



December 20, 2017
Out of State Duty

PRELIMINARY REPORT

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ISSUE STATEMENT

Off-duty members who are injured while trying to save lives in an out-of-state “mass casualty” event are not entitled to LEOFF 2 duty disability benefits.

OVERVIEW

Current statute limits duty disability benefits to members who become injured while “on the clock” with their employer. Any member who becomes disabled in their off time is limited to a non-duty disability benefit. The benefit for a non-duty disability is as follows:

- $2\% \times \text{FAS} \times \text{service credit years}$

The monthly benefit will be reduced to reflect the difference between the members’ age at the time of their disability retirement and age 53. Suffering a disability at a younger age will lead to a larger reduction.

BACKGROUND AND POLICY ISSUES

An off-duty member who becomes disabled responding to a mass casualty incident has the same level of benefits as a member who becomes disabled from any other type of non-duty injury. There has been a recent push across the west coast (in response to the Las Vegas terrorist attack) to ensure that officers and other first responders can get assistance no matter where an incident takes place. A number of California law enforcement officers were shot and injured while providing lifesaving care at the Las Vegas terrorist attack, but when they went to file workers compensation claims, they were told that they would not be approved. Had those off-duty officers been shot and injured while responding to a mass-killing in California, they likely would be taken care of without dispute. But because they were shot in Nevada, their life-saving efforts could cost them dearly.

What Level of Benefits is Appropriate?

The primary policy question is whether the Board wants to expand disability coverage for these types of events. The current benefit for these members' only provides the normal retirement formula, reduced by the difference between the members' age and age 53.

- Should the level of benefits rise to the level of a line of duty disability providing full earned benefits?
- If a member becomes catastrophically disabled, should the level of benefits rise to the catastrophic duty disability benefit, where a member would receive 70% of their FAS as well as medical premium reimbursements?
- If a member dies while performing this type of service, should his survivor be entitled to the lump sum payment of 150% of their contributions plus interest or a monthly benefit?

This issue of compensation is certain to remain in the forefront as communities across the country face a threat from mass-casualty events, including terrorist attacks and wildfires.

Public Safety Officers Benefits Program

Opponents of granting more benefits to these members argue that the coverage for these types of events should be done at the federal level. The most common federal benefit for public safety officers if they were to die or become disabled is the Public Safety Officers Benefits Program (PSOB).

The PSOB provides a \$343,589 lump sum death and total-disability benefits for eligible public safety officers. The PSOB definition of eligibility states that a public safety officer's death or total and permanent disability must result from injuries sustained in the line of duty. "Line of duty" means any action that the public safety officer is authorized or obligated to perform by law, rule, regulation or condition of employment or service.

If law enforcement, fire suppression, rescue or ambulance service is not a person's primary function, then, to be covered by the Act, that person must be engaged in his or her authorized law enforcement, fire suppression, rescue or ambulance duties when the fatal or disabling injury is sustained. Therefore, the PSOB benefits do not apply to these off-duty members either.

POLICY OPTIONS

1. Expand the level of pension benefits for members who become injured while providing lifesaving care in an out-of-state “mass casualty” event.
2. Take no action at this time.

SUPPORTING INFORMATION

Appendix A: Bill Language

APPENDIX A – BILL LANGUAGE

Out of State Duty

RCW 41.26.470 is amended to read as follows:

Earned disability allowance—Cancellation of allowance—Reentry—Receipt of service credit while disabled—Conditions—Disposition upon death of recipient—Disabled in the line of duty—Total disability—Reimbursement for certain payments—Disabled while providing emergency management services.

(1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the director shall be eligible to receive an allowance under the provisions of RCW **41.26.410** through **41.26.550**. Such member shall receive a monthly disability allowance computed as provided for in RCW **41.26.420** and shall have such allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age fifty-three, except under subsection (7) of this section.

(2) Any member who receives an allowance under the provisions of this section shall be subject to such comprehensive medical examinations as required by the department. If such medical examinations reveal that such a member has recovered from the incapacitating disability and the member is no longer entitled to benefits under Title **51** RCW, the retirement allowance shall be canceled and the member shall be restored to duty in the same civil service rank, if any, held by the member at the time of retirement or, if unable to perform the duties of the rank, then, at the member's request, in such other like or lesser rank as may be or become open and available, the duties of which the member is then able to perform. In no event shall a member previously drawing a disability allowance be returned or be restored to duty at a salary or rate of pay less than the current salary attached to the rank or position held by the member at the date of the retirement for disability. If the department determines that the member is able to return to service, the member is entitled to notice and a hearing. Both the notice and the hearing shall comply with the requirements of chapter **34.05** RCW, the administrative procedure act.

(3) Those members subject to this chapter who became disabled in the line of duty on or after July 23, 1989, and who receive benefits under RCW **41.04.500** through **41.04.530** or similar benefits under RCW **41.04.535** shall receive or continue to receive service credit subject to the following:

(a) No member may receive more than one month's service credit in a calendar month.

(b) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(c) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(d) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(e) State contributions shall be as provided in RCW **41.45.060** and **41.45.067**.

(f) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred.

(g) The service and compensation credit under this section shall be granted for a period not to exceed six consecutive months.

(h) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right.

(4)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no such designated person or persons still living at the time of the recipient's death, then to the surviving spouse or domestic partner, or, if there is neither such designated person or persons still living at the time of his or her death nor a surviving spouse or domestic partner, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions.

(5) Should the disability retirement allowance of any disability beneficiary be canceled for any cause other than reentrance into service or retirement for service, he or she shall be paid the excess, if any, of the accumulated contributions at the time of retirement over all payments made on his or her behalf under this chapter.

(6) A member who becomes disabled in the line of duty, and who ceases to be an employee of an employer except by service or disability retirement, may request a refund of one hundred fifty percent of the member's accumulated contributions. Any accumulated contributions attributable to restorations made under RCW **41.50.165**(2) shall be refunded at one hundred percent. A person in receipt of this benefit is a retiree.

(7) A member who becomes disabled in the line of duty shall be entitled to receive a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five.

(8) A member who became disabled in the line of duty before January 1, 2001, and is receiving an allowance under RCW **41.26.430** or subsection (1) of this section shall be entitled to receive a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five, and shall have the allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age fifty-three. An additional benefit shall not result in a total monthly benefit greater than that provided in subsection (1) of this section.

(9) A member who is totally disabled in the line of duty is entitled to receive a retirement allowance equal to seventy percent of the member's final average salary. The allowance provided under this subsection shall be offset by:

(a) Temporary disability wage-replacement benefits or permanent total disability benefits provided to the member under Title 51 RCW; and

(b) Federal social security disability benefits, if any;

so that such an allowance does not result in the member receiving combined benefits that exceed one hundred percent of the member's final average salary. However, the offsets shall not in any case reduce the allowance provided under this subsection below the member's accrued retirement allowance.

A member is considered totally disabled if he or she is unable to perform any substantial gainful activity due to a physical or mental condition that may be expected to result in death or that has lasted or is expected to last at least twelve months. Substantial gainful activity is defined as average earnings in excess of eight hundred sixty dollars a month in 2006 adjusted annually as determined by the director based on federal social security disability standards. The department may require a person in receipt of an allowance under this subsection to provide any financial records that are necessary to determine continued eligibility for such an allowance. A person in receipt of an allowance under this subsection whose earnings exceed the threshold for substantial gainful activity shall have their benefit converted to a line-of-duty disability retirement allowance as provided in subsection (7) of this section.

Any person in receipt of an allowance under the provisions of this section is subject to comprehensive medical examinations as may be required by the department under subsection (2) of this section in order to determine continued eligibility for such an allowance.

(10)(a) In addition to the retirement allowance provided in subsection (9) of this section, the retirement allowance of a member who is totally disabled in the line of duty shall include reimbursement for any payments made by the member after June 10, 2010, for premiums on employer-provided medical insurance, insurance authorized by the consolidated omnibus budget reconciliation act of 1985 (COBRA), medicare part A (hospital insurance), and medicare part B (medical insurance). A member who is entitled to medicare must enroll and maintain enrollment in both medicare part A and medicare part B in order to remain eligible for the reimbursement provided in this subsection. The legislature reserves the right to amend or repeal the benefits provided in this subsection in the future and no member or beneficiary has a contractual right to receive any distribution not granted prior to that time.

(b) The retirement allowance of a member who is not eligible for reimbursement provided in (a) of this subsection shall include reimbursement for any payments made after June 30, 2013, for premiums on other medical insurance. However, in no instance shall the reimbursement exceed the amount reimbursed for premiums authorized by the consolidated omnibus budget reconciliation act of 1985 (COBRA).

(11) A member who has left the employ of an employer due to service in the national guard, military reserves, federal emergency management agency, or national disaster medical system of the United States department of health and human services and who becomes totally incapacitated for continued employment by an employer as determined by the director while performing service in response to a disaster, major emergency, special event, federal exercise,

or official training on or after March 22, 2014, shall be eligible to receive an allowance under the provisions of RCW **41.26.410** through **41.26.550**. Such member shall receive a monthly disability allowance computed as provided for in RCW **41.26.420** except such allowance is not subject to an actuarial reduction for early retirement as provided in RCW **41.26.430**. The member's retirement allowance is computed under RCW**41.26.420**, except that the member shall be entitled to a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five.

(12) An off-duty member who becomes totally incapacitated for continued employment by an employer as determined by the director while performing service in response to an out-of-state mass casualty incident shall be eligible to receive an allowance as provided under subsection (11) of this section.



Out of State Duty

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Issue

- Off-duty members who are injured while performing service in response to an out-of-state mass casualty incident are not entitled to LEOFF 2 duty disability benefits.

Overview

Current statute

- Limits duty disability benefits to members who become injured while “on the clock” with their employer.
- Any member who becomes disabled in their off time is limited to a non-duty disability benefit.
 - $2\% \times \text{FAS} \times \text{service credit years}$
- The monthly benefit will be reduced to reflect the difference between the members’ age at the time of their disability retirement and age 53.
 - Suffering a disability at a younger age will lead to a larger reduction.

Background

- An off-duty member who becomes disabled responding to a mass casualty incident has the same level of benefits as a member who becomes disabled from any other type of non-duty injury.
- There has been a recent push across the west coast (in response to the Las Vegas terrorist attack) to ensure that officers and other first responders can get assistance no matter where an incident takes place.

Background

California law enforcement officers shot and injured while providing lifesaving care at the Las Vegas terrorist attack

- When they went to file workers compensation claims, they were told that they would not be approved.

Had those off-duty officers been shot and injured while responding to a mass-killing in California, they likely would be taken care of without dispute.

- But because they were shot in Nevada instead, their life-saving efforts could cost them dearly.

What Level of Benefits is Appropriate?

The primary policy question for this issue

- **Does the Board want to expand disability coverage for these types of events?**
 - Should the level of benefits rise to the level of a line of duty disability providing full earned benefits?
 - If a member becomes catastrophically disabled, should the level of benefits rise to the catastrophic duty disability benefit?
 - If a member dies while performing this type of service, should his survivor be entitled to full survivor benefits?
- **This issue of compensation is certain to remain in the forefront as communities across the country face a threat from mass-casualty events, including terrorist attacks and wildfires.**

Public Safety Officers Benefits Program

Opponents of granting more benefits to these members argue that the coverage for these types of events should be done at the federal level.

- **The biggest federal benefit for public safety officers if they were to die or become disabled is the Public Safety Officers Benefits Program (PSOB).**
 - The PSOB provides a \$343,589 lump sum death and total-disability benefits for eligible public safety officers.
 - The PSOB definition of eligibility states that a public safety officer's death or total and permanent disability must result from injuries sustained in the “line of duty”.
 - Therefore, the PSOB benefits do not apply to these off-duty members either.

Policy Options

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Questions?

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