

PUBLIC EMPLOYEES LONG-TERM DISABILITY ACT

AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jefferson Moss

Senate Sponsor: Daniel Hemmert

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

30

31 *Be it enacted by the Legislature of the state of Utah:*32 Section 1. Section **49-21-102** is amended to read:33 **49-21-102. Definitions.**

34 As used in this chapter:

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

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

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

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

44 (C) any firefighter service employee or volunteer firefighter as defined under Section
45 [49-23-102](#) who began firefighter service on or after July 1, 2011;

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

47 (E) the governor of the state;

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

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

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

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

54 (ii) a retiree.

55 (3) "Elimination period" means the three months at the beginning of each continuous
56 period of total disability for which no benefit will be paid. The elimination period begins on
57 the nearest first day of the month from the date of disability. The elimination period may

58 include a one-time trial return to work period of less than 15 consecutive calendar days.

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

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

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

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

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

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

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

69 (iv) currently available.

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

73 ~~[(5)]~~ (6) "Monthly disability benefit" means the monthly payments and accrual of
74 service credit under Section 49-21-401.

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

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

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

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

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

85 (9) "Own occupation disability" means the complete inability, due to objective medical

86 impairment, whether physical or mental, to engage in the eligible employee's regular
87 occupation during the elimination period and the first 24 months of disability benefits.

88 [~~(7)~~] (10) "Physician" means a licensed physician.

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

93 [~~(9)~~] (12) "Regular occupation" means either:

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

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

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

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

102 (a) own occupation disability; or

103 (b) ongoing disability.

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

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

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

111 **49-21-401. Disability benefits -- Application -- Eligibility.**

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

- 114 (a) completing an application form prepared by the office;
- 115 (b) signing a consent form allowing the office access to the eligible employee's medical
- 116 records; and
- 117 (c) providing any documentation or information reasonably requested by the office.
- 118 (2) (a) If an eligible employee is unable to apply on the employee's own behalf, the
- 119 application may be made by a person who is:
 - 120 (i) the attorney for an eligible employee; or
 - 121 (ii) appointed as a conservator or guardian of the eligible employee.
- 122 (b) A person described in Subsection (2)(a), may not make an application for a
- 123 deceased employee.
- 124 (3) Upon request by the office, the participating employer of the eligible employee
- 125 shall provide to the office documentation and information concerning the eligible employee.
- 126 (4) The office:
 - 127 (a) shall review all relevant information;
 - 128 (b) may request additional information; and
 - 129 (c) shall determine whether or not the eligible employee has a total disability.
- 130 (5) (a) If the office determines that the eligible employee has a total disability due to
- 131 accidental bodily injury or physical illness which is not the result of the performance of an
- 132 employment duty, the eligible employee shall receive a monthly disability benefit equal to:
 - 133 (i) two-thirds of the eligible employee's regular monthly salary, for each month the total
 - 134 disability continues beyond the elimination period, not to exceed the maximum benefit
 - 135 period[-]; minus
 - 136 (ii) any required reductions or reimbursements under Section [49-21-402](#).
 - 137 (b) For an eligible employee under an own occupation disability, the office shall, at the
 - 138 end of the two-year disability period or when a claim for total disability is made by an eligible
 - 139 employee:
 - 140 (i) review and determine whether the eligible employee qualifies for ongoing disability
 - 141 benefits;

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

144 (iii) consider only physical objective medical impairment that the office determines as
145 a disabling condition on the date of disability; and

146 (iv) exclude any new intervening causes or new diagnoses during the own occupation
147 disability period.

148 (6) If the office determines that the eligible employee has a total disability due to
149 psychiatric illness, the eligible employee shall receive:

150 (a) a maximum of two years of monthly disability benefits equal to two-thirds of the
151 eligible employee's regular monthly salary for each month the total disability continues beyond
152 the elimination period;

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

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

159 ~~[(7) If the office determines that the eligible employee has a total disability due to a~~
160 ~~physical injury resulting from external force or violence as a result of the performance of an~~
161 ~~employment duty, the eligible employee shall receive a monthly disability benefit equal to~~
162 ~~100% of the eligible employee's regular monthly salary, for each month the total disability~~
163 ~~continues beyond the elimination period, not to exceed the maximum benefit period.]~~

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

169 (i) the eligible employee has a total disability due solely to a physical objective medical

170 impairment;

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

173 and

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

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

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

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

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

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

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

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

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

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

197 (11) (a) If the office denies or terminates a claim for long-term disability benefits, the

198 eligible employee shall have the right to appeal the denial or termination:

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

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

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

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

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

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

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

219 ~~[(14)]~~ (13) If there is a valid benefit protection contract, service credit shall accrue
220 during the period of total disability, unless the disabled eligible employee is:

- 221 (a) exempted from a system;
- 222 (b) eligible to retire with an unreduced retirement allowance; or
- 223 (c) otherwise ineligible for service credit.

224 ~~[(15)]~~ (14) Regardless of any medical evidence provided by the employee to support
225 the application for disability, an employee is not eligible for long-term disability benefits

226 during any period in which the employee:

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

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

230 ~~[(16)]~~ (15) Notwithstanding the provisions of Section 49-11-618, upon written request
231 by an employer, information obtained under this part may, upon an order of a court or an
232 administrative law judge, be released to an employer who is a party in an action under
233 Subsection ~~[(15)]~~ (14).

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

235 **49-21-402. Reduction or reimbursement of benefit -- Circumstances --**

236 **Application for other benefits required.**

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

238 (a) the eligible employee is under the ongoing care and treatment of a physician other
239 than the eligible employee; and

240 (b) the eligible employee provides the information and documentation requested by the
241 office.

242 (2) (a) The monthly disability benefit shall be reduced or reimbursed by any amount
243 received by, or payable to, the eligible employee ~~[from the following sources for the same~~
244 ~~period of time during which the eligible employee is entitled to receive a]~~ for the same injury
245 or illness that is the basis for the monthly disability benefit from the following sources:

246 ~~[(a) Social Security disability benefits, including all benefits received by the eligible~~
247 ~~employee, the eligible employee's spouse, and the eligible employee's children as determined~~
248 ~~by the Social Security Administration;]~~

249 ~~[(b)]~~ (i) workers' compensation indemnity benefits, regardless of whether the amount is
250 received as an ongoing monthly benefit, as a lump sum, or in a settlement with a workers'
251 compensation indemnity carrier;

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

254 ~~[(d) unemployment compensation benefits;]~~
255 ~~[(e)]~~ (iii) automobile no-fault, medical payments, or similar insurance payments;
256 ~~[(f)]~~ (iv) any money received by a judgment, settlement, or other payment as a result of
257 a claim against an employer; or
258 ~~[(g) any payments made for sick leave;]~~ (v) annual leave[;] or similar lump-sum
259 payments[; and].
260 ~~[(h) compensation received for employment, including self-employment, except for~~
261 ~~eligible amounts from approved rehabilitative employment in accordance with Section~~
262 ~~49-21-406.]~~

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

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

269 (ii) unemployment compensation benefits;

270 (iii) sick leave benefits; or

271 (iv) compensation received for employment, including self-employment, except for
272 eligible amounts from approved rehabilitative employment in accordance with Section
273 49-21-406.

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

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

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

282 this chapter.

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

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

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

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

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

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

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

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

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

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

- 310 (i) the eligible employee; or
- 311 (ii) a third party related to the eligible employee.
- 312 (c) The executive director may waive the interest on an overpayment of monthly
- 313 disability benefits under Subsection (9)(b) if good cause is shown for the delay in repayment of
- 314 the overpayment of monthly disability benefits.
- 315 Section 4. **Effective date.**
- 316 This bill takes effect on July 1, 2018.