

**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.]