

PUBLIC EMPLOYEES DISABILITY

BENEFITS LIMITATIONS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Scott L Wyatt

LONG TITLE

General Description:

This bill modifies the Public Employees' Long-Term Disability Act to amend provisions related to disability claims.

Highlighted Provisions:

This bill:

- ▶ provides that an employee is not eligible for long-term disability benefits during any period that the employee claims to be able to work or has an action pending in which the employee claims to be able to work;

- ▶ provides that an employer may obtain long-term disability information for certain pending cases in which the employer is a party;

- ▶ provides that monthly disability benefits paid for long-term disability may be reduced or reimbursed for certain amounts received during eligibility including when the employee receives a judgment, settlement, or other payment as a result of a claim against an employer related to the period of disability; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30 **49-21-401**, as last amended by Chapter 240, Laws of Utah 2003

31 **49-21-402**, as last amended by Chapter 116, Laws of Utah 2005

32

33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **49-21-401** is amended to read:

35 **49-21-401. Disability Benefits -- Application -- Eligibility.**

36 (1) An eligible employee shall apply for long-term disability benefits under this chapter
37 by:

38 (a) completing an application form prepared by the office;

39 (b) signing a consent form allowing the office access to the eligible employee's medical
40 records; and

41 (c) providing any documentation or information reasonably requested by the office.

42 (2) Upon request by the office, the participating employer of the eligible employee
43 shall provide to the office documentation and information concerning the eligible employee.

44 (3) The office shall review all relevant information and determine whether or not the
45 eligible employee is totally disabled.

46 (4) If the office determines that the eligible employee is totally disabled due to
47 accidental bodily injury or physical illness which is not the result of the performance of an
48 employment duty, the eligible employee shall receive a monthly disability benefit equal to 2/3
49 of the eligible employee's regular monthly salary, for each month the total disability continues
50 beyond the elimination period, not to exceed the maximum benefit period.

51 (5) If the office determines that the eligible employee is totally disabled due to
52 psychiatric illness, the eligible employee shall receive:

53 (a) a maximum of two years of monthly disability benefits equal to 2/3 of the eligible
54 employee's regular monthly salary for each month the total disability continues beyond the
55 elimination period;

56 (b) a maximum of \$10,000 for psychiatric expenses, including rehabilitation expenses
57 preauthorized by the office's consultants, paid during the period of monthly disability benefits;

58 and

59 (c) payment of monthly disability benefits according to contractual provisions for a
60 period not to exceed five years if the eligible employee is institutionalized due to psychiatric
61 illness.

62 (6) If the office determines that the eligible employee is totally disabled due to a
63 physical injury resulting from external force or violence as a result of the performance of an
64 employment duty, the eligible employee shall receive a monthly disability benefit equal to
65 100% of the eligible employee's regular monthly salary, for each month the total disability
66 continues beyond the elimination period, not to exceed the maximum benefit period.

67 (7) (a) Successive periods of disability are considered as a continuous period of
68 disability if the period of disability:

69 (i) results from the same or related causes;

70 (ii) is separated by less than six months of continuous full-time work at the individual's
71 usual place of employment; and

72 (iii) commences while the individual is an eligible employee covered by this chapter.

73 (b) The inability to work for a period of less than 15 consecutive days is not considered
74 as a period of disability.

75 (c) If Subsection (7)(a) or (b) does not apply, successive periods of disability are
76 considered as separate periods of disability.

77 (8) The office may, at any time, have any eligible employee claiming disability
78 examined by a physician chosen by the office to determine if the eligible employee is totally
79 disabled.

80 (9) A claim brought by an eligible employee for long-term disability benefits under the
81 Public Employee's Long-Term Disability Program is barred if it is not commenced within one
82 year from the eligible employee's date of disability, unless the office determines that under the
83 surrounding facts and circumstances, the eligible employee's failure to comply with the time
84 limitations was reasonable.

85 (10) Medical or psychiatric conditions which existed prior to enrollment may not be a

86 basis for disability benefits until the eligible employee has had one year of continuous
87 enrollment in the Public Employees Long-Term Disability Program.

88 (11) If there is a valid benefit protection contract, service credit shall accrue during the
89 period of total disability, unless the disabled eligible employee is exempted from a system, or is
90 otherwise ineligible for service credit.

91 (12) Regardless of any medical evidence provided by the employee to support the
92 application for disability, an employee is not eligible for long-term disability benefits during
93 any period in which the employee:

94 (a) makes a claim that the employee is able to work; or

95 (b) has a pending action in a court or before any state or local administrative body in
96 which the employee has made a claim that the employee is able to work.

97 (13) Notwithstanding the provisions of Section 49-11-618, upon written request by an
98 employer, information obtained under this part may, upon an order of a court or an
99 administrative law judge, be released to an employer who is a party in an action under
100 Subsection (12).

101 Section 2. Section **49-21-402** is amended to read:

102 **49-21-402. Reduction or reimbursement of benefit -- Circumstances --**
103 **Application for other benefits required.**

104 (1) A monthly disability benefit may not be paid for any period of total disability unless
105 the eligible employee is under the ongoing care and treatment of a physician other than the
106 eligible employee.

107 (2) The monthly disability benefit shall be reduced or reimbursed by any amount
108 received by, or payable to, the eligible employee from the following sources for the same
109 period of time during which the eligible employee is entitled to receive a monthly disability
110 benefit:

111 (a) Social Security disability benefits, including all benefits received by the eligible
112 employee, the eligible employee's spouse, and the eligible employee's children as determined
113 by the Social Security Administration;

- 114 (b) workers' compensation indemnity benefits;
- 115 (c) any monies received by judgment, legal action, or settlement from a third party
- 116 liable to the employee for the disability;
- 117 (d) unemployment compensation benefits; [~~and~~]
- 118 (e) automobile no-fault, medical payments, or similar insurance payments[-]; and
- 119 (f) any monies received by a judgment, settlement, or other payment as a result of a
- 120 claim against an employer.
- 121 (3) The monthly disability benefit shall be reduced by any amount in excess of 1/3 of
- 122 the eligible employee's regular monthly salary received by, or payable to, the eligible employee
- 123 from the following sources for the same period of time during which the eligible employee is
- 124 entitled to receive a monthly disability benefit:
 - 125 (a) any employer-sponsored retirement programs; and
 - 126 (b) any disability benefit resulting from the disability for which benefits are being
 - 127 received under this chapter.
- 128 (4) Cost-of-living increases to any of the benefits listed in Subsection (2) may not be
- 129 considered in calculating a reduction to the monthly disability benefit.
- 130 (5) Any amounts payable to the eligible employee from one or more of the sources
- 131 under Subsection (2) are considered as amounts received whether or not the amounts were
- 132 actually received by the eligible employee.
- 133 (6) (a) An eligible employee shall first apply for all disability benefits from
- 134 governmental entities under Subsection (2) to which the eligible employee is or may be
- 135 entitled, and provide to the office evidence of the applications.
 - 136 (b) The eligible employee shall also first apply at the earliest eligible age for all
 - 137 unreduced retirement benefits to which the eligible employee is or may be entitled, and provide
 - 138 to the office evidence of the application.
 - 139 (c) If the eligible employee fails to make application under Subsection (6)(a) or (b), the
 - 140 monthly disability benefit shall be suspended.