

WSR 23-14-017

PERMANENT RULES

HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Admin #2023-02.02—Filed June 23, 2023, 9:07 a.m., effective January 1, 2024]

Effective Date of Rule: January 1, 2024.

Purpose: The purpose for adoption is to amend an existing rule to support the public employees benefits board (PEBB) program: Amended WAC 182-08-187 to implement Policy Resolution PEBB 2022-01 when an employee returns to work from active duty.

Citation of Rules Affected by this Order: Amending WAC 182-08-187.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Policy Resolution PEBB 2022-01.

Adopted under notice filed as WSR 23-10-076 on May 2, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: June 23, 2023.

Wendy Barcus  
Rules Coordinator

**OTS-4554.1**

AMENDATORY SECTION (Amending WSR 22-13-158, filed 6/21/22, effective 1/1/23)

**WAC 182-08-187 How do employing agencies and contracted vendors correct enrollment errors and is there a limit on retroactive enrollment?** (1) An employing agency or contracted vendor that makes one or more of the following enrollment errors must correct the error as described in subsections (2) through (5) of this section.

(a) Failure to timely notify an employee of their eligibility for public employee benefits board (PEBB) benefits and the employer contribution as described in WAC 182-12-113(2);

(b) Failure to enroll the employee and their dependents in PEBB benefits as elected by the employee, if the elections were timely;

(c) Failure to enroll an employee and their dependents in PEBB benefits as described in WAC 182-08-197 (1)(b);

(d) Failure to accurately reflect an employee's premium surcharge attestation on the employee's account;

(e) Enrolling an employee or their dependent in PEBB insurance coverage when they are not eligible as described in WAC 182-12-114 or 182-12-260 and it is clear there was no fraud or intentional misrepresentation by the employee involved; or

(f) Providing incorrect information regarding PEBB benefits to the employee that they relied upon.

(2) The employing agency or the applicable contracted vendor must enroll the employee and the employee's dependents, as elected, or terminate enrollment in PEBB benefits as described in subsection (3) of this section, reconcile premium payments and applicable premium surcharges as described in subsection (4) of this section, and provide recourse as described in subsection (5) of this section.

**(3) Enrollment or termination.**

(a) PEBB medical and dental enrollment is effective the first day of the month following the date the enrollment error is identified, unless the authority determines additional recourse is warranted, as described in subsection (5) of this section. If the enrollment error is identified on the first day of the month, the enrollment correction is effective that day;

**Exception:** When an employee who is called to active duty in the uniformed services under Uniformed Services Employment and Reemployment Rights Act (USERRA) loses eligibility for the employer contribution toward PEBB benefits, they regain eligibility for the employer contribution toward PEBB benefits the day they return from active duty. Employer-paid PEBB benefits will begin the first day of the month in which they return from active duty.

(b) Basic life, basic accidental death and dismemberment (AD&D), employer-paid long-term disability (LTD) insurance, and employee-paid LTD insurance (unless the employee declines the employee-paid LTD insurance as described in WAC 182-08-197(1)) enrollment is retroactive to the first day of the month following the day the employee became newly eligible, or the first day of the month the employee regained eligibility, as described in WAC 182-08-197. If the employee became newly eligible on the first working day of a month, basic life, basic AD&D, employer-paid LTD insurance, and employee-paid LTD insurance begin on that date;

**Exception:** When an employee who is called to active duty in the uniformed services under USERRA loses eligibility for the employer contribution toward PEBB benefits, they regain eligibility for the employer contribution toward PEBB benefits the day they return from active duty. Employer-paid PEBB benefits will begin the first day of the month in which they return from active duty.

(c) Supplemental life, supplemental AD&D, and employee-paid LTD insurance enrollment is retroactive to the first day of the month following the day the employee became newly eligible if the employee elects to enroll in this coverage (or if previously elected, the first of the month following the signature date on the employee's application for this coverage). If an employing agency enrollment error occurred when the employee regained eligibility for the employer contribution following a period of leave as described in WAC 182-08-197(3):

(i) Supplemental life, supplemental AD&D, and employee-paid LTD insurance is enrolled the first day of the month the employee regained eligibility, at the same level of coverage the employee continued during the period of leave, without evidence of insurability.

(ii) If the employee was not eligible to continue employee-paid LTD insurance during the period of leave as described in WAC 182-12-133, employee-paid LTD insurance is reinstated the first day of the month the employee regained eligibility, to the level of coverage the employee was enrolled in prior to the period of leave, without evidence of insurability.

(iii) If the employee was eligible to continue supplemental life insurance, supplemental AD&D insurance, and employee-paid LTD insurance under the period of leave but did not, the employee must provide

evidence of insurability and receive approval from the contracted vendor.

(d) If the employee is eligible and elects (or elected) to enroll in the medical flexible spending arrangement (FSA), limited purpose FSA, or dependent care assistance program (DCAP), enrollment is limited to 60 days prior to the date enrollment is processed, but not earlier than the current plan year. If an employee was not enrolled in a medical FSA, limited purpose FSA, or DCAP as elected, the employee may either participate at the amount originally elected with a corresponding increase in contributions for the balance of the plan year, or participate at a reduced amount for the plan year by maintaining the per-pay period contribution in effect;

(e) If the employee or their dependent was not eligible but still enrolled as described in subsection (1)(e) of this section, the employee's or their dependent's PEBB benefits will be terminated prospectively effective as of the last day of the month.

**(4) Premium payments.**

(a) The employing agency must remit to the authority the employer contribution and the employee contribution for health plan premiums, applicable premium surcharges, basic life, basic AD&D, and employer-paid LTD starting the date PEBB benefits begins as described in subsections (3) and (5)(a)(i) of this section. If a state agency failed to notify a newly eligible employee of their eligibility for PEBB benefits, the state agency may only collect the employee contribution for health plan premiums and applicable premium surcharges for coverage for the months after the employee was notified.

(b) When an employing agency fails to correctly enroll the amount of employee-paid LTD insurance elected by the employee, premiums will be corrected as follows:

(i) When additional premiums are due to the authority, the employee is responsible for premiums for the most recent 24 months of coverage. The employing agency is responsible for additional months of premiums.

(ii) When a premium refund is due to the employee, the LTD insurance contracted vendor is responsible for premium refunds for the most recent 24 months of coverage. The employing agency is responsible for additional months of premium refund.

(c) When an employing agency mistakenly enrolls an employee or their dependent as described in subsection (1)(e) of this section, premiums and any applicable premium surcharges will be refunded by the employing agency to the employee without rescinding the insurance coverage.

**(5) Recourse.**

(a) Employee eligibility for PEBB benefits begins on the first day of the month following the date eligibility is established as described in WAC 182-12-114. Dependent eligibility is described in WAC 182-12-260, and dependent enrollment is described in WAC 182-12-262. When retroactive correction of an enrollment error is limited as described in subsection (3)(b), (c) and (d) of this section, the employing agency must work with the employee, and receive approval from the authority, to implement retroactive PEBB benefits within the following parameters:

(i) Retroactive enrollment in a PEBB insurance coverage;

(ii) Reimbursement of claims paid;

(iii) Reimbursement of amounts paid by the employee or dependent for medical and dental premiums;

- (iv) Reimbursement of amounts paid by the employee for the premium surcharges;
  - (v) Other legal remedy received or offered; or
  - (vi) Other recourse, upon approval by the authority.
- (b) Recourse must not contradict a specific provision of federal law or statute and does not apply to requests for noncovered services or in the case of an individual who is not eligible for PEBB benefits.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-13-158 (Admin #2022-01), § 182-08-187, filed 6/21/22, effective 1/1/23. Statutory Authority: RCW 41.05.021, 41.05.160 and Policy resolutions PEBB 2021-11 and 2021-12. WSR 21-13-103 (Admin #2021-01.03), § 182-08-187, filed 6/18/21, effective 1/1/22. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 20-16-062 (Admin #2020-03), § 182-08-187, filed 7/28/20, effective 1/1/21. Statutory Authority: RCW 41.05.021, 41.05.160, and PEBB policy resolutions. WSR 19-17-073 (Admin #2019-01), § 182-08-187, filed 8/20/19, effective 1/1/20; WSR 18-20-117 (Admin #2018-02), § 182-08-187, filed 10/3/18, effective 1/1/19; WSR 17-19-077 (Order 2017-01), § 182-08-187, filed 9/15/17, effective 1/1/18. Statutory Authority: RCW 41.05.021, 41.05.160, 2016 c 67, and PEBB policy resolutions. WSR 16-20-080, § 182-08-187, filed 10/4/16, effective 1/1/17. Statutory Authority: RCW 41.05.160, 2015 c 116, and PEBB policy resolutions. WSR 15-22-099 (PEBB Admin # 2015-01 Rev 1), § 182-08-187, filed 11/4/15, effective 1/1/16. Statutory Authority: RCW 41.05.160 and 2013 2nd sp.s. c 4. WSR 14-20-058 (PEBB Admin 2014-02), § 182-08-187, filed 9/25/14, effective 1/1/15. Statutory Authority: RCW 41.05.160 and 2012 2nd sp.s. c 3. WSR 13-22-019 (Admin. 2013-01), § 182-08-187, filed 10/28/13, effective 1/1/14.]