

PUBLIC EMPLOYEES LONG-TERM DISABILITY

ACT AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill modifies the Public Employees' Long-Term Disability Act by amending provisions relating to long-term disability benefits.

Highlighted Provisions:

This bill:

- ▶ provides and amends definitions;
- ▶ specifies when an employee will be evaluated for ongoing disability benefits;
- ▶ modifies the amount of certain disability benefits to be paid;
- ▶ modifies the types of reductions or reimbursements for a disability benefit and specifies when a reduction or reimbursement should be applied;
- ▶ requires repayment when an overpayment of monthly disability benefits occurs; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

- 49-21-102**, as last amended by Laws of Utah 2014, Chapter 15
- 49-21-401**, as last amended by Laws of Utah 2015, Chapter 328
- 49-21-402**, as last amended by Laws of Utah 2017, Chapter 34

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

Section 1. Section **49-21-102** is amended to read:

49-21-102. Definitions.

32 As used in this chapter:

33 (1) "Date of disability" means the date on which a period of [~~continuous~~] total
34 disability [~~commences~~] begins, and may not [~~commence~~] begin on or before the last day of
35 [~~actual work~~] performing full-duty work in the eligible employee's regular occupation.

36 (2) (a) "Eligible employee" means the following employee whose employer provides
37 coverage under this chapter:

38 (i) (A) any regular full-time employee as defined under Section 49-12-102, 49-13-102,
39 or 49-22-102;

40 (B) any public safety service employee as defined under Section 49-14-102, 49-15-102,
41 or 49-23-102;

42 (C) any firefighter service employee or volunteer firefighter as defined under Section
43 49-23-102 who began firefighter service on or after July 1, 2011;

44 (D) any judge as defined under Section 49-17-102 or 49-18-102; or

45 (E) the governor of the state;

46 (ii) an employee who is exempt from participating in a retirement system under
47 Subsection 49-12-203(4), 49-13-203(4), 49-14-203(1), or 49-15-203(1); and

48 (iii) an employee who is covered by a retirement program offered by a public or private
49 system, organization, or company designated by the State Board of Regents.

50 (b) "Eligible employee" does not include:

51 (i) any employee that is exempt from coverage under Section 49-21-201; or

52 (ii) a retiree.

53 (3) "Elimination period" means the three months at the beginning of each continuous
54 period of total disability for which no benefit will be paid. The elimination period begins on
55 the nearest first day of the month from the date of disability. The elimination period may
56 include a one-time trial return to work period of less than 15 consecutive calendar days.

57 (4) (a) "Gainful employment" means any occupation or employment position in the
58 state that:

59 (i) contemplates continued employment during a fiscal or calendar year; and

60 (ii) would pay an amount equal to or greater than 40 hours per week at the legally
61 required minimum wage, regardless of the number of hours worked.

62 (b) "Gainful employment" does not mean that an occupation or employment position in

63 the state is:

64 (i) available within any geographic boundaries of the state;

65 (ii) offered at a certain level of wages;

66 (iii) available at a particular number of hours per week; or

67 (iv) currently available.

68 ~~[(4)]~~ (5) "Maximum benefit period" means the maximum period of time the monthly
69 disability income benefit will be paid under Section 49-21-403 for any continuous period of
70 total disability.

71 ~~[(5)]~~ (6) "Monthly disability benefit" means the monthly payments and accrual of
72 service credit under Section 49-21-401.

73 ~~[(6)]~~ (7) "Objective medical impairment" means an impairment resulting from an
74 injury or illness which is diagnosed by a physician and which is based on accepted objective
75 medical tests or findings rather than subjective complaints.

76 ~~[(b)(i)]~~ ~~"Total disability"~~ (8)(a) "Ongoing disability" means, after the elimination
77 period and the first 24 months of disability benefits, the complete inability, as determined
78 under Subsection ~~[(11)(b)(ii)]~~ (8)(b), to engage in any gainful ~~[occupation]~~ employment which
79 is reasonable, considering the eligible employee's education, training, and experience.

80 ~~[(ii)]~~ (b) For purposes of Subsection ~~[(11)(b)(i)]~~ (8)(a), inability is determined:

81 ~~[(A)]~~ (i) based solely on physical objective medical impairment; and

82 ~~[(B)]~~ (ii) regardless of the existence or absence of any mental impairment.

83 (9) "Own occupation disability" means the complete inability, due to objective medical
84 impairment, whether physical or mental, to engage in the eligible employee's regular
85 occupation during the elimination period and the first 24 months of disability benefits.

86 ~~[(7)]~~ (10) "Physician" means a licensed physician.

87 ~~[(8)]~~ (11) "Regular monthly salary" means the amount certified by the participating
88 employer as the monthly salary of the eligible employee, unless there is a discrepancy between
89 the certified amount and the amount actually paid, in which case the office shall determine the
90 regular monthly salary.

91 ~~[(9)]~~ (12) "Regular occupation" means either:

92 (a) the primary duties performed by the eligible employee for the 12 months preceding
93 the date of disability~~[-]~~; or

94 (b) a permanent assignment of duty to the eligible employee, as long as the eligible
95 employee has actually performed all the required duties of the permanent assignment of duty.

96 ~~[(10)]~~ (13) "Rehabilitative employment" means any occupation or employment for
97 wage or profit, for which the eligible employee is reasonably qualified to perform based on
98 education, training, or experience.

99 ~~[(11)-(a)]~~ (14) "Total disability" means:

100 (a) own occupation disability; or

101 (b) ongoing disability.

102 (15) (a) "Workers' compensation indemnity benefits" means benefits provided that are
103 designed to replace wages under Title 34A, Chapter 2, Part 4, Compensation and Benefits,
104 including wage replacement for a temporary disability, temporary partial disability, permanent
105 partial disability, or permanent total disability.

106 (b) "Workers' compensation indemnity benefits" includes a settlement amount
107 following a claim for indemnity benefits.

108 Section 2. Section **49-21-401** is amended to read:

109 **49-21-401. Disability benefits -- Application -- Eligibility.**

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

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

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

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

116 (2) (a) If an eligible employee is unable to apply on the employee's own behalf, the
117 application may be made by a person who is:

118 (i) the attorney for an eligible employee; or

119 (ii) appointed as a conservator or guardian of the eligible employee.

120 (b) A person described in Subsection (2)(a), may not make an application for a
121 deceased employee.

122 (3) Upon request by the office, the participating employer of the eligible employee
123 shall provide to the office documentation and information concerning the eligible employee.

124 (4) The office:

- 125 (a) shall review all relevant information;
- 126 (b) may request additional information; and
- 127 (c) shall determine whether or not the eligible employee has a total disability.
- 128 (5) (a) If the office determines that the eligible employee has a total disability due to
- 129 accidental bodily injury or physical illness which is not the result of the performance of an
- 130 employment duty, the eligible employee shall receive a monthly disability benefit equal to:
- 131 (i) two-thirds of the eligible employee's regular monthly salary, for each month the total
- 132 disability continues beyond the elimination period, not to exceed the maximum benefit
- 133 period[-]; minus
- 134 (ii) any required reductions or reimbursements under Section 49-21-402.
- 135 (b) For an eligible employee under an own occupation disability, the office shall, at the
- 136 end of the two-year disability period or when a claim for total disability is made by an eligible
- 137 employee:
- 138 (i) review and determine whether the eligible employee qualifies for ongoing disability
- 139 benefits;
- 140 (ii) make the determination under Subsection (5)(b)(i) as of the day after the eligible
- 141 employee's own occupation disability benefits end;
- 142 (iii) consider only physical objective medical impairment that the office determines as
- 143 a disabling condition on the date of disability; and
- 144 (iv) exclude any new intervening causes or new diagnoses during the own occupation
- 145 disability period.
- 146 (6) If the office determines that the eligible employee has a total disability due to
- 147 psychiatric illness, the eligible employee shall receive:
- 148 (a) a maximum of two years of monthly disability benefits equal to two-thirds of the
- 149 eligible employee's regular monthly salary for each month the total disability continues beyond
- 150 the elimination period;
- 151 (b) a maximum of \$10,000 for psychiatric expenses, including rehabilitation expenses
- 152 preauthorized by the office's consultants, paid during the period of monthly disability benefits;
- 153 and
- 154 (c) payment of monthly disability benefits according to contractual provisions for a
- 155 period not to exceed five years if the eligible employee is institutionalized due to psychiatric

156 illness.

157 ~~[(7) If the office determines that the eligible employee has a total disability due to a~~
158 ~~physical injury resulting from external force or violence as a result of the performance of an~~
159 ~~employment duty, the eligible employee shall receive a monthly disability benefit equal to~~
160 ~~100% of the eligible employee's regular monthly salary, for each month the total disability~~
161 ~~continues beyond the elimination period, not to exceed the maximum benefit period.]~~

162 (7) (a) An eligible employee shall receive a monthly disability benefit equal to 100% of
163 the eligible employee's regular monthly salary for each month the total disability continues
164 beyond the elimination period, not to exceed the maximum benefit period, but reduced by any
165 required reductions and reimbursements under Section 49-21-402, if the office determines that
166 the employee meets all of the following:

167 (i) the eligible employee has a total disability due solely to a physical objective medical
168 impairment;

169 (ii) the physical objective medical impairment described in Subsection (7)(a)(i)
170 resulted from external force or violence as a result of the performance of an employment duty;
171 and

172 (iii) the eligible employee received workers' compensation indemnity benefits for the
173 physical objective medical impairment described in Subsection (7)(a)(i).

174 (b) An eligible employee who receives workers' compensation indemnity benefits for a
175 physical objective medical impairment is not guaranteed to receive the 100% monthly
176 disability benefit described in Subsection (7)(a).

177 (8) (a) Successive periods of disability are considered as a continuous period of
178 disability if the period of disability:

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

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

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

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

185 (c) If Subsection (8)(a) or (b) does not apply, successive periods of disability are
186 considered as separate periods of disability.

187 (9) The office may, at any time, have any eligible employee claiming to have a
188 disability examined by a physician chosen by the office to determine if the eligible employee
189 has a total disability.

190 (10) A claim brought by an eligible employee for long-term disability benefits under
191 the Public Employee's Long-Term Disability Program is barred if it is not commenced within
192 six months from the eligible employee's date of disability, unless the office determines that
193 under the surrounding facts and circumstances, the eligible employee's failure to comply with
194 the time limitations was reasonable.

195 (11) (a) If the office denies or terminates a claim for long-term disability benefits, the
196 eligible employee shall have the right to appeal the denial or termination:

197 (i) to the [~~office disability claims review committee~~] executive director of the office
198 within 60 days of the denial or termination of long-term disability benefits; and

199 (ii) in accordance with Section 49-11-613.

200 (b) An appeal of a denial or termination of long-term disability benefits described in
201 Subsection (11)(a) is barred if it is not commenced within the time limit described in
202 Subsection (11)(a).

203 [~~(12) (a) If the office disability claims review committee, after reviewing an appeal
204 denying or terminating long-term disability benefits, denies or terminates a claim for long-term
205 disability benefits, the eligible employee may appeal the office disability claims review
206 committee's denial or termination to the executive director of the office in accordance with
207 Section 49-11-613.]~~

208 [~~(b) An appeal of a denial or termination of long-term disability benefits described in
209 Subsection (12)(a) is barred if it is not commenced within 60 days of the office disability
210 claims review committee's denial or termination.]~~

211 [~~(c) Following an appeal commenced under this Subsection (12), any further appeal
212 proceedings shall be conducted in accordance with the administrative hearing process
213 described in Section 49-11-613.]~~

214 [~~(13)~~] (12) Medical or psychiatric conditions which existed prior to eligibility may not
215 be a basis for disability benefits until the eligible employee has had one year of continuous
216 eligibility in the Public Employees Long-Term Disability Program.

217 [~~(14)~~] (13) If there is a valid benefit protection contract, service credit shall accrue

218 during the period of total disability, unless the disabled eligible employee is:

219 (a) exempted from a system;

220 (b) eligible to retire with an unreduced retirement allowance; or

221 (c) otherwise ineligible for service credit.

222 ~~[(15)]~~ (14) Regardless of any medical evidence provided by the employee to support

223 the application for disability, an employee is not eligible for long-term disability benefits

224 during any period in which the employee:

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

226 (b) has a pending action in a court or before any federal, state, or local administrative

227 body in which the employee has made a claim that the employee is able to work.

228 ~~[(16)]~~ (15) Notwithstanding the provisions of Section 49-11-618, upon written request

229 by an employer, information obtained under this part may, upon an order of a court or an

230 administrative law judge, be released to an employer who is a party in an action under

231 Subsection ~~[(15)]~~ (14).

232 Section 3. Section **49-21-402** is amended to read:

233 **49-21-402. Reduction or reimbursement of benefit -- Circumstances --**

234 **Application for other benefits required.**

235 (1) A monthly disability benefit may be terminated unless:

236 (a) the eligible employee is under the ongoing care and treatment of a physician other

237 than the eligible employee; and

238 (b) the eligible employee provides the information and documentation requested by the

239 office.

240 (2) (a) The monthly disability benefit shall be reduced or reimbursed by any amount

241 received by, or payable to, the eligible employee ~~[from the following sources for the same~~

242 ~~period of time during which the eligible employee is entitled to receive a]~~ for the same injury

243 or illness that is the basis for the monthly disability benefit from the following sources:

244 ~~[(a) Social Security disability benefits, including all benefits received by the eligible~~

245 ~~employee, the eligible employee's spouse, and the eligible employee's children as determined~~

246 ~~by the Social Security Administration;]~~

247 ~~[(b)]~~ (i) workers' compensation indemnity benefits, regardless of whether the amount is

248 received as an ongoing monthly benefit, as a lump sum, or in a settlement with a workers'

249 compensation indemnity carrier;

250 ~~[(e)]~~ (ii) any money received by judgment, legal action, or settlement from a third party
251 liable to the employee for the monthly disability benefit;

252 ~~[(d) unemployment compensation benefits;]~~

253 ~~[(e)]~~ (iii) automobile no-fault, medical payments, or similar insurance payments;

254 ~~[(f)]~~ (iv) any money received by a judgment, settlement, or other payment as a result of
255 a claim against an employer; or

256 ~~[(g) any payments made for sick leave;]~~ (v) annual leave[;] or similar lump-sum
257 payments[; ~~and~~].

258 ~~[(h) compensation received for employment, including self-employment, except for~~
259 ~~eligible amounts from approved rehabilitative employment in accordance with Section~~
260 ~~49-21-406;]~~

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

264 (i) social security disability benefits, including all benefits received by the eligible
265 employee, the eligible employee's spouse, and the eligible employee's children as determined
266 by the Social Security Administration;

267 (ii) unemployment compensation benefits;

268 (iii) sick leave benefits; or

269 (iv) compensation received for employment, including self-employment, except for
270 eligible amounts from approved rehabilitative employment in accordance with Section
271 49-21-406.

272 (3) The monthly disability benefit shall be reduced by any amount in excess of
273 one-third of the eligible employee's regular monthly salary received by, or payable to, the
274 eligible employee from the following sources for the same period of time during which the
275 eligible employee is entitled to receive a monthly disability benefit:

276 (a) any retirement payment earned through or provided by public or private
277 employment; and

278 (b) any disability benefit, other than social security or workers' compensation
279 indemnity benefits, resulting from the disability for which benefits are being received under

280 this chapter.

281 (4) After the date of disability, cost-of-living increases to any of the benefits listed in
282 Subsection (2) or (3) may not be considered in calculating a reduction to the monthly disability
283 benefit.

284 (5) Any amounts payable to the eligible employee from one or more of the sources
285 under Subsection (2) are considered as amounts received whether or not the amounts were
286 actually received by the eligible employee.

287 (6) (a) An eligible employee shall first apply for all disability benefits from
288 governmental entities under Subsection (2) to which the eligible employee is or may be
289 entitled, and provide to the office evidence of the applications.

290 (b) If the eligible employee fails to make application under this Subsection (6), the
291 monthly disability benefit shall be suspended.

292 (7) During a period of total disability, an eligible employee has an affirmative duty to
293 keep the program informed regarding:

294 (a) the award or receipt of an amount from a source that could result in the monthly
295 disability benefit being reduced or reimbursed under this section within 10 days of the award or
296 receipt of the amount; and

297 (b) any employment, including self-employment, of the eligible employee and the
298 compensation for that employment within 10 days of beginning the employment or a material
299 change in the compensation from that employment.

300 (8) The program shall use commercially reasonable means to collect any amounts of
301 overpayments and reimbursements.

302 (9) (a) If the program is unable to reduce or obtain reimbursement for the required
303 amount from the monthly disability benefit for any reason, the employee will have received an
304 overpayment of monthly disability benefits.

305 (b) If an eligible employee receives an overpayment of monthly disability benefits, the
306 eligible employee shall repay to the office the amount of the overpayment, plus interest as
307 determined by the program, within 30 days from the date the overpayment is received by:

308 (i) the eligible employee; or

309 (ii) a third party related to the eligible employee.

310 (c) The executive director may waive the interest on an overpayment of monthly

311 disability benefits under Subsection (9)(b) if good cause is shown for the delay in repayment of
312 the overpayment of monthly disability benefits.

313 Section 4. **Effective date.**

314 This bill takes effect on July 1, 2018.