



September 25, 2024

Authorized Leave of Absence Service Credit

INITIAL CONSIDERATION

By Jacob White

Senior Research & Policy Manager

360-586-2327

jacob.white@leoff.wa.gov

ISSUE STATEMENT

Some LEOFF 2 members are unable to purchase service credit when they are out on temporary non-duty disability leave because of the definition of basic salary and the requirements of purchasing service credit.

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 member's 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 purchase service credit when they are out on temporary non-duty disability. After being presented this issue at the December 2023 board meeting the Board voted to further study the issue during the 2024 interim.

BACKGROUND AND POLICY ISSUES

In 2023, SB 5625, Concerning public employee retirees, was proposed but did not pass. Section 18 of that bill sought to address a concern that DRS was treating 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 (2017) 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 allows 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. “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 the 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 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 415-104-3205	Yes - WAC 415-104-360
Allowances (i.e. uniform)	No - WAC 415-104-3404	No - WAC 415-104-390
Basic Monthly Rate	Yes - WAC 415-104-3200	Yes - WAC 415-104-360
Cafeteria Plans	No - WAC 415-104-3303	Yes - WAC 415-104-367
Deferred Wages Attached to Position	Yes - WAC 415-104-3201(1)	Yes - WAC 415-104-363(1)
Deferred Wages not attached to a Position	No - WAC 415-104-3306	No - WAC 415-104-363(2)
Disability Payments	No - WAC 415-104-340	No - WAC 415-104-380
Education Attainment Pay	No - WAC 415-104-3301	Yes - WAC 415-104-375
Employer taxes/contributions	No - WAC 415-104-3401	No - WAC 415-104-383
Fringe Benefits, including insurance	No - WAC 415-104-3402	No - WAC 415-104-385
Illegal Payments	No - WAC 415-104-3403	No - WAC 415-104-387
Leave Cash Outs/Severance	No - WAC 415-104-3304	No - WAC 415-104-401
Longevity	Yes - WAC 415-104-311	Yes - WAC 415-104-375
Overtime	No - WAC 415-104-3305	Yes - WAC 415-104-370
Paid Leave	Yes - WAC 415-104-3203	Yes - WAC 415-104-373
Payments in Lieu of Excluded Items	No - WAC 415-104-350	No - WAC 415-104-405
Performance Bonuses	No - WAC 415-104-3302	Yes - WAC 415-104-377
Retroactive Salary Increase	Yes - WAC 415-104-3202	Yes - WAC 415-104-365
Reimbursements	No - WAC 415-104-3404	No - WAC 415-104-390
Retirement or Termination Bonuses	No - WAC 415-104-3406	No - WAC 415-104-395
Shift Differential	Yes - WAC 415-104-3204	Yes - WAC 415-104-379
Special Salary or Wages	No - WAC 415-104-330	Yes - WAC 415-104-375
Standby Pay	No - WAC 415-104-3405	No - WAC 415-104-393
Tuition/Fee Reimbursement	No - WAC 415-104-3404	No - WAC 415-104-390
Workers' Compensation	Not Applicable	No - WAC 415-104-380

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 cannot receive service credit for this time.

The member in this situation would still have the option to utilize the Purchase Service Credit¹ and/or the Purchase of Additional Annuity² benefit at the time of retirement. These benefits would allow the member to purchase an annuity; however, it would cost the member more and the annuity purchase through these benefits does not count towards the qualifying for service credit based LEOFF 2 benefits, such as early retirement or the tiered multiplier benefit enhancement. Purchase Service Credit and the Purchase of Additional Annuity benefits require the member to pay the full actuarial value, while the ALOA PSC benefit costs the member only the member and employer contributions (so long as it is purchased within 5 years of the member returning to work).

SUPPORTING INFORMATION

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

¹ [RCW 41.26.432: Additional service credit purchase—Rules. \(wa.gov\)](#)

² [RCW 41.26.463: Optional actuarially equivalent life annuity benefit—Rules—Definition. \(wa.gov\)](#)

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**.



Authorized Leave of Absence Service Credit

Initial Consideration
September 25, 2024

Issue

- **Some LEOFF 2 members are unable to purchase service credit when they are out on temporary non-duty disability leave because of the definition of basic salary and the requirements of purchasing service credit**

Example Situation

- LEOFF 2 member tears his ACL while playing with his golden retriever and is out on an Authorized Leave of Absence while recovering
- Member uses paid leave while recovering from injury
- Member has private insurance to replace his income if he is injured outside of work
- Member is required under CBA to “buy back” the paid leave they have taken while out on temporary disability using their insurance payments
- Member does not return to work, instead retires
- Member does not receive service credit for time out on ALOA and is unable to purchase service credit for that time

Basic Salary

- **Paid Leave is basic salary**
- **Disability payments/Workers Compensation/private insurance are not basic salary**
- **Some employers require employees to “buy back” the paid leave they have taken while out on temporary disability using their insurance payments**
 - **Requirement comes from Collective Bargaining Agreements**
- **Members may be able to purchase service credit for the time they bought back**

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
 - Only available to members who return to work after their leave of absences, not those who retire
 - Must purchase before or at the time of retirement

Leave of Absence 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

Annuity Options at Retirement

- **Purchase Service Credit or Purchase of Additional Annuity**
- **More expensive for member than Authorized Leave of Absence Purchase Service Credit**
 - **Member pays full actuarial costs**
- **These are annuity options and are not actual service credit for purposes of qualifying for service credit-based plan benefits**
 - **i.e. Benefit enhancement (tiered multiplier and lump sum benefit), early retirement**

Possible Solutions

- **Changes to CBAs, such as making buy back programs optional if the employee is on non-duty disability and separates from employment without returning to work**
- **Legislation to change Authorized Leave of Absence Purchase Service Credit eligibility requirements**

Next Steps

1. **Comprehensive Report**
2. **No further action**



Thank You

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