

WSR 22-13-091
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed June 13, 2022, 4:57 p.m., effective July 14, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department of retirement systems needs to amend rules in Title 415 WAC to correct incorrect references to realphabetized WAC and RCW. The substance and meaning of these rules are not changing.

Citation of Rules Affected by this Order: Amending WAC 415-106-010, 415-106-105, 415-106-110, 415-106-205, 415-106-225, 415-106-240, 415-106-250, 415-106-255, 415-106-270, 415-106-500, 415-106-700, 415-110-010, 415-110-436, 415-110-456, 415-110-458, 415-110-467, 415-110-469, 415-110-685, and 415-110-800.

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 22-08-107 on April 6, 2022.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 19, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 19, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 10, 2022.

Tracy Guerin
Director

OTS-3679.1

AMENDATORY SECTION (Amending WSR 19-10-038, filed 4/26/19, effective 5/27/19)

WAC 415-106-010 Definitions. 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.

(1) **AFC** means average final compensation as defined in RCW 41.37.010(~~((+14))~~).

(2) **City corrections department** means any subsection or unit of a city employing correctional employees.

(3) **County corrections department** means any subsection or unit of a county employing correctional employees.

(4) **Employer** means the state or local government entities as defined in RCW 41.37.010(~~((+4))~~) employing members eligible for PSERS.

(5) **Full-time employee** means an employee who is regularly scheduled to provide at least ~~((one hundred sixty))~~ 160 hours of compensated service for an employer each calendar month.

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

(7) **Nursing care**, for purposes of membership eligibility under RCW 41.37.010(~~((+19))~~), refers to services provided on behalf of a qualifying PSERS employer in which an employee is required to hold a valid certification and/or license in the state of Washington and the primary duty is to provide direct patient nursing care. Services include the identification of, and discrimination between, the individual's physical and psychosocial needs, treatment, counseling, patient education, self-care and the administration of medication.

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

(9) **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.

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

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

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

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

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

[Statutory Authority: RCW 41.50.050. WSR 19-10-038, § 415-106-010, filed 4/26/19, effective 5/27/19. 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.]

AMENDATORY SECTION (Amending WSR 08-02-046, 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.]

AMENDATORY SECTION (Amending WSR 19-10-038, filed 4/26/19, effective 5/27/19)

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 before July 1, 2006; and

(b) On July 1, 2006, you meet the requirements for membership in RCW 41.37.010 (~~((19)(a), (b), (c) or (f))~~); and

(c) You submit a properly completed election form to your employer between July 1, 2006, and September 30, 2006.

(2) You may also change retirement system membership from PERS to PSERS if:

(a) You were a member of either PERS Plan 2 or Plan 3 before January 1, 2019; and

(b) On January 1, 2019, you met the requirements for membership in RCW 41.37.010 (~~((19)(d), (e) or (f))~~); and

(c) You submit a properly completed election form to your employer between January 1, 2019, and March 1, 2019.

(3) Your change in membership is prospective only.

(4) 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.

(5) If you meet the conditions in subsection (1) or (2) of this section and do not elect PSERS membership during the election window, you cannot become a member of PSERS while you continue employment with the same employer; however, if you terminate your employment with that employer after the election window begins, and subsequently become employed in a PSERS eligible position, you will be mandated into PSERS membership.

[Statutory Authority: RCW 41.50.050. WSR 19-10-038, § 415-106-110, filed 4/26/19, effective 5/27/19. 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.]

AMENDATORY SECTION (Amending WSR 08-02-046, 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.]

AMENDATORY SECTION (Amending WSR 08-02-046, 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.]

AMENDATORY SECTION (Amending WSR 08-02-046, 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.]

AMENDATORY SECTION (Amending WSR 08-02-046, 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.]

AMENDATORY SECTION (Amending WSR 08-02-046, 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.]

AMENDATORY SECTION (Amending WSR 08-02-046, 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))~~ 12 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.

(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.]

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

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~~) 10 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)~~) 60. 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~~) 10 years of service credit, you will receive a monthly allowance¹ 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)~~) 65. Your monthly allowance may be further reduced to offset the cost of the benefit option you choose. See WAC 415-106-600.

¹You may choose to receive a lump sum payment instead of a monthly allowance if your initial monthly allowance will be less than (~~(fifty dollars)~~) \$50. 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. If you are married, your spouse's consent may be required as described in WAC 415-106-600.

(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~~) 90 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;

(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. WSR 20-06-040, § 415-106-500, filed 2/27/20, effective 3/29/20. 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.]

AMENDATORY SECTION (Amending WSR 16-17-047, filed 8/11/16, effective 9/11/16)

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))~~ 30 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))~~ 30 consecutive calendar days.

(b) If you retire and remain absent at least ~~((thirty))~~ 30 consecutive calendar days from your accrual date, you may work up to ~~((eight hundred sixty-seven))~~ 867 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 rerehire, your retirement benefit will be recalculated pursuant to WAC 415-106-710.

(b) If you return to an eligible PSERS position within ~~((thirty))~~ 30 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))~~ 30 consecutive calendar days. The reduction will accrue for a maximum of ~~((one hundred sixty))~~ 160 hours per month. Any reduction over ~~((one hundred))~~ 100 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))~~ 30 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))~~ 867 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.

(6) **What happens if I work more than the annual ~~((eight hundred sixty-seven))~~ 867 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.]

OTS-3680.1

AMENDATORY SECTION (Amending WSR 04-04-041, filed 1/29/04, effective 3/1/04)

WAC 415-110-010 Definitions. All definitions in RCW 41.35.010 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.35 RCW are defined in this chapter.

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

(2) **Normally** as used in the definition of eligible position under RCW 41.35.010 means a position is eligible if it is expected to require at least five months of (~~(seventy))~~ 70 or more hours of compensated service each month during each of two consecutive years. Once a position is determined to be eligible, it will continue to be eligible if it requires at least five months of (~~(seventy))~~ 70 or more hours of compensated service during at least one year in any two-year period.

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

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

(5) **Reportable compensation** means compensation earnable as that term is defined in RCW 41.35.010(~~((+6))~~).

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

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

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

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

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

Example: An employer has used the (~~twelve~~) 12 consecutive month period from September 1st to August 31st to evaluate the eligibility of positions. When the employer hires a new employee to fill an existing position, the employer must continue to use the September 1st through August 31st period to define a year for the position.

Example: If the same employer in the above example hires a person to work in a project position beginning in November, the employer will use the (~~twelve-month~~) 12-month period beginning in November to evaluate the eligibility of the new position. The employer must consistently apply this (~~twelve-month~~) 12-month period to evaluate the eligibility of this position.

(8) **School year** for Plan 2 and 3 members means the (~~twelve-month~~) 12-month period from September 1st of one year to August 31st of the following year.

(9) **Substitute employee** includes any classified employee who is employed as a substitute for an absent employee or working in an ineligible position.

[Statutory Authority: RCW 41.50.050(5), 41.35.010, 41.35.030, 41.35.033. WSR 04-04-041, § 415-110-010, filed 1/29/04, effective 3/1/04. Statutory Authority: RCW 41.50.050(5) and chapter 41.35 RCW. WSR 02-18-046, § 415-110-010, filed 8/28/02, effective 9/30/02. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. WSR 01-01-059, § 415-110-010, filed 12/12/00, effective 1/12/01.]

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

WAC 415-110-436 SERS Plans 2 and 3 disability benefits. This section covers disability benefits provided for in RCW 41.35.440 and 41.35.690 for members of SERS 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 SERS 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~~) 65. 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~~) 65. 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 415-110-326. 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 415-110-610.

(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~~) 90 days after the approval date if you have not officially separated from SERS employment.

(i) If you are continuing to perform the duties of your position or another SERS 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 SERS 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 41.35.100(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 41.35.110.

(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 41.35.010(~~(+4)~~), at a comparable compensation.

(b) If you return to employment and reenter SERS 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 SERS 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 SERS Plan 2, see RCW 41.35.410.

(ii) If you are a member of SERS Plan 3, see RCW 41.35.670.

[Statutory Authority: RCW 41.50.050. WSR 20-06-040, § 415-110-436, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-110-436, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5), 41.35.020, 41.35.440, and 41.35.690. WSR 05-19-014, § 415-110-436, filed 9/9/05, effective 10/10/05.]

AMENDATORY SECTION (Amending WSR 01-01-059, filed 12/12/00, effective 1/12/01)

WAC 415-110-456 Leave payments earned over time. (1) **Sick and annual leave usage.** Sick leave and annual leave is accumulated over time and paid to a person during a period of excused absence. Leave accrues at a prescribed rate, usually a certain number of hours per month. The employee earns a leave day by rendering service during the month the leave accrued. When the employee uses his or her accrued leave by taking a scheduled work day off with pay, the payment is deferred compensation for services previously rendered. The payment is a salary or wage earned for services rendered and is reportable.

(2) **Annual leave cash outs.** Annual leave cash outs are not reportable compensation for SERS Plan 2 and SERS Plan 3 members. Although annual leave cash outs, like payments for leave usage, are deferred compensation earned for services previously rendered, they are excluded from the definition of compensation earnable by statute, see RCW 41.35.010 (~~(+6)(a)~~).

(3) **Sick leave cash outs.** Sick leave cash outs are excluded from the definition of compensation earnable for SERS Plan 2 and SERS Plan 3 members by statute.

Sick leave cash outs are excluded from reportable compensation for:

(i) School district employees by RCW 28A.400.210; and
(ii) Educational service district employees by RCW 28A.310.490.
See RCW 41.35.010 ((+6)-(a))).

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. WSR 01-01-059, § 415-110-456, filed 12/12/00, effective 1/12/01.]

AMENDATORY SECTION (Amending WSR 01-01-059, filed 12/12/00, effective 1/12/01)

WAC 415-110-458 Severance pay earned over time. All forms of severance pay are excluded from earnable compensation and are not reportable for Plan 2 or Plan 3 by RCW 41.35.010 ((+6)-(a))).

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. WSR 01-01-059, § 415-110-458, filed 12/12/00, effective 1/12/01.]

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

WAC 415-110-467 Reinstatement or payment instead of reinstatement. (1) Payments to an employee are not earned for services rendered if an employer makes them for periods during which the employee was not employed and the payments are made either upon reinstatement or instead of reinstatement. Nonetheless, RCW 41.35.010((+6)) specifically designates these payments as reportable compensation. The payments are only reportable to the extent that they are equivalent to the salary the employee would have earned had he or she been working. The payment will be prorated over the entire period that the employee was suspended, terminated, or otherwise absent from work.

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

(a) The employer; or

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

[Statutory Authority: RCW 41.50.050(5), 41.40.020, 41.35.010(6), 41.40.010(8). WSR 01-08-057, § 415-110-467, filed 4/2/01, effective 5/3/01. Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. WSR 01-01-059, § 415-110-467, filed 12/12/00, effective 1/12/01.]

AMENDATORY SECTION (Amending WSR 01-01-059, filed 12/12/00, effective 1/12/01)

WAC 415-110-469 Standby pay. Some employers pay employees for being on "standby." A member is on standby when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work if the need arises, although the need may not arise. Because the member is not actually working, the member is not rendering service. However, RCW 41.35.010((+6)) specif-

ically identifies standby pay that meets the above requirements as reportable compensation. Although included in the definition of compensation earnable, time spent on standby is excluded from the definition of "service," see RCW 41.35.010(~~(+7)~~).

[Statutory Authority: Chapters 41.32, 41.34, 41.35, 41.50 RCW. WSR 01-01-059, § 415-110-469, filed 12/12/00, effective 1/12/01.]

AMENDATORY SECTION (Amending WSR 17-02-032, filed 12/28/16, effective 1/28/17)

WAC 415-110-685 Am I eligible for membership and service credit as a classified substitute employee? You may be eligible to apply for membership and receive service credit for time worked as a classified substitute employee that occurred on or after July 27, 2003.

(1) If you have never been a member of the school employees' retirement system (SERS), you may establish membership in Plan 2 or Plan 3 if you worked as a classified employee for (~~(seventy)~~) 70 or more hours per month during at least five months within a single school year period of September 1st through August 31st. Your membership will begin when your first optional bill to purchase substitute teaching service credit is paid in full.

(2) If you have already established membership in SERS Plan 3, or if you have established membership in SERS Plan 2 and have not withdrawn your contributions, you may apply to the department for service credit as described in subsection (4) of this section, for any compensated employment as a classified substitute employee that occurs after your first month of established service credit. You may apply for service credit for compensated employment as a classified substitute employee that occurred prior to your first month of established service credit if it meets the requirements for membership as described in subsection (1) of this section.

(3) If you previously established membership in SERS Plan 2 and withdrew your contributions, you may reestablish your membership by purchasing service credit if you worked as a classified substitute employee for (~~(seventy)~~) 70 or more hours per month during at least five months within a single school year period of September 1st through August 31st.

(4) To apply, you must submit a classified substitute's application for service credit.

(a) Applications must be submitted no earlier than September 1st following the end of the school year in which you worked.

(b) If you are establishing membership in SERS for the first time, you must also submit a member information form to indicate your selection of Plan 2 or Plan 3.

(c) If you are an established Plan 3 member, you must also submit a member information form to indicate your contribution rate and investment options.

(d) If you are purchasing service credit for the 2003-04 school year, you must also submit quarterly reports to DRS along with your application for service credit. Quarterly reports must show the exact hours worked and compensation earned each month, and must be signed by the employer.

(5) To receive classified substitute employee's service credit, you must pay the appropriate member contributions.

(a) Upon receipt of your application materials, the department will determine the amount of service credit you are eligible to purchase and will provide an optional bill for the amount due. Your service credit will be applied when the bill is paid in full.

(b) You have six months following the end of the school year in which you worked to pay the member contributions interest-free. Interest will begin to accrue on the first day of the seventh month following the end of the school year. The school year ends on August 31st for Plans 2 and 3.

(i) SERS Plan 2. If payment is received after the six month interest-free period, the amount due will include interest on both the member and employer contributions.

(ii) SERS Plan 3. If payment is received after the six month interest-free period, the amount due will include interest on the Plan 3 employer contributions.

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

(a) "Classified employee" - RCW 41.35.010(~~((7))~~).

(b) "Member" - RCW 41.35.010(~~((20))~~).

(c) "Service" - RCW 41.35.010(~~((32))~~).

(d) "Substitute employee" - RCW 41.35.010(~~((38))~~).

[Statutory Authority: RCW 41.50.050(5). WSR 17-02-032, § 415-110-685, filed 12/28/16, effective 1/28/17; WSR 13-08-055, § 415-110-685, filed 3/29/13, effective 5/1/13. Statutory Authority: RCW 41.50.050(5), 41.35.010, 41.35.030, 41.35.033. WSR 04-04-041, § 415-110-685, filed 1/29/04, effective 3/1/04.]

AMENDATORY SECTION (Amending WSR 02-02-060, filed 12/28/01, effective 1/1/02)

WAC 415-110-800 When does a member of the school employees' retirement system (SERS) enter retirement status? A member of the SERS enters retirement status when he or she:

(1) Has separated from service as defined in RCW 41.35.010(~~((36))~~);

(2) Has no written agreement to return to public employment prior to entering "retiree status"; and

(3) Has applied for retirement, the accrual date has been determined under RCW 41.35.450 or 41.35.640, and the benefit begins to accrue.

Example: Doug is eligible for retirement on July 1st. He submits an application on June 1st with a July 1st retirement date. His last day of employment is June 30th and he does not have an agreement to return to work.

Doug's retirement date (accrual date) is July 1st, and the benefit begins to accrue. The first retirement payment will be paid at the end of July. Doug entered "retiree status" effective July 1st.

[Statutory Authority: RCW 41.50.050(5), 41.04.270, 41.26.030, 41.32.010, 41.32.025, 41.32.480, 41.32.500, 41.32.570, 41.32.765, 41.32.795, 41.32.802, 41.32.855, 41.32.860, 41.32.862, 41.35.010, 41.35.030, 41.35.060, 41.35.450, 41.35.640, 41.40.010, 41.40.023,

41.40.037, 41.40.150, 41.40.193, 41.40.680, 41.40.750, 41.40.801. WSR
02-02-060, § 415-110-800, filed 12/28/01, effective 1/1/02.]