

WSR 21-11-111
EXPEDITED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed May 19, 2021, 10:37 a.m.]

Title of Rule and Other Identifying Information: Chapter 415-02 WAC, General rules affecting multiple plans and systems; and chapter 415-108 WAC, Public employees' retirement system.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To eliminate subsection numbers in citations for definitions.

Reasons Supporting Proposal: Lists of definitions in RCW and WAC are alphabetized, so subsection numbers change when new terms are added. Eliminating references to specific subsections will remove and avoid incorrect citations.

Statutory Authority for Adoption: RCW 41.50.050.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of retirement systems (DRS), governmental.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Jilene Siegel, DRS, P.O. Box 48380, Olympia, WA 98504-8380, phone 360-664-7291, email drs.rules@drs.wa.gov, AND RECEIVED BY July 19, 2021.

May 19, 2021
Jilene Siegel
Rules Coordinator

OTS-2585.1

AMENDATORY SECTION (Amending WSR 20-13-064, filed 6/15/20, effective 7/16/20)

WAC 415-02-030 Definitions. This section contains definitions of words and phrases commonly used in the department of retirement systems' rules. It also serves as a directory for finding definitions within the RCW and WAC.

(1) **Accumulated contributions** means the sum of all contributions paid into a member's defined benefit account, including interest.

(2) **Appeal** means the proceeding through which a party obtains review of a department action in an adjudicative proceeding conducted

under chapter 34.05 RCW (the Administrative Procedure Act) and chapter 415-08 WAC (the department's appeal rules).

(3) **Average final compensation** is defined in RCW 41.32.010(~~((+30+))~~) (TRS); RCW 41.35.010(~~((+14+))~~) (SERS); RCW 41.40.010(~~((+17+))~~) (PERS); and RCW 41.37.010(~~((+14+))~~) (PSERS).

(4) **Average final salary** for WSPRS is defined in RCW 43.43.120(~~((+15+))~~).

(5) **Cafeteria plan** means a "qualified" employee benefit program under IRC section 125, such as certain health and welfare plans.

(6) **Calendar month.**

(a) Refers to one of the twelve named months of the year, extending from the first day of the named month through the last day. For example: January 1st through January 31st is a calendar month. February 1st through February 29th is a calendar month in a leap year. March 13th through April 12th is **not** a calendar month.

(b) Exception: For the purpose of administering the break in employment required by RCW 41.32.570, 41.32.802, 41.32.862, 41.35.060, 41.37.050 and 41.40.037 for retirees returning to work, one calendar month means thirty consecutive calendar days. For example: Kim's retirement date is August 1st. August 31st would be the earliest Kim could return to work and meet the requirement for a one calendar month break in employment.

(7) **Compensation earnable or earnable compensation** definitions can be found in RCW 41.32.010(~~((+10+))~~) and 41.32.345 (TRS); RCW 41.35.010(~~((+6+))~~) (SERS); RCW 41.37.010(~~((+6+))~~) (PSERS); and RCW 41.40.010(~~((+8+))~~) (PERS).

(8) **Contribution rate** is:

(a) For employees: The fraction (percent) of compensation a member contributes to a retirement system each month.

(b) For employers: The fraction (percent) of payroll a member's employer contributes to a retirement system each month. Contribution rates vary for the different systems and plans.

(9) **Deferred compensation** refers to the amount of the participant's compensation, which the participant voluntarily defers from earnings before taxes to a deferred compensation program.

(10) **Defined benefit plan** is a pension plan in which a lifetime retirement allowance is available, based on the member's service credit and compensation.

(11) **Defined contribution plan** is a plan in which part of members' or participants' earnings are deferred into investment accounts in which tax is deferred until funds are withdrawn. The benefit is based on the contributions and the amount of return from the investment of the contributions. Members or participants receive the full market rate of return minus expenses. There is no guaranteed rate of return and the value of an account will increase or decrease based upon market fluctuations.

(12) **Department** means the department of retirement systems.

(13) **Director** means the director of the department of retirement systems.

(14) **Employee** means a worker who performs labor or services for a retirement systems employer under the control and direction of the employer as determined under WAC 415-02-110(2). An employee may be eligible to participate as a member of one of the state-administered retirement systems according to eligibility requirements specified under the applicable retirement system.

(15) **Employer** is defined in RCW 41.26.030(~~((2))~~) (LEOFF), 41.32.010(~~((11))~~) (TRS), 41.34.020(~~((5))~~) (Plan 3), 41.35.010(~~((4))~~) (SERS), 41.37.010(~~((4))~~) (PSERS) and 41.40.010(~~((4))~~) (PERS).

(16) **Ex-spouse** refers to a person who is a party to a "dissolution order" as defined in RCW 41.50.500(~~((3))~~).

(17) **Final average salary for LEOFF** is defined in RCW 41.26.030(~~((12))~~).

(18) **First employed by an eligible employer in an eligible position** means, for purposes of plan default, first employment with an employer, in an eligible position, with which a member has fully exhausted their plan choice rights.

(19) **HERPs** mean higher education retirement plans described in chapter 28B.10 RCW, which are non-DRS retirement plans offered by institutions of higher education, such as, but not limited to, University of Washington retirement plan (UWRP) and Western Washington University retirement plan (WWURP).

(20) **Independent contractor** means a contract worker who is not under the direction or control of the employer as determined under WAC 415-02-110 (2) and (3).

(21) **IRC** means the Federal Internal Revenue Code of 1986, as subsequently amended.

(22) **Indexed retirement allowance** means a defined benefit retirement allowance from an indexed retirement plan, payable to a member who separates after having completed at least twenty service credit years, that is increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date that the retirement allowance commences.

(23) **Indexed retirement plan** means one of the following retirement plans, which are administered by the department of retirement systems and provide an indexed retirement allowance: Law Enforcement Officers' and Firefighters Retirement System Plan 2 (RCW 41.26.530), Public Employees' Retirement System Plan 3 (RCW 41.40.790), School Employees' Retirement System Plan 3 (RCW 41.35.620), and Teachers' Retirement System Plan 3 (RCW 41.32.840).

(24) **JRF** means the judges' retirement fund created by chapter 2.12 RCW.

(25) **JRS** means the Washington judicial retirement system created by chapter 2.10 RCW.

(26) **LEOFF** means the Washington law enforcement officers' and firefighters' retirement system created by chapter 41.26 RCW.

(27) **Member** means a person who is included in the membership of one of the retirement systems created by chapters 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW.

(28) **Nonadministrative position or nonadministrative capacity** refers to retirees returning to work in a position at a school district, charter school, educational service district, state school for the deaf, state school for the blind, or tribal school which:

(a) Does not require an administrative certification, as defined by the office of the superintendent of public instruction, (currently positions requiring the certification include: Principal, vice principal, program administrator, conditional administrator, superintendent or program administrator certifications); or

(b) Does not evaluate staff.

(29) **Normal retirement** means qualifying for retirement based on the standard age and service credit requirements as specified in RCW 2.10.100 (JRS), 2.12.020 (JRF), 41.26.090 (LEOFF Plan 1), 41.26.430(1) (LEOFF Plan 2), 41.32.470 (TRS Plan 1), 41.32.765(1) (TRS Plan 2),

41.32.875(1) (TRS Plan 3), 41.35.420(1) (SERS Plan 2), 41.35.680(1) (SERS Plan 3), 41.37.210(1) (PSERS), 41.40.180 (PERS Plan 1), 41.40.630(1) (PERS Plan 2), 41.40.820(1) (PERS Plan 3), or 43.43.250 (WSPRS).

(30) **Participant** means an eligible employee who participates in a deferred compensation plan.

(31) **Participation agreement** means an agreement that an eligible employee signs to become a participant in a deferred compensation plan.

(32) **Pension plan** is a plan that provides a lifelong post retirement payment of benefits to employees.

(33) **PERS** means the Washington public employees' retirement system created by chapter 41.40 RCW.

(34) **Petition** means the method by which a party requests a review of an administrative determination prior to an appeal to the director. The department's petitions examiner performs the review under chapter 415-04 WAC.

(35) **Plan 1** means the retirement plans in existence prior to the enactment of chapters 293, 294 and 295, Laws of 1977 ex. sess.

(36) **Plan 2** means the retirement plans established by chapters 293, 294 and 295, Laws of 1977 ex. sess., chapter 341, Laws of 1998, and chapter 329, Laws of 2001.

(37) **Plan 3** means the retirement plans established by chapter 239, Laws of 1995, chapter 341, Laws of 1998, and chapter 247, Laws of 2000.

(38) **Plan choice rights** refers to a member's right, within a ninety-day period, to make an irrevocable choice to become a member of Plan 2 or Plan 3 or be defaulted into a plan after the full ninety-day period has expired.

(a) A member will be reported in Plan 2 until plan choice rights have been exercised.

(b) A member must make a choice within ninety calendar days (computed as described in RCW 1.12.040) from the first day of employment in an eligible position.

(c) A member will be defaulted into a plan if they continue employment in an eligible position past the ninety-day plan choice period without making a choice.

(d) A member may exercise plan choice rights only once per system.

(39) **Plan year** is the twelve-month period that begins on January 1st and ends on December 31st of the same calendar year.

(40) **Portability** is the ability to use membership in more than one Washington state retirement system in order to qualify for retirement benefits. See chapters 41.54 RCW and 415-113 WAC.

(41) **PSERS** means the Washington public safety employees' retirement system created by chapter 41.37 RCW.

(42) **Public record** is defined in RCW (~~(42.17.020(41))~~) 42.56.010.

(43) **Restoration** is the process of restoring a member's service credit for prior periods.

(44) **Retirement system employer** - See "employer."

(45) **Rollover** means a distribution that is paid to or from an eligible retirement plan within the statutory time limit allowed.

(46) **Separation date** is the date a member ends employment in a position eligible for retirement.

(47) **SERS** means the Washington school employees' retirement system created by chapter 41.35 RCW.

(48) **Split account** is the account the department establishes for a member or retiree's ex-spouse.

(49) **Surviving spouse** refers to a person who was married to the member at the time of the member's death and who is receiving or is eligible to receive a survivor benefit.

(50) **Survivor beneficiary** means a person designated by the member to receive a monthly benefit allowance after the member dies.

(51) **Survivor benefit** is a feature of a retirement plan that provides continuing payments to a designee after the death of a member or retiree.

(52) **TRS** means the Washington state teachers' retirement system created by chapter 41.32 RCW.

(53) **The Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA)** is the federal law that requires employers to reemploy and preserve job security, pension and welfare benefits for qualified employees who engage in military service.

(54) **WSPRS** means the Washington state patrol retirement system created by chapter 43.43 RCW.

[Statutory Authority: RCW 41.50.050. WSR 20-13-064, § 415-02-030, filed 6/15/20, effective 7/16/20; WSR 20-01-079, § 415-02-030, filed 12/11/19, effective 1/11/20. Statutory Authority: RCW 41.50.050(5). WSR 16-17-047, § 415-02-030, filed 8/11/16, effective 9/11/16; WSR 16-08-008, § 415-02-030, filed 3/24/16, effective 4/24/16; WSR 10-24-099, § 415-02-030, filed 12/1/10, effective 1/1/11. Statutory Authority: RCW 41.50.050(5) and 41.04.640. WSR 09-01-021, § 415-02-030, filed 12/8/08, effective 1/8/09. Statutory Authority: RCW 41.50.050(5). WSR 06-18-009, § 415-02-030, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5), 41.40.010(42), 41.40.037. WSR 04-04-037, § 415-02-030, filed 1/29/04, effective 3/1/04. Statutory Authority: RCW 41.50.050(5). WSR 02-23-037, § 415-02-030, filed 11/13/02, effective 1/1/03; WSR 02-01-120, § 415-02-030, filed 12/19/01, effective 1/19/02. Statutory Authority: RCW 41.50.050. WSR 00-10-016, § 415-02-030, filed 4/21/00, effective 5/22/00; WSR 94-09-039, § 415-02-030, filed 4/19/94, effective 5/20/94; Order 4, § 415-02-030, filed 7/27/77.]

AMENDATORY SECTION (Amending WSR 04-04-038, filed 1/29/04, effective 3/1/04)

WAC 415-02-200 Can I transfer former LEOFF Plan 1 service? If you are a member of PERS, TRS, SERS, or WSPRS, and you have previously established service credit in LEOFF Plan 1, you may **irrevocably** choose to transfer your LEOFF Plan 1 service to your current retirement system and plan subject to the following conditions:

(1) The choice to transfer service must be filed in writing with the department no later than one year from the date you become employed by a PERS, TRS, SERS, or WSPRS employer in an eligible position.

(2) If you transfer your service credit under this section:

(a) You will forfeit (lose) all rights to benefits as a LEOFF Plan 1 member and will be permanently excluded from membership.

(b) Your transferred service will **not apply** to the eligibility requirements for military service credit as defined in RCW

41.40.170(3) for PERS Plan 1 or in RCW 43.43.260(3) for WSPRS Plan 1.

(3) When you transfer your service credit under this section to your current retirement system and plan, DRS will transfer:

(a) All of your accumulated LEOFF Plan 1 contributions;

(b) An amount sufficient to ensure that the employer contribution rate in your current system and plan will not increase because of the transfer; and

(c) All applicable months of LEOFF Plan 1 service credit, as defined in RCW 41.26.030 (~~((14)(a))~~).

(4) If you previously withdrew contributions from LEOFF Plan 1, you:

(a) May restore the contributions, together with interest as determined by the director, and recover the service represented by the contributions for the sole purpose of transferring service under this section;

(b) Must restore the contributions before the transfer can occur; and

(c) Must complete the restoration within the time limitations specified in subsection (1) of this section.

(5) If you do not meet the time limitations of subsection (1) of this section, you may restore any withdrawn contributions and transfer service under this section by paying the amount required under subsection (3)(b) of this section less any employee contributions transferred.

(6) **Terms used:**

LEOFF - Law enforcement officers' and firefighters' retirement system.

PERS - Public employees' retirement system.

SERS - School employees' retirement system.

TRS - Teachers' retirement system.

WSPRS - Washington state patrol retirement system.

[Statutory Authority: RCW 41.50.050(5), 41.26.195. WSR 04-04-038, § 415-02-200, filed 1/29/04, effective 3/1/04.]

OTS-2620.1

AMENDATORY SECTION (Amending WSR 02-18-046, filed 8/28/02, effective 9/30/02)

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

(1) **Annual leave** means leave provided by an employer for the purpose of taking regularly scheduled work time off with pay. Annual leave does not usually include leave for illness, personal business if in addition to and different from vacation leave, or other paid time off from work. However, if an employer authorizes only one type of leave, covering paid leave for vacation, illness, and any other excused absence from work, such leave will be considered annual leave for purposes of RCW 41.50.150.

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

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

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

(5) **Public corporation** means a public corporation created under RCW 35.21.730. A public corporation may be admitted as an "employer" under the definition in RCW 41.40.010((+4)).

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

(7) **Reportable compensation** means compensation earnable as that term is defined in RCW 41.40.010((+8)).

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

(a) The retirement systems listed under RCW 41.50.030;

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 41.50.050(5) and chapter 41.40 RCW. WSR 02-18-046, § 415-108-010, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5), 35.21.730, 41.40.010(4), chapter 41.40 RCW. WSR 01-21-090, § 415-108-010, filed 10/22/01, effective 11/22/01. Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-010, filed 4/17/98, effective 5/18/98; WSR 95-16-053, § 415-108-010, filed 7/25/95, effective 8/25/95. Statutory Authority: RCW 41.50.050 and Bowles v. Retirement Systems, 121 Wn.2d 52 (1993). WSR 94-11-009, § 415-108-010, filed 5/5/94, effective 6/5/94. Statutory Authority: RCW

41.50.050(5) and 41.40.010 (4) (a). WSR 93-11-077, § 415-108-010, filed 5/18/93, effective 6/18/93. Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-108-010, filed 2/15/78. Formerly WAC 184-01-025 and 184-01-035.]

AMENDATORY SECTION (Amending WSR 20-06-040, filed 2/27/20, effective 3/29/20)

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

Members may also be eligible for benefits from the Washington state departments of labor and industries (workers' compensation benefits) and social and health services, the U.S. Social Security Administration, employers, disability insurers, and others. Please contact these organizations directly for more information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Guarantee that payments should or should not be designated as exempt from federal income tax;

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

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

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

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

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

(14) How is my disability benefit affected if I am a member of more than one retirement system? If you are a member of more than one retirement system, your benefit is governed by portability law (see chapters 41.54 RCW and 415-113 WAC). You may apply for disability only from your active system. However, if you qualify for a disability benefit from your active system, you will also be eligible for a service retirement calculated under the laws governing the inactive system.

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

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

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

(ii) You have been offered reemployment by an employer, as defined in RCW 41.40.010 (~~((4)(b))~~), at a comparable compensation.

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

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

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

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

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

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

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

[Statutory Authority: RCW 41.50.050. WSR 20-06-040, § 415-108-436, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-108-436, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5), 41.40.670 and

41.40.825. WSR 05-12-106, § 415-108-436, filed 5/27/05, effective 6/27/05.]

AMENDATORY SECTION (Amending WSR 02-18-045, filed 8/28/02, effective 9/28/02)

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

(a) Compensation earnable must meet the definition in RCW 41.40.010(~~((8))~~) and:

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

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

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

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

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

(2) Reportable compensation:

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

(b) An employer must report all of an employee's compensation earnable, as defined by RCW 41.40.010(~~((8))~~) and WAC 415-108-445(~~((1))~~), to the department.

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

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

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

AMENDATORY SECTION (Amending WSR 02-03-120, filed 1/23/02, effective 3/1/02)

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

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

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

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

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

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

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

(a) **Plans 2 and 3:** Annual leave cash outs are not reportable compensation. Although the payments are for services provided, they are excluded from the definition of compensation earnable by statute. See RCW 41.40.010 (~~((8)-(b))~~).

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

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

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

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

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

(a) Sick leave cash outs are excluded from the definition of compensation earnable for PERS Plan 2 or 3 members by statute. See RCW 41.40.010 (~~((8)-(b))~~).

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

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

(i) State employees by RCW 41.04.340;

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

(iii) Educational service district employees by RCW 28A.310.490. See RCW 41.40.010 (~~((8)-(a))~~).

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

AMENDATORY SECTION (Amending WSR 02-03-120, filed 1/23/02, effective 3/1/02)

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

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

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

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

(2) **PERS Plans 2 and 3:** All forms of severance pay are excluded from earnable compensation. See RCW 41.40.010 (~~((+8)-(b))~~).

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

AMENDATORY SECTION (Amending WSR 01-08-057, filed 4/2/01, effective 5/3/01)

WAC 415-108-467 Reinstatement or payment instead of reinstatement. (1) Payments to an employee are not earned for services rendered if an employer makes them for periods during which the employee was not employed and the payments are made either upon reinstatement or instead of reinstatement. Nonetheless, RCW 41.40.010(~~((+8))~~) specifically designates these payments as reportable compensation. The payments are only reportable to the extent that they are equivalent to the salary the employee would have earned had he or she been working. The payment will be prorated over the entire period that the employee was suspended, terminated, or otherwise absent from work.

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

(a) The employer; or

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

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

AMENDATORY SECTION (Amending WSR 98-09-059, filed 4/17/98, effective 5/18/98)

WAC 415-108-469 Standby pay. Some employers pay employees for being on "standby." A member is on standby when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work if the need arises, although the need may not arise. Because the member is not actually working, the member is not rendering service. However, RCW 41.40.010(~~((8))~~) specifically identifies standby pay that meets the above requirements as reportable compensation. Although included in the definition of compensation earnable, time spent on standby is excluded from the definition of "service," see RCW 41.40.010(~~((9))~~).

[Statutory Authority: RCW 41.50.050. WSR 98-09-059, § 415-108-469, filed 4/17/98, effective 5/18/98.]

AMENDATORY SECTION (Amending WSR 99-14-008, filed 6/24/99, effective 7/25/99)

WAC 415-108-510 Treatment of cash payments made in lieu of unused leave—First-in-first-out accounting method for determining when leave earned—Forms of leave deemed excess compensation—Conversions.

(1) Cash compensation in lieu of unused annual or sick leave may be considered compensation earnable for Plan 1 members subject to the provisions of RCW 41.40.010 (~~((8)(a))~~) and WAC 415-108-456. Employers may not limit the inclusion of cash compensation paid in lieu of unused annual or sick leave as compensation earnable in conflict with RCW 41.40.010 (~~((8)(a))~~). Provisions of collective bargaining agreements, employment and administrative policies or other rules applied by an employer that conflict with RCW 41.40.010 (~~((8)(a))~~) and rules adopted thereunder are without legal effect.

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 03-08-090, filed 4/2/03, effective 5/1/03)

WAC 415-108-550 Elected officials—Eligibility and application for retirement service membership. (1) **Definition:** For the purposes of this section and WAC 415-108-570, and pursuant to RCW 41.40.010 (~~((25)(b))~~), 41.40.010 (~~((9)(a))~~), 41.40.023 and 41.40.035, "elected" officials means individuals elected to any state, local or political subdivision office or individuals appointed to any vacant elective office.

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

(3) If you are not currently a retiree and when the department approves your application, you may establish membership retroactive to the first day of any previous elected term or terms of office. Your plan membership that you established under subsection (2) of this sec-

tion remains the same. To exercise this option, you must apply to the department pursuant to subsection (2) of this section. When the department approves the application, you must:

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

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

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

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

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

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

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

(6) **Membership length:** Except as provided under RCW 41.40.023

(3) (b), once you become a member of the retirement system you shall remain a member until you separate from all eligible public employment pursuant to RCW 41.40.150. It is not a separation if:

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

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

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

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

AMENDATORY SECTION (Amending WSR 03-08-090, filed 4/2/03, effective 5/1/03)

WAC 415-108-560 Appointed officials—Eligibility and application for retirement service membership. (1) For the purposes of this section and WAC 415-108-570, an "appointed" official is a person who meets the criteria in RCW 41.40.010 (~~((25)(b))~~) and is not excluded by the criteria in RCW 41.40.035.

(2) **Voluntary application for membership:** Under RCW 41.40.023

(3) (a), appointed officials are exempt from mandatory retirement system membership. You have the option to apply for membership during your current term of appointed service. To apply for membership, sub-

mit a written application directly to the department. When the department approves your application you will be entitled to establish membership effective the first day of your current term of appointed service. Once membership is established, you will be required to pay the employee contributions for your current term of appointed service with interest as determined by the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AMENDATORY SECTION (Amending WSR 02-03-120, filed 1/23/02, effective 3/1/02)

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

In evaluating whether your position is eligible for membership, your employer will determine only whether the position meets the criteria of an eligible position under RCW 41.40.010(~~(-25)~~) and WAC 415-108-680(1). Your employer will not consider your membership status or individual circumstances unless you:

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

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

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

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

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

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

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

(ii) If:

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

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

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

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

(a) If your employer has declared your position ineligible, the department will not reclassify your position as eligible until history of the position shows a period of two consecutive years of at least

five months of seventy or more hours of compensated employment each month.

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

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

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

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

AMENDATORY SECTION (Amending WSR 97-19-035, filed 9/9/97, effective 9/9/97)

WAC 415-108-730 Membership for city managers. The purpose of the WAC is to implement the provisions of RCW ((41.40.120(17))) 41.40.023(17) relating to city managers.

Effective immediately and until December 31, 1986 any current member described in RCW ((41.40.120(17))) 41.40.023(17) may, at his/her option, elect to withdraw from membership in the retirement system provided by chapter 41.40 RCW. Such election is to be made in writing on a form provided for that purpose by the department. Persons making this election will be refunded the contributions and related interest which were credited while in their current position. The effect of such a withdrawal will be to terminate and cancel the service credit acquired while in that position. Such action is final and no service credit may ever be obtained in the future for the period ((cancelled)) canceled.

Effective immediately any person described in RCW ((41.40.120(17))) 41.40.023(17) who is employed in one of the positions described shall not become a member of the system provided by chapter 41.40 RCW unless within thirty days of employment in such position he/she shall submit in writing on a form, provided by the department, a waiver of his/her right to be excluded and requesting his/her inclusion in the system. Such a person may not then subsequently withdraw from the system except as provided by RCW 41.40.260 or 41.40.730 as appropriate.

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

AMENDATORY SECTION (Amending WSR 06-04-059, filed 1/27/06, effective 2/27/06)

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

- (1) Have separated from service as defined in RCW 41.40.010((-42));
 - (2) Have no written or oral agreement to return to employment;
- and
- (3) Have applied for retirement, the accrual date has been determined under RCW 41.40.193, 41.40.680, or 41.40.801, and your benefit begins to accrue.

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

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

AMENDATORY SECTION (Amending WSR 02-12-085, filed 6/4/02, effective 6/13/02)

WAC 415-108-980 Will I receive a transfer payment when I transfer to Plan 3? (1) **PERS Plan 3 will be implemented on March 1, 2002.** If you transfer from PERS Plan 2 to PERS Plan 3 during the Phase 1 transfer period and establish service credit in June 2002, or transfer during the Phase 2 transfer period and establish service credit in either June 2002 or February 2003, you will receive a transfer payment to be added to your member account on or after June 1, 2003, once the department receives the transfer information from your employer. The transfer period and payment amount you will receive is based upon your employer type and your account balance as of March 1, 2002.

(a) You will receive a payment of one hundred and ten percent of your **transfer basis** if you are employed in an eligible position by a Phase 1 employer and you transfer to Plan 3 during the Phase 1 transfer period. State agencies and institutes of higher education are Phase 1 employers.

(b) You will receive a payment of one hundred and eleven percent of your **transfer basis** if you are employed in an eligible position by a Phase 2 employer and you transfer to Plan 3 during the Phase 2 transfer period. All other employers are Phase 2 employers.

(2) Your **transfer basis** is your total accumulated contributions (and interest) on March 1, 2002, less fifty percent of any contributions you made under RCW 41.50.165(2).

(3) If you request to transfer but die before payment is made, the transfer payment will be paid immediately to your defined contribution account. These moneys will be distributed when payment is made from your account to your estate, or the person or persons, trust or organization you nominated by the most recent written beneficiary designation filed with the department.

Examples:

Phase 1 Employer (110%) (state agencies and institutes of higher education)

- Al works for a Phase 1 employer and makes \$2,000 a month.
- On March 1, 2002, Al's defined benefit (DB) account balance is \$10,000.
- On June 1, 2002, Al transfers to PERS Plan 3 and chooses contribution rate option A (5%).
- On June 1, 2002, the department transfers approximately \$10,185 to Al's new defined contribution (DC) account. The transfer amount is the sum of:
 - ◆ Al's \$10,000 account balance on March 1, 2002;
 - ◆ Approximately \$50 in contributions between March 1st and June 1st; and
 - ◆ Approximately \$135 in interest in Plan 2 at 5.5% annually, compounded quarterly.
- Al continues working for his Phase 1 employer through June 2003, including the month of June 2002.
- In June 2003, after he receives his transfer payment, Al will have approximately **\$22,385** in his DC account. Here is how:
 - ◆ In June 2002, when Al transferred to Plan 3, he started with approximately \$10,185 in his DC account.
 - ◆ He then made twelve monthly contributions of \$100 (5% of a \$2,000 salary, June 2002 through May 2003) for a total of \$1,200.
 - ◆ In June 2003, he receives a transfer payment of \$11,000 (110% of \$10,000, his account balance on March 1, 2002).
 - ◆ The total is approximate because it will depend on earnings or losses on the investments of the original amount transferred the previous year, and the contributions made to date.

Phase 2 Employer (111%) (local government)

- Peggy works for a Phase 2 employer and makes \$2,000 a month.
- On March 1, 2002, Peggy's defined benefit (DB) account balance is \$10,000.
- On November 1, 2002, Peggy transfers to PERS Plan 3 and chooses contribution rate option A (5%).
- On November 1, 2002, the department transfers approximately \$10,560 to Peggy's new defined contribution (DC) account. The transfer amount is the sum of:
 - ◆ Peggy's \$10,000 account balance on March 1, 2002;
 - ◆ Approximately \$140 in contributions between March 1st and November 1st;
 - ◆ Approximately \$420 in interest in Plan 2 at 5.50% annually, compounded quarterly.

- Peggy continues working for her Phase 2 employer through June 2003, including the month of February 2003*.

- * A Phase 2 employee can establish service credit in either June 2002 or February 2003.

- In June 2003, after she receives her transfer payment, Peggy will have approximately **\$22,360** in her DC account. Here is how:

- ◆ In November 2002, when Peggy transferred to Plan 3, she started with approximately \$10,560 in her DC account.

- ◆ She then made monthly contributions of \$100 (5% of a \$2,000 salary) for a total of \$700.

- ◆ In June 2003, she receives a transfer payment of \$11,100 (111% of \$10,000, her account balance on March 1, 2002).

- ◆ The total is approximate because it will depend on earnings or losses on the investments of the original amount transferred the previous year, and the contributions made to date.

(4) **Terms defined:**

Phase 1 employer: WAC 415-108-425.

Phase 2 employer: WAC 415-108-425.

Phase 1 transfer period: WAC 415-108-425.

Phase 2 transfer period: WAC 415-108-425.

Service: RCW 41.40.010 ((-9)-(b)).

Transfer basis: RCW 41.40.795 (1)(b).

Transfer period: RCW 41.40.795 (1)(a).

[Statutory Authority: RCW 41.50.050(5), 41.40.795. WSR 02-12-085, § 415-108-980, filed 6/4/02, effective 6/13/02. Statutory Authority: RCW 41.50.050(5), 41.32.8401, 41.35.630, 41.40.795. WSR 02-03-120, § 415-108-980, filed 1/23/02, effective 3/1/02.]