means the school employees' retirement system.

(10) **Union** means a labor guild, labor association, and/or labor organization.

(11) **Union employer** means a union or a union lodge or other division of a union which has verified that it meets the definition of a Plan 1 employer in RCW 41.40.010.

(12) **Year** means any twelve consecutive month period established and applied consistently by an employer to evaluate the eligibility of a specific position. The term may include, but is not limited to, a school year, calendar year or fiscal year.

Example: An employer has used the twelve consecutive month period from July 1st to June 30th to evaluate the eligibility of positions. When the employer hires a new employee to fill an existing position, the employer must continue to use the July 1st through June 30th period to define a year for the position.

Example: If the same employer in the above example hires a person to work in a project position beginning in November, the employer will use the twelve-month period beginning in November to evaluate the eligibility of the new position. The employer must consistently apply this twelve-month period to evaluate the eligibility of this position.

[Statutory Authority: RCW 41.50.050. WSR 21-16-020, § 415-108-010, filed 7/23/21, effective 8/23/21. Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW. WSR 02-18-046, § 415-108-010, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW. WSR 01-21-090, § 415-108-010, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-010, filed 4/17/98, effective 5/18/98; WSR 95-16-053, § 415-108-010, filed 7/25/95, effective 8/25/95. Statutory Authority: RCW 41.50.050 and Bowles v. Retirement Systems, 121 Wn.2d 52 (1993). WSR 94-11-009, § 415-108-010, filed 5/5/94, effective 6/5/94. Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4)(a). WSR 93-11-077, § 415-108-010, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-010, filed 2/15/78. Formerly WAC 184-01-025 and 184-01-035.]

ADMINISTRATION

WAC 415-108-020 Public records. See chapter 415-06 WAC.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-020, filed 2/15/78. Formerly WAC 184-20-010.]

WAC 415-108-030 Statewide cities retirement system. The former statewide cities retirement system has been merged into the Washington public employees retirement system pursuant to RCW 41.40.405, 41.40.406, and 41.40.407. The statutes and rules applying to the public employees retirement system and the department of retirement systems (as provided in chapters 41.40 and 41.50 RCW and Title 415 WAC) govern the administration and operation of the former statewide cities retirement system.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-030, filed 2/15/78.]

WAC 415-108-070 Excess contributions to employees' savings fund. Pursuant to authority granted by RCW 41.40.330(2) this section shall cover all applications by members of the retirement system for permission to make excess contributions to the employees' savings fund.

The total contributions of a member of the state employees' retirement system to the employees' savings fund in any calendar year shall in no event exceed ten percent of the member's earnable compensation for that calendar year.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-070, filed 2/15/78. Formerly WAC 184-12-010.]

BENEFIT OPTIONS

WAC 415-108-315 How do I designate a beneficiary, and who will receive a distribution if I die before retirement? (1) If you die before retirement, the following statutes govern any distribution from your account:

(a) RCW 41.40.270 for Plan 1 members;

(b) RCW 41.40.700 for Plan 2 members;

(c) RCW 41.40.835 for Plan 3 members' defined benefits; and

(d) RCW 41.34.070 for Plan 3 members' defined contributions. See example three.

(2) You may designate or change a beneficiary by submitting a *beneficiary designation form* to the department. Your designation will become effective upon the department's receipt of the form, only if it is completed properly and signed by you. Strict compliance with these provisions is required.

(3) You may name one or more of the following as a beneficiary or beneficiaries:

(a) An organization or person, including unborn or later adopted children. However, unborn or later adopted children must be specifically designated as beneficiaries on the form. You must indicate the date of birth for any living person you name as a beneficiary.

(b) Your estate.

(c) An existing trust, or a trust to be established at a later date or under your last will. If you designate a trust that is not in existence at the time of your death, or is not created under your last will, the designation will be invalid. Before making a distribution to any trust the department must receive:

(i) A copy of the entire trust document;

(ii) The name, address, and telephone number of the current trustee; and

(iii) The tax identification number.

(4) You may name contingent beneficiaries in addition to primary beneficiaries.

(5) You may change your beneficiary designation at any time.

(6) A change in marital status may invalidate your prior designation.

(7) If your surviving spouse is eligible to receive a benefit under RCW 41.40.270(2) (Plan 1) or 41.40.700(2) (Plan 2), but your spouse dies before requesting a distribution, your minor children and your spouse's minor children may elect to receive either:

(a) Your accumulated contributions; or

(b) A monthly benefit, share and share alike, until each child reaches the age of majority. See example four.

(8) For Plan 3 members, if you were eligible but had not applied for a service retirement or had completed enough service to be eligible for a service retirement at the time of your death, your surviving spouse, or your minor children or your spouse's minor children, if your spouse is deceased, is eligible to receive a defined benefit under RCW 41.40.835.

Examples:

EXAMPLE ONE.

Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists the "Barbara Trust." His daughter Barbara is the trust beneficiary. He checks the box to indicate that the trust is a primary beneficiary.

Result

At John's death, Ann and the Barbara Trust are the primary beneficiaries. The department will require the name of the trustee, the tax identification number, a copy of the entire trust and other information specified in this rule before distribution to the trust. Distribution is governed by RCW 41.40.270 for Plan 1 members, RCW 41.40.700 for Plan 2 members, and RCW 41.34.070 for Plan 3 members.

EXAMPLE TWO.

Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists his daughter Barbara personally; i.e., no trust name is provided. John checks the corresponding box to indicate a primary beneficiary designation. At John's death, the department learns that John has created no trusts.

Result

Because John has created no trust, the designation of the Barbara Trust is void. Barbara, personally, will not be a beneficiary.

EXAMPLE THREE.

Facts

When she became a PERS 1 member, Joan was unmarried and named her mother as her beneficiary. Joan later married, but did not complete a new beneficiary form before she died with four years of service.

Result

Unless required to do otherwise by court order, the department will comply with RCW 41.40.270 (1)(b) and pay Joan's surviving spouse the accumulated contributions in her retirement account. In this case, Joan's mother will not receive a distribution.

EXAMPLE FOUR.

Facts

John is a PERS Plan 2 member with eleven years of service. He and his wife Mary have a total of three minor children. They have one child together, and each has one child from a previous marriage.

John and Mary were in a skydiving accident. John died instantly making Mary eligible for a benefit under RCW 41.40.700(2). However, Mary died the following week before requesting a distribution from the department.

Result

Since Mary died before requesting a distribution of John's account, John and Mary's three minor children are eligible and opt to receive a monthly benefit, share and share alike, until each child reaches the age of majority.

[Statutory Authority: RCW 41.50.050(5). WSR 14-06-056, § 415-108-315, filed 2/27/14, effective 3/30/14; WSR 05-12-041, § 415-108-315, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(5), 41.40.270, 41.40.700, 41.40.835. WSR 02-03-120, § 415-108-315, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. WSR 00-10-015, § 415-108-315, filed 4/21/00, effective 5/22/00.]

WAC 415-108-326 What are my retirement benefit options? Upon retirement for service under RCW 41.40.180, 41.40.630, or 41.40.820, or for disability under RCW 41.40.210, 41.40.230, 41.40.670, or 41.40.825, you must choose to have the defined benefit portion of your retirement benefit paid to you by one of the options described in this section. If you are a Plan 1 member, you may also select an optional supplemental cost of living adjustment (COLA).

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to 50 percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds survivor benefit.**[1] The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's consent, verified by a notarized signature or other means acceptable to the department. If you do not provide spousal consent, the department will pay you a monthly retirement

benefit based on option three (joint and 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.40.188, 41.40.660 and 41.40.845.

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, spousal consent is required. If you do not provide spousal consent, verified by a notarized signature or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.40.188, 41.40.660 and 41.40.845.

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least 30 days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What is the supplemental COLA option for Plan 1 members?** If you are a Plan 1 member, in addition to choosing a retirement benefit option described in subsection (2) of this section, you may choose to receive a supplemental annual COLA. If you select this option, your monthly retirement benefit will be actuarially reduced to offset the cost of this benefit.

(6) **What happens if I choose a benefit with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(7) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following four exceptions:

(a) **Return to membership.** If you retire and then return to membership for at least two years of uninterrupted service, you may choose a different retirement option upon your subsequent retirement. See RCW 41.40.037.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a survivor benefit option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a survivor benefit option and name a nonspouse as your survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(d) **One-time change of survivor.** You may change your benefit option and/or designated survivor one time within 90 days from the date

your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

(8) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) **Plan 1 and 2 members:**

(i) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(B) If you have not designated a beneficiary, or if your designated beneficiary is no longer living or in existence, then to your surviving spouse.

(C) If not paid according to (a)(i)(A) or (B) of this subsection, then to your estate.

(ii) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(A) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(B) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(C) If not paid according to (a)(ii)(A) or (B) of this subsection, then to your survivor beneficiary's estate.

(b) **Plan 3 members:** The defined benefit stops upon your death or upon the death of your survivor beneficiary, if applicable. As a Plan 3 member, you do not contribute to the defined benefit portion of your retirement benefit. The defined contribution portion of your benefit will be distributed according to WAC 415-111-310.

(9) For more information, see RCW 41.40.188 (Plan 1), RCW 41.40.660 (Plan 2) and RCW 41.40.845 (Plan 3).

[1] Available to members retiring on or after January 1, 1996.

[Statutory Authority: RCW 41.50.050. WSR 22-01-061, § 415-108-326, filed 12/8/21, effective 1/8/22; WSR 20-13-065, § 415-108-326, filed 6/15/20, effective 7/16/20; WSR 20-06-040, § 415-108-326, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-108-326, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5), 41.40.188, 41.40.660, 41.40.845. WSR 05-23-062, § 415-108-326, filed 11/14/05, effective 12/15/05. Statutory Authority: RCW 41.50.050(5), 41.26.460, 41.32.530, 41.32.785, 41.32.851, 41.35.220, 41.40.188, 41.40.660, 41.40.845. WSR 01-10-045, § 415-108-326, filed 4/26/01, effective 6/1/01. Statutory Authority: RCW 41.50.050. WSR 99-14-008, § 415-108-326, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660. WSR 96-01-047, § 415-108-326, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249. WSR 91-03-015, § 415-108-326, filed 1/7/91, effective 2/7/91.]

WAC 415-108-340 Actuarial factors and schedules. See chapter 415-02 WAC starting with WAC 415-02-300 for information on how the department uses actuarial factors and schedules to calculate optional retirement allowances of members of the Washington state public employees' retirement system.

[Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-108-340, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW. WSR 02-18-048, § 415-108-340, filed 8/28/02, effective 9/1/02; WSR 02-03-120, § 415-108-340, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. WSR 96-03-100, § 415-108-340, filed 1/19/96, effective 2/19/96. Statutory Authority: RCW 41.50.050, 41.40.165, 41.40.020 and 41.40.022. WSR 91-02-018, § 415-108-340, filed 12/21/90, effective 1/21/91.]

WAC 415-108-400 Purpose and scope. WAC 186-16-400 through 186-16-440 are hereby promulgated by the director in order to implement and give effect to the provisions of RCW 41.40.380 allowing a beneficiary of a retirement allowance to authorize deductions therefrom for payment of premiums due on any group life or disability insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions, in accordance with rules and regulations that may be promulgated by the director.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-400, filed 2/15/78. Formerly WAC 184-16-010.]

WAC 415-108-410 Definitions. As used in WAC 186-16-400 through 186-16-440, unless a different meaning is plainly required by the context:

(a) "Group life insurance policy or plan" means a contract of group life insurance issued by an insurance carrier authorized to do business in the state of Washington which meets one of the group requirements set forth in chapter 48.24 RCW;

(b) "Group disability insurance policy or plan" means a group disability insurance contract issued by an insurance carrier authorized to do business in the state of Washington which meets the requirements of chapter 48.21 RCW, and the term shall also include a group health care service contract as issued pursuant to, and regulated by, the provisions of chapter 48.40 RCW;

(c) To the extent that they are defined by RCW 41.40.010, all other terms used in WAC 186-16-400 through 186-16-440 which are thereby defined shall be given the same meaning herein as is set forth in the cited statute.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-410, filed 2/15/78. Formerly WAC 184-16-020.]

WAC 415-108-420 Scope of authority. Any beneficiary of a retirement allowance payable for service or disability under the provisions of chapter 41.40 RCW may, in the manner provided for by WAC 415-108-430, authorize the director to deduct therefrom, on a monthly basis only, such amounts as are due as premiums on any group life or

disability insurance policy or plan currently covering the beneficiary, issued to the employer by which he was employed prior to his retirement for the benefit of a group comprised of himself and his fellow public employees, under authority granted to the employer by act of the Washington legislature. The department and the director are not and will not be liable for any failure to make such deduction payments on time or in the proper amount.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-420, filed 2/15/78. Formerly WAC 184-16-030.]

WAC 415-108-425 How do I determine if I have plan choice rights or transfer rights to PERS Plan 3? (1) **Definitions:**

(a) **"Concurrently employed"** means you are employed at the same time, in eligible positions, by a Phase 1 employer and by a Phase 2 employer.

(b) **"Exercising plan choice rights"** means choosing Plan 2 or Plan 3 or defaulting into a plan.

(c) **"Phase 1 employer"** means state agencies and institutes of higher education.

(d) **"Phase 2 employer"** means all other employers.

(e) **"Phase 1 transfer period"** is the period from March 1, 2002, through and including August 31, 2002.

(f) **"Phase 2 transfer period"** is the period from September 1, 2002, through and including May 31, 2003.

(2) **What determines if I have "plan choice rights" or "transfer rights"?** Your current employment status and your employment history will be used to determine if you have plan choice rights (refer to WAC 415-02-030 for definition) or transfer rights. If your employment status changes, your rights must be reevaluated. A change in your employment status, such as separating from employment or becoming reemployed, may change your rights.

(3) **Do I have "plan choice rights"?**

(a) You have plan choice rights if your initial PERS membership began on or after March 1, 2002, with a Phase 1 employer in an eligible position.

(i) If you separate from employment and did not exercise your plan choice rights, you retain plan choice rights if you are reemployed in an eligible position with a Phase 1 employer.

(ii) If you separate from employment and did not exercise your plan choice rights, and you are not employed by a Phase 2 employer during Phase 2, you retain plan choice rights if you begin another period of employment in an eligible position with a Phase 2 employer after May 31, 2003.

(b) You have plan choice rights if your initial PERS membership began on or after September 1, 2002, with a Phase 2 employer in an eligible position. If you separate from employment and did not exercise your plan choice rights, you retain plan choice rights if you begin another period of employment in an eligible position with a Phase 1 or Phase 2 employer.

(c) You have plan choice rights if you transferred from membership in PERS to membership in the school employees' retirement system and then became employed in an eligible PERS position on or after March 1, 2002, with a Phase 1 employer or on or after September 1, 2002, with a Phase 2 employer.

(4) **What are "transfer rights" and how are they applied?** "Transfer rights" refers to your right as a Plan 2 member to transfer into Plan 3 during an applicable transfer period to your employment type.

(a) You are not required to exercise transfer rights. If you have transfer rights, you will remain in Plan 2 unless you decide to transfer to Plan 3.

(b) If you do not transfer to Plan 3 during the Phase 1 or the Phase 2 transfer periods, you will not qualify to receive the additional transfer payment under RCW 41.40.795 or retroactive gainsharing payment under RCW 41.31A.040.

(5) **Do I have transfer rights?**

(a) You have transfer rights if you:

(i) Are a Plan 2 member;

(ii) Are employed in an eligible position by a Phase 1 employer during the Phase 1 transfer period; and

(iii) Were not eligible for plan choice rights under subsection (3)(a) or (c) of this section.

(b) You have transfer rights if you:

(i) Are a Plan 2 member;

(ii) Are employed in an eligible position by a Phase 2 employer during the Phase 2 transfer period; and

(iii) Were not eligible for plan choice rights under subsection (3)(b) or (c) of this section.

(6) **What are "January transfer rights" and how are they applied?** "January transfer rights" refers to a Plan 2 member's right to transfer to Plan 3 during any January after the close of a transfer period.

(a) If you are employed by a Phase 1 employer, in an eligible position, the first January you can transfer is January 2003.

(b) If you are employed by a Phase 2 employer, in an eligible position, the first January you can transfer is January 2004.

(c) You must earn service credit in the January in which you transfer.

(7) **Do I have January transfer rights?**

(a) You have January transfer rights if you were eligible for transfer rights and did not transfer to PERS Plan 3 **during** the transfer period that applied to you.

(b) You have January transfer rights if you:

(i) Were employed in an eligible position with a Phase 1 employer **before** the Phase 1 transfer period, or were employed in an eligible position by a Phase 2 employer **before** the Phase 2 transfer period;

(ii) Were not employed by a Phase 1 employer **during** the Phase 1 transfer period;

(iii) Were not employed by a Phase 2 employer **during** the Phase 2 transfer period; and

(iv) Are employed by a Phase 1 employer in an eligible position that you began **after** the Phase 1 transfer period ended, or are employed by a Phase 2 employer in an eligible position that you began **after** the Phase 2 transfer period ended.

(8) **What happens after I become a member of a plan by choice, transfer or default?** Once you choose, transfer, or default into a plan, you will remain a member of that plan regardless of whether you change employers. You will not have any additional transfer rights or plan choice rights to exercise.

(9) **What rules apply to me if I am concurrently employed?** If you are, or become concurrently employed during the Phase 1 transfer period in an eligible position, you will have transfer rights but must

wait until the Phase 2 transfer period to transfer. If you separate from one of the employers, your membership rights must be reevaluated.

Examples: ***The examples are written, for the most part, for a Phase 1 employer. Use the Phase 2 transfer period (September 1, 2002, through and including May 31, 2003) to apply the rules to a Phase 2 employer.***

Plan Choice Rights:
Example 1: Pat starts working for a state agency in an eligible position (Phase 1 employer) as of:
A. April 1, 2002. Since Pat has not previously been a member of PERS, Pat has ninety days to make a **plan choice** for Plan 2 or Plan 3. See subsection (3) of this section.
B. After forty-five days, Pat leaves service without making a choice, and then returns in an eligible position one year later. Pat has a new ninety day period in which to make a **plan choice.** See subsection (3)(a)(i) of this section.
C. Pat chooses Plan 3 within ninety days. Pat is now a Plan 3 member regardless of future employment. *See subsection (8) of this section.*
D. Instead of choosing Plan 3, Pat lets the ninety day plan choice period go by without choosing Plan 2 or Plan 3. Pat is defaulted into a plan and is now a member of that plan regardless of future employment. *See subsection (8) of this section.*

Transfer Rights:
Example 2:
A. Chris has been a Plan 2 member since 1977. Chris is working at a state agency (Phase 1 employer) as of March 1, 2002. Since Chris was a member prior to the start of Plan 3, Chris has the right to **transfer** to Plan 3 in the transfer period (March 1, 2002, through August 31, 2002). See subsection (5)(a) of this section.
B. However, Chris **did not make a decision** to transfer prior to the close of the Phase 1 **transfer period.** If Chris remains employed for a Phase 1 employer, the right to transfer to Plan 3 is limited to January of each year. *See subsection (7)(a) of this section.*
C. In this variation, Chris was a Plan 2 member from March 1, 1987, through February 1, 2002. Chris returns on October 15, 2002, for a state agency (Phase 1 employer). Since Chris returned to service **after** the transfer period (March 1, 2002, through August 31, 2002), Chris only has the right to transfer to Plan 3 in January of each year. See subsection (7)(b) of this section.

Irrevocable Choice Rule:
Example 3: Mike starts working for a state agency (Phase 1 employer) as of April 1, 2002. Since Mike has not previously been a member of PERS, Mike has ninety days to make a **plan choice** for Plan 2 or Plan 3. Mike chooses Plan 3 within ninety days. Mike is now a Plan 3 member regardless of future employment. See subsection (8) of this section.

Irrevocable Choice Rule:
Example 4: Pat starts working for a state agency (Phase 1 employer) as of April 1, 2002. Since Pat has not previously been a member of PERS, Pat has ninety days to make a **plan choice** for Plan 2 or Plan 3. Pat chooses Plan 2 within ninety days. Pat is now a Plan 2 member who can no longer have a **plan choice** regardless of future employment. *See subsection (8) of this section.*

Concurrent Employment in Phase 1 and 2:
Example 5: Using example 2A, Chris also accepts employment for a county (Phase 2 employer) on April 1, 2002, **prior to transferring** to Plan 3. Since Chris is concurrently employed at a Phase 1 and a Phase 2 employer, Chris must wait for the Phase 2 window to transfer to Plan 3. See subsection (9) of this section.

[Statutory Authority: RCW 41.50.050. WSR 20-13-064, § 415-108-425, filed 6/15/20, effective 7/16/20. Statutory Authority: RCW 41.50.050(5), 41.40.785, and 2000 c 247. WSR 03-15-007, § 415-108-425, filed 7/3/03, effective 8/1/03. Statutory Authority: RCW 41.50.050(5) and 41.40.785. WSR 02-03-120, § 415-108-425, filed 1/23/02, effective 3/1/02.]

WAC 415-108-430 Procedure. Any beneficiary, who desires to authorize a retirement allowance deduction for payment of insurance premiums provided for by these rules, shall notify the retirement board of his intention in writing at least thirty days prior to the date upon which the first deduction is to be made and shall execute and file with the director a formal authorization on such form as may be hereinafter provided by the director.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-430, filed 2/15/78. Formerly WAC 184-16-040.]

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 deter-

mination 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.]

WAC 415-108-434 PERS Plan 1 nonduty disability benefits. This section covers benefits provided in RCW 41.40.230 through 41.40.250 for PERS Plan 1 members who incur a disability outside the performance 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 nonduty disability benefit?** You are eligible for a PERS Plan 1 nonduty disability benefit if the department determines that all of the following are true:

(a) You are a PERS Plan 1 member and have been employed with a PERS eligible employer for at least five years;

(b) You separate 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) Your disability is likely to be permanent;

(e) Your disability was not incurred during the performance of your job duties; and

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

(2) **What is the PERS Plan 1 nonduty disability benefit?** If you qualify to receive a nonduty disability benefit, you will receive a benefit under RCW 41.40.235 or, if you were a PERS Plan 1 member on February 25, 1972, you may irrevocably choose to receive a benefit under RCW 41.40.250.

If you are eligible to receive a benefit under RCW 41.40.235, your benefit will equal two percent of your average final compensation for each year of service credit, reduced by two percent for every year or fraction of a year that your age is less than fifty-five. For example, if you are fifty years old, your monthly disability benefit will be reduced by ten percent.

(a) Your monthly disability benefit will not exceed sixty percent of your average final compensation.

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

(c) 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.

(d) Your monthly disability benefit will be actuarially reduced if you choose a benefit option with a survivor feature. See WAC 415-108-326.

(3) **How do I apply?** To apply for a nonduty disability benefit 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. If you are married, your spouse must sign consenting to the option you choose. Your signature(s) must be verified by notarization or other means acceptable to the department.

(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 benefits.

(5) **What is the time limit for filing an application for a nonduty disability benefit?** There is no time limit for filing an application for a nonduty disability benefit. However, you must prove that

you were totally incapacitated at the time you separated from PERS employment.

(6) **What information will the department use to determine whether I am entitled to a nonduty disability benefit?** To determine your eligibility for a nonduty disability benefit, the department will consider any relevant information submitted by you, your employer, or 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 evidence.

(7) **If I am eligible for a service retirement under RCW 41.40.180, may I still apply for a disability retirement?** Yes, if you are eligible for both you may elect a disability retirement or a service retirement. If you elect a service retirement, you may not later change to a disability retirement.

(8) **When will the department evaluate my eligibility for benefits?** The department will evaluate your eligibility for a nonduty disability benefit once it receives all three parts of your properly completed application, supporting documentation, and all other information requested by the department.

(9) **If my application is approved, when will my benefit accrue?** If your application for a nonduty 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, you will be eligible for a retroactive payment of the benefit that accrued between the month following your date of 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 a benefit, 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?**

(a) If your application is denied and you continue in or resume PERS employment, you may reapply for a nonduty disability benefit at a later time if your condition worsens. You must submit new information to the department that shows you meet the requirements in subsection (1) of this section.

(b) If your application is denied, you may petition for review of the department's decision under the provisions of chapter 415-04 WAC.

(11) **What happens if I die within sixty days of applying for nonduty disability benefits?** If you die within sixty days of the date the department receives your application for a nonduty disability benefit, the beneficiary you name on the application may choose to receive either:

(a) A lump sum amount equal to the contributions in your PERS account; or

(b) A monthly benefit calculated according to whichever of the following methods will give your beneficiary the greatest benefit:

(i) A benefit calculated according to subsection (2) of this section and the benefit option indicated on your application; or

(ii) If otherwise qualified, the benefit provided in RCW 41.40.270 (4)(a).

(12) **What information must I provide to the department if I am receiving nonduty disability benefits?** If you are receiving nonduty disability benefits, 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 receive disability benefits?** 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?** During your lifetime, you will receive a monthly disability benefit unless one of the following occurs:

(a) If you return to gainful employment, your monthly disability benefit will be recalculated, as set forth in subsection (15) of this section.

(b) If you return to active PERS membership, your disability benefit will be discontinued.

(c) If a doctor determines that you are no longer totally incapacitated, your disability benefit will be discontinued.

(d) If you refuse to submit to medical examinations required by RCW 41.40.310, your disability benefit will be discontinued.

(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 of your compensation at retirement, adjusted for inflation, and your monthly disability benefit.

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

Example of benefit being reduced:

Due to a nonduty-related disability, Joe separated from service and began receiving a disability benefit of $1,000 per month. Joe became gainfully employed earning $2,500 per month. Joe's compensation at the time of separation adjusted for inflation is $3,000. Because Joe's current compensation, $2,500, is greater than his allowable earnings ($3,000 - $1,000 = $2,000) by $500, his benefit will be reduced by $500. Joe's reduced disability benefit will be $500 per month ($1,000 - $500).

Example of benefit being discontinued:

Due to a nonduty-related disability, Heidi separated from service and began receiving a disability benefit of $1,000 per month.

Heidi became gainfully employed earning $4,000 per month. Heidi's compensation at the time of separation adjusted for inflation is $3,000. Because Heidi's current compensation, $4,000, is greater than her allowable earnings ($3,000 - $1,000 = $2,000) by an amount ($2,000) that is greater than her disability benefit ($1,000), her benefit will be discontinued.

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

Example:

Due to a nonduty-related disability, you separated from service and began receiving a disability benefit of $1,000 per month. You become gainfully employed earning $1,000 per month. Your compensation at the time of separation adjusted for inflation is $3,000. Because your current compensation, $1,000, is less than your allowable earnings ($3,000 - $1,000 = $2,000), your disability benefit will not be reduced or discontinued.

(16) **Is my PERS Plan 1 nonduty disability benefit taxable?** You should consult with your tax advisor regarding all payments you receive from the department. The department reports disability benefits to the Internal Revenue Service as required by federal law and 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 disability benefits subject to court or administrative orders?** Your nonduty disability benefit 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 nonduty disability make me eligible for a benefit from the other system?** If you are a member of more than one retirement system, you may be entitled to additional benefits under portability law. See chapters 41.54 RCW and 415-113 WAC.

[Statutory Authority: RCW 41.50.050. WSR 20-13-065, § 415-108-434, filed 6/15/20, effective 7/16/20. Statutory Authority: RCW 41.50.050(5), 41.40.230, 41.40.235, 41.40.250. WSR 09-18-051, § 415-108-434, filed 8/27/09, effective 9/27/09.]

WAC 415-108-436 PERS Plans 2 and 3 disability benefits. This section covers disability benefits provided for in RCW 41.40.670 and 41.40.825 for members of PERS Plans 2 and 3. Disability provisions are designed primarily to provide an income to members who have been forced to leave the workforce because of an incapacitating disability. This section applies equally to on- or off-the-job injuries and/or illnesses.

Members may also be eligible for benefits from the Washington state departments of labor and industries (workers' compensation benefits) and social and health services, the U.S. Social Security Admin-

istration, employers, disability insurers, and others. Please contact these organizations directly for more information.

(1) **Am I eligible for disability benefits?** You are eligible for a disability allowance if, at the time of your separation from employment, you are totally incapacitated to perform the duties of your job or any other position for a PERS employer for which you are qualified by training or experience. Objective medical evidence is required to establish total incapacitation. Vocational and/or occupational evidence may be required at the discretion of the department.

(2) **If eligible, what will I receive as my monthly disability benefits under the standard option?**

(a) If you are a Plan 2 member, you will receive two percent times average final compensation (AFC) times service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age sixty-five. See WAC 415-02-320 for more information on early retirement.

(b) If you are a Plan 3 member, you will receive a defined benefit of one percent times average final compensation times service credit years, permanently actuarially reduced to reflect the difference in the number of years between your age when you separate for disability and age sixty-five. See WAC 415-02-320 for more information on early retirement.

(c) The degree of your disability or impairment will not impact the amount of your disability benefit.

(3) **May I choose a benefit option that provides a monthly allowance to my survivor beneficiary?** You may choose to have your benefit paid according to any of the benefit options described in WAC 415-108-326. If you choose an option with a survivor benefit, your monthly benefit will be reduced to offset the cost of the survivor option.

(4) **How do I apply?**

(a) You or your representative must contact the department to request an application. The three-part application must be completed by the proper persons and returned to the department.

(i) **Part 1:** Disability retirement application. You must complete and sign the application. If you are married, your spouse's consent may be required as described in WAC 415-108-326.

(ii) **Part 2:** Employer's statement and report. Your employer must complete, sign and return directly to the department.

(iii) **Part 3:** Medical report. You must complete section one. Your physician must complete the remainder of the form, attach supporting documentation, sign and return directly to the department. You are responsible for all medical expenses related to your application for benefits.

(b) When the department receives Part 1 of your application, you are considered to be an applicant for disability benefits. However, your eligibility will not be determined until the department receives all three parts of the application.

(5) **What is the time limit for filing an application for disability benefits?** There is no time limit for applying for benefits. However, if you have separated from employment, your application must be based on your condition at the time of separation.

(6) **If I am eligible to retire, may I still apply for disability benefits?** Yes, however, there will be no difference in the dollar amount of your benefit.

(7) **Once my application is approved, when will my benefit begin?**

(a) You will start accruing disability benefits the first day of the calendar month immediately following your separation from employment. If you are continuing to earn service credit while on paid leave or through programs such as shared leave, you are not considered to be separated from employment.

(b) Your first benefit payment will include all retroactive benefits to which you are entitled.

(c) Department approval will expire ninety days after the approval date if you have not officially separated from PERS employment.

(i) If you are continuing to perform the duties of your position or another PERS position, you may reapply for disability benefits according to subsection (4) of this section if your condition worsens.

(ii) If you are on leave, the department may reinstate approval upon your request and your employer's verification of your leave status.

(8) **What are my options if my application is denied?**

(a) You may submit additional information that shows you were totally incapacitated at the time of your separation from employment.

(b) If you continue to work in a PERS position, you may reapply for disability benefits at a later time if your condition worsens.

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

(9) **What information must be provided to the department if I am receiving disability benefits?**

(a) You and your doctor must report any improvement in your condition; and

(b) You must report the name of your employer and monthly salary if you resume employment, regardless of the number of hours you work.

(10) **How long will my disability benefits last?** You may receive benefits throughout your lifetime, subject to the provisions of subsection (15) of this section.

(11) **Are my disability benefits taxable?** You should consult with your tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any payments you receive from the department. The department does not:

(a) Guarantee that payments should or should not be designated as 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 nontaxable determination; or

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

(12) **Are disability benefits subject to court or administrative orders?** Your benefits may be subject to orders for spousal maintenance, child support, property division, or any other administrative or court order expressly authorized by federal law. For more information, see RCW 41.40.052(3) or contact the department.

(13) **Am I eligible for disability benefits if my disability is the result of my criminal conduct committed after April 21, 1997?** No. For more information, see RCW 41.40.054.

(14) **How is my disability benefit affected if I am a member of more than one retirement system?** If you are a member of more than one retirement system, your benefit is governed by portability law (see chapters 41.54 RCW and 415-113 WAC). You may apply for disability only from your active system. However, if you qualify for a disability ben-

efit from your active system, you will also be eligible for a service retirement calculated under the laws governing the inactive system.

(15) **Is it possible to lose my disability benefits after I begin receiving them?**

(a) The department may, at its expense, require comprehensive medical examinations to reevaluate your eligibility for disability benefits. You will no longer be eligible to receive disability benefits if both of the following apply:

(i) Medical evidence indicates you have recovered from the disability for which the department granted your disability benefits; and

(ii) You have been offered reemployment by an employer, as defined in RCW 41.40.010, at a comparable compensation.

(b) If you return to employment and reenter PERS membership, your benefits will cease.

(16) **If I take my disability benefit in a lump sum and return to work, may I restore my service credit?** Yes, you may restore your service credit if you take a lump sum benefit and return to PERS membership at a later date.

(a) You may restore your service credit within two years of reentering membership or prior to retirement, whichever comes first. You must pay back the lump sum amount you received, minus the monthly amount for which you were eligible, plus interest as determined by the director.

(b) If you restore your service after two years, you will have to pay the actuarial value of the resulting increase in your future retirement benefit. See RCW 41.50.165.

(c) The provisions for restoring service credit vary according to retirement plan.

(i) If you are a member of PERS Plan 2, see RCW 41.40.625.

(ii) If you are a member of PERS Plan 3, see RCW 41.40.815.

[Statutory Authority: RCW 41.50.050. WSR 21-16-020, § 415-108-436, filed 7/23/21, effective 8/23/21; WSR 20-06-040, § 415-108-436, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-108-436, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5), 41.40.670 and 41.40.825. WSR 05-12-106, § 415-108-436, filed 5/27/05, effective 6/27/05.]

WAC 415-108-440 Revocability. No authorization for a retirement allowance deduction for payment of insurance premiums, as made pursuant to WAC 186-16-400 through 186-16-440, shall be revocable except upon submission to the director of an express written revocation, which shall be first applicable to the retirement allowance deduction which would otherwise be made at the end of the calendar month following the month within which the statement of revocation is filed.

[Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-440, filed 2/15/78. Formerly WAC 184-16-050.]

REPORTABLE COMPENSATION

WAC 415-108-441 Purpose and scope of compensation earnable rules. WAC 415-108-443 through 415-108-488 codify the department's interpretation of statutes and administrative practice regarding clas-

sification of payments as compensation earnable in PERS Plan 1, 2, or 3. These rules will be used to determine the proper characterization of payments occurring prior to and after the effective dates of these sections.

[Statutory Authority: RCW 41.50.050(5), 41.40.010(8), chapter 41.40 RCW. WSR 02-03-120, § 415-108-441, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-441, filed 4/17/98, effective 5/18/98.]

WAC 415-108-443 PERS reportable compensation table. The following table indicates whether certain types of payments are reportable compensation under PERS Plan 1, 2, or 3 and provides a cross-reference to the specific WAC.

Type of Payment	PERS 1 Reportable Compensation?	PERS 2 or 3 Reportable Compensation?
Annual Leave Cash Outs	Yes - WAC 415-108-456	No - WAC 415-108-456
Assault Pay (State Emp.)	Yes - WAC 415-108-468	Yes - WAC 415-108-468
Base Rate	Yes - WAC 415-108-451	Yes - WAC 415-108-451
Car Allowances	No - WAC 415-108-485[1]	No - WAC 415-108-485[1]
Cafeteria Plans	Yes - WAC 415-108-455	Yes - WAC 415-108-455
Deferred Wages	Yes - WAC 415-108-459	Yes - WAC 415-108-459
Disability Payments	No - WAC 415-108-477	No - WAC 415-108-477
Disability: Salary lost while on disability leave	Yes - WAC 415-108-468 RCW 41.40.038	Yes - WAC 415-108-468 RCW 41.40.038
Employer Provided Vehicle	No - WAC 415-108-480[2]	No - WAC 415-108-480
Employer taxes/contributions	No - WAC 415-108-459	No - WAC 415-108-459
Fringe Benefits, including insurance	No - WAC 415-108-475	No - WAC 415-108-475
Illegal Payments	No - WAC 415-108-482	No - WAC 415-108-482
Legislative Leave	Yes - WAC 415-108-464	Yes - WAC 415-108-464
Longevity/Education Attainment Pay	Yes - WAC 415-108-451	Yes - WAC 415-108-451
Nonmoney Maintenance	Yes - WAC 415-108-470[3]	No - WAC 415-108-470
Optional Payments	No - WAC 415-108-483	No - WAC 415-108-483
Payments in Lieu of Excluded Items	No - WAC 415-108-463	No - WAC 415-108-463
Performance Bonuses	Yes - WAC 415-108-453	Yes - WAC 415-108-453

[1]A portion of the value of an employer car allowance may be reportable compensation. See WAC 415-108-485.

[2]A portion of the value of an employer provided vehicle may be reportable compensation in Plan 1 only. See WAC 415-108-480.

[3]A portion of the value of nonmoney maintenance provided may be reportable compensation in Plan 1 only. See WAC 415-108-470.

Type of Payment	PERS 1 Reportable Compensation?	PERS 2 or 3 Reportable Compensation?
Retroactive Salary Increase	Yes - WAC 415-108-457	Yes - WAC 415-108-457
Reimbursements	No - WAC 415-108-484	No - WAC 415-108-484
Reinstatement Payments	Yes - WAC 415-108-467	Yes - WAC 415-108-467
Retirement or Termination Bonuses	No - WAC 415-108-487	No - WAC 415-108-487

Type of Payment	PERS 1 Reportable Compensation?	PERS 2 or 3 Reportable Compensation?
Severance Pay - Earned Over Time	Yes - WAC 415-108-458	No - WAC 415-108-458
Severance Pay - Not Earned Over Time	No - WAC 415-108-488	No - WAC 415-108-488
Shared Leave - State Emp.	Yes - WAC 415-108-468	Yes - WAC 415-108-468
Shared Leave - Local Government Employees	No - WAC 415-108-468	No - WAC 415-108-468
Sick Leave Cash Outs - State Employees	No - WAC 415-108-456	No - WAC 415-108-456
Sick Leave Cash Out - Local Government Employees	Yes - WAC 415-108-456	No - WAC 415-108-456
Standby Pay	Yes - WAC 415-108-469	Yes - WAC 415-108-469
Time Off with Pay	Yes - WAC 415-108-456 WAC 415-108-465	Yes - WAC 415-108-456 WAC 415-108-465
Union Leave[4]	Yes - WAC 415-108-466	Yes - WAC 415-108-466
Workers' Compensation	No - WAC 415-108-479	No - WAC 415-108-479

[4]Only specific types of union leave are reportable compensation. See WAC 415-108-466.

[Statutory Authority: RCW 41.40.020 and 41.50.050(5). WSR 06-04-059, § 415-108-443, filed 1/27/06, effective 2/27/06. Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW. WSR 03-06-042, § 415-108-443, filed 2/27/03, effective 4/1/03. Statutory Authority: RCW 41.50.050(5), 41.40.010(8), chapter 41.40 RCW. WSR 02-03-120, § 415-108-443, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-443, filed 4/17/98, effective 5/18/98.]

WAC 415-108-445 What compensation can be reported? (1) **Compensation earnable:**

(a) Compensation earnable must meet the definition in RCW 41.40.010 and:

(i) Be earned as a salary or wage for personal services provided during a payroll period and be paid by an employer to an employee; or

(ii) Qualify as compensation earnable under WAC 415-108-464 through 415-108-470.

(b) The department determines whether payments to an employee are compensation earnable based on the nature, not the name, of the payment. The department considers the reason for the payment and whether the reason brings the payment within the statutory definition of compensation earnable.

Example: "Longevity pay" conditioned on retirement is not for services provided and is therefore not compensation earnable.

(c) "Compensation earnable" is defined in very similar terms for all three PERS plans. Any differences among plans are specifically noted in WAC 415-108-443 through 415-108-488.

(2) **Reportable compensation:**

(a) Reportable compensation is the compensation paid by an employer to an employee that the employer must report to the department.

(b) An employer must report all of an employee's compensation earnable, as defined by RCW 41.40.010 and WAC 415-108-445, to the department.

(c) An employer must report compensation for the month in which it was earned. Compensation is earned when the service is provided, rather than when payment is made.

Example: A member is paid in July for work performed during June. The employer must report the compensation to the department as "June earnings."

[Statutory Authority: RCW 41.50.050. WSR 21-16-020, § 415-108-445, filed 7/23/21, effective 8/23/21. Statutory Authority: RCW 41.50.050(5) and 41.40.010(8). WSR 02-18-045, § 415-108-445, filed 8/28/02, effective 9/28/02. Statutory Authority: RCW 41.50.050(5) and 41.40.010. WSR 02-03-120, § 415-108-445, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-445, filed 4/17/98, effective 5/18/98.]

WAC 415-108-451 Salary or wages. Most employees receive a base rate of salary or wages expressed as an hourly or monthly rate of pay. This payment is for services rendered and qualifies as reportable compensation. Two possible components of an employee's base rate are salary considerations based on longevity or educational attainment.

(1) A member who receives a salary increase based upon longevity or educational attainment receives a higher salary without working more hours. The higher salary indicates a higher level of performance due to greater experience or more education. The payment is therefore a payment for personal service and is reportable compensation.

(2) Simply attaching the label "longevity" to a payment does not guarantee that it will be reportable compensation. If a payment described as a longevity payment is actually based upon some other criteria, such as retirement or notification of intent to retire, the payment may not be reportable.

[Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-451, filed 4/17/98, effective 5/18/98.]

WAC 415-108-453 Performance bonuses. Bonuses that are based upon meeting certain performance goals are earned for services rendered and are reportable compensation. If a bonus was earned over a specified period of time it should be prorated for reporting purposes.

Example: An employer pays each employee in the work group an additional $100 if the work group had no work related accidents in the preceding year. Remaining accident free is a performance goal. Therefore the payment is for services rendered and qualifies as reportable compensation. The bonus should be prorated over each of the preceding twelve months during which it was earned.

[Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-453, filed 4/17/98, effective 5/18/98.]

WAC 415-108-455 Cafeteria plans. Compensation received in any form under the provisions of a "cafeteria plan," "flexible benefits plan," or similar arrangement pursuant to section 125 of the United

States Internal Revenue Code is reportable compensation if the employee has an absolute right to receive cash or deferred cash payments in lieu of the fringe benefits offered. In such an instance, the fringe benefits are being provided in lieu of cash and are considered reportable compensation, just as the cash would be. If there is no cash option, the value of the fringe benefit is not a salary or wage and is not reportable compensation, see WAC 415-108-475.

[Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-455, filed 4/17/98, effective 5/18/98.]

WAC 415-108-456 Leave payments earned over time. (1) **Sick and annual leave usage.**

(a) Leave accrues at a prescribed rate, usually a certain number of hours per month.

(b) You earn a leave day by providing service during the month the leave accrued.

(c) Sick leave and annual leave are accumulated over time and paid to you during a period of excused absence.

(d) When you use your accrued leave by taking a scheduled work day off with pay, the payment is deferred compensation for services previously provided.

(e) The payment is a salary or wage earned for services provided and is reportable.

(2) **Annual leave cash outs.** Annual leave cash outs, like payments for leave usage, are deferred compensation earned for services previously provided. Whether, and to what extent an annual leave cash out qualifies as reportable compensation depends upon the PERS plan to which you belong and the type of employer.

(a) **Plans 2 and 3:** Annual leave cash outs are not reportable compensation. Although the payments are for services provided, they are excluded from the definition of compensation earnable by statute. See RCW 41.40.010.

(b) **Plan 1, state government employees:** A cash out of up to thirty days of annual leave for state government employees is reportable compensation. See RCW 43.01.040. A cash out in excess of thirty days of annual leave:

(i) Qualifies as reportable compensation if the leave is authorized by a letter of necessity under RCW 43.01.040. Annual leave qualifies as authorized under a letter of necessity only if the leave was earned after the letter of necessity was issued;

(ii) Does not qualify as reportable compensation if the leave is earned between the date that you accrued thirty days of annual leave and your anniversary date under RCW 43.01.044.

(c) **Plan 1 employees not covered by subsection (2)(b) of this section:** All annual leave cash outs received by PERS Plan 1 members who are not state employees qualify as reportable compensation.

(3) **Sick leave cash outs.** Sick leave cash outs are deferred compensation for services previously provided.

(a) Sick leave cash outs are excluded from the definition of compensation earnable for PERS Plan 2 or 3 members by statute. See RCW 41.40.010.

(b) Sick leave cash outs are reportable compensation for PERS Plan 1 members other than state, school district, and educational service district employees.

(c) Sick leave cash outs are excluded from reportable compensation for:

(i) State employees by RCW 41.04.340;

(ii) School district employees by RCW 28A.400.210; and

(iii) Educational service district employees by RCW 28A.310.490.

See RCW 41.40.010.

[Statutory Authority: RCW 41.50.050. WSR 21-16-020, § 415-108-456, filed 7/23/21, effective 8/23/21. Statutory Authority: RCW 41.50.050(5) and 41.40.010(8). WSR 02-03-120, § 415-108-456, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-456, filed 4/17/98, effective 5/18/98.]

WAC 415-108-457 Retroactive salary increases. A retroactive salary payment to an employee who worked during the covered period is a payment of additional salary for services already rendered.

Note: A retroactive salary increase is not the same as a retroactive payment upon reinstatement or in lieu of reinstatement of a terminated or suspended employee. For treatment of back payments for periods where services were not rendered, see WAC 415-108-467.

(1) To qualify as reportable compensation under this section, the payment must be a bona fide retroactive salary increase. To ensure that is the case, the retroactive payment must be made pursuant to:

(a) An order or conciliation agreement of a court or administrative agency charged with enforcing federal, state, or local statutes, ordinances, or regulations protecting employment rights;

(b) A bona fide settlement of such a claim before a court or administrative agency;

(c) A collective bargaining agreement; or

(d) Action by the personnel resources board which expressly states the payments are retroactive.

(2) The payments will be deemed earned in the period in which the work was done.

[Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-457, filed 4/17/98, effective 5/18/98.]

WAC 415-108-458 Severance pay earned over time. (1) **PERS Plan 1:** Severance pay earned over time is reportable compensation. Conversely, severance pay not earned over time is not reportable compensation (see WAC 415-108-488). The difference is that severance pay earned over time is deferred compensation for services previously provided.

Severance pay is earned over time if the employment contract(s) or compensation policies in effect at the beginning of a given period of employment specify that a certain amount of severance pay will be earned during that period in consideration for services provided.

Example: Mr. Jones is a PERS Plan 1 member employed as a city manager. Since the beginning of his term of employment with the city, his contract has specified that he will earn one week of severance pay for every year of his employment. The earned severance pay will be paid at the time of his separation. His severance pay is reportable compensation. When Mr. Jones retires, the two weeks severance pay that he earned during his two highest paid years (i.e., one week per year for two years) will be included in his PERS Plan 1 retirement calculation.

To the extent that severance pay qualifies as reportable compensation and is earned within your average final compensation period, the severance pay is excess compensation. See RCW 41.50.150.

(2) **PERS Plans 2 and 3:** All forms of severance pay are excluded from earnable compensation. See RCW 41.40.010.

[Statutory Authority: RCW 41.50.050. WSR 21-16-020, § 415-108-458, filed 7/23/21, effective 8/23/21. Statutory Authority: RCW 41.50.050(5) and 41.40.010(8). WSR 02-03-120, § 415-108-458, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-458, filed 4/17/98, effective 5/18/98.]

WAC 415-108-459 Payroll deductions. Salary or wages for services rendered that are withheld from a member's pay still qualify as reportable compensation.

(1) **Retirement contributions.** Payments deducted from employee compensation for employee retirement contributions are reportable. Employer contributions are a fringe benefit and are not reportable, see WAC 415-108-475.

(2) **Tax withholding.** Payments withheld to satisfy federal tax obligations qualify as reportable compensation.

(3) **Voluntary deductions.** Payments deducted voluntarily, such as I.R.C. section 457 plan contributions or other authorized deductions, are reportable.

[Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-459, filed 4/17/98, effective 5/18/98.]

WAC 415-108-463 Payments not for services rendered. In general, payments cannot be reported to the retirement system unless they are for services rendered. However, the legislature has identified some types of compensation which are reportable even though they are not for services rendered.

(1) WAC 415-108-464 through 415-108-469 discuss all payments that are not for services rendered that nonetheless qualify as reportable compensation.

(2) WAC 415-108-475 through 415-108-488 discuss some payments that are not a salary or wage for services rendered and so do not qualify as reportable compensation. A payment not for services rendered other than those identified in WAC 415-108-464 through 415-108-469 is not reportable compensation even if it is not listed in WAC 415-108-475 through 415-108-488.

(3) A payment made in lieu of a payment that is not for services rendered (such as a payment made in lieu of a car allowance) will be

treated in the same way that the original payment was treated. Such a payment is not for services rendered and is not reportable.

[Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-463, filed 4/17/98, effective 5/18/98.]

WAC 415-108-464 Legislative leave. If you take leave without pay from an eligible position to serve in the legislature, you may choose to participate in PERS as a legislator.

(1) **Plan 1:** Your reportable compensation is the salary you would have earned from your employer. You must pay employee contributions on this amount. Either you or your employer must pay employer contributions on the amount.

(2) **Plan 2 or 3:** You may choose your reportable compensation to be:

(a) The reportable compensation you would have earned from your employer; or

(b) Your actual reportable compensation for your legislative and nonlegislative service combined.

If you choose (2)(a) of this subsection and your reportable compensation is higher than it would have been under (2)(b) of this subsection, you must pay both employee and employer contributions on the excess amount.

[Statutory Authority: RCW 41.50.050(5) and 41.40.010(8). WSR 02-03-120, § 415-108-464, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-464, filed 4/17/98, effective 5/18/98.]

WAC 415-108-465 Is paid leave not earned over time reportable compensation for PERS? RCW 41.40.175 and 41.40.710 identify payments received from the employer while on paid leave as reportable for PERS. Contributions are due on these payments to the extent they meet the following conditions:

(1) **The payment is equal to the salary that you normally earn in your position; and**

(2) **The payment is actually from the employer.** Payments from an employer that are conditioned upon reimbursement from a third party are payments from the third party. Because the payments are not from the employer, they are not reportable compensation. The only exception is union leave paid by the employer subject to reimbursement from the union under the conditions specified in RCW 41.40.175 (Plan 1), RCW 41.40.710 (Plan 2), RCW 41.40.805 (Plan 3), and WAC 415-108-466.

Example: Joe injures himself off the job and collects labor and industries payments instead of compensation from his employer. Because the payments are not from his employer, they are not reportable compensation.

[Statutory Authority: RCW 41.50.050(5) and 41.40.710. WSR 02-03-120, § 415-108-465, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-465, filed 4/17/98, effective 5/18/98.]

WAC 415-108-466 Do I receive reportable compensation for union leave? If you take an authorized leave of absence to serve as an elected official of a labor organization and your employer pays you while you are on leave subject to reimbursement from the union, your pay qualifies as reportable compensation provided that all the conditions of RCW 41.40.175 (Plan 1), RCW 41.40.710 (Plan 2), or RCW 41.40.805 (Plan 3) as appropriate, are met.

[Statutory Authority: RCW 41.50.050(5), 41.40.010, 41.40.175, 41.40.710, 41.40.805. WSR 02-03-120, § 415-108-466, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-466, filed 4/17/98, effective 5/18/98.]

WAC 415-108-467 Reinstatement or payment instead of reinstatement. (1) Payments to an employee are not earned for services rendered if an employer makes them for periods during which the employee was not employed and the payments are made either upon reinstatement or instead of reinstatement. Nonetheless, RCW 41.40.010 specifically designates these payments as reportable compensation. The payments are only reportable to the extent that they are equivalent to the salary the employee would have earned had he or she been working. The payment will be prorated over the entire period that the employee was suspended, terminated, or otherwise absent from work.

(2) For purposes of subsection (1) of this section, "reinstatement" means that the employee is entitled to return to full employment rights by action of either:

(a) The employer; or

(b) A personnel board, personnel appeals board or court of law following a hearing.

[Statutory Authority: RCW 41.50.050. WSR 21-16-020, § 415-108-467, filed 7/23/21, effective 8/23/21. Statutory Authority: RCW 41.50.050(5), 41.40.020, 41.35.010(6), 41.40.010(8). WSR 01-08-057, § 415-108-467, filed 4/2/01, effective 5/3/01. Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-467, filed 4/17/98, effective 5/18/98.]

WAC 415-108-468 Compensation authorized by statute for periods of absence due to sickness or injury. Compensation that a member receives for periods of absence due to sickness or injury are not payments for services rendered unless the payments are authorized pursuant to sick leave earned by the member for services rendered, see WAC 415-108-456. Certain specific types of payments for periods of absence due to sickness or injury have been included within the statutory definition of compensation earnable and therefore qualify as reportable compensation.

(1) **Assault pay** qualifies as reportable compensation only to the extent authorized by RCW 27.04.100, 72.01.045, and 72.09.240.

(2) **Imputed compensation for periods of duty disability** that a member would have received but for a disability occurring in the line of duty qualify as reportable compensation only to the extent authorized by RCW 41.40.038.

(3) **Shared leave.**

(a) Compensation that a state employee receives due to participation in a leave sharing program to the extent authorized by RCW 41.04.650 through 41.04.670 qualifies as reportable compensation.

(b) Shared leave payments received by members who are not state employees, do not qualify as reportable compensation. Such payments are not for services rendered, nor are they specifically included within the statutory definition of compensation earnable.

[Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-468, filed 4/17/98, effective 5/18/98.]

WAC 415-108-469 Standby pay. Some employers pay employees for being on "standby." A member is on standby when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work if the need arises, although the need may not arise. Because the member is not actually working, the member is not rendering service. However, RCW 41.40.010 specifically identifies standby pay that meets the above requirements as reportable compensation. Although included in the definition of compensation earnable, time spent on standby is excluded from the definition of "service," see RCW 41.40.010.

[Statutory Authority: RCW 41.50.050. WSR 21-16-020, § 415-108-469, filed 7/23/21, effective 8/23/21; WSR 98-09-059, § 415-108-469, filed 4/17/98, effective 5/18/98.]

WAC 415-108-470 Nonmoney maintenance. Are payments from my employer in any form other than money reportable compensation?

(1) Nonmoney maintenance compensation, as defined in this section:

(a) Is reportable compensation to the extent authorized by this section, for Plan 1 members; and

(b) Is not reportable compensation for Plan 2 and 3 members.

(2) Nonmoney maintenance compensation is compensation legally provided to you in a form other than money. For example, nonmoney maintenance compensation may include the provision of materials such as living quarters, food, board, equipment, clothing, laundry, transportation, fuel, and utilities. To be considered nonmoney maintenance compensation, the materials must be provided for your personal use and/or the personal use of your dependents, not for a business use. The materials are not nonmoney maintenance compensation if:

(a) You use them solely in connection with your employer's business; or

(b) They are provided in lieu of reimbursement for your business expenses.

(3) To prove that the provision of materials constitutes nonmoney maintenance compensation:

(a) Your employer must substantiate by adequate records or other sufficient corroborating evidence that the materials were provided to you for your personal use as payment for your services to the employer.

(b) Your employer must substantiate that the fair market value of the materials provided is includable in your taxable income for federal income tax purposes.

(c) You may provide corroborating evidence to the department. Written documentation prepared at or near the time the materials were provided is generally preferred.

(d) In the absence of clear proof, the department will presume that employer-provided materials were not nonmoney maintenance compensation.

(4) Your employer must report nonmoney maintenance compensation to the department. The amount reported as compensation is the fair market value of materials legally provided by your employer. To substantiate the value of nonmoney maintenance compensation:

(a) Your employer must establish and regularly update a written schedule reflecting the monthly fair market value of the materials provided. Typically, the fair market value would be the cost of the item if it were acquired in a purchase or lease transaction. Your employer must be able to substantiate the accuracy of this schedule with adequate records.

(b) If you pay any amount to your employer in order to own or use the materials, your employer must report the amount by which the fair market value exceeds the amount of your payment.

Example: Your employer leases an apartment for $700.00 per month and charges you $300.00 per month to use the apartment for temporary living quarters. Because you use the apartment for personal, rather than business purposes, the amount by which the lease value exceeds your payment is nonmoney maintenance compensation. $400.00 per month is reportable compensation.

[Statutory Authority: RCW 41.40.020 and 41.50.050(5). WSR 06-04-059, § 415-108-470, filed 1/27/06, effective 2/27/06. Statutory Authority: RCW 41.50.050. WSR 95-22-006, § 415-108-470, filed 10/18/95, effective 11/18/95. Statutory Authority: RCW 41.40.010(8) and 41.40.020. WSR 87-17-061 (Order DRS 87-08), § 415-108-470, filed 8/19/87.]

WAC 415-108-475 Fringe benefits. Fringe benefits provided by an employer are not a salary or wage, and therefore are not reportable compensation. Fringe benefits include, but are not limited to:

(1) Employer retirement contributions;

(2) Any type of insurance such as medical, dental or life insurance; and any employer contribution to meet the premium or charge for the insurance; or

(3) Any employer payments into a private fund to provide health or welfare benefits for the member (or the member and the member's dependents), with the exception of compensation paid pursuant to a bona fide cafeteria plan, flexible benefit plan or similar arrangement as described in WAC 415-108-455.

[Statutory Authority: RCW 41.50.050(5). WSR 05-12-109, § 415-108-475, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW. WSR 03-06-042, § 415-108-475, filed 2/27/03, effective 4/1/03. Statutory Authority: RCW 41.50.050. WSR 99-14-008, § 415-108-475, filed 6/24/99, effective 7/25/99; WSR 98-09-059, § 415-108-475, filed 4/17/98, effective 5/18/98.]

WAC 415-108-477 Disability insurance. Disability insurance payments are paid to persons for periods when they are unable to work.

Because no services are rendered in exchange for these payments, they are not reportable compensation. This is true whether the payments come directly from the employer or from an insurance company.

[Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-477, filed 4/17/98, effective 5/18/98.]

WAC 415-108-479 Workers' compensation. Workers' compensation is paid to persons for periods when they are unable to work. Workers' compensation payments, like disability insurance, are not payments for services rendered and are not reportable compensation.

Example: Some employees on unpaid disability leave submit their workers' compensation payments to their employer who then issues the employee a check for the same amount through the payroll system. This exchange of payments does not change the character of the workers' compensation payment. Whether the payments come from the department of labor and industries, a self-insured employer, or have the appearance of coming from the employer, workers' compensation payments are not payments for services rendered and do not qualify as reportable compensation.

Note: A member may elect to make contributions and receive service credit for periods of disability covered by industrial insurance, see RCW 41.40.038.

[Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-479, filed 4/17/98, effective 5/18/98.]

WAC 415-108-480 Vehicles—Does the value of my use of an employer vehicle qualify as compensation earnable? (1) PERS Plan 1 members:

(a) Use of an employer vehicle for business purposes does not qualify as compensation earnable. If your employer's established policy prohibits the use of an employer vehicle for nonbusiness uses, all use of the vehicle will be deemed business use.

(b) Use of an employer vehicle for nonbusiness purposes qualifies as compensation earnable if:

(i) Your employer reports your personal use of the vehicle to the IRS as taxable income under IRC Section 61 and Treas. Reg. Section 1.61-21; or

(ii) Your employer maintains monthly records of your personal use. These records must contain:

(A) Your employer's authorization of your personal use;

(B) The distance normally commuted each day during the month, if you use the vehicle to commute;

(C) The dates, mileage, and itinerary of each personal trip other than a commute trip;

(D) Your total mileage for the month; and

(E) The ratio of personal mileage to total mileage, expressed as a percent.

(c) The department presumes that your use of an employer vehicle is solely for business purposes. If you used an employer vehicle for personal use, your employer must report the value of this use as com-

pensation earnable on a monthly basis. Monthly compensation earnable is the lesser of the following:

(i) Fair Market Lease Value x Percentage of Personal Use

(ii) Miles of Personal Use x IRS Mileage Rate.

The IRS Mileage Rate is the mileage rate adopted by the Internal Revenue Service for use by taxpayers in computing the value of the use of a vehicle.

(2) **PERS Plan 2 and 3 members.** If you are a member of PERS Plan 2 or 3, you are not entitled to count any of the value of an employer-provided vehicle as compensation earnable.

[Statutory Authority: RCW 41.50.050(5) and 41.40.010. WSR 02-03-120, § 415-108-480, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. WSR 95-22-006, § 415-108-480, filed 10/18/95, effective 11/18/95. Statutory Authority: RCW 41.40.010(8) and 41.40.020. WSR 87-17-061 (Order DRS 87-08), § 415-108-480, filed 8/19/87.]

WAC 415-108-482 Illegal payments. Payments made by an employer in excess of the employer's legal authority are not reportable.

Example: School districts are prohibited from increasing an employee's salary to include a payment in lieu of a fringe benefit per RCW 28A.400.220. If a district increased a person's salary instead of providing a fringe benefit, the payment would be illegal and should not be reported.

[Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-482, filed 4/17/98, effective 5/18/98.]

WAC 415-108-483 Optional payments. If an employee can receive an additional payment only on the condition of taking an action other than providing service to the employer, the payment is not for services rendered and is not reportable compensation.

Example: An employer offers to make a contribution to a deferred compensation plan on behalf of an employee only if the employee agrees to defer a portion of his or her salary. Because the employee does not have a right to receive the contribution based solely on the rendering of service, the employer payment is not reportable compensation.

[Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-483, filed 4/17/98, effective 5/18/98.]

WAC 415-108-484 Reimbursements for expenses. Reimbursements are not earned for services rendered and thus are not reportable compensation. Typical reimbursement payments include mileage reimbursements for use of a private car on employer business, see WAC 415-108-485, or meal and lodging reimbursements for business trips.

[Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-484, filed 4/17/98, effective 5/18/98.]

WAC 415-108-485 Vehicle allowances—Are vehicle allowances earnable compensation? (1) **If your employer provides you any payment or allowance in lieu of a reimbursement for expenses you incur or expect to incur in performing services for your employer, the payment or allowance is not compensation earnable.** Your vehicle allowance does not qualify as compensation earnable if you receive the allowance in lieu of reimbursement for expenses that you incur or expect to incur in using your own vehicle for business purposes.

(2) **The department presumes that any vehicle allowance provided to you by your employer is a payment in lieu of reimbursement for expenses and is not compensation earnable.** If the contract authorizing your vehicle allowance states that it is provided solely in lieu of reimbursement for expenses that you incur or expect to incur in using your own vehicle for business purposes, the department's presumption is not rebuttable.

(3) **Your vehicle allowance may qualify as compensation earnable to the extent that it exceeds your actual expenses.** If your employer documents that your vehicle allowance exceeds the actual expenses you incur in driving your own vehicle for business purposes, the excess amount is compensation earnable. Your employer must maintain monthly contemporaneous records documenting the following:

(a) The dates, if any, on which you used a privately owned vehicle in performing services for your employer;

(b) The miles you drove the vehicle on each of these trips; and

(c) Your itinerary for each of these trips.

(4) **How to determine what amount of your vehicle allowance, if any, is reportable as compensation earnable.** If your employer documents that your vehicle allowance exceeds the actual expenses you incur in using your own vehicle for business purposes, your employer must report to the department as compensation earnable:

Your Vehicle Allowance LESS (Miles x IRS Rate)

(a) "Miles" above means the number of miles you drove a privately owned vehicle for business purposes during the month.

(b) "IRS rate" above means the Internal Revenue Service mileage rate for use by taxpayers computing the value of the use of a vehicle.

(5) **Your vehicle allowance qualifies as compensation earnable if you also receive a separate reimbursement for each occasion you use your own vehicle for business purposes.** If, in addition to your vehicle allowance, you receive a separate reimbursement for vehicle expenses for each occasion that you use a privately owned vehicle for business purposes, your vehicle allowance is compensation earnable.

(6) **Any part of your vehicle allowance that qualifies as earnable compensation is excess compensation.** If any part of your vehicle allowance is included in the calculation of your retirement allowance, your employer will be billed for excess compensation under RCW 41.50.150. Your employer's bill will equal the total estimated cost of the portion of your retirement allowance payment attributable to your vehicle allowance.

[Statutory Authority: RCW 41.50.050. WSR 99-14-008, § 415-108-485, filed 6/24/99, effective 7/25/99; WSR 95-22-006, § 415-108-485, filed 10/18/95, effective 11/18/95.]

WAC 415-108-487 Retirement bonus or incentive. A payment made to an employee as a bonus or incentive when retiring or terminating is not a payment for services rendered. Rather, the payment is made in exchange for an employee's promise or notification of intent to retire or terminate. A retirement or termination bonus or incentive is not reportable compensation.

Example: A collective bargaining agreement authorizes a city to pay employees a higher salary during the last two years of employment if the employee gives written notice of his or her intent to retire or terminate. Because the payment is in exchange for the agreement to retire or terminate and not for services, the payment is not reportable compensation.

[Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-487, filed 4/17/98, effective 5/18/98.]

WAC 415-108-488 Severance pay not earned over time—Contract buy outs. Severance pay that is not earned over time is not earned for services rendered and is not reportable. An example of severance pay not earned over time is a payment negotiated as part of termination agreement.

Example: At the time of an employee's termination the employer agrees to pay a lump sum payment equal to two months salary. The employer identifies this payment as "severance pay." Because the payment was not earned for services rendered, it is not reportable compensation and will not be included in the retirement calculation.

For treatment of severance pay earned over time, see WAC 415-108-458.

[Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-488, filed 4/17/98, effective 5/18/98.]

WAC 415-108-491 Salary imputed to periods of unpaid leave. In some circumstances specified in statute, a member may choose to establish service credit for periods of unpaid leave. The salary imputed to a member for purposes of calculating contributions owing for such periods of leave is not reportable compensation. Depending on the type of leave, the imputed compensation may or may not be included as average final compensation in calculating a member's retirement allowance.

(1) **Unpaid authorized leave of absence.** For information about purchasing service credit for periods of unpaid authorized leave of absence, see:

(a) Plan 2: WAC 415-02-175 and RCW 41.40.710; and

(b) Plan 3: WAC 415-02-175 and RCW 41.40.805.

(2) **Periods of disability.** See RCW 41.40.038 for information about establishing service credit for periods of disability covered by industrial insurance.

(3) **Military leave.** For Plan 2 and Plan 3, salary imputed to a member for purposes of calculating contributions owing for periods of interrupted military service is not reportable compensation. Federal law requires that if a member chooses to purchase credit for such pe-

riods of military service, and that period falls in the member's average final compensation period, the member is entitled to have the imputed salary he or she would have earned during the period of absence used in the calculation of his or her average final compensation.

[Statutory Authority: RCW 41.50.050(5). WSR 04-20-005, § 415-108-491, filed 9/23/04, effective 10/24/04. Statutory Authority: RCW 41.50.050(5), 41.40.038, 41.40.170, 41.40.710, 41.40.805. WSR 02-03-120, § 415-108-491, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-491, filed 4/17/98, effective 5/18/98.]

WAC 415-108-510 Treatment of cash payments made in lieu of unused leave—First-in-first-out accounting method for determining when leave earned—Forms of leave deemed excess compensation—Conversions. (1) Cash compensation in lieu of unused annual or sick leave may be considered compensation earnable for Plan 1 members subject to the provisions of RCW 41.40.010 and WAC 415-108-456. Employers may not limit the inclusion of cash compensation paid in lieu of unused annual or sick leave as compensation earnable in conflict with RCW 41.40.010. Provisions of collective bargaining agreements, employment and administrative policies or other rules applied by an employer that conflict with RCW 41.40.010 and rules adopted thereunder are without legal effect.

(2) When an employer provides cash compensation in lieu of unused annual or sick leave, the department applies a first-in-first-out accounting method to determine when the compensated leave was earned, and when or whether the leave was used or cashed out, with the following exceptions:

(a) As otherwise provided in *Bowles v. Department of Retirement Systems*, 121 Wn.2d 52 (1993); and

(b) The employer has in place a regulation, charter provision, ordinance, collective bargaining agreement, or other comparable written policy statement which clearly delineates when the cashed out leave was accrued, or a different method of accounting for the accrual and use of leave, and, if applicable, compensation for unused leave and the same such method is consistently applied in each instance and for all purposes.

Any employer's policy which is not consistent for all purposes which is contained in a regularly negotiated labor agreement in effect on the effective date of this section will be honored until the expiration date of the agreement not including any extensions at which time it will be brought into compliance with this section. Any employer's policy which is not consistent for all purposes which is established by the employer shall be brought into compliance within sixty days of the effective date of this section. In the event an employer fails to come into full compliance with this section by the dates established herein, the department will treat cashed out leave on the same basis as the employer has established for using leave.

(3) A cash out of leave which is not annual leave as defined under WAC 415-108-010, shall be treated by the department as "any other form of leave" under RCW 41.50.150(2). The department shall bill the employer for any such leave cash out as excess compensation under RCW 41.50.150.

(4) For purposes of determining average final compensation and excess compensation, hours of leave earned by a member shall be considered for all purposes in the form in which it was earned. The department shall disregard any conversion of leave by an employer from one form to another and bill the employer for the amount converted as excess compensation pursuant to RCW 41.50.150.

[Statutory Authority: RCW 41.50.050. WSR 21-16-020, § 415-108-510, filed 7/23/21, effective 8/23/21; WSR 99-14-008, § 415-108-510, filed 6/24/99, effective 7/25/99. Statutory Authority: RCW 41.50.050 and Bowles v. Retirement Systems, 121 Wn.2d 52 (1993). WSR 94-11-009, § 415-108-510, filed 5/5/94, effective 6/5/94. Statutory Authority: RCW 41.40.010(8) and 41.40.020. WSR 87-17-061 (Order DRS 87-08), § 415-108-510, filed 8/19/87.]

MEMBERSHIP

WAC 415-108-520 Membership exceptions——Student and spouse of student. (1) A person employed by a Washington state institution of higher education or community college (employer), who is employed at such institution or college primarily for the purpose of furthering her/his education or the education of the person's spouse, is excepted from membership in PERS when:

(a) The person is a full-time student or the spouse of a full-time student; and

(b) The person is employed at the same institution where she/he is a full-time student or where the person's spouse is a full-time student; and

(c) The person determines her/his employment is primarily an incident to and in furtherance of her/his education or training, or the education or training of the person's spouse.

(2) For purposes of this section, RCW 41.40.023(7) shall be administered as follows:

(a) When a person begins employment in a PERS eligible position, a determination shall be made by the person as to whether the provisions of this section apply. If this section applies to the person, she/he shall determine her/his membership status as either being excepted from membership in PERS, or being a member of PERS, based upon whether employment at the institution of higher education or community college is primarily as an incident to and in furtherance or her/his education or training, or the education or training of the person's spouse. The person shall notify the employer in writing of her/his determination of membership status no later than two months after commencing employment in a PERS eligible position. Based upon the provisions herein and the written notification of status, the person shall either be excepted from membership in PERS or become a member of PERS. In the event that no written notification of status is provided to the employer, based upon the provisions of this section, the employer shall make the presumption:

(i) That the person shall remain a member of PERS where the person is employed in a PERS eligible position and is a member of PERS at the time the person, or his or her spouse, becomes a full-time student;

(ii) That the person shall be excepted from PERS membership where the person or the person's spouse is a full-time student at the time of becoming employed in a PERS eligible position.

(b) A person employed in a PERS eligible position at the time of becoming a full-time student or becoming the spouse of a full-time student, shall remain a member of PERS; except, at the time of becoming a full-time student or becoming the spouse of a full-time student, the person may elect to waive her/his membership in PERS, based upon the provisions of this section excepting membership. The person must provide written notification of the waiver to the employer. If the person elects to waive membership in PERS, she/he cannot later elect membership in PERS unless there is a change of status of the person or of the person's spouse, as set forth below, and the employer has received written notification from the person of the change of status.

(c) A person who is a full-time student or who is the spouse of a full-time student at the time of becoming employed in a PERS eligible position, shall not be eligible for membership in PERS; except, at the time of becoming employed in a PERS eligible position, the person may elect to become a member of PERS, based upon the person's determination that the provisions of this section excepting membership do not apply. The person must provide written notification of the election to be a member of PERS to the employer. If the person elects to become a member of PERS, she/he cannot later waive PERS membership unless there is a change of status of the person or of the person's spouse, as set forth below, and the employer has received written notification from the person of the change of status.

(d) For purposes of this section, status is defined as:

(i) Student status - Is full-time student, part-time student or nonstudent. Part-time student and nonstudent status do not meet the threshold for exception from PERS; only full-time student status meets the threshold:

(ii) Employment status - Is employment in a PERS eligible position, employment in a PERS ineligible position, or unemployment. Unemployment refers to termination of employment from a Washington state institution of higher education or community college employer;

(iii) Marital status - Is single, married, widowed or divorced.

(3) The department shall rely upon the institutions of higher education and community college employers to:

(a) Notify each person, at the time of hire, of the provisions of this section;

(b) Request all written notifications from persons electing membership or waiving membership under this section;

(c) Retain and make available to the department upon request, all written notifications electing membership or waiving membership on a sixty-four year record retention schedule.

(4) It is recommended, but not required, that no less than annually employers provide notice that employees are required to notify the employer of any change in status as set forth in this section.

[Statutory Authority: RCW 41.50.050. WSR 99-14-008, § 415-108-520, filed 6/24/99, effective 7/25/99; WSR 91-21-083, § 415-108-520, filed 10/18/91, effective 12/31/91.]

WAC 415-108-550 Elected officials—Eligibility and application for retirement service membership. (1) **Definition:** For the purposes

of this section and WAC 415-108-570, and pursuant to RCW 41.40.010, 41.40.023 and 41.40.035, "elected" officials means individuals elected to any state, local or political subdivision office or individuals appointed to any vacant elective office.

(2) **Voluntary application for membership:** Under RCW 41.40.023 (3)(a), elected officials are exempt from mandatory retirement system membership. You have the option to apply for membership during your current term of elected office. To apply for membership, submit a written application directly to the department. When the department approves your application, you will be entitled to establish membership effective the first day of your current term of elected service. Once membership is established, you will be required to pay the employee contributions from the first day of your current term of elected service with interest as determined by the department.

(3) If you are not currently a retiree and when the department approves your application, you may establish membership retroactive to the first day of any previous elected term or terms of office. Your plan membership that you established under subsection (2) of this section remains the same. To exercise this option, you must apply to the department pursuant to subsection (2) of this section. When the department approves the application, you must:

(a) Pay the required employee contributions for such previous term or terms of elected service with interest as determined by the department; and

(b) Pay the required employer contributions for such previous term or terms of elected service with interest as determined by the department. The employer may, in its discretion, pay the required employer contributions plus interest in lieu of your paying this amount.

(4)(a) If you are a retiree and you become an elected official, you may establish membership prospectively from the first day of the month following the date the department accepts your application.

(b) If you chose not to establish membership, the reemployment provisions of RCW 41.40.037 and WAC 415-108-710 will apply to you.

(5) **Multiple positions:** If you are employed in an eligible position at the time of election to office and will hold multiple positions concurrently, you may:

(a) Apply to the department to participate in membership pursuant to your elected position as provided in subsection (2) of this section; or

(b) Choose not to participate pursuant to your elected position while continuing membership through the nonelected position.

(6) **Membership length:** Except as provided under RCW 41.40.023 (3)(b), once you become a member of the retirement system you shall remain a member until you separate from all eligible public employment pursuant to RCW 41.40.150. It is not a separation if:

(a) Your term of office ends and you begin another term of office in the same or a different position for the same employer without a break in service; or

(b) You resign from your elected position and you are later reappointed to the same position during the same term.

(7) This section codifies the department's long-standing administrative practice in relation to elected officials. The department will apply this section to service by elected officials which occurred prior to the effective date of this section.

[Statutory Authority: RCW 41.50.050. WSR 21-16-020, § 415-108-550, filed 7/23/21, effective 8/23/21. Statutory Authority: RCW

41.50.050(5), 41.40.023, 41.40.037. WSR 03-08-090, § 415-108-550, filed 4/2/03, effective 5/1/03. Statutory Authority: RCW 41.50.050. WSR 94-12-014, § 415-108-550, filed 5/23/94, effective 6/23/94.]

WAC 415-108-560 Appointed officials—Eligibility and application for retirement service membership. (1) For the purposes of this section and WAC 415-108-570, an "appointed" official is a person who meets the criteria in RCW 41.40.010 and is not excluded by the criteria in RCW 41.40.035.

(2) **Voluntary application for membership:** Under RCW 41.40.023 (3)(a), appointed officials are exempt from mandatory retirement system membership. You have the option to apply for membership during your current term of appointed service. To apply for membership, submit a written application directly to the department. When the department approves your application you will be entitled to establish membership effective the first day of your current term of appointed service. Once membership is established, you will be required to pay the employee contributions for your current term of appointed service with interest as determined by the department.

(3) If you are not currently a retiree and when the department approves your application, you may establish membership retroactive to the first day of any previous appointed term or terms of office. Your plan membership that you established under subsection (2) of this section remains the same. To exercise this option, you must apply to the department pursuant to subsection (3) of this section. When the department approves the application you must:

(a) Pay the required employee contributions for such previous term or terms of appointed service with interest as determined by the department; and

(b) Pay the required employer contributions for such previous term or terms of appointed service with interest as determined by the department. The employer may, in its discretion, pay the required employer contributions plus interest in lieu of your paying this amount.

(c) "Current term of appointed service" includes an appointed official's entire current term of service. If you have not been appointed to a position with a set term of office, "current term of appointed service" includes all uninterrupted service in your current appointed position.

(4)(a) If you are a retiree and you become an appointed official, you may establish membership prospectively from the first day of the month following the date the department accepts your application.

(b) If you choose not to establish membership, the reemployment provisions of RCW 41.40.037 and WAC 415-108-710 will apply to you.

(5) **Multiple positions:** If you are employed in an eligible position at the time of appointment to office and will hold the two positions concurrently you may:

(a) Apply to the department to participate in membership pursuant to your appointed position as provided in subsection (2) of this section; or

(b) Choose not to participate pursuant to your appointed position while continuing membership through the nonappointive position.

(6) **Membership length:** Once you become a member of the retirement system you shall remain a member until you separate from all eligible public employment pursuant to RCW 41.40.150. It is not a separation if:

(a) Your term of office ends, and you begin another term of office in the same or a different position for the same employer without a break in service; or

(b) You resign from your appointed position and you are later reappointed to the position during the same term.

(7) This section codifies the department's long-standing administrative practice in relation to appointed officials. The department will apply this section to service by appointed officials which occurred prior to the effective date of this section.

[Statutory Authority: RCW 41.50.050. WSR 21-16-020, § 415-108-560, filed 7/23/21, effective 8/23/21. Statutory Authority: RCW 41.50.050(5), 41.40.023, 41.40.037. WSR 03-08-090, § 415-108-560, filed 4/2/03, effective 5/1/03. Statutory Authority: RCW 41.50.050. WSR 94-12-014, § 415-108-560, filed 5/23/94, effective 6/23/94.]

WAC 415-108-570 As an elected or appointed official, what are my requirements for service credit? (1)(a) As a Plan 1 elected or appointed official, you may receive one month of service credit for each month during which you earn compensation pursuant to your elected or appointed position.

(b) If you are a Plan 1 member who was appointed by the governor prior to July 1, 1976, to serve as a member of any committee, board or commission, you may receive one month of service credit for each month during which you earn compensation pursuant to your appointed positions.

(c) If you are a Plan 1 member who was appointed or reappointed by the governor on or after July 1, 1976, to serve as a member of any committee, board or commission, you may receive one month of service credit for each month during which you are compensated for at least seventy total hours of work.

(d) If you are a Plan 1 member who served in a governor-appointed position as a member of any committee, board or commission on or after September 1, 1991, you may receive one-quarter month of service credit for each month during which you are compensated for less than seventy total hours of work.

(2)(a) If you are a Plan 2 or Plan 3 member who was elected to office by statewide election, you may receive one month of service credit for each month during which you earn compensation pursuant to your elected position.

(b) Except for Plan 2 or Plan 3 elected officials covered under (a) of this subsection, if you are elected to office or appointed by the governor to a position prior to September 1, 1991, you may receive service credit only for months during which you are compensated:

(i) In excess of ninety times the state hourly minimum wage in effect at the time you provide the service; and

(ii) For ninety or more total hours of work.

(c) On or after September 1, 1991, except for Plan 2 or Plan 3 elected officials covered under (a) of this subsection, if you were elected to office or appointed by the governor to a position, you may earn:

(i) One month of service credit for each month during which you are compensated:

(A) For ninety or more total hours of work; and

(B) In excess of ninety times the state hourly minimum wage in effect at the time you provide the service; or

(ii) One-half month of service credit for each month during which you are compensated:

(A) For less than ninety hours but equal to or more than seventy total hours of work; and

(B) In excess of ninety times the state hourly minimum wage in effect at the time you provide the service; or

(iii) One-quarter month of service credit for each month during which you are compensated:

(A) For less than seventy total hours of work; and

(B) In excess of ninety times the state hourly minimum wage in effect at the time you provide the service.

(3) This section codifies the department's long-standing administrative practice in relation to elected and appointed officials. The department will apply this section to service by elected and appointed officials which occurred prior to the effective date of this section.

[Statutory Authority: RCW 41.50.050(5) and 41.40.023. WSR 02-03-120, § 415-108-570, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. WSR 94-12-014, § 415-108-570, filed 5/23/94, effective 6/23/94.]

WAC 415-108-575 May I retire from PERS while holding an elective position? (1) If you are holding an elective position and accruing PERS service credit for your service in that position, you may retire from PERS and continue to work in your elective position provided:

(a) You are eligible to retire under RCW 41.40.180, 41.40.630, or 41.40.820;

(b) You submit a written statement to the department, waiving the right to earn PERS service credit for any future period of service in an elective position; and

(c) Your compensation in the elective position is fifteen thousand dollars or less per year, adjusted annually for inflation by the director. See subsection (2) of this section.

(2) The compensation threshold in subsection (1)(c) of this section is adjusted on April 1 of each year, based on the average consumer price index for Seattle for the previous calendar year. Effective April 2006, the threshold is $21,551. You may contact the department for the threshold in effect for previous or subsequent years.

[Statutory Authority: RCW 41.50.050(5) and 41.40.023. WSR 06-16-042, § 415-108-575, filed 7/26/06, effective 8/26/06. Statutory Authority: RCW 41.50.050(5). WSR 05-12-109, § 415-108-575, filed 5/27/05, effective 6/27/05. Statutory Authority: RCW 41.50.050(5), 41.40.023, 41.40.037. WSR 03-08-090, § 415-108-575, filed 4/2/03, effective 5/1/03.]

WAC 415-108-620 Requirements for a union to be a PERS I union employer. (1) In order to establish or maintain status as a PERS I union employer, a union must satisfy the following requirements:

(a) Verify that at least forty percent of the members of the level of union organization are employees of an employer: Provided however, That employees of the union organization are not to be considered in the forty percent determination; and

(b) Beginning on the effective date of this rule, annually complete and submit the verification form set forth in WAC 415-108-660 to the department.

(2) Unions which have reported members prior to the effective date of this rule shall be deemed to have met the requirements of this rule with respect to those members.

[Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4)(a). WSR 93-11-077, § 415-108-620, filed 5/18/93, effective 6/18/93.]

WAC 415-108-630 Calculation and verification of PERS membership requirement. (1) Calculation - Unions applying for union employer status must provide the department with the information specified in WAC 415-108-660.

Each union employer is required to submit to the department the form provided in WAC 415-108-660 in verifying compliance with WAC 415-108-620 on or after November 1 and no later than December 31 of each year.

(2) Union employer status will lapse on January 1 if a union does not submit verification by December 31 of the preceding year. The union may regain union employer status by subsequently submitting verification of compliance with WAC 415-108-620 (1)(a). The union shall be responsible for applicable retroactive employer contributions plus interest for any period of lapsed employer status.

(3) Unions submitting timely verification of qualifications for union employer status are considered Plan I union employers for the succeeding calendar year (January 1 to December 31).

[Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4)(a). WSR 93-11-077, § 415-108-630, filed 5/18/93, effective 6/18/93.]

WAC 415-108-640 Effect of meeting union verification requirements. (1) Plan 1 union employer status applies only to the level of union organization that meets the requirements of WAC 415-108-620(1). Therefore, if only a single union lodge of a union with multiple lodges has been verified to meet the requirements of WAC 415-108-620(1), only that union lodge is a Plan 1 union employer.

(2) Plan 1 members who are employed by union employers shall have an irrevocable option to reenter membership. You lose this option if you do not reenter PERS Plan 1 when you begin working in an eligible position with the union employer. The union employer must notify you, as its new employee, of the option to reenter Plan 1. Failure of the union employer to notify you shall not prevent your loss of the right to participate in Plan 1 under this section. Union employers and their Plan 1 employees who choose to reenter membership will be subject to the same statutory and regulatory requirements as other Plan 1 non-state agency employers and employees.

(3) Plan 1 union employers employing persons who have previously established Plan 1 membership must report you for participation in the retirement system if you choose to reenter membership under RCW 41.40.023.

(4) Union employers shall have all new employees state on a written form whether they have ever been a Plan 1 member.

(5)(a) Upon first establishing union employer status the union must pay the required retroactive contributions and interest as deter-

mined by the department under RCW 41.40.363 or 41.40.057, as applicable for union elective officials and employees who choose to become a member under RCW 41.40.023 and are eligible for Plan 1.

(b) If employer and employee contributions have been submitted in error and the union subsequently establishes retroactive union employer status for the period in question, the contributions on deposit with the retirement system will be considered valid to the extent that the periods of erroneous contributions coincide with periods for which the union has established union employer status.

(6) Notwithstanding any provisions of WAC 415-108-620 Plan 1 retirees who enter into employment with a union employer in an eligible position are subject to the provisions of RCW 41.40.150 (5)(a).

(7) A union employer may not report employees for participation in Plan 2 or Plan 3.

[Statutory Authority: RCW 41.50.050(5), 41.40.010 (4)(a), 41.40.057, 41.40.363. WSR 02-03-120, § 415-108-640, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4)(a). WSR 93-11-077, § 415-108-640, filed 5/18/93, effective 6/18/93.]

WAC 415-108-650 Effect on unions seeking to maintain union employer status if verification requirement is not met. (1) A union employer which does not verify that it meets the criteria for union employer status shall not report any employee hired during that succeeding calendar year for retirement system participation. A union employee who previously terminated retirement system membership under RCW 41.40.150 cannot reestablish retirement system membership during a year the hiring union failed to maintain union employer status.

(2) The failure of a union employer to meet the requirements of WAC 415-108-620 and 415-108-630 will not terminate the retirement system participation of employees already employed in an eligible position with the union employer as of December 31 of the preceding year.

[Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4)(a). WSR 93-11-077, § 415-108-650, filed 5/18/93, effective 6/18/93.]

WAC 415-108-660 Plan I union employer verification form. Unions must use the following form to verify compliance with the requirements of WAC 415-108-620.

_____

I certify under the penalty of perjury under the laws of the state of Washington that the following is true and correct:

_____, verifies that on the date of

Name of Union

_____ the _____

(Must be a Date in November or December) — Identify Level of Union Organization (i.e. lodge) (hereinafter referred to as "organization")

possessed the following membership characteristics:

A. Total number of organization members ____

B. Total number of organization members who are employees of a public employee retirement system (PERS) employer other than this union ____

C. Percentage of organization members who are employees of a public employee retirement system employer other than this union (B ÷ A x 100) _____ %

D. The percentage identified in "C" is equal to or greater than 40% ____ yes

____ no

If the answer to "D" is yes, then the organization is eligible to participate in PERS with regard to PERS Plan I union employees employed in an eligible position during the succeeding calendar year. Such employees shall remain eligible for participation while employed with the organization regardless of whether the organization continues to meet the requirements of WAC 415-108-620 and 415-108-630.

If the answer to "D" is no then the level of union organization identified above is not eligible to participate in the public employees' retirement system with regard to union employees employed in an eligible position during the succeeding calendar years.

_____

Signature of Local/Division President or Person Designated in Writing by President as Having Authority to Verify

[Statutory Authority: RCW 41.50.050(5) and 41.40.010 (4)(a). WSR 93-11-077, § 415-108-660, filed 5/18/93, effective 6/18/93.]

WAC 415-108-679 Purpose and scope of eligibility rules. WAC 415-108-680 through 415-108-728 codify the department's existing interpretation of statutes regarding eligibility for membership in all three PERS plans.

[Statutory Authority: RCW 41.50.050(5) and 41.40.010. WSR 02-03-120, § 415-108-679, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-108-679, filed 7/25/95, effective 8/25/95.]

WAC 415-108-680 Am I eligible for membership? (1) **You are eligible for membership if you are employed in an eligible position.** Your position is eligible under RCW 41.40.010 if the position, as defined by your employer, normally requires at least five months of seventy or more hours of compensated service per month during each year. If you are a PERS Plan 1 member working in a SERS substitute position, the SERS substitute laws do not apply. If you are a Plan 2 or 3 member, hours worked as a SERS substitute are not counted when determining eligibility for membership.

(2) **If you leave an eligible position to serve in a project position, you may retain eligibility.**

(a) Project positions may use a twelve-month period other than a school year to evaluate eligibility. The employer must consistently apply this twelve-month period to evaluate the eligibility of this position.

(b) If you are a member and you leave employment in an eligible position to serve in a project position, the project position is eligible if:

(i) The position, as defined by the employer, normally requires at least five months of seventy or more hours of compensated service each month; or

(ii) The position requires at least seventy hours per month and you take the position with the understanding that you are expected to return to your permanent eligible position at the completion of the project.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Eligible position" - RCW 41.40.010.

(b) "Employer" - RCW 41.40.010.

(c) "Member" - RCW 41.40.010.

(d) "Membership" - RCW 41.40.023.

(e) "Normally" - WAC 415-108-010.

(f) "Project position" - WAC 415-108-010.

(g) "Year" - WAC 415-108-010.

[Statutory Authority: RCW 41.50.050(5), 41.35.010, 41.35.030, 41.35.033. WSR 04-14-023, § 415-108-680, filed 6/28/04, effective 7/29/04. Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW. WSR 02-18-046, § 415-108-680, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-108-680, filed 7/25/95, effective 8/25/95.]

WAC 415-108-690 How is my membership eligibility evaluated? (1) **Your eligibility to participate as a member of PERS is based on your position.**

In evaluating whether your position is eligible for membership, your employer will determine only whether the position meets the criteria of an eligible position under RCW 41.40.010 and WAC 415-108-680(1). Your employer will not consider your membership status or individual circumstances unless you:

(a) Leave employment in an eligible position to serve in a project position (See WAC 415-108-680(2)); or

(b) Work in both a PERS and TRS position during the same school year (See WAC 415-108-728).

(2) **Your employer will evaluate your position's eligibility for a particular year at the beginning of the year.** This is normally a calendar year unless your employer has determined and supports a different twelve-month period for its year.

(3) **Your employer or the department may reclassify your position's eligibility based upon your actual work history.** If your employer declares your position to be ineligible at the beginning of a year and by the end of the year, you have actually worked five or more months of seventy or more hours, your employer will, at that time, review your position's eligibility. If at the end of the first year:

(a) Your employer believes your position meets the requirements for an eligible position and declares the position as eligible, you will enter membership and your employer will report you to the department effective from the date your employer declares the position as eligible; or

(b) Your employer believes that the position will not meet the criteria for an eligible position during the next year, your employer may continue to define your position as ineligible. However, if during the next year the position actually requires you to again work seventy or more hours each month for at least five months, the department will

declare your position as eligible. You will enter membership in the retirement system.

(i) Except as provided in (b)(ii) of this subsection, your employer will report you to the department effective from the first month of the first year in which your position required you to work for seventy or more hours.

(ii) If:

(A) Your employer has monitored the work history of your position for PERS eligibility;

(B) Has notified you in writing when you entered the position that the position was not considered eligible; and

(C) The months of employment in a twelve-month period required by the position are determined by the occurrence or nonoccurrence of natural disasters such as forest fires;

You will enter membership prospectively.

(4) **The department will not reclassify your position's eligibility until history of the position shows that it meets the criteria for an eligible or ineligible position.**

(a) If your employer has declared your position ineligible, the department will not reclassify your position as eligible until history of the position shows a period of two consecutive years of at least five months of seventy or more hours of compensated employment each month.

(b) If your employer has declared your position ineligible, the position must continue to fail to meet the requirements of an eligible position or reclassification of your position will occur as stated in subsection (3)(b) of this section.

(5) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Eligible position" - RCW 41.40.010.

(b) "Employer" - RCW 41.40.010.

(c) "Ineligible position" - RCW 41.40.010.

(d) "Membership" - RCW 41.40.023.

(e) "Project position" - WAC 415-108-010.

(f) "Report" - WAC 415-108-010.

(g) "Year" - WAC 415-108-010.

[Statutory Authority: RCW 41.50.050. WSR 21-16-020, § 415-108-690, filed 7/23/21, effective 8/23/21. Statutory Authority: RCW 41.50.050(5), 41.40.010, 41.40.023. WSR 02-03-120, § 415-108-690, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-108-690, filed 7/25/95, effective 8/25/95.]

WAC 415-108-700 Can I qualify for membership if I work in more than one ineligible position with the same employer? (1) **All of your monthly work for an employer counts as one position.** If you are employed with the same employer in two ineligible positions during a year which, when combined, equate to an eligible position and your employer expects you to continue in this employment for a second consecutive year, your employer will report the total hours you work in both positions to the department as an eligible position.

Example: A person normally works for one employer as a cook for forty hours each month and as a bus driver for forty hours each month. The person is eligible for membership because he works a total of eighty hours each month for at least five months each year and this is the normal pattern of his employment.

Example: A person normally works for one employer for forty hours each month as a cook. For one year only, she takes on extra duties by also working forty hours per month as a bus driver. Although she worked eighty hours each month for five or more months during one year, she is not eligible for membership because these hours are not the normal pattern of her employment.

Example: A person works for one employer for forty hours each month as a cook and also works for another employer for forty hours each month as a bus driver. The person is not eligible for membership because he cannot combine the hours of employment with these separate employers to establish membership.

(2) **You may be reported in TRS if you work in two positions and one position is covered under TRS.** See WAC 415-108-728.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Eligible position" - RCW 41.40.010.
(b) "Employer" - RCW 41.40.010.
(c) "Ineligible position" - RCW 41.40.010.
(d) "Membership" - RCW 41.40.023.
(e) "Normally" - WAC 415-108-010.
(f) "Report" - WAC 415-108-010.
(g) "Year" - WAC 415-108-010.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW. WSR 02-18-046, § 415-108-700, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-108-700, filed 7/25/95, effective 8/25/95.]

WAC 415-108-710 What are the return to work rules for PERS Plan 1, Plan 2, and Plan 3? (1) **How soon can I return to work after I retire without impacting my PERS retirement benefit?**

(a) You may begin working immediately after you retire without impacting your PERS retirement benefit if:

(i) You go to work for a private employer;

(ii) You are an independent contractor as defined in WAC 415-02-110;

(iii) Your only employment is as an elected official and you end your PERS membership under RCW 41.40.023 (3)(b); or

(iv) You are a PERS Plan 1 retiree elected to office or appointed to office by the governor.

(b) If you retire and then return to work sooner than thirty consecutive calendar days from your accrual date (effective retirement date), your monthly retirement benefit will be reduced in accordance with RCW 41.40.037(1) until you remain absent for at least thirty consecutive calendar days.

(c) If you retire and remain absent at least thirty consecutive calendar days from your accrual date, you may return to work in any

position (eligible or ineligible), for any employer whose retirement plan is administered by the department of retirement systems (DRS) or a public institution of higher education, without impacting your PERS retirement benefit until you reach your applicable hour limit.

(2) **What is the annual hour limit?** Except as provided in subsection (5) of this section regarding the 2008 early retirement factors (ERFs), after being absent at least thirty consecutive calendar days as described in subsection (1)(c) of this section, your annual hour limit will be based on the position you return to.

(a) **No limit.** You may work as many hours as you want without affecting your retirement benefit if you work:

(i) In a position that is not eligible for membership in a DRS or higher education retirement plan;

(ii) As an independent contractor;

(iii) For a private employer;

(iv) If you end your PERS membership as an elected official under RCW 41.40.023 (3)(b); or

(v) As a PERS Plan 1 retiree elected to office or appointed to office by the governor.

(b) **Eight hundred sixty-seven-hour limit.** You may work up to eight hundred sixty-seven hours in a calendar year, in a position that is eligible for membership in a DRS or a public institution of higher education retirement plan, before your retirement allowance is suspended.

(3) **What hours count toward the limit?**

(a) **Counted toward the eight hundred sixty-seven-hour limit:** All compensated hours that are worked in an eligible position covered by a DRS or higher education retirement plan, including the use of earned sick leave, vacation days, paid holidays, compensatory time, and cashouts of compensatory time.

(b) **Not counted toward the hour limit:** Cashouts of unused sick and vacation leave.

(4) **What happens if I work more than the annual eight hundred sixty-seven-hour limit?**

(a) If you work more than the annual limit, your retirement benefit will be suspended. The suspension will be effective the day after you exceed the hour limit. DRS will prorate your retirement benefit for the month in which you exceed the hour limit.

(b) Your retirement benefit will be restarted beginning the next calendar year (January) or the day after you terminate all eligible employment, whichever occurs first.

(c) DRS will recover any overpayments made to you for the month(s) in which you exceeded the work limit and received a retirement benefit. See RCW 41.50.130.

(5) **What if I am a PERS Plan 2 or Plan 3 member and retired using the 2008 early retirement factors (ERFs)?**

(a) If you retire using the 2008 ERFs and then return to work before age sixty-five:

(i) You will not receive your retirement benefit for any month in which you are an employee in a position covered by a DRS or higher education retirement plan including, but not limited to, permanent, nonpermanent, project, temporary, eligible and ineligible positions.

(ii) You will not receive your retirement benefit for any month in which you earn compensation for service performed as a contractor, or as the result of service performed by those in your employ, for an employer covered by a DRS or higher education retirement plan.

(iii) Your retirement benefit will stop effective the first day of the month you return to work and will restart the first day of the month after you stop working.

(6) **Can I return to PERS membership?**

(a) If you retire from PERS, you have the option to return to membership if you are employed by a PERS employer and meet the eligibility criteria. The option to return to membership is prospective from the first day of the month following the month in which you request to return to membership. See RCW 41.40.023(12).

(b) If you reenter PERS membership and later choose to retire again, DRS will recalculate your retirement benefit under the applicable statutes and regulations. See WAC 415-108-830. You will be subject to the return to work rules in place at the time of your reretirement.

(c) If you are a retiree from another retirement system administered by DRS, you may choose to enter PERS membership if you are eligible. See WAC 415-108-725. The option to enter membership is prospective from the first day of the month following the month in which you request membership. See RCW 41.40.270 and 41.40.023.

(7) **What if I retired from PERS and another DRS retirement system?**

(a) If you retired from PERS using the 2008 ERFs and another DRS retirement system, and are under age sixty-five:

(i) Your PERS retirement benefit will be impacted as described in subsection (5) of this section.

(ii) The retirement benefit from the other DRS retirement system will be impacted based on the rules for that system.

(b) If you retired from PERS and another DRS retirement system without using the 2008 ERFs, or using the 2008 ERFs and have reached age sixty-five, see WAC 415-113-300 to determine the effect of returning to work.

Note: You may have a choice of returning to membership. See the following WAC sections for more information: WAC 415-108-725, 415-110-725, 415-112-546, 415-106-725, and 415-104-111.

(8) **Terms used.**

(a) 2008 Early retirement factors (ERFs) – RCW 41.40.630 (3)(b) for PERS Plan 2 or RCW 41.40.820 (3)(b) for PERS Plan 3.

(b) Accrual date - RCW 41.40.193, 41.40.680, 41.40.801.

(c) PERS: Public employees' retirement system.

(d) Elected official - WAC 415-108-550.

(e) Eligible position - RCW 41.40.010; WAC 415-108-680 through 415-108-700.

(f) Ineligible position - RCW 41.40.010.

(g) Month - Calendar month as defined in WAC 415-02-030.

(h) Public institution of higher education - RCW 28B.10.400.

(i) Membership - RCW 41.40.023.

[Statutory Authority: RCW 41.50.050(5). WSR 16-17-047, § 415-108-710, filed 8/11/16, effective 9/11/16. Statutory Authority: RCW 41.50.050(5), 41.40.010(42), 41.40.037. WSR 04-04-037, § 415-108-710, filed 1/29/04, effective 3/1/04. Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW. WSR 02-18-046, § 415-108-710, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5), 41.04.270, 41.26.030, 41.32.010, 41.32.025, 41.32.480, 41.32.500, 41.32.570, 41.32.765, 41.32.795, 41.32.802, 41.32.855, 41.32.860, 41.32.862, 41.35.010, 41.35.030, 41.35.060, 41.35.450, 41.35.640, 41.40.010, 41.40.023, 41.40.037, 41.40.150, 41.40.193, 41.40.680, 41.40.750, 41.40.801. WSR 02-02-060, § 415-108-710, filed 12/28/01, effective

1/1/02. Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-108-710, filed 7/25/95, effective 8/25/95.]

WAC 415-108-720 Participation—Can I be excluded from participating in membership even if I am employed in an eligible position? (1) **You may be exempt from participating in membership even if you meet eligibility criteria.** Even if you are employed in an eligible position you are exempt from participating in PERS if your individual circumstances qualify you for one of the exceptions to membership under RCW 41.40.023.

(2) **If you work for a PERS employer after you retire, you are subject to post-retirement employment restrictions even if you are excluded from participating in membership.** If you become employed in an eligible position after you retire, you are subject to the post-retirement employment restrictions under RCW 41.40.150, 41.40.690, and 41.40.850 even if you are excluded from membership.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Eligible position" - RCW 41.40.010.

(b) "Employer" - RCW 41.40.010.

(c) "Ineligible position" - RCW 41.40.010.

(d) "Membership" - RCW 41.40.023.

[Statutory Authority: RCW 41.50.050(5), 41.40.023, 41.40.150, 41.40.690. WSR 02-03-120, § 415-108-720, filed 1/23/02, effective 3/1/02. Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-108-720, filed 7/25/95, effective 8/25/95.]

WAC 415-108-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in PERS? (1) If you have **retired** from another retirement system authorized by the laws of this state you cannot participate in PERS membership unless:

(a) You established membership in PERS prior to March 19, 1976;

(b) You accrued less than fifteen years of service credit in the other retirement system; or

(c) You are a LEOFF Plan 2 retiree returning to work in a PERS eligible position and choose to participate in PERS membership. See WAC 415-104-111.

(2) If you are **eligible for normal retirement** from another retirement system listed in RCW 41.50.030, you cannot participate in PERS membership unless:

(a) You established membership in PERS prior to March 19, 1976;

(b) You accrued less than fifteen years of service credit in the other retirement system; or

(c) You are a dual member as described in RCW 41.54.010.

(3) If you are **receiving a disability allowance** from another retirement system listed in RCW 41.50.030, you cannot participate in PERS membership unless:

(a) You established membership in PERS prior to March 19, 1976; or

(b) You are a LEOFF Plan 2 retiree returning to work in a PERS eligible position and choose to participate in PERS membership. See WAC 415-104-111.

(4) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Membership" - RCW 41.40.023.

(b) "Service" - RCW 41.40.010.

(c) "Normal retirement" – A member is eligible for normal retirement when they have met their plan's age and/or service credit requirements for a full retirement benefit. Normal retirement does not include early retirement with a reduced benefit, or early retirement with employment restrictions prior to full retirement age. See the following plan definitions of normal retirement:

Public Employees' Retirement System (PERS) Plan 1 – RCW 41.40.180;

Public Employees' Retirement System (PERS) Plan 2 – RCW 41.40.630(1);

Public Employees' Retirement System (PERS) Plan 3 – RCW 41.40.820(1);

Public Safety Employees' Retirement System (PSERS) – RCW 41.37.210 (1) and (2);

School Employees' Retirement System (SERS) Plan 2 – RCW 41.35.420(1);

School Employees' Retirement System (SERS) Plan 3 – RCW 41.35.680(1);

Teachers' Retirement System (TRS) Plan 1 – RCW 41.32.480(1);

Teachers' Retirement System (TRS) Plan 2 – RCW 41.32.765(1);

Teachers' Retirement System (TRS) Plan 3 – RCW 41.32.875(1);

Washington State Patrol Retirement System (WSPRS) – RCW 43.43.250(2).

[Statutory Authority: RCW 41.50.050(5). WSR 18-08-040, § 415-108-725, filed 3/28/18, effective 4/28/18. Statutory Authority: RCW 41.50.050(5), 41.04.270, and 41.26.500. WSR 09-19-046, § 415-108-725, filed 9/10/09, effective 10/11/09. Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW. WSR 02-18-046, § 415-108-725, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-108-725, filed 7/25/95, effective 8/25/95.]

WAC 415-108-726 Can I earn service credit in PERS and another retirement plan at the same time? (1)(a) Yes. You may earn service credit in PERS and any of the following First Class City Retirement Systems (FCCRS) at the same time if:

(i) You work for a PERS employer and an employer covered by a retirement system of the city of Seattle, Spokane or Tacoma (FCCRS); and

(ii) You cannot report service for the FCCRS in PERS;

(b) The combined service credit under PERS and the retirement system listed in (a) of this subsection may not exceed one month of service for a calendar month of employment.

(c) To qualify for PERS service credit, it is up to the employee to initiate the process by applying under subsection (2) of this section.

Example: A member works part time for the City of Seattle and part time for the University of Washington (UW). She may receive partial service credit in PERS for the UW service since she cannot report the time she works for Seattle under PERS.

Note: The combined service credit under PERS and the City of Seattle Retirement System may not exceed one month of service for a calendar month of employment. To receive PERS service credit she must apply to the department.

(2) **How do I apply?**

(a) To apply for membership and service credit under subsection (1) of this section you must send the department an application. The application is a statement that you want membership and/or service credit in PERS. Include:

(i) Your name;

(ii) Your SSN;

(iii) All period(s) of service that you want to receive service credit for;

(iv) All PERS and non-PERS employer(s) that you worked for during the periods of service referenced in (a)(iii) of this subsection.

(b) After the department receives your application, it will contact your employer(s) to verify how much service credit you have earned. When the department receives the necessary information, it will determine how much service credit you will receive. At that time the department will send you a bill for member contributions and interest that must be paid in order to establish the service credit.

(3) **When should I submit my payment?**

You should pay contributions and interest required under subsection (2)(b) of this section within twenty-four consecutive months from the last day of the calendar year for which you claim service credit. After that date, you must pay the actuarial cost of purchasing the service credit under RCW 41.40.104 and 41.50.165.

(4) **What if I worked before this WAC became effective?**

If you worked for a PERS employer and for one of the retirement systems listed in subsection (1) of this section, before this WAC became effective, you have until December 31, 2000, to apply in order to purchase service credit by paying member contributions plus interest. After December 31, 2000, you must pay the actuarial cost of purchasing the service credit under RCW 41.40.104 and 41.50.165.

(5) You may participate in PERS if you are concurrently employed, as described in WAC 415-113-200, in a SERS position.

(6) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Membership" - RCW 41.40.023.

(b) "Retirement plan" - WAC 415-108-010.

(c) "Service" - RCW 41.40.010.

(d) "Normally" - WAC 415-108-010.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW. WSR 02-18-046, § 415-108-726, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. WSR 01-01-059, § 415-108-726, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050. WSR 99-22-043, § 415-108-726, filed 10/29/99, effective 11/29/99; WSR 95-16-053, § 415-108-726, filed 7/25/95, effective 8/25/95.]

WAC 415-108-727 Can I transfer service credit earned as a cadet in the public employees' retirement system to the Washington state patrol retirement system Plans 1 or 2? (1) A PERS Plan 1 or Plan 2 member may transfer cadet service under RCW 41.40.092.

(2) A person who becomes a PERS Plan 3 member cannot transfer service credit earned as a cadet in PERS, regardless of when the credit was earned.

[Statutory Authority: RCW 41.50.050(5), 41.40.092, 43.43.120(6), 43.43.130. WSR 02-23-037, § 415-108-727, filed 11/13/02, effective 1/1/03. Statutory Authority: RCW 41.50.050(5) and 41.40.092. WSR 02-03-120, § 415-108-727, filed 1/23/02, effective 3/1/02.]

WAC 415-108-728 If I work concurrently in a PERS position and TRS position, which system will I be in? (1) If you work concurrently in a PERS and TRS position, your membership status and the nature of your positions will determine the system your employer will report you in. You will be reported in either PERS or TRS according to the following table:

Former TRS Plan 1 Members 1/

Type of Employment 2/	Type of Employer(s)	System You Will Be Reported In
A substitute or less than full-time teaching position and a PERS-eligible position	Same employer	PERS - For both positions.
	Separate TRS employers	PERS - For PERS position only. Your substitute part-time position is not reported unless you qualify for and elect to establish TRS membership under RCW 41.32.240. If you elect to establish TRS membership, your employers will report you in TRS for both positions. Any previously reported service credit and compensation in PERS will be transferred to TRS.
	A TRS employer and non-TRS employer	PERS - For PERS position only. Your substitute part-time position is not reported unless you qualify for and elect to establish TRS membership under RCW 41.32.240. If you elect to establish TRS membership, you must elect either to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.
A full-time teaching position and an eligible PERS position	Same employer	TRS - For both positions.
	Separate TRS employers	TRS - For both positions.
	A TRS employer and non-TRS employer	You must elect to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

TRS Plan 1 Members

Type of Employment 2/	Type of Employer(s)	System You Will Be Reported In
A full-time or less than full-time TRS position and an eligible PERS position	Same employer	TRS - For both positions.
	Separate TRS employers	TRS - For both positions.
	A TRS employer and non-TRS employer	You must elect either to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for PERS position.

Type of Employment 2/	Type of Employer(s)	System You Will Be Reported In
A full-time or less than full-time TRS position and an ineligible PERS position	Same employer	TRS - For both positions.
	Separate TRS employers	TRS - For both positions.
	A TRS employer and non-TRS employer	TRS - For the TRS position only; your ineligible PERS position is not reportable.

TRS Plan 2 Members

Type of Employment 2/	Type of Employer(s)	System You Will Be Reported In
An eligible TRS position and an ineligible PERS position	Same employer	TRS - For both positions.
	Separate TRS employers	TRS - For TRS position only; your ineligible PERS position is not reported.
	A TRS employer and non-TRS employer	TRS - For TRS position only; your ineligible PERS position is not reported.
An eligible TRS position and an eligible PERS position	Same employer	TRS - For both positions.
	Separate TRS employers	TRS - For both positions.3/
	A TRS employer and non-TRS employer	You must elect either to: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

PERS Members

Type of Employment 2/	Type of Employer(s)	System You Will Be Reported In
An eligible PERS position and an ineligible TRS or substitute position	Same employer	PERS - For both positions.
	Separate TRS employers	PERS - For the PERS position only. Your TRS service will not be reported unless you have met the eligibility criteria for TRS membership and choose to either: 1. Have your TRS service reported in PERS for both positions4/; or 2. Establish TRS membership and have your service in both positions reported in TRS. Any previously reported service credit and compensation in PERS will be transferred to TRS.
	A TRS employer and non-TRS employer	PERS - For the PERS position only. You will not be reported for the TRS position unless you have met the eligibility criteria for TRS membership and choose to either: 1. Have your TRS service reported in PERS and receive service credit in PERS for both positions; or 2. Have your TRS service reported in TRS and not receive service credit for the PERS position.

Neither TRS Nor PERS Member

Type of Employment 2/	Type of Employer(s)	System You Will Be Reported In
An ineligible TRS and an ineligible PERS position	Same employer	TRS - For both positions if the positions combined, qualify as an eligible position.
	Separate employers, TRS or non-TRS	Neither position reported.

Type of Employment 2/	Type of Employer(s)	System You Will Be Reported In
A substitute teaching position and an ineligible PERS position	Same employer	Neither position reported. However, if you qualify, you may elect to establish membership in TRS at the end of the school year for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.
	Separate employers, TRS or non-TRS	Neither position reported. However, if you qualify, you may elect to establish membership in TRS at the end of the school year for your substitute teaching position under RCW 41.32.013 and WAC 415-112-140.

1/ "Former TRS 1 member", as used here, means you terminate your membership by withdrawing your contributions.
2/ Means during the same school year.
3/ EXAMPLE: A TRS 2 member teaches in an eligible position and during the summer, she works for a state agency in an eligible position under PERS. Because the member has established membership in TRS 2 through employment as a teacher, her state agency employer must report her service and compensation from the PERS position to the Department in TRS 2.
EXAMPLE: A TRS 2 member is employed concurrently by School District A in an eligible TRS position and by School District B in an eligible PERS position. Because he is a TRS 2 member, School District B employer must report his service and compensation from the PERS position to the Department in TRS 2. If the member terminates his employment in the TRS position with School District A, School District B will report him in PERS for the PERS position.
4/ This provision applies retroactively to July 1, 1996.

(2) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Eligible position" - RCW 41.40.010.
(b) "Employer" - RCW 41.40.010 (PERS); RCW 41.32.010 (TRS).
(c) "Ineligible position" - RCW 41.40.010.
(d) "Member" - RCW 41.40.010.
(e) "Membership" - RCW 41.40.023.
(f) "Report" - WAC 415-108-010.
(g) "Service" - RCW 41.40.010.

[Statutory Authority: RCW 41.50.050(5) and chapters 41.32 and 41.40 RCW. WSR 05-03-001, § 415-108-728, filed 1/5/05, effective 2/5/05. Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW. WSR 02-18-046, § 415-108-728, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. WSR 01-01-059, § 415-108-728, filed 12/12/00, effective 1/12/01. Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-108-728, filed 7/25/95, effective 8/25/95.]

WAC 415-108-730 Membership for city managers. The purpose of the WAC is to implement the provisions of RCW 41.40.023(17) relating to city managers.

Effective immediately and until December 31, 1986 any current member described in RCW 41.40.023(17) may, at his/her option, elect to withdraw from membership in the retirement system provided by chapter 41.40 RCW. Such election is to be made in writing on a form provided for that purpose by the department. Persons making this election will be refunded the contributions and related interest which were credited while in their current position. The effect of such a withdrawal will be to terminate and cancel the service credit acquired while in that position. Such action is final and no service credit may ever be obtained in the future for the period canceled.

Effective immediately any person described in RCW 41.40.023(17) who is employed in one of the positions described shall not become a member of the system provided by chapter 41.40 RCW unless within thirty days of employment in such position he/she shall submit in writing on a form, provided by the department, a waiver of his/her right to be excluded and requesting his/her inclusion in the system. Such a person

may not then subsequently withdraw from the system except as provided by RCW 41.40.260 or 41.40.730 as appropriate.

[Statutory Authority: RCW 41.50.050. WSR 21-16-020, § 415-108-730, filed 7/23/21, effective 8/23/21. Recodified as § 415-108-730. WSR 97-19-035, filed 9/9/97, effective 9/9/97. Statutory Authority: RCW 41.40.120(17). WSR 86-13-023 (Order 86-3), § 415-108-500, filed 6/10/86.]

WAC 415-108-800 When do I enter retirement status? As a member of PERS, you enter retirement status when you:

(1) Have separated from service as defined in RCW 41.40.010;

(2) Have no written or oral agreement to return to employment; and

(3) Have applied for retirement, the accrual date has been determined under RCW 41.40.193, 41.40.680, or 41.40.801, and your benefit begins to accrue.

Example: Sally is eligible for retirement on July 1st. She submits an application on June 1st with a July 1st retirement date. Her last day of employment is June 30th and she does not have an agreement to return to work.
Sally's retirement date (accrual date) is July 1st and the benefit begins to accrue. The first retirement payment will be paid at the end of July. Sally entered "retiree status" effective July 1st.

[Statutory Authority: RCW 41.50.050. WSR 21-16-020, § 415-108-800, filed 7/23/21, effective 8/23/21. Statutory Authority: RCW 41.40.020 and 41.50.050(5). WSR 06-04-059, § 415-108-800, filed 1/27/06, effective 2/27/06. Statutory Authority: RCW 41.50.050(5), 41.04.270, 41.26.030, 41.32.010, 41.32.025, 41.32.480, 41.32.500, 41.32.570, 41.32.765, 41.32.795, 41.32.802, 41.32.855, 41.32.860, 41.32.862, 41.35.010, 41.35.030, 41.35.060, 41.35.450, 41.35.640, 41.40.010, 41.40.023, 41.40.037, 41.40.150, 41.40.193, 41.40.680, 41.40.750, 41.40.801. WSR 02-02-060, § 415-108-800, filed 12/28/01, effective 1/1/02.]

WAC 415-108-805 What is the PERS Plan 1 minimum allowance? RCW 41.40.1984 entitles certain PERS Plan 1 retirees and beneficiaries to a minimum monthly allowance. Subsection (3) of this section provides the amount of the minimum allowance and explains how it may be adjusted.

(1) **Do I qualify for the minimum allowance?** Except as provided in subsection (2) of this section:

(a) You qualify if your current monthly allowance, excluding any amount you receive for an additional (optional) annuity based on extra contributions, is less than the minimum allowance calculated under subsection (3) of this section, and:

(i) You have twenty-five or more years of PERS Plan 1 service credit and have been retired at least twenty years; or

(ii) You have twenty or more years of PERS Plan 1 service credit and have been retired at least twenty-five years.

(b) You qualify if you are a PERS Plan 1 member's survivor beneficiary under WAC 415-108-326 and your current monthly allowance is

less than the minimum allowance calculated under subsection (3) of this section, provided:

(i) The member had twenty-five or more years of PERS Plan 1 service credit and retired at least twenty years ago; or

(ii) The member had twenty or more years of PERS Plan 1 service credit and retired at least twenty-five years ago.

(2) **Do I qualify if I receive a duty disability allowance?** You do not qualify to receive the minimum allowance provided by this rule if you are a:

(a) Retiree currently receiving a duty disability retirement allowance under RCW 41.40.220(1);

(b) Retiree currently receiving a statewide city employees' retirement system duty disability retirement allowance under RCW 41.44.170(3); or

(c) Beneficiary currently receiving an allowance under RCW 41.44.170(5).

(3) **How much is the minimum allowance in RCW 41.40.1984, and how is it adjusted?**

(a) **Minimum allowance.** The minimum allowance prior to July 1, 2006, was $1000. On July 1, 2006, and each July 1 thereafter, the minimum allowance increases by three percent, rounded to the nearest cent.

(b) **Adjustment.** The minimum allowance in (a) of this subsection will be adjusted each July by the same factors that were otherwise used in the calculation of your monthly allowance, including, but not limited to:

(i) Early retirement;

(ii) Automatic cost-of-living (COLA) increases chosen at retirement;

(iii) Benefit option chosen at retirement (see WAC 415-108-326);

(iv) Survivor percentage. See Example 2 in this subsection.

Example 1: Bob retired in August 1986 with twenty-five years of service credit. Bob chose benefit option three, so that his wife, Betty, would receive a monthly allowance equal to 50% of his allowance after his death. In August 2006, Bob became eligible for the minimum allowance, calculated as follows:

Minimum allowance in August 2006 =		$1,030.00
Minimum allowance, actuarially reduced for benefit option three	$1,030 x 0.87 (This is an example of an actuarial factor for illustration purposes only. Actuarial factors periodically change.) =	**$896.10**

Example 2: When Bob died in August 2009, Betty's allowance was calculated using the minimum allowance in effect on the date of Bob's death. The minimum allowance was adjusted by the same factors used to calculate Bob's allowance at retirement and also by the survivor percentage (50%) chosen when Bob retired.

Minimum allowance in August 2009	(includes a 3% per year increase)	$1,125.51
Actuarially reduced for benefit option three =	$1,125.51 x 0.87 =	$979.19
Betty's adjusted minimum allowance	(50% of the allowance Bob was receiving)	**$489.60**

(4) **If the minimum allowance is less than my current monthly allowance, will my monthly allowance be reduced?** The department will compare the amount of the minimum allowance calculated under subsection (3) of this section with your current monthly allowance. You will always receive the higher of the two benefits.

(5) **If I qualify for the minimum allowance, when will I begin to receive it?**

(a) If your eligibility is based on meeting the requirements of subsection (1)(a)(i) or (b)(i) of this section, and:

(i) You were eligible on July 1, 2004, you began receiving the minimum allowance in effect at that time, in lieu of your regular monthly allowance, in July 2004.

(ii) You become eligible after July 1, 2004, you will begin receiving the minimum allowance, in lieu of your regular monthly allowance, the month in which you qualify.

(b) If your eligibility is based on meeting the requirements of subsection (1)(a)(ii) or (b)(ii) of this section, and:

(i) You were eligible on July 1, 2006, you began receiving the minimum allowance in effect at that time, in lieu of your regular monthly allowance, in July 2006.

(ii) You become eligible after July 1, 2006, you will begin receiving the minimum allowance, in lieu of your regular monthly allowance, the month in which you qualify.

(6) **Will I receive cost-of-living adjustments (COLAs)?** You will not receive the uniform COLA (based on your years of service credit) while you are receiving the minimum allowance.

(7) **How long will I continue to receive the minimum allowance?** You will receive the minimum allowance calculated under subsection (3) of this section, for your lifetime or until your regular retirement allowance, plus COLAs and other eligible adjustments, exceeds the minimum allowance. At that time you will automatically start receiving the higher allowance.

Example:

	Regular Allowance (including COLAs and other eligible adjustments)	**Adjusted Minimum Allowance**	**Actual Amount Paid**
July 1, 2006	$882.38 (allowance + COLAs)	**$896.10** ($1,030 x .87)	$896.10
July 1, 2007	$914.63 ($882.38 + COLA)	**$922.98** ($1,060.90 x .87)	$922.98
July 1, 2008	$946.88 ($914.63 + COLA)	**$950.67** ($1,092.73 x .87)	$950.67
July 1, 2009	$979.13 ($946.88 + COLA)	**$979.19** ($1,125.51 x .87)	$979.19
July 1, 2010	**$1,011.38** ($979.13 + COLA)	$1,008.57 ($1,159.28 x .87)	$1,011.38 (reverts to regular allowance including COLAs)

[Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-108-805, filed 8/28/13, effective 10/1/13; WSR 07-10-013, § 415-108-805, filed 4/20/07, effective 5/21/07. Statutory Authority: RCW 41.50.050(5) and 41.40.1984. WSR 04-20-004, § 415-108-805, filed 9/23/04, effective 10/24/04.]

SERVICE RETIREMENT

WAC 415-108-810 Calculation of retirement allowance pursuant to *Bowles v. Retirement Systems*—Eligibility—Procedure. Pursuant to *Bowles v. Retirement Systems*, 121 Wn.2d 52 (1993), the department is required to calculate certain Plan I members' retirement allowances without regard to percentage or ceiling limitations on leave cash outs. *Bowles v. Retirement Systems* does not change the terms contained in collective bargaining agreements negotiated by employers and employees or leave policies promulgated by employers, nor does it apply

to state and school district employees who cash out sick leave pursuant to RCW 28A.400.210 or 41.04.340, or annual leave pursuant to RCW 43.01.040 through 43.01.044.

(1) Certain Plan I members' retirement allowances shall be calculated pursuant to this section if they meet the following criteria:

(a) Retire on or after March 11, 1993, from Plan I, or be a surviving spouse or beneficiary of a member who retired or died after March 11, 1993; and

(b) Have average final compensation that is:

(i) Based on employment with a nonstate agency or political subdivision employer; and

(ii) Subject to employer percentage or ceiling limitations on leave cash outs.

(c) If a person meets the eligibility requirements for calculation under (a) and (b) of this subsection, the department shall determine whether the person is entitled to the calculation provided under subsection (2) of this section.

(2) For persons who are eligible under subsection (1) of this section, the department shall calculate the retirement allowance as follows:

(a) Calculate average final compensation twice:

(i) First, by including the amount of leave actually cashed out that is accruable within the member's two year average final compensation period, not taking into consideration any employer percentage or ceiling cash out limitations; and

(ii) Second, by including accrued leave as specified in (a)(i) of this subsection but taking into consideration any employer percentages and ceiling cash out limitations.

(b) Calculate the difference between the retirement allowance under (a)(i) and (ii) of this subsection. The department shall calculate the present value of this difference using its actuarial tables and retain eight percent of the present value of this amount to restore pension fund moneys expended in paying *Bowles* plaintiff class attorney fees. Each member's *Bowles* attorney fee payment shall be made in a one-time deduction from the member's first retirement allowance payment after the final computation of the member's benefit; and

(c) Pursuant to RCW 41.50.150, assess the member's employer for any additional excess compensation added to the member's retirement allowance.

[WSR 97-19-035, recodified as § 415-108-810, filed 9/9/97, effective 9/9/97. Statutory Authority: RCW 41.50.050 and Bowles v. Retirement Systems, 121 Wn.2d 52 (1993). WSR 94-11-009, § 415-108-530, filed 5/5/94, effective 6/5/94.]

WAC 415-108-815 What is the minimum dollar limit used to determine a Plan 3 lump sum benefit payment? (1) The minimum dollar limit under RCW 41.40.815 for determining if a lump sum payment may be received instead of a monthly benefit is increased to $119.41 as of March 1, 2002.

(2) The limit established in subsection (1) of this section will be increased each January 1st by three percent beginning January 1, 2003.

[Statutory Authority: RCW 41.50.050(5) and 41.40.815. WSR 02-03-120, § 415-108-815, filed 1/23/02, effective 3/1/02.]

WAC 415-108-820 Interim retirement allowance—Employer final compensation report—Final computation of retirement allowance—Adjustment of retirement allowance for errors. (1) At the time of a member's application for retirement, the department does not have all information necessary to make a final computation of the member's retirement allowance. Based upon estimates of the retiree's compensation and earned service credit through the date of retirement, the department shall compute an interim retirement allowance made payable to the member in the interim between the member's date of retirement and the department's final computation of the member's retirement allowance. The interim retirement allowance is an initial, estimated computation of the retiree's retirement allowance subject to adjustment by the department based upon subsequent review of information provided by the member's employer.

(2) In computing the interim retirement allowance, the department shall, subject to later correction, consider only the amount of the member's salary actually reported by the employer up to the date of the interim computation, but shall impute the member's earned service credit for the same period.

(3) Every employer of a member who applies for retirement shall provide the department with a final compensation report for that member. The report shall be completed on a form provided or approved by the department.

(4) Following the department's computation of the interim benefit and receipt of the employer final compensation report, leave cash out information for Plan I retirees, earnings history, and copies of the employment contract and employer compensation policies, the department shall complete a final computation of the member's retirement allowance. The department's final computation may either increase or decrease the amount of the interim retirement allowance computed pursuant to subsection (1) of this section.

(5) Pursuant to RCW 41.50.130, following the department's final computation of the member's retirement allowance as provided in subsection (4) of this section, the department may subsequently adjust a member's retirement allowance to correct any error in retirement system records. For purposes of this subsection, errors in retirement system records include, but are not limited to, the following:

(a) Applying an incorrect retirement allowance formula in computing the retirement allowance;

(b) Including service that is not creditable to the member;

(c) Including payments that do not constitute earnable compensation to a member in the member's retirement allowance computation, or excluding earnable compensation not reported by an employer;

(d) Benefit overpayments and underpayments;

(e) Including an individual in the membership of the retirement system who is not entitled to such membership.

[WSR 97-19-035, recodified as § 415-108-820 filed 9/9/97, effective 9/9/97. Statutory Authority: RCW 41.50.050 and Bowles v. Retirement Systems, 121 Wn.2d 52 (1993). WSR 94-11-009, § 415-108-540, filed 5/5/94, effective 6/5/94.]

WAC 415-108-830 How does the department calculate the retirement allowance of a PERS Plan 2 or Plan 3 member who retires, reenters PERS membership, and then retires again? This rule establishes a method to

actuarially recompute your defined benefit retirement allowance if you are a Plan 2 or Plan 3 member who retires, reenters PERS membership causing your retirement allowance to stop, and then retires again.

(1) **If you previously retired before age sixty-five**, the department will:

(a) Recompute your retirement allowance pursuant to RCW 41.40.620 (Plan 2) or 41.40.790 (Plan 3) using:

(i) Your total years of career service, including service earned prior to your initial retirement and service earned after reentering membership; and

(ii) Any increase in your average final compensation resulting from your reentry into membership; and

(b) Actuarially reduce your retirement allowance:

(i) Based on the present value of the retirement allowance payments you received during your initial retirement;

(ii) To reflect the difference in the number of years between your current age and the attainment of age sixty-five, if applicable; and

(iii) To offset the cost of your benefit option if it includes a survivor feature. See WAC 415-108-326.

(2) **If you previously retired at or after age sixty-five**, the department will recompute your retirement allowance pursuant to RCW 41.40.620 (Plan 2) or 41.40.790 (Plan 3) and include any additional service credit you earned and any increase in your average final compensation resulting from your reentry into membership. The department will actuarially reduce your retirement allowance to offset the cost of your benefit option if it includes a survivor feature. See WAC 415-108-326.

(3) Under no circumstances will you receive a retirement allowance creditable to a month during which you earned service credit.

[Statutory Authority: RCW 41.50.050(5), 41.40.690, 41.40.850, 41.40.037. WSR 05-12-043, § 415-108-830, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(5), 41.40.620, 41.40.690. WSR 02-03-120, § 415-108-830, filed 1/23/02, effective 3/1/02; WSR 97-19-035, recodified as § 415-108-830, filed 9/9/97, effective 9/9/97. Statutory Authority: RCW 41.50.050. WSR 94-09-040, § 415-108-580, filed 4/19/94, effective 5/20/94.]

WAC 415-108-980 Will I receive a transfer payment when I transfer to Plan 3? (1) **PERS Plan 3 will be implemented on March 1, 2002.** If you transfer from PERS Plan 2 to PERS Plan 3 during the Phase 1 transfer period and establish service credit in June 2002, or transfer during the Phase 2 transfer period and establish service credit in either June 2002 or February 2003, you will receive a transfer payment to be added to your member account on or after June 1, 2003, once the department receives the transfer information from your employer. The transfer period and payment amount you will receive is based upon your employer type and your account balance as of March 1, 2002.

(a) You will receive a payment of one hundred and ten percent of your **transfer basis** if you are employed in an eligible position by a Phase 1 employer and you transfer to Plan 3 during the Phase 1 transfer period. State agencies and institutes of higher education are Phase 1 employers.

(b) You will receive a payment of one hundred and eleven percent of your **transfer basis** if you are employed in an eligible position by

a Phase 2 employer and you transfer to Plan 3 during the Phase 2 transfer period. All other employers are Phase 2 employers.

(2) Your **transfer basis** is your total accumulated contributions (and interest) on March 1, 2002, less fifty percent of any contributions you made under RCW 41.50.165(2).

(3) If you request to transfer but die before payment is made, the transfer payment will be paid immediately to your defined contribution account. These moneys will be distributed when payment is made from your account to your estate, or the person or persons, trust or organization you nominated by the most recent written beneficiary designation filed with the department.

Examples:

Phase 1 Employer (110%) (state agencies and institutes of higher education)

• Al works for a Phase 1 employer and makes $2,000 a month.
• On March 1, 2002, Al's defined benefit (DB) account balance is $10,000.
• On June 1, 2002, Al transfers to PERS Plan 3 and chooses contribution rate option A (5%).
• On June 1, 2002, the department transfers approximately $10,185 to Al's new defined contribution (DC) account. The transfer amount is the sum of:

♦ Al's $10,000 account balance on March 1, 2002;
♦ Approximately $50 in contributions between March 1st and June 1st; and
♦ Approximately $135 in interest in Plan 2 at 5.5% annually, compounded quarterly.

• Al continues working for his Phase 1 employer through June 2003, including the month of June 2002.
• In June 2003, after he receives his transfer payment, Al will have approximately **$22,385** in his DC account. Here is how:

♦ In June 2002, when Al transferred to Plan 3, he started with approximately $10,185 in his DC account.
♦ He then made twelve monthly contributions of $100 (5% of a $2,000 salary, June 2002 through May 2003) for a total of $1,200.
♦ In June 2003, he receives a transfer payment of $11,000 (110% of $10,000, his account balance on March 1, 2002).
♦ The total is approximate because it will depend on earnings or losses on the investments of the original amount transferred the previous year, and the contributions made to date.

Phase 2 Employer (111%) (local government)

• Peggy works for a Phase 2 employer and makes $2,000 a month.
• On March 1, 2002, Peggy's defined benefit (DB) account balance is $10,000.
• On November 1, 2002, Peggy transfers to PERS Plan 3 and chooses contribution rate option A (5%).
• On November 1, 2002, the department transfers approximately $10,560 to Peggy's new defined contribution (DC) account. The transfer amount is the sum of:

♦ Peggy's $10,000 account balance on March 1, 2002;
♦ Approximately $140 in contributions between March 1st and November 1st;

♦ Approximately $420 in interest in Plan 2 at 5.50% annually, compounded quarterly.

• Peggy continues working for her Phase 2 employer through June 2003, including the month of February 2003*.

* A Phase 2 employee can establish service credit in either June 2002 or February 2003.

• In June 2003, after she receives her transfer payment, Peggy will have approximately **$22,360** in her DC account. Here is how:

♦ In November 2002, when Peggy transferred to Plan 3, she started with approximately $10,560 in her DC account.

♦ She then made monthly contributions of $100 (5% of a $2,000 salary) for a total of $700.

♦ In June 2003, she receives a transfer payment of $11,100 (111% of $10,000, her account balance on March 1, 2002).

♦ The total is approximate because it will depend on earnings or losses on the investments of the original amount transferred the previous year, and the contributions made to date.

(4) **Terms defined:**

Phase 1 employer: WAC 415-108-425.
Phase 2 employer: WAC 415-108-425.
Phase 1 transfer period: WAC 415-108-425.
Phase 2 transfer period: WAC 415-108-425.
Service: RCW 41.40.010.
Transfer basis: RCW 41.40.795 (1)(b).
Transfer period: RCW 41.40.795 (1)(a).

[Statutory Authority: RCW 41.50.050. WSR 21-16-020, § 415-108-980, filed 7/23/21, effective 8/23/21. Statutory Authority: RCW 41.50.050(5), 41.40.795. WSR 02-12-085, § 415-108-980, filed 6/4/02, effective 6/13/02. Statutory Authority: RCW 41.50.050(5), 41.32.8401, 41.35.630, 41.40.795. WSR 02-03-120, § 415-108-980, filed 1/23/02, effective 3/1/02.]

WAC 415-108-990 May I waive my Plan 3 one percent retirement benefit? (1) **Why would I want to waive my Plan 3 one percent retirement benefit?** Some state retirement systems have provisions that allow members to purchase service credit earned elsewhere. If you are employed by one of these states and wish to purchase service credit for time worked in Washington, you may be required by that state to show proof that you have waived all of your rights to retirement benefits from Washington as a condition for purchasing the service credit.

(2) **Do I qualify to waive my Plan 3 one percent retirement benefit?** You may irrevocably waive your Plan 3 one percent retirement benefit if:

(a) You are separated from all Plan 3 eligible employment;

(b) You withdrew your funds in your Plan 3 member account or are receiving distributions from your Plan 3 member account;

(c) Your spouse consents to the waiver if you are married;

(d) There is not a court order or administrative order that affects your right to waive your benefits; and

(e) You have not received, or are not receiving, a defined benefit payment.

(3) **How do I waive my one percent retirement benefit?** You may waive your right to this benefit by submitting a properly completed form, available through the department. The date of the waiver will be the date the department receives your form.

(4) **Will I get service credit for eligible time if it is discovered after I sign a waiver?** If periods of employment, prior to or within the waived time period, are discovered after you sign a waiver, you will not be credited for the service. However, your employer will be billed for employer contributions for any such period.

(5) **May I retract or withdraw my waiver in the future?** No. You irrevocably give up all rights to any retirement benefits when you submit your signed waiver.

(6) **What are my retirement options if I return to work in a (PERS/SERS/TRS) eligible position?** You will be a member of Plan 3 and will begin accumulating service credit from your new date of hire. You will not be entitled to purchase back any of the Plan 3 service credit you waived.

[Statutory Authority: RCW 41.50.050(5) and 41.40.787. WSR 04-17-002, § 415-108-990, filed 8/4/04, effective 9/4/04.]