

WSR 22-01-126  
PROPOSED RULES  
DEPARTMENT OF  
RETIREMENT SYSTEMS

[Filed December 13, 2021, 11:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-139.

Title of Rule and Other Identifying Information: WAC 415-104-486

When does my disability benefit end?

Hearing Location(s): On January 25, 2022, at 11:30 a.m. The hearing will be conducted by Zoom. See <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings> for details. Zoom meeting ID 881 4900 1711, Link <https://us02web.zoom.us/j/88149001711>, Dial-in 253 215 8782 US (Tacoma).

Date of Intended Adoption: January 26, 2022.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email [drs.Rules@drs.wa.gov](mailto:drs.Rules@drs.wa.gov), by January 24, 2022.

Assistance for Persons with Disabilities: Contact Jilene Siegel, phone 360-664-7291, TTY 711, email [drs.Rules@drs.wa.gov](mailto:drs.Rules@drs.wa.gov), by January 19, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify the process when a law enforcement officers' and firefighters' (LEOFF) plan 2 disability retiree returns to work.

Reasons Supporting Proposal: When a LEOFF plan 2 disability retiree returns to work, this amendment will clarify when their disability retirement benefits will stop. If the member does not meet the employer's requirement for returning to employment, this rule clarifies the process for challenging the determination.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: RCW 41.26.470.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Candice Myrum, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7288.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5) (a) (i) does not apply to this proposed rule and is not voluntarily made applicable by the agency.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: DRS rules only impact members and beneficiaries of the state retirement systems and participating public employers, and do not affect small businesses.

December 13, 2021  
Jilene Siegel  
Rules Coordinator

OTS-3264.2

AMENDATORY SECTION (Amending WSR 18-13-078, filed 6/15/18, effective 7/16/18)

**WAC 415-104-486 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 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 duty or nonduty disability benefit will cease if:

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

(b) Medical examination reveals that you are no longer totally incapacitated for employment in a LEOFF-eligible position and you are no longer entitled to workers' compensation benefits under Title 51 RCW.

(2) Your catastrophic disability benefit will cease if:

(a) You return to work in a LEOFF-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. WSR 18-13-078, § 415-104-486, filed 6/15/18, effective 7/16/18.]