



December 20, 2017  
Definition of Child

## COMPREHENSIVE REPORT

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## ISSUE STATEMENT

The LEOFF definition of “child” excludes children adopted after retirement. Post-retirement adoptees do not qualify for LEOFF children’s benefits.

## OVERVIEW

LEOFF provides benefits to children of active and retired members. Plan 1 and Plan 2 provide different benefits, though both use the same definition of child. While the definition includes children adopted before retirement, it excludes children adopted after retirement.

This report provides an overview of the current state of the law and options for potential modification.

## BACKGROUND AND POLICY ISSUES

### Adopted Family Members as Children

The LEOFF definition of “child” includes children adopted before retirement:

"Child" or "children" means an unmarried person who is under the age of eighteen or mentally or physically disabled as determined by the department, except a person who is disabled and in the full time care of a state institution, who is:

- (i) A natural born child;
- (ii) A stepchild where that relationship was in existence prior to the date benefits are payable under this chapter;
- (iii) A posthumous child;
- (iv) **A child legally adopted or made a legal ward of a member prior to the date benefits are payable under this chapter; or**

(v) An illegitimate child legitimized prior to the date any benefits are payable under this chapter.

RCW 41.26.030(6)(a) (*emphasis added*). Worker's compensation law has a similar provision:

"Child" means every natural born child, posthumous child, stepchild, child legally adopted prior to the injury, child born after the injury where conception occurred prior to the injury,...

RCW 51.08.030.

These definitions create two categories of children:

1. Biological children who qualify by the circumstances of their birth; and
2. Stepchildren, adopted children, or illegitimate children, who don't qualify unless they satisfy a statutory condition, for instance adoption, before the member retires.

While there is no specific statutory history, this provision may have been enacted out of concern that a beneficiary might adopt a child after retirement to enhance benefits. This same policy is found in the LEOFF Plan 1 surviving spouse benefit, RCW 41.26.160(2), which only allows benefits to a spouse married to the member for at least one year prior to retirement.

## **Benefits Denied Children Adopted After Retirement**

While both LEOFF Plan 1 and Plan 2 exclude children adopted after retirement from the definition of child, the plans provide different benefits to covered children.

### ***LEOFF Plan 2 Child Benefits***

- Death in service benefit, with a choice between:
  - Retirement allowance:
    - Direct to child if no surviving spouse; or
    - Derivative from surviving spouse if he or she dies after member but while child still under age of majority; *RCW 41.26.510(2)(a)*
  - or
  - 150% contribution refund if no surviving spouse; *RCW 41.26.510(2)(b)*
- Duty death benefit<sup>1</sup>:

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<sup>1</sup> Children not eligible for lump sum death benefit; RCW 41.26.048

- Unreduced survivor allowance if no surviving spouse; *RCW 41.26.510(4)*
- Reimbursement of health insurance premiums; *RCW 41.26.510(5)*
- Tuition Waiver; *RCW 28B.15.380*
- Catastrophic disability benefit:
  - Reimbursement of health insurance premiums; *RCW 41.26.510(5)*
  - Tuition waiver; *RCW 28B.15.380*
- Establishing service credit for interruptive military service credit where member dies before establishing leave; *RCW 41.26.520(7)(d)*.

### **LEOFF Plan 1 Child Benefits**

LEOFF 1 increases the benefits of retirees and surviving spouses with qualifying children:

- Duty disability - Additional 5% of final average salary (FAS) for each child up to a maximum of 10%; *RCW 41.26.130*;
- Death benefit<sup>1</sup> –
  - Surviving spouse receives an additional 5% of FAS for each child up to a maximum of 10%.
  - If no surviving spouse or surviving spouse dies with qualifying children, the children receive 30% of FAS for one child, 10% for each additional up to 60%, share and share alike. *RCW 41.26.160, 41.26.161<sup>2</sup>*

The widow of a LEOFF Plan 1 disability retiree who adopted children after retirement, argues the exclusion of the children is discriminatory and seeks legislation to include children adopted after the date of retirement within the LEOFF definition of “child.”

The Select Committee on Pension Policy heard testimony and conducted a work session on this issue at their December 12, 2017 meeting. While some members expressed interest in the issue, no action was taken.

## **POLICY OPTIONS**

The LEOFF definition of child applies to Plan 1 and Plan 2. The Board jurisdiction is limited to LEOFF Plan 2, with the Select Committee on Pension Policy (SCPP) responsible for LEOFF Plan 1. The options presented below are based on that division of responsibilities.

### **Option 1: Amend Definition of Child for LEOFF Plan 2 only.**

Consistent with the Board’s statutory jurisdiction, the Board could propose to include children adopted after retirement for LEOFF plan 2 retiree’s only. See draft bill language, Appendix A.

<sup>2</sup> *RCW 41.26.160* applies to duty related death while *RCW 41.26.161* applies to non-duty death. Both statute provide the same benefit.

**Option 2: Work with SCPP to Amend Definition of Child for LEOFF Plan 1 and Plan 2.**

While LEOFF 1 issues are within the SCPP’s jurisdiction, the Board could work with the SCPP to craft a bill to amend the definition of child for both plans. See draft bill language, Appendix B.

**Option 3: Take No Further Action at This time.**

**SUPPORTING INFORMATION**

Appendix A: Draft bill language amending definition of “child” for LEOFF Plan 2 only

Appendix B: Draft bill language amending definition of “child” for both plans.

## APPENDIX A – AMENDING “CHILD” DEFINITION FOR LEOFF PLAN 2 ONLY

**Making children adopted after retirement eligible for LEOFF benefits; Amending RCW 41.26.030...**

(6)(a) "Child" or "children" means an unmarried person who is under the age of eighteen or mentally or physically disabled as determined by the department, except a person who is disabled and in the full time care of a state institution, who is:

(i) A natural born child;

(ii) A stepchild where that relationship was in existence prior to the date benefits are payable under this chapter;

(iii) A posthumous child;

(iv) (a) A child legally adopted or made a legal ward of a LEOFF Plan 1 member prior to the date benefits are payable under this chapter;

(b) A child legally adopted or made a legal ward of a LEOFF Plan 2 member; or

(v) An illegitimate child legitimized prior to the date any benefits are payable under this chapter.

(b) A person shall also be deemed to be a child up to and including the age of twenty years and eleven months while attending any high school, college, or vocational or other educational institution accredited, licensed, or approved by the state, in which it is located, including the summer vacation months and all other normal and regular vacation periods at the particular educational institution after which the child returns to school.

## APPENDIX B – AMENDING CHILD DEFINITION FOR BOTH PLANS

**Making children adopted after retirement eligible for LEOFF benefits; Amending RCW 41.26.030...**

(6)(a) "Child" or "children" means an unmarried person who is under the age of eighteen or mentally or physically disabled as determined by the department, except a person who is disabled and in the full time care of a state institution, who is:

(i) A natural born child;

(ii) A stepchild where that relationship was in existence prior to the date benefits are payable under this chapter;

(iii) A posthumous child;

(iv) A child legally adopted or made a legal ward of a member (~~prior to the date benefits are payable under this chapter~~); or

(v) An illegitimate child legitimized prior to the date any benefits are payable under this chapter.

(b) A person shall also be deemed to be a child up to and including the age of twenty years and eleven months while attending any high school, college, or vocational or other educational institution accredited, licensed, or approved by the state, in which it is located, including the summer vacation months and all other normal and regular vacation periods at the particular educational institution after which the child returns to school.



# Definition of Child

December 20, 2017

# Issue

- The LEOFF definition of “child” excludes children adopted after retirement
- Same definition for Plan 1 and Plan 2 - RCW 41.26.030(6)
- Children adopted after retirement do not qualify for member death and disability benefits

# Two Categories of Qualifying Children

- **Biological Children who qualify by birth**
- **Children must meet statutory condition before member retires:**
  - **Adopted children must be adopted prior to retirement**
  - **Stepchild relationship must have been in existence prior to retirement**
  - **Illegitimate child legitimized, i.e. paternity established prior to retirement**
- **Possible policy for having two categories: to avoid perceived incentive to adopt a child in order to enhance LEOFF benefits**

## Children's Benefits: LEOFF Plan 2

If no surviving spouse or surviving spouse dies while children under 18:

- Death in service benefit, choice between:
  - Retirement allowance or
  - 150% contribution refund - *RCW 41.26.510(2)(b)*
- Duty death benefit:
  - Unreduced survivor allowance - *RCW 41.26.510(4)*
  - Reimbursement of health insurance premiums - *RCW 41.26.510(5)*
  - Tuition Waiver - *RCW 28B.15.380*
- Establishing service credit for interruptive military service credit where member dies before establishing leave - *RCW 41.26.520(7)(d)*

# Children's Benefits: LEOFF Plan 1

**LEOFF 1 increases the benefits of retirees and surviving spouses with qualifying children:**

- **Duty disability: Additional 5% of final average salary (FAS) for each child up to a maximum of 10% - RCW 41.26.130**
- **Death benefit:**
  - **Surviving spouse receives an additional 5% of FAS for each child up to a maximum of 10%**
  - **If no surviving spouse or surviving spouse dies with qualifying children, the children receive 30% of FAS for one child, 10% for each additional up to 60%, share and share alike - RCW 41.26.160, 41.26.161**

# SCPP Work Session

- Work session at December 12, 2017 SCPP meeting
- Interest expressed, no action taken at this time

# Options

- **Option 1: Amend Definition of Child for LEOFF Plan 2 only**
- **Option 2: Work with SCPP to Amend Definition of Child for LEOFF Plans 1 and 2**
- **Option 3: Take No Further Action at This time**



**Thank You**

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