



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: To codify the department's existing practice of granting a LEOFF plan 2 duty disability benefit. The rule clarifies that the work actions and activities defined in WAC 415-104-480(2) must be the proximate cause of the member's disability (but need not be the sole cause of the member's disability).

Citation of existing rules affected by this order:

- Repealed:
- Amended: WAC 415-104-480 LEOFF Plan 2 duty disability benefits.
WAC 415-104-485 LEOFF nonduty disability benefits.
- Suspended:

Statutory authority for adoption: 41.50.050 (5)

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 16-01-197 on December 23, 2015 (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:

January 27, 2016

NAME (TYPE OR PRINT)

Marcie Frost

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: January 27, 2016

TIME: 3:10 PM

WSR 16-04-049

**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:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	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	Repealed	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	Repealed	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>2</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>0</u>	Amended	<u>2</u>	Repealed	<u>0</u>
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The number of sections adopted using:

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	Repealed	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	Repealed	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	Repealed	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

WAC 415-104-480 LEOFF Plan 2 duty disability benefits. This section applies to you if you are a LEOFF Plan 2 member who incurs a disability in the line of duty per RCW 41.26.470 (6) and (7) and this section. A "disability" is total incapacitation for further LEOFF employment (although not necessarily for any other employment).

(1) **Who is entitled to duty disability benefits?** Any member of LEOFF Plan 2 who the department determines has:

- (a) Incurred a physical or mental disability in the line of duty;
- (b) Become totally incapacitated for continued employment in a LEOFF eligible position; and
- (c) Separated from a LEOFF eligible position due to the disability.

(2) **How is "line of duty" defined?** Line of duty means any action or activity occurring in conjunction with your employment or your status as a law enforcement officer or firefighter and required or authorized by law, rule, regulations, or condition of employment or service.

(3) **How does the department decide if a disability was incurred in the line of duty?** A physical or mental disability is caused by the performance of LEOFF Plan 2 duty if it was the member's good faith performance of LEOFF duty that produced the disability, in a direct sequence and unbroken by any new independent cause, and if the disability would not have been incurred but for the member's performance of duty. There may be more than one cause of a disability.

(4) **When are the duty disability provisions effective?** The duty disability provisions under RCW 41.26.470 (6) and (7) are effective June 10, 2004.

~~((4))~~ (5) **How do I apply for duty disability benefits?** The department must receive:

(a) A completed three-part disability retirement application on the form provided by the department.

(i) Part 1: Disability retirement application. You must complete and sign the application. If you are married, your spouse must sign consenting to the retirement payment option you choose. Your signature(s) must be notarized.

(ii) Part 2: Employer's statement and report. Your employer must complete, sign and return it directly to the department.

(iii) Part 3: Medical report. You must complete Section 1. The remainder must be completed and signed by a person licensed according to Washington state law to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, clinical psychology, podiatry, dentistry, or optometry;

(b) Additional information requested by the department; and

(c) Any other material you want the department to consider.

~~((5))~~ (6) **What evidence will the department use to determine whether I am entitled to benefits under this section?** The department will consider any relevant information submitted by you or your employer, or otherwise available to the department, including:

(a) Information and determinations by the department of labor and industries (L&I) or a ~~((self-insurer))~~ self-insured LEOFF employer;

(b) Medical, vocational, and other information about your disability;

(c) Your job description;

- (d) Your membership records, maintained by the department; and
- (e) Any other relevant evidence.

~~((+6+))~~ **(7) What would disqualify me for duty disability benefits?** You are not eligible for duty disability benefits if any of the following apply:

(a) Your application does not provide adequate proof that you are totally incapacitated for continued employment in a LEOFF-eligible position;

(b) Your application does not provide adequate proof that your disability was incurred in the line of duty;

(c) The disability occurred as a result of intentional misconduct including ~~((but not limited to))~~:

(i) An action you took intentionally to bring about your own disability;

(ii) Gross negligence on your part; or

(iii) Your voluntary intoxication. As used in this section, "intoxication" means a disturbance of mental or physical faculties resulting from the introduction of:

(A) Alcohol into the body as evidenced by:

(I) A blood alcohol level of .20 per centum or greater; or

(II) A blood alcohol level of at least .10 per centum but less than .20 per centum unless the department receives convincing evidence that the officer or firefighter was not acting in an intoxicated manner immediately ~~((prior to))~~ before the injury; or

(B) Drugs or other substances in the body.

~~((+7+))~~ **(8) Who decides if I meet the requirements for benefits under this section?** The LEOFF plan administrator.

~~((+8+))~~ **(9) May I petition a decision made by the LEOFF plan administrator?** Yes. If the LEOFF plan administrator denies your request for a disability benefit under this section, you may petition for review under chapter 415-04 WAC.

~~((+9+))~~ **(10) What are the duty disability retirement benefits?** As a duty disability retiree, you may choose between:

(a) A nontaxable, one-time lump sum payment equal to one hundred fifty percent of your retirement contributions; except that, any payments you have previously made to restore service credit after the five-year deadline will be paid at one hundred percent; or

(b) A monthly allowance equal to:

(i) Ten percent of your final average salary (FAS), which is nontaxable; and

(ii) Two percent of your FAS for each year of service beyond five years.

Your monthly allowance will not be adjusted for early retirement. However, if you choose a benefit option with a survivor feature as described in WAC 415-104-215, your monthly allowance will be actuarially reduced to offset the cost. See WAC 415-02-380 for more information on how your monthly allowance is affected by choosing a survivor feature.

Example: Tom incurs a duty disability at age 42 after twenty years of service. His final average salary is \$5,000 per month. Tom's wife is also age 42. He chooses Benefit Option Two so that, after his death, his wife will receive a monthly allowance equal to the gross monthly allowance he was receiving. For illustration purposes in this example only, we will use 0.87 as the corresponding Option Two joint and survivor factor (actuarial factors change periodically) for zero age difference between Tom and his wife.

Tom will receive a minimum allowance of \$435 (nontaxable) plus an additional \$1,305 (taxable), for a total monthly allowance of \$1,740. The department will use the following formula to determine Tom's monthly allowance:

$$\$5,000 \times 10\% \times 0.87 = \$435 \text{ (nontaxable); PLUS}$$

15 x 2% x \$5,000 x 0.87 = \$1,305 (taxable)

TOTAL = \$1,740

~~((10))~~ (11) **Are my duty disability benefits taxable?** The department reports disability benefits to the Internal Revenue Service as required by federal law. Based on current federal law, part of your benefit may be taxable. You should consult with your own tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any 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 benefit payments to you;
- (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.

~~((11))~~ (12) **If I previously withdrew my contributions, may I apply for duty disability benefits?** If you separated from employment due to a disability and withdrew your contributions, you may apply for duty disability benefits according to the provisions of subsection ~~((4))~~ (5) of this section.

~~((12))~~ (13) **If I previously withdrew my contributions and am approved for duty disability benefits, what will I receive as a benefit?** If the LEOFF plan administrator determines you are entitled to duty disability benefits, ~~((the department will amend Internal Revenue Service reporting to designate your previous withdrawal as nontaxable. In addition,))~~ you may choose either of the following:

- (a) If you previously withdrew 100% of your contributions, you may choose to receive an additional lump sum payment equal to 50% of the contributions you withdrew. The payment will be nontaxable; or
- (b) If you previously withdrew 100% or 150% of your contributions, you may choose to receive a monthly allowance according to subsection ~~((9))~~ (10) of this section. You must repay the amount you withdrew, either in a lump sum payment or by having your monthly allowance permanently actuarially reduced to offset the amount of your previous withdrawal.

Example: John was injured on the job and separated from his LEOFF position in March 2002. At the time he separated, he was 43 years old, had 10 years of service, and his final average salary was \$5,000.00 per month. At that time, John chose to withdraw ~~((75,000, which equaled))~~ 150 percent of his retirement contributions, which equaled \$75,000.

John subsequently applied under the provisions of RCW 41.26.470 (6) and (7) and was deemed eligible for duty disability benefits.

The department calculated John's benefit according to the methods in subsection ~~((9))~~ (10) of this section. For illustration purposes in this example only, we will use .0049904 as the corresponding annuity factor for age 43 (actuarial factors change periodically). John determined it was to his advantage to take a monthly allowance.

If John **repays the entire amount he withdrew in a lump sum**, his monthly allowance will be calculated according to the formula in subsection ~~((9))~~ (10)(b) of this section:

\$5,000 x 10%	=	\$500 (nontaxable); PLUS
5 x 2% x \$5,000	=	\$500 (taxable)
TOTAL	=	\$1,000 ¹

If John **repays the withdrawn amount through a permanent actuarial reduction**, his monthly allowance will be reduced as follows:

Monthly amount from above = \$1,000; LESS
\$75,000 x .0049904 = -\$374.28
Monthly allowance = \$625.72¹

¹ If John chooses a benefit option with a survivor feature, as described in WAC 415-104-215, his monthly allowance will be actuarially reduced to offset the cost. See also WAC 415-02-380.

~~((+13))~~ **(14) When does a duty disability retirement benefit end?** ~~((The department may require comprehensive medical examinations to reevaluate your eligibility for continued disability benefits according to the provisions of RCW 41.26.470(2).))~~ Your duty disability benefit will cease if:

- (a) You return to work in a LEOFF-eligible position; or
- (b) Medical examination reveals that you are no longer totally incapacitated for employment in a LEOFF eligible position and you are no longer entitled to workers' compensation benefits under Title 51 RCW. As authorized by RCW 41.26.470(2), the department may require comprehensive medical examinations to reevaluate your eligibility for continued disability benefits.

~~((+14))~~ **(15) If I retire for a duty disability and die, will my survivor beneficiary receive a monthly allowance?** If you choose a benefit option with a survivor feature under WAC 415-104-215(2) at the time of retirement, your survivor beneficiary will receive a monthly allowance after your death.

~~((+15))~~ **(16) What happens if I return to a LEOFF-eligible position?** If you return to a LEOFF-eligible position, your monthly allowance will stop.

~~((+16))~~ **(17) If I return to a LEOFF-eligible position, how will my future retirement benefit be affected?** When you reretire, your monthly allowance will be calculated ~~((pursuant to))~~ as required by RCW 41.26.500 and WAC 415-104-111.

AMENDATORY SECTION (Amending WSR 13-18-034, filed 8/28/13, effective 10/1/13)

WAC 415-104-485 LEOFF nonduty disability benefits. This section applies to you if you are a LEOFF Plan 2 member who incurs a disability not in the line of duty. A "disability" is total incapacitation for further LEOFF employment (although not necessarily for any other employment). If your disability or injury was incurred in the line of duty, see WAC 415-104-480.

(1) Who is entitled to nonduty disability benefits? Any member of LEOFF Plan 2 who the department determines has:

- (a) Incurred a physical or mental disability while not in the line of duty;
- (b) Become totally incapacitated for continued employment in a LEOFF eligible position; and
- (c) Separated from a LEOFF-eligible position due to the disability.

(2) How is "line of duty" defined? Line of duty means any action or activity occurring in conjunction with your employment or your status as a law enforcement officer or firefighter and required or authorized by law, rule, regulations, or condition of employment or service.

(3) **How do I apply for nonduty disability benefits?** The department must receive:

(a) A completed three-part disability retirement application on the form provided by the department.

(i) Part 1: Disability retirement application. You, or a person with legal authority to apply on your behalf, must complete and sign the application. If you are married, your spouse must sign consenting to the retirement payment option you choose. Your signature(s) must be notarized.

(ii) Part 2: Employer's statement and report. Your employer must complete, sign and return it directly to the department.

(iii) Part 3: Medical report. You must complete Section 1. The remainder must be completed and signed by a person licensed according to Washington state law to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, clinical psychology, podiatry, dentistry, or optometry;

(b) Additional information requested by the department; and

(c) Any other material you want the department to consider.

(4) **Is there a time limit for filing an application for nonduty disability benefits?** No. There is no time limit for applying for benefits. However, if you have separated from employment, your application must be based on your condition at the time of separation.

(5) **What evidence will the department use to determine whether I am entitled to benefits under this section?** The department will consider any relevant information submitted by you or your employer, or otherwise available to the department, including:

(a) Information and determinations by the department of labor and industries (L&I) or a self-insurer;

(b) Medical, vocational, and other information about your disability;

(c) Your job description;

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

(e) Any other relevant evidence.

(6) **What would disqualify me for nonduty disability benefits?** You are not eligible for nonduty disability benefits if any of the following apply:

(a) Your application does not provide adequate proof that you are totally incapacitated for continued employment in a LEOFF-eligible position;

(b) Your disability is the result of your criminal conduct committed after April 21, 1997. See RCW 41.26.061.

(7) **Who decides if I meet the requirements for benefits under this section?** The LEOFF plan administrator.

(8) **May I petition a decision made by the LEOFF plan administrator?** Yes. If the LEOFF plan administrator denies your request for a disability benefit under this section, you may petition for review under chapter 415-04 WAC.

(9) **What are the nonduty disability retirement benefits?** As a nonduty disability retiree, your retirement benefit is a monthly allowance equal to:

(a) Two percent times your final average salary times your service credit years. This allowance will be actuarially reduced to reflect the difference in your age at the time of disability retirement and age 53. If you qualify for alternative early retirement per RCW 41.26.430(3), your reduction will be three percent per year before age 53.

(b) If you choose a benefit option with a survivor feature as described in WAC 415-104-215, your monthly allowance will be actuarially reduced to offset the cost. See WAC 415-104-380 for more information on how your monthly allowance is affected by choosing a survivor feature.

Example: Tom incurs a nonduty disability at age 42 after twenty years of service. His final average salary (FAS) is \$5,000 per month. Tom's wife is also age 42. He chooses Benefit Option Two so that, after his death, his wife will receive a monthly allowance equal to the gross monthly allowance he was receiving. For illustration purposes in this example only, we will use 0.39 as the corresponding factor for retiring 11 years early, and 0.87 as the Option Two factor (actuarial factors change periodically). As a result, Tom's monthly allowance will be \$678.60.

The department will use the following formula to determine Tom's monthly allowance: 20 (years of service) \times 2% \times $\$5,000$ (FAS) \times 0.39 (early retirement factor) \times 0.87 (Option Two factor) = $\$678.60$.

(10) **Are my nonduty disability benefits taxable?** The department reports disability benefits to the Internal Revenue Service as required by federal law. Based on current federal law, your benefit may be taxable. You should consult with your own tax advisor regarding all questions of federal or state income, payroll, personal property or other tax consequences regarding any 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 benefit payments to you;
- (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.

(11) **If I previously retired for service under the alternative early retirement provisions of RCW 41.26.430(3), but I qualified for a disability retirement, can I apply for duty or nonduty disability benefits?** Yes. If you retired under the alternative early retirement provisions of RCW 41.26.430(3) on or before January 1, 2001, you can apply to retire under the disability provisions of RCW 41.26.470. Your benefit will be reduced by three percent per year before age 53 instead of actuarially reduced by the early retirement factors in WAC 415-02-320.

(12) **If I previously retired for disability but was otherwise qualified for a service retirement under the alternative early retirement provisions of RCW 41.26.430(3), can I have my benefit recalculated to reflect a three percent reduction instead of being actuarially reduced by the early retirement reduction factors in WAC 415-102-320?** Yes. If you retired on or after January 1, 2001, and met the requirements of RCW 41.26.430(3), you can have your disability benefit recalculated under those provisions.

(13) **When does a nonduty disability retirement benefit end?** (~~The department may require comprehensive medical examinations to reevaluate your eligibility for continued disability benefits according to the provisions of RCW 41.26.470(2).~~) Your nonduty disability benefit will cease if:

- (a) You return to work in a LEOFF-eligible position; or
- (b) Medical examination reveals that you are no longer totally incapacitated for employment in a LEOFF-eligible position and you are

no longer entitled to workers' compensation benefits under Title 51 RCW. The department may require comprehensive medical examinations to reevaluate your eligibility for continued disability benefits according to the provisions of RCW 41.26.470(2).

(14) If I retire for a nonduty disability and die, will my survivor beneficiary receive a monthly allowance? If you choose a benefit option with a survivor feature under WAC 415-104-215(2) at the time of retirement, your survivor beneficiary will receive a monthly allowance after your death.

(15) What happens if I return to a LEOFF-eligible position? If you return to a LEOFF-eligible position, your monthly allowance will stop.

(16) If I return to a LEOFF-eligible position, how will my future retirement benefit be affected? When you reretire, your monthly allowance will be calculated (~~pursuant to~~) as required by RCW 41.26.500 and WAC 415-104-111.