

**PUBLIC EMPLOYEES LONG-TERM DISABILITY ACT**

**AMENDMENTS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jefferson Moss**

Senate Sponsor: Daniel Hemmert

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**LONG TITLE**

**Committee Note:**

The Retirement and Independent Entities Interim Committee recommended this bill.

**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:**



28 AMENDS:

29 **49-21-102**, as last amended by Laws of Utah 2014, Chapter 15

30 **49-21-401**, as last amended by Laws of Utah 2015, Chapter 328

31 **49-21-402**, as last amended by Laws of Utah 2017, Chapter 34



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

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

35 **49-21-102. Definitions.**

36 As used in this chapter:

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

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

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

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

46 (C) any firefighter service employee or volunteer firefighter as defined under Section  
47 **49-23-102** who began firefighter service on or after July 1, 2011;

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

49 (E) the governor of the state;

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

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

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

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

56 (ii) a retiree.

57 (3) "Elimination period" means the three months at the beginning of each continuous  
58 period of total disability for which no benefit will be paid. The elimination period begins on

59 the nearest first day of the month from the date of disability. The elimination period may  
60 include a one-time trial return to work period of less than 15 consecutive calendar days.

61 (4) (a) "Gainful employment" means any occupation or employment position in the  
62 state 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 ~~[(4)]~~ (5) "Maximum benefit period" means the maximum period of time the monthly  
73 disability income benefit will be paid under Section 49-21-403 for any continuous period of  
74 total disability.

75 ~~[(5)]~~ (6) "Monthly disability benefit" means the monthly payments and accrual of  
76 service credit under Section 49-21-401.

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

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

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

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

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

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

90           ~~[(7)]~~ (10) "Physician" means a licensed physician.

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

95           ~~[(9)]~~ (12) "Regular occupation" means either:

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

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

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

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

104           (a) own occupation disability; or

105           (b) ongoing disability.

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

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

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

113           **49-21-401. Disability benefits -- Application -- Eligibility.**

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

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

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

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

120           (2) (a) If an eligible employee is unable to apply on the employee's own behalf, the

121 application may be made by a person who is:

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

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

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

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

128 (4) The office:

129 (a) shall review all relevant information;

130 (b) may request additional information; and

131 (c) shall determine whether or not the eligible employee has a total disability.

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

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

138 (ii) any required reductions or reimbursements under Section [49-21-402](#).

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

142 (i) review and determine whether the eligible employee qualifies for ongoing disability  
143 benefits;

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

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

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

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

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

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

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

161 [~~(7) If the office determines that the eligible employee has a total disability due to a  
162 physical injury resulting from external force or violence as a result of the performance of an  
163 employment duty, the eligible employee shall receive a monthly disability benefit equal to  
164 100% of the eligible employee's regular monthly salary, for each month the total disability  
165 continues beyond the elimination period, not to exceed the maximum benefit period.]~~

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

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

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

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

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

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

- 183 (i) results from the same or related causes;
- 184 (ii) is separated by less than six months of continuous full-time work at the individual's  
185 usual place of employment; and
- 186 (iii) commences while the individual is an eligible employee covered by this chapter.
- 187 (b) The inability to work for a period of less than 15 consecutive calendar days is not  
188 considered as a period of disability.
- 189 (c) If Subsection (8)(a) or (b) does not apply, successive periods of disability are  
190 considered as separate periods of disability.
- 191 (9) The office may, at any time, have any eligible employee claiming to have a  
192 disability examined by a physician chosen by the office to determine if the eligible employee  
193 has a total disability.
- 194 (10) A claim brought by an eligible employee for long-term disability benefits under  
195 the Public Employee's Long-Term Disability Program is barred if it is not commenced within  
196 six months from the eligible employee's date of disability, unless the office determines that  
197 under the surrounding facts and circumstances, the eligible employee's failure to comply with  
198 the time limitations was reasonable.
- 199 (11) (a) If the office denies or terminates a claim for long-term disability benefits, the  
200 eligible employee shall have the right to appeal the denial or termination:
- 201 (i) to the ~~[office disability claims review committee]~~ executive director of the office  
202 within 60 days of the denial or termination of long-term disability benefits; and
- 203 (ii) in accordance with Section 49-11-613.
- 204 (b) An appeal of a denial or termination of long-term disability benefits described in  
205 Subsection (11)(a) is barred if it is not commenced within the time limit described in  
206 Subsection (11)(a).
- 207 ~~[(12)(a) If the office disability claims review committee, after reviewing an appeal~~  
208 ~~denying or terminating long-term disability benefits, denies or terminates a claim for long-term~~  
209 ~~disability benefits, the eligible employee may appeal the office disability claims review~~  
210 ~~committee's denial or termination to the executive director of the office in accordance with~~  
211 ~~Section 49-11-613:]~~
- 212 ~~[(b) An appeal of a denial or termination of long-term disability benefits described in~~  
213 ~~Subsection (12)(a) is barred if it is not commenced within 60 days of the office disability~~

214 ~~claims review committee's denial or termination.]~~

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

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

221 ~~[(14)]~~ (13) If there is a valid benefit protection contract, service credit shall accrue  
222 during the period of total disability, unless the disabled eligible employee is:

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

226 ~~[(15)]~~ (14) Regardless of any medical evidence provided by the employee to support  
227 the application for disability, an employee is not eligible for long-term disability benefits  
228 during any period in which the employee:

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

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

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

237 **49-21-402. Reduction or reimbursement of benefit -- Circumstances --**

238 **Application for other benefits required.**

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

- 240 (a) the eligible employee is under the ongoing care and treatment of a physician other  
241 than the eligible employee; and
- 242 (b) the eligible employee provides the information and documentation requested by the  
243 office.

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

245 received by, or payable to, the eligible employee [~~from the following sources for the same~~  
 246 ~~period of time during which the eligible employee is entitled to receive a~~] for the same injury  
 247 or illness that is the basis for the monthly disability benefit from the following sources:

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

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

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

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

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

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

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

262 ~~[(h) compensation received for employment, including self-employment, except for~~  
 263 ~~eligible amounts from approved rehabilitative employment in accordance with Section~~  
 264 ~~49-21-406.]~~

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

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

271 (ii) unemployment compensation benefits;

272 (iii) sick leave benefits; or

273 (iv) compensation received for employment, including self-employment, except for  
 274 eligible amounts from approved rehabilitative employment in accordance with Section  
 275 49-21-406.

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

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

282 (b) any disability benefit, other than social security or workers' compensation  
283 indemnity benefits, resulting from the disability for which benefits are being received under  
284 this chapter.

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

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

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

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

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

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

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

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

306 (9) (a) If the program is unable to reduce or obtain reimbursement for the required

307 amount from the monthly disability benefit for any reason, the employee will have received an  
308 overpayment of monthly disability benefits.

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

312 (i) the eligible employee; or

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

314 (c) The executive director may waive the interest on an overpayment of monthly  
315 disability benefits under Subsection (9)(b) if good cause is shown for the delay in repayment of  
316 the overpayment of monthly disability benefits.

317 **Section 4. Effective date.**

318 This bill takes effect on July 1, 2018.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**