

Representative Walt Brooks proposes the following substitute bill:

DISABILITY BENEFIT AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian S. King

Senate Sponsor: Daniel Hemmert

LONG TITLE

General Description:

This bill amends the Public Employees' Long-Term Disability Act.

Highlighted Provisions:

This bill:

- ▶ allows an eligible employee to receive certain disability benefits for an objective medical impairment regardless of whether the impairment is physical or mental;
- ▶ creates certain review and compliance requirements for an individual receiving a disability benefit; and
- ▶ makes technical and corresponding changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

49-21-102, as last amended by Laws of Utah 2018, Chapter 185

49-21-401, as last amended by Laws of Utah 2018, Chapter 185

49-21-402, as last amended by Laws of Utah 2019, Chapter 349



26 [49-21-406](#), as last amended by Laws of Utah 2019, Chapter 349

27

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

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

30 **49-21-102. Definitions.**

31 As used in this chapter:

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

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

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

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

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

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

44 (E) the governor of the state;

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

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

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

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

51 (ii) a retiree.

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

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

57 state that:

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

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

- 63 (i) available within any geographic boundaries of the state;
- 64 (ii) offered at a certain level of wages;
- 65 (iii) available at a particular number of hours per week; or
- 66 (iv) currently available.

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

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

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

75 (8) ~~[(a)]~~ "Ongoing disability" means, after the elimination period and the first 24
76 months of disability benefits, the complete inability~~[, as determined under Subsection (8)(b),]~~
77 due to objective medical impairment, whether physical or mental, to engage in any gainful
78 employment which is reasonable, considering the eligible employee's education, training, and
79 experience.

80 ~~[(b) For purposes of Subsection (8)(a), inability is determined:]~~
 81 ~~[(i) based solely on physical objective medical impairment; and]~~
 82 ~~[(ii) regardless of the existence or absence of any mental impairment.]~~

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

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

87 (11) "Regular monthly salary" means the amount certified by the participating

88 employer as the monthly salary of the eligible employee, unless there is a discrepancy between
89 the certified amount and the amount actually paid, in which case the office shall determine the
90 regular monthly salary.

91 (12) "Regular occupation" means either:

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

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

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

99 (14) "Total disability" means:

100 (a) own occupation disability; or

101 (b) ongoing disability.

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

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

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

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

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

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

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

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

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

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

- 119 (ii) appointed as a conservator or guardian of the eligible employee.
- 120 (b) A person described in Subsection (2)(a), may not make an application for a
121 deceased employee.
- 122 (3) Upon request by the office, the participating employer of the eligible employee
123 shall provide to the office documentation and information concerning the eligible employee.
- 124 (4) The office:
- 125 (a) shall review all relevant information;
- 126 (b) may request additional information; and
- 127 (c) shall determine whether or not the eligible employee has a total disability.
- 128 (5) (a) If the office determines that the eligible employee has a total disability due to
129 accidental bodily injury or [physical] illness which is not the result of the performance of an
130 employment duty, the eligible employee shall receive a monthly disability benefit equal to:
- 131 (i) two-thirds of the eligible employee's regular monthly salary, for each month the total
132 disability continues beyond the elimination period, not to exceed the maximum benefit period;
133 minus
- 134 (ii) any required reductions or reimbursements under Section 49-21-402.
- 135 (b) For an eligible employee under an own occupation disability, the office shall, at the
136 end of the two-year disability period or when a claim for total disability is made by an eligible
137 employee:
- 138 (i) review and determine whether the eligible employee qualifies for ongoing disability
139 benefits;
- 140 (ii) make the determination under Subsection (5)(b)(i) as of the day after the eligible
141 employee's own occupation disability benefits end;
- 142 (iii) consider only [physical] objective medical impairment that the office determines
143 as a disabling condition on the date of disability; and
- 144 (iv) exclude any new intervening causes or new diagnoses during the own occupation
145 disability period.
- 146 [~~(6) If the office determines that the eligible employee has a total disability due to~~
147 ~~psychiatric illness, the eligible employee shall receive:]~~
- 148 [~~(a) a maximum of two years of monthly disability benefits equal to two-thirds of the~~
149 ~~eligible employee's regular monthly salary for each month the total disability continues beyond~~

150 ~~the elimination period;]~~

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

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

157 ~~[(7)]~~ (6) (a) An eligible employee shall receive a monthly disability benefit equal to
158 100% of the eligible employee's regular monthly salary for each month the total disability
159 continues beyond the elimination period, not to exceed the maximum benefit period, but
160 reduced by any required reductions and reimbursements under Section 49-21-402, if the office
161 determines that the employee meets all of the following:

162 (i) the eligible employee has a total disability due ~~[solely to a physical]~~ to an objective
163 medical impairment, whether physical or mental;

164 (ii) the ~~[physical]~~ objective medical impairment described in Subsection ~~[(7)(a)(i)]~~
165 (6)(a)(i) resulted from physical external force or violence ~~[as a result of]~~ to the body of the
166 eligible employee in the performance of an employment duty; and

167 (iii) the eligible employee received workers' compensation indemnity benefits for the
168 ~~[physical]~~ objective medical impairment described in Subsection ~~[(7)(a)(i)]~~ (6)(a)(i).

169 (b) An eligible employee who receives workers' compensation indemnity benefits for
170 ~~[a physical]~~ an objective medical impairment is not guaranteed to receive the 100% monthly
171 disability benefit described in Subsection ~~[(7)(a)]~~ (6)(a).

172 ~~[(8)]~~ (7) (a) Successive periods of disability are considered as a continuous period of
173 disability if the period of disability:

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

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

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

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

180 (c) If Subsection ~~[(8)(a)]~~ (7)(a) or (b) does not apply, successive periods of disability

181 are considered as separate periods of disability.

182 ~~[(9)]~~ (8) The office may, at any time, have any eligible employee claiming to have a
183 disability examined by a physician chosen by the office to determine if the eligible employee
184 has a total disability.

185 ~~[(10)]~~ (9) A claim brought by an eligible employee for long-term disability benefits
186 under the Public Employee's Long-Term Disability Program is barred if it is not commenced
187 within six months from the eligible employee's date of disability, unless the office determines
188 that under the surrounding facts and circumstances, the eligible employee's failure to comply
189 with the time limitations was reasonable.

190 ~~[(11)]~~ (10) (a) If the office denies or terminates a claim for long-term disability
191 benefits, the eligible employee shall have the right to appeal the denial or termination:

192 (i) to the executive director of the office within 60 days of the denial or termination of
193 long-term disability benefits; and

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

195 (b) An appeal of a denial or termination of long-term disability benefits described in
196 Subsection ~~[(11)(a)]~~ (10)(a) is barred if it is not commenced within the time limit described in
197 Subsection ~~[(11)(a)]~~ (10)(a).

198 ~~[(12)]~~ (11) Medical or psychiatric conditions which existed prior to eligibility may not
199 be a basis for disability benefits until the eligible employee has had one year of continuous
200 eligibility in the Public Employees Long-Term Disability Program.

201 ~~[(13)]~~ (12) If there is a valid benefit protection contract, service credit shall accrue
202 during the period of total disability, unless the disabled eligible employee is:

203 (a) exempted from a system;

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

205 (c) otherwise ineligible for service credit.

206 ~~[(14)]~~ (13) Regardless of any medical evidence provided by the employee to support
207 the application for disability, an employee is not eligible for long-term disability benefits
208 during any period in which the employee:

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

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

212 ~~[(15)]~~ (14) Notwithstanding the provisions of Section 49-11-618, upon written request
213 by an employer, information obtained under this part may, upon an order of a court or an
214 administrative law judge, be released to an employer who is a party in an action under
215 Subsection ~~[(14)]~~ (13).

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

217 **49-21-402. Reduction or reimbursement of benefit -- Circumstances --**
218 **Application for other benefits required.**

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

220 (a) the eligible employee is under the ongoing care and treatment of a physician or
221 physician assistant other than the eligible employee, which may include compliance with a
222 treatment plan approved by the office; and

223 (b) the eligible employee provides the information and documentation requested by the
224 office.

225 (2) (a) The monthly disability benefit shall be reduced or reimbursed by any amount
226 received by, or payable to, the eligible employee for the same injury or illness that is the basis
227 for the monthly disability benefit from the following sources:

228 (i) workers' compensation indemnity benefits, regardless of whether the amount is
229 received as an ongoing monthly benefit, as a lump sum, or in a settlement with a workers'
230 compensation indemnity carrier;

231 (ii) any money received by judgment, legal action, or settlement from a third party
232 liable to the employee for the monthly disability benefit;

233 (iii) automobile no-fault, medical payments, or similar insurance payments;

234 (iv) any money received by a judgment, settlement, or other payment as a result of a
235 claim against an employer; or

236 (v) annual leave or similar lump-sum payments.

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

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

243 (ii) unemployment compensation benefits;
244 (iii) sick leave benefits; or
245 (iv) compensation received for employment, including self-employment, except for
246 eligible amounts from approved rehabilitative employment in accordance with Section
247 49-21-406.

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

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

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

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

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

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

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

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

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

273 (b) any employment, including self-employment, of the eligible employee and the

274 compensation for that employment within 10 days of beginning the employment or a material
275 change in the compensation from that employment.

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

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

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

284 (i) the eligible employee; or

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

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

289 Section 4. Section **49-21-406** is amended to read:

290 **49-21-406. Rehabilitative employment -- Interview by disability specialist --**
291 **Maintaining eligibility -- Additional treatment and care.**

292 (1) (a) If an eligible employee, during a period of total disability for which the monthly
293 disability benefit is payable, engages in approved rehabilitative employment, the monthly
294 disability benefit otherwise payable shall be reduced:

295 (i) by an amount equal to 50% of the income to which the eligible employee is entitled
296 for the employment during the month; and

297 (ii) so that the combined amount received from the rehabilitative employment and the
298 monthly disability payment does not exceed 100% of the eligible employee's monthly salary
299 prior to the employee's disability.

300 (b) This rehabilitative benefit is payable for up to two years or to the end of the
301 maximum benefit period, whichever occurs first.

302 (2) (a) The office shall review an eligible employee's total disability at least one time
303 each year.

304 (b) Each eligible employee receiving a monthly disability benefit shall be interviewed

305 by the office.

306 (b) The office may refer the eligible employee to a rehabilitative or vocational
307 specialist for a review of the eligible employee's condition and a written rehabilitation plan and
308 return to work assistance.

309 (3) If an eligible employee receiving a monthly disability benefit fails to participate in
310 an office-approved rehabilitation program within the limitations set forth by a physician or
311 physician assistant, the monthly disability benefit may be suspended or terminated.

312 (4) The office may, as a condition of paying a monthly disability benefit, require that
313 the eligible employee receive medical care and treatment if that treatment is reasonable or usual
314 according to current medical practices.