



# RULE-MAKING ORDER

**CR-103P (May 2009)**  
(Implements RCW 34.05.360)

**Agency:** Department of Retirement Systems

**Permanent Rule Only**

**Effective date of rule:**

**Permanent Rules**

- 31 days after filing.
- Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes
  - No
- If Yes, explain:

**Purpose:** This revision clarifies how the agency administers adjustments to a catastrophic disability allowance for the Law Enforcement Officers' and Fire Fighters' (LEOFF) retirement system Plan 2. Other changes are to ensure consistency with the LEOFF Plan 2 duty disability rule and document existing practices.

**Citation of existing rules affected by this order:**

- Repealed:
- Amended: WAC 415-104-482: What is the LEOFF Plan 2 catastrophic disability allowance?
- Suspended:

**Statutory authority for adoption:** 41.50.050 (5)

**Other authority :**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 16-03-074 on January 19, 2016 (date).  
Describe any changes other than editing from proposed to adopted version:

The text being adopted is identical to the text as proposed.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: \_\_\_\_\_ phone ( ) \_\_\_\_\_  
 Address: \_\_\_\_\_ fax ( ) \_\_\_\_\_  
 e-mail \_\_\_\_\_

**Date adopted:**

February 25, 2016

**NAME (TYPE OR PRINT)**

Marcie Frost

**SIGNATURE**

**TITLE**

Director

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: February 25, 2016**

**TIME: 2:41 PM**

**WSR 16-06-069**

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Federal rules or standards:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Recently enacted state statutes:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

**The number of sections adopted at the request of a nongovernmental entity:**

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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**The number of sections adopted in the agency's own initiative:**

	New	<u>0</u>	Amended	<u>1</u>	Repealed	<u>0</u>
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

	New	<u>1</u>	Amended	<u>1</u>	Repealed	<u>0</u>
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Pilot rule making:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
<b>Other alternative rule making:</b>	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

**WAC 415-104-482 What is the LEOFF Plan 2 catastrophic disability allowance?** Under RCW 41.26.470, two types of disability retirement are available to members of LEOFF Plan 2 who become disabled in the line of duty: Duty disability retirement benefits as described in WAC 415-104-480 and catastrophic disability retirement benefits as described in this section. If you are not eligible for a catastrophic disability allowance under this section, you may still be eligible for duty disability benefits.

(1) **Am I eligible for a catastrophic disability allowance?** You are eligible for a catastrophic disability allowance if the department determines all of the following are true:

(a) You incurred a physical or mental disability in the line of duty, as defined in ~~((subsection (13) of this section))~~ WAC 415-104-480;

(b) You separated from LEOFF-eligible employment due to your disability;

(c) Your disability is so severe that you are unable to do your previous LEOFF eligible work, and considering your education, transferable skills, and work experience, you cannot engage in any other kind of substantial gainful activity in the labor market;

(d) Your condition has lasted or is expected to last at least twelve months, or your condition is expected to result in death; and

(e) Your disability is not the result of your criminal conduct committed after April 21, 1997. See RCW 41.26.061.

(2) **If I am receiving a retirement allowance for service, can I qualify for a catastrophic disability allowance?** You are eligible for a catastrophic disability allowance in lieu of your service retirement allowance if the department determines you ~~((separated from LEOFF eligible service due to a duty disability and you otherwise))~~ meet the eligibility requirements in subsection (1) of this section.

(3) **How do I request a catastrophic disability allowance?** To request a catastrophic disability allowance, please contact the ~~((LEOFF unit at the))~~ department of retirement systems. You, your physician, and your employer will be required to provide information regarding your catastrophic disability.

(4) **What information will the department use to determine whether I am entitled to an allowance under this section?** The department will consider information submitted by you, your physician, and your employer, and information otherwise available to the department, including:

(a) Medical and vocational information;

(b) Information from and determinations made by the department of labor and industries, the Social Security Administration, or ~~((a self-insurer))~~ an employer;

(c) Your job description at the time you separated from LEOFF Plan 2 service;

(d) Financial records;

(e) Your membership records, maintained by the department; and

(f) Any other relevant information.

(5) **Who determines my eligibility?** The LEOFF plan administrator determines your eligibility for a catastrophic disability benefit. The plan administrator will rely substantially on determinations that have

been made by the Social Security Administration unless there is information available that would produce a different determination.

(6) **What are my options if my request is denied?** If your request is denied, you have the following options:

(a) You may apply for duty disability benefits under WAC 415-104-480; and/or

(b) You may petition for review under chapter 415-04 WAC.

(7) **If my request is approved, when will my monthly allowance begin to be paid?** If your request is approved, you will begin to receive a catastrophic disability allowance in the month following the approval. Your first payment will include a retroactive payment of benefits that have accrued, but not yet been paid. The date your allowance for catastrophic disability accrues is determined as follows:

(a) If you separated from LEOFF Plan 2 employment due to a catastrophic disability, your allowance will accrue from the first of the month following your separation date.

(b) If you are receiving a duty disability allowance or a service retirement allowance, and you are subsequently approved for a catastrophic disability, your allowance will accrue from:

(i) The first of the month following the month in which a specific, one-time event, verified by medical records, occurred that clearly caused your duty disability to become a catastrophic disability; or

(ii) If the department determines there is not a one-time event that caused your disability to become catastrophic, the first of the month following the month in which the department receives your request for a catastrophic disability allowance.

**Example:** John has been receiving a duty-disability allowance under WAC 415-104-480 since June 1, 2005, when he separated service as a firefighter due to a back injury he incurred in the line of duty.

**Example of (b)(i) of this subsection: A one-time event.** On January 15, 2007, John accidentally twisted his back causing a catastrophic disability. Because John's catastrophic disability was clearly the result of a specific one-time event, his catastrophic disability allowance will accrue from February 1, 2007, the first of the month following the month in which the event occurred.

**Example of (b)(ii) of this subsection: No specific event.** John's back gradually worsened until his disability qualified as a catastrophic disability. On May 15, 2007, John applied for a catastrophic disability allowance. His allowance will accrue from June 1, 2007, the first of the month following the month the department received his application.

(8) **How much is a catastrophic disability allowance?** The base catastrophic disability allowance is equal to seventy percent of your final average salary (FAS).

(a) Your allowance combined with other disability benefits, such as Title 51 RCW benefits or Social Security disability benefits, may not exceed one hundred percent of your FAS. If necessary, your catastrophic disability allowance will be reduced so that your combined allowance does not exceed one hundred percent of your FAS. Any such adjustment will be applied prospectively. Your catastrophic disability allowance will not be reduced below your accrued retirement allowance as defined in subsection (13) of this section.

(b) If you choose a benefit option with a survivor feature as described in WAC 415-104-215, the allowance calculated in (a) of this

subsection will be actuarially reduced to cover the cost of providing benefits over two lifetimes.

(c) If you have been retired for at least one year by July 1st of each year, you will receive a cost-of-living adjustment each July ((±)) based on the percentage change, if any, in the consumer price index.

**Example:** Michael separates from service on June 1, 2005, and is approved for a catastrophic disability allowance. Since his FAS is \$5,800, Michael's catastrophic disability allowance from the department is \$4,060 per month (\$5,800 x 70% = \$4,060). Michael is also approved for a Social Security benefit in the amount of \$1,800 per month. Michael's combined benefit equals \$5,860 (\$4,060 + \$1,800). This is \$60 over 100% of his FAS (\$5,860 - \$5,800), so Michael's catastrophic disability benefit will be reduced by that amount; his new monthly benefit from the department is \$4,000 (\$4,060 - \$60). In January 2006, Michael received a 4.1% COLA for his Social Security benefit. The department will recalculate his benefit as follows:

January 2006 Social Security benefit, with COLA	$\$1,800 \times 4.1\% = \$73.80 + \$1,800$	<b>= \$1,873.80</b>
Total combined benefit	$\$4,060 + \$1,873.80$	<b>= \$5,933.80</b>
Amount over 100% of FAS	$\$5,933.80 - \$5,800$	<b>= \$133.80</b>

Since Michael's combined benefit is \$133.80 over 100% of his FAS, his catastrophic disability benefit will be reduced by that amount. His new monthly benefit from the department is \$3,926.20 (\$4,060 - \$133.80). Michael's benefit cannot be reduced more than the amount of his accrued retirement allowance. To determine his accrued retirement allowance, the department multiplies Michael's FAS, \$5,800, by his years of service credit, 30, by 2% (\$5,800 x 30 x 2%). Michael's accrued retirement allowance is \$3,480. Since his benefit does not fall below his retirement allowance, Michael will receive \$3,926.20 from the department per month.

In July 2006, Michael received a 3% COLA for his catastrophic disability benefit. The department will recalculate his benefit as follows:

July 2006 catastrophic disability benefit, with COLA	$\$5,800 \times 3\% = \$174 + \$5,800 = \$5,974 \times 70\%$	<b>= \$4,181.80</b>
Total combined benefits	$\$4,181.80 + \$1,873.80$	<b>= \$6,055.60</b>
Amount over 100% of FAS	$\$6,055.60 - \$5,974$	<b>= \$81.60</b>

Since Michael's combined benefit is \$81.60 over 100% of his FAS, his catastrophic disability benefit will be reduced by that amount. His new monthly benefit from the department is \$4,100.20 (\$4,181.80 - \$81.60). This is compared to his accrued retirement allowance, \$3,584.40 (\$5,974 x 30 x 2%); since his benefit does not fall below his retirement allowance, Michael will receive \$4,100.20 from the department per month.

(9) **Is my catastrophic disability allowance taxable?** You should consult with your tax advisor regarding all payments you receive from the department. The department does not:

- (a) Guarantee that payments are exempt from federal income tax;
- (b) Guarantee that it was correct in withholding or not withholding taxes from disability payments;
- (c) Represent or guarantee that any particular federal or state income, payroll, personal property or other tax consequence will occur because of its determination; or
- (d) Assume any liability for your compliance with the Internal Revenue Code.

(10) **If I withdrew my contributions prior to December 2, 2004, and am approved for a catastrophic disability allowance, what will I receive?** You may apply for a catastrophic disability allowance even if you withdrew your accumulated contributions prior to December 2, 2004. If you are approved for a catastrophic disability allowance, your monthly allowance will be calculated as follows:

- (a) If you repay the entire amount you withdrew plus interest, in a lump sum payment, you will receive a monthly allowance calculated according to subsection (8) of this section.
- (b) If you do not repay the entire amount you withdrew, your monthly allowance will be actuarially reduced to offset the amount of your previous withdrawal.

(11) **Can my catastrophic disability allowance be discontinued?** Your catastrophic disability allowance will be discontinued if:

- (a) Medical/vocational examination, or other information commonly available or provided to the department by an employer, reveals that your disability no longer prevents you from performing substantial gainful activity; or
- (b) Your earnings exceed the threshold for substantial gainful activity.

The department may require or offer to provide comprehensive medical/vocational examinations and/or submission of earnings information to evaluate your eligibility for continued benefits (~~according to the provisions of RCW 41.26.470~~). You are required to contact the department if your medical/vocational or financial situation changes.

(12) **If my catastrophic disability allowance terminates, may I qualify for duty disability benefits?** If you are no longer eligible for a catastrophic disability allowance, but have a disability that prevents you from returning to a LEOFF-eligible position, the department will determine if you qualify for duty disability benefits under WAC 415-104-480.

(a) The department may request additional information from you, your physician, or others upon which to base the determination.

(b) If the department determines you are eligible, you will begin receiving a duty disability allowance under WAC 415-104-480 in lieu of your catastrophic disability allowance.

(13) **Definitions.** As used in this section:

(a) **Accrued retirement allowance** means a duty disability monthly allowance under WAC 415-104-480.

(b) **Earnings** are any income or wages received, which are reportable as wages or self-employment income on IRS form 1040.

(c) **Labor market** is the geographic area within reasonable commuting distance of where you were last gainfully employed or where you currently live, whichever provides the greatest opportunity for gainful employment.

~~(d) (**Line of duty** means any action or activity performed in the service of your employer that is required or authorized by law, rule, regulations, or condition of employment or service.~~

~~(e))~~ **Substantial gainful activity** means any activity that produces average earnings, as defined in (b) of this subsection, in excess of eight hundred sixty dollars a month in 2006, adjusted annually as determined by the department based on federal Social Security disability standards. Wages count toward earnings when they are earned, not when you receive them. Self-employment income counts when you receive it, not when you earn it.

~~((f))~~ (e) **Transferable skills** are any combination of learned or demonstrated behavior, education, training, work traits, and skills that you can readily apply. They are skills that are interchangeable among different jobs and workplaces.