
SENATE BILL 5542

State of Washington

61st Legislature

2009 Regular Session

By Senators Franklin, Delvin, and Kohl-Welles; by request of LEOFF Plan 2 Retirement Board

Read first time 01/26/09. Referred to Committee on Ways & Means.

1 AN ACT Relating to members of the law enforcement officers' and
2 firefighters' retirement system plan 2 who were disabled in the line of
3 duty before January 1, 2001; and amending RCW 41.26.470.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 41.26.470 and 2006 c 39 s 1 are each amended to read
6 as follows:

7 (1) A member of the retirement system who becomes totally
8 incapacitated for continued employment by an employer as determined by
9 the director shall be eligible to receive an allowance under the
10 provisions of RCW 41.26.410 through 41.26.550. Such member shall
11 receive a monthly disability allowance computed as provided for in RCW
12 41.26.420 and shall have such allowance actuarially reduced to reflect
13 the difference in the number of years between age at disability and the
14 attainment of age fifty-three, except under subsection (7) of this
15 section.

16 (2) Any member who receives an allowance under the provisions of
17 this section shall be subject to such comprehensive medical
18 examinations as required by the department. If such medical
19 examinations reveal that such a member has recovered from the

1 incapacitating disability and the member is no longer entitled to
2 benefits under Title 51 RCW, the retirement allowance shall be canceled
3 and the member shall be restored to duty in the same civil service
4 rank, if any, held by the member at the time of retirement or, if
5 unable to perform the duties of the rank, then, at the member's
6 request, in such other like or lesser rank as may be or become open and
7 available, the duties of which the member is then able to perform. In
8 no event shall a member previously drawing a disability allowance be
9 returned or be restored to duty at a salary or rate of pay less than
10 the current salary attached to the rank or position held by the member
11 at the date of the retirement for disability. If the department
12 determines that the member is able to return to service, the member is
13 entitled to notice and a hearing. Both the notice and the hearing
14 shall comply with the requirements of chapter 34.05 RCW, the
15 Administrative Procedure Act.

16 (3) Those members subject to this chapter who became disabled in
17 the line of duty on or after July 23, 1989, and who receive benefits
18 under RCW 41.04.500 through 41.04.530 or similar benefits under RCW
19 41.04.535 shall receive or continue to receive service credit subject
20 to the following:

21 (a) No member may receive more than one month's service credit in
22 a calendar month.

23 (b) No service credit under this section may be allowed after a
24 member separates or is separated without leave of absence.

25 (c) Employer contributions shall be paid by the employer at the
26 rate in effect for the period of the service credited.

27 (d) Employee contributions shall be collected by the employer and
28 paid to the department at the rate in effect for the period of service
29 credited.

30 (e) State contributions shall be as provided in RCW 41.45.060 and
31 41.45.067.

32 (f) Contributions shall be based on the regular compensation which
33 the member would have received had the disability not occurred.

34 (g) The service and compensation credit under this section shall be
35 granted for a period not to exceed six consecutive months.

36 (h) Should the legislature revoke the service credit authorized
37 under this section or repeal this section, no affected employee is
38 entitled to receive the credit as a matter of contractual right.

1 (4)(a) If the recipient of a monthly retirement allowance under
2 this section dies before the total of the retirement allowance paid to
3 the recipient equals the amount of the accumulated contributions at the
4 date of retirement, then the balance shall be paid to the member's
5 estate, or such person or persons, trust, or organization as the
6 recipient has nominated by written designation duly executed and filed
7 with the director, or, if there is no such designated person or persons
8 still living at the time of the recipient's death, then to the
9 surviving spouse, or, if there is neither such designated person or
10 persons still living at the time of his or her death nor a surviving
11 spouse, then to his or her legal representative.

12 (b) If a recipient of a monthly retirement allowance under this
13 section died before April 27, 1989, and before the total of the
14 retirement allowance paid to the recipient equaled the amount of his or
15 her accumulated contributions at the date of retirement, then the
16 department shall pay the balance of the accumulated contributions to
17 the member's surviving spouse or, if there is no surviving spouse, then
18 in equal shares to the member's children. If there is no surviving
19 spouse or children, the department shall retain the contributions.

20 (5) Should the disability retirement allowance of any disability
21 beneficiary be canceled for any cause other than reentrance into
22 service or retirement for service, he or she shall be paid the excess,
23 if any, of the accumulated contributions at the time of retirement over
24 all payments made on his or her behalf under this chapter.

25 (6) A member who becomes disabled in the line of duty, and who
26 ceases to be an employee of an employer except by service or disability
27 retirement, may request a refund of one hundred fifty percent of the
28 member's accumulated contributions. Any accumulated contributions
29 attributable to restorations made under RCW 41.50.165(2) shall be
30 refunded at one hundred percent. A person in receipt of this benefit
31 is a retiree.

32 (7) A member who becomes disabled in the line of duty shall be
33 entitled to receive a minimum retirement allowance equal to ten percent
34 of such member's final average salary. The member shall additionally
35 receive a retirement allowance equal to two percent of such member's
36 average final salary for each year of service beyond five.

37 (8) A member who became disabled in the line of duty before January
38 1, 2001, and is receiving an allowance under RCW 41.26.430 or

1 subsection (1) of this section shall be entitled to receive a minimum
2 retirement allowance equal to ten percent of such member's final
3 average salary. The member shall additionally receive a retirement
4 allowance equal to two percent of such member's average final salary
5 for each year of service beyond five, and shall have the allowance
6 actuarially reduced to reflect the difference in the number of years
7 between age at disability and the attainment of age fifty-three. An
8 additional benefit shall not result in a total monthly benefit greater
9 than that provided in subsection (1) of this section.

10 (9) A member who is totally disabled in the line of duty is
11 entitled to receive a retirement allowance equal to seventy percent of
12 the member's final average salary. The allowance provided under this
13 subsection shall be offset by:

14 (a) Temporary disability wage-replacement benefits or permanent
15 total disability benefits provided to the member under Title 51 RCW;
16 and

17 (b) Federal social security disability benefits, if any;
18 so that such an allowance does not result in the member receiving
19 combined benefits that exceed one hundred percent of the member's final
20 average salary. However, the offsets shall not in any case reduce the
21 allowance provided under this subsection below the member's accrued
22 retirement allowance.

23 A member is considered totally disabled if he or she is unable to
24 perform any substantial gainful activity due to a physical or mental
25 condition that may be expected to result in death or that has lasted or
26 is expected to last at least twelve months. Substantial gainful
27 activity is defined as average earnings in excess of eight hundred
28 sixty dollars a month in 2006 adjusted annually as determined by the
29 director based on federal social security disability standards. The
30 department may require a person in receipt of an allowance under this
31 subsection to provide any financial records that are necessary to
32 determine continued eligibility for such an allowance. A person in
33 receipt of an allowance under this subsection whose earnings exceed the
34 threshold for substantial gainful activity shall have their benefit
35 converted to a line-of-duty disability retirement allowance as provided
36 in subsection (7) of this section.

37 Any person in receipt of an allowance under the provisions of this

1 section is subject to comprehensive medical examinations as may be
2 required by the department under subsection (2) of this section in
3 order to determine continued eligibility for such an allowance.

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