

PUBLIC EMPLOYEE DISABILITY BENEFITS

AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian S. King

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends the Public Employees' Long-Term Disability Act.

Highlighted Provisions:

This bill:

- ▶ establishes a three-year pilot period during which an eligible employee with a mental objective medical impairment qualifies for the same disability benefit as the eligible employee would receive for a physical objective medical impairment;
- ▶ creates review and compliance requirements for an individual receiving a disability benefit; and
- ▶ makes technical and corresponding changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

49-21-102, as last amended by Laws of Utah 2020, Chapter 365

49-21-401, as last amended by Laws of Utah 2018, Chapter 185

49-21-402, as last amended by Laws of Utah 2019, Chapter 349

49-21-406, as last amended by Laws of Utah 2019, Chapter 349

30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **49-21-102** is amended to read:

32 **49-21-102. Definitions.**

33 As used in this chapter:

34 (1) "Date of disability" means the date on which a period of total disability begins, and
35 may not begin on or before the last day of performing full-duty work in the eligible employee's
36 regular occupation.

37 (2) (a) "Eligible employee" means any of the following [~~employee~~] employees whose
38 employer provides coverage under this chapter:

39 (i) (A) any regular full-time employee as defined under Section 49-12-102, 49-13-102,
40 or 49-22-102;

41 (B) any public safety service employee as defined under Section 49-14-102, 49-15-102,
42 or 49-23-102;

43 (C) any firefighter service employee or volunteer firefighter as defined under Section
44 49-23-102 who began firefighter service on or after July 1, 2011;

45 (D) any judge as defined under Section 49-17-102 or 49-18-102; or

46 (E) the governor of the state;

47 (ii) an employee who is exempt from participating in a retirement system under
48 Subsection 49-12-203(4), 49-13-203(4), 49-14-203(1), or 49-15-203(1); and

49 (iii) an employee who is covered by a retirement program offered by a public or private
50 system, organization, or company designated by the Utah Board of Higher Education.

51 (b) "Eligible employee" does not include:

52 (i) any employee that is exempt from coverage under Section 49-21-201; or

53 (ii) a retiree.

54 (3) "Elimination period" means the three months at the beginning of each continuous
55 period of total disability for which no benefit will be paid. The elimination period begins on
56 the nearest first day of the month from the date of disability. The elimination period may
57 include a one-time trial return to work period of less than 15 consecutive calendar days.

58 (4) (a) "Gainful employment" means any occupation or employment position in the
59 state that:

- 60 (i) contemplates continued employment during a fiscal or calendar year; and
- 61 (ii) would pay an amount equal to or greater than 40 hours per week at the legally
62 required minimum wage, regardless of the number of hours worked.

63 (b) "Gainful employment" does not mean that an occupation or employment position in
64 the state is:

- 65 (i) available within any geographic boundaries of the state;
- 66 (ii) offered at a certain level of wages;
- 67 (iii) available at a particular number of hours per week; or
- 68 (iv) currently available.

69 (5) "Maximum benefit period" means the maximum period of time the monthly
70 disability income benefit will be paid under Section 49-21-403 for any continuous period of
71 total disability.

72 (6) "Monthly disability benefit" means the monthly payments and accrual of service
73 credit under Section 49-21-401.

74 (7) "Objective medical impairment" means an impairment resulting from an injury or
75 illness ~~[which]~~ that is diagnosed by a physician and ~~[which]~~ that is based on accepted objective
76 medical tests or findings rather than subjective complaints.

77 (8) ~~[(a)]~~ "Ongoing disability" means, after the elimination period and the first 24
78 months of disability benefits, the complete inability due to objective medical impairment, as
79 determined under ~~[Subsection (8)(b)]~~ Subsection 49-21-401(9), to engage in any gainful
80 employment which is reasonable, considering the eligible employee's education, training, and
81 experience.

82 ~~[(b) For purposes of Subsection (8)(a), inability is determined:]~~

83 ~~[(i) based solely on physical objective medical impairment; and]~~

84 ~~[(ii) regardless of the existence or absence of any mental impairment.]~~

85 (9) "Own occupation disability" means the complete inability, due to objective medical

86 impairment, whether physical or mental, to engage in the eligible employee's regular
87 occupation during the elimination period and the first 24 months of disability benefits.

88 (10) "Physician" means a licensed physician.

89 (11) "Pilot period" means the period beginning on July 1, 2023, and ending on June 30,
90 2026.

91 [~~(11)~~] (12) "Regular monthly salary" means the amount certified by the participating
92 employer as the monthly salary of the eligible employee, unless there is a discrepancy between
93 the certified amount and the amount actually paid, in which case the office shall determine the
94 regular monthly salary.

95 [~~(12)~~] (13) "Regular occupation" means either:

96 (a) the primary duties performed by the eligible employee for the 12 months preceding
97 the date of disability; or

98 (b) a permanent assignment of duty to the eligible employee, as long as the eligible
99 employee has actually performed all the required duties of the permanent assignment of duty.

100 [~~(13)~~] (14) "Rehabilitative employment" means any occupation or employment for
101 wage or profit, for which the eligible employee is reasonably qualified to perform based on
102 education, training, or experience.

103 [~~(14)~~] (15) "Total disability" means:

104 (a) own occupation disability; or

105 (b) ongoing disability.

106 [~~(15)~~] (16) (a) "Workers' compensation indemnity benefits" means benefits provided
107 that are designed to replace wages under Title 34A, Chapter 2, Part 4, Compensation and
108 Benefits, including wage replacement for a temporary disability, temporary partial disability,
109 permanent partial disability, or permanent total disability.

110 (b) "Workers' compensation indemnity benefits" includes a settlement amount
111 following a claim for indemnity benefits.

112 Section 2. Section **49-21-401** is amended to read:

113 **49-21-401. Disability benefits -- Application -- Eligibility.**

114 (1) An eligible employee shall apply for long-term disability benefits under this chapter
115 by:

116 (a) completing an application form prepared by the office;

117 (b) signing a consent form allowing the office access to the eligible employee's medical
118 records; and

119 (c) providing any documentation or information reasonably requested by the office.

120 (2) (a) If an eligible employee is unable to apply on the employee's own behalf, the
121 application may be made by a person who is:

122 (i) the attorney for an eligible employee; or

123 (ii) appointed as a conservator or guardian of the eligible employee.

124 (b) A person described in Subsection (2)(a), may not make an application for a
125 deceased employee.

126 (3) Upon request by the office, the participating employer of the eligible employee
127 shall provide to the office documentation and information concerning the eligible employee.

128 (4) The office:

129 (a) shall review all relevant information;

130 (b) may request additional information; and

131 (c) shall determine whether or not the eligible employee has a total disability.

132 (5) (a) If the office determines that the eligible employee has a total disability due to
133 accidental bodily injury or ~~physical~~ illness ~~which~~ that is not the result of the performance of
134 an employment duty, the eligible employee shall receive a monthly disability benefit equal to:

135 (i) two-thirds of the eligible employee's regular monthly salary, for each month the
136 total disability continues beyond the elimination period, not to exceed the maximum benefit
137 period; minus

138 (ii) any required reductions or reimbursements under Section [49-21-402](#).

139 (b) For an eligible employee under an own occupation disability, the office shall, at the
140 end of the two-year disability period or when a claim for total disability is made by an eligible
141 employee:

142 (i) review and determine whether the eligible employee qualifies for ongoing disability
143 benefits;

144 (ii) make the determination under Subsection (5)(b)(i) as of the day after the eligible
145 employee's own occupation disability benefits end;

146 (iii) consider only [~~physical~~] objective medical impairment that the office determines
147 as a disabling condition on the date of disability; and

148 (iv) exclude any new intervening causes or new diagnoses during the own occupation
149 disability period.

150 [~~(6) If the office determines that the eligible employee has a total disability due to
151 psychiatric illness, the eligible employee shall receive:]~~

152 [~~(a) a maximum of two years of monthly disability benefits equal to two-thirds of the
153 eligible employee's regular monthly salary for each month the total disability continues beyond
154 the elimination period;]~~

155 [~~(b) a maximum of \$10,000 for psychiatric expenses, including rehabilitation expenses
156 preauthorized by the office's consultants, paid during the period of monthly disability benefits;
157 and]~~

158 [~~(c) payment of monthly disability benefits according to contractual provisions for a
159 period not to exceed five years if the eligible employee is institutionalized due to psychiatric
160 illness.]~~

161 [(7)] (6) (a) An eligible employee shall receive a monthly disability benefit equal to
162 100% of the eligible employee's regular monthly salary for each month the total disability
163 continues beyond the elimination period, not to exceed the maximum benefit period, but
164 reduced by any required reductions and reimbursements under Section 49-21-402, if the office
165 determines that the employee meets all of the following:

166 (i) the eligible employee has a total disability:

167 (A) during the pilot period, due [solely] to a physical objective medical impairment or
168 a mental objective medical impairment; or

169 (B) except as provided in Subsection (6)(b), after the pilot period, due to a physical

170 objective medical impairment;

171 (ii) the ~~[physical]~~ objective medical impairment described in Subsection ~~[(7)(a)(i)]~~
172 (6)(a)(i) resulted from physical, external force or violence ~~[as a result of]~~ to the body of the
173 eligible employee in the performance of an employment duty; and

174 (iii) the eligible employee received workers' compensation indemnity benefits for the
175 ~~[physical]~~ objective medical impairment described in Subsection ~~[(7)(a)(i)]~~ (6)(a)(i).

176 (b) If an eligible employee qualifies for a total disability during the pilot period, the
177 office shall determine whether the employee has a total disability after the pilot period due to a
178 physical objective medical impairment or a mental objective medical impairment.

179 (c) An eligible employee who receives workers' compensation indemnity benefits for ~~[a~~
180 ~~physical]~~ an objective medical impairment is not guaranteed to receive the 100% monthly
181 disability benefit described in Subsection ~~[(7)(a)]~~ (6)(a).

182 ~~[(8)]~~ (7) (a) Successive periods of disability are considered as a continuous period of
183 disability if the period of disability:

184 (i) results from the same or related causes;

185 (ii) is separated by less than six months of continuous full-time work at the individual's
186 usual place of employment; and

187 (iii) commences while the individual is an eligible employee covered by this chapter.

188 (b) The inability to work for a period of less than 15 consecutive calendar days is not
189 considered as a period of disability.

190 (c) If Subsection ~~[(8)(a)]~~ (7)(a) or (b) does not apply, successive periods of disability
191 are considered as separate periods of disability.

192 ~~[(9)]~~ (8) The office may, at any time, have any eligible employee claiming to have a
193 disability examined by a physician chosen by the office to determine if the eligible employee
194 has a total disability.

195 (9) (a) For purposes of determining whether an eligible employee has an ongoing
196 disability, inability is determined:

197 (i) during the pilot period, due to physical objective medical impairment or mental

198 objective medical impairment; or

199 (ii) except as provided in Subsection (9)(b), after the pilot period, due to a physical
200 objective medical impairment.

201 (b) If an eligible employee has a total disability during the pilot period, the office shall
202 determine whether the employee has an ongoing disability after the pilot period due to a
203 physical objective medical impairment or a mental objective medical impairment.

204 (10) A claim brought by an eligible employee for long-term disability benefits under
205 the Public Employee's Long-Term Disability Program is barred if it is not commenced within
206 six months from the eligible employee's date of disability, unless the office determines that
207 under the surrounding facts and circumstances, the eligible employee's failure to comply with
208 the time limitations was reasonable.

209 (11) (a) If the office denies or terminates a claim for long-term disability benefits, the
210 eligible employee shall have the right to appeal the denial or termination:

211 (i) to the executive director of the office within 60 days ~~[of]~~ after the day of the denial
212 or termination of long-term disability benefits; and

213 (ii) in accordance with Section 49-11-613.

214 (b) An appeal of a denial or termination of long-term disability benefits described in
215 Subsection (11)(a) is barred if it is not commenced within the time limit described in
216 Subsection (11)(a).

217 (12) Medical or psychiatric conditions ~~[which existed prior to]~~ that existed before
218 eligibility may not be a basis for disability benefits until the eligible employee has had one year
219 of continuous eligibility in the Public Employees Long-Term Disability Program.

220 (13) If there is a valid benefit protection contract, service credit shall accrue during the
221 period of total disability, unless the disabled eligible employee is:

222 (a) exempted from a system;

223 (b) eligible to retire with an unreduced retirement allowance; or

224 (c) otherwise ineligible for service credit.

225 (14) Regardless of any medical evidence provided by the employee to support the

226 application for disability, an employee is not eligible for long-term disability benefits during
227 any period in which the employee:

- 228 (a) makes a claim that the employee is able to work; or
- 229 (b) has a pending action in a court or before any federal, state, or local administrative
230 body in which the employee has made a claim that the employee is able to work.

231 (15) Notwithstanding the provisions of Section 49-11-618, upon written request by an
232 employer, information obtained under this part may, upon an order of a court or an
233 administrative law judge, be released to an employer who is a party in an action under
234 Subsection (14).

235 (16) On or after May 1, 2025, but on or before November 1, 2025, the office shall
236 provide a written electronic report to the Retirement and Independent Entities Committee
237 regarding the costs and benefits of the changes to the disability benefits during the pilot period.

238 Section 3. Section 49-21-402 is amended to read:

239 **49-21-402. Reduction or reimbursement of benefit -- Circumstances --**
240 **Application for other benefits required.**

241 (1) A monthly disability benefit may be reduced, suspended, or terminated unless:

242 (a) the eligible employee ~~[is under the]~~ participates in ongoing care and treatment ~~[of a~~
243 ~~physician or physician assistant other than the eligible employee; and]~~ in accordance with
244 Subsection 49-21-406(3) or (4); and

245 (b) the eligible employee provides the information and documentation requested by the
246 office.

247 (2) (a) The monthly disability benefit shall be reduced or reimbursed by any amount
248 received by, or payable to, the eligible employee for the same injury or illness that is the basis
249 for the monthly disability benefit from the following sources:

250 (i) workers' compensation indemnity benefits, regardless of whether the amount is
251 received as an ongoing monthly benefit, as a lump sum, or in a settlement with a workers'
252 compensation indemnity carrier;

253 (ii) any money received by judgment, legal action, or settlement from a third party

254 liable to the employee for the monthly disability benefit;

255 (iii) automobile no-fault, medical payments, or similar insurance payments;

256 (iv) any money received by a judgment, settlement, or other payment as a result of a

257 claim against an employer; or

258 (v) annual leave or similar lump-sum payments.

259 (b) The monthly disability benefit shall be reduced or reimbursed by any amount

260 received by, or payable to, the eligible employee for the same period of time during which the

261 eligible employee is entitled to receive a monthly disability benefit from the following sources:

262 (i) social security disability benefits, including all benefits received by the eligible

263 employee, the eligible employee's spouse, and the eligible employee's children as determined

264 by the Social Security Administration;

265 (ii) unemployment compensation benefits;

266 (iii) sick leave benefits; or

267 (iv) compensation received for employment, including self-employment, except for

268 eligible amounts from approved rehabilitative employment in accordance with Section

269 [49-21-406](#).

270 (3) The monthly disability benefit shall be reduced by any amount in excess of

271 one-third of the eligible employee's regular monthly salary received by, or payable to, the

272 eligible employee from the following sources for the same period of time during which the

273 eligible employee is entitled to receive a monthly disability benefit:

274 (a) any retirement payment earned through or provided by public or private

275 employment; and

276 (b) any disability benefit, other than social security or workers' compensation

277 indemnity benefits, resulting from the disability for which benefits are being received under

278 this chapter.

279 (4) After the date of disability, cost-of-living increases to any of the benefits listed in

280 Subsection (2) or (3) may not be considered in calculating a reduction to the monthly disability

281 benefit.

282 (5) Any amounts payable to the eligible employee from one or more of the sources
283 under Subsection (2) are considered as amounts received whether or not the amounts were
284 actually received by the eligible employee.

285 (6) (a) An eligible employee shall first apply for all disability benefits from
286 governmental entities under Subsection (2) to which the eligible employee is or may be
287 entitled, and provide to the office evidence of the applications.

288 (b) If the eligible employee fails to make application under this Subsection (6), the
289 monthly disability benefit shall be suspended.

290 (7) During a period of total disability, an eligible employee has an affirmative duty to
291 keep the program informed regarding:

292 (a) the award or receipt of an amount from a source that could result in the monthly
293 disability benefit being reduced or reimbursed under this section within 10 days ~~[of]~~ after the
294 day of the award or receipt of the amount; and

295 (b) any employment, including self-employment, of the eligible employee and the
296 compensation for that employment within 10 days ~~[of]~~ after beginning the employment or a
297 material change in the compensation from that employment.

298 (8) The program shall use commercially reasonable means to collect any amounts of
299 overpayments and reimbursements.

300 (9) (a) If the program is unable to reduce or obtain reimbursement for the required
301 amount from the monthly disability benefit for any reason, the employee will have received an
302 overpayment of monthly disability benefits.

303 (b) If an eligible employee receives an overpayment of monthly disability benefits, the
304 eligible employee shall repay to the office the amount of the overpayment, plus interest as
305 determined by the program, within 30 days from the date the overpayment is received by:

- 306 (i) the eligible employee; or
- 307 (ii) a third party related to the eligible employee.

308 (c) The executive director may waive the interest on an overpayment of monthly
309 disability benefits under Subsection (9)(b) if good cause is shown for the delay in repayment of

310 the overpayment of monthly disability benefits.

311 Section 4. Section 49-21-406 is amended to read:

312 **49-21-406. Rehabilitative employment -- Interview by disability specialist --**
313 **Maintaining eligibility -- Additional treatment and care.**

314 (1) (a) If an eligible employee, during a period of total disability for which the monthly
315 disability benefit is payable, engages in approved rehabilitative employment, the monthly
316 disability benefit otherwise payable shall be reduced:

317 (i) by an amount equal to 50% of the income to which the eligible employee is entitled
318 for the employment during the month; and

319 (ii) so that the combined amount received from the rehabilitative employment and the
320 monthly disability payment does not exceed 100% of the eligible employee's monthly salary
321 prior to the employee's disability.

322 (b) This rehabilitative benefit is payable for up to two years or to the end of the
323 maximum benefit period, whichever occurs first.

324 (2) (a) The office shall review an eligible employee's total disability at least one time
325 each year.

326 [~~(a) Each~~] (b) The office shall interview each eligible employee receiving a monthly
327 disability benefit [~~shall be interviewed by the office~~].

328 [~~(b)~~] (c) The office may refer the eligible employee to a rehabilitative or vocational
329 specialist for a review of the eligible employee's condition and a written rehabilitation plan and
330 return to work assistance.

331 (3) If an eligible employee receiving a monthly disability benefit fails to participate in
332 an office-approved rehabilitation program within the limitations set forth by a physician or
333 physician assistant, the monthly disability benefit may be reduced, suspended, or terminated.

334 (4) The office may, as a condition of paying a monthly disability benefit, require that
335 the eligible employee receive medical care and treatment if that treatment is reasonable or usual
336 according to current medical practices.

337 Section 5. **Effective date.**

338

This bill takes effect on July 1, 2023.