

Chapter 21 Public Employees' Long-Term Disability Act

Part 1 General Provisions

49-21-101 Title.

This chapter is known as the "Public Employees' Long-Term Disability Act."

Renumbered and Amended by Chapter 250, 2002 General Session

49-21-102 Definitions.

As used in this chapter:

- (1) "Date of disability" means the date on which a period of continuous disability commences, and may not commence on or before the last day of actual work.
- (2)
 - (a) "Eligible employee" means the following employee 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 State Board of Regents.
 - (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) "Maximum benefit period" means the maximum period of time the monthly disability income benefit will be paid under Section 49-21-403 for any continuous period of total disability.
- (5) "Monthly disability benefit" means the monthly payments and accrual of service credit under Section 49-21-401.
- (6) "Objective medical impairment" means an impairment resulting from an injury or illness which is diagnosed by a physician and which is based on accepted objective medical tests or findings rather than subjective complaints.
- (7) "Physician" means a licensed physician.

- (8) "Regular monthly salary" means the amount certified by the participating employer as the monthly salary of the eligible employee, unless there is a discrepancy between the certified amount and the amount actually paid, in which case the office shall determine the regular monthly salary.
- (9) "Regular occupation" means either the primary duties performed by the eligible employee for the 12 months preceding the date of disability, or a permanent assignment of duty to the eligible employee.
- (10) "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.
- (11)
 - (a) "Total disability" means the complete inability, due to objective medical impairment, whether physical or mental, to engage in the eligible employee's regular occupation during the elimination period and the first 24 months of disability benefits.
 - (b)
 - (i) "Total disability" means, after the elimination period and the first 24 months of disability benefits, the complete inability, as determined under Subsection (11)(b)(ii), to engage in any gainful occupation which is reasonable, considering the eligible employee's education, training, and experience.
 - (ii) For purposes of Subsection (11)(b)(i), inability is determined:
 - (A) based solely on physical objective medical impairment; and
 - (B) regardless of the existence or absence of any mental impairment.

Amended by Chapter 15, 2014 General Session

49-21-103 Creation of program.

There is created for eligible employees the "Public Employees' Long-Term Disability Program."

Renumbered and Amended by Chapter 250, 2002 General Session

49-21-104 Creation of trust fund.

- (1) There is created the "Public Employees' Long-Term Disability Trust Fund" for the purpose of paying the benefits and costs of administering this program.
- (2) The fund shall consist of all money and interest paid into it in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.
- (3) Custody, management, and investment of the fund shall be governed by Chapter 11, Utah State Retirement Systems Administration.

Renumbered and Amended by Chapter 250, 2002 General Session

49-21-105 Purpose -- Flexibility -- Administration.

- (1) The purpose of this chapter is to provide long-term disability benefits for an eligible employee.
- (2) Subject to the provisions of Section 49-21-201, the program may include one or more long-term disability benefit plans that differ from the benefit plan specified by this chapter for an eligible employee of a covered employer as defined under Section 49-20-102.
- (3) The program shall be administered by the office, under policies and rules adopted by the board.

Amended by Chapter 66, 2013 General Session

Part 2 Membership Eligibility

49-21-201 Program membership -- Eligibility.

- (1) The state shall cover all of its eligible employees under this chapter.
- (2) Public safety service employees, as defined in Sections 49-14-102, 49-15-102, and 49-23-102 shall be covered under this chapter or a substantially similar long-term disability program in accordance with the provisions of Section 49-14-601, 49-15-601, or 49-23-601.
- (3) Beginning on July 1, 2011, firefighter service employees, as defined in Section 49-23-102, initially entering employment on or after July 1, 2011, and volunteer firefighters, as defined in Section 49-23-102, shall be covered under this chapter in accordance with the provisions of Section 49-23-601.
- (4) Except as provided under Subsection (5), all other employers may provide coverage for their eligible employees under this chapter.
- (5) If an employer elects to cover any of its eligible employees under this chapter, all of its eligible employees shall be covered.
- (6) Except as provided under Subsections (1) and (2), nothing in this chapter requires any employer to cover its eligible employees under this chapter.
- (7) The following employees are not eligible for coverage under this chapter:
 - (a) firefighter service employees, as defined under Section 49-16-102, that initially entered employment prior to July 1, 2011; and
 - (b) legislators.

Amended by Chapter 298, 2012 General Session

Part 3 Contributions

49-21-301 Contributions to fund program -- Adjustment of premium rate.

- (1) During each legislative session, the board shall certify to the Legislature the employer paid premium rate expressed as a percentage of salary which is required to fund the Public Employees' Long-Term Disability Trust Fund.
- (2) Upon the board's recommendation, the Legislature shall adjust the premium rate to maintain adequate funding for the Public Employees' Long-Term Disability Trust Fund.

Renumbered and Amended by Chapter 250, 2002 General Session

Part 4 Disability Benefits

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) The office:
- (a) shall review all relevant information;
 - (b) may request additional information; and
 - (c) shall determine whether or not the eligible employee has a total disability.
- (5) If the office determines that the eligible employee has a total disability due to accidental bodily injury or physical illness which is not the result of the performance of an employment duty, the eligible employee shall receive a monthly disability benefit equal to 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.
- (6) If the office determines that the eligible employee has a total disability due to psychiatric illness, the eligible employee shall receive:
- (a) a maximum of two years of monthly disability benefits equal to two-thirds of the eligible employee's regular monthly salary for each month the total disability continues beyond the elimination period;
 - (b) a maximum of \$10,000 for psychiatric expenses, including rehabilitation expenses preauthorized by the office's consultants, paid during the period of monthly disability benefits; and
 - (c) payment of monthly disability benefits according to contractual provisions for a period not to exceed five years if the eligible employee is institutionalized due to psychiatric illness.
- (7) If the office determines that the eligible employee has a total disability due to a physical injury resulting from external force or violence as a result of the performance of an employment duty, the 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.
- (8)
- (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
 - (iii) commences while the individual is an eligible employee covered by this chapter.
 - (b) The inability to work for a period of less than 15 consecutive calendar days is not considered as a period of disability.
 - (c) If Subsection (8)(a) or (b) does not apply, successive periods of disability are considered as separate periods of disability.

- (9) The office may, at any time, have any eligible employee claiming to have a disability examined by a physician chosen by the office to determine if the eligible employee has a total disability.
- (10) A claim brought by an eligible employee for long-term disability benefits under the Public Employee's Long-Term Disability Program is barred if it is not commenced within six months from the eligible employee's date of disability, unless the office determines that under the surrounding facts and circumstances, the eligible employee's failure to comply with the time limitations was reasonable.
- (11)
 - (a) If the office denies or terminates a claim for long-term disability benefits, the eligible employee shall have the right to appeal the denial or termination to the office disability claims review committee within 60 days of the denial or termination of long-term disability benefits.
 - (b) An appeal of a denial or termination of long-term disability benefits described in Subsection (11)(a) is barred if it is not commenced within the time limit described in Subsection (11)(a).
- (12)
 - (a) If the office disability claims review committee, after reviewing an appeal denying or terminating long-term disability benefits, denies or terminates a claim for long-term disability benefits, the eligible employee may appeal the office disability claims review committee's denial or termination to the executive director of the office in accordance with Section 49-11-613.
 - (b) An appeal of a denial or termination of long-term disability benefits described in Subsection (12)(a) is barred if it is not commenced within 60 days of the office disability claims review committee's denial or termination.
 - (c) Following an appeal commenced under this Subsection (12), any further appeal proceedings shall be conducted in accordance with the administrative hearing process described in Section 49-11-613.
- (13) Medical or psychiatric conditions which existed prior to eligibility may not be a basis for disability benefits until the eligible employee has had one year of continuous eligibility in the Public Employees Long-Term Disability Program.
- (14) 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.
- (15) 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.
- (16) 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 (15).

Amended by Chapter 328, 2015 General Session

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

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

- (a) the eligible employee is under the ongoing care and treatment of a physician other than the eligible employee; and
 - (b) the eligible employee provides the information and documentation requested by the office.
- (2) The monthly disability benefit shall be reduced or reimbursed by any amount received by, or payable to, the eligible employee from the following sources for the same period of time during which the eligible employee is entitled to receive a monthly disability benefit:
- (a) Social Security disability benefits, including all benefits received by the eligible employee, the eligible employee's spouse, and the eligible employee's children as determined by the Social Security Administration;
 - (b) workers' compensation indemnity benefits;
 - (c) any money received by judgment, legal action, or settlement from a third party liable to the employee for the disability;
 - (d) unemployment compensation benefits;
 - (e) automobile no-fault, medical payments, or similar insurance payments;
 - (f) any money received by a judgment, settlement, or other payment as a result of a claim against an employer; and
 - (g) any payments made for sick leave, annual leave, or similar payments.
- (3) The monthly disability benefit shall be reduced by any amount in excess of one-third of the eligible employee's regular monthly salary received by, or payable to, the eligible employee from the following sources for the same period of time during which the eligible employee is entitled to receive a monthly disability benefit:
- (a) any retirement payment earned through or provided by public or private employment; and
 - (b) any disability benefit resulting from the disability for which benefits are being received under this chapter.
- (4) After the date of disability, cost-of-living increases to any of the benefits listed in Subsection (2) or (3) may not be considered in calculating a reduction to the monthly disability benefit.
- (5) Any amounts payable to the eligible employee from one or more of the sources under Subsection (2) are considered as amounts received whether or not the amounts were actually received by the eligible employee.
- (6)
- (a) An eligible employee shall first apply for all disability benefits from governmental entities under Subsection (2) to which the eligible employee is or may be entitled, and provide to the office evidence of the applications.
 - (b) If the eligible employee fails to make application under this Subsection (6), the monthly disability benefit shall be suspended.

Amended by Chapter 316, 2013 General Session

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 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;
 - (ii) 25 years of service credit if the eligible employee is covered by Chapter 17, Judges' Contributory Retirement Act, or Chapter 18, Judges' Noncontributory Retirement Act;
 - (iii) 30 years of service credit if the eligible employee is covered by Chapter 12, Public Employees' Contributory Retirement Act, or Chapter 13, Public Employees' Noncontributory Retirement Act;
 - (iv) 35 years of service credit if the eligible employee is covered by the defined benefit portion under Chapter 22, Part 3, Tier II Hybrid Retirement System, or is covered by the defined contribution plan under Chapter 22, Part 4, Tier II Defined Contribution Plan; or
 - (v) 25 years of service credit if the eligible employee is covered by the defined benefit portion under Chapter 23, Part 3, Tier II Hybrid Retirement System, or is covered by the defined contribution plan under Chapter 23, Part 4, Tier II Defined Contribution Plan;
- (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; or
- (e) the eligible employee's retirement date, set when the eligible employee retires from a system or from the Utah Governors' and Legislators' Retirement Plan.
- (2)
- (a) Upon termination of a monthly disability benefit, an eligible employee eligible for service credit under a system may retire under the requirements of the system which covered the eligible employee on the date of disability.
 - (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.

Amended by Chapter 227, 2016 General Session

49-21-404 Annual adjustment to disability benefit.

- (1)
 - (a) An eligible employee receiving a monthly disability benefit shall receive an annual adjustment on the date following the end of the elimination period to reflect annual changes in the United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
 - (b) This adjustment may not exceed adjustments made to retirees under the system which covered the eligible employee on the date of disability.
- (2) If an employee is not participating in a system, the annual adjustment may not exceed the adjustment paid in the system which would cover the employee if the employee were participating in a system.

Amended by Chapter 240, 2003 General Session

49-21-405 Disability benefit -- Exclusions.

A monthly disability benefit is not payable for the following:

- (1) self-inflicted injury;
- (2) alcoholism;
- (3) substance abuse;
- (4) disability arising from or caused by acts of aggression committed by the eligible employee; or
- (5) the eligible employee committing or attempting to commit a felony or other illegal act.

Renumbered and Amended by Chapter 250, 2002 General Session

49-21-406 Rehabilitative employment -- Interview by disability specialist -- Maintaining eligibility -- Additional treatment and care.

- (1)
 - (a) If an eligible employee, during a period of total disability for which the monthly disability benefit is payable, engages in approved rehabilitative employment, the monthly disability benefit otherwise payable shall be reduced:
 - (i) by an amount equal to 50% of the income to which the eligible employee is entitled for the employment during the month; and
 - (ii) so that the combined amount received from the rehabilitative employment and the monthly disability payment does not exceed 100% of the eligible employee's monthly salary prior to the employee's disability.
 - (b) This rehabilitative benefit is payable for up to two years or to the end of the maximum benefit period, whichever occurs first.
- (2)
 - (a) Each eligible employee receiving a monthly disability benefit shall be interviewed by the office.
 - (b) The office may refer the eligible employee to a rehabilitative or vocational specialist for a review of the eligible employee's condition and a written rehabilitation plan and return to work assistance.
- (3) If an eligible employee receiving a monthly disability benefit fails to participate in an office-approved rehabilitation program within the limitations set forth by a physician, the monthly disability benefit may be suspended or terminated.
- (4) The office may, as a condition of paying a monthly disability benefit, require that the eligible employee receive medical care and treatment if that treatment is reasonable or usual according to current medical practices.

Amended by Chapter 328, 2015 General Session

49-21-408 Limitation of service credit accrual -- Disability benefits from a long-term disability program other than under this chapter.

Beginning on July 1, 2014, an eligible employee who receives a monthly disability benefit from a long-term disability program other than under this chapter and who is eligible for service credit under a system or plan shall accrue service credit in that system or plan until the earlier of:

- (1) the date of the eligible employee's death;
- (2) the date the eligible employee retires from the system or plan; or
- (3) the date the eligible employee has accumulated or would have accumulated service credit in a defined benefit system or plan under this title, sufficient to be eligible to retire with an unreduced allowance, if the employee had not:
 - (a) chosen a defined contribution plan under Title 49, Chapter 22, Part 4, Tier II Defined Contribution Plan, or under Title 49, Chapter 23, Part 4, Tier II Defined Contribution Plan;
 - (b) been a volunteer firefighter; or
 - (c) been exempted from a retirement system or plan under this title.

Enacted by Chapter 15, 2014 General Session