



Prohibition on Remarriage

Preliminary Report

LEOFF Plan 2 Retirement Board

April 30, 2008

Background Summary

- Inconsistency in remarriage policy
- Survivor Retirement Benefits not affected by remarriage
- Survivor Workers' Compensation benefits affected by remarriage when death related to occupational injury or disease

2008 Legislation

- Allow LEOFF Plan 2 Survivor to remarry without loss of benefits (HB 1545 – Rep Kirby)
 - Prospective
 - Cost – HB 1545 Fiscal Note
 - 07-09: \$201,662
 - 09-11: \$ 21,536
 - 11-13: \$ 21,536
- House Passed; Did not advance past Senate Rules

Key Issues

- Survivors penalized for remarriage
 - Face financial and moral/lifestyle decisions
 - Retroactive application to remarried survivors
- Affects more than just LEOFF Plan 2
- L&I issue/coordination of policy development

2007 Action

- Pursue joint legislation
 - Letter to L&I and WCAC to review issue
 - Unclear timeline for joint legislation

Prohibition on Remarriage

Questions?

LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' PLAN 2 RETIREMENT BOARD

Prohibition on Remarriage

Preliminary Report

April 30, 2008

1. Issue

A policy inconsistency exists between Workers' Compensation benefits and retirement benefits regarding the continuation of survivor benefits when the survivor of a member killed in the line of duty remarries. A survivor who remarries will continue to receive retirement benefits but may lose Workers' Compensation benefits.

2. Staff

Tim Valencia, Senior Research and Policy Manager
(360) 586-2326
tim.valencia@leoff.wa.gov

3. Members Impacted

This issue impacts survivors of LEOFF Plan 2 members who are killed in the line of duty. As of September 30, 2006 there were 15,418 active members in LEOFF Plan 2. Although the number of current survivors of line of duty deaths is not known, the Office of the State Actuary estimated for the 2006 Survivor Health Care that there would be approximately three duty-related deaths per year and assumed that there were approximately 24 current survivors as the result of prior duty-related deaths.

4. Current Situation

None of the current state administered retirement plans contain a prohibition on remarriage for a survivor receiving pension benefits. If a survivor remarries, their survivor pension benefits continue. Workers' Compensation benefits provided to a survivor of a line of duty death can cease if the survivor remarries.

5. Background Information and Policy Issues

A policy inconsistency exists between Workers' Compensation benefits and retirement benefits regarding the continuation of survivor benefits when the survivor of a member killed in the line of duty remarries. The LEOFF Plan 2 Retirement Board has been contacted by survivors of members killed in the line duty regarding this policy inconsistency.

Retirement Benefits for Survivors

If a member dies in the line of duty and has 10 or more years of service credit or is eligible to retire, the surviving spouse may choose between the following two benefits:

1. Payment of 150 percent of the member's accumulated contributions, or
2. A monthly benefit calculated as if the member had elected the Joint and 100% Survivor Option

If the survivor elects the continuing benefit, the survivor will continue to receive the benefit for their lifetime; the benefit is actuarially reduced to reflect the cost of providing the benefit over the survivor's lifetime.

Impact of Remarriage on Retirement Benefits

If a survivor remarries, it has no impact on the survivor's receipt of retirement benefits. Since inception, LEOFF Plan 2 has not contained any provisions with a prohibition on remarriage for survivors. Although LEOFF Plan 1 at one point contained a prohibition on remarriage, that provision was removed from the plan by the Legislature in 1977. In 2002, a provision was added to LEOFF Plan 1 to make the 1977 legislation retroactive, allowing pre-1977 survivors to remarry and continue receiving survivor retirement benefits.

None of the other State administered pension plans have prohibition of remarriage provisions. The pre-LEOFF Plan, administered at the local government level, does contain a remarriage prohibition. Legislation introduced in the 2007 Session to repeal the prohibition did not pass.

Workers' Compensation Benefits for Survivors

If a worker dies from a work-related injury or occupational disease, a surviving spouse receives a monthly benefit from Workers' Compensation. The amount the survivor receives is 60% of the worker's wages at the time of death. There are no actuarial reductions applied to this survivor benefit.

If a worker becomes disabled due to an injury, the worker may be paid a monthly pension for life. The amount the worker receives is based on the formula used for setting time-loss compensation payments. If the disabled worker dies and the death is not related to their disabling work-related injury or occupational disease, a surviving spouse is entitled to benefits if a pension survivor option was selected. The amount the survivor will receive is based on the survivor option chosen, which provides from 50 percent to 100 percent of the *actuarially reduced* monthly pension the disabled worker was receiving.

If the disabled worker dies and the death is related to their disabling work-related injury or occupational disease, the amount the survivor receives is 60% of the worker's wages at the time of disablement. There are no actuarial reductions applied to this survivor benefit.

Impact of Remarriage on Workers' Compensation Benefits

If a surviving spouse of someone who died from a work-related injury or occupational disease remarries, monthly benefit payments stop. This occurs whether a duty-related death or death following retirement from disability. The survivor will receive benefits through the end of the month in which they remarry. The survivor then has the option to receive a final settlement, or to leave the settlement in trust with Workers' Compensation. If the survivor accepts the settlement, no further benefits are paid under the claim. If the survivor leaves the settlement in trust and the new marriage ends in death, annulment or divorce, the survivor can apply to reinstate the pension as of the date of death or date the divorce becomes final. Should the survivor die while the settlement is in trust, the survivor's estate is paid 50 percent of the remaining pension reserve or the settlement amount, whichever is less.

If a surviving spouse of someone whose death is not related to their disabling work-related injury or occupational disease remarries, monthly benefit payments do not stop if a survivor option was selected. Similar to survivor retirement benefits, the worker's benefit was actuarially reduced to reflect the cost of continuing the benefit over the survivor's lifetime.

Administrative Issues

The requirement to determine eligibility for continuing benefits has created administrative challenges for the Department of Labor and Industries. In fact, the Department of Labor and Industries received an audit finding from the State Auditor's Office in 2006¹ for paying benefits to survivors who were no longer eligible due to remarriage. Eliminating this requirement may help the Department of Labor and Industries.

Workers' Compensation Policy Development

The Workers' Compensation Advisory Committee (WCAC) works with the Department of Labor & Industries to study workers' compensation policy issues. The members on the WCAC are appointed by the Director of the Department of Labor and Industries; the committee is composed of ten members:

- three representing workers,
- three representing employers,
- one representing self-insurers,
- one representing workers of self-insurers, and
- two ex officio members (Chairman of the Board of Industrial Appeals and a representative of the Department of Labor and Industries who acts as chairman²).

¹ WA State Auditor's Office, Audit Report 6541, Released May 5, 2006

² The current WCAC Chairman is Robert J. Malooly, Department of Labor and Industries Assistant Director for Insurance Services

The statutory responsibility of WCAC is to conduct continuing study of any aspects of workers' compensation as the committee determines requires consideration. Issues are generally brought to the WCAC from or through the Director of Labor and Industries. The committee reports its findings to the Department of Labor and Industries or the Board of Industrial Insurance Appeals for action as deemed appropriate.

The WCAC can hire experts if needed to meet the statutory duties of the committee and may utilize personnel and facilities of the Department of Labor and Industries or the Board of Industrial Insurance Appeals as it needs, without charge. All expenses of the WCAC are paid by the Department of Labor and Industries.

2008 Legislation

Legislation was introduced by Representative Steve Kirby during the 2008 Legislative session that allows surviving spouses of LEOFF Plan 2 members who are receiving Workers' Compensation death benefits to continue to receive the benefit after remarriage. Although bill (House Bill 1545) was passed unanimously by the House of Representatives, the bill did not move past the Senate Rules Committee. A Fiscal Note from the Department of Labor and Industries estimated the cost of the bill at \$201,662 in the 2007-09 biennium and \$21,536 in each of the 2009-11 and 2011-13 biennia.

6. Policy Options

The LEOFF Plan 2 Retirement Board considered three policy options during the 2007 Interim which are outlined below. The Board elected to pursue Option 1 working jointly with the Department of Labor and Industries Workers' Compensation Advisory Committee.

Option 1: Pursue Joint Legislation with the Department of Labor and Industries

The LEOFF Plan 2 Retirement Board would send a letter to the Department of Labor and Industries and the Workers' Compensation Advisory Committee (WCAC) requesting that eliminating the remarriage prohibition be studied and pursued as joint legislation. It is unclear however if joint legislation could be ready in time for the 2008 session.

Option 2: Recommend legislation to remove the remarriage prohibition

The LEOFF Plan 2 Retirement Board would recommend legislation to eliminate the remarriage prohibition for workers' compensation survivor benefits. This would allow survivors to remarry and continue to receive workers' compensation benefits. There may be some concern that this is not solely a LEOFF Plan 2 pension issue and therefore not within the scope of the Board's responsibility.

Option 3: Retroactive application to remarried survivors

Legislation to eliminate the remarriage prohibition would specify that it is to be applied retroactively for survivors who had remarried prior to the effective date of the legislation. This would prevent remarried survivors from being required to divorce and then re-marry in order to qualify for benefits. This option is not mutually exclusive of Option 1 and Option 2; rather it could be selected in addition to either Option 1 or Option 2 in order to restart benefits for survivors' who are already remarried and have had their benefits suspended.