



§ 40.65
DUTY DISABILITY
AND
SURVIVOR BENEFITS

Department of Employee Trust Funds
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GENERAL INFORMATION

This booklet is for protective occupation participants who have questions about the disability benefits that are available from the duty disability program. Duty disability benefits may be payable if you have been injured while performing your duties or contracted a disease due to your occupation. The disability must be work-related, permanent and cause a reduction in your pay or position, assignment to light duty, retirement or adversely affect your promotional opportunities within the service, if state or local employer rules, ordinances, policies or written agreements specifically prohibit promotion because of the disability.

This booklet explains the eligibility requirements and how duty disability benefits are calculated. If you sustain a work-related disability and are unable to perform your law enforcement or fire fighting duties, contact the Department of Employee Trust Funds (ETF) for application information.

The duty disability program provides a lifetime disability benefit under Wis. Stat. § 40.65. This disability benefit is similar to Worker's Compensation benefits and is administered by ETF. The benefit is not based on your Wisconsin Retirement System (WRS) account. It is not a pension.

Read this booklet carefully. If you believe that you may be eligible for disability benefits and you decide to apply for a duty disability benefit, follow the instructions on page 4 of this booklet.

NOTE: This booklet provides a brief and general description of duty disability benefits. The booklet is not intended to be a complete explanation of duty disability benefits in all situations and circumstances and cannot be relied upon for that purpose. The Wisconsin Statutes and administrative rule, not this publication, establish the details of the duty disability program. No error, misrepresentation, or ambiguity in this booklet creates any rights or benefits not expressly granted by the statutes and administrative rule. Consult Wis. Stat. § 40.65, and the Wis. Admin. Code, Chapter ETF 52, for the actual terms of the duty disability plan.

ELIGIBILITY REQUIREMENTS FOR DUTY DISABILITY BENEFITS

ELIGIBILITY REQUIREMENTS FOR BENEFITS

The duty disability program is an income replacement program. It provides that income from all sources will equal the percentage of the monthly salary at the qualifying date. Benefits are available to protective occupation participants who have been injured while performing their duties or contracted a disease due to their occupation.

You may qualify for a duty disability benefit if your disability is work-related, permanent and causes one or more of the following:

- Reduction of pay or position
- Assignment to light duty
- Retirement
- Promotion adversely affected

If your eligibility for duty disability benefits is based on a reduction of pay or position or assignment to light duty, then the qualifying date is the date on which you began the permanent reduction or assignment. Only a reduction in base pay meets the criteria of reduced pay. Loss of shift differential payment, uniform allowance, or other collateral payment is not a reduction of pay. Assignment from a full-time position to a part-time position does qualify as a reduction of position. Assignment to a position, which does not satisfy the protective occupation participant criteria, is considered a reduction in position.

A reduction in pay or position or assignment to light duty must be permanent. It may begin as a temporary action by your employer while you were recovering or your permanent condition is being assessed. Your employer would have to determine whether it was necessary to make the reduction or assignment permanent, or if your employment should be terminated. If you are restored to your full pay, position or full duty status then you would not qualify for duty disability benefits.

If your eligibility is based on retirement, then the termination date is considered the qualifying date for duty disability benefits. If your work-related disability disqualifies you from being promoted, the qualifying date is the date on which you have become continuously subject to the prohibition.

Your disability must be certified by two physicians (MD or DO) who are licensed and practice in the State of Wisconsin. The physicians must certify that you are disabled due to an injury incurred while performing your duty or that you have contracted a disease due to your occupation. You may select one physician who is licensed by and practices in the State of Wisconsin to complete a Medical Report on your behalf. The second physician is selected by ETF.

Your employer must certify that you were injured while performing your duty or that you contracted a disease due to your occupation and indicate which criteria (retirement, light duty, etc.) you met to be eligible for a duty disability benefit. Your employer will be contacted by the

ETF upon receipt of your duty disability application. If you are a state or municipal firefighter whose disability is due to heart problems, respiratory impairment or cancer, it may be presumed to be caused by such employment per Wis. Stat. §§ 891.45 and 891.455. Municipal firefighters that smoke cigarettes or use tobacco products after January 1, 2001 are exempt from the cancer presumption. ETF will obtain from the employer a certification including the following:

- Whether the employee has served a total of five years or more for that employer as a municipal firefighter. This would apply to the disability due to heart problems or respiratory impairment.
- Whether the employee had served at least ten years for that employer as a municipal firefighter. This would apply to the disability due to cancer.
- A copy of the qualifying medical examination given prior to the time the participant became a firefighter for that employer or a certification that there is no record of a medical examination.

Only ETF determines whether the disability is presumed to be caused by the employment based on the medical evidence provided by the physicians completing your duty disability medical reports. If either presumption applies, ETF may grant the duty disability application for benefits despite an employer indicating that the condition or disease is not due to the employee's occupation.

DEFINITIONS

“Effective date” means the date the participant's application form was received by ETF or the applicant's qualifying date, whichever is later.

“Light duty” means the employer's limiting of the participant's job duties because of medically imposed restrictions associated with an apparent disability, or the employer's assignment of the participant to another position, the duties of which the participant is capable of performing notwithstanding the apparent disability, and which does not cause the participant to be reclassified to a category other than protective occupation participant.

“Lump sum payment” means a payment, or that portion of a payment, which covers a period other than the current benefit payment period established for those benefits.

“Medical report” means a written certification on the form prescribed by ETF by a physician, as defined in Wis. Stat. § 448.01(5), who practices in this state, concerning the medical evaluation, diagnosis, prognosis, and causal factors of the condition of an applicant for duty disability benefits.

“Municipal firefighter” means an employee of the fire department of a participating employer other than the state or a state agency, who was classified for that employment as a protective occupation participant and whose employment by the fire department was not subject to title II of the federal Social Security Act. The term does not include a fire department employee who spends more than 49% of his or her working hours engaged in duties other than active fire suppression or prevention. Telephone operator, clerk, stenographer, machinist or mechanic duties, for example, are not active fire suppression or prevention.

For purposes of Wis. Stat. § 891.45 and 891.455 (heart/lung and cancer presumptive respectively), the term does not include a municipal firefighter who did not meet the qualifications of at least five or ten years of at least two-thirds of his or her working hours for that period engaged in active fire suppression or prevention.

“Protective occupation participant” for the purposes of the duty disability program, means a person who was a protective occupation participant within the meaning of Wis. Stat. § 40.02 (48), on the date the injury occurs, or the disease is contracted, which leads to the disability covered under the duty disability program.

“Qualifying date” means the date on which a participant’s work-related disability is so severe it causes a permanent change in the employee’s employment status, as indicated in Wis. Stat. § 40.65 (4), Stats.

“Receiving duty disability benefits” refers to a person who has applied for and been found eligible to receive duty disability benefits, regardless of the affect of any monthly reductions on the net duty disability benefit payable.

HOW TO APPLY

To obtain a duty disability application packet, please write or call ETF. You will receive a packet of detailed information. If you wish to apply for a duty disability, you must complete and return the *Duty Disability Application* to ETF.

You must have your physician complete and return the *Duty Disability Medical Report* to ETF.

If approved, your benefit will be effective the date you qualify or the date ETF receives your completed application, whichever is later. If you delay filing an application and are no longer in pay status with your employer, you will lose duty disability benefits.

If you are unable to sign the disability application, ETF will accept the signature of the person you have designated as having your power of attorney or a court appointed guardian. The original power of attorney form or guardianship papers must be submitted to ETF. The appointment must not have expired and the person with power of attorney or guardianship must have been given the right to apply for the benefit. The application will be returned if these requirements are not met.

If the Medical Report submitted by the attending physician of your choice indicates a permanent disability that is duty related, you will be sent another medical report form. ETF will determine and notify you of the type of physician you must see. You must arrange for an examination and completion of the second medical report. Any cost incurred for the examinations and medical reports is your responsibility.

The physician must forward the completed Medical Report form directly to ETF. We will notify you whether or not the second medical report indicates you are permanently disabled.

Your employer will be required to submit a certification that you are disabled within the requirements of the law, indicating the specific criteria you qualify under and admitting that the injury or disease leading to the disability was duty-related. If the employer is unable to certify, they will be required to provide a statement indicating they believe you do not qualify for the duty disability benefit and the basis for that belief. If you are a municipal firefighter with a heart problem, respiratory impairment or cancer, ETF will obtain a statement from the employer which documents your employment as a municipal firefighter. The employer will have to provide a copy of the qualifying medical examination given prior to your employment with them. If there is no record of the pre-employment examination, the employer will be required to certify to that fact.

If you are receiving Income Continuation Insurance (ICI) benefits authorized under Wis. Stat. Chapter 40, approval of your duty disability benefit will have a direct affect on your ICI benefit. The ICI benefit is reduced by the amount of duty disability benefits that are paid or payable for the same period of time. The offset will be based on the original gross monthly benefit amount. Your first disability check may include retroactive payments, therefore creating an overpayment of ICI benefits. **You will be required to repay the duplicate benefits to the Income Continuation Insurance program.** The ICI program will notify you of the overpayment. Arrangements will be made to withhold the ICI overpayment out of your first duty disability check.

BENEFIT CALCULATION

HOW THE BASIC BENEFIT IS CALCULATED

ETF will establish an effective date for duty disability benefits for each employee whose application for duty disability benefits is granted. Duty disability benefits are not retroactive. The effective date for duty disability benefits is the later of:

- The employee's qualifying date
- The date the employee's application form was received by ETF

If you do not submit your duty disability application until you are no longer receiving earnings from your employer, you will not have the earliest possible effective date and lose benefits.

The duty disability benefit is computed by multiplying the monthly salary, as of your qualifying date, times a specific percentage. The base monthly benefit payable to a state employee is 80% of the employee's monthly salary. A local government employee who qualifies for either a Wisconsin Retirement System (WRS) or a Social Security disability benefit is 80% of the employee's monthly salary. Local government employees who do not qualify for WRS or Social Security disability benefit will be paid a benefit based on 75% of the monthly salary.

The percentage used in computing your gross monthly benefit will be reduced by 0.5% (one-half of one percent) for each month of your WRS creditable service over 25 years at the date of application but not to less than 50% of your monthly salary. This reduction does not apply to state protective employees.

Note: A state employee covered by a collective bargaining agreement under subchapter V of Wis. Stat. Chapter 111, will have their benefits based on 80% of the monthly salary without reduction for creditable service over 25 years. The state employee's benefit will be based on 1982 law until the Department of Employment Relations notifies our Department that the treatment was approved by the collective bargaining representative and by the Joint Committee on Employment Relations.

HOW YOUR MONTHLY SALARY IS DETERMINED

The monthly salary is determined based on the date you qualify for the duty disability benefit.

For example: You were injured on 9/11/2006, went to permanent light duty on 10/13/2006 and continued to work in light duty until 5/25/2007. Your gross monthly salary would be based on the salary in effect on 10/13/2006 (the date you went to light duty is your qualifying date). This is regardless that you remained in full pay status and your salary on 5/25/2007 may be higher due

to annual raises. Overtime may be included in the gross monthly salary if it was worked on a regular and dependable basis.

The gross monthly salary means any earnings that qualify as reportable earnings to the WRS under Wis. Stat. § 40.02 (22). In addition to the gross earnings, the annual lump sum payments that are reported to the WRS must be included if you were eligible to receive it as of the qualifying date. Lump sum cash payments made specifically at termination for accumulated vacation, sick leave or compensatory time, or any payment contingent on you having terminated employment or having died, including a bonus or any form of severance pay which is made solely because you terminate or die, are not included as part of the monthly salary. The lump sum payments included as reportable earnings will be prorated by dividing the annual amount by 12, unless the lump sum payments represents a shorter period of time, to determine the monthly amount to be added to the gross monthly earnings.

REGULAR AND DEPENDABLE OVERTIME

To include overtime pay in the monthly salary, you must have received overtime on a regular and dependable basis. Regular and dependable overtime pay means consistent periodic monetary payment made for hours worked beyond your normal work schedule. Compensatory time earned in lieu of cash payment will not be considered as regular and dependable overtime. Compensatory time paid in a lump sum at termination is not considered overtime pay.

You must be eligible to receive overtime pay on your qualifying date. The period of time used to determine whether the overtime was regular and dependable is the five calendar years prior to your qualifying date. If you have less than a five year employment history, your employer will use the actual years of creditable service, prior to the qualifying date, for the regular and dependable overtime test. You must have received overtime pay in each and every year in order to be included in the monthly salary basis.

Overtime is computed by dividing the total number of overtime hours for all appropriate years by the total number of months in those years. If your employment began during the five year period, the months for that year should be based on the months from your hire date to the end of the calendar year. The average monthly overtime hours is multiplied by the hourly overtime rate of pay in effect on your qualifying date.

BENEFIT OFFSETS/REDUCTIONS

Your duty disability benefit will be reduced (offset) by income received from the following sources:

- Any Social Security benefits payable to you, your spouse or dependent(s) that are based on your work record.
- Unemployment Compensation.
- Worker's Compensation. Any worker's compensation payment, excluding payment for medical expenses, attorney fees, rehabilitation, where the payment check dated is on or after the duty disability benefit effective date.
- Five percent offset. If you have not applied for a permanent worker's compensation benefit and you are employed by a covered employer other than the State, your gross duty disability benefit will be reduced by 5% of your monthly salary until a decision is made on the worker's compensation award. If you never apply for a Worker's Compensation benefit, the 5% offset remains in effect for the life of your duty disability benefit.

If you apply for the Worker's Compensation benefit and an award is granted, the amount of the 5% reduction will be taken into consideration in determining the amount of the award that would be offset. If the 5% offset exceeds the award then the difference will be refunded to you.

- Retirement, separation or disability benefit under any retirement system based on your earnings and years of service.
- Earnings from the employer with which your duty disability occurred.
- Earnings from any other employer or self-employment.

You are required to notify ETF when you are approved for any of the above benefits or any time you receive earnings for work performed. You must notify ETF within 30 days of the receipt of any income from the above sources.

HOW OFFSETS ARE CALCULATED

Social Security Offsets

Any Social Security benefits you, your spouse and/or dependents receive that are based on your work record are a reduction to your duty disability benefit. The offset is based on the gross monthly Social Security benefit amount regardless of any deductions from that benefit. The monthly offset to your duty disability benefit is based on the date of the Social Security check. Your first check from the Social Security Administration may include retroactive payments depending on the type of benefit, your disability date and when you submitted your application. If you receive retroactive payments and those payments are more than your duty disability monthly benefit, your duty disability benefit will be totally offset for the month in which you received the retroactive payments. The suspension is based on the date of your Social Security check. The Social Security offset is adjusted annually for any cost of living increases you receive from the Social Security Administration.

You will be asked to provide documentation which supports your application for Social Security benefits, as well as the award notice/denial when issued. If you choose not to submit documentation as you receive it from the Social Security Administration you will be asked to complete a *Social Security Administration Appointment of Representation* form. This appoints ETF as an authorized agent to receive information directly from the Social Security Administration regarding the benefits for which you are eligible.

During the duty disability benefit application process, your medical records will be reviewed to determine whether your disability may meet the Social Security disability criteria. If ETF determines you may be eligible for a Social Security disability benefit, you are required to apply for the disability benefit. If you fail to apply for the disability benefit, ETF will reduce your duty disability benefit by an estimated Social Security disability amount.

If your disability later becomes so disabling that you meet the criteria for disability benefits from Social Security, you must apply for the benefit at that time.

If your disability is not severe enough to meet the Social Security disability criteria, at age 62 the Department will be required to reduce your duty disability benefit by an estimated Social Security benefit amount. If you apply for your Social Security benefit the gross monthly amount that you receive will be used as the offset amount.

Unemployment Compensation

Any unemployment compensation you receive is an offset to your duty disability benefit regardless of who employed you. The offset will be based on the date of your unemployment check.

Worker's Compensation

Any worker's compensation benefit, excluding payment for attorney fees, medical expenses and possibly rehabilitation, will be an offset to your duty disability check, regardless of the nature of the disability. The offset to the duty disability benefit is based on the date of the worker's compensation benefit check. Lump sum or compromise agreements that are paid on or after your duty disability benefit effective date will reduce your duty disability benefit regardless of the period the lump sum covers. The law (Wis. Stat. § 40.65(5)(b)3), provides a means for offsetting a lump sum Worker's Compensation payment or compromise settlement. If the Worker's Compensation check date is on or after the duty disability benefit effective date, the lump sum or compromise payment will reduce the duty disability benefits in monthly amounts equal to 4.3 times the maximum weekly worker's compensation benefit. The duty disability benefit is reduced until the lump sum/compromise amount is exhausted.

If you have not applied for permanent disability benefits from Worker's Compensation and you are employed by a covered employer other than the State, the Department will withhold from each monthly duty disability payment an amount equal to 5% of the gross monthly duty disability benefits. The reduction remains in effect until a decision is made by the Department of Workforce Development. Once a decision is made, ETF will determine the amount of the 5% reduction and adjust the lump sum payment before determining the actual amount of the worker's compensation offset. Only the portion of the lump sum that exceeds the accumulated total of the amounts previously deducted is offset. If the total amount withheld under the 5% provision exceeds the amount of the worker's compensation lump sum payment or compromise agreement, the difference is refunded to you.

If you are employed by the State, your duty disability benefit is not affected by the 5% withholding.

Retirement, Separation or Disability Benefits

Any retirement, separation, or disability benefit paid based on your service and earnings record is a reduction to your duty disability benefit.

During the application process for your duty disability benefits, your medical records will be reviewed to determine whether you are required to apply for a disability benefit from the Wisconsin Retirement System (WRS). If ETF determines you may be eligible for a regular or special disability benefit, you are required to apply for the disability benefit. If you fail to apply for the disability benefit, ETF will reduce your duty disability benefit by an estimated WRS disability amount.

If your offset is based on an approved WRS monthly disability benefit, your duty disability benefit will be reduced by the gross monthly WRS disability benefit regardless of any deductions (i.e., health insurance, taxes, etc.). The offset is based on the date of the WRS disability check. Depending on when you submit the WRS disability application, you may be eligible for retroactive payments. If you receive retroactive payments and those payments are more than your duty disability monthly benefit, your duty disability benefit is totally offset for the month in which

your received the retroactive payments. The suspension is based on the date of your WRS disability check. The WRS disability offset is adjusted annually for any adjustments you receive from the WRS.

If your medical condition does not require you to apply for a WRS disability, you may be eligible to receive a separation benefit from the WRS if you have not reached minimum retirement age. You are NOT required to take a separation benefit. If you do take a separation benefit from the WRS, your WRS account will be closed and there will not be a WRS death benefit payable upon your death.

If you are approved for a duty disability benefit based on cancer presumptive under Wis. Stat. § 891.455, you are not allowed to take a separation benefit from the WRS while you are receiving duty disability benefits.

If you take a separation benefit, your duty disability benefit will have a lifetime offset. The offset is determined by multiplying the lump sum separation benefit by an actuarial factor using your age as of the date of your separation check. This offset will not change over the life of the duty disability benefit. The offset will begin based on the date of the separation benefit check.

If you are not required to apply for a disability benefit and you are age 50 and have terminated your covered WRS employment, you will be required to apply for a regular WRS retirement benefit. The offset is based on the gross monthly retirement annuity benefit regardless of any deductions (i.e., health insurance, taxes, etc.) from the benefit. Your offset to the duty disability benefit is based on the date of the retirement annuity check. If you receive retroactive payments in your first check, your duty disability benefit may be totally offset for that month if the payments are larger than your monthly duty disability benefit. If the retroactive payments are smaller than your duty disability monthly benefit, the duty disability program will make up the difference.

Earnings From the Employer Under Whom the Duty Disability Occurred

If you work for the same employer from whom you became disabled regardless of position, the earnings you receive are an offset to your duty disability benefit. The offset is based on the gross earnings that are reportable to the WRS. The earnings will reduce your duty disability check based on the date of your payroll check. If the earnings you receive from your employer is equal to your duty disability monthly benefit, your duty disability payment for that month is totally offset. In addition, the duty disability benefits you receive in the month(s) you receive earnings from the employer for whom you became disabled, are fully taxable.

Earnings From Any Other Employer or Self-Employment

If you work for an employer who is not covered under the WRS or you are self-employed, the gross amount paid by the employer as salary or wages for personal services rendered on or after the duty disability effective date is an offset to the duty disability benefit. Earnings means the gross amount paid by any employer as salary or wages for personal service rendered, on or after the disability effective date, to or for any employer, or which would have been available for payment to the employee except for the employee's election that part or all of the amount be used for other purposes. The gross amount shall be determined prior to deductions for taxes, insurance premiums, retirement contributions, charitable contributions, etc. Self-employment and/or contractual service income is based on the net profit as reported on the federal income tax returns. Earnings do not include payments for reasons other than for personal services rendered.

Examples of income that is included as an offset, but not limited to:

- Pay for attending meetings (per diem).
- Honorarium (payment for speeches).
- Payment as guardian, executor of estate, etc.
- Commission for service as an agent. (i.e., real estate agent, salesperson).

Examples of excludable income received by the disability recipient, but not limited to:

- Income from the government for not using farmland.
- Income from land rental.
- Lump sum payouts from employer due to termination unless otherwise indicated in statute or rule.
- Income from services rendered prior to disability effective date (royalties).
- Income from rental property.
- Reimbursement of out of pocket expenses.
- Inheritance income.
- Investment income.

The gross monthly earnings from any other employer offset is offset as follows:

- a) For the amount of the total earnings that is less than 40% of your monthly salary, the offset is 1/3 (one-third);
- b) For the amount of the total earnings that is from 40% to 80% of your monthly salary, the offset is 1/2 (one-half);
- c) For the amount of the total earnings that is above 80% of your monthly salary, the offset is 2/3 (two-thirds).

SAMPLE BENEFIT CALCULATIONS

1. A 30-year-old disabled firefighter is approved for duty disability benefits. The guaranteed duty disability percentage is 75% and the monthly salary is \$3,500. The firefighter never received permanent partial disability benefits or a determination from Worker's Compensation (Department of Workforce Development). The duty disability recipient is working part time for an employer other than the employer under whom the disability occurred and earning \$1,000.00 per month (gross earnings). The monthly duty disability benefit calculation is:

Monthly salary basis		\$3,500.00
Guaranteed percentage		<u>x .75</u>
Gross monthly duty disability benefit		\$2,625.00
Less:		
5% withholding for Worker's Compensation:		
5% x \$2,625	=	- 131.25

Part time earnings:		
\$1,000 x 1/3	=	<u>- 333.33</u>
Net monthly duty disability benefit		\$2,160.42

2. A 45-year old disabled law enforcement officer is approved for duty disability benefits. The guaranteed duty disability percentage is 75% and the monthly salary \$4,000. The duty disability benefit effective date is January 1, 2007. The duty disability recipient received a permanent partial worker's compensation award (PPD) in the amount of \$11,411.25. The recipient received a lump sum worker's compensation payment in the amount of \$5,000.00 which was paid to the recipient on January 5, 2007 and began receiving monthly PPD amounts (\$770.00) effective January 2, 2007 until the remaining \$6,411.25 PPD award (\$11,411.25 – \$5,000.00 = \$6,411.25) is paid out. The monthly duty disability benefit calculation is:

Monthly salary basis		\$4,000.00
Guaranteed percentage		<u>x .75</u>
Gross monthly duty disability benefit		\$3,000.00
Less:		
Lump sum payment of \$5,000 offset at:		
\$179.00 x 4.3 =		\$769.70
\$5,000 ÷ \$769.70 =		6.5 months
Offset begins 1/2007; last offset of \$381.80 in 7/2001		<u>-769.70</u>
Monthly PPD offset \$770 for remaining \$6,411.25: Offset begins 1/2007; last offset of \$251.25 in 9/2007		<u>-770.00</u>
Net current monthly duty disability benefit		\$1,460.30

3. A 50-year-old disabled law enforcement officer is approved for duty disability benefits. The guaranteed duty disability percentage is 75% and the monthly salary \$4,200. The duty disability benefit effective date is January 1, 2007. The duty disability recipient began working full time for an employer other than the one in which the disability occurred. The gross monthly earnings are \$3,500.00. The monthly duty disability benefit calculation is:

Monthly salary basis		\$4,200.00
Guaranteed percentage		<u>x .75</u>
Gross monthly duty disability benefit		\$3,150.00
Less:		
Other Earnings Offset:		
\$1,680 x 1/3 =	\$	560.00
\$1,680 x 1/2 =		840.00
<u>\$ 140 x 2/3 =</u>		<u>93.33</u>
\$3,500	\$1,493.33	<u>- 1,493.33</u>
Net current monthly duty disability benefit		\$1,656.67

4. A 52-year-old totally and permanently disabled law enforcement officer is approved for duty disability benefits. The guaranteed duty disability percentage is 80% and the monthly salary is \$3,800. Due to the fact that the law enforcement officer is totally and permanently disabled, the disabled recipient is receiving disability benefits from Social Security

Administration and the Wisconsin Retirement System (WRS). The disability benefits from the Social Security administration include benefits that are being paid to the spouse and minor children that are based on the employee's earnings records. The Social Security benefit is \$895 and the WRS disability benefit is \$2,356. The monthly duty disability benefit calculation is:

Monthly salary basis	\$3,800.00
Guaranteed percentage	<u>x .80</u>
Gross monthly duty disability benefit	\$3,040.00
Less:	
Social Security Disability Benefit	- 895.00
WRS Disability Benefit	<u>-2,356.00</u>
Net current monthly duty disability benefit	\$ 0.00

5. A 30-year old State of Wisconsin law enforcement officer is approved for duty disability benefits. The guaranteed duty disability percentage is 80% and the monthly salary is \$4,000. The duty disability recipient took a WRS separation benefit on January 3, 2007 in the amount of \$16,750.00. The monthly duty disability benefit calculation is:

Monthly salary basis	\$4,000.00
Guaranteed percentage	<u>x .80</u>
Gross monthly duty disability benefit	\$3,200.00
Less:	
Lifetime offset for separation benefit: (\$16,750.00 X .00664)	- <u>111.22</u>
Net current monthly duty disability benefit	\$3,088.78

ANNUAL ADJUSTMENTS

Each January, your duty disability benefit amount will be indexed. This index is based on the Social Security salary index (the percentage increase in the average of the total wages, as determined by Social Security, between the year before the preceding year and the preceding year). If you are receiving a WRS regular retirement annuity, a WRS separation benefit or "special" disability benefit and turn age 60, your annual adjustment is based on the core adjustment percentage that is granted on the WRS core annuity accounts.

If your duty disability benefit is being offset for disability or retirement benefits from Social Security, your Social Security offset is adjusted and reflected in your February 1 duty disability benefit check. Social Security benefits are adjusted with the check dated on or after January 1.

Benefit offsets based on monthly WRS retirement and/or disability benefits will be adjusted and reflected in your duty disability check dated June 1. This adjustment is based on the annual adjustment granted to your monthly WRS benefit in May of each year.

ANNUAL INCOME REVIEW REQUIREMENTS

You are required to submit financial information to ETF on an annual basis. A completed Annual Income Statement must be returned to ETF by March 15th. Each July you are required to submit a copy of your current tax return. You are required to file income tax returns each year,

even if your duty disability benefit is not taxable, or you have no earnings/income for services rendered (including self-employment).

Your account will be reviewed to determine whether all offsets for benefits and earnings have been applied. If you did not notify ETF of an offset, an adjustment to your duty disability account is made at the time your income tax return is reviewed. If an overpayment occurs because you did not inform ETF of an offset, you are required to pay interest on any overpayments that have not been repaid within 180 days of you receiving the notification of the overpayment.

DENIAL OF DISABILITY BENEFIT APPLICATION

Your duty disability application may be denied for the following reason(s):

- Medical evidence does not support your application for duty disability benefit. You must have two (2) medical reports that support a permanent, work-related disability as required by the Wisconsin Statutes.
- Employer fails to provide a certification that you are permanently disabled and the disability caused a reduction of pay or position, assignment to light duty, retirement or affected your promotional aspects. If you are a firefighter and your disability is heart, lung or cancer, your employer must certify to the number of years as required for state or municipal firefighter as well as providing a copy of the pre-employment medical examination.
- If you are a municipal firefighter who has cancer and has smoked cigarettes or used tobacco products on or after January 1, 2001.
- Submission of false information regarding your application for duty disability benefits.

WITHDRAWING YOUR DUTY DISABILITY APPLICATION

If you decide to withdraw your duty disability application, ETF must receive your request to withdraw in writing. Upon receipt of your request, your duty disability application is void. Should you decide to pursue duty disability benefits, you will be required to submit a new application. All benefit determinations will be based on the received date of the new application.

Failure to submit two qualifying medical reports within one year after the date on which ETF received your duty disability application is also a cause for the application to be withdrawn. If ETF has not already denied the application, your duty disability application will automatically be withdrawn and considered void.

TERMINATION OF BENEFITS

Your duty disability benefit may be terminated if you refuse to submit or fail to timely submit information requested by ETF. In addition, your benefit may be terminated if you submit false information. Information that may be requested by ETF includes, but is not limited to, income or benefit information, information concerning a person's marital status, and information on spouse or dependent benefits.

If your duty disability benefit is terminated, you may not apply for duty disability benefits based on the same disability for which your previous benefit was terminated.

APPEAL RIGHTS

DUTY DISABILITY DENIED APPLICATION APPEAL RIGHTS

If your duty disability application is denied for any or all of the above reasons, and if either you or your employer wishes to contest the Department's determination, a written notice of appeal must be filed with the Department of Workforce Development, Worker's Compensation Division. The appeal will follow the procedures outlined in Wis. Stat. § 102.16 to 102.26.

If an application is denied based upon receipt of a qualifying medical report and a medical report which was not a qualifying medical report, and you appeal the denial, the Worker's Compensation administrative law judge who is responsible for determining your eligibility may decide between the two conflicting medical reports.

DUTY DISABILITY BENEFIT APPEAL RIGHTS

ETF is responsible for all benefit calculations including but not limited to the original benefit calculation, offset calculation and any updated offsets. At the time a new or revised benefit calculation is completed, you will receive a *Monthly Payment and Offsets* form, ET-5507.

ETF can correct a clerical or mathematical mistake without an appeal hearing. If you have any questions about the calculation of duty disability benefits, you should contact the person who is responsible for adjudicating your claim. The name and telephone number will be provided on the *Monthly Payment and Offsets* form.

If, after contacting the person who is adjudicating your claim, you believe the calculation of your duty disability benefits, termination of duty disability benefits, benefit offsets or the qualifying date is based upon a factual error or that ETF has misinterpreted the applicable law, you have the right to appeal the Department's determination to the Wisconsin Retirement Board. An appeal to the Board must be in writing and identify the specific facts or legal interpretations in the Department's determination that you believe are in error. The written appeal request must be received at the Board's address within 90 days of the determination to which the determination notice is attached. If the written request is not received within 90 days, the appeal will be rejected as untimely. The Board's address is: Wisconsin Retirement Board, ATTN: Appeals Coordinator, P.O. Box 7931, Madison, WI 53707-7931.

DEATH BENEFITS

Duty disability death benefits may be payable if you die as a result of the injury or disease for which a benefit is paid or would be payable (if not already receiving duty disability benefits), and you are survived by a spouse or unmarried child(ren) under age 18. The spouse has to be the same person you were married to on your qualifying date. Normally, the amount paid as a death benefit will be determined by the applicable duty disability law that was in effect at the time the application for duty disability benefits was approved.

DUTY DISABILITY APPLICATIONS SUBMITTED UNDER THE 1982 DUTY DISABILITY LAW

Death Benefits Payable:

- A death benefit may be payable to a surviving spouse if the spouse was married to the participant on the date the participant was disabled within the meaning of Wis. Stat. § 40.65 (4),

and is married to the participant at the time of death. The benefit is payable until death or marriage, whichever occurs first.

- A death benefit is also payable to the guardian of all minor children until they reach age 18 or marry, whichever occurs first.
 1. The surviving spouse receives 1/3 of the participant's monthly salary as reflected at the time of death.
 2. The guardian of any under age 18 child(ren) receives \$15 per month for each minor child.
 3. The total benefit cannot exceed 65% of the participant's monthly salary.
- The death benefit is a fixed amount and does not receive annual adjustments. The amount payable under the duty disability program is reduced by the death benefit payable from Wis. Stat. § 102.

DUTY DISABILITY APPLICATIONS SUBMITTED UNDER THE 1988 DUTY DISABILITY LAW

Death Benefits Payable:

- A death benefit is payable to a surviving spouse if the spouse was married to the participant on the date the participant was disabled within the meaning of Wis. Stat. § 40.65 (4), and is married to the participant at the time of death. The benefit is payable until death or marriage, whichever occurs first.
- A death benefit is also payable to the guardian of all minor children until they reach age 18 or marry, whichever occurs first.

State Employee's death benefits*

1. The surviving spouse receives 1/3 of the participant's monthly salary as reflected at the time of death.
 2. The guardian of any under age 18 child(ren) receives \$15 per month for each minor child.
 3. The total benefit cannot exceed 65% of the participant's monthly salary.
- The death benefit is a fixed amount and does not receive annual adjustments. The amount payable under the duty disability programs is reduced by the worker's compensation death benefit payable from Wis. Stat. § 102.

Other employee's death benefits

1. The surviving spouse receives 50% of the participant's monthly salary at the time of death reduced by other income sources that are based on the participant's earnings records (i.e., Social Security benefits, Wisconsin Retirement System benefits, etc.).
2. The guardian of unmarried surviving children under age 18 receives 10% of the participant's monthly salary at the time of death, payable until the child marries, dies or reaches 18, whichever occurs first.
3. The total amount payable to the spouse and children cannot exceed 70% of the participant's monthly salary at the time of death less the offsets for other income.

- The death benefit is adjusted annually based on the salary indexing percentage determined for the previous year.
- The amount payable under the duty disability programs is reduced by the worker's compensation death benefit payable from Wis. Stat. § 102.

* The Joint Committee on Employment Relations and Collective Bargaining has not approved including the State employees in the 5/3/88 law provisions regarding benefits.

DUTY DISABILITY BENEFITS UNDER THE CANCER PRESUMPTIVE LAW

Death Benefits Payable:

- A death benefit may be payable to a surviving spouse if the spouse was married to the participant on the date the participant was disabled within the meaning of § 40.65 (4), Stats., and is married to the participant at the time of death. The benefit is payable until death or marriage, whichever occurs first.
- A death benefit is only payable to the guardian of each minor child if there is no surviving spouse or the surviving spouse dies. The death benefit is payable until the child marries, dies or reaches the age of 18, whichever occurs first.
 1. The surviving spouse receives 70% of the participant's monthly salary at the time of death.
 2. The spouse's benefits are reduced by any by other income sources that are based on the participant's earnings records (i.e., Social Security benefits, WRS benefits, etc.).
 3. The guardian of any minor child(ren) receives 10% of the participant's monthly salary at the time of death.
- The death benefit is adjusted annually based on the salary indexing percentage determined for the previous year.
- The amount payable under the duty disability programs is also reduced by the worker's compensation death benefit payable from Wis. Stat. § 102.

INSURANCES

GROUP LIFE INSURANCE

If you are presently insured under the Wisconsin Public Employers Group Life Insurance Program, you may be eligible to continue coverage without further premium payments. Premium payments are waived for a participant who is totally and permanently disabled from employment in any occupation whose employer submits a request for a disability premium waiver to ETF. If the waiver is approved, you will be notified of your amount of coverage. However, you should continue to pay premiums until notified that they are no longer due. Contact ETF within 30 days after termination of employment for special instructions for keeping your life insurance coverage in force while your duty disability benefit application is pending.

If you are not covered by a waiver of premiums when your employment terminates, you can continue your group life insurance if you began your WRS employment before 1990 or, if your

WRS employment began after 1989, you have been insured during at least five years. In addition you must meet one of the following conditions:

- You have reached age 50 if protective on your termination date, or
- Your years of creditable service as of January 1, 1990 plus your years of insurance coverage after 1989 total at least 20 years, or
- Your years on payroll with the WRS employer from which you retire total at least 20 years.

If you are not eligible to continue your group life insurance under one of the provisions above, you can apply for a conversion policy upon termination of employment. Your application for continuation or conversion coverage must be received within 31 days after you group life insurance coverage as an active employee ends.

GROUP HEALTH INSURANCE COVERAGE

If you are on a leave of absence from your employer and you are covered under the Group Health Insurance program administered by ETF, you must continue to pay your monthly premiums through your employer while your duty disability application is being processed. Once your application for a duty disability benefit has been approved, you will be provided information on your health insurance. The insurance carrier will bill you directly for your health insurance premiums. Participating employees whose compensation plan or contract provides for unused sick leave conversion to pay group health insurance premiums have the option of using unused sick leave or converting it for credits to pay group health insurance premiums.

If you do not pay the premiums, your coverage will lapse, but may be reinstated if you have an immediate annuity and file a health insurance application by the date of your first duty disability payment.

If you have terminated employment and your duty disability application is denied, and you are:

- Under age 50 (protective only). You will be eligible to continue your group coverage for up to 36 months and then purchase a conversion policy (non-group) from the insurance carrier without providing medical evidence of insurability. Your employer should provide you with a form to continue coverage within 14 days of termination of employment. You then have 60 days in which to return the form to our office.
- Over age 50 (protective only). You will be eligible to continue your group coverage if you submit your application for a regular retirement annuity from the WRS within 60 days after notification of denial of your duty disability application. There is no minimum service requirement under the group health plan. Premiums for your group health insurance coverage will be deducted from your regular WRS retirement annuity.
- Over age 50 (protective only). Your coverage is continued if you terminated employment after age 50 and have at least 20 years of creditable WRS service, even if you do not take an immediate retirement annuity.

Special Program Available to Retirees of Local Government Employers

All local government employees who receive a monthly retirement or disability annuity are eligible for health insurance coverage under the Local Annuitant Health Program. To qualify for open enrollment, ETF must receive your application no later than 60 days after the date you terminate employment.

MEDICARE SUPPLEMENT INSURANCE FOR DISABILITY RETIREES

To keep your WRS group health insurance, **you must enroll for both portions of Medicare (Hospital Part A & Medical Part B) when first eligible.** Medicare is available before age 65 to a person who has received Social Security disability for two years or has permanent kidney failure. This is required by State law to integrate with, not duplicate Medicare benefits.

It is your responsibility to notify us when you and other family members are enrolled in Medicare. We adjust your group health insurance premium to the appropriate Medicare supplement amount after we know the effective date(s) of Medicare coverage. You can notify us by sending in a photocopy of your Medicare card.

SOCIAL SECURITY BENEFIT

You can contact the Social Security Administration at 1-800-772-1213 for a projection of your Social Security benefits. Remember your Social Security benefits are separate from your WRS benefits. You must contact the Social Security Administration about any Social Security benefit for which you may be eligible.

INCOME CONTINUATION INSURANCE COVERAGE

State of Wisconsin Employees

If you are presently insured under the Income Continuation Insurance (ICI) program, you may be eligible for benefits. Benefits under this insurance program become payable after you have exhausted your accumulated sick leave or satisfied the required elimination period, whichever is longer. If you have accumulated more than 130 days of sick leave and your disability is not total and permanent, your benefits may begin only after using 130 days of sick leave.

- Participating employees whose compensation plan or contract provides for converting unused sick leave to pay group health insurance premiums, and who qualify for a disability benefit, can either use sick leave until exhausted or convert it for credits to pay health insurance premiums. If the sick leave is converted, the ICI benefit will begin after the required elimination period is satisfied or the day after the last day of sick leave is used, whichever is later. Contact your employer to determine if you are eligible to convert your sick leave credits and the appropriate process.

Depending on the extent of your disability, the ICI plan may provide benefits for as long as you remain totally disabled or until you reach age 65. However, ICI benefits may extend beyond age 65, depending on your age at the time your disability begins. (Disabilities beginning between the ages of 62 and 70 have slightly different benefit duration periods.)

This insurance plan is designed to coordinate or integrate with other income replacement benefits including, but not limited to, your duty disability benefit. Therefore, any income replacement benefits will be offset against the total monthly ICI benefit. In most cases, if you are

approved for a duty disability, your ICI benefit will be totally offset by the amount of your duty disability award back to the duty disability effective date.

Local Government Employees

Local government employees insured under the Wisconsin Public Employers Income Continuation Insurance program are subject to the general requirements outlined above for state employees, except that the exhaustion of accumulated sick leave is not required. If sick leave is paid after the required elimination period, the ICI benefit is reduced by the amount of sick leave paid.

TAXABILITY OF BENEFITS

Duty disability benefits under Wis. Stat. § 40.65, are similar to workers' compensation benefit. ETF has received confirmation from our legal tax counsel that this income need not be reported to the state and federal tax authorities since it is a non-taxable benefits. Therefore, you will not receive a 1099-R tax statement from this Department. Although state and federal laws may not require you to file tax returns because you do not have income to report, the duty disability program does require you to file tax returns even if you report zero income.

Should you return to employment with the same employer from which you became disabled and earnings from this employment are not totally offset, the residual duty disability benefits are reportable as taxable income. For the few individuals in this situation, we will report earnings as taxable and issue 1099-R tax statements to them.

INCOME CONTINUATION INSURANCE (ICI)

If you do receive benefits under the Income Continuation Insurance program, you may be required to report some or all of these benefits as taxable income on both your state and federal tax returns. The percentage of your taxable ICI benefits will be based on the percentage of your premiums that were paid by your employer. You should consult both state and federal tax authorities for answers to any questions that you have concerning the exclusion or inclusion of insurance benefits as taxable income. Information about the taxable amount of your ICI benefits will be provided to you.

Great effort has been made to ensure that the information in this booklet is accurate. However, if there is any conflict between the information and the law or rule, the law or rule must be followed.

SPECIAL NEEDS ACCOMMODATION

The Department of Employee Trust Funds does not discriminate on the basis of disability in the provision of programs, services or employment. If you are speech, hearing, or visually impaired and need assistance, call toll free 1-877-533-5020 or (608) 266-3285 (local Madison). We will try to find another way to get the information to you in a usable form.

For Additional Information

Contact the Department of Employee Trust Funds

Self-Service Toll Free Telephone Services

Available 24 hours a day, seven days a week. You must have a touch-tone telephone to use these systems.

SELF-SERVICE LINE: Call 1-877-383-1888 or (608) 266-2323 (local Madison) to request forms or brochures. Wisconsin Retirement System annuitants may also change their home mailing address or tax withholding election through this self-service line.

TELEPHONE MESSAGE CENTER: Call 1-800-991-5540 or (608) 264-6633 (local Madison) to hear detailed recorded messages covering a variety of Wisconsin Retirement System topics.

Note: You will not be able to talk to a "live" person using these systems. To speak to a benefits specialist, call the telephone numbers listed below.

Visit our Internet Site

Access the internet site at: etf.wi.gov. A tremendous amount of information is on-line regarding the Wisconsin Retirement System and other benefit programs. You may e-mail the Department through this site.

Call During Office Hours

Office Hours: 7:45 am to 4:30 pm, Monday through Friday
(except holidays)

Telephone: 1-877-533-5020 (toll free)
(608) 266-3285 (local Madison)
Wisconsin Relay Service (for hearing & speech impaired)
7-1-1 or
1-800-947-3529 (English)
1-800-833-7813 (Spanish)

Write Us

Department of Employee Trust Funds
P. O. Box 7931
Madison, WI 53707-7931

Visit Us

Appointments: (608) 266-5717

Madison: An appointment is recommended
801 West Badger Road

Waukesha: An appointment is required
141 N.W. Barstow Street, Rm.. 411, in Waukesha