

# Chapter 415-106 WAC

## PUBLIC SAFETY EMPLOYEES' RETIREMENT SYSTEM

WAC	DEFINITIONS	415-106-500	DISABILITY BENEFITS
415-106-010	Definitions.		PSERS disability benefits.
	ADMINISTRATION		RETIREMENT
415-106-080	Actuarial factors and schedules.	415-106-600	What are my retirement benefit options?
	MEMBERSHIP	415-106-610	How do I apply for retirement benefits?
415-106-100	Am I eligible for PSERS membership?	415-106-620	How does the department calculate my retirement allowance?
415-106-105	May I join PSERS if my duties qualify for PSERS membership, but my employer is not specifically listed in WAC 415-106-010(2)?		POSTRETIREMENT EMPLOYMENT
415-106-110	If I am a member of PERS, may I change my membership to PSERS?	415-106-700	What are the return to work rules for PSERS?
	REPORTABLE COMPENSATION	415-106-710	How does the department calculate my retirement allowance if I reenter PSERS membership and then re retire?
415-106-200	Purpose and scope of reportable compensation rules.	415-106-725	If I have retired from another retirement system or am eligible to retire, am I excluded from participating in PSERS?
415-106-205	What is reportable compensation?	415-106-900	How do I designate a beneficiary, and who will receive a distribution if I die before retirement?
415-106-210	What types of payments are considered reportable compensation?		DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER
415-106-215	Are salary increases based on longevity or educational attainment considered reportable compensation?	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 Repealed by WSR 10-24-099, filed 12/1/10, effective 1/1/11.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).
415-106-220	Are overtime payments reportable compensation?	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 Repealed by WSR 10-24-099, filed 12/1/10, effective 1/1/11.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).
415-106-225	Is standby pay reportable compensation?	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).
415-106-230	Is performance pay reportable compensation?		DEFINITIONS
415-106-235	Is a retirement bonus or incentive reportable compensation?		<b>WAC 415-106-010 Definitions.</b> 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.
415-106-240	Are payments for reinstatement or payment instead of reinstatement reportable compensation?		(1) <b>AFC</b> means average final compensation as defined in RCW 41.37.010(14).
415-106-245	Are retroactive salary increases reportable compensation?		(2) <b>City corrections department</b> means any subsection or unit of a city employing correctional employees.
415-106-250	Is severance pay reportable compensation?		(3) <b>County corrections department</b> means any subsection or unit of a county employing correctional employees.
415-106-255	Is sick leave or vacation leave, whether used or cashed out, reportable compensation?		(4) <b>Employer</b> means the state or local government entities as defined in RCW 41.37.010(4) employing members eligible for PSERS.
415-106-260	Is paid leave, which is not earned over time, reportable compensation?		(5) <b>Full-time employee</b> means an employee who is regularly scheduled to provide at least one hundred sixty hours of compensated service for an employer each calendar month.
415-106-265	Is the pay I receive from my employer when I am on union leave reportable compensation?		
415-106-270	Is compensation for periods of absence due to sickness or injury reportable compensation?		
415-106-275	Are disability insurance or workers' compensation payments reportable compensation?		
415-106-280	Will the compensation that is imputed to periods of unpaid leave be used in the calculation of my AFC?		
415-106-285	Is the pay I receive while on legislative leave reportable compensation?		
415-106-290	Is compensation applied toward cafeteria plans reportable compensation?		
415-106-295	Are fringe benefits reportable compensation?		
415-106-300	Are payroll deductions reportable compensation?		
415-106-305	Are payments, which are outside my employer's legal authority, reportable compensation?		
415-106-310	Are optional payments reportable compensation?		
415-106-315	Are nonmoney payments from my employer reportable compensation?		
415-106-320	Are reimbursements for business expenses reportable compensation?		
415-106-325	Vehicles—Is the value of my use of an employer's vehicle reportable compensation?		
415-106-330	Are vehicle allowances reportable compensation?		
	ELECTED AND APPOINTED OFFICIALS		
415-106-400	If I establish PSERS membership and now hold a state elective position, may I continue to accrue service credit in PSERS?		
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?		
415-106-405	May I retire from PSERS while holding a state elective position?		

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

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

(8) **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.

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

(10) **Reportable compensation** means compensation earnable as that term is defined in RCW 41.37.010(6).

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

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

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

[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?** On or after July 1, 2006, you are eligible for PSERS membership according to the provisions in this section.

(1) Subject to the exceptions in subsection (2) of this section, you will be a PSERS member on the date you become employed in a full-time position for an employer as defined in WAC 415-106-010, provided one or more of the following applies:

(a) The position requires completion of a certified criminal justice training course and you are authorized by your employer to arrest, conduct criminal investigations, enforce the criminal laws of the state of Washington, and carry a firearm as part of the job.

(b) Your primary responsibility is to ensure the custody and security of incarcerated or probationary individuals.

(c) You are a limited authority Washington peace officer, as defined in RCW 10.93.020.

(d) Your primary responsibility is to supervise members eligible under this section.

(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 PERS Plan 1 member; or

(d) You were a PERS Plan 2 or 3 member on July 1, 2006, and are not required to join PSERS membership according to WAC 415-106-110.

[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 WAC 415-106-010(2)?** You do not qualify for membership unless your department or agency is specifically listed in WAC 415-106-010(2), even if your employer employs one or more elected or appointed officials who are PSERS members.

[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 prior to July 1, 2006; and

(b) On July 1, 2006, you meet the requirements for membership in WAC 415-106-100.

(2) If you meet the conditions in subsection (1) of this section and wish to change membership from PERS to PSERS, you must submit a properly completed election form to your employer during the election period that begins on July 1, 2006, and ends on September 30, 2006.

(3) Your change in membership is prospective only.

(a) You become a member of PSERS on the election date shown on your election form.

(b) 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.

(4) If you meet the conditions in subsection (1) of this section and do not change membership to PSERS on or before September 30, 2006, you may not become a member of PSERS while you continue employment with the same employer. However, if you terminate your employment with the employer with whom you were employed on July 1, 2006, and become employed in a PSERS eligible position with another employer after July 1, 2006, you will be mandated into PSERS membership.

[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 classification 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(6). 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(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

(10/14/16)

Type of Payment	PSERS Reportable Compensation?
Employer taxes/contributions	No - WAC 415-106-300
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

[Ch. 415-106 WAC p. 3]

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 (6)(b)(vi):

(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(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.]

[Ch. 415-106 WAC p. 4]

**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 (6)(b)(i) 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(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 (6)(a).

[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 (6)(a), sick and annual leave cash outs are not reportable compensation.

[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(6) 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 twelve 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.

(10/14/16)

(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(6) and do not qualify as reportable compensation.

[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

[Ch. 415-106 WAC p. 5]

(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

[Ch. 415-106 WAC p. 6]

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.

(10/14/16)

(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.

[Ch. 415-106 WAC p. 7]

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 415-106-500 PSERS disability benefits.** This section covers disability benefits provided for 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-the-job 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 disability benefits 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 ten 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 **sixty**. 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 ten 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 **sixty-five**. 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 fifty dollars. See RCW 41.37.200.*

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

(3) **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 must sign consent to the benefit option you select. You, and your spouse if you are married, must have your signatures notarized.

(ii) **Part 2:** Employer's statement and report. Your employer must complete and sign Part 2, and return it 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 it directly to the department. You are responsible for all medical expenses related to your application for benefits. A copy of your job description must be provided to the physician at time of examination.

(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.

(4) **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.

(5) **If I am eligible to retire, may I still apply for disability benefits?** Yes, however, you should request a benefit estimate from the department, as there may be a difference in the dollar amount of your monthly allowance.

(6) **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 ninety 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 subsection (3) 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.

(7) **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 PSERS 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.

(8) **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;

## RETIREMENT

(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.

**(9) 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.

**(10) Am I eligible for disability benefits if my disability is the result of my criminal conduct?** No. See RCW 41.37.100.

**(11) 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.

**(12) How long will I continue to receive a monthly disability allowance?** You may receive a monthly allowance throughout your lifetime, subject to the provisions of subsection (13) of this section.

**(13) 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 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 41.37.010(4), at a comparable compensation.

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

**(14) 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 will have to pay the actuarial value of the resulting increase in your future retirement benefit. See RCW 41.50.165 and 41.37.200.

[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.]

(10/14/16)

**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 allowance paid to you by one of the options described in this section.

**(1) Which option will pay my beneficiary a monthly allowance after my death?** Options described in subsection (2)(b) through (d) of this section include a survivor feature. The person you name at the time of retirement to receive a monthly allowance after your death is referred to as your "survivor beneficiary." Upon your death your survivor beneficiary will be entitled to receive a monthly allowance for the duration of his or her life. Your monthly retirement allowance will be actuarially reduced to offset the cost of the survivor feature. See WAC 415-02-380 for more information on how your monthly allowance is affected by choosing a survivor feature.

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

**(a) Option one: Standard allowance (no survivor feature).** The department will pay you a monthly retirement allowance throughout your lifetime. Your monthly retirement allowance will cease upon your death.

**(b) Option two: Joint and whole allowance.** The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to the gross monthly retirement allowance you were receiving.

**(c) Option three: Joint and one-half allowance.** The department will pay you a reduced monthly retirement allowance throughout your lifetime. After your death, the department will pay your survivor beneficiary a monthly allowance equal to one-half of the gross monthly retirement allowance you were receiving.

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

**(3) Do I need my spouse's consent on the option I choose?** If you are married, you must provide your spouse's notarized signature indicating consent to the retirement option you select. If you do not provide spousal consent, the department will pay you a monthly retirement allowance based on option three (joint and one-half allowance) and record your spouse as the survivor beneficiary as required by RCW 41.37.170(2). 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 thirty 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.

[Ch. 415-106 WAC p. 9]

(5) **What happens if I choose a benefit option with a survivor feature and my survivor beneficiary dies before I do?** Your monthly retirement allowance will increase, provided you submit proof of your survivor beneficiary's death to the department. The increase will accrue from the first day of the month following the death. Your increased monthly allowance will be:

(a) The amount you would have received had you chosen the standard allowance option at the time of retirement; plus

(b) Any cost-of-living adjustments (COLAs) you received prior to your survivor beneficiary's death, based on your original option selection.

**Example:** John retires from PSERS in 2006. John chooses a benefit option with a survivor feature and names Beatrice, his daughter, as his survivor beneficiary. As a result, John's monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Beatrice dies in 2011. John's monthly allowance will increase to \$2,191.05, which equals the amount he would have received had he chosen the standard allowance option, plus the COLAs he has received (based on his prior monthly allowance).

Year	Standard Allowance	Survivor Option plus COLAs	COLA incr. (3% max)	\$ Increase
2006	2,000.00	1,750.00		0.00
2007		1,750.00	.02	35.00
2008		1,785.00	.03	53.55
2009		1,838.55	.025	45.96
2010		1,884.51	.03	56.54
2011	2,000.00	1,941.05	—	—
			Total COLAs	191.05
Original Option One Monthly Allowance	+ Total COLAs		= New Monthly Allowance	
\$2000	+ \$191.05		= \$2,191.05	

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following three 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 allowance option at the time of retirement and marry after retirement, you may select a benefit option with a survivor feature 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 benefit option with a survivor feature and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard allowance. You may exercise this option one time only.

(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 allowance 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 allowance 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(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 web site or by submitting to the department:

(1) A completed, signed and notarized retirement application, 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 notarized signature indicating consent to the retirement option you selected.

(i) If you are married and you do not provide spousal consent, the department will pay you a monthly retirement allowance based on WAC 415-106-600 (2)(c), option three (joint and one-half survivor benefit allowance) and record your spouse as the survivor beneficiary as required by RCW 41.37.170 (2)(a).

(ii) Spousal consent is not required if a dissolution decree designating your survivor beneficiary under RCW 41.50.790 was filed with the department at least thirty days prior to your retirement date.

(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(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.]

(10/14/16)

## 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 thirty 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 thirty consecutive calendar days.

(b) If you retire and remain absent at least thirty consecutive calendar days from your accrual date, you may work up to eight hundred sixty-seven 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 rehire, your retirement benefit will be recalculated pursuant to WAC 415-106-710.

(b) If you return to an eligible PSERS position within thirty 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 thirty consecutive calendar days. The reduction will accrue for a maximum of one hundred sixty hours per month. Any reduction over one hundred 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 thirty 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 hours are counted toward the limit?**

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

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

[Ch. 415-106 WAC p. 11]

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

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

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

**(7) Terms used.**

(a) Accrual date - RCW 41.37.240.

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

(c) Eligible position - RCW 41.37.010(10); WAC 415-106-100.

(d) Ineligible position - RCW 41.37.010(17).

(e) Membership - RCW 41.37.020.

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

[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 rerehire?** If you return to work in an eligible PSERS position, you have the option of reentering membership. If you reenter membership, your retirement allowance will be calculated according to this section when you rerehire.

**(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 rerehire;

(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 rerehire; 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 to retire** 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.

[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.]