

BOARD MEETING AGENDA

December 20, 2017 - 9:30 AM



LOCATION

STATE INVESTMENT BOARD
Large Conference Room, STE 100
2100 Evergreen Park Drive S.W.
Olympia, WA 98502
Phone: 360.586.2320
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recep@leoff.wa.gov

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|---|----------|
| 1. Approval of Minutes | 9:35 AM |
| 2. Catastrophic Disability Medical Insurance
Paul Neal, Senior Research and Policy Manager | 9:40 AM |
| 3. Fiscal Analysis: Cost To Extend PEBB Coverage To Catastrophic Retirees | 10:00 AM |
| 4. Economic Assumption Adoption
Ryan Frost, Research and Policy Manager | 10:30 AM |
| 5. Interruptive Military Service Credit Study
Ryan Frost, Research and Policy Manager | 11:00 AM |
| 6. Disabled Members Return to Work
Ryan Frost, Research and Policy Manager | 11:30 AM |
| 7. Administrative Update <ul style="list-style-type: none">• Administrative Update
Steve Nelsen, Executive Director | 12:00 PM |
| 8. McNeil Island Fire Fighters
Paul Neal, Senior Research and Policy Manager | 12:15 PM |
| 9. Definition of Child
Paul Neal, Senior Research and Policy Manager | 12:45 PM |
| 10. Out of State Duty
Ryan Frost, Research and Policy Manager | 1:15 PM |
| 11. Board Operating Policy
Jessica Burkhart, Administrative Services Manager | 1:45 PM |
| 12. Agenda Items for Future Meetings
Steve Nelsen, Executive Director | 2:00 PM |
| 13. Possible Executive Session
Dennis Lawson, Chair | 2:15 PM |

Lunch is served as an integral part of the meeting.

In accordance with RCW 42.30.110, the Board may call an Executive Session for the purpose of deliberating such matters as provided by law. Final actions contemplated by the Board in Executive Session will be taken in open session. The Board may elect to take action on any item appearing on this agenda.



Catastrophic Disability Medical Insurance

Comprehensive Report – December 20, 2017

Current Law

- Catastrophic retirees and surviving spouses premium reimbursement:
 - Before Medicare eligibility:
 - Reimbursement of health insurance premiums
 - Up to former employer's COBRA limit
 - At 65, Reimbursement of Medicare Premiums:
 - Part A (if any)
 - Part B
 - Not eligible for reimbursement of part C and D premiums

Survivor Premium Reimbursement

- Line-of-duty death benefit:
 - Survivors of LEOFF 2 members killed in the line of duty allowed to participate in PEBB (2001)
 - PEBB Premiums reimbursed by LEOFF (2006)
- Participation in the PEBB benefit system has two advantages:
 - Implicit Subsidy: Pay same rate as entire PEBB pool
 - Explicit Subsidy: PEBB pays Medicare part B premiums for Medicare covered retirees

Extending Benefit to Catastrophic Retirees

Proposal to include catastrophic retirees and survivors in PEBB, with insured paying their own premium – HB 1679 (2009)

- Health Care Authority (HCA) Fiscal Note: estimated cost of extending PEBB subsidy to catastrophic retirees
 - Estimated costs:
 - \$1.5 million cost first biennium
 - \$4.7 million 2013-15 biennium

Extending Benefit to Catastrophic Retirees

Version 2: Premium reimbursement – SHB 1679 (2010)

- No PEBB membership, so no HCA cost
- Actuary supplemental rate increase not recommended

Updated Cost Figures

- Health Care Authority agreed to update cost estimate based on Actuary's revised estimate of number of disability retirees
- Health Care Authority will present updated fiscal analysis next



Thank You

Paul Neal

Senior Research and Policy Manager

(360) 586-2327

paul.neal@leoff.wa.gov



Economic Assumption Adoption

Date Presented:

12/20/2017

Presenter Name and Title:

Ryan Frost, Research and Policy Manager

Summary:

The Board is tasked with adopting economic assumptions every 2 years. The last adopted changes to economic assumptions occurred in 2011.

Strategic Linkage:

This item supports the following Strategic Priority Goals:

Enhance the benefits for the members., Maintain the financial integrity of the plan.

ATTACHMENTS:

Description	Type
▣ Economic Assumptions Adoption	Presentation



Economic Assumptions Adoption

December 20, 2017

Issue

The Board is tasked with adopting economic assumptions every 2 years

- Any changes subject to revision by the Legislature

The last adopted changes to economic assumptions occurred in 2011

- Inflation 3.50% to 3.00%
- Salary Growth 4.50% to 3.75%
- Annual Investment Return 8.00% to 7.50%

Assumption Change Recommendations

Current

- Inflation - 3.00%
- General Salary Growth - 3.75%
- Annual Investment Return - 7.50%

Recommended

- Inflation - 2.75%
- General Salary Growth - 3.50%
- Annual Investment Return - 7.40%

Options

1. **Adopt the recommended assumption changes**
 - a) Rate change to begin July 1, 2019. This is the current statutory process.
 - b) Rate change to begin January 2018.
2. **Adopt the recommended inflation and salary growth assumptions, but adopt a lower investment return assumption of 7.3%**
 - a) Rate change to begin July 1, 2019. This is the current statutory process.
 - b) Rate change to begin January 2018.
3. **Do not adopt assumptions**

Economic Assumptions		
	Current	Recommended
Inflation	3.00%	2.75%
General Salary Growth	3.75%	3.50%
Assumed Investment Return	7.50%	7.40%

Contribution Rates			
	Current	If EA adopted	EA w/ 7.3% Assumption
Member	8.75%	8.48%	8.70%
Employer	5.25%	5.09%	5.22%
State	3.50%	3.39%	3.48%

Budget Impacts (in millions)		
	All EA adopted	EA w/ 7.3% Assumption
Member	\$(28.6)	\$(7.1)
Employer	\$(28.6)	\$(7.1)
State	\$(11.4)	\$(2.8)

Questions?

Ryan Frost

Research and Policy Manager

ryan.frost@leoff.wa.gov

360-586-2325



Interruptive Military Service Credit Study

Report Type:

Final Proposal

Date Presented:

12/20/2017

Presenter Name and Title:

Ryan Frost, Research and Policy Manager

Summary:

Veterans who served during a designated conflict period but did not earn a campaign badge or medal must pay member contributions to receive LEOFF1 Plan 2 credit for periods of interruptive military service credit.

ATTACHMENTS:

Description	Type
▢ Interruptive Military Service Credit Study	Presentation
▢ Interruptive Military Service Credit Study	Report



Interruptive Military Service Credit

Final Proposal – December 20, 2017

Issue

- Veterans who served during a designated conflict period but did not earn a campaign badge or medal must pay member contributions to receive LEOFF Plan 2 credit for periods of interruptive military service credit.

Overview

- **LEOFF Plan 2 members may establish up to 5 years of service credit for military service interrupting their LEOFF service**
- **Member contributions are waived for LEOFF 2 members who served in the military:**
 - 1) During wartime or
 - 2) During a specified conflict for which they earned a campaign badge or medal.
- **SB 5661**
 - Should members of LEOFF 2 who are veterans of named specified conflicts not during a period of war, and where they were not awarded a campaign badge or medal, also receive up to 5 years of free service credit?

Campaign Medals

- As defined by the Department of Defense manual 1348.33 Volume 2, campaign medals are medals which “recognize Service members who are deployed to the geographic area where the combat is actually occurring. Members awarded campaign medals have the highest degree of personal risk and hardship as they are conducting the combat operations and are deployed to the area where the combat is actually occurring.”

Background

- **Waiver of Employee Contributions for Purchasing Military Service Credit**
 - Period of War or
 - Specified Military Operations w/ campaign badge or medal
- **No Waiver**
 - Members who served during a specified operation but were not stationed in a war zone did not earn a campaign badge or medal
 - Because they do not meet the definition of “veteran” those members are not eligible for a waiver of their member contributions, and must pay for LEOFF Plan 2 interruptive military service credit

LEOFF 2 Data

Since June 2012:

- 187 LEOFF 2 members have taken advantage of interruptive military service credit
- Average service credit bought by those members was 9.3 months

Definition of Veteran Issues

- If a member goes on multiple deployments to the same conflict, they only get a badge or medal for the first deployment to that conflict
- There is no end date in statute for the end of the Gulf War
- There are current combat operations for which DRS cannot award free interruptive military service credit even though campaign medals were awarded, because they are not listed in statute:
 - Inherent Resolve, Iraq and Syria
 - Freedom's Sentinel, Afghanistan

Policy Options

1. **Extend the waiver of contributions to cover all members who served in any capacity at a named conflict**
2. **Make corrections to the current definition of “veteran”**
3. **Take No Action At This Time**

Questions?

Ryan Frost

Research and Policy Manager

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360-586-2325



December 20, 2017

Disabled Members Return to Work

FINAL PROPOSAL

By Ryan Frost

Research and Policy Manager

360-586-2325

ryan.frost@leoff.wa.gov

ISSUE STATEMENT

Members who recover from their disabilities are stuck in limbo if their previous employer refuses to hire them back.

OVERVIEW

This is one of the issues that came out of working with the Department of Retirement Systems (DRS) on the duty disability rule making project, as an issue that they were hoping that policymakers would take notice of. Current disability statute for LEOFF 2 members states that when a member is determined to have recovered from their disability, the members' previous employer is required to hire them back at their previous rank. They will begin earning service credit again and become eligible for an active member benefit.

Issues arise when the employer disagrees with the DRS decision that the member has fully recovered from their disability. This leaves the member in limbo pending the appeals decision because:

- Duty Disability payments have been stopped.
- They are not earning a salary, because their previous employer refuses to hire them back.

BACKGROUND

Disability Payments Stopped

Any member who receives a disability allowance is subject to comprehensive medical examinations as required by DRS. If those medical examinations reveal that the member has recovered from their incapacitating disability, they are no longer entitled to their duty disability pension benefit. The members' retirement allowance is therefore canceled and the member shall be restored to duty.

Previous Employer

Once the determination has been made that the member has recovered from their disability, the member's previous employer is required to hire them back at the same civil service rank they held at the time of their disability retirement¹. The employer may appeal if they disagree with the DRS determination.

Current Case

DRS is aware of one current case where they have made the determination that the member has recovered from their disability, but the previous employer has refused to hire them back. DRS has chosen to continue paying the members disability benefit while the appeal works its way through the process.

Who determines that the member is no longer disabled?

All pension statutes are written giving DRS that determination authority. As soon as DRS says the member is no longer disabled, all of the pension statutes are written to say that the member's disability benefit is terminated. In this instance, there are two parties trying to decide whether the member is disabled: DRS and the previous employer.

These parties have a differing opinion about whether the member is actually recovered from their disability. This is the area in statute where the member can be caught in limbo. Sometimes it's a good faith disagreement between the two parties on the member's level of recovery. Sometimes, though, it's the employer not wanting to follow the statute, so they use the appeal process to delay their rehiring as long as possible.

The question then is: If DRS determines the member has recovered, what do they do in the situation where the employer disagrees? If the determination is upheld during the appeal process, who pays for those extra disability payments? The way it works now, the benefits are paid for by the fund, which means all the other members, employers, and state pay for those extra disability payments that were made during the appeals process.

¹RCW 41.26.470 (2)

POLICY OPTIONS

1. A member will continue to receive their disability benefit while they are in the appeals process
2. The employer will be billed for the disability payments made to the member while they were in the appeals process
3. Take No Action At This Time

SUPPORTING INFORMATION

Appendix A: Bill Language

Appendix B: Different types of disabilities

APPENDIX A: BILL LANGUAGE

Disabled Member Return to Work [Clarification of Statue/Practice]

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. If the member's previous employer appeals the department's findings in their medical examinations and refuses to hire the member back, the department may continue to pay the members' disability allowance until the appeal is decided.

(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.

APPENDIX B: DIFFERENT TYPES OF DISABILITIES²

Temporary Duty Disability

If you do not earn full service credit because of leave associated with a duty disability, you have the option to purchase up to 24 months of service credit for each covered duty disability. To establish service credit, you must meet the following criteria:

- Your disability must have occurred in the line of duty.
- You must have received your injury on or after July 1, 2002, and be eligible to receive workers' compensation benefits.
- You and your employer must make employer and member contributions on the compensation you would have earned had you been working. If the payments are made for a retroactive period, interest is charged. If your employer offers a disability leave supplement or similar benefit, your first six months of service credit are interest free.

If your duty disability occurred between July 23, 1989, and June 30, 2002, the amount of service credit you can purchase is limited to six months and requires that you be receiving a disability leave supplement or similar benefit from your employer.

Duty Disability

If your disability occurred in the line of duty, you may choose between a nontaxable:

- One-time payment equal to 150% of your eligible retirement contributions
- Minimum monthly benefit of at least 10% of your FAS

If you have fewer than 60 service credit months when you become disabled, the average will be based on your actual total of service credit months. If the normal retirement benefit calculation rule yields a monthly benefit greater than 10% of your FAS, you will receive the higher benefit amount. However, only the amount equal to 10% of your FAS is nontaxable. Contributions made to restore service credit after the deadline are refunded at 100% only.

Disaster Response Disability

There are certain circumstances, on or after March 22, 2014, when you might qualify for disaster response benefits and service credit. In the two situations listed below, your disability must have occurred while you were in eligible federal service providing eligible emergency management services.

Working for a LEOFF Plan 2 employer: You might qualify for a disability benefit if you leave the employment of your LEOFF Plan 2 employer to provide a disaster response, and you become

² <http://www.drs.wa.gov/publications/member/leoff/leoff2disability.htm>

disabled on or after March 22, 2014. Your benefit won't be reduced if you retire early. The benefit will be a minimum 10% of your Final Average Salary.

Working in eligible federal service: You might qualify for service credit for a leave of absence if you become disabled when you leave the employment of your LEOFF Plan 2 employer to provide a disaster response, on or after March 22, 2014.

Non-duty Disability

If your disability didn't occur in the line of duty, you might receive a monthly benefit calculated as follows: $2\% \times \text{FAS} \times \text{service credit years}$

Final Average Salary (FAS) is the monthly average of your 60 consecutive, highest-paid service credit months. Your monthly benefit will be reduced to reflect the difference between your age at the time of your disability retirement and age 53. If you are age 50 and have 20 years of service credit, the reduction is 3% per year (prorated monthly) from age 53.

Catastrophic Duty Disability

If your disability occurred in the line of duty and is so severe it prevents you from performing substantial gainful activity or substantial gainful employment in any capacity in the future, you might be entitled to receive a catastrophic duty disability benefit.

The Social Security Administration defines "substantial gainful employment" as working in a position whose average earnings are more than a set dollar amount each month, a figure it updates annually.

The catastrophic duty disability benefit can be calculated in three ways:

- 70% of your FAS
- 100% of your FAS, offset by Social Security disability and workers' compensation disability payments
- $<2\% \times \text{FAS} \times \text{service credit years}$

In addition to your monthly benefit, you will be reimbursed for premiums you pay for employer-provided health insurance, COBRA, and Medicare Parts A and B.

If you are entitled to Medicare, you must enroll and maintain enrollment in both Medicare Parts A and B to remain eligible for the reimbursement. These premium reimbursements are not taxable. Medical insurance reimbursements are available for current, past and eligible COBRA enrollees. Reimbursement for these members is never greater than the COBRA coverage they are eligible for.



Disabled Members Return to Work

Date Presented:

12/20/2017

Presenter Name and Title:

Ryan Frost, Research and Policy Manager

Summary:

Members who recover from their disabilities are stuck in limbo if their previous employer refuses to hire them back.

ATTACHMENTS:

Description	Type
▣ Disabled Members Return to Work	Presentation
▣ Disabled Members Return to Work	Report



Disabled Members Return to Work

Final Proposal – December 20, 2017

Issue

- Members who recover from their disabilities are stuck in limbo if their previous employer refuses to hire them back.

Overview

- **Issue came out of working with the Department of Retirement Systems (DRS) on the duty disability rule making project.**
- **Current disability statute for LEOFF 2 members.**
 - When a member is determined to have recovered from their disability, the members' previous employer is required to hire them back at their previous rank.
- **Issues arise when the employer disagrees with DRS decision that the member has fully recovered from their disability.**
- **This leaves the member in limbo pending the appeals decision because:**
 - Disability payments have been stopped.
 - They are not earning a salary, because their previous employer refuses to hire them back.

Limbo

Disability Payments Stopped

- Any member who receives a disability allowance is subject to comprehensive medical examinations as required by DRS.
- If those medical examinations reveal that the member has recovered from their incapacitating disability, they are no longer entitled to their duty disability benefit.
- The members' retirement allowance is canceled and the member shall be restored to duty.

Limbo cont.

Previous Employer

- Once the determination has been made that the member has recovered from their disability, the member's previous employer is required to hire them back at the same civil service rank they held at the time of their disability retirement. 41.26.470 (2)

Background

Current Case

- DRS is aware of one current case where they have made the determination that the member has recovered from their disability, but the previous employer has refused to hire them back.
- DRS has chosen to continue paying the members disability benefit while the appeal works its way through the process.

Who determines that the member is no longer disabled?

- **All pension statutes are written giving DRS disability determination authority.**
 - As soon as DRS says the member is no longer disabled, all of the pension statutes are written to say that the member's disability benefit is terminated.
- **In this instance, there are two parties trying to decide whether the member is disabled:**
 - DRS
 - Previous employer
- **These parties have a differing opinion about whether the member is actually recovered from their disability.**

Determination cont.

- **This is the area in statute where the member can be caught in limbo.**
 - Could be a good faith disagreement between the two parties on the member's level of recovery.
 - Or the employer not wanting to follow the statute and is using the appeal process to delay their rehiring as long as possible.
- **The question: If DRS determines that the member has recovered, what do they do in the situation where the employer disagrees?**
 - If the determination is upheld during the appeal process, who pays for those extra disability payments?
 - The way it works now, the benefits are paid for by the fund, which means all the other members, employers, and state pay for those extra disability payments that were made during the appeals process.

Policy Options

1. A member will continue to receive their disability benefit while they are in the appeals process.
2. The employer will be billed for the disability payments made to the member while they were in the appeals process.
3. Take No Action At This Time.

Questions?

Ryan Frost

Research and Policy Manager

ryan.frost@leoff.wa.gov

360-586-2325



December 20, 2017

Disabled Members Return to Work

FINAL PROPOSAL

By Ryan Frost

Research and Policy Manager

360-586-2325

ryan.frost@leoff.wa.gov

ISSUE STATEMENT

Members who recover from their disabilities are stuck in limbo if their previous employer refuses to hire them back.

OVERVIEW

This is one of the issues that came out of working with the Department of Retirement Systems (DRS) on the duty disability rule making project, as an issue that they were hoping that policymakers would take notice of. Current disability statute for LEOFF 2 members states that when a member is determined to have recovered from their disability, the members' previous employer is required to hire them back at their previous rank. They will begin earning service credit again and become eligible for an active member benefit.

Issues arise when the employer disagrees with the DRS decision that the member has fully recovered from their disability. This leaves the member in limbo pending the appeals decision because:

- Duty Disability payments have been stopped.
- They are not earning a salary, because their previous employer refuses to hire them back.

BACKGROUND

Disability Payments Stopped

Any member who receives a disability allowance is subject to comprehensive medical examinations as required by DRS. If those medical examinations reveal that the member has recovered from their incapacitating disability, they are no longer entitled to their duty disability pension benefit. The members' retirement allowance is therefore canceled and the member shall be restored to duty.

Previous Employer

Once the determination has been made that the member has recovered from their disability, the member's previous employer is required to hire them back at the same civil service rank they held at the time of their disability retirement¹. The employer may appeal if they disagree with the DRS determination.

Current Case

DRS is aware of one current case where they have made the determination that the member has recovered from their disability, but the previous employer has refused to hire them back. DRS has chosen to continue paying the members disability benefit while the appeal works its way through the process.

Who determines that the member is no longer disabled?

All pension statutes are written giving DRS that determination authority. As soon as DRS says the member is no longer disabled, all of the pension statutes are written to say that the member's disability benefit is terminated. In this instance, there are two parties trying to decide whether the member is disabled: DRS and the previous employer.

These parties have a differing opinion about whether the member is actually recovered from their disability. This is the area in statute where the member can be caught in limbo. Sometimes it's a good faith disagreement between the two parties on the member's level of recovery. Sometimes, though, it's the employer not wanting to follow the statute, so they use the appeal process to delay their rehiring as long as possible.

The question then is: If DRS determines the member has recovered, what do they do in the situation where the employer disagrees? If the determination is upheld during the appeal process, who pays for those extra disability payments? The way it works now, the benefits are paid for by the fund, which means all the other members, employers, and state pay for those extra disability payments that were made during the appeals process.

¹RCW 41.26.470 (2)

POLICY OPTIONS

1. A member will continue to receive their disability benefit while they are in the appeals process
2. The employer will be billed for the disability payments made to the member while they were in the appeals process
3. Take No Action At This Time

SUPPORTING INFORMATION

Appendix A: Bill Language

Appendix B: Different types of disabilities

APPENDIX A: BILL LANGUAGE

Disabled Member Return to Work [Clarification of Statute/Practice]

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. If the member's previous employer appeals the department's findings in their medical examinations and refuses to hire the member back, the department may continue to pay the members' disability allowance until the appeal is decided.

(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.

APPENDIX B: DIFFERENT TYPES OF DISABILITIES²

Temporary Duty Disability

If you do not earn full service credit because of leave associated with a duty disability, you have the option to purchase up to 24 months of service credit for each covered duty disability. To establish service credit, you must meet the following criteria:

- Your disability must have occurred in the line of duty.
- You must have received your injury on or after July 1, 2002, and be eligible to receive workers' compensation benefits.
- You and your employer must make employer and member contributions on the compensation you would have earned had you been working. If the payments are made for a retroactive period, interest is charged. If your employer offers a disability leave supplement or similar benefit, your first six months of service credit are interest free.

If your duty disability occurred between July 23, 1989, and June 30, 2002, the amount of service credit you can purchase is limited to six months and requires that you be receiving a disability leave supplement or similar benefit from your employer.

Duty Disability

If your disability occurred in the line of duty, you may choose between a nontaxable:

- One-time payment equal to 150% of your eligible retirement contributions
- Minimum monthly benefit of at least 10% of your FAS

If you have fewer than 60 service credit months when you become disabled, the average will be based on your actual total of service credit months. If the normal retirement benefit calculation rule yields a monthly benefit greater than 10% of your FAS, you will receive the higher benefit amount. However, only the amount equal to 10% of your FAS is nontaxable. Contributions made to restore service credit after the deadline are refunded at 100% only.

Disaster Response Disability

There are certain circumstances, on or after March 22, 2014, when you might qualify for disaster response benefits and service credit. In the two situations listed below, your disability must have occurred while you were in eligible federal service providing eligible emergency management services.

Working for a LEOFF Plan 2 employer: You might qualify for a disability benefit if you leave the employment of your LEOFF Plan 2 employer to provide a disaster response, and you become

² <http://www.drs.wa.gov/publications/member/leoff/leoff2disability.htm>

disabled on or after March 22, 2014. Your benefit won't be reduced if you retire early. The benefit will be a minimum 10% of your Final Average Salary.

Working in eligible federal service: You might qualify for service credit for a leave of absence if you become disabled when you leave the employment of your LEOFF Plan 2 employer to provide a disaster response, on or after March 22, 2014.

Non-duty Disability

If your disability didn't occur in the line of duty, you might receive a monthly benefit calculated as follows: $2\% \times \text{FAS} \times \text{service credit years}$

Final Average Salary (FAS) is the monthly average of your 60 consecutive, highest-paid service credit months. Your monthly benefit will be reduced to reflect the difference between your age at the time of your disability retirement and age 53. If you are age 50 and have 20 years of service credit, the reduction is 3% per year (prorated monthly) from age 53.

Catastrophic Duty Disability

If your disability occurred in the line of duty and is so severe it prevents you from performing substantial gainful activity or substantial gainful employment in any capacity in the future, you might be entitled to receive a catastrophic duty disability benefit.

The Social Security Administration defines "substantial gainful employment" as working in a position whose average earnings are more than a set dollar amount each month, a figure it updates annually.

The catastrophic duty disability benefit can be calculated in three ways:

- 70% of your FAS
- 100% of your FAS, offset by Social Security disability and workers' compensation disability payments
- $<2\% \times \text{FAS} \times \text{service credit years}$

In addition to your monthly benefit, you will be reimbursed for premiums you pay for employer-provided health insurance, COBRA, and Medicare Parts A and B.

If you are entitled to Medicare, you must enroll and maintain enrollment in both Medicare Parts A and B to remain eligible for the reimbursement. These premium reimbursements are not taxable. Medical insurance reimbursements are available for current, past and eligible COBRA enrollees. Reimbursement for these members is never greater than the COBRA coverage they are eligible for.



McNeil Island Fire Fighters

Date Presented:

12/20/2017

Presenter Name and Title:

Paul Neal, Senior Research and Policy Manager

Summary:

Fire fighters serving the McNeil Island Civil Commitment Center are members of the Public Employees' Retirement System (PERS) rather than LEOFF.

ATTACHMENTS:

Description	Type
▣ McNeil Island Fire Fighters Pension Membership	Presentation
▣ McNeil Island Fire Fighters Pension Membership	Presentation



McNeil Island Fire Fighters Pension Membership

December 20, 2017

McNeil Island Fire Fighters are PERS Members

- McNeil Island Fire Fighters work for a state agency:
 - DOC: 1981- 2011
 - DSHS: 2011- present
- State agencies are not LEOFF employers, so McNeil Island Fire Fighters are in PERS
- Unique status of McNeil Island led to current situation

**Isolated
Location for
Incarceration**



McNeil

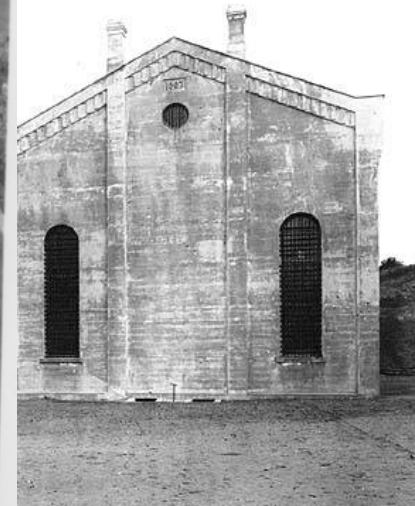


55 family l
with a chur
school, sto
and comm
center



Community without a
municipality.

al Penitentiary
5



McNeil Island Fire Department

- Fire department needed to protect community, plus prison specific fire dangers:
 - Diversionary fires set inside
 - Arson on external buildings including:
 - Saw Mill
 - Island Store
 - Civil Commitment Center Hall



State Takes Over in 1981

- Initially operated by Department of Corrections (DOC) as a prison – Commitment Center added later



- Prison closed in 2011
 - Kept Civil Commitment Center for Violent Sex Offenders operated by DSHS



- From 1981 to present, fire fighters have been in PERS
- Fire fighters would probably qualify for LEOFF if employed by a municipality

McNeil Island Fire Fighters Not Eligible for LEOFF

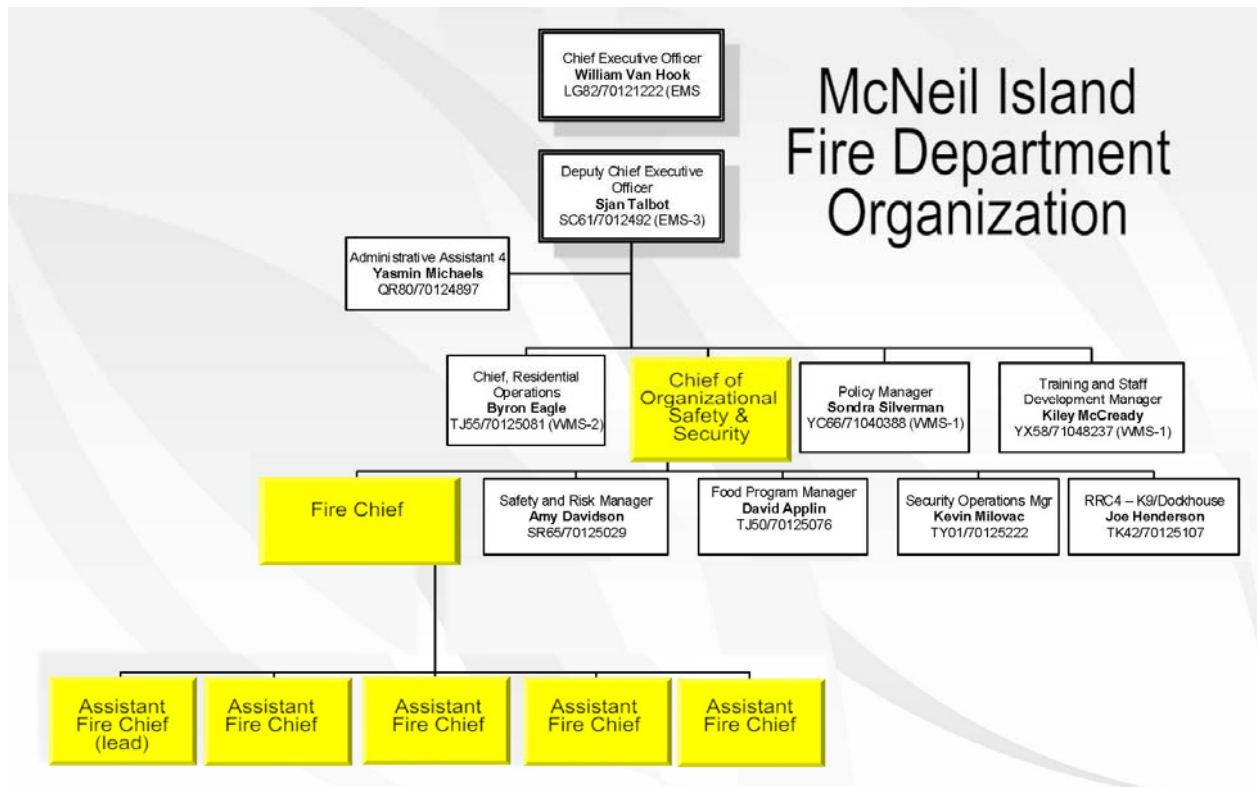
- Only employees of defined LEOFF employer qualify for LEOFF
- Most State Agencies are not LEOFF employers
 - Original definition limited to political subdivision employers
 - Higher education fire fighters (WSU) added in 1996
 - Bringing McNeil Island fire fighters into LEOFF would require similar amendment

McNeil Island Fire Fighters Meet LEOFF Duty Requirements

- Full time fully compensated – full time salaried employees working 192 hours every 27 days
- Fire combat or fire supervisory duties – Fire Chief and Assistant Fire Chief positions provide fire, EMT, and HazMat protection:
 - Fire Chief – “directs the emergency response program for fire, medical aid, and hazardous materials emergencies on McNeil Island, 24-hours a day, seven days a week, protecting life and safety of McNeil Island staff, inmates and island residents.”
 - Assistant Fire Chief – “These positions exercise independent judgment and assist the Fire Chief in the emergency response program for fire, medical aid, and hazardous materials emergencies on McNeil Island, 24-hours a day, seven days a week.”
 - Both positions require prior EMT certification. Fire fighting experience and/or education

McNeil Island Fire Fighters Probably Work for Fire Department

- Employee must work for “fire department of an employer” to be in LEOFF



Policy Options

- **Option 1:** Expand Definition of Employer for Prospective Service Only
- **Option 2:** Expand Definition of Employer with Option to Transfer Prior Service
- **Option 3:** Further Study in 2018 interim
- **Option 4:** No Further Action at This Time



Thank You

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December 20, 2017

McNeil Island Fire Fighters Pension Membership

PRELIMINARY REPORT

By Paul Neal

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ISSUE STATEMENT

Fire fighters serving the McNeil Island Civil Commitment Center are members of the Public Employees' Retirement System (PERS) rather than LEOFF.

OVERVIEW

A fire fighter must work for a defined LEOFF employer to qualify for LEOFF membership. Only local government entities meet that definition, with one exception: Washington State University fire fighters.

While performing all the defined duties of a LEOFF eligible fire fighter, McNeil Island fire fighters do not qualify for LEOFF because they work for the Department of Social and Health Services (DSHS) which runs the civil commitment center on the island.

This report reviews the history of McNeil Island fire fighters pension participation through the present day.

BACKGROUND AND POLICY ISSUES

A Brief History of McNeil Island

McNeil Island was originally established as a Federal Territorial Prison in 1875. The Island provided secure incarceration but also required a full time population of workers and their families. These families required the same infrastructure as any permanent community, including a school and a fire department. There is, however, no municipality because the entire operation was first federally, and then state, operated.

The fire department originally maintained fire safety for the community, including 55 island resident homes, a school, church, and community center. Fire dangers unique to prison life

included diversionary fires set by inmates inside the prison and some large external arson including setting fire to the saw mill, the island store, and King Hall at the commitment center. The McNeil Island fire department also operated two fire boats, which were available to assist with mainland fires such as a fire at the Gig Harbor marina in 2005.

The federal government transferred the island prison to state control in 1981 under the Department of Corrections (DOC). Persons employed by the DOC on or after that date became members of PERS. In 2011 the state prison closed. The prison transitioned to a civil commitment center for violent sex offenders who served out their prison time but are civilly committed to mental health treatment because they are deemed likely to offend again. DSHS took over as employer to the remaining staff, including the fire fighters, continuing PERS membership.

McNeil Island has maintained a fire department throughout its history. It currently employs 7 career fire fighters and 8 volunteer inmate fire fighters.

Pension Participation

McNeil Island fire fighters are state employees in PERS, first with DOC prior to 2011, thereafter with DSHS. They meet some but not all the current legal qualifications for LEOFF. Those requirements are: 1) Work for a LEOFF employer; 2) Full time fully compensated employment; 3) Fire combat or supervisory fire fighter duties; 4) Member of an employer's fire department.

The Department of Retirement Systems (DRS) is the final decision maker on LEOFF eligibility. This report's conclusions on that subject are, therefore, subject to DRS review.

McNeil Island Fire Fighters do not work for a LEOFF Employer

The original LEOFF definition of "employer" was limited to political subdivisions. That is, it excluded state agencies such as DSHS. The definition was amended in 1996 to include: "A four-year institution of higher education having a fully operational fire department as of January 1, 1996." §2, Ch. 38, laws of 1996. This was specific to Washington State University, which, like McNeil Island, maintained its own fire department. Bringing McNeil Island fire fighters into LEOFF would require a similar amendment.

McNeil Fire Fighters Meet LEOFF Duty and Compensation Requirements

McNeil Island fire fighters are salaried workers who work 24 hours on and 24 hours off for 3 shifts, with the next 4 days off. This equates to 192 hours every 27 days, exceeding the LEOFF requirement of at least 160 hours per month. McNeil Island fire fighters are full time fully compensated fire fighters.

They also meet fire fighter duty requirements to qualify as fire fighters, defined as having:

“...the legal authority and responsibility to direct or perform fire protection activities that are required for and directly concerned with preventing, controlling and extinguishing fires”

WAC 415-104-225. The definition also includes supervisory fire personnel.

McNeil Island fire fighters have two job classifications: Assistant Fire Chief or Fire Chief. Both classification descriptions appear to satisfy the LEOFF duty requirements:

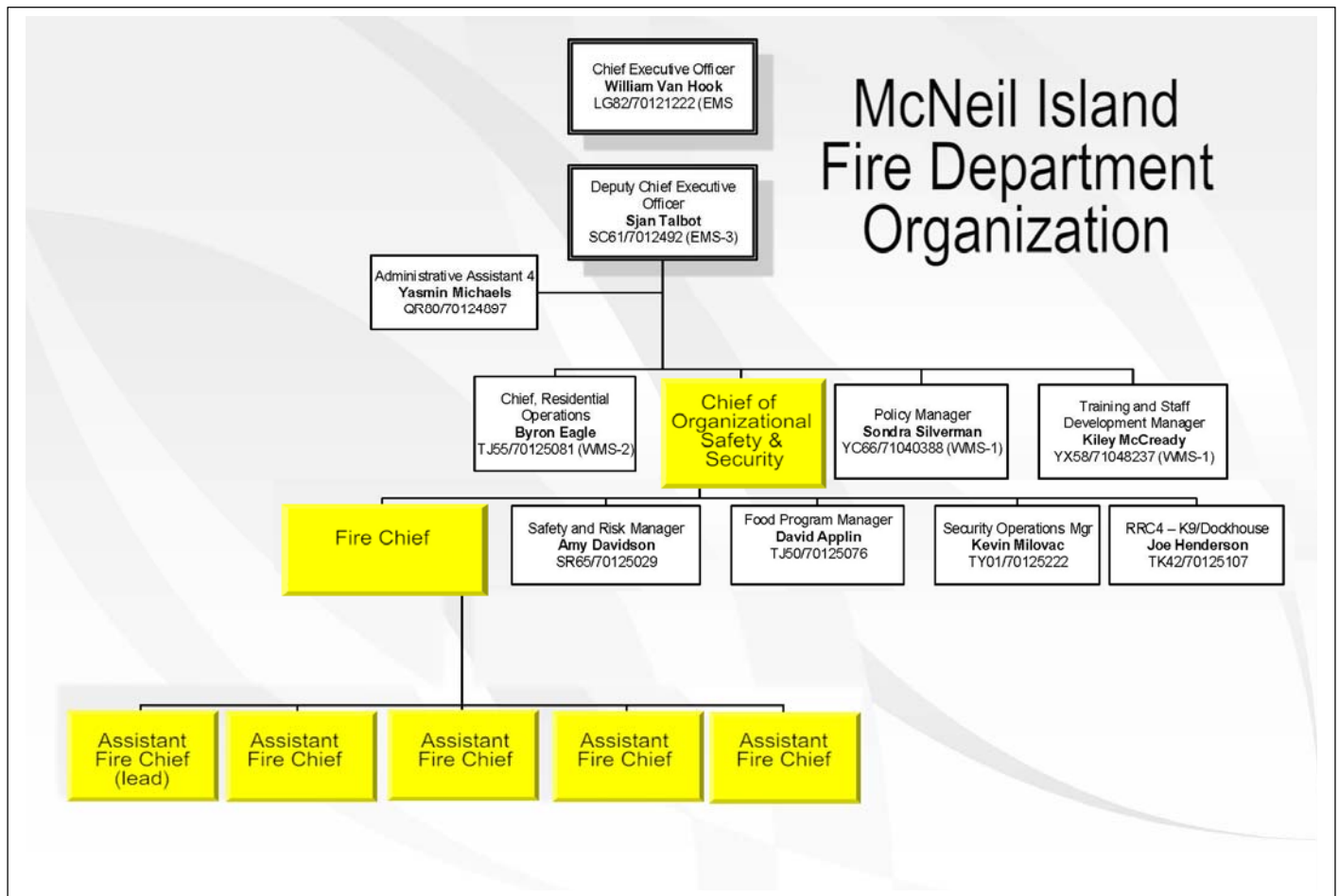
- Assistant Fire Chief:
 - “These positions exercise independent judgment and assist the Fire Chief in the emergency response program for fire, medical aid, and hazardous materials emergencies on McNeil Island, 24-hours a day, seven days a week. Develops, monitors and administers a fire suppression training program that meets or exceeds state and local requirements. This position will assume command and act for the Fire Chief in their absence.”
 - “Directs fire, medical aid, and hazardous materials response emergencies on McNeil Island. ...Maintains all fire suppression equipment, i.e., fire engines, ambulances, HAZ-MAT response van, SCBAS fire extinguishers, fire alarm and sprinkler systems; ...Respond to fire and ambulance calls and lead the operation of fire suppression, hazardous material, and emergency medical equipment;”
- Fire Chief:
 - “...directs the emergency response program for fire, medical aid, and hazardous materials emergencies on McNeil Island, 24-hours a day, seven days a week, protecting life and safety of McNeil Island staff, inmates and island residents.”

Both positions require Emergency Medical Technician certification prior to employment. See Appendix A: Fire Chief and Assistant Fire Chief Class Specifications.

While subject to final review by DRS, it is likely that the McNeil Island fire fighter positions meet the duty requirements of the LEOFF fire fighter definition.

Do McNeil Island fire fighters work for a fire department?

A qualifying fire fighter must “work for the fire department of an employer.” A review of the McNeil Island organizational structure shows the fire fighters probably work for a fire department within DSHS:



The organization chart shows a separate fire chief reporting to the Chief of organizational safety and security. The job classification shows an absence of non-fire duties. This appears to be a fire department although not identified as such in the organization chart. Subject to review and approval from DRS, it appears McNeil Island fire fighters meet all LEOFF qualifications except for the requirement of working for a LEOFF employer.

POLICY OPTIONS

Option 1: Expand Definition of Employer for Prospective Service Only

Passage of such legislation would bring all current McNeil Island fire fighters into LEOFF, making them dual members.

Option 2: Expand Definition of Employer with Option to Transfer Prior Service

Similar provisions were included in the 2007 bill bringing EMTs into LEOFF and last year's bill bringing hospital district EMTs into LEOFF. These provisions allow affected members the option to transfer their past PERS fire fighter service into LEOFF. The member and employer would have to pay difference between PERS contributions and LEOFF contributions for the covered period.

Option 3: Further Study

This would allow DRS an opportunity to review the positions and confirm that they would be LEOFF eligible if the employer was a political subdivision. Would also allow for more detailed fiscal analysis.

Option 4: No Further Action at This Time

SUPPORTING INFORMATION

Appendix A: Fire Chief and Assistant Fire Chief class descriptions.

APPENDIX A: MCNEIL ISLAND FIRE FIGHTERS CLASS DESCRIPTIONS

State of Washington Class Specification

FIRE CHIEF

396F

Salary Range: 59

Category: Protective Services

Definition

This is the senior, specialist, or leadworker level of the series. Within the Department of Corrections, directs the emergency response program for fire, medical aid, and hazardous materials emergencies on McNeil Island, 24-hours a day, seven days a week, protecting life and safety of McNeil Island staff, inmates and island residents. Monitors a fire suppression-training program that meets or exceeds state and local requirements;

OR

In higher education, directs a shift of fire department personnel and functional operations. May supervise fire officers and student fire fighters.

Typical Work

Assists in interviewing and making recommendations on appointments and with disciplinary actions;

Plans, schedules and assigns staff and student fire personnel to shifts and duty assignments;

Reviews and analyzes operational data and initiate or recommend corrective action;

Assists in the development of departmental operating policies and procedures;

Organizes and conducts lectures on fire safety, life safety, occupational safety and related subjects;

Coordinates and performs safety and fire inspections to ensure compliance with applicable codes;

Develops and directs training programs for campus and other area emergency personnel;

Devises and conducts pre-fire planning surveys to enhance fire suppression capability;

Conducts investigations of fires and hazardous material incidents to determine origin and cause;

Assumes responsibility for Fire Department operations in absence of supervisor;

Conducts classroom and high-risk field training in accordance with lesson plans, assuring all current applicable standards are met, assisting with planning and curriculum development as needed;

Participates in the development of statewide fire service training goals and objectives;

Identifies customer training needs, provides customer assistance with training related problems, which may include off-site visits, needs analyses, evaluations, and recommendations;

Develops recommendations for firefighting training props and classroom instruction;

May schedule and evaluate on-call and guest instructors as needed;

May supervise lower level staff.

Legal Requirement(s)

Certification as an Emergency Medical Technician is required prior to employment.

Desirable Qualifications

Four years of experience as a lieutenant or above at a fire department involved in fire suppression activities

OR

Two years of experience as a lieutenant or above at a fire department involved in fire suppression activities which includes at least one year as a fire codes enforcement officer.

Class Specification History

New class consolidates 2677 Fire Officer II, 41940 Fire Chief – DOC; adopted May 10, 2007, effective July 1, 2007.

State of Washington Class Specification

ASSISTANT FIRE CHIEF

396E

Salary Range: 53

Category: Protective Services

Definition

This is the journey level of the series. These positions exercise independent judgment and assist the Fire Chief in the emergency response program for fire, medical aid, and hazardous materials emergencies on McNeil Island, 24-hours a day, seven days a week. Develops, monitors and administers a fire suppression training program that meets or exceeds state and local requirements. This position will assume command and act for the Fire Chief in their absence.

OR

In higher education, under general supervision, lead student fire fighters in fire prevention, suppression, emergency medical treatment and maintenance of equipment.

Typical Work

Develops, monitors and administers a training program for inmate fire fighters and fire department staff that meets or exceeds state, local, and NFPA standards; provides ongoing training classes to ensure all annual and quarterly training requirements are met; maintains training records for the department and on an individual basis;

Inspects all occupancies of compliance with state and federal fire and life safety requirements, i.e., MICC's main facility, the DSGS Special Commitment Center, manufacturing facilities, power generation station, sewer and water treatment facilities, gas station, auto and marine repair shops, an elementary school, a bowling alley, a community of 52 family residences, and 4,400 acres of wild lands;

Supervises fire drills and provides instruction pertaining to the handling of emergency situations; inspects and tests fire fighting equipment and alarm systems for proper operation; interprets and explains national, state, and city fire codes to staff; provides technical advice to individuals as requested;

Investigates fires on McNeil Island relative to fire plan and systems operation; prepares reports on fires occurring on McNeil Island under the direction of the State Fire Marshall; develops and updates policies pertaining to fire prevention, suppression and hazardous materials containment spills;

Provides technical assistance to local jurisdictions, coordinates compliance of state and federal regulations and requirements; maintains liaison with local jurisdiction concerning fire hazards on construction projects;

Directs fire, medical aid, and hazardous materials response emergencies on McNeil Island.

Maintains all fire suppression equipment, i.e., fire engines, ambulances, HAZ-MAT response van, SCBAS fire extinguishers, fire alarm and sprinkler systems;

Respond to fire and ambulance calls and lead the operation of fire suppression, hazardous material, and emergency medical equipment;

Assist with safety and fire inspections, testing of fire protection systems, pre-fire planning surveys, campus fire-life safety education, fire investigations, etc.;

Lead and perform maintenance on emergency fire and ambulance apparatus and related equipment;

Prepare reports such as public assist, medical and fire incident, pre-fire survey, and safety and fire inspection;

Attend public events to ensure compliance with safety and fire codes;

Conduct periodic fire drills;

Lead custodial maintenance of fire station;

Performs other work as required.

Legal Requirement(s)

Certification as an Emergency Medical Technician is required prior to employment.

Desirable Qualifications

Four years of experience as a structural firefighter or above at a fire department involved in fire suppression activities.

OR

One year of experience as a lieutenant or above at a fire department involved in fire suppression activities which includes experience as a training officer.

OR

A two year degree in Fire Science.

Class Specification History

New class consolidates 2676 Fire Officer I, 41950 Assistant Fire Chief – DOC, adopted May 10, 2007, effective July 1, 2007.

Revise definition; adopted 5/9/2013, effective 5/10/2013



Definition of Child

Date Presented:

12/20/2017

Presenter Name and Title:

Paul Neal, Senior Research and Policy Manager

Summary:

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

ATTACHMENTS:

Description	Type
▢ Definition of Child	Presentation
▢ Definition of Child	Report



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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December 20, 2017
Definition of Child

COMPREHENSIVE REPORT

By Paul Neal

Senior Research & Policy Manager

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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 benefit¹:

¹ 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 benefit¹ –
 - 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*²

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.

² 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.



Out of State Duty

Date Presented:

12/20/2017

Presenter Name and Title:

Ryan Frost, Research and Policy Manager

Summary:

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.

ATTACHMENTS:

Description	Type
▣ Out of State Duty	Presentation
▣ Out of State Duty	Report



Out of State Duty

Preliminary Report – December 20, 2017

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

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.

Questions?

Ryan Frost

Research and Policy Manager

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December 20, 2017
Out of State Duty

PRELIMINARY REPORT

By Ryan Frost

Research and Policy Manager

360-586-2325

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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 Sate 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.



Agenda Items for Future Meetings

Date Presented:

12/20/2017

Presenter Name and Title:

Steve Nelsen, Executive Director

ATTACHMENTS:

Description	Type
▣ 2018 Agenda Items Calendar	Report

MEETING DATE	AGENDA ITEMS
Jan 17	Legislative Update Administrative <u>Update</u>
Feb 28	Legislative Update Administrative <u>Update</u>
March 28	Legislative Update Administrative <u>Update</u>
April 25	
May 23	
June 20	
July 25	
August 22	
Sept 26	
Oct 24	
Nov 28	
Dec 19	