



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: June 15, 2018

TIME: 2:11 PM

WSR 18-13-078

Agency: Department of Retirement Systems

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: Law Enforcement Officers' and Fire Fighters' (LEOFF) Plan 2 disability rules: To clarify and update rules concerning the administration of LEOFF Plan 2 nonduty, duty and catastrophic disability retirement benefits.

Citation of rules affected by this order:

New: WAC 415-104-478, 415-104-479, 415-104-481, 415-104-483, 415-104-484, 415-104-486, 415-104-487

Repealed:

Amended: WAC 415-104-480, 415-104-482, 415-104-485

Suspended:

Statutory authority for adoption: RCW 41.50.050

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 18-10-110 on May 2, 2018 (date).

Describe any changes other than editing from proposed to adopted version: No changes, 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:

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other:

**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Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

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

New	___	Amended	___	Repealed	___
-----	-----	---------	-----	----------	-----

The number of sections adopted on the agency's own initiative:

New	<u>7</u>	Amended	<u>3</u>	Repealed	___
-----	----------	---------	----------	----------	-----

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>7</u>	Amended	<u>3</u>	Repealed	___
-----	----------	---------	----------	----------	-----

The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: June 15, 2018

Name: Tracy Guerin

Title: Director

Signature:



NEW SECTION

WAC 415-104-478 Am I eligible for a LEOFF Plan 2 disability benefit? This section applies to you if you are a LEOFF Plan 2 member who becomes disabled.

Definitions. As used in this section:

Disabled - Totally incapacitated to perform the essential functions of his or her LEOFF Plan 2 eligible position.

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

(a) Become disabled; and

(b) Separated from all LEOFF-eligible employment due to the disability.

(2) **Is there a time limit for filing an application for disability benefits?** There is no time limit for applying for benefits. However, your eligibility for a benefit will be based on your condition at the time of separation.

(3) **What happens if I become disabled after I retire?** Your medical condition at the time of separation will determine whether you qualify for a disability retirement.

(4) **What evidence will the department use to determine whether I am entitled to benefits under this section?**

(a) To determine if you are entitled to disability benefits, the department will consider any relevant information submitted by you or your employer, or otherwise available to the department, including:

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

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

(iii) Your job description;

(iv) Your membership records, maintained by the department;

(v) Independent medical reviews made by DRS contracted vendors;

and

(vi) Any other relevant evidence.

(b) The department reserves the right to consult with a contracted vendor for the purpose of providing an independent medical review of any LEOFF member who applies for disability benefits.

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

(a) Your application does not provide adequate proof that you are disabled;

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

(i) If a member is a defendant in a civil proceeding or has been formally charged in court with a crime, and the member is applying for or receiving a disability retirement benefit for a disability that is the result of the alleged criminal conduct, the department shall withhold payment of any disability benefits until:

(A) The case or charges, or both if both are pending, are dismissed; or

(B) The member is found not guilty in the criminal case or prevails in the civil proceeding, or both if both are pending; or

(C) The member is convicted or found to have engaged in criminal conduct in the civil proceeding.

(ii) If the case or charges, or both if both are pending, are dismissed or if a member is found not guilty or prevails in the civil proceeding, or both if both are pending, the department shall pay the member a disability benefit if he or she otherwise qualifies.

(iii) If the member is convicted or found to be liable for criminal conduct in a civil proceeding, and the member's disability is the result of the criminal conduct, the department shall not pay the member a disability benefit.

(iv) In the absence of a criminal conviction, a superior court may determine by a preponderance of the evidence whether the person participated in criminal conduct.

(6) Who decides if I meet the requirements for benefits under this section? The director of the department of retirement systems (DRS) or their designee will decide if you meet the requirements for benefits under this section.

(7) What if I disagree with a decision made by the director or their designee? If you disagree with the decision of the director of DRS or their designee, you may petition for review under chapter 415-04 WAC.

NEW SECTION

WAC 415-104-479 Does my LEOFF Plan 2 disability qualify as a line of duty disability? This section applies to you if you are a LEOFF Plan 2 member who becomes disabled in the line of duty per RCW 41.26.470.

(1) 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. "Line of duty" has the same meaning as "course of employment" in worker's compensation law, under RCW 51.08.013. If you have multiple conditions, some duty-related and some not, you may still qualify for a duty-related disability if:

(a) The duty-related condition or conditions, standing alone, would render you disabled; or

(b) The duty-related incident or incidents were the proximate cause of the disabling condition.

(2) What if I have a preexisting condition? The presence of a preexisting condition does not by itself disqualify a member from receiving benefits for duty-related disability.

Example: A LEOFF Plan 2 member has asymptomatic congenital osteoarthritis, a degenerative joint disease. While on duty, the member suffered a knee injury. Absent the osteoarthritis, the knee injury may not have been disabling. However, the preexisting degenerative joint disease prevented full recovery from the injury, leaving the member unable to resume LEOFF duties. In this case, the member could qualify for a LEOFF plan 2 duty disability benefit.

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

WAC 415-104-480 Does my disability qualify me for a LEOFF Plan 2 catastrophic duty disability benefit((s.))? ((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.

~~(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) **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) **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) **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 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 the injury; or~~

~~(B) Drugs or other substances in the body.~~

~~(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 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 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:

$$\begin{aligned} \$5,000 \times 10\% \times 0.87 &= \$435 \text{ (nontaxable); PLUS} \\ 15 \times 2\% \times \$5,000 \times &= \$1,305 \text{ (taxable)} \\ 0.87 & \\ \text{TOTAL} &= \$1,740 \end{aligned}$$

~~(10) 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) **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) of this section.~~

~~(12) **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) 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.

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) 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)(b) of this section:~~

$$\begin{aligned}
 \$5,000 \times 10\% &= \$500 \text{ (nontaxable); PLUS} \\
 5 \times 2\% \times \$5,000 &= \$500 \text{ (taxable)} \\
 \text{TOTAL} &= \$1,000
 \end{aligned}$$

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

$$\begin{aligned}
 \text{Monthly amount from above} &= \$1,000; \text{ LESS} \\
 \$75,000 \times .0049904 &= -\$374.28 \\
 \text{Monthly allowance} &= \$625.72^{\dagger}
 \end{aligned}$$

† 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) 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.~~

~~(14) 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) 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 RCW 41.26.500 and WAC 415-104-111.) (1) If the department determines you are disabled and you became disabled in the line of duty, you qualify for a catastrophic duty disability if:~~

~~(a) The disability or disabilities that qualified you for a LEOFF Plan 2 duty disability benefit are so severe that considering your age, education, work experience, and transferable skills, you cannot engage in any other kind of substantial gainful activity in the labor market; and~~

~~(b) Your disability or disabilities have lasted or are expected to last at least twelve months, or are expected to result in your death.~~

~~(2) A person with multiple injuries/conditions, some duty-related and some not, could qualify for a catastrophic duty disability but only if the duty injury or injuries, standing on their own, are catastrophically disabling.~~

Examples:

~~• Totally disabled, but not from duty injury - Not eligible for catastrophic disability benefit.~~

~~A LEOFF Plan 2 member suffers a knee injury on duty, leaving them disabled from LEOFF employment. The knee injury, standing alone, is not totally disabling. The member also suffers from amyotrophic lateral sclerosis (ALS) or Lou Gehrig's disease, a progressive neurodegenerative disease that ultimately leaves the member totally disabled. Pursuant to the ALS diagnosis the member is granted a full disability from the Social Security Administration. In this case the member would qualify for a duty disability, but not for a catastrophic disability since the fully disabling condition, ALS, is not duty related.~~

~~• Totally disabled, duty injury totally disabling - Eligible for catastrophic disability benefits.~~

~~A LEOFF Plan 2 member suffers a knee injury while fishing. The knee injury, standing alone, is neither duty related nor catastrophically disabling. The member also suffers severe burns while fighting a fire, leaving him/her fully disabled. The Social Security Administra-~~

tion grants the member a full disability based on his/her total condition. The member qualifies for a LEOFF plan 2 catastrophic disability benefit because the burn injuries, standing alone, render him/her totally disabled.

(3) Medical insurance premium reimbursement is an additional benefit for a member who is catastrophically disabled in the line of duty (RCW 41.26.470). However, if you choose to withdraw one hundred fifty percent of your accumulated contributions pursuant to RCW 41.26.470(6) you are not entitled to the medical insurance premium reimbursement.

(4) Definitions. As used in this section:

(a) **Catastrophically disabled** means the same as "totally disabled" as defined under RCW 41.26.470(9).

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

(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) **Substantial gainful activity** describes a level of work activity and earnings. Substantial gainful activity is work activity that is both substantial and gainful. Earnings as defined in this section includes compensated work that meets or exceeds the defined income threshold:

(i) Work activity is substantial if it involves doing significant physical or mental activities. Your work may be substantial even if it is done on a part-time basis or if you do less, or get paid less, or have less responsibility than when you worked in your LEOFF position.

(ii) Work activity is gainful if it is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

(iii) Generally, activities like taking care of yourself, household tasks, profits from rental income, hobbies, therapy, school attendance, club activities, or social programs are not substantial gainful activity.

(e) **Defined income threshold** means any substantial gainful activity that produces average earnings, as defined in (a) of this subsection, in excess of the federal Social Security disability standards, adjusted annually for inflation. 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) **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.

NEW SECTION

WAC 415-104-481 Does my disability qualify as a nonduty LEOFF Plan 2 disability? This section applies to you if you are a LEOFF Plan 2 member who becomes disabled not in the line of duty.

(1) **Who is entitled to nonduty disability benefits?** Any member of LEOFF Plan 2 who the department determines has become totally incapacitated to perform the essential functions of his or her LEOFF Plan 2 eligible position as a result of their disability, but did not have

the qualifying disability occur in the line of duty, is entitled to a nonduty disability per RCW 41.26.470(1).

(2) **What if I have a preexisting condition or conditions?** The presence of a preexisting condition does not disqualify a member from receiving benefits.

Example: A LEOFF Plan 2 member has asymptomatic congenital osteoarthritis, a degenerative joint disease. While off duty, the member suffered a knee injury. Absent the osteoarthritis, the knee injury may not have been disabling. However, the preexisting degenerative joint disease prevented full recovery from the injury, leaving the member unable to resume LEOFF duties. In this case, the member could qualify for a LEOFF Plan 2 nonduty disability benefit.

AMENDATORY SECTION (Amending WSR 16-06-069, filed 2/25/16, effective 3/27/16)

~~WAC 415-104-482 ((What is the LEOFF Plan 2 catastrophic disability allowance?)) **How are the different LEOFF Plan 2 disability benefits calculated?** ((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 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 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 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 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 ($\$5,800 \times 70\% = \$4,060$). 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	$\$1,800 \times 4.1\% =$ $\$73.80 + \$1,800$	= \$1,873.80
Total combined benefit	$\$4,060 + \$1,873.80$	= \$5,933.80
Amount over 100% of FAS	$\$5,933.80 - \$5,800$	= \$133.80

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 \times 30 \times 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	$\$5,800 \times 3\% =$ $\$174 + \$5,800 =$ $\$5,974 \times 70\%$	$= \$4,181.80$
Total combined benefits	$\$4,181.80 + \$1,873.80$	$= \$6,055.60$
Amount over 100% of FAS	$\$6,055.60 - \$5,974$	$= \$81.60$

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 \times 30 \times 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. 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~~

$$.10 \times \$10,000 \equiv \$1,000$$

$$2. \quad \frac{2\% \times \text{FAS} \times \text{Number of Service Years beyond Five Years}}{\text{Years}} \equiv \text{Taxable amount}$$

$$.02 \times \$10,000 \times 0 \equiv \$0$$

$$3. \quad \frac{\text{Nontaxable amount} + \text{Taxable amount}}{\text{amount}} \equiv \text{Total benefit}$$

$$\$1,000 + \$0 \equiv \$1,000$$

(2) Catastrophic duty disability: As a catastrophic 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 made to restore service credit after the five-year deadline will be paid at one hundred percent. Under this option you waive your right to the medical insurance premium reimbursement; or

(b) A monthly disability benefit equal to:

(i) Seventy percent of your final average salary (FAS), which is nontaxable, reduced by any temporary disability benefits provided under Title 51 RCW and federal Social Security disability benefits, if necessary to ensure that the total combined benefits do not exceed one hundred percent of the member's final average salary (FAS).

(ii) The reduced benefit cannot be less than the earned service retirement benefit.

Calculation of monthly disability benefit:

Example 1: Terry was approved for catastrophic disability. The final average salary (FAS) was \$10,000. Terry was not receiving benefits from LNI or Social Security disability insurance (SSDI). Terry had 20 years of service credit at the time of retirement. To determine the catastrophic benefit amount:

$$1. \quad 70\% \text{ of FAS} \equiv \text{Monthly disability benefit}$$

$$.70 \times \$10,000 \equiv \$7,000$$

$$2. \quad 2\% \times \text{FAS} \times \text{Service Years} \equiv \text{Earned benefit}$$

$$.02 \times \$10,000 \times 20 \equiv \$4,000$$

Since there is no offset and the monthly disability benefit is greater than the earned benefit, Terry's benefit will be \$7000 a month.

Example 2: Pat was approved for catastrophic disability. The final average salary (FAS) was \$10,000. Pat was receiving benefits from LNI and Social Security disability insurance (SSDI) in the amounts of \$5,000 and \$2,000. Pat had 2 years of service credit at the time of retirement. To determine the catastrophic benefit amount:

$$1. \quad 70\% \text{ of FAS} \equiv \text{Monthly disability benefit}$$

$$.70 \times \$10,000 \equiv \$7,000$$

$$2. \quad \frac{\text{Monthly disability benefit} + \text{LNI benefits} + \text{SSDI benefit}}{\text{benefits}} \equiv \text{Total of all benefits}$$

$$\$7,000 + \$5,000 + \$2,000 \equiv \$14,000$$

$$3. \quad \frac{\text{Total of all benefits} - \text{FAS}}{\text{amount}} \equiv \text{Reduction amount}$$

$$\$14,000 - \$10,000 \equiv \$4,000$$

$$4. \quad \frac{\text{Monthly disability benefit} - \text{Reduction Amount}}{\text{benefit}} \equiv \text{Reduced monthly benefit}$$

$$\$7,000 - \$4,000 \equiv \$3,000$$

$$5. \quad 2\% \times \text{FAS} \times \text{Service Years} \equiv \text{Earned benefit}$$

$$.02 \times \$10,000 \times 2 = \$400$$

Since the reduced monthly benefit amount is greater than the earned benefit, Pat's benefit will be \$3,000 a month.

Example 3: Chris was approved for catastrophic disability. The final average salary (FAS) was \$10,000. Chris was receiving benefits from LNI (Title 51 RCW) and Social Security disability insurance (SSDI) in the amounts of \$5,000 and \$2,000 respectively. Chris had 20 years of service credit at the time of retirement. To determine the catastrophic benefit amount:

1. $\frac{70\% \text{ of FAS}}{.70 \times \$10,000} = \frac{\text{Monthly disability benefit}}{\$7,000}$
2. $\frac{\text{Monthly disability benefit} + \text{LNI benefits} + \text{SSDI benefit}}{\$7,000 + \$5,000 + \$2,000} = \frac{\text{Total of all benefits}}{\$14,000}$
3. $\frac{\text{Total of all benefits} - \text{FAS}}{\$14,000 - \$10,000} = \frac{\text{Reduction amount (to not exceed 100\% of FAS)}}{\$4,000}$
4. $\frac{\text{Monthly disability benefit} - \text{Reduction Amount}}{\$7,000 - \$4,000} = \frac{\text{Reduced monthly benefit}}{\$3,000}$
5. $\frac{2\% \times \text{FAS} \times \text{Service Years}}{.02 \times \$10,000 \times 20} = \frac{\text{Earned benefit}}{\$4,000}$

Chris is entitled to the greater of the catastrophic retirement calculation or the earned benefit. Since the earned benefit is greater than the reduced catastrophic benefit, Chris' benefit will be \$4,000 a month.

(3) Nonduty disability: As a nonduty disability retiree, you receive a benefit of two percent times your final average salary times your service credit years. This disability benefit will be actuarially reduced to reflect the difference in age at the time of disability retirement and age fifty-three.

Calculation of monthly disability benefit:

Example 1 – Full actuarial reduction:

Chris, age 47, was approved for a nonduty disability. The final average salary (FAS) was \$10,000. Chris had 20 years of service credit at the time of retirement. To determine the nonduty disability benefit amount:

$$\frac{2\% \times \text{FAS} \times \text{Service Years} \times \text{early retirement factor (2018 table)}}{.02 \times \$10,000 \times 20 \times 0.5980} = \frac{\text{Benefit amount}}{\$2,392}$$

NEW SECTION

WAC 415-104-483 Is my disability benefit affected by choosing a survivor option? If you choose a benefit option with a survivor feature at the time of retirement, your survivor beneficiary will receive an ongoing monthly disability benefit after your death. Your disability benefit will be actuarially reduced to offset the cost of providing payments over two lifetimes. The survivor options are further described in WAC 415-104-215. See WAC 415-02-380 for more information and

examples on how the actuarial reduction is applied to your disability benefit.

NEW SECTION

WAC 415-104-484 Is my disability benefit reduced for early retirement? If you retire for line of duty disability or catastrophic duty disability, your disability benefit will not be reduced for early retirement. If you retire for nonduty disability, your disability benefit will be actuarially reduced to reflect the difference in age at the time of disability retirement and age fifty-three. See WAC 415-02-320 for more information and examples on how the actuarial reduction is applied to your disability benefit.

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

WAC 415-104-485 ((LEOFF nonduty disability benefits.)) How do I apply for a disability benefit? ((This section applies to you if you are a LEOFF Plan 2 member who incurs a disability not in the line of duty. 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 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) x 2% x \$5,000 (FAS) x 0.39 (early retirement factor) x 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.~~

~~(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 RCW 41.26.500 and WAC 415-104-111.) (1) The department must receive:

(a) A completed DRS disability retirement application;

(b) Additional information required by the department; and

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

(2) The process for determining eligibility for a disability benefit can be lengthy and may require additional documentation to complete.

NEW SECTION

WAC 415-104-486 When does my disability benefit end? The department may require comprehensive medical or psychological examinations to reevaluate your continued eligibility for disability benefits. For catastrophic benefits the department may also require or offer to provide comprehensive vocational examinations and/or submission of earnings information to evaluate your continued eligibility. You are required to contact the department if your medical/vocational or financial situation changes.

(1) Your duty or 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.

(2) Your catastrophic disability benefit will cease if:

(a) You return to work in a LEOFF-eligible position;

(b) 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

(c) Your earnings exceed the threshold for substantial gainful activity.

NEW SECTION

WAC 415-104-487 Can my disability retirement type change? Your disability retirement type may change depending upon the circumstances.

If your original disabling condition or conditions worsen, improve, or recover, the department may adjust your benefit.

(1) Worsening - If the condition or conditions that caused your duty disability worsen, your retirement may be changed to a catastrophic disability. You must submit an application and provide sufficient medical evidence to support a claim that your condition or conditions qualify you for a catastrophic disability. The worsening must be caused by or directly related to the original injury or injuries or illness and not due to the natural aging process or a succeeding cause.

Example: A member retires on a duty-related disability retirement due to a knee injury. The member has surgery related to the knee injury after retirement and suffers side effects from the surgery that prevent the member from performing any substantial gainful employment. The member is eligible to have their benefit adjusted because the aggravation is directly related to the original injury.

Example: A member retires on a duty-related disability retirement due to a knee injury. The member reinjures the knee in a skiing accident and is rendered unable to perform any substantial gainful employment. The member is not eligible to have their benefit adjusted because the aggravation is the result of a succeeding cause and not the original injury.

Example: A member retires on a duty-related disability retirement due to a knee injury. The condition gradually worsens over time until the member is no longer capable of substantial gainful employment. The member is not eligible to have their benefit adjusted because the aggravation is due to aging.

(2) Improvement - If your condition or conditions improve such that you are capable of substantial gainful employment, the department will adjust your catastrophic disability benefit to a duty disability benefit.

(3) Recovery - If your condition or conditions improve such that you are able to return to work in a LEOFF-eligible position, the department will terminate your disability retirement or convert you to a normal retirement benefit if you are eligible.