

**Chapter 415-106 WAC**  
**PUBLIC SAFETY EMPLOYEES' RETIREMENT SYSTEM**

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WAC

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- 415-106-050 How does the department comply with Internal Revenue Code distribution rules? [Statutory Authority: RCW 41.50.050(5), chapter 41.37 RCW and IRS regulations. WSR 08-02-046, § 415-106-050, filed 12/27/07, effective 1/27/08.] Repealed by WSR 10-24-099, filed 12/1/10, effective 1/1/11. Statutory Authority: RCW 41.50.050(5).
- 415-106-060 What are the IRS limitations on maximum benefits and maximum contributions? [Statutory Authority: RCW 41.50.050(5), chapter 41.37 RCW and IRS regulations. WSR 08-02-046, § 415-106-060, filed 12/27/07, effective 1/27/08.] Repealed by WSR 10-24-099, filed 12/1/10, effective 1/1/11. Statutory Authority: RCW 41.50.050(5).
- 415-106-070 Assets for exclusive benefit of members and beneficiaries. [Statutory Authority: RCW 41.50.050(5), chapter 41.37 RCW and IRS regulations. WSR 08-02-046, § 415-106-070, filed 12/27/07, effective 1/27/08.] Repealed by WSR 10-24-099, filed 12/1/10, effective 1/1/11. Statutory Authority: RCW 41.50.050(5).

DEFINITIONS

**WAC 415-106-010 Definitions.** The definitions in RCW 41.37.010 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.37 RCW are defined in this chapter.

(1) **AFC** means average final compensation as defined in RCW 41.37.010.

(2) **City corrections department** means any subsection or unit of a city employing correctional employees.

(3) **County corrections department** means any subsection or unit of a county employing correctional employees.

(4) **Employer** means the state or local government entities as defined in RCW 41.37.010 employing members eligible for PSERS.

(5) **Full-time employee** means an employee who is regularly scheduled to provide at least 160 hours of compensated service for an employer each calendar month.

(6) **LEOFF** means the law enforcement officers' and firefighters' retirement system.

(7) **Nursing care**, for purposes of membership eligibility under RCW 41.37.010, refers to services provided on behalf of a qualifying PSERS employer in which an employee is required to hold a valid certification and/or license in the state of Washington and the primary duty is to provide direct patient nursing care. Services include the identification of, and discrimination between, the individual's physical and psychosocial needs, treatment, counseling, patient education, self-care and the administration of medication.

(8) **PERS** means the public employees' retirement system.

(9) **Primary responsibility** means the fundamental, crucial job duty performed in a position. It does not include marginal responsibilities, which are extra or incidental to the primary responsibility. The primary responsibility of a position may be considered the primary responsibility because:

(a) The position exists to perform that function; or

(b) There are a limited number of employees available who could perform that function; or

(c) The function is highly specialized, and the incumbent is hired for special expertise or ability to perform it.

(10) **PSERS** means the public safety employees' retirement system.

(11) **Reportable compensation** means compensation earnable as that term is defined in RCW 41.37.010.

(12) **SERS** means the school employees' retirement system.

(13) **TRS** means the teachers' retirement system.

(14) **WSPRS** means the Washington state patrol retirement system.

[Statutory Authority: RCW 41.50.050. WSR 22-13-091, § 415-106-010, filed 6/13/22, effective 7/14/22; WSR 19-10-038, § 415-106-010, filed 4/26/19, effective 5/27/19. Statutory Authority: RCW 41.50.050(5). WSR 16-17-128, § 415-106-010, filed 8/23/16, effective 9/23/16. Statutory Authority: RCW 41.50.050(5) and chapter 41.37 RCW. WSR 08-02-046, § 415-106-010, filed 12/27/07, effective 1/27/08.]

## **ADMINISTRATION**

**WAC 415-106-080 Actuarial factors and schedules.** See chapter 415-02 WAC starting with WAC 415-02-300 for information on how the department uses factors and schedules to calculate optional retirement allowances for PSERS members.

[Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-106-080, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5), chapters 41.37, 41.45, and 41.50 RCW. WSR 08-02-046, § 415-106-080, filed 12/27/07, effective 1/27/08.]

## **MEMBERSHIP**

**WAC 415-106-100 Am I eligible for PSERS membership?** (1) You are eligible for PSERS membership if you meet the definition of member in RCW 41.37.010.

(2) You are exempt from PSERS membership if:

(a) One or more of the exemptions in RCW 41.37.020 apply to you;

(b) You are a retirement system retiree, estopped from membership under RCW 41.04.270;

(c) You are, or have been, a public employees' retirement system (PERS) Plan 1 member; or

(d) You were a PERS Plan 2 or 3 member and were not required to join PSERS membership according to WAC 415-106-110.

[Statutory Authority: RCW 41.50.050. WSR 19-10-038, § 415-106-100, filed 4/26/19, effective 5/27/19. Statutory Authority: RCW 41.50.050(5), 10.93.020, 41.04.270, 41.37.010 (4) and (5), and 41.37.020. WSR 08-02-046, § 415-106-100, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-105 May I join PSERS if my duties qualify for PSERS membership, but my employer is not specifically listed in RCW 41.37.010?** You do not qualify for membership unless your employer is specifically listed in RCW 41.37.010, even if your employer employs one or more elected or appointed officials who are PSERS members.

[Statutory Authority: RCW 41.50.050 and 2023 c 199. WSR 24-11-015, § 415-106-105, filed 5/6/24, effective 6/1/24. Statutory Authority: RCW 41.50.050. WSR 22-13-091, § 415-106-105, filed 6/13/22, effective 7/14/22. Statutory Authority: RCW 41.50.050(5) and 41.37.010(4). WSR 08-02-046, § 415-106-105, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-110 If I am a member of PERS, may I change my membership to PSERS?** You may have the right to change your retirement system membership from PERS to PSERS according to the requirements in this section.

(1) You may change retirement system membership from PERS to PSERS if:

(a) You were a member of either PERS Plan 2 or Plan 3 before July 1, 2006; and

(b) On July 1, 2006, you meet the requirements for membership in RCW 41.37.010; and

(c) You submit a properly completed election form to your employer between July 1, 2006, and September 30, 2006.

(2) You may also change retirement system membership from PERS to PSERS if:

(a) You were a member of either PERS Plan 2 or Plan 3 before January 1, 2019; and

(b) On January 1, 2019, you met the requirements for membership in RCW 41.37.010; and

(c) You submit a properly completed election form to your employer between January 1, 2019, and March 1, 2019.

(3) You may also change retirement system membership from PERS to PSERS if:

(a) You were a member of either PERS Plan 2 or Plan 3 before June 1, 2024; and

(b) On June 1, 2024, you met the requirements for membership in RCW 41.37.010 (19)(f); and

(c) You submit a properly completed election form to your employer between June 1, 2024, and September 1, 2024.

(4) Your change in membership is prospective only.

(5) You will become a dual member of PSERS and PERS. All service credit and compensation previously reported in PERS will remain in PERS. Your retirement benefits will be governed by the dual member "portability" provisions in chapters 41.54 RCW and 415-113 WAC.

(6) If you meet the conditions in subsection (1), (2), or (3) of this section and do not elect PSERS membership during the election window, you cannot become a member of PSERS while you continue employment with the same employer; however, if you terminate your employment with that employer after the election window begins, and subsequently become employed in a PSERS eligible position, you will be mandated into PSERS membership.

[Statutory Authority: RCW 41.50.050 and 2023 c 199. WSR 24-11-015, § 415-106-110, filed 5/6/24, effective 6/1/24. Statutory Authority: RCW 41.50.050. WSR 22-13-091, § 415-106-110, filed 6/13/22, effective 7/14/22; WSR 19-10-038, § 415-106-110, filed 4/26/19, effective 5/27/19. Statutory Authority: RCW 41.50.050(5), chapters 41.37 and 41.45 RCW, and RCW 41.40.113. WSR 08-02-046, § 415-106-110, filed 12/27/07, effective 1/27/08.]

## **REPORTABLE COMPENSATION**

**WAC 415-106-200 Purpose and scope of reportable compensation rules.** WAC 415-106-205 through 415-106-330 codify the department's interpretation of statutes and administrative practice regarding clas-

sification of payments received by members. The department applies these rules to all payments.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.37 RCW. WSR 08-02-046, § 415-106-200, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-205 What is reportable compensation?** Reportable compensation is subject to retirement system contributions and is used in the calculation of your retirement benefit.

(1) The department determines whether payments you receive are reportable compensation based on the nature of the payment, 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" in RCW 41.37.010. It must:

(a) Be paid to you by an employer as a salary or wage for services you provided; or

(b) Qualify as reportable compensation under chapter 41.37 RCW or this chapter.

(2) Your employer must report all of your reportable compensation to the department. Your 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: Bill is paid in July for work performed during June. The employer must report his compensation to the department as "June earnings."

[Statutory Authority: RCW 41.50.050. WSR 22-13-091, § 415-106-205, filed 6/13/22, effective 7/14/22. Statutory Authority: RCW 41.50.050(5) and 41.37.010(6). WSR 08-02-046, § 415-106-205, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-210 What types of payments are considered reportable compensation?** The following table indicates whether certain types of payments are reportable compensation under PSERS, and provides a cross-reference to the applicable WAC.

Type of Payment	PSERS Reportable Compensation?
Annual leave cash outs	No - WAC 415-106-255
Assault pay (state employees)	Yes - WAC 415-106-270
Base rate	Yes - WAC 415-106-215
Cafeteria plans	Yes - WAC 415-106-290
Deferred wages	Yes - WAC 415-106-300
Disability insurance payments	No - WAC 415-106-275
Disability: Salary imputed while on duty-disability leave	Yes - WAC 415-106-270
Employer provided vehicle	No - WAC 415-106-325
Employer taxes/contributions	No - WAC 415-106-300

Type of Payment	PSERS Reportable Compensation?
Fringe benefits, including insurance	No - WAC 415-106-295
Illegal payments	No - WAC 415-106-305
Legislative leave	Yes - WAC 415-106-285
Longevity/education attainment pay	Yes - WAC 415-106-215
Nonmoney compensation	No - WAC 415-106-315
Optional payments	No - WAC 415-106-310
Overtime payments	Yes - WAC 415-106-220
Performance pay	Yes - WAC 415-106-230
Paid leave	Yes - WAC 415-106-260
Reimbursements	No - WAC 415-106-320
Reinstatement payments	Yes - WAC 415-106-240
Retirement or termination bonus	No - WAC 415-106-235
Retroactive salary increase	Yes - WAC 415-106-245
Severance pay	No - WAC 415-106-250
Shared leave (state employees)	Yes - WAC 415-106-270
Sick leave cash outs	No - WAC 415-106-255
Standby pay	Yes - WAC 415-106-225
Time off with pay	Yes - WAC 415-106-255
Union leave <sup>1</sup>	Yes - WAC 415-106-265
Unpaid leave <sup>2</sup>	Yes - WAC 415-106-280
Vehicle allowances	No - WAC 415-106-330

<sup>1</sup>Only specific types of union leave are reportable. See WAC 415-106-265.

<sup>2</sup>Only the unpaid leave specified in WAC 415-106-280(2) will be used in the calculation of your AFC.

[Statutory Authority: RCW 41.50.050(5) and 41.37.010(6). WSR 08-02-046, § 415-106-210, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-215 Are salary increases based on longevity or educational attainment considered reportable compensation?** Most employees receive a base rate of salary or wages expressed as an hourly or monthly rate of pay. This payment is for services you provide and qualifies as reportable compensation. Your rate of salary may be based in part 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 service due to greater experience or more education.

(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 compensation.

[Statutory Authority: RCW 41.50.050(5) and 41.37.010(6). WSR 08-02-046, § 415-106-215, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-220 Are overtime payments reportable compensation?**

Overtime is additional pay you earn for working time in excess of your regularly scheduled shift, and is reportable compensation. Some examples of overtime are:

(1) **Additional pay for working on a holiday.** If you receive an extra payment for working on a scheduled holiday, the payment is overtime. Your employer may make the additional payment when the holiday occurs or in a lump sum at some other time.

Example: Bill works on Christmas day. He is given the option of taking another day off with pay or receiving an extra day's pay. If he opts for the extra pay, the payment is overtime and is reportable compensation. If he takes another day off in lieu of the extra pay, it is paid leave and also qualifies as reportable compensation.

(2) **Callback pay.** If your employer offers you a special rate of pay for returning to work when called after the end of your regular shift, it is overtime.

(3) **Court pay.** If you receive an additional payment for appearing in court or performing other duties outside your regularly scheduled shift, it is overtime.

[Statutory Authority: RCW 41.50.050(5) and 41.37.010(6). WSR 08-02-046, § 415-106-220, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-225 Is standby pay reportable compensation?**

Standby means you are required by your employer to be prepared to report immediately for work if the need arises, although the need may not arise. According to RCW 41.37.010:

(1) The pay you receive for being on standby qualifies as reportable compensation; however

(2) The time you spend on standby is not counted toward service credit and is not reported to the department by your employer.

[Statutory Authority: RCW 41.50.050. WSR 22-13-091, § 415-106-225, filed 6/13/22, effective 7/14/22. Statutory Authority: RCW 41.50.050(5) and 41.37.010(6). WSR 08-02-046, § 415-106-225, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-230 Is performance pay reportable compensation?**

Performance pay for meeting certain performance goals is reportable compensation because it is paid for services provided. Employers must document the dates over which the performance pay is earned, and provide that information if requested by the department.

Example: An employer offers each employee in a work group an additional \$100 if the work group has no work-related accidents during the upcoming year. Remaining accident free is a performance goal. Therefore the payment will be for services provided and will qualify as reportable compensation.

[Statutory Authority: RCW 41.50.050(5) and 41.37.010(6). WSR 08-02-046, § 415-106-230, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-235 Is a retirement bonus or incentive reportable compensation?** A payment made as a bonus or incentive to retire is not a payment for services provided, and 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 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(5) and 41.37.010(6). WSR 08-02-046, § 415-106-235, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-240 Are payments for reinstatement or payment instead of reinstatement reportable compensation?** (1) Payments you receive upon reinstatement or instead of reinstatement are reportable compensation to the extent they are equivalent to the salary you would have earned by working in your position. RCW 41.37.010 defines these payments as reportable compensation even though they are not payments for services you provided to your employer. The payment will be prorated over the entire period you were suspended, terminated, or otherwise absent from work.

(2) For purposes of this section, "reinstatement" means that you are 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.

[Statutory Authority: RCW 41.50.050. WSR 22-13-091, § 415-106-240, filed 6/13/22, effective 7/14/22. Statutory Authority: RCW 41.50.050(5) and 41.37.010(6). WSR 08-02-046, § 415-106-240, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-245 Are retroactive salary increases reportable compensation?** A retroactive salary increase occurs when your rate of pay is increased and made retroactive to a prior date. You receive a lump sum payment to cover the increase earned during the earlier period.

(1) To qualify as reportable compensation under this section, the retroactive salary increase 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 a claim before a court or administrative agency for a retroactive salary increase;  
(c) A collective bargaining agreement; or  
(d) Action by a personnel resources board which expressly states the payments are retroactive.

(2) Your employer must report compensation for the month in which it was earned.

[Statutory Authority: RCW 41.50.050(5) and 41.37.010(6). WSR 08-02-046, § 415-106-245, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-250 Is severance pay reportable compensation?** Severance pay, whether or not it is earned over time, is not reportable compensation. See RCW 41.37.010.

[Statutory Authority: RCW 41.50.050. WSR 22-13-091, § 415-106-250, filed 6/13/22, effective 7/14/22. Statutory Authority: RCW 41.50.050(5) and 41.37.010(6). WSR 08-02-046, § 415-106-250, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-255 Is sick leave or vacation leave, whether used or cashed out, reportable compensation?** (1) **Sick and annual leave (used).** Most PSERS members earn a certain number of sick leave and annual leave hours per month. These leave hours are earned by providing service during the month in which the leave accrues. The payment you receive when you use an earned leave day is reportable compensation.

(2) **Sick and annual leave cash outs.** Under RCW 41.37.010, sick and annual leave cash outs are not reportable compensation.

[Statutory Authority: RCW 41.50.050. WSR 22-13-091, § 415-106-255, filed 6/13/22, effective 7/14/22. Statutory Authority: RCW 41.50.050(5) and 41.37.010(6). WSR 08-02-046, § 415-106-255, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-260 Is paid leave, which is not earned over time, reportable compensation?** To the extent authorized by RCW 41.37.260, payment you receive from your employer while on an authorized paid leave of absence is reportable compensation provided that:

(1) The payment does not exceed the salary for the position from which you are on leave; and

(2) The payment is received from the employer, not from a third party. Except as provided in WAC 415-106-265, if you receive the payment from your employer, but your employer is reimbursed for the payment by a third party, the payment is not reportable compensation.

[Statutory Authority: RCW 41.50.050(5) and 41.37.260. WSR 08-02-046, § 415-106-260, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-265 Is the pay I receive from my employer when I am on union leave reportable compensation?** If you take an authorized leave of absence to serve as an elected official of a labor organization and you receive payment from your employer during your leave, the payment may be reportable compensation even if the union reimburses

your employer. To qualify as reportable compensation, the payment must meet the specific conditions of RCW 41.37.260(2).

[Statutory Authority: RCW 41.50.050(5) and 41.37.260. WSR 08-02-046, § 415-106-265, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-270 Is compensation for periods of absence due to sickness or injury reportable compensation?** Compensation you receive for periods of absence due to sickness or injury, which is not covered by earned sick leave, qualifies as reportable compensation only as authorized by RCW 41.37.010 and this section.

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

(2) **Duty disability.** You may make contributions and receive up to 12 consecutive months of service credit for periods of disability covered by Title 51 RCW or similar federal workers' compensation program as provided in RCW 41.37.060. In this case, the compensation you would have received but for the disability qualifies as reportable compensation to the extent authorized by RCW 41.37.060.

(3) **Shared leave.**

(a) If you are a state employee, as defined in RCW 41.04.655, the compensation you receive due to participation in a leave-sharing program qualifies as reportable compensation to the extent authorized by RCW 41.04.650 through 41.04.670.

(b) If you are not a state employee, shared leave payments are not specifically authorized by RCW 41.37.010 and do not qualify as reportable compensation.

[Statutory Authority: RCW 41.50.050. WSR 22-13-091, § 415-106-270, filed 6/13/22, effective 7/14/22. Statutory Authority: RCW 41.50.050(5), 27.04.100, 41.04.650 through 41.04.670, 41.37.010(6), 41.37.060, 72.01.045, and 72.09.240. WSR 08-02-046, § 415-106-270, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-275 Are disability insurance or workers' compensation payments reportable compensation?** (1) Disability insurance payments are not reportable compensation, whether the payments come directly from your employer or from an insurance company.

(2) Workers' compensation payments are not reportable compensation.

Example: Susan, an employee on unpaid disability leave, submits her workers' compensation payments to her employer. The employer then issues Susan a check for the same amount through the payroll system. Even though the payment may have the appearance of compensation from the employer, it is not a payment for services provided and is not reportable compensation.

(3) See WAC 415-106-270 for information about service credit and imputed compensation for periods of duty disability.

[Statutory Authority: RCW 41.50.050(5) and 41.37.010(6). WSR 08-02-046, § 415-106-275, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-280 Will the compensation that is imputed to periods of unpaid leave be used in the calculation of my AFC?** (1) **Authorized unpaid leave.** If you establish service credit under RCW 41.37.260 for periods of unpaid leave, the compensation imputed to the period of time you are on leave will not be included in your AFC. See WAC 415-02-175.

(2) **Military leave.** If you purchase service credit for a period of interruptive military service and that period falls in your AFC period, federal law entitles you to have the salary you would have earned during that time period used in the calculation of your AFC.

[Statutory Authority: RCW 41.50.050(5) and 41.37.260. WSR 08-02-046, § 415-106-280, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-285 Is the pay I receive while on legislative leave reportable compensation?** If you take leave without pay from an eligible PSERS position to serve in the legislature, you may elect to participate in PSERS as a legislator.

For any year in which you serve in the legislature, you may choose that your reportable compensation be either:

(1) The reportable compensation you would have earned had you not served in the legislature; or

(2) The compensation you actually received for nonlegislative public employment and the legislative service combined.

If you choose the option in subsection (1) of this section, you must pay the additional employer and employee contributions to the extent the compensation reported is higher than it would have been under subsection (2) of this section.

[Statutory Authority: RCW 41.50.050(5) and 41.37.010(6). WSR 08-02-046, § 415-106-285, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-290 Is compensation applied toward cafeteria plans reportable compensation?** Compensation you receive and apply toward a benefit plan under Internal Revenue Code (IRC) section 125 is reportable compensation if you have an absolute right to receive cash or deferred cash payments instead of participating in the plan. If there is no cash option, the value of participating in the plan is not reportable compensation. See WAC 415-106-295.

[Statutory Authority: RCW 41.50.050(5), chapter 41.37 RCW and IRS regulations. WSR 08-02-046, § 415-106-290, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-295 Are fringe benefits reportable compensation?** Fringe benefits provided by an employer are not a salary or wage, and 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; and

(3) Any employer payments into a private fund to provide health or welfare benefits for you or your dependents, with the exception of

compensation paid pursuant to a bona fide cafeteria plan, flexible benefit plan or similar arrangement as described in WAC 415-106-290.

[Statutory Authority: RCW 41.50.050(5), chapter 41.37 RCW and IRS regulations. WSR 08-02-046, § 415-106-295, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-300 Are payroll deductions reportable compensation?**

Amounts withheld from your salary or wages are reportable compensation. Examples include:

(1) Your member contributions to PSERS. Your employer's contributions are a fringe benefit and are not reportable compensation. See WAC 415-106-295.

(2) Amounts withheld for federal income tax purposes; and

(3) Other authorized voluntary deductions, such as deferred compensation or IRC section 457 plan contributions.

[Statutory Authority: RCW 41.50.050(5), 41.37.010(6) and IRS regulations. WSR 08-02-046, § 415-106-300, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-305 Are payments, which are outside my employer's legal authority, reportable compensation?**

Payments made by an employer that go beyond the employer's legal authority are not reportable.

[Statutory Authority: RCW 41.50.050(5). WSR 08-02-046, § 415-106-305, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-310 Are optional payments reportable compensation?**

If you receive an additional payment only on the condition of taking an action other than providing service to your employer, the payment is not reportable compensation.

Example: An employer offers to make a contribution to Joe's deferred compensation plan only if Joe agrees to have a portion of his salary deferred. Because Joe does not have a right to receive the contribution based solely on providing service, the payment is not reportable compensation.

[Statutory Authority: RCW 41.50.050(5). WSR 08-02-046, § 415-106-310, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-315 Are nonmoney payments from my employer reportable compensation?**

Nonmoney compensation is compensation legally provided to you in a form other than money. Examples include: Living quarters, food, board, equipment, clothing, laundry, transportation, fuel and utilities. The value of nonmoney maintenance compensation you receive from your employer is not reportable compensation.

[Statutory Authority: RCW 41.50.050(5) and 41.37.010(6). WSR 08-02-046, § 415-106-315, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-320 Are reimbursements for business expenses reportable compensation?** Reimbursements are not reportable compensation. Typical reimbursement payments include mileage reimbursements for use of a private car on employer business, or meal and lodging reimbursements for business trips.

[Statutory Authority: RCW 41.50.050(5). WSR 08-02-046, § 415-106-320, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-325 Vehicles—Is the value of my use of an employer's vehicle reportable compensation?** The value of an employer-provided vehicle is not reportable compensation.

[Statutory Authority: RCW 41.50.050(5). WSR 08-02-046, § 415-106-325, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-330 Are vehicle allowances reportable compensation?**

(1)(a) A vehicle allowance is not reportable compensation if it is received in lieu of expenses you incur or expect to incur in using your own vehicle for business purposes.

(b) A vehicle allowance qualifies as reportable compensation to the extent that it exceeds your actual expenses. For instance, if you receive both a vehicle allowance and separate reimbursements for vehicle expenses each time you use a privately owned vehicle for business purposes, the vehicle allowance is reportable compensation.

(2) To prove that your vehicle allowance exceeded your actual expenses, your employer must maintain ongoing monthly records, documenting:

(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;

(c) Your itinerary for each of these trips; and

(d) The amount of the allowance less the actual expenses, using IRS methodology. Under the IRS methodology, your actual expenses are the miles you drove multiplied by the IRS rate.

(i) The miles you drove are the number of miles you drove a privately owned vehicle for business purposes during the month.

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

(3) If a vehicle allowance exceeds actual expenses, your employer must report the excess, calculated in subsection (2)(d) of this section.

(4) If any part of a vehicle allowance is included in the calculation of your retirement allowance, your employer will be billed for excess compensation under RCW 41.50.150.

[Statutory Authority: RCW 41.50.050(5), 41.50.150 and IRS regulations. WSR 08-02-046, § 415-106-330, filed 12/27/07, effective 1/27/08.]

**ELECTED AND APPOINTED OFFICIALS**

**WAC 415-106-400 If I establish PSERS membership and now hold a state elective position, may I continue to accrue service credit in PSERS?** If you are an active PSERS member and are elected or appointed by the governor to a state elective position, you have the option to continue as a contributing member of PSERS, as limited by the requirements in this section.

(1) You must submit a written application directly to the department.

(2) If you submit your application before your service in a state elective position starts:

(a) Your employee contributions will be deducted from your compensation for your elective service.

(b) Except as provided in WAC 415-106-285, your employer(s) will pay the required employer contributions.

(3) If you submit your application mid-term (after your service in a state elective position has started):

(a) You and your employer will begin making contributions according to subsection (2) of this section.

(b) You must establish service credit for the prior portion of your current term by paying the employee contributions plus interest. Your employer must pay the required employer contributions plus interest.

(4) If you submit your application after your service in a state elective position has been completed, you must pay the required employee and employer contributions for the service credit with interest as determined by the department. Your former employer, at its discretion, may pay the required employer contributions plus interest.

(5) If you work in a PSERS eligible position at the same time you accrue service credit in a state elective position:

(a) Employee contributions will be deducted from your compensation for your service in the PSERS position and in the state elective position; and

(b) Both employers will make employer contributions.

(6) You will earn one service credit month for each calendar month during which you provide service in a state elective position. If you provide concurrent service in a PSERS eligible position, you will not receive additional service credit for that service.

(7) Once you start to accrue service credit in PSERS for a state elective position you must remain an active PSERS member until:

(a) You separate from all eligible public employment. You are not separated from eligible public employment if:

(i) You are reelected or reappointed to a successive term or terms of office; or

(ii) You resign from your state elective position and later resume service in the same state elective position during the same term.

(b) You retire from PSERS, whether or not you continue to serve in your elective position. See WAC 415-106-405.

(8) A state elective position is any position held by any person:

(a) Elected or appointed to a statewide office; or

(b) Elected or appointed as a member of the legislature.

[Statutory Authority: RCW 41.50.050(5) and 41.37.020(2). WSR 08-02-046, § 415-106-400, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-401 If I hold a state elective position before establishing PSERS membership, may I establish service credit for my**

**prior service in the state elective position?** If you held a state elective position before you established PSERS membership, you have the option to establish service credit for the time you served in the state elective position as limited by the following requirements:

(1) You must be an active PSERS member at the time you submit your application.

(2) The term of office must have begun on or after July 1, 2006.

(3) You must submit a written application directly to the department.

(4) You must pay the required employee and employer contributions for the service credit with interest as determined by the department. Your former employer, at its discretion, may pay the employer contributions plus interest.

(5) You must establish service credit for a full term of office. You may not establish service for only a portion of your term in office. However, if you served multiple terms, you are not required to establish service credit for all of the terms served.

[Statutory Authority: RCW 41.50.050(5) and 41.37.020(2). WSR 08-02-046, § 415-106-401, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-405 May I retire from PSERS while holding a state elective position?** (1) If you are holding a state elective position and accruing PSERS service credit for your service in that position, you may retire from PSERS and continue to work in your elective position provided:

(a) You are eligible to retire under RCW 41.37.210;

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

(c) Your compensation in the state 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 subsequent years.

[Statutory Authority: RCW 41.50.050(5), 41.37.020(2) and 41.37.210. WSR 08-02-046, § 415-106-405, filed 12/27/07, effective 1/27/08.]

## **DISABILITY BENEFITS**

**WAC 415-106-490 How are the PSERS disability benefits administered?** This section applies to you if you are a PSERS member who becomes disabled.

This section covers disability benefits in RCW 41.37.230. 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 bene-

fits) and social and health services, the U.S. Social Security Administration, employers, disability insurers, and others. Please contact these organizations directly for more information.

**Definitions.** As used in this section:

**Disabled** - A person who is totally incapacitated to perform the essential functions of their PSERS eligible position.

(1) **How do I apply for a disability benefit?**

(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.

(b) The department must receive:

(i) A completed disability retirement application. 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;

(ii) Additional information required by the department; and

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

(c) The process for determining eligibility for a disability benefit can be lengthy and may require additional documentation to complete.

(2) **Is there a time limit for filing an application for disability benefits?** There is no time limit for applying. However, your eligibility for a benefit will be based on your condition at the time of separation.

(3) **What happens if I become disabled after I retire?** Your medical condition at the time of separation will determine whether you qualify for a disability retirement.

(4) **What evidence will the department use to determine whether I am entitled to benefits under this section?**

(a) To determine if you are entitled to disability benefits, the department will consider any relevant information submitted by you or your employer, or otherwise available to the department, including:

(i) Information and determinations by the department of labor and industries (L&I), a self-insurer or the Social Security Administration;

(ii) Medical, vocational, and other information about your disability;

(iii) Your job description;

(iv) Your membership records, maintained by the department;

(v) Independent medical reviews made by DRS contracted vendors; and

(vi) Any other relevant evidence.

(b) The department reserves the right to consult with a contracted vendor for the purpose of providing an independent medical review of any PSERS member who applies for disability benefits.

(5) **What would disqualify me for disability benefits?** You are not eligible for disability benefits if any of the following apply:

(a) Your application does not provide adequate proof that you are disabled;

(b) Your disability is the result of your criminal conduct committed after July 1, 2006 (RCW 41.37.100).

"Criminal conduct" means:

(i) If a member is a defendant in a criminal proceeding or has been formally charged in court with a crime, and the member is applying for or receiving a disability retirement benefit for a disability

that is the result of the alleged criminal conduct, the department shall withhold payment of any disability benefits until:

(A) The case or charges, or both if both are pending, are dismissed; or

(B) The member is found not guilty in the criminal case or prevails in the criminal proceeding; or

(C) The member is convicted or found to have engaged in criminal conduct in the criminal proceeding.

(ii) If the case or charges are dismissed or if a member is found not guilty or prevails in the criminal proceeding, the department shall pay the member a disability benefit if they otherwise qualify.

(iii) If the member is convicted or found to be liable for criminal conduct in a criminal proceeding, and the member's disability is the result of the criminal conduct, the department shall not pay the member a disability benefit.

(iv) In the absence of a criminal conviction, a superior court may determine by a preponderance of the evidence whether the person participated in criminal conduct.

**(6) Who decides if I meet the requirements for benefits under this section?** The director of the department of retirement systems (DRS) or their designee will decide if you meet the requirements for benefits under this section.

**(7) What if I disagree with a decision made by the director or their designee?** If you disagree with the decision of the director of DRS or their designee, you may petition for review under chapter 415-04 WAC.

**(8) 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 41.37.090(3) or contact the department.

**(9) 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 benefit from your active system, you will also be eligible for a service retirement calculated under the laws governing the inactive system.

**(10) How long will I continue to receive a monthly disability allowance?** You may receive a monthly disability allowance throughout your lifetime, subject to the provisions of subsection (11) of this section.

**(11) Is it possible to lose my monthly disability allowance after I begin receiving it?**

(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 a disability allowance if 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 41.37.010, at comparable compensation; and

(iii) If your monthly disability allowance is from a catastrophic duty disability, also refer to WAC 415-106-550.

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

(12) **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 PSERS 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 must pay the actuarial value of the resulting increase in your future retirement benefit. See RCW 41.50.165 and 41.37.200.

(13) **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.

[Statutory Authority: RCW 41.50.050 and 41.37.230. WSR 24-08-071, § 415-106-490, filed 4/2/24, effective 4/3/24.]

**WAC 415-106-500 PSERS disability benefit.** (1) **Am I eligible for a PSERS disability benefit?** You are eligible for a disability benefit if, at the time of your separation from employment, you are totally incapacitated to perform the duties of your job or any other PSERS position 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 a monthly disability allowance?**

(a) If you have at least 10 years of service credit in PSERS, you will receive a monthly allowance equal to two percent of your AFC times your 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 **60**. Your monthly allowance may be further reduced to offset the cost of the benefit option you choose. See WAC 415-106-600.

(b) If you have less than 10 years of service credit, you will receive a monthly allowance<sup>1</sup> equal to two percent of your AFC times your 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 **65**. Your monthly allowance may be further reduced to offset the cost of the benefit option you choose. See WAC 415-106-600.

<sup>1</sup>You may choose to receive a lump sum payment instead of a monthly allowance if your initial monthly allowance will be less than \$50. See RCW 41.37.200.

See WAC 415-02-320 for early retirement factors and examples.

**(3) Once my application is approved, when will my monthly allowance begin?**

(a) Your disability allowance will accrue from 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 payment will include all retroactive benefits to which you are entitled.

(c) Department approval will expire 90 days after the approval date if you have not officially separated from PSERS employment.

(i) If you are continuing to perform the duties of your position or another PSERS position, you may reapply for disability benefits according to WAC 415-106-490 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.

[Statutory Authority: RCW 41.50.050 and 41.37.230. WSR 24-08-071, § 415-106-500, filed 4/2/24, effective 4/3/24. Statutory Authority: RCW 41.50.050. WSR 22-13-091, § 415-106-500, filed 6/13/22, effective 7/14/22; WSR 20-06-040, § 415-106-500, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050(5), 41.37.010(4), 41.37.090(3), 41.37.100, 41.37.200, 41.37.230, 41.50.165, and chapter 41.54 RCW. WSR 08-02-046, § 415-106-500, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-510 Does my disability qualify me for a PSERS catastrophic duty disability benefit?** (1) If the department determines you are disabled and you became disabled in the line of duty, you qualify for a catastrophic duty disability if:

(a) The disability or disabilities that qualified you for a PSERS disability benefit are so severe that considering your age, education, work experience, and transferable skills, you cannot engage in any other kind of substantial gainful activity in the labor market; and

(b) Your disability or disabilities have lasted or are expected to last at least 12 months, or are expected to result in your death.

(2) A person with multiple injuries/conditions, some duty-related and some not, could qualify for a catastrophic duty disability but only if the duty injury or injuries, standing on their own, are catastrophically disabling.

Example 1:

Totally disabled, but not from a duty injury - Not eligible for a catastrophic duty disability benefit.

A PSERS member suffers a knee injury on duty, leaving them disabled from PSERS employment. The knee injury, by itself, is not totally disabling. The member also suffers from amyotrophic lateral sclerosis (ALS) or Lou Gehrig's disease, a progressive neurodegenerative disease that ultimately leaves the member totally disabled. Pursuant to the ALS diagnosis the member is granted a full disability from the Social Security Administration. In this case the member would qualify for a

disability, but not for a catastrophic duty disability because the fully disabling condition, ALS, is not duty related.

Example 2:

Totally disabled, duty injury totally disabling - Eligible for catastrophic duty disability benefits.

A PSERS member suffers a knee injury while fishing. The knee injury, by itself, is neither duty related nor catastrophically disabling. The member also suffers severe injuries on the job while responding to an emergency event at a correctional facility, leaving the member fully disabled. The Social Security Administration grants the member a full disability based on the member's total condition. The member qualifies for a PSERS catastrophic duty disability benefit because the severe injuries, by themselves, render the member totally disabled.

(3) If you receive catastrophic duty disability benefits, the department will periodically review your income and medical status for continued eligibility. This review is not a reassessment of your initial determination, but an assessment of whether there has been any change in your condition. If it is determined that there has been a change in your condition and you are no longer eligible under subsection (1) of this section, or if you fail to provide required documentation or cooperate with the review, your catastrophic duty disability benefit may be discontinued or converted to a different retirement type. DRS will notify you of your review at least 30 days before it starts.

(a) Income review: At least annually, you must submit documentation to verify that your income from earnings is below the defined income threshold as defined in subsection (4)(c) of this section. You must also notify the department within 30 calendar days of any changes in your income that could impact your eligibility including, but not limited to, wages and earnings from self-employment (see subsection (4)(c), (d) and (f) of this section). If DRS is not notified on time, you may be responsible for any resulting overpayment.

Documentation you may need to provide includes a federal or state income tax return from the most recent year, employment security records for the last four quarters, self-employment documents or 1099-R, or other documentation as requested by the department.

(b) Medical review: The department will conduct a continuing disability review (CDR) at least once every three years if at the time of your last determination your condition is expected to improve, or every six years if your condition is not expected to improve, until you reach age 65. The department may increase the frequency of your CDRs and reserves the right to require a CDR at any time if notified of a change in your condition, but not more than once every 12 months. The department may also waive the CDR if your disability is determined to be permanent or terminal.

(i) DRS will first review any updated medical information available from any labor and industries claims related to your line of duty injury to determine if additional medical information is needed from you and your primary care provider.

(ii) If needed, the department will provide you with a Disability Review form, which asks for information about whether your medical condition has improved since your last eligibility determination. You will have at least 30 days to complete and return this form to the department or notify the department that you need additional time. Once received, the department will have 90 days to review this information and either notify you of your continued eligibility or the need for

additional information. Before making a change to your disability retirement status, the department may consult with a contracted vendor for the purpose of providing an independent medical review.

(4) Definitions. As used in this section:

(a) **Catastrophically disabled** means the same as "totally disabled" as defined under RCW 41.37.230(3).

(b) **Continuing disability review (CDR)** means an assessment of your current medical condition to determine if it continues to be catastrophically disabling. The department will review recent documentation, with supplemental assessment by external medical experts at the department's discretion.

(c) **Defined income threshold** means any substantial gainful activity that produces average earnings, as defined in (d) of this subsection, in excess of the federal Social Security disability standards, adjusted annually for inflation. Wages count toward earnings when they are earned, not when you receive them. Self-employment income counts when you receive it, not when you earn it.

(d) **Earnings** are any income or wages received, which are reportable as wages or self-employment income to the IRS.

(e) **Labor market** is the geographic area within reasonable commuting distance of where you were last gainfully employed or where you currently live, whichever provides the greatest opportunity for gainful employment.

(f) **Substantial gainful activity** describes a level of work activity and earnings. Substantial gainful activity is work activity that is both substantial and gainful, and it may be, but is not required to be, from work or self-employment. Earnings as defined in this section include compensated work activity that meets or exceeds the defined income threshold:

(i) Work activity is substantial if it involves doing significant physical or mental activities. Your work activity may be substantial even if it is done on a part-time basis or if you do less, or get paid less, or have less responsibility than when you worked in your PSERS position.

(ii) Work activity is gainful if it is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

(iii) Generally, activities like taking care of yourself, household tasks, profits from rental income, hobbies, therapy, school attendance, club activities, or social programs are not substantial gainful activity.

(g) **Transferable skills** are any combination of learned or demonstrated behavior, education, training, work traits, and skills that you can readily apply. They are skills that are interchangeable among different jobs and workplaces.

[Statutory Authority: RCW 41.50.050 and 41.37.230. WSR 24-08-071, § 415-106-510, filed 4/2/24, effective 4/3/24.]

**WAC 415-106-520 How are the PSERS catastrophic duty disability benefits calculated?** (1) **Catastrophic duty disability:** As a catastrophic duty disability retiree, you may choose between:

- (a) A taxable, one-time lump-sum payment; or
- (b) A monthly benefit equal to:

(i) Seventy percent of your average final compensation (AFC), which is nontaxable, reduced by any disability benefits provided under

Title 51 RCW and federal Social Security disability benefits (SSDI), if necessary to ensure that the total combined benefits do not exceed 100 percent of the member's average final compensation (AFC). Any such adjustment will be applied prospectively from the time the Title 51 RCW or Social Security determination is made, even if the Title 51 RCW or Social Security disability (SSDI) benefits are retroactively adjusted.

(ii) The reduced benefit cannot be less than the earned service retirement benefit. When the earned service benefit is more than the reduced benefit, the difference is taxable (subject to any basis recovery).

**Calculation of monthly disability benefit:**

**Example 1:** Terry was approved for catastrophic duty disability. The average final compensation (AFC) was \$10,000. Terry was not receiving benefits from L&I or Social Security disability insurance (SSDI). Terry had 20 years of service credit at the time of retirement. To determine the catastrophic duty disability benefit amount:

1. 70% of AFC = Monthly disability benefit  
 $.70 \times \$10,000 = \$7,000$
2.  $2\% \times \text{AFC} \times \text{Service Years} = \text{Earned benefit}$   
 $.02 \times \$10,000 \times 20 = \$4,000$

Since there is no offset and the monthly disability benefit is greater than the earned benefit, Terry's nontaxable monthly benefit will be \$7,000.

**Example 2:** Pat was approved for catastrophic duty disability. The average final compensation (AFC) was \$10,000. Pat was receiving benefits from L&I and Social Security disability insurance (SSDI) in the amounts of \$5,000 and \$2,000. Pat had 2 years of service credit at the time of retirement. To determine the catastrophic duty disability benefit amount:

1. 70% of AFC = Monthly disability benefit  
 $.70 \times \$10,000 = \$7,000$
2. Monthly disability benefit + L&I benefits + SSDI benefit = Total of all benefits  
 $\$7,000 + \$5,000 + \$2,000 = \$14,000$
3. Total of all benefits - AFC = Reduction amount  
 $\$14,000 - \$10,000 = \$4,000$
4. Monthly disability benefit - Reduction amount = Reduced monthly benefit  
 $\$7,000 - \$4,000 = \$3,000$
5.  $2\% \times \text{AFC} \times \text{Service Years} = \text{Earned benefit}$   
 $.02 \times \$10,000 \times 2 = \$400$

Since the reduced monthly benefit amount is greater than the earned benefit, Pat's nontaxable monthly benefit will be \$3,000.

**Example 3:** Chris was approved for catastrophic duty disability. The average final compensation (AFC) was \$10,000. Chris was receiving benefits from L&I and Social Security disability insurance (SSDI) in the amounts of \$5,000 and \$2,000. Chris had 20 years of service credit at the time of retirement. To determine the catastrophic duty disability benefit amount:

1. 70% of AFC = Monthly disability benefit  
 $.70 \times \$10,000 = \$7,000$
2. Monthly disability benefit + L&I benefits + SSDI benefit = Total of all benefits  
 $\$7,000 + \$5,000 + \$2,000 = \$14,000$

3.	Total of all benefits - AFC	=	Reduction amount (to not exceed 100% of AFC)
	\$14,000 - \$10,000	=	\$4,000
4.	Monthly disability benefit - Reduction amount	=	Reduced monthly benefit
	\$7,000 - \$4,000	=	\$3,000
5.	2% × AFC × Service Years	=	Earned benefit
	.02 × \$10,000 × 20	=	\$4,000
6.	Earned benefit - Reduced monthly benefit	=	Difference
	\$4,000 - \$3,000	=	\$1,000

Chris is entitled to the greater of the catastrophic duty disability retirement calculation or the earned benefit. Since the earned benefit is greater than the reduced catastrophic duty disability benefit, Chris' monthly benefit will be \$4,000 and \$1,000 of that benefit will be taxable (subject to any basis recovery).

[Statutory Authority: RCW 41.50.050 and 41.37.230. WSR 24-08-071, § 415-106-520, filed 4/2/24, effective 4/3/24.]

**WAC 415-106-530 Is my disability benefit affected by choosing a survivor option?**

(1) If you choose a benefit option with a survivor feature at the time of retirement, your survivor beneficiary will receive an ongoing monthly disability benefit after your death. Your disability benefit will be actuarially reduced to offset the cost of providing payments over two lifetimes. The survivor options are further described in WAC 415-106-600. See WAC 415-02-380 for more information and examples on how the actuarial reduction is applied for a survivor benefit.

(2) If your retirement status changes due to the department's acceptance of a new retirement application from service retirement to a disability retirement or catastrophic duty disability retirement, or a disability retirement to a catastrophic duty disability retirement, you may select a different survivor benefit option. Your benefit will be recalculated to reflect your new survivor option.

Example 1: Pat retired with a disability retirement benefit with survivor option three (50%). Pat's condition worsened. Pat applied for and was granted a catastrophic duty disability retirement. Pat selected survivor option two (100%) on the catastrophic application. Pat's catastrophic duty disability retirement benefit will be calculated to reflect this survivor option.

Example 2: Pat retired with a disability retirement benefit with survivor option two (100%) for their spouse. Pat's condition worsened. Pat applied for and was granted a catastrophic duty disability retirement benefit. Pat selected survivor option one (no ongoing survivor benefit after Pat's death). Pat's spouse will need to agree to this survivor option and the application will need to be notarized.

[Statutory Authority: RCW 41.50.050 and 41.37.230. WSR 24-08-071, § 415-106-530, filed 4/2/24, effective 4/3/24.]

**WAC 415-106-540 Is my catastrophic duty disability benefit reduced for early retirement?** If you retire for a catastrophic duty disability, your disability benefit will not be reduced for early retirement.

[Statutory Authority: RCW 41.50.050 and 41.37.230. WSR 24-08-071, § 415-106-540, filed 4/2/24, effective 4/3/24.]

**WAC 415-106-550 When does my disability benefit end?** The department may require comprehensive medical or psychological examinations to reevaluate your continued eligibility for disability benefits. For catastrophic duty disability benefits, the department may also require or offer to provide comprehensive vocational examinations and/or submission of earnings information to evaluate your continued eligibility. You are required to contact the department if your medical/vocational or financial situation changes.

(1) Your disability benefit will cease if:

(a) You return to work in a PSERS-eligible position; or

(b) Medical examination reveals you are no longer totally incapacitated for employment in a PSERS-eligible position.

(2) Your catastrophic duty disability benefit will cease if:

(a) You return to work in a PSERS-eligible position;

(b) Medical/vocational examination, or other information commonly available or provided to the department by an employer, reveals that your disability no longer prevents you from performing substantial gainful activity; or

(c) Your earnings exceed the threshold for substantial gainful activity.

If you believe you are capable of returning from your disability to work for your former employer and your employer agrees that you have met their requirements (examples could include a fit for duty test or polygraph), your disability benefit will end on the date you start working, as reported to the department by your employer. If you do not meet the requirements of your employer, you may challenge your employer's decision through the collective bargaining process, or other legal process against your employer.

[Statutory Authority: RCW 41.50.050 and 41.37.230. WSR 24-08-071, § 415-106-550, filed 4/2/24, effective 4/3/24.]

**WAC 415-106-560 Can my disability retirement type change?** Your disability retirement type may change depending upon the circumstances.

If your original disabling condition or conditions worsen, improve, or you recover, the department may adjust your benefit.

(1) Worsening - If the condition or conditions that caused your disability worsen, your retirement may be changed to a catastrophic duty disability. The timing of this change is dependent on medical determination dates. You must submit an application and provide sufficient medical evidence to support a claim that your condition or conditions qualify you for a catastrophic duty disability. The worsening must be caused by or directly related to the original injury or injuries or illness and not due to the natural aging process or a succeeding cause.

Example 1: A member retires on a disability retirement due to a knee injury. The member has surgery related to the knee injury after retirement and suffers side effects from the surgery that prevent the member from performing any substantial gainful employment. The member is eligible to have their benefit adjusted because the aggravation is directly related to the original injury.

Example 2: A member retires on a disability retirement due to a knee injury. The member reinjures the knee in a skiing accident and is rendered unable to perform any substantial gainful employment. The member is not eligible to have their benefit adjusted because the aggravation is the result of a succeeding cause and not the original injury.

Example 3: A member retires on a disability retirement due to a knee injury. The condition gradually worsens over time until the member is no longer capable of substantial gainful employment. The member is not eligible to have their benefit adjusted because the aggravation is due to aging.

(2) Improvement - If your condition or conditions improve such that you are capable of substantial gainful employment, the department will adjust your catastrophic duty disability benefit to a disability benefit.

(3) Recovery - If your condition or conditions improve such that you are able to return to work in a PSERS-eligible position, the department will terminate your disability retirement or convert you to a normal retirement benefit if you are eligible.

[Statutory Authority: RCW 41.50.050 and 41.37.230. WSR 24-08-071, § 415-106-560, filed 4/2/24, effective 4/3/24.]

## RETIREMENT

**WAC 415-106-600 What are my retirement benefit options?** Upon retirement for service under RCW 41.37.210 or retirement for disability under RCW 41.37.230, you must choose to have your retirement benefit paid to you by one of the options described in this section.

(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.** 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 verified 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 41.37.170(2).

(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 41.37.170(2).

(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 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.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following five 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 41.37.050(3).

(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.

(e) **Retirement type changes.** If your retirement status changes due to the acceptance of a new retirement application from service retirement to a disability or catastrophic retirement, or disability to catastrophic retirement, you may select a different survivor benefit option. Your benefit will be recalculated to reflect your new survivor option in accordance with WAC 415-106-530.

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

(a) 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:

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

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

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) 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:

(i) 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.

(ii) 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.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate. See RCW 41.37.170.

[Statutory Authority: RCW 41.50.050 and 41.37.230. WSR 24-08-071, § 415-106-600, filed 4/2/24, effective 4/3/24. Statutory Authority: RCW 41.50.050. WSR 22-01-061, § 415-106-600, filed 12/8/21, effective 1/8/22; WSR 20-13-065, § 415-106-600, filed 6/15/20, effective 7/16/20; WSR 20-06-040, § 415-106-600, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-106-600, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.37.170, 41.50.050(5), 41.37.050, 41.37.170, 41.37.210, 41.37.230, and 41.50.790. WSR 08-02-046, § 415-106-600, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-610 How do I apply for retirement benefits?** You should apply for retirement benefits at least thirty days before your intended retirement date. You can apply online at the department's website or by submitting to the department:

(1) A completed and signed retirement application, verified by notarization or other means acceptable to the department, including:

(a) Your selection of one of the benefit options described in WAC 415-106-600.

(b) Designation of a survivor beneficiary if you selected a benefit option with a survivor feature.

(c) If you are married, your spouse's consent may be required as described in WAC 415-106-600.

(2) Evidence of your birth date, only if requested by the department, such as a photocopy of your birth certificate, passport or passport card, government-issued driver license or identification card, NEXUS card, naturalization certificate, certificate of armed services record U.S. DD-214, or other documentation acceptable to the department. If you are requested to submit evidence, the document you submit must include the month, day, and year of your birth.

(3) If you selected a benefit option with a survivor feature, acceptable evidence of your designated survivor beneficiary's birth date which includes the month, day, and year of birth.

[Statutory Authority: RCW 41.50.050. WSR 20-13-065, § 415-106-610, filed 6/15/20, effective 7/16/20; WSR 20-06-040, § 415-106-610, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050(5). WSR 16-21-059, § 415-106-610, filed 10/14/16, effective 11/14/16. Statutory Authority: RCW 41.50.050(5), 41.37.170 and 41.50.790. WSR 08-02-046, § 415-106-610, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-620 How does the department calculate my retirement allowance?** (1) When you apply for retirement, you will first receive a provisional retirement allowance.

(a) The department will calculate the provisional allowance based on:

(i) The data for service credit and reportable compensation in the department's system at the time it is calculated; and

(ii) Projections of your salary for periods that have not yet been reported by your employer.

(b) The department will pay you the provisional allowance until your actual retirement allowance has been calculated.

(2) To compute your actual allowance, the department must receive a final compensation report from your employer. The department may also require any of the following from your employer:

(a) Earnings history.

(b) Copies of your employment contract(s).

(c) Copies of your employer's compensation policies.

(3) The department will make a final calculation of your actual retirement allowance by making a final determination of your service credit and AFC and by applying the correct formula to these values. Your actual retirement allowance may be higher or lower than your provisional allowance.

(4) If the amount of your actual allowance is different from your provisional allowance, the department will make the necessary adjustments.

(a) If you were underpaid, the department will pay you a lump sum payment equal to the difference of the total provisional payments you received and the total you would have received based on your actual allowance.

(b) If you were overpaid, the department will recover the overpayment either through a lump sum payment, monthly installment payments, or through an actuarial reduction of your actual allowance.

[Statutory Authority: RCW 41.50.050(5) and 41.37.190. WSR 08-02-046, § 415-106-620, filed 12/27/07, effective 1/27/08.]

## POSTRETIREMENT EMPLOYMENT

### WAC 415-106-700 What are the return to work rules for PSERS?

(1) **How soon can I return to work after I retire without impacting my PSERS retirement benefit?** You may begin working immediately after you retire without impacting your PSERS retirement benefit if:

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

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

(c) Your only employment is as an elected official and you are not a PERS member; or

(d) You work in an ineligible position.

(2) If you return to work in a **PERS, SERS, or TRS Plan 2 or Plan 3, or LEOFF Plan 2 eligible position**, your retirement benefit will be affected as follows:

(a) If you retire and then return to work sooner than 30 consecutive calendar days from your accrual date (effective retirement date), your monthly retirement benefit will be reduced in accordance with RCW 41.37.050(1) until you remain absent for at least 30 consecutive calendar days.

(b) If you retire and remain absent at least 30 consecutive calendar days from your accrual date, you may work up to 867 hours each calendar year before your retirement benefit is suspended.

(3) If you return to work in an eligible **PSERS position**, your retirement benefit will be affected as follows:

(a) If you elect to reenter membership, your retirement benefit will be suspended. When you rerehire, your retirement benefit will be recalculated pursuant to WAC 415-106-710.

(b) If you return to an eligible PSERS position within 30 consecutive days of your accrual date (effective retirement date) and do not reenter membership, your monthly retirement benefit will be reduced by five and one-half percent for every eight hours you work during that month. This reduction will be applied each month until you remain absent for 30 consecutive calendar days. The reduction will accrue for a maximum of 160 hours per month. Any reduction over 100 percent will be applied to the benefit you are eligible to receive in subsequent months. See RCW 41.37.050(1).

(c) If you return to an eligible PSERS position after being absent for 30 consecutive calendar days from your accrual date (effective retirement date) and do not reenter membership, your retirement benefit will be suspended until you separate from PSERS employment.

(4) If you return to work after retirement from PSERS and another DRS retirement system, see WAC 415-113-300 to determine the effect of returning to work.

(5) **What is the annual limit?**

(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.

(b) **Eight hundred sixty-seven-hour limit.** You may work up to 867 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.

(c) **One thousand forty-hour limit.** From April 14, 2023, through July 1, 2026, if you had a 30-day break from your accrual date, you may work up to 1,040 hours in a calendar year, at a state agency or higher education institution in a nonadministrative position as a licensed nurse.

(6) **What hours are counted toward the limit?**

(a) **Counted toward the annual 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.

(7) **What happens if I work more than the annual 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 identified in subsection (2) of this section, 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.

(8) **Terms used.**

(a) Accrual date - RCW 41.37.240.

(b) PSERS: Public safety employees' retirement system.

(c) Eligible position - RCW 41.37.010; WAC 415-106-100.

(d) Ineligible position - RCW 41.37.010.

(e) Membership - RCW 41.37.020.

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

[Statutory Authority: RCW 41.50.050, 2022 c 110, 2023 c 99, and 2023 c 410. WSR 23-24-091, § 415-106-700, filed 12/5/23, effective 12/7/23. Statutory Authority: RCW 41.50.050. WSR 22-13-091, § 415-106-700, filed 6/13/22, effective 7/14/22. Statutory Authority: RCW 41.50.050(5). WSR 16-17-047, § 415-106-700, filed 8/11/16, effective 9/11/16. Statutory Authority: RCW 41.50.050(5), 41.37.050, 41.50.130, chapters 41.32, 41.35, and 41.40 RCW. WSR 08-02-046, § 415-106-700, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-710 How does the department calculate my retirement allowance if I reenter PSERS membership and then reretire?** If you return to work in an eligible PSERS position, you have the option of re-

entering membership. If you reenter membership, your retirement allowance will be calculated according to this section when you reretire.

**(1) If you previously retired before age sixty, the department will:**

(a) Calculate your retirement allowance pursuant to RCW 41.37.190 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 AFC 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 account for any lump sum payment you took at the time of your previous retirement, plus interest, unless you choose to repay the entire amount before you reretire;

(iii) To reflect the difference in the number of years between your current age and the attainment of age sixty, if you are not yet age sixty; and

(iv) To offset the cost of your benefit option if it includes a survivor feature. See WAC 415-106-600.

**(2) If you previously retired at or after age sixty, the department will:**

(a) Calculate your retirement allowance pursuant to RCW 41.37.190 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 AFC resulting from your reentry into membership; and

(b) Actuarially reduce your retirement allowance:

(i) To account for any lump sum payment you took at the time of your previous retirement, plus interest, unless you choose to repay the entire amount before you reretire; and

(ii) To offset the cost of your benefit option if it includes a survivor feature. See WAC 415-106-600.

(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), 41.37.050, 41.37.180, and 41.37.190. WSR 08-02-046, § 415-106-710, filed 12/27/07, effective 1/27/08.]

**WAC 415-106-725 If I have retired from another retirement system or am eligible to retire, am I excluded from participating in PSERS?**

(1) If you have **retired** from another retirement system authorized by the laws of this state, you cannot participate in PSERS membership unless:

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

(b) You are a LEOFF Plan 2 retiree returning to work in a PSERS eligible position and choose to participate in PSERS 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 PSERS membership unless:

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

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

(4) **Defined terms used.** Definitions for the following terms used in this section are:

(a) "Membership" - RCW 41.37.020.

(b) "Service" - RCW 41.37.010.

(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, § 415-106-725, 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, § 415-106-725, filed 9/10/09, effective 10/11/09.]

**WAC 415-106-900 How do I designate a beneficiary, and who will receive a distribution if I die before retirement?** (1) 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 and a witness.

(2) 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 distribution to any trust, the department must receive:

(i) A copy of the entire trust document;

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

(iii) The tax identification number.

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

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

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

(6) Your named beneficiary may not necessarily receive a distribution if you die prior to retirement. (See example three.) Distribution is governed by RCW 41.37.250.

(7) If your surviving spouse is eligible to receive a benefit under RCW 41.37.250(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.

#### 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 41.37.250.

#### 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, Barbara, personally, will not be a beneficiary.

EXAMPLE THREE.

**Facts**

When she became a PSERS member, Joan named her mother as her beneficiary. Joan later married, but did not file a new beneficiary form before she died with eleven years of service.

**Result**

Unless required to do otherwise by a court order, the department will comply with RCW 41.37.250(2) and pay Joan's surviving spouse either a retirement allowance or lump sum. In this case, Joan's mother will not receive a distribution.

EXAMPLE FOUR.

**Facts**

John is a PSERS 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 41.37.250(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) and 41.37.250. WSR 08-02-046, § 415-106-900, filed 12/27/07, effective 1/27/08.]