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## Non-Duty Disability Leave

### INITIAL CONSIDERATION

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### ISSUE STATEMENT

There were concerns raised that the Department of Retirement Systems (DRS) was not always treating temporary non-duty and temporary duty disability leave consistently for purposes of basic salary in situations where members utilized leave “buy-back”.

### OVERVIEW

There was concern brought to the Board that DRS may be treating basic salary differently based on whether the member was out on temporary duty versus temporary non-duty leave.

Specifically, in instances where the member was injured, took paid leave, and then utilized the employer’s “buy-back” program by providing their disability or worker’s compensation check to the employer in exchange for having their annual leave backed out of the system and put back into their leave bank.

After researching the concern further, DRS is treating members’ basic salary the same in both situations. The service credit and basic salary for the leave that has been “bought back” is not reportable compensation in either situation. The confusion stems from how DRS is applying the Temporary Duty Disability (TDD) purchase service credit versus the Authorized Leave of Absence (ALOA) purchase service credit. One of the options that DRS provides to employers for TDD purchase service credit gives the impression that the member’s service credit and basic salary for the personal leave they bought back is being reported. Instead, what has occurred is the member has purchased service credit with their workers-compensation or disability insurance money, not bought-back their annual leave.

Nonetheless, there remains a scenario where LEOFF 2 members are unable to receive service credit when they are out on temporary non-duty disability because of the interplay between their Collective Bargaining Agreement, the definition of basic salary, and the requirements of purchasing service credit.

## BACKGROUND AND POLICY ISSUES

In 2023, SB 5625, Concerning public employee retirees, was proposed but did not pass out of the legislature. Section 18 of that bill sought to address a concern that DRS was treating what is considered basic salary different based on whether the member was out on temporary duty versus temporary non-duty leave. The law does not differentiate between duty and non-duty in this respect, so the bill sought to clarify that basic salary should be treated the same for purposes of sick leave or vacation leave used by the member. However, DRS is treating basic salary the same for temporary duty and non-duty disability. Instead, the procedure for temporary duty and non-duty disability to purchase service for a break in service due to their disability is different. This procedural difference is due to differences between the type of purchase service credit that members on duty disability are eligible for purchasing versus the type that members on non-duty disability are eligible for purchasing.

In 1989, SB 5353 was enacted into law. This allowed for members of LEOFF 2 to purchase up to 6 consecutive months of service credit for periods of temporary duty-related disability without paying interest. The member was responsible for paying the member contributions and the employer paying the employer contributions.

In 2017, SHB 1271 was enacted into law. This allowed for members of LEOFF 2 (and other DRS administered retirement plans) to purchase up to 24 consecutive months of service credit for periods of temporary duty-related disability with interest. The member was responsible for paying the member contributions plus any interest incurred and the employer paying the employer contributions. During the implementation of SHB 1271 DRS issued an Employer Notice (see Appendix A) providing two methods for employers to report to DRS member's purchasing TDD service credit.

Method 1 allowed the employer to report to DRS the regular compensation the member would have earned if not on TDD. Under method 2 the employer reports the leave used, then makes adjustments to back-out and restore the member's leave, and allow the member to contact DRS directly to purchase TDD service credit. After the member contacted DRS, DRS would create an invoice of contributions and interest for the employer, compounded monthly until the employee purchases their share of the service credit.

In developing "Method 1" it appears DRS sought to simplify the process for members, employers, and DRS, while also limiting the amount of interest members would potentially incur. This method does not increase costs for the retirement systems because the

contributions would be the same under either method and “Method 1” helps prevent lost investment earnings from occurring due to delayed contribution payments.

Members who have a break in service due to temporary non-duty disability are not eligible for TDD Purchase Service Credit. Instead, they are eligible for Authorized Leave of Absence (ALOA) Purchase Service Credit. ALOA purchase service credit is paid for completely by the member to DRS, both member and employer contributions. If the member does not purchase the service credit within 5 years, they must pay the full actuarial value of the service credit. ALOA may apply to many different situations that could result in a member having a break in service, not just temporary non-duty disability. For example, it is commonly used for maternity or paternity leave.

A member who is injured and unable to work may choose to use paid leave instead of purchasing service credit. Since paid leave is considered basic salary the member would earn service credit for that time. Workers’ compensation or disability payments are not considered basic salary. Below is a chart from DRS identifying what types of payments are or are not basic salary and the corresponding WAC for each type of payment.

Type of Payment	LEOFF 1 Basic Salary?	LEOFF 2 Basic Salary?
Additional Duty Pay	Yes - WAC <b>415-104-3205</b>	Yes - WAC <b>415-104-360</b>
Allowances (i.e. uniform)	No - WAC <b>415-104-3404</b>	No - WAC <b>415-104-390</b>
Basic Monthly Rate	Yes - WAC <b>415-104-3200</b>	Yes - WAC <b>415-104-360</b>
Cafeteria Plans	No - WAC <b>415-104-3303</b>	Yes - WAC <b>415-104-367</b>
Deferred Wages Attached to Position	Yes - WAC <b>415-104-3201(1)</b>	Yes - WAC <b>415-104-363(1)</b>
Deferred Wages not attached to a Position	No - WAC <b>415-104-3306</b>	No - WAC <b>415-104-363(2)</b>
Disability Payments	No - WAC <b>415-104-340</b>	No - WAC <b>415-104-380</b>
Education Attainment Pay	No - WAC <b>415-104-3301</b>	Yes - WAC <b>415-104-375</b>
Employer taxes/contributions	No - WAC <b>415-104-3401</b>	No - WAC <b>415-104-383</b>
Fringe Benefits, including insurance	No - WAC <b>415-104-3402</b>	No - WAC <b>415-104-385</b>
Illegal Payments	No - WAC <b>415-104-3403</b>	No - WAC <b>415-104-387</b>
Leave Cash Outs/Severance	No - WAC <b>415-104-3304</b>	No - WAC <b>415-104-401</b>
Longevity	Yes - WAC <b>415-104-311</b>	Yes - WAC <b>415-104-375</b>
Overtime	No - WAC <b>415-104-3305</b>	Yes - WAC <b>415-104-370</b>
Paid Leave	Yes - WAC <b>415-104-3203</b>	Yes - WAC <b>415-104-373</b>
Payments in Lieu of Excluded Items	No - WAC <b>415-104-350</b>	No - WAC <b>415-104-405</b>
Performance Bonuses	No - WAC <b>415-104-3302</b>	Yes - WAC <b>415-104-377</b>
Retroactive Salary Increase	Yes - WAC <b>415-104-3202</b>	Yes - WAC <b>415-104-365</b>
Reimbursements	No - WAC <b>415-104-3404</b>	No - WAC <b>415-104-390</b>
Retirement or Termination Bonuses	No - WAC <b>415-104-3406</b>	No - WAC <b>415-104-395</b>
Shift Differential	Yes - WAC <b>415-104-3204</b>	Yes - WAC <b>415-104-379</b>
Special Salary or Wages	No - WAC <b>415-104-330</b>	Yes - WAC <b>415-104-375</b>
Standby Pay	No - WAC <b>415-104-3405</b>	No - WAC <b>415-104-393</b>
Tuition/Fee Reimbursement	No - WAC <b>415-104-3404</b>	No - WAC <b>415-104-390</b>
Workers' Compensation	Not Applicable	No - WAC <b>415-104-380</b>

The potential issue initially raised was regarding the treatment of the salary and service credit for a member out on temporary duty or non-duty disability who used paid leave, but through their employer “buy-back” program had that paid leave backed out of the system in exchange for providing their employer with their worker’s compensation or disability insurance payment. In this situation DRS does not consider whether the member was out on duty or non-duty disability, in either instance the time would not be reportable as basic salary because the member no longer used paid leave for that period.

The scenario that results in a member being unable to receive service credit for the time they were out on temporary duty disability occurs when the member has a CBA that requires them to utilize the buy-back program, and the member retires instead of returning to work. If the member’s CBA made the buy-back optional they could choose to not utilize that and instead use paid leave. However, since they are required to use the buy-back program and because they are ineligible for ALOA purchase service credit because they never returned to work, they can not receive service credit for this time.

## SUPPORTING INFORMATION

**Appendix A:** DRS Employer Notice 17-007, Employer Reporting Related to Workers’ Compensation/Temporary Duty Disability.

# DRS Email 17-007, Employer Reporting Related to Workers' Compensation/Temporary Duty Disability

Posted on March 28, 2017

**Notice No.:** 17-007

**Date:** March 28, 2017

**Applies to:** All Employers Except WSPRS

**Subject:** Employer Reporting Related to Workers' Compensation/Temporary Duty Disability

Workers' compensation, also known as temporary duty disability (TDD), can be a complex payroll issue. This notice provides information on reporting data to DRS for members in TDD status.

Some employers may allow employees to:

- use accrued leave while waiting for workers' compensation/TDD determinations
- use accrued leave to supplement their workers' compensation/TDD payments
- use their worker's compensation/TDD payments to restore leave balances through a buy-back program
- use shared leave while on TDD
- be made whole without using accrued leave

There are two methods for reporting data to DRS for members in TDD status.

**Method 1 – Employer reports the regular compensation the employee would have earned if not on TDD.**

Steps to complete:

1. Employers should enter into a written agreement with the employee regarding the obligation to repay the member contributions to the employer.
2. Employers must report the regular compensation the employee would have earned. This must be reported on the current transmittal and cannot be reported retroactively.

*Note: Buy back/restoration of accrued leave remains an internal accounting function and does not affect retirement reporting.*

**Method 2 – Employer reports the leave used, and makes adjustments to reverse leave restored and allows employee to contact DRS directly to purchase service, creating an invoice of contributions and interest for the employer and compounded monthly until the employee purchases their share of the service credit.**

Steps to complete:

1. Employer reports leave used to DRS, if reportable compensation (shared leave is not reportable for some plans).
2. Employee turns in worker's compensation check to employer to restore (buy back) some or all leave used.
3. Employer credits the employee's leave balance based on the amount of hours of leave the workers' compensation check will restore.
4. Employer uses the retirement transmittal to back out the restored leave previously reported to DRS in Step 1.
5. Employee applies directly to DRS to purchase service credit for each period of absence due to TDD status.
6. Employee will receive an Optional Bill for the member contributions from DRS.
7. Employers will receive an invoice for employer contributions only if and when the employee pays the optional bill amount. Payments are subject to interest (currently 7.8%) compounded monthly from the time of the disability.

Relevant statutes:

- PERS: **RCW 41.40.038**
- SERS: **RCW 41.35.070**
- PSERS: **RCW 41.37.060**
- TRS: **RCW 41.32.0641**
- LEOFF: **RCW 41.26.470 (3)**

Prior notices:

- E07-020** (All Employers)
- 94-006** (PERS)
- 89-004** (LEOFF)
- 86-011** (PERS)

If you have any questions regarding this DRS Notice, please contact Employer Support Services at 360-664-7200, option 2, or 800-547-6657, option 6, option 2; or **email us**.



# Non-Duty Disability Leave

Initial Consideration  
September 27, 2023



# Issue

- There were concerns raised that DRS was not always treating temporary non-duty and temporary duty disability leave consistently for purposes of basic salary in situations where members utilized leave “buy-back”

# Legislative History

- **SB 5625 (2023) – DRS Ombuds Bill**
  - Section 18 add to LEOFF 2 Basic Salary definition “and shall include sick leave or vacation leave used by the member [...]”
- **Actuarial Fiscal Note**
  - No expected fiscal impact based on the understanding this section just codifies current administrative practice

# Temporary Duty Disability Purchase Service Credit

- **SB 5353 (1989)** - Members of LEOFF 2 may purchase up to 6 consecutive months of service credit for periods of temporary duty disability (TDD)
- **SHB 1271 (2017)** - Members of LEOFF 2 (and other plans) may purchase up to 24 consecutive months of service credit for periods of TDD

# Authorized Leave of Absence

- A break in service for a non-duty injury is not covered by the TDD Purchase Service Credit laws
- Instead, it would fall under the general Authorized Leave of Absence Purchase Service Credit Law
  - Up to 24 months of service credit

# Purchase Service Credit

- **TDD**

- TDD Purchase Service Credit - 6 months no interest + 24 months with interest
- Employer collects member contributions (employer pick-up)
- Employer pays employer contributions
- State pays state contributions

- **Temporary Non-Duty Disability**

- Authorized Leave of Absence - 24 months
- Member pays all contributions if within 5 years of returning to work
- After 5 years member pays actuarial value of the service credit

# Basic Salary

- Paid Leave is basic salary
- Disability payments/Workers Compensation/Private insurance are not basic salary
- Some LEOFF employers **require** their employees to “buy back” the paid leave they have taken while out on temporary disability using their insurance payments

# Example – Injured at Work

- Dave falls off a ladder and breaks his leg at work
- Dave is out on leave for **12 weeks** recovering
  - He uses his paid leave while out
  - He also receives disability insurance or workers comp payments
  - His employer allows him to buy back the paid leave he took using his disability insurance payments
  - Since the paid leave was backed out of the system it is no longer considered basic salary
  - Instead, he must purchase that service credit
- Qualifies for TDD purchase service credit
  - DRS Employer Notice lays out procedural options for the employer

# Employer Notice 17-007

- **Method 1 - Employer reports the regular compensation the employee would have earned if not on TDD**
- **Method 2 – Employer reports the leave used, then makes adjustments to back-out and restore the member’s leave, and allow the member to contact DRS directly to purchase TDD service credit. After the member contacted DRS, DRS would create an invoice of contributions and interest for the employer, compounded monthly until the employee purchases their share of the service credit**
- **In both methods the member has their personal leave balance restored, and they purchase service credit for their break in service created by the personal leave being backed out**



# Employer Notice vs WAC

- **DRS has put this decision into an Employer Notice not WAC**
  - Procedural option for employers to simplify and help limit accrual of interest
- **WAC requires APA rule-making process**
  - Public notification
  - Public comment
  - Can't be changed by an agency without going through the APA process again

# Example - Injured at Home

- **Dave falls off a ladder and breaks his leg at home**
- **Dave is out on leave for 12 weeks recovering**
  - He uses his personal leave while out
  - He also receives disability insurance payments
  - His employer allows him to buy back the personal leave he took using his disability insurance payments
  - Since the personal leave was backed out of the system, he is not actually earning service credit for that time, not reported as basic salary
  - Instead, he must purchase that service credit
- **Must use Authorized Leave of Absence purchase service credit**
  - No alternative method since the member must pay DRS all contributions not employer

# Examples - Continued

- What happens if Dave doesn't return to work and instead retires?
- Duty – He may still purchase TDD service credit
- Non-Duty – He may not purchase ALOA service credit
  - In this instance, Dave has been forced to use the buy back program through his CBA, and therefore can not use paid leave to receive service credit and can not purchase ALOA service credit since he did not return to work

# Next Steps

1. No action at this time
2. Motion for comprehensive briefing



**Thank You**

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