

Long-Term Disability Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

House Sponsor: Cheryl K. Acton

LONG TITLE

General Description:

This bill modifies provisions related to public employee long-term disability benefits.

Highlighted Provisions:

This bill:

- modifies the definition of objective medical impairment for purposes of the Public Employees' Long-Term Disability Act;
- amends provisions related to the application for and determination of long-term disability benefits;
- clarifies which employees are eligible for a disability benefit for a total disability due to a mental objective medical impairment through June 30, 2026;
- modifies the exclusions for monthly disability benefits;
- directs the Public Employees' Long-Term Disability program to administer the existing basic long-term benefit for volunteer emergency medical services personnel; and
- makes technical and conforming 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 2023, Chapter 274

49-21-401, as last amended by Laws of Utah 2023, Chapter 274

49-21-403, as last amended by Laws of Utah 2016, Chapter 227

49-21-405, as renumbered and amended by Laws of Utah 2002, Chapter 250

ENACTS:

49-21-410, Utah Code Annotated 1953

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.

As used in this chapter:

(1) "Date of disability" means the date on which a period of total disability begins, and may not begin on or before the last day of performing full-duty work in the eligible employee's regular occupation.

(2)(a) "Eligible employee" means any of the following employees whose employer provides coverage under this chapter:

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

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

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

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

(E) the governor of the state;

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

(iii) an employee who is covered by a retirement program offered by a public or private system, organization, or company designated by the Utah Board of Higher Education.

(b) "Eligible employee" does not include:

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

(ii) a retiree.

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

(4)(a) "Gainful employment" means any occupation or employment position in the state

62 that:

- 63 (i) contemplates continued employment during a fiscal or calendar year; and
64 (ii) would pay an amount equal to or greater than 40 hours per week at the legally
65 required minimum wage, regardless of the number of hours worked.

66 (b) "Gainful employment" does not mean that an occupation or employment position in
67 the state is:

- 68 (i) available within any geographic boundaries of the state;
69 (ii) offered at a certain level of wages;
70 (iii) available at a particular number of hours per week; or
71 (iv) currently available.

72 (5) "Maximum benefit period" means the maximum period of time the monthly disability
73 income benefit will be paid under Section 49-21-403 for any continuous period of total
74 disability.

75 (6) "Monthly disability benefit" means the monthly payments and accrual of service credit
76 under Section 49-21-401.

77 (7) "Objective medical impairment" means an impairment ~~[resulting]~~ that:

78 (a) is diagnosed by a physician based on accepted objective medical tests or findings
79 rather than subjective complaints; and

80 (b) resulted from an injury or illness that is diagnosed by a physician ~~[and that is]~~ based
81 on accepted objective medical tests or findings rather than subjective complaints.

82 (8) "Ongoing disability" means, after the elimination period and the first 24 months of
83 disability benefits, the complete inability due to objective medical impairment, as
84 determined under Subsection 49-21-401(9), to engage in any gainful employment which
85 is reasonable, considering the eligible employee's education, training, and experience.

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

89 (10) "Physician" means a licensed physician.

90 (11) "Pilot period" means the period beginning on July 1, 2023, and ending on June 30,
91 2026.

92 (12) "Regular monthly salary" means the amount certified by the participating employer as
93 the monthly salary of the eligible employee, unless there is a discrepancy between the
94 certified amount and the amount actually paid, in which case the office shall determine
95 the regular monthly salary.

(13) "Regular occupation" means either:

(a) the primary duties performed by the eligible employee for the 12 months preceding the date of disability; or

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

(14) "Rehabilitative employment" means any occupation or employment for wage or profit, for which the eligible employee is reasonably qualified to perform based on education, training, or experience.

(15) "Total disability" means:

(a) own occupation disability; or

(b) ongoing disability.

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

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

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

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

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

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

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

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

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

(i) the attorney for an eligible employee; or

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

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

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

(4)(a) [The] Upon receipt of the items described in Subsection (1) and any

documentation or information the office requests under Subsection (3), the office:

~~[(a)]~~ (i) shall review all relevant information;

~~[(b)]~~ (ii) may request additional information; and

~~[(c)]~~ (iii) shall determine whether ~~[or not]~~ the eligible employee has a total disability.

(b) In evaluating any claim for disability benefits, the office shall:

(i) determine whether the eligible employee has a total disability as of the date the office makes the determination; and

(ii) consider only objective medical impairment that the office determines as a disabling condition on the date of disability.

(5)(a) If the office determines that the eligible employee has a total disability due to accidental bodily injury or illness that is not the result of the performance of an employment duty, the eligible employee shall receive a monthly disability benefit equal to:

(i) two-thirds of the eligible employee's regular monthly salary, for each month the total disability continues beyond the elimination period, not to exceed the maximum benefit period; minus

(ii) any required reductions or reimbursements under Section 49-21-402.

~~[(b) For an eligible employee under an own occupation disability, the office shall, at the end of the two-year disability period or when a claim for total disability is made by an eligible employee:]~~

~~[(i) review and determine whether the eligible employee qualifies for ongoing disability benefits;]~~

~~[(ii) make the determination under Subsection (5)(b)(i) as of the day after the eligible employee's own occupation disability benefits end;]~~

~~[(iii) consider only objective medical impairment that the office determines as a disabling condition on the date of disability; and]~~

~~[(iv) exclude any new intervening causes or new diagnoses during the own occupation disability period.]~~

(b) For an eligible employee receiving own occupation disability benefits, if the office reviews the eligible employee's claim for own occupation disability benefits, the office may not consider any condition unrelated to the condition the office relied upon in awarding the own occupation disability benefits, including any new intervening cause or new diagnosis during the own occupation disability period.

(6)(a) At the end of the 24-month own occupation disability period or when the eligible

employee makes a claim for ongoing disability, the office shall evaluate the eligible employee's eligibility for ongoing disability benefits.

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

(i) the eligible employee has a total disability:

(A) during the pilot period, due to a physical objective medical impairment or a mental objective medical impairment; or

(B) except as provided in Subsection ~~[(6)(b)]~~ (6)(c), after the pilot period, due to a physical objective medical impairment;

(ii) the objective medical impairment described in Subsection ~~[(6)(a)(i)]~~ (6)(b)(i) resulted from physical, external force or violence to the body of the eligible employee in the performance of an employment duty; and

(iii) the eligible employee received workers' compensation indemnity benefits for the objective medical impairment described in Subsection ~~[(6)(a)(i)]~~ (6)(b)(i).

~~[(b)]~~ (c) If an eligible employee qualifies for a total disability during the pilot period, the office shall determine whether the employee has a total disability after the pilot period due to a physical objective medical impairment or a mental objective medical impairment.

~~[(e)]~~ (d) An eligible employee who receives workers' compensation indemnity benefits for an objective medical impairment is not guaranteed to receive the 100% monthly disability benefit described in Subsection ~~[(6)(a)]~~ (6)(b).

(e) An eligible employee may receive a disability benefit for a total disability due to a mental objective medical impairment in accordance with this subsection only if the eligible employee is a state employee or an employee of a participating employer who has not opted out of providing a disability benefit for a total disability due to a mental objective medical impairment.

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

(i) results from the same or related causes;

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

- 198 (iii) commences while the individual is an eligible employee covered by this chapter.
- 199 (b) The inability to work for a period of less than 15 consecutive calendar days is not
200 considered as a period of disability.
- 201 (c) If Subsection (7)(a) or (b) does not apply, successive periods of disability are
202 considered as separate periods of disability.
- 203 (8) The office may, at any time, have any eligible employee claiming to have a disability
204 examined by a physician chosen by the office [~~to determine if~~] for purposes of the
205 office's review and determination of whether the eligible employee has, or continues to
206 have, a total disability.
- 207 (9)(a) For purposes of determining whether an eligible employee has an ongoing
208 disability, inability is determined:
- 209 (i) during the pilot period, due to physical objective medical impairment or mental
210 objective medical impairment; or
- 211 (ii) except as provided in Subsection (9)(b), after the pilot period, due to a physical
212 objective medical impairment.
- 213 (b) If an eligible employee has a total disability during the pilot period, the office shall
214 determine whether the employee has an ongoing disability after the pilot period due
215 to a physical objective medical impairment or a mental objective medical impairment.
- 216 (10) A claim brought by an eligible employee for long-term disability benefits under the
217 Public Employee's Long-Term Disability Program is barred if it is not commenced
218 within six months from the eligible employee's date of disability, unless the office
219 determines that under the surrounding facts and circumstances, the eligible employee's
220 failure to comply with the time limitations was reasonable.
- 221 (11)(a) If the office denies or terminates a claim for long-term disability benefits, the
222 eligible employee shall have the right to appeal the denial or termination:
- 223 (i) to the executive director of the office within 60 days after the day of the denial or
224 termination of long-term disability benefits; and
- 225 (ii) in accordance with Section 49-11-613.
- 226 (b) An appeal of a denial or termination of long-term disability benefits described in
227 Subsection (11)(a) is barred if it is not commenced within the time limit described in
228 Subsection (11)(a).
- 229 (12) Medical or psychiatric conditions that existed before eligibility may not be a basis for
230 disability benefits until the eligible employee has had one year of continuous eligibility
231 in the Public Employees Long-Term Disability Program.

- (13) If there is a valid benefit protection contract, service credit shall accrue during the period of total disability, unless the disabled eligible employee is:
- (a) exempted from a system;
 - (b) eligible to retire with an unreduced retirement allowance; or
 - (c) otherwise ineligible for service credit.
- (14) Regardless of any medical evidence provided by the employee to support the application for disability, an employee is not eligible for long-term disability benefits during any period in which the employee:
- (a) makes a claim that the employee is able to work; or
 - (b) has a pending action in a court or before any federal, state, or local administrative body in which the employee has made a claim that the employee is able to work.
- (15) Notwithstanding the provisions of Section 49-11-618, upon written request by an employer, information obtained under this part may, upon an order of a court or an administrative law judge, be released to an employer who is a party in an action under Subsection (14).
- (16) On or after May 1, 2025, but on or before November 1, 2025, the office shall provide a written electronic report to the Retirement and Independent Entities Committee regarding the costs and benefits of the changes to the disability benefits during the pilot period.

Section 3. Section **49-21-403** is amended to read:

49-21-403 . Termination of disability benefits -- Calculation of retirement benefit.

- (1) An eligible employee covered by this chapter and eligible for service credit under a system or plan, including an eligible employee who relinquishes rights to retirement benefits under Section 49-11-619, who applies and is qualified for a monthly disability benefit shall receive a monthly disability benefit until the earlier of:
- (a) the date of the eligible employee's death;
 - (b) the date the eligible employee no longer has a total disability;
 - (c) the date the eligible employee has accumulated or would have accumulated, if the employee had not chosen the Title 49, Chapter 22, Part 4, Tier II Defined Contribution Plan, Title 49, Chapter 23, Part 4, Tier II Defined Contribution Plan, been a volunteer firefighter, or exempted from a retirement system or plan:
 - (i) 20 years of service credit if the eligible employee is covered by Chapter 14, Public Safety Contributory Retirement Act, or Chapter 15, Public Safety Noncontributory Retirement Act;

- 266 (ii) 25 years of service credit if the eligible employee is covered by Chapter 17,
267 Judges' Contributory Retirement Act, or Chapter 18, Judges' Noncontributory
268 Retirement Act;
- 269 (iii) 30 years of service credit if the eligible employee is covered by Chapter 12,
270 Public Employees' Contributory Retirement Act, or Chapter 13, Public
271 Employees' Noncontributory Retirement Act;
- 272 (iv) 35 years of service credit if the eligible employee is covered by the defined
273 benefit portion under Chapter 22, Part 3, Tier II Hybrid Retirement System, or is
274 covered by the defined contribution plan under Chapter 22, Part 4, Tier II Defined
275 Contribution Plan; or
- 276 (v) 25 years of service credit if the eligible employee is covered by the defined
277 benefit portion under Chapter 23, Part 3, Tier II Hybrid Retirement System, or is
278 covered by the defined contribution plan under Chapter 23, Part 4, Tier II Defined
279 Contribution Plan;
- 280 (d) the date the eligible employee has received a monthly disability benefit for the
281 following applicable time periods:
- 282 (i) if the eligible employee is under age 60, the monthly disability benefit is payable
283 until age 65;
- 284 (ii) if the eligible employee is 60 or 61 years of age on the date of disability, the
285 monthly disability benefit is payable for five years;
- 286 (iii) if the eligible employee is 62 or 63 years of age on the date of disability, the
287 monthly disability benefit is payable for four years;
- 288 (iv) if the eligible employee is 64 or 65 years of age on the date of disability, the
289 monthly disability benefit is payable for three years;
- 290 (v) if the eligible employee is 66, 67, or 68 years of age on the date of disability, the
291 monthly disability benefit is payable for two years; and
- 292 (vi) if the eligible employee is 69 years of age or older on the date of disability, the
293 monthly disability benefit is payable for one year; or
- 294 (e) the eligible employee's retirement date, set when the eligible employee retires from a
295 system or from the Utah Governors' and Legislators' Retirement Plan.
- 296 (2)(a) Upon termination of a monthly disability benefit, an eligible employee eligible for
297 service credit under a system may retire under the requirements of the system which
298 covered the eligible employee on the date of disability.
- 299 (b) The final average salary used in the calculation of the allowance shall be based on

the annual rate of pay on the date of disability, improved by the annual cost-of-living increase factor applied to retirees of the system which covered the eligible employee on the date of disability.

(3) An eligible employee who is eligible for service credit in a system, but has relinquished rights to an allowance under Section 49-11-619, may receive the benefits the eligible employee would have received by being eligible for service credit in the system covering the eligible employee on the date of disability, except for the accrual of service credit, in accordance with this title.

(4) An eligible employee receiving a monthly disability benefit who has service credit from two or more systems may not combine service credits under Section 49-11-405 in qualifying for retirement, unless the eligible employee would receive a greater allowance by combining the service credits.

(5) An eligible employee covered by this chapter who is a participant in the Tier II Defined Contribution Plan, created in Chapter 22, Part 4, Tier II Defined Contribution Plan, or Chapter 23, Part 4, Tier II Defined Contribution Plan, who applies and is qualified for a monthly disability benefit, shall receive a monthly disability benefit until the earlier of:

(a) the date of the eligible employee's death;

(b) the date the eligible employee no longer has a disability;

(c)(i) 35 years from the date the eligible employee began participation in the Tier II Defined Contribution Plan, created in Chapter 22, Part 4, Tier II Defined Contribution Plan; or

(ii) 25 years from the date the eligible employee began participation in the Tier II Defined Contribution Plan created in Chapter 23, Part 4, Tier II Defined Contribution Plan; or

(d) the date the eligible employee has received a monthly disability benefit for the following applicable time periods:

(i) if the eligible employee is under age 60, the monthly disability benefit is payable until age 65;

(ii) if the eligible employee is 60 or 61 years of age on the date of disability, the monthly disability benefit is payable for five years;

(iii) if the eligible employee is 62 or 63 years of age on the date of disability, the monthly disability benefit is payable for four years;

(iv) if the eligible employee is 64 or 65 years of age on the date of disability, the monthly disability benefit is payable for three years;

- (v) if the eligible employee is 66, 67, or 68 years of age on the date of disability, the monthly disability benefit is payable for two years; and
- (vi) if the eligible employee is 69 years of age or older on the date of disability, the monthly disability benefit is payable for one year.

Section 4. Section **49-21-405** is amended to read:

49-21-405 . Disability benefit -- Exclusions.

A monthly disability benefit is not payable for ~~[the following]~~ a total disability proximately caused by:

- (1) self-inflicted injury;
- (2) ~~[alcoholism]~~ abuse or misuse of any substance, including alcohol;
- (3) ~~[substance abuse]~~ illicit drug use;
- (4) ~~[disability arising from or caused by acts]~~ an act of aggression committed by the eligible employee; or
- (5) the eligible ~~[employee committing or attempting to commit]~~ employee's commission or attempted commission of a felony or other illegal act.

Section 5. Section **49-21-410** is enacted to read:

49-21-410 . Basic long-term disability benefit for volunteer emergency medical service personnel.

The program shall administer a basic long-term disability benefit, as defined in Section 53-2d-703, for volunteer emergency medical service personnel as provided in Section 53-2d-703.

Section 6. **Effective Date.**

This bill takes effect on July 1, 2025.