



September 25, 2024

Duty Disability Health Insurance

COMPREHENSIVE REPORT

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ISSUE STATEMENT

Members who separate due to a duty disability only have temporary access to employer provided health insurance through COBRA.

OVERVIEW

This issue came to the Board from the Washington Council of Police and Sheriffs (WACOPS) (see Appendix A). In their letter to the Board, WACOPS explained a situation where a LEOFF 2 member was injured at work and while still recovering from their injuries they were going to lose their employer provided health insurance coverage. This specific member situation was resolved but there is concern that the same issue could impact other LEOFF 2 members. The Board received an Educational Briefing at the May Board meeting and requested a Comprehensive Briefing.

BACKGROUND AND POLICY ISSUES

If a LEOFF 2 member suffers a duty related injury or disabling condition that necessitates them missing work to recover from their injuries their access to employer covered health insurance is only guaranteed temporarily. LEOFF 2 members are guaranteed at least 6 months of Disability Leave Supplement coverage while they recover. Disability Leave Supplement Benefit is not a LEOFF 2 benefit; it is not paid out of the LEOFF 2 trust fund. Instead, the benefit is paid by employers. The Disability Leave Supplement benefit provides LEOFF 2 members with their base salary income, employer health insurance coverage for a minimum of 6 months while they recover, and protects LEOFF 2 members from losing their jobs while they are unable to perform them due to their injuries.¹ Some employees have collectively bargained with employers to extend the minimum of 6 months to allow for additional time for them to recover from their injuries.

¹ RCW 41.04.500

If the Disability Leave Supplement benefit coverage has been exhausted by the LEOFF 2 member before they are able to return to work the employer may choose to terminate the member's employment, which would cause the member to also lose their access to employer provided health insurance. However, these members would have extended access to their employer's health insurance through Consolidated Omnibus Budget Reconciliation Act (COBRA). COBRA typically lasts for 18 months, but it can be extended to 29 or 36 months in some cases.² COBRA does not subsidize the cost of health insurance.

For LEOFF 2 members who are injured in their LEOFF 2 position they also have the option of LEOFF 2 Duty or Catastrophic Disability retirement. While many think of disability retirement as a permanent situation, LEOFF 2 allows for it to be temporary while a member recovers from their disabling condition. LEOFF 2 disability retirement can assist members with replacing a portion of their income, as well as requiring their employer to allow them to return to their position once they recover from their injuries. Since 2004 only four LEOFF 2 Duty Disability retirees have recovered and return to their LEOFF 2 position.

The qualifying standard for Duty Disability is that a member is no longer able to perform the duties of their position.³ Catastrophic Disability requires the member to no longer be able to perform any substantial gainful employment.⁴

LEOFF 2 Duty Disability allows for early retirement without a reduction in benefit or 10% of the member's Final Average Salary (FAS), whichever is higher.⁵ However, LEOFF 2 Duty Disability does not provide members with continued coverage of their employer health insurance or any other subsidized health insurance benefit. There is no minimum amount of time for a LEOFF 2 member to be disabled to qualify for a Duty Disability retirement.

LEOFF 2 Catastrophic Disability allows for early retirement without a reduction in benefit or 70% FAS, or 100% FAS offset by Social Security and LNI payments.⁶ LEOFF 2 also reimburses Catastrophic Disability retirees for premiums paid for employer-provided health insurance, COBRA, and Medicare Parts A and B.⁷

² [Continuation of Health Coverage \(COBRA\) | U.S. Department of Labor \(dol.gov\)](#)

³ RCW 41.26.470

⁴ id

⁵ id

⁶ id

⁷ id

While COBRA and LEOFF 2 Duty Disability do not subsidize health insurance premiums, there are other savings programs that may help disabled members with these costs. A voluntary employees' beneficiary association (VEBA) plan is a tax-exempt trust typically funded by an employer to help employees pay for eligible medical expenses.⁸ Firefighters also have a Medical Expense Reimbursement Plan (MERP) offered through the Washington State Council of Fire Fighters (WSCFF). The MERP is a 501(c)(9) tax-exempt union sponsored plan to allow fire fighters to plan for retirement medical expenses.⁹ The MERP allows early access to an actuarially reduced Lifetime Monthly Benefit for disability retirees.

POLICY OPTIONS

Option 1: Reimburse duty disability health insurance premiums through LEOFF 2

- Pros – Aligns catastrophic disability benefit with duty disability benefit
- Cons – Increases cost to the plan; duty disability was designed for members who are still able to work non-LEOFF jobs where they could have access to employer provided health insurance or earn money to pay for private health insurance

Option 2: Extend temporary duty disability

- Pros – Provides additional time for a member to recover from duty injuries and return to work
- Cons - Not a LEOFF 2 benefit (extension may need to be paid by LEOFF 2), some employers already offer extended temporary duty disability benefits

SUPPORTING INFORMATION

Appendix A: Washington Council of Police and Sheriffs Letter to LEOFF 2 Board, April 15, 2024.

⁸ <https://www.veba.org/>

⁹ <https://www.wscff.org/benefits-retirement/merp/>



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**EVERY OFFICER
EVERY DAY**

April 15, 2024

LEOFF 2 Board
PO Box 40918
Olympia, WA 98504

DELIVERED VIA EMAIL

Dear Chairman Lawson,

The Washington Council of Police and Sheriffs (WACOPS) respectfully requests the LEOFF 2 board research potential solutions to a problem we recently became aware of for members recuperating from a serious on the job injury.

On August 15, 2023, Officer Kevin Bereta, a Bellevue Police Department employee and WACOPS member, sustained critical injuries resulting from a motorcycle crash while performing a department-condoned escort. Bereta has worked for the department and has been a LEOFF 2 member since 2018.

After a three-week stay in the hospital, Bereta was unable to return to work and currently remains under restrictions from his physician while he works toward a full recovery. Under the current contract between the Bellevue Police Officer's Guild and the City of Bellevue, at 6 months post injury Bereta was scheduled to lose his benefits including his family's health insurance since his care team would not release him to work in any capacity.

While a temporary insurance solution has been arranged between Bereta and the City of Bellevue, this event has highlighted an inequity that needs rectification. It appears that RCW 41.04.515 may set a maximum disability leave supplement at 6 months regardless of the medical recovery plan set by the employee's doctors. It appears that individual unions can negotiate for a longer period. In Bellevue, for example, we understand that law enforcement has 6 months of covered benefits, but Bellevue Fire may have as much as 9. We wonder if there is a LEOFF 2 pension solution for members seriously injured, working toward a return to duty, without a separation from employment. LEOFF 2 members should not have to separate from employment as their only option when their recovery plan extends beyond the designated disability leave supplement.

WACOPS respectfully asks the LEOFF 2 board to accept our request to review this situation and assess whether there is a pension related short term solution for these rare, but serious, on the job injuries where the member remains employed while recuperating.

Thank you for your consideration. Please let us know if we can provide any additional information.

Respectfully,

A handwritten signature in black ink that reads "Teresa C Taylor". The signature is written in a cursive style.

Teresa C Taylor
Executive Director

Cc: Jason Granneman, Vice Chair



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Issue

- **Members who separate due to a duty disability only have temporary access to employer provided health insurance through COBRA**

Possible Steps for Disabled LEOFF 2 Member

- Employee injured at work and unable to immediately return to duty
- Temporary Duty Disability
- After Temporary Duty Disability
 - Duty Disability retirement
 - Authorized Leave of Absence, or
 - Employer may terminate employment
- If member Duty Disability retires their right to return to their position is protected

Temporary Duty Disability

- **LNI Benefits**
 - Wage Replacement – Doesn't fully replace wage (60-75% only)
 - Loss of Earning Power Benefits – Light duty
 - Medical Care
- **LEOFF 2 Benefits**
 - TDD Purchase Service Credit
- **RCW 41.04.500 – Disability leave supplement**

RCW 41.04.500 – Disability Leave Supplement

- Payments begin on the 6th day from the date of injury/illness
- Employee must receive the “base salary” they would have received before the injury
- Employer health insurance coverage is still provided
- Maximum of 6 months
 - Employer may offer additional coverage outside of this law

After Temporary Duty Disability

If Temporary Duty Disability is exhausted and member has not recovered:

1. Authorized Leave of Absence
2. Employer may terminate employment, or
3. Duty Disability retirement

Duty Disability Retirement

- **Duty Disability**

- Pension Benefit - Allows for early retirement without a reduction in benefit or 10% FAS
- No LEOFF 2 subsidized health insurance benefit
- Eligible for COBRA health insurance coverage (temporary benefit)

- **Catastrophic Disability**

- Pension Benefit - Allows for early retirement without a reduction in benefit or 70% FAS, or 100% FAS offset by SS and LNI payments
- LEOFF 2 reimburses for premiums paid for employer-provided health insurance, COBRA, and Medicare Parts A and B

Return from Duty Disability Retirement

- If a Duty or Catastrophic Disability retiree recovers, member may choose to return to their previous position at same salary and rank previously held
- Employer is required to rehire
- Data from DRS – 4 instances of disability retiree recovering and returning to LEOFF 2 position

VEBA

- A voluntary employees' beneficiary association (VEBA) plan is a tax-exempt trust typically funded by an employer to help employees pay for eligible medical expenses
- A member, especially a younger member, who is injured may not have much if any money in a VEBA account

Medical Expense Reimbursement Plan

- Fire Fighters have access to MERP through the WSCFF
- 501(c)(9) tax-exempt union sponsored plan to allow fire fighters to plan for retirement medical expenses
- MERP allows early access to an actuarially reduced Lifetime Monthly Benefit for disability retirees

Summary

- **Duty Disability retirement allows qualified members to temporarily retire until they have recovered from their injuries and provides those members with return rights to their position and salary**
- **However, Duty Disability does not provide members with continued access to employer provided health insurance or subsidize premium payments for health insurance**

Policy Options

1. Reimburse duty disability health insurance premiums through LEOFF 2

- Pros – Aligns catastrophic disability benefit with duty disability benefit
- Cons – Increases cost to the plan; duty disability was designed for members who are still able to work non-LEOFF jobs where they could have access to employer provided health insurance or earn money to pay for private health insurance

2. Extend temporary duty disability from 6 to 12 months

- Pros – Provides additional time for a member to recover from duty injuries and return to work
- Cons - Not a LEOFF 2 benefit (extension may need to be paid by LEOFF 2), some employers already offer extended temporary duty disability benefits

Next Steps

1. Board may motion to receive a final briefing
 - Identify a policy option to be priced by OSA
2. Board may not take any action at this time
 - No motion required



Thank You

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