

**DISABILITY BENEFIT AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brian S. King**

Senate Sponsor: \_\_\_\_\_

---

---

**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ allows an eligible employee to receive certain disability benefits for an objective medical impairment regardless of whether the impairment is physical or mental; and
- ▶ makes technical and corresponding changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**49-21-102**, as last amended by Laws of Utah 2018, Chapter 185

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

---

---

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

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

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

As used in this chapter:



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

31 (2) (a) "Eligible employee" means the following employee whose employer provides  
32 coverage under this chapter:

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

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

37 (C) any firefighter service employee or volunteer firefighter as defined under Section  
38 49-23-102 who began firefighter service on or after July 1, 2011;

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

40 (E) the governor of the state;

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

43 (iii) an employee who is covered by a retirement program offered by a public or private  
44 system, organization, or company designated by the State Board of Regents.

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

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

47 (ii) a retiree.

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

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

54 (i) contemplates continued employment during a fiscal or calendar year; and

55 (ii) would pay an amount equal to or greater than 40 hours per week at the legally  
56 required minimum wage, regardless of the number of hours worked.

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

- 59 (i) available within any geographic boundaries of the state;  
60 (ii) offered at a certain level of wages;  
61 (iii) available at a particular number of hours per week; or  
62 (iv) currently available.

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

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

68 (7) "Objective medical impairment" means an impairment resulting from an injury or  
69 illness which is diagnosed by a physician and which is based on accepted objective medical  
70 tests or findings rather than subjective complaints.

71 (8) ~~[(a)]~~ "Ongoing disability" means, after the elimination period and the first 24  
72 months of disability benefits, the complete inability~~[, as determined under Subsection (8)(b),]~~  
73 due to objective medical impairment, whether physical or mental, to engage in any gainful  
74 employment which is reasonable, considering the eligible employee's education, training, and  
75 experience.

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

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

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

79 (9) "Own occupation disability" means the complete inability, due to objective medical  
80 impairment, whether physical or mental, to engage in the eligible employee's regular  
81 occupation during the elimination period and the first 24 months of disability benefits.

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

83 (11) "Regular monthly salary" means the amount certified by the participating  
84 employer as the monthly salary of the eligible employee, unless there is a discrepancy between  
85 the certified amount and the amount actually paid, in which case the office shall determine the  
86 regular monthly salary.

87 (12) "Regular occupation" means either:

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

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

92 (13) "Rehabilitative employment" means any occupation or employment for wage or  
93 profit, for which the eligible employee is reasonably qualified to perform based on education,  
94 training, or experience.

95 (14) "Total disability" means:

96 (a) own occupation disability; or

97 (b) ongoing disability.

98 (15) (a) "Workers' compensation indemnity benefits" means benefits provided that are  
99 designed to replace wages under Title 34A, Chapter 2, Part 4, Compensation and Benefits,  
100 including wage replacement for a temporary disability, temporary partial disability, permanent  
101 partial disability, or permanent total disability.

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

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

105 **49-21-401. Disability benefits -- Application -- Eligibility.**

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

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

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

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

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

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

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

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

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

120 (4) The office:

121 (a) shall review all relevant information;  
122 (b) may request additional information; and  
123 (c) shall determine whether or not the eligible employee has a total disability.  
124 (5) (a) If the office determines that the eligible employee has a total disability due to  
125 accidental bodily injury or [physical] illness which is not the result of the performance of an  
126 employment duty, the eligible employee shall receive a monthly disability benefit equal to:  
127 (i) two-thirds of the eligible employee's regular monthly salary, for each month the total  
128 disability continues beyond the elimination period, not to exceed the maximum benefit period;  
129 minus  
130 (ii) any required reductions or reimbursements under Section 49-21-402.  
131 (b) For an eligible employee under an own occupation disability, the office shall, at the  
132 end of the two-year disability period or when a claim for total disability is made by an eligible  
133 employee:  
134 (i) review and determine whether the eligible employee qualifies for ongoing disability  
135 benefits;  
136 (ii) make the determination under Subsection (5)(b)(i) as of the day after the eligible  
137 employee's own occupation disability benefits end;  
138 (iii) consider only [physical] objective medical impairment that the office determines  
139 as a disabling condition on the date of disability; and  
140 (iv) exclude any new intervening causes or new diagnoses during the own occupation  
141 disability period.  
142 [~~(6) If the office determines that the eligible employee has a total disability due to~~  
143 ~~psychiatric illness, the eligible employee shall receive:]  
144 [~~(a) a maximum of two years of monthly disability benefits equal to two-thirds of the~~  
145 ~~eligible employee's regular monthly salary for each month the total disability continues beyond~~  
146 ~~the elimination period;]~~  
147 [~~(b) a maximum of \$10,000 for psychiatric expenses, including rehabilitation expenses~~  
148 ~~preauthorized by the office's consultants, paid during the period of monthly disability benefits;~~  
149 ~~and]~~  
150 [~~(c) payment of monthly disability benefits according to contractual provisions for a~~  
151 ~~period not to exceed five years if the eligible employee is institutionalized due to psychiatric~~~~

152 illness.]

153 ~~[(7)]~~ (6) (a) An eligible employee shall receive a monthly disability benefit equal to  
154 100% of the eligible employee's regular monthly salary for each month the total disability  
155 continues beyond the elimination period, not to exceed the maximum benefit period, but  
156 reduced by any required reductions and reimbursements under Section 49-21-402, if the office  
157 determines that the employee meets all of the following:

158 (i) the eligible employee has a total disability due ~~[solely to a physical]~~ to an objective  
159 medical impairment, whether physical or mental;

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

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

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

168 ~~[(8)]~~ (7) (a) Successive periods of disability are considered as a continuous period of  
169 disability if the period of disability:

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

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

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

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

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

178 ~~[(9)]~~ (8) The office may, at any time, have any eligible employee claiming to have a  
179 disability examined by a physician chosen by the office to determine if the eligible employee  
180 has a total disability.

181 ~~[(10)]~~ (9) A claim brought by an eligible employee for long-term disability benefits  
182 under the Public Employee's Long-Term Disability Program is barred if it is not commenced

183 within six months from the eligible employee's date of disability, unless the office determines  
184 that under the surrounding facts and circumstances, the eligible employee's failure to comply  
185 with the time limitations was reasonable.

186 ~~[(11)]~~ (10) (a) If the office denies or terminates a claim for long-term disability  
187 benefits, the eligible employee shall have the right to appeal the denial or termination:

188 (i) to the executive director of the office within 60 days of the denial or termination of  
189 long-term disability benefits; and

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

191 (b) An appeal of a denial or termination of long-term disability benefits described in  
192 Subsection ~~[(11)(a)]~~ (10)(a) is barred if it is not commenced within the time limit described in  
193 Subsection ~~[(11)(a)]~~ (10)(a).

194 ~~[(12)]~~ (11) Medical or psychiatric conditions which existed prior to eligibility may not  
195 be a basis for disability benefits until the eligible employee has had one year of continuous  
196 eligibility in the Public Employees Long-Term Disability Program.

197 ~~[(13)]~~ (12) If there is a valid benefit protection contract, service credit shall accrue  
198 during the period of total disability, unless the disabled eligible employee is:

199 (a) exempted from a system;

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

201 (c) otherwise ineligible for service credit.

202 ~~[(14)]~~ (13) Regardless of any medical evidence provided by the employee to support  
203 the application for disability, an employee is not eligible for long-term disability benefits  
204 during any period in which the employee:

205 (a) makes a claim that the employee is able to work; or

206 (b) has a pending action in a court or before any federal, state, or local administrative  
207 body in which the employee has made a claim that the employee is able to work.

208 ~~[(15)]~~ (14) Notwithstanding the provisions of Section 49-11-618, upon written request  
209 by an employer, information obtained under this part may, upon an order of a court or an  
210 administrative law judge, be released to an employer who is a party in an action under  
211 Subsection ~~[(14)]~~ (13).