

WSR 21-19-149
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed September 22, 2021, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-24-129.

Title of Rule and Other Identifying Information: WAC 415-104-482

How are the different LEOFF Plan 2 disability benefits calculated?

Hearing Location(s): On October 26, 2021, at 2:30 p.m. The hearing will be conducted by telephone conference only, 360-407-3830 or 855-682-0796 (toll free), Conference ID 91556917.

Date of Intended Adoption: October 27, 2021.

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, by October 25, 2021.

Assistance for Persons with Disabilities: Contact Jilene Siegel, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov, by October 21, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify that adjustments to offset workers' compensation and Social Security disability benefits will be prospective.

Reasons Supporting Proposal: This amendment describes how adjustments are applied to a LEOFF Plan 2 member's catastrophic benefit if other disability benefits are approved retroactively.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: RCW 41.26.470(9).

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(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

September 22, 2021
Jilene Siegel

OTS-2883.2

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

WAC 415-104-482 How are the different LEOFF Plan 2 disability benefits calculated? (1) **Line of duty:** As a line of duty disability retiree, you may choose between:

(a) A nontaxable, one-time lump sum payment equal to one hundred fifty percent of your retirement contributions; except that, any payments made to restore service credit after the five-year deadline will be paid at one hundred percent; or

(b) A monthly disability benefit equal to:

(i) Ten percent of your final average salary (FAS), which is nontaxable; and

(ii) Two percent of your FAS for each year of service beyond five years.

Calculation of monthly disability benefit:

Example 1: Chris was approved for line of duty disability. The final average salary (FAS) was \$10,000. Chris had 20 years of service credit at the time of retirement. To determine the line of duty disability benefit amount:

1. $10\% \times \text{FAS} = \text{Nontaxable amount}$
 $.10 \times \$10,000 = \$1,000$
2. $2\% \times \text{FAS} \times \frac{\text{Number of Service Years beyond Five Years}}{\text{Years}} = \text{Taxable amount}$
 $.02 \times \$10,000 \times 15 = \$3,000$
3. $\text{Nontaxable amount} + \text{Taxable amount} = \text{Total benefit}$
 $\$1,000 + \$3,000 = \$4,000$

Example 2: Pat was approved for line of duty disability. The final average salary (FAS) was \$10,000. Pat had 2 years of service credit at the time of retirement. To determine the line of duty disability benefit amount:

1. $10\% \times \text{FAS} = \text{Nontaxable amount}$
 $.10 \times \$10,000 = \$1,000$
2. $2\% \times \text{FAS} \times \frac{\text{Number of Service Years beyond Five Years}}{\text{Years}} = \text{Taxable amount}$
 $.02 \times \$10,000 \times 0 = \0
3. $\text{Nontaxable amount} + \text{Taxable amount} = \text{Total benefit}$
 $\$1,000 + \$0 = \$1,000$

(2) **Catastrophic duty disability:** As a catastrophic duty disability retiree, you may choose between:

(a) A nontaxable, one-time lump sum payment equal to one hundred fifty percent of your retirement contributions; except that, any payments made to restore service credit after the five-year deadline will

be paid at one hundred percent. Under this option you waive your right to the medical insurance premium reimbursement; or

(b) A monthly disability benefit equal to:

(i) Seventy percent of your final average salary (FAS), which is nontaxable, reduced by any temporary disability benefits provided under Title 51 RCW and federal Social Security disability benefits, if necessary to ensure that the total combined benefits do not exceed one hundred percent of the member's final average salary (FAS). Any such adjustment will be applied prospectively from the time the Title 51 RCW or Social Security determination is made, even if the Title 51 RCW or Social Security disability benefits are retroactively adjusted.

(ii) The reduced benefit cannot be less than the earned service retirement benefit.

Calculation of monthly disability benefit:

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

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

Since there is no offset and the monthly disability benefit is greater than the earned benefit, Terry's benefit will be \$7000 a month.

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

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

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

Example 3: Chris was approved for catastrophic disability. The final average salary (FAS) was \$10,000. Chris was receiving benefits from LNI (Title 51 RCW) and Social Security disability insurance (SSDI) in the amounts of \$5,000 and \$2,000 respectively. Chris had 20 years of service credit at the time of retirement. To determine the catastrophic benefit amount:

1. 70% of FAS = Monthly disability benefit
 $.70 \times \$10,000 = \$7,000$

2. Monthly disability benefit + LNI benefits + SSDI benefit = Total of all benefits
 $\$7,000 + \$5,000 + \$2,000 = \$14,000$
3. Total of all benefits - FAS = Reduction amount (to not exceed 100% of FAS)
 $\$14,000 - \$10,000 = \$4,000$
4. Monthly disability benefit - Reduction Amount = Reduced monthly benefit
 $\$7,000 - \$4,000 = \$3,000$
5. $2\% \times \text{FAS} \times \text{Service Years} = \text{Earned benefit}$
 $.02 \times \$10,000 \times 20 = \$4,000$

Chris is entitled to the greater of the catastrophic retirement calculation or the earned benefit. Since the earned benefit is greater than the reduced catastrophic benefit, Chris' benefit will be \$4,000 a month.

(3) **Nonduty disability:** As a nonduty disability retiree, you receive a benefit of two percent times your final average salary times your service credit years. This disability benefit will be actuarially reduced to reflect the difference in age at the time of disability retirement and age fifty-three.

Calculation of monthly disability benefit:

Example 1 – Full actuarial reduction:

Chris, age 47, was approved for a nonduty disability. The final average salary (FAS) was \$10,000. Chris had 20 years of service credit at the time of retirement. To determine the nonduty disability benefit amount:

$$2\% \times \text{FAS} \times \text{Service Years} \times \text{early retirement factor (2018 table)} = \text{Benefit amount}$$

$$.02 \times \$10,000 \times 20 \times 0.5980 = \$2,392$$

[Statutory Authority: RCW 41.50.050. WSR 18-13-078, § 415-104-482, filed 6/15/18, effective 7/16/18. Statutory Authority: RCW 41.50.050(5). WSR 16-06-069, § 415-104-482, filed 2/25/16, effective 3/27/16. Statutory Authority: RCW 41.50.050(5) and 41.26.470. WSR 09-17-035, § 415-104-482, filed 8/10/09, effective 9/10/09.]