Chapter 415-104 WAC
LAW ENFORCEMENT OFFICERS' AND FIREFIGHTERS' RETIREMENT SYSTEM

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WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

415-104-010 Definitions. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-010, filed 2/15/78. Formerly WAC 297-15-010.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-0111 Commissioned—Definition. [Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-104-0111, filed 7/25/95, effective 8/25/95.] Repealed by WSR 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW.

415-104-0112 Director of public safety—Definition. [Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-104-0112, filed 7/25/95, effective 8/25/95.] Repealed by WSR 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW.

415-104-0113 Elective employer—Definition. [Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-104-0113, filed 7/25/95, effective 8/25/95.] Repealed by WSR 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW.

415-104-0114 Full time—Definition. [Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-104-0114, filed 7/25/95, effective 8/25/95.] Repealed by WSR 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW.

415-104-0115 Fully compensated—Definition. [Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-104-0115, filed 7/25/95, effective 8/25/95.] Repealed by WSR 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW.

415-104-0117 LEOFF employer—Definition. [Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-104-0117, filed 7/25/95, effective 8/25/95.] Repealed by WSR 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW.

415-104-0118 LEOFF Plan I elected official—Definition. [Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-104-0118, filed 7/25/95, effective 8/25/95.] Repealed by WSR 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW.

415-104-0120 Public safety officer—Definition. [Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-104-0120, filed 7/25/95, effective 8/25/95.] Repealed by WSR 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW.

415-104-0121 Plan I and Plan II—Definition. [Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-104-0121, filed 7/25/95, effective 8/25/95.] Repealed by WSR 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW.

415-104-0122 LEOFF—Definition. [Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-104-0122, filed 7/25/95, effective 8/25/95.] Repealed by WSR 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW.

415-104-0125 Uniformed firefighter position—Definition. [Statutory Authority: RCW 41.50.050. WSR 96-04-003, § 415-104-0125, filed 1/24/96, effective 2/24/96.] Repealed by WSR 02-18-046, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW.

415-104-020 Public records. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-020, filed 2/15/78.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-030 Deductions from pension payments for insurance purposes. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-030, filed 2/15/78. Formerly WAC 297-60-010.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-105 Election of LEOFF member to LEOFF retirement board. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-105, filed 2/15/78. Formerly WAC 297-10-010.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-110 Administration. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-110, filed 2/15/78.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-120 Function. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-120, filed 2/15/78.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-140 Location. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-140, filed 2/15/78. Formerly WAC 297-25-100.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-150 Meetings. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-150, filed 2/15/78. Formerly WAC 297-25-020.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-160 Office of the chairman. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-160, filed 2/15/78. Formerly WAC 297-25-030.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-170 Business hours. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-170, filed 2/15/78. Formerly WAC 297-25-030.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-180 Correspondence. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-180, filed 2/15/78. Formerly WAC 297-25-040.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-190 Identification. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-190, filed 2/15/78. Formerly WAC 297-25-050.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-200 Decision and order of the local disability board. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-200, filed 2/15/78. Formerly WAC 297-30-010.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-201 Background and purpose. [Statutory Authority: RCW 34.05.050 and 1990 c 249. WSR 91-03-014, § 415-104-201, filed 1/7/91, effective 2/7/91.] Repealed by WSR 96-01-047, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660.

415-104-205 Definitions for purposes of WAC 415-104-200 through 415-104-215. [Statutory Authority: RCW 34.05.050 and 1990 c 249. WSR 91-03-014, § 415-104-205, filed 1/7/91, effective 2/7/91.] Repealed by WSR 96-01-047, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660.

415-104-210 Processing applications. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-210, filed 2/15/78. Formerly WAC 297-30-020.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-211 Married LEOFF Plan 2 member's benefit selection—Spousal consent required. [Statutory Authority: RCW 41.50.050(5) and 41.26.460. WSR 03-12-014, § 415-104-211, filed 5/27/03, effective 7/1/03. Statutory Authority: RCW 41.50.050. WSR 99-16-075, § 415-104-211, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660. WSR 96-01-047, § 415-104-211, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249. WSR 91-03-014, § 415-104-211, filed 1/7/91, effective 2/7/91.] Repealed by WSR 20-06-040, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050.

415-104-220 Recording. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-220, filed 2/15/78. Formerly WAC 297-30-030.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-230 Legal examination of application. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-230, filed 2/15/78. Formerly WAC 297-30-040.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-240 Recommendation and conclusion. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-240, filed 2/15/78. Formerly WAC 297-30-050.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-250 LEOFF retirement board decision on application. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-250, filed 2/15/78. Formerly WAC

297-30-060.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-260 Notification of member. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-260, filed 2/15/78. Formerly WAC 297-30-070.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-270 Miscellaneous applications. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-270, filed 2/15/78. Formerly WAC 297-30-080.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-300 Disability retirement applications—Appeals. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-300, filed 2/15/78. Formerly WAC 297-35-010.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-310 Grievances. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-310, filed 2/15/78. Formerly WAC 297-35-020.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-320 Rules on appeals. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-320, filed 2/15/78. Formerly WAC 297-35-030.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-400 Notice of appeal to the superior court. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-400, filed 2/15/78. Formerly WAC 297-45-010.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-410 Certification of record. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-410, filed 2/15/78. Formerly WAC 297-45-020.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-510 Minimum standards for membership—Physical examination. [Statutory Authority: RCW 41.50.050(5), 41.50.090 and 41.26.051. WSR 84-03-047 (Order V), § 415-104-510, filed 1/18/84. Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-510, filed 2/15/78. Formerly WAC 297-50-020.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-520 Abdomen and gastrointestinal system. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-520, filed 2/15/78. Formerly WAC 297-50-030.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-530 Blood and blood-forming tissue diseases. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-530, filed 2/15/78. Formerly WAC 297-50-040.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-540 Dental. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-540, filed 2/15/78. Formerly WAC 297-50-050.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-550 Ears. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-550, filed 2/15/78. Formerly WAC 297-50-060.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-555 Hearing. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-555, filed 2/15/78.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-560 Table 1—Table of acceptable audiometric hearing level. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-560, filed 2/15/78. Formerly WAC 297-50-070.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-570 Endocrine and metabolic disorders. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-570, filed 2/15/78. Formerly WAC 297-50-080.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-580 Upper extremities. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-580, filed 2/15/78. Formerly WAC 297-50-090.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-584 Lower extremities. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-584, filed 2/15/78. Formerly WAC 297-50-090.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-588 Miscellaneous extremities. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-588, filed 2/15/78. Formerly WAC 297-50-090.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-590 Eyes. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-590, filed 2/15/78. Formerly WAC 297-50-100.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-595 Vision. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-595, filed 2/15/78. Formerly WAC 297-50-100.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-600 Genitalia. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-600, filed 2/15/78. Formerly WAC 297-50-110.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-605 Urinary system. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-605, filed 2/15/78. Formerly WAC 297-50-110.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-610 Head. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-610, filed 2/15/78. Formerly WAC 297-50-120.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-615 Neck. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-615, filed 2/15/78. Formerly WAC 297-50-120.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-620 Heart. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-620, filed 2/15/78. Formerly WAC 297-50-130.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-624 Vascular system. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-624, filed 2/15/78. Formerly WAC 297-50-130.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-628 Heart and vascular system—Miscellaneous. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-628, filed 2/15/78. Formerly WAC 297-50-130.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-630 Height. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-630, filed 2/15/78. Formerly WAC 297-50-140.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-634 Weight. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-634, filed 2/15/78. Formerly WAC 297-50-140.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-638 Body build. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-638, filed 2/15/78. Formerly WAC 297-50-140.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-640 Lungs and chest wall—General. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-640, filed 2/15/78. Formerly WAC 297-50-150.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-644 Lungs and chest—Tuberculous lesions. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-644, filed 2/15/78. Formerly WAC 297-50-150.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-648 Lungs and chest—Nontuberculous lesions. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-648, filed 2/15/78. Formerly WAC 297-50-150.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-650 Table 2—Table of weight. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-650, filed 2/15/78. Formerly WAC 297-50-160.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-660 Mouth. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-660, filed 2/15/78. Formerly WAC 297-50-180.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-663 Nose and sinuses. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-663, filed 2/15/78. Formerly WAC 297-50-180.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-666 Pharynx, trachea, esophagus, and larynx. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-666, filed 2/15/78. Formerly WAC 297-50-180.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-668 Miscellaneous mouth, throat, and nose diseases. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-668, filed 2/15/78. Formerly WAC 297-50-180.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-670 Neurological disorders. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-670, filed 2/15/78. Formerly WAC 297-50-190.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-680 Psychoses. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-680, filed 2/15/78. Formerly WAC 297-50-200.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-684 Psychoneuroses. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-684, filed 2/15/78. Formerly WAC 297-50-200.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-688 Personality disorders. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-688, filed 2/15/78. Formerly WAC 297-50-200.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-690 Skin and cellular tissues. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-690, filed 2/15/78. Formerly WAC 297-50-210.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-700 Spine and sacroiliac joints. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-700, filed 2/15/78. Formerly WAC 297-50-220.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-705 Scapulae, clavicles, and ribs. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-705, filed 2/15/78. Formerly WAC 297-50-220.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-710 Systemic diseases. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-710, filed 2/15/78. Formerly WAC 297-50-230.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-715 Miscellaneous conditions and defects. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-715, filed 2/15/78. Formerly WAC 297-50-230.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-720 Tumors. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-720, filed 2/15/78. Formerly WAC 297-50-240.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-725 Malignant diseases and tumors. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-725, filed 2/15/78. Formerly WAC 297-50-240.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-730 Venereal diseases. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-730, filed 2/15/78. Formerly WAC 297-50-250.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-740 Mental examination. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-740, filed 2/15/78. Formerly WAC 297-50-260.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-745 Mental examination—Requirement. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-745, filed 2/15/78. Formerly WAC 297-50-260.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-750 Mental examination—Procedure. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-750, filed 2/15/78. Formerly WAC 297-50-270.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-755 Mental examination—Retention by employing department. [Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-755, filed 2/15/78. Formerly WAC 297-50-260.] Repealed by WSR 22-05-049, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050.

415-104-800 Continued LEOFF membership for members in state elective positions. [Statutory Authority: RCW 41.50.050(6). WSR 81-07-017 (Order 81-2), § 415-104-800, filed 3/10/81.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-810 Contributions and service credit for members in state elective positions. [Statutory Authority: RCW 41.50.050(6). WSR 81-07-017 (Order 81-2), § 415-104-810, filed 3/10/81.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-820 Members in state elective positions—Entitlement to benefits. [Statutory Authority: RCW 41.50.050(6). WSR 81-07-017 (Order 81-2), § 415-104-820, filed 3/10/81.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

415-104-830 Operation if in conflict with state law. [Statutory Authority: RCW 41.50.050(6). WSR 81-07-017 (Order 81-2), § 415-104-830, filed 3/10/81.] Repealed by WSR 87-07-016 (Order 87-4), filed 3/11/87. Statutory Authority: RCW 41.50.050(5) and 41.50.090.

WAC 415-104-005 Purpose. These rules are adopted to implement administration of chapter 41.26 RCW by the director of the department of retirement systems pursuant to RCW 41.26.051.

[Statutory Authority: RCW 41.50.050(5) and 41.50.090. WSR 87-07-016 (Order 87-4), § 415-104-005, filed 3/11/87.]

WAC 415-104-011 Definitions. All definitions in RCW 41.26.030 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.26 RCW are defined in this chapter.

(1) **Commissioned** means that an employee is employed as an officer of a general authority Washington law enforcement agency and is empowered by that employer to enforce the criminal laws of the state of Washington.

(2) **Director of public safety** means a person who is employed on or after January 1, 1993, by a city or town on a full-time, fully compensated basis to administer the programs and personnel of a public safety department.

This definition applies only to cities or towns in which the population did not exceed ten thousand at the time the person became employed as a director of public safety.

(3) **Elective employer** means the employer of the LEOFF Plan 1 elected official during the member's leave of absence from the LEOFF employer for the purpose of serving in elective office.

(4) **Full-time employee** means an employee who is normally expected to earn basic salary from an employer for a minimum of one hundred sixty hours in a calendar month.

(5) **Fully compensated employee** means an employee who is normally expected to earn a basic monthly salary no less than one hundred sixty times the state minimum hourly wage. Nominal sums including, but not limited to, stipends or ancillary benefits such as insurance or leave accrual, provided to volunteer firefighters are not compensation for the purpose of determining whether a firefighter is fully compensated.

(6) **Left the employ of an employer** as used in RCW 41.26.470, 41.26.510, and 41.26.520 means any break in employment, whether formally separated or not formally separated, due to service in the uniformed services, national guard, military reserves, federal emergency management agency, or national disaster medical system of the United States Department of Health and Human Services.

(7) **LEOFF** means the law enforcement officers' and firefighters' retirement system established by chapter 41.26 RCW.

(8) **LEOFF employer** means the employer, as defined in RCW 41.26.030, who employs the member as a law enforcement officer or firefighter.

(9) **LEOFF Plan 1 elected official** means a LEOFF Plan 1 member who is a civil service employee on leave of absence because he or she has been elected or appointed to an elective public office and who chooses to preserve retirement rights as an active LEOFF member under the procedure described in this chapter.

(10) **Performing service** as used in RCW 41.26.470, 41.26.510, and 41.26.520 means engaging in activities in response to a disaster, major emergency, special event, federal exercise, or official training after having left the employ of an employer as described in subsection (6) of this section.

(11) **Plan 1 and Plan 2.**

(a) "Plan 1" means the law enforcement officers' and firefighters' retirement system providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(b) "Plan 2" means the law enforcement officers' and firefighters' retirement system providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(12) **Public safety officer** means a person who is employed on or after January 1, 1993, on a full-time, fully compensated basis by a city or town to perform both law enforcement and firefighter duties.

This definition applies only to cities or towns in which the population did not exceed ten thousand at the time the person became employed as a public safety officer.

(13) **Uniformed firefighter position** means a position which may only be filled by uniformed personnel as that term is defined in RCW 41.56.030 (7)(e) as in effect on July 1, 1995. A position only qualifies as a uniformed firefighter position if the employer has identified it as such for all purposes. An employer may designate a position

as uniformed regardless of whether the employer is covered by public employees' collective bargaining under chapter 41.56 RCW.

[Statutory Authority: RCW 41.50.050(5). WSR 17-10-035, § 415-104-011, filed 4/26/17, effective 5/27/17; WSR 16-08-007, § 415-104-011, filed 3/24/16, effective 4/24/16. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW. WSR 02-18-046, § 415-104-011, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-104-011, filed 7/25/95, effective 8/25/95. Statutory Authority: RCW 41.50.050(5) and 41.04.120. WSR 93-11-078, § 415-104-011, filed 5/18/93, effective 6/18/93.]

WAC 415-104-015 Scope. These rules shall govern the unique aspects of the administration of chapter 41.26 RCW, Law enforcement officers' and firefighters' retirement system (LEOFF).

[Statutory Authority: RCW 41.50.050(5) and 41.50.090. WSR 87-07-016 (Order 87-4), § 415-104-015, filed 3/11/87.]

WAC 415-104-025 Public records. See chapter 415-06 WAC.

[Statutory Authority: RCW 41.50.050(5) and 41.50.090. WSR 87-07-016 (Order 87-4), § 415-104-025, filed 3/11/87.]

WAC 415-104-035 Jurisdiction of director. The director or the director's designee (director, designee or DRS) does not have authority to review local disability board findings or decisions regarding:

(1) Whether a member’s disability was incurred in the line of duty under RCW 41.26.120 or not incurred in the line of duty under RCW 41.26.125; or

(2) A member's right to the employer's payment for medical services pursuant to RCW 41.26.030(22) and 41.26.150.

[Statutory Authority: RCW 41.50.050. WSR 99-16-075, § 415-104-035, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. WSR 87-07-016 (Order 87-4), § 415-104-035, filed 3/11/87.]

WAC 415-104-045 Appeal of a local disability board decision. Any person aggrieved by the decision of a local disability board may appeal the decision if it:

(1) Denies disability leave;

(2) Denies disability retirement; or

(3) Cancels a previously granted disability retirement.

The written notice of appeal must be submitted to DRS within thirty days in accordance with RCW 41.26.200.

[Statutory Authority: RCW 41.50.050. WSR 99-16-075, § 415-104-045, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. WSR 87-07-016 (Order 87-4), § 415-104-045, filed 3/11/87.]

WAC 415-104-050 Review of disability board action—Appeal of director's decision. Under RCW 41.26.120(3) and 41.26.125(3), DRS must review a disability board's order to grant a disability retirement allowance. DRS must:

(1) Affirm (approve) the board’s decision; or

(2) Remand (send back) the case for further proceeding; or

(3) Reverse (deny) the board’s decision.

DRS must serve a copy of the decision on the applicant, employer, and disability board. DRS must notify the applicant of the right to file a notice for hearing (an appeal under RCW 41.26.200) if the DRS decision denies the disability retirement allowance.

[Statutory Authority: RCW 41.50.050. WSR 99-16-075, § 415-104-050, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. WSR 87-07-016 (Order 87-4), § 415-104-050, filed 3/11/87.]

WAC 415-104-060 Records reviewed on appeals filed under RCW 41.26.200. DRS will review the appeal based on the record established by the disability board and materials appearing in the records of the department of retirement systems. DRS must:

(1) Affirm (approve) the board's decision; or

(2) Remand (send back) the case for further proceeding; or

(3) Reverse (deny) the board's decision.

[Statutory Authority: RCW 41.50.050. WSR 99-16-075, § 415-104-060, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. WSR 87-07-016 (Order 87-4), § 415-104-060, filed 3/11/87.]

WAC 415-104-070 Parties to a de novo hearing. The applicant, the employer, and the department are parties to a hearing held under RCW 41.26.221. The disability board may appear at such hearing only in support of the department's decision.

[Statutory Authority: RCW 41.50.050. WSR 99-16-075, § 415-104-070, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. WSR 87-07-016 (Order 87-4), § 415-104-070, filed 3/11/87.]

WAC 415-104-080 The department can require an examination. The department has discretion to require an applicant for disability retirement to undergo a mental and/or physical examination prior to the hearing to be held pursuant to RCW 41.26.221. The cost of such examination is the responsibility of the department.

[Statutory Authority: RCW 41.50.050. WSR 99-16-075, § 415-104-080, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. WSR 87-07-016 (Order 87-4), § 415-104-080, filed 3/11/87.]

WAC 415-104-090 Notice of appeal to the superior court. Any party aggrieved by a DRS final decision and order issued under RCW 41.26.211 may petition for judicial review within thirty days after the decision and order was mailed. Any party wishing to perfect a superior court appeal must comply with chapter 34.05 RCW, the Administrative Procedure Act.

[Statutory Authority: RCW 41.50.050. WSR 99-16-075, § 415-104-090, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. WSR 87-07-016 (Order 87-4), § 415-104-090, filed 3/11/87.]

GENERAL ADMINISTRATION

WAC 415-104-100 Certification of record. The director or his/her designated representative shall promptly file with the clerk of the court a certified copy of the complete record of the hearing before the director which shall, upon being so filed, become the record in such case. Appeal shall lie from the judgment of the superior court to the court of appeals or the supreme court as in other cases.

[Statutory Authority: RCW 41.50.050(5) and 41.50.090. WSR 87-07-016 (Order 87-4), § 415-104-100, filed 3/11/87. Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-100, filed 2/15/78. Formerly WAC 297-20-010.]

WAC 415-104-108 Actuarial factors and schedules. See chapter 415-02 WAC starting with WAC 415-02-300 for information on how the department uses actuarial factors and schedules to calculate optional retirement allowances of members of the Washington state law enforcement officers' and firefighters' retirement system.

[Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-104-108, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5) and chapter 41.45 RCW. WSR 02-18-048, § 415-104-108, filed 8/28/02, effective 9/1/02. Statutory Authority: RCW 41.50.050. WSR 96-03-100, § 415-104-108, filed 1/19/96, effective 2/19/96. Statutory Authority: RCW 41.50.050 and 41.26.060. WSR 91-19-063, § 415-104-108, filed 9/16/91, effective 10/17/91; WSR 91-02-019, § 415-104-108, filed 12/21/90, effective 1/21/91.]

WAC 415-104-111 How is my LEOFF Plan 2 retirement allowance affected if I return to work after retirement? This rule applies to you if you are a LEOFF 2 retiree who returns to work in an eligible LEOFF, public employees' retirement system (PERS), public safety employees' retirement system (PSERS), school employees' retirement system (SERS), or teachers' retirement system (TRS) position.

(1) **If you return to employment in a LEOFF eligible position, you must reenter membership and your retirement allowance will stop.** When you separate from service, the department will calculate your retirement allowance according to this subsection.

(a) If you previously retired before age fifty-three, the department will:

(i) Calculate your retirement allowance pursuant to RCW 41.26.420 using:

(A) Your total years of career service, including service earned prior to your initial retirement and service earned after reentering membership; and

(B) Any increase in your final average salary resulting from your reentry into membership; and

(ii) Actuarially reduce your retirement allowance:

(A) Based on the present value of the retirement allowance payments you received during your initial retirement;

(B) To reflect the difference in the number of years between your current age and the attainment of age fifty-three, if you are not yet fifty-three; and

(C) To offset the cost of your benefit option if it includes a survivor feature. See WAC 415-104-215.

(b) If you previously retired at or after age fifty-three, the department will:

(i) Calculate your retirement allowance pursuant to RCW 41.26.420 using:

(A) Your total years of career service, including service earned prior to your initial retirement and service earned after reentering membership; and

(B) Any increase in your final average salary resulting from your reentry into membership; and

(ii) Actuarially reduce your retirement allowance to offset the cost of your benefit option if it includes a survivor feature. See WAC 415-104-215.

(c) Under no circumstances will you receive a retirement allowance creditable to a month during which you earned service credit.

(2) **If you enter employment in a PERS, PSERS, SERS, or TRS eligible position,** you have two options:

(a) You may decline membership in the PERS, PSERS, SERS, or TRS retirement system. Under this option, you will continue to receive your monthly LEOFF Plan 2 retirement allowance; or

(b) You may choose to become a member of the PERS, PSERS, SERS, or TRS retirement system. Under this option, your LEOFF Plan 2 retirement allowance will be suspended while you earn a retirement benefit in the other system. When you terminate employment in the PERS, PSERS, SERS, or TRS eligible position, you will resume receiving your LEOFF Plan 2 retirement allowance, along with a retroactive payment of your LEOFF Plan 2 retirement allowance for the time you were employed.

(i) Your **ongoing LEOFF Plan 2 retirement allowance** will include any cost of living adjustments (COLAs) that you would have received if your LEOFF allowance had not been suspended during the period of non-LEOFF employment.

(ii) Your **retroactive payment** will equal the sum of your suspended LEOFF Plan 2 retirement allowances, including COLAs, during the period of non-LEOFF employment. You may choose to receive your retroactive payment in either of the following forms:

(A) A lump sum; or

(B) An increase in your ongoing LEOFF Plan 2 retirement allowance on an actuarial basis. The amount of the increase is calculated by taking the lump sum amount and multiplying it by an actuarial factor that is determined by your age at the time your retirement allowance is resumed. See WAC 415-02-340 for more information on how the department uses actuarial factors to determine the equivalent value of a lump sum amount when compared with monthly payments.

[Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-104-111, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5) and 41.26.500. WSR 08-23-071, § 415-104-111, filed 11/18/08, effective 12/19/08. Statutory Authority: RCW 41.50.050(5) and chapter 41.37 RCW. WSR 08-02-048, § 415-104-111, filed 12/27/07, effective 1/27/08. Statutory Authority: RCW 41.50.050(5) and 41.26.500. WSR 06-03-096, § 415-104-111, filed 1/17/06, effective 2/17/06; WSR 05-12-043, § 415-104-111, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050(5), 41.26.470, 2001 c 261. WSR 02-14-072, § 415-104-111, filed 6/28/02, effective 7/29/02. Statutory Authority: RCW 41.50.050. WSR 94-09-040, § 415-104-111, filed 4/19/94, effective 5/20/94.]

WAC 415-104-112 Interim retirement allowance—Employer final compensation report—Final computation of retirement allowance—Adjustment of retirement allowance for errors. (1) At the time of a member's application for retirement, the department does not have all information necessary to make a final computation of the member's retirement allowance. The department shall compute an interim retirement allowance that shall be paid to the member until the department's final computation of the member's retirement allowance. The interim retirement allowance is an initial, estimated computation of the retiree's retirement allowance subject to adjustment by the department based upon subsequent review of information provided by the member's employer.

(2) In computing the interim retirement allowance, the department may, subject to later correction, consider only the amount of the member's salary actually reported by the employer up to the date of the interim computation, but may impute the member's earned service credit for the same period.

(3) Every employer of a member who applies for retirement shall provide the department with a final compensation report for that member. The report shall be completed on a form provided or approved by the department.

(4) Following the department's computation of the interim benefit and receipt of the employer final compensation report, earnings history, and any additional information requested by the department, the department will complete a final computation of the member's retirement allowance. The department's final computation may increase, decrease, or leave unchanged the amount of the interim retirement allowance computed pursuant to subsection (1) of this section.

(5) Pursuant to RCW 41.50.130, either before or after the department's final computation of the member's retirement allowance as provided in subsection (4) of this section, the department may adjust a member's retirement allowance to correct any error in retirement system records. For purposes of this subsection, errors in retirement system records include, but are not limited to, the following:

(a) Applying an incorrect retirement allowance formula in computing the retirement allowance;

(b) Including service that is not creditable to the member;

(c) Including payments that do not constitute basic salary to a member in the member's retirement allowance computation, or excluding basic salary not reported by an employer;

(d) Benefit overpayments and underpayments;

(e) Including an individual in the membership of the retirement system or plan who is not entitled to such membership;

(f) Excluding an individual from membership in the retirement system or plan who is entitled to such membership.

[Statutory Authority: RCW 41.50.050. WSR 99-16-075, § 415-104-112, filed 8/3/99, effective 9/3/99.]

CESSATION OF DISABILITY

WAC 415-104-115 Purpose and scope. The purpose of WAC 415-104-125 through 415-104-175 is to implement the provisions of RCW 41.26.135 to be followed by the department of retirement systems. These rules apply only to disability retirees over age fifty who seek a determination that their disability has ceased.

[Statutory Authority: RCW 41.50.050(5) and 41.50.090. WSR 87-07-016 (Order 87-4), § 415-104-115, filed 3/11/87.]

WAC 415-104-125 DRS review of disability board order. (1) Under the provisions of RCW 41.26.135, DRS must review a disability board determination that an applicant's disability has ceased pursuant to RCW 41.26.130(3). DRS must:

(a) Affirm (approve) the board's decision; or

(b) Remand (send back) the case for further proceedings; or

(c) Reverse (deny) the board’s decision.

(2) A retiree aggrieved by a decision of the local disability board that the disability has not ceased may appeal the determination to the director. The written notice of appeal must be submitted to DRS within thirty days as provided by RCW 41.26.140(6).

[Statutory Authority: RCW 41.50.050. WSR 99-16-075, § 415-104-125, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. WSR 87-07-016 (Order 87-4), § 415-104-125, filed 3/11/87.]

WAC 415-104-135 Notice for hearing. A person aggrieved by:

(1) The director's decision on review of the local board determination; or

(2) The director's decision after review of the record on appeal must invoke the director's jurisdiction by filing a notice for hearing in accordance with RCW 41.26.211 and WAC 415-08-020 before they can appeal to the superior court. Such hearing shall be in accordance with RCW 41.26.221.

[Statutory Authority: RCW 41.50.050. WSR 99-16-075, § 415-104-135, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. WSR 87-07-016 (Order 87-4), § 415-104-135, filed 3/11/87.]

WAC 415-104-145 Department examination. The director or his representative, in his/her discretion, may require a disability retir-

ee to undergo a mental and/or physical examination prior to the hearing to be held pursuant to RCW 41.26.221. The cost of such examination is the responsibility of the department.

[Statutory Authority: RCW 41.50.050. WSR 99-16-075, § 415-104-145, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. WSR 87-07-016 (Order 87-4), § 415-104-145, filed 3/11/87.]

WAC 415-104-155 Burden of proof. The retiree has the burden of proof in the proceedings before the disability board and the director.

[Statutory Authority: RCW 41.50.050(5) and 41.50.090. WSR 87-07-016 (Order 87-4), § 415-104-155, filed 3/11/87.]

WAC 415-104-165 Payment of benefits pending final determination. The department will continue to pay monthly benefits when a disability board determines that a retiree's disability has ceased until there is a final determination from which no appeal is taken. The department will pay either the retiree's monthly service retirement allowance or monthly disability retirement allowance, whichever is less. Any retroactive adjustment required as the result of the final determination will be made after the appeal period has passed.

[Statutory Authority: RCW 41.50.050. WSR 99-16-075, § 415-104-165, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. WSR 87-07-016 (Order 87-4), § 415-104-165, filed 3/11/87.]

WAC 415-104-175 Comparison of disability retirement allowance and service retirement allowance. In comparing the disability retirement allowance and the service retirement allowance as required by RCW 41.26.130(3), the department must:

(1) Compute the service retirement allowance using a final average salary calculated as follows:

(a) The department shall first calculate the greatest basic salaries that were or would have been payable to such member during any consecutive twenty-four month period within such member's last ten years of service for which service credit is allowed;

(b) The department shall then divide the total basic salaries during the selected twenty-four month period by twenty-four to compute the final average salary.

(2) Compute the service retirement allowance. The service retirement allowance does not include any cost-of-living increases that would have been granted if the service retirement allowance had been in effect during the period of disability retirement.

(3) Compare the service retirement allowance to the monthly disability retirement allowance that the member was receiving on the date that the disability ceased.

[Statutory Authority: RCW 41.50.050. WSR 99-16-075, § 415-104-175, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050(5) and 41.50.090. WSR 87-07-016 (Order 87-4), § 415-104-175, filed 3/11/87.]

BENEFIT OPTIONS

WAC 415-104-202 What are my LEOFF Plan 1 retirement benefit options? (1) **What are flexible survivor benefit options?** RCW 41.26.164 allows a retiree to provide a survivor option for a spouse who is not eligible for survivor benefits under RCW 41.26.160 or 41.26.161. The survivor option will provide a lifetime benefit for the spouse after the retiree's death.

(2) **How will my monthly retirement benefit be affected by selecting a flexible survivor option?** Your monthly retirement benefit will be actuarially reduced beginning the first month following the month in which the department receives the completed form.

(3) **What are the flexible survivor option choices?**

(a) **Joint and one hundred percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, the department will pay your surviving spouse a monthly benefit equal to the gross monthly retirement benefit you were receiving.

(b) **Joint and fifty percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your surviving spouse will receive a gross monthly benefit equal to fifty percent of your gross monthly benefit.

(c) **Joint and two-thirds survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your surviving spouse will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(4) **Do I qualify to add a flexible survivor option?** You may select a flexible survivor option if:

(a) Your current spouse is not eligible for survivor benefits under RCW 41.26.160 or 41.26.161;

(b) Some portion of your monthly retirement benefit is payable to you, after any reduction pursuant to a property division obligation under RCW 41.50.670; and

(c) You meet the deadline and application requirements in subsection (5) of this section.

(5) **How do I add a flexible survivor option?** You may select a flexible survivor option and name your current spouse as your survivor beneficiary, provided that:

(a) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of the marriage, or as otherwise authorized by law;

(b) You provide a copy of your certified marriage certificate to the department;

(c) You provide proof, satisfactory to the department, of your current spouse's birth date; and

(d) You file the properly completed forms with the department in a timely manner.

(6) **May I remove the flexible survivor option in the future?** You may remove your flexible survivor option under the following circumstances:

(a) Your spouse dies before you. Your benefit may be increased as described in WAC 415-02-380 (6)(a)(ii).

(b) You and your spouse divorce. If you choose to remove your former spouse as your survivor, your benefit will increase to the

amount you would have received had you not chosen a flexible survivor option plus any cost-of-living adjustments (COLA) you received prior to removing your survivor.

(7) **What happens to my eligible surviving children's share if I select a flexible survivor option?** There is ***no*** impact to the benefit provided under RCW 41.26.160 or 41.26.161 to surviving children if you select a flexible survivor option.

(8) **Actuarial information.** See chapter 415-02 WAC starting with WAC 415-02-300 for information on how the department uses actuarial factors and schedules to calculate retirement benefits.

(9) **Terms used in this section:**

(a) Child or children - RCW 41.26.030(7).

(b) Eligible surviving child - RCW 41.26.160 and 41.26.161.

(c) Eligible surviving spouse - RCW 41.26.161 and 41.26.162.

(d) Surviving spouse - RCW 41.26.030(6).

[Statutory Authority: RCW 41.50.050. WSR 20-06-040, § 415-104-202, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050(5). WSR 17-02-033, § 415-104-202, filed 12/28/16, effective 1/28/17; WSR 13-18-034, § 415-104-202, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5), 41.26.164. WSR 05-22-110, § 415-104-202, filed 11/2/05, effective 12/3/05. Statutory Authority: RCW 41.50.050(5), 41.26.162, 41.26.164, chapter 41.45 RCW. WSR 03-12-014, § 415-104-202, filed 5/27/03, effective 7/1/03.]

WAC 415-104-215 What are my LEOFF Plan 2 retirement benefit options? If you retire for service under RCW 41.26.430 or nonduty disability under RCW 41.26.470, or if you choose to receive a monthly benefit for duty disability under RCW 41.26.470, you must choose to have your monthly retirement benefit paid to you by one of the options described in this section.

(1) **Which option will pay my beneficiary a monthly benefit after my death?** Options described in subsection (2)(b) through (d) of this section will pay a monthly benefit to your survivor after your death. The person you name at the time of retirement to receive a monthly benefit after your death is referred to as your "survivor beneficiary." After your death, your survivor beneficiary will receive a monthly benefit for the duration of their life. Your monthly retirement benefit will be reduced to offset the cost of the survivor option. See WAC 415-02-380 for more information on how your monthly benefit will be affected if you choose a survivor option.

(2) **What are my benefit options?**

(a) **Option one: Standard benefit (nonsurvivor option).** The department will pay you a monthly retirement benefit throughout your lifetime. Your monthly benefit will cease upon your death.

(b) **Option two: Joint and 100 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to your gross monthly benefit.

(c) **Option three: Joint and 50 percent survivor benefit.** The department will pay you a reduced monthly retirement benefit throughout your lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to 50 percent of your gross monthly benefit.

(d) **Option four: Joint and two-thirds benefit.** The department will pay you a reduced monthly retirement benefit throughout your

lifetime. After your death, your survivor beneficiary will receive a gross monthly benefit equal to two-thirds (66.667%) of your gross monthly benefit.

(3) **Do I need my spouse's consent on the option I choose?** The option you select will determine whether spousal consent is required.

(a) If you are married and select a nonsurvivor benefit option, you must provide your spouse's consent, verified by notarization or other means acceptable to the department. If you do not provide verified spousal consent, the department will pay you a monthly retirement benefit based on option three (joint and 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.26.460(2).

(b) If you are married and select a survivor benefit option for your spouse, spousal consent is not required. The department will pay you a monthly benefit based on the option you selected.

(c) If you are married and select a survivor benefit option for someone other than your spouse, verified spousal consent is required. If you do not provide spousal consent, verified by notarization or other means acceptable to the department, the department will pay you a monthly retirement benefit based on option three (joint and 50 percent benefit) with your spouse as the survivor beneficiary as required by RCW 41.26.460(2).

(d) If your survivor beneficiary has been designated by a dissolution order according to subsection (4) of this section, which was filed with the department at least 30 days before your retirement date, spousal consent is not required.

(4) **Can a dissolution order require that a former spouse be designated as a survivor beneficiary?** Yes. A dissolution order may require that a former spouse be designated as a survivor beneficiary. The department is required to pay survivor benefits to a former spouse pursuant to a dissolution order that complies with RCW 41.50.790.

(5) **What happens if I choose a benefit option with a survivor option and my survivor beneficiary dies before I do?** If your survivor beneficiary dies before you do, you may request to have your benefit increased as described in WAC 415-02-380.

(6) **May I change my benefit option after retirement?** Your choice of a benefit option is irrevocable with the following five exceptions:

(a) **Return to membership.** If you retire and then return to membership, you may choose a different retirement option upon your subsequent retirement.

(b) **Postretirement marriage option.** If you select the standard benefit option at the time of retirement and marry after retirement, you may select a benefit option with a survivor option and name your current spouse as survivor beneficiary, provided that:

(i) Your benefit is not subject to a property division obligation pursuant to a dissolution order. See WAC 415-02-500;

(ii) The selection is made during a one-year window, on or after the date of the first anniversary and before the second anniversary of your postretirement marriage;

(iii) You provide a copy of your certified marriage certificate to the department; and

(iv) You provide proof of your current spouse's birth date.

(c) **Removal of a nonspouse survivor option.** If you select a benefit option with a survivor option and name a nonspouse as survivor beneficiary at the time of retirement, you may remove that survivor beneficiary designation and have your benefit adjusted to a standard benefit. You may exercise this option one time only.

(d) **One-time change of survivor.** You may change your benefit option and/or designated survivor one time within 90 days from the date your first benefit payment is issued. Your change request must be in writing, and must comply with other requirements as described in this section. Your new benefit amount will be effective the first of the month following the receipt of your request by the department.

(e) **Retirement type changes.** If your retirement status changes due to the acceptance of a new retirement application from service retirement to a nonduty, duty or catastrophic retirement, or duty to catastrophic retirement, you may select a different survivor benefit option. Your benefit will be recalculated to reflect your new survivor option in accordance with WAC 415-104-483.

(7) **Who will receive the balance of my accumulated contributions, if any, after my death?**

(a) If you do not have a survivor beneficiary at the time of your death, and you die before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) you have nominated by written designation, executed and filed with the department.

(ii) If you have not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your surviving spouse.

(iii) If not paid according to (a)(i) or (ii) of this subsection, then to your estate.

(b) If you have a survivor beneficiary at the time of your death, and your survivor beneficiary dies before the total of the retirement benefit paid equals the amount of your accumulated contributions at the time of retirement, the balance will be paid:

(i) To the person or entity (i.e., trust, organization, or estate) your survivor beneficiary has nominated by written designation, executed and filed with the department.

(ii) If your survivor beneficiary has not designated a beneficiary, or if the designated beneficiary is no longer living or in existence, then to your survivor beneficiary's spouse.

(iii) If not paid according to (b)(i) or (ii) of this subsection, then to your survivor beneficiary's estate.

(8) For more information, see RCW 41.26.460.

[Statutory Authority: RCW 41.50.050. WSR 22-11-040, § 415-104-215, filed 5/12/22, effective 6/12/22; WSR 22-01-061, § 415-104-215, filed 12/8/21, effective 1/8/22; WSR 20-13-065, § 415-104-215, filed 6/15/20, effective 7/16/20; WSR 20-06-040, § 415-104-215, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-104-215, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5), 41.26.460. WSR 05-23-062, § 415-104-215, filed 11/14/05, effective 12/15/05; WSR 03-12-014, § 415-104-215, filed 5/27/03, effective 7/1/03. Statutory Authority: RCW 41.50.050(5), 41.26.460, 41.32.530, 41.32.785, 41.32.851, 41.35.220, 41.40.188, 41.40.660, 41.40.845. WSR 01-10-045, § 415-104-215, filed 4/26/01, effective 6/1/01. Statutory Authority: RCW 41.50.050. WSR 99-16-075, § 415-104-215, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 2.10.146, 41.26.460, 41.32.530, 41.50.050, 41.32.785, 41.40.188 and 41.40.660. WSR 96-01-047, § 415-104-215, filed 12/14/95, effective 1/14/96. Statutory Authority: RCW 34.05.050 and 1990 c 249. WSR 91-03-014, § 415-104-215, filed 1/7/91, effective 2/7/91.]

MEMBERSHIP

WAC 415-104-224 Purpose and scope of eligibility rules. WAC 415-104-225 through 415-104-240 codify the department's existing interpretation of statutes and existing administrative practice regarding eligibility for membership in LEOFF Plan I and Plan II. The department has applied and will apply these rules to determine eligibility for service occurring prior to the effective dates of these sections.

[Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-104-224, filed 7/25/95, effective 8/25/95.]

WAC 415-104-225 Am I a LEOFF member? If you are employed by an employer as a full-time, fully compensated law enforcement officer or firefighter, you are required to be a LEOFF member.

(1) **Law enforcement officers.**

(a) You are a law enforcement officer only if you are commissioned and employed on a full-time, fully compensated basis as a:

(i) City police officer;

(ii) Town marshal or deputy marshal;

(iii) County sheriff;

(iv) Deputy sheriff, if you passed a civil service exam for deputy sheriff and you possess all of the powers, and may perform any of the duties, prescribed by law to be performed by the sheriff;

(b) Effective January 1, 1994, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a:

(i) General authority Washington peace officer under RCW 10.93.020(3);

(ii) Port district general authority law enforcement officer and you are commissioned and employed by a port district general authority law enforcement agency;

(iii) State university or college general authority law enforcement officer; or

(c) Effective January 1, 1993, "law enforcement officer" also includes commissioned persons employed on a full-time, fully compensated basis as a public safety officer or director of public safety of a city or town if, at the time you first became employed in this position, the population of the city or town did not exceed ten thousand. See RCW 41.26.030(3).

(d) If you meet the requirements of (a), (b) or (c) of this subsection, you qualify as a law enforcement officer regardless of your rank or status as a probationary or permanent employee.

(e) You are not a law enforcement officer if you are employed in either:

(i) A position that is clerical or secretarial in nature and you are not commissioned; or

(ii) A corrections officer position and the only training required by the Washington criminal justice training commission for your position is basic corrections training under WAC 139-10-210.

(2) **Firefighters.**

(a) You are a firefighter if you are employed in a uniformed firefighter position by a fire department of an employer on a full-time, fully compensated basis, and as a consequence of your employment, you have the legal authority and responsibility to direct or perform fire protection activities that are required for and directly concerned with preventing, controlling and extinguishing fires. The primary duty of a position is defined by what is expected of the full-time position, not by the number of hours or percentage of hours that the duty is performed.

Example A: A full-time position in a fire department of an employer is responsible for preventing, controlling, and extinguishing fires. The employer rarely has fires. The position spends the majority of its time performing other fire protection activities. The position is a firefighter.

Example B: A fire department of an employer has a full-time fire marshal position or firefighter trainer position. The position requires the legal authority and responsibility to perform fire protection activities. The position is a firefighter.

Example C: An employer's community development department has a fire marshal position. The community development department is not a fire department and its purpose is not fire protection activities. The position is not a firefighter.

(i) "Fire protection activities" may include incidental functions such as housekeeping, equipment maintenance, grounds maintenance, fire safety inspections, lecturing, performing community fire drills and inspecting homes and schools for fire hazards. These activities qualify as fire protection activities only if the primary duty of your position is preventing, controlling and extinguishing fires.

(ii) You are a firefighter if you qualify as supervisory firefighter personnel.

(A) To qualify as "supervisory firefighter personnel" you must:

(I) Supervise firefighters or other supervisory firefighter personnel;

(II) Be in a position located within a firefighting department or organization whose primary or sole purpose is fire protection activities; and

(III) Direct fire protection activities.

(B) This includes first line supervisors of firefighters, who typically direct from the scene of a fire, up to and including positions that are administrative in nature when the primary duty is to provide executive leadership for fire protection activities, such as setting strategic priorities for the organization.

Example A: A City Administrator supervises various city departments including a fire department. The City Administrator supervises the Fire Chief, who is a firefighter, as well as other department heads. The City Administrator would not be considered supervisory firefighter personnel because, while the duties of the position include oversight of the fire department, it is not the primary duty of the position. Furthermore, the position is not located within a firefighting department or organization whose primary or sole purpose is fire protection activities.

Example B: A Fire Chief of a large fire department does not respond to fires, but instead works in an office setting providing direction and leadership, such as setting strategic priorities and approving hiring and firing, for the Fire Department. The Fire Chief supervises three battalion chiefs, a Human Resources Director, and a Chief Financial Officer. The Fire Chief is supervisory firefighter

personnel because the position supervises firefighters, is located within an organization whose sole purpose is fire protection activities, and the primary purpose of the position is to provide executive leadership to fire protection activities.

Example C: An Administrator of an organization whose primary purpose is fire protection activities does not respond to fires, but instead works in an office setting providing direction and leadership, such as setting strategic priorities and approving hiring and firing, for the organization. The Administrator supervises two Battalion Chiefs, a Human Resources Director, and a Chief Financial Officer. The Administrator is supervisory firefighter personnel because the position supervises firefighters, is located within an organization whose primary purpose is fire protection activities, and the primary purpose of the position is to provide executive leadership to fire protection activities.

(iii) If your employer requires firefighters to pass a civil service examination, you must be actively employed in a position that requires passing such an examination in order to qualify as a firefighter unless you qualify as supervisory firefighter personnel.

(iv) You are a firefighter if you meet the requirements of this section regardless of your rank or status as a probationary or permanent employee or your particular specialty or job title.

(v) You do not qualify for membership as a firefighter if you are a volunteer firefighter or resident volunteer firefighter.

(b) You are a firefighter if you are employed on a full-time, fully compensated basis by an employer as an emergency medical technician (EMT). To be an "emergency medical technician" you must:

(i) Be certified by the department of health to perform emergency medical services at the level of care of an EMT; and

(ii) Complete the requirements of your employer, if any, to perform the job duties of an EMT.

(3) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Commissioned" - WAC 415-104-011.
(b) "Director of public safety" - WAC 415-104-011.
(c) "Employer" - RCW 41.26.030.
(d) "Firefighter" - RCW 41.26.030.
(e) "Full time" - WAC 415-104-011.
(f) "Fully compensated" - WAC 415-104-011.
(g) "Law enforcement officer" - RCW 41.26.030.
(h) "Member" - RCW 41.26.030.
(i) "Public safety officer" - WAC 415-104-011.
(j) "Uniformed firefighter position" - WAC 415-104-011.

[Statutory Authority: RCW 41.50.050. WSR 20-06-039, § 415-104-225, filed 2/27/20, effective 3/29/20. Statutory Authority: RCW 41.50.050(5). WSR 16-08-007, § 415-104-225, filed 3/24/16, effective 4/24/16. Statutory Authority: RCW 41.50.050(5) and 41.26.030. WSR 09-05-011, § 415-104-225, filed 2/6/09, effective 3/9/09. Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW. WSR 02-18-046, § 415-104-225, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050. WSR 96-01-045, § 415-104-225, filed 12/14/95, effective 1/14/96; WSR 95-16-053, § 415-104-225, filed 7/25/95, effective 8/25/95.]

WAC 415-104-235 Can I terminate my status as a LEOFF member? (1) Your membership in the retirement system is terminated if you:

(a) Die;

(b) Separate from service; or

(c) Cease to be employed full time as a law enforcement officer or firefighter.

(2) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Firefighter" - RCW 41.26.030 and WAC 415-104-225(2).

(b) "Full-time employee" - WAC 415-104-011.

(c) "Law enforcement officer" - RCW 41.26.030 and WAC 415-104-225(1).

(d) "Member" - RCW 41.26.030.

(e) "Service" - RCW 41.26.030.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW. WSR 02-18-046, § 415-104-235, filed 8/28/02, effective 9/30/02. Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-104-235, filed 7/25/95, effective 8/25/95.]

WAC 415-104-245 Am I required to meet minimum medical and health standards in order to establish or reestablish Plan 1 membership? (1) **You may be required to meet minimum medical and health standards in order to establish or reestablish Plan 1 membership.**

You are required to meet minimum medical and health standards codified in WAC 415-104-500 through 415-104-755, if you:

(a) Were first employed as a law enforcement officer or firefighter on or after August 1, 1971, and before October 1, 1977; and

(b) Have been separated from service for more than six months for reasons other than a disability leave, a disability retirement, or an authorized leave of absence.

(2) **If you are an elected sheriff or an appointed police or fire chief, you are exempt from the age requirement of the standards.**

(3) **If you are required to meet the minimum medical and health standards, your employer will enroll you in Plan 1 provisionally, depending on the results of your physical examination.**

(a) If you are required to meet the minimum medical and health standards, your employer will begin reporting you in LEOFF Plan 1 from the first day of your employment. Your enrollment in Plan 1, however, is provisional depending upon the results of your medical examination.

(b) Your employer is responsible for having you examined by a physician or surgeon appointed by the local disability board and for paying the cost of your examination. Your employer will send a copy of your examination report to the department along with a certification letter of whether you have met the standards.

(4) **If you are denied Plan 1 membership because you did not meet minimum medical and health standards, you will enter membership in Plan 2.**

(a) The department will review your examination report and if you meet the minimum medical and health standards you will be reported in membership in Plan 1.

(b) If you do not meet the standards, your employer must stop reporting you to the department in Plan 1 and report you in Plan 2. The department will transfer your membership from Plan 1 to Plan 2 retroactively to the beginning of your term of employment.

(5) **Defined terms used.** Definitions for the following terms used in this section may be found in the sections listed.

(a) "Employer" - RCW 41.26.030.

(b) "Firefighter" - RCW 41.26.030.

(c) "Full time" - WAC 415-104-011.

(d) "Fully compensated" - WAC 415-104-011.

(e) "Law enforcement officer" - RCW 41.26.030.

(f) "Member" - RCW 41.26.030.

(g) "Minimum medical and health standards" - WAC 415-104-500 through 415-104-755.

(h) "Plan 1 and Plan 2" - WAC 415-104-011.

[Statutory Authority: RCW 41.50.050(5), 41.26.035, 41.26.045 - [41.26.]047. WSR 04-02-003, § 415-104-245, filed 12/24/03, effective 1/1/04. Statutory Authority: RCW 41.50.050. WSR 95-16-053, § 415-104-245, filed 7/25/95, effective 8/25/95.]

BASIC SALARY

WAC 415-104-298 Purpose and scope of basic salary rules. WAC 415-104-299 through 415-104-405 codify the department's existing interpretation of statutes and existing administrative practice regarding classification of payments as basic salary in LEOFF Plan I and LEOFF Plan II. The department has applied and will apply these rules to determine the proper characterization of payments occurring prior to the effective dates of these sections.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-298, filed 12/6/96, effective 1/6/97.]

WAC 415-104-299 Basic salary table. The following table will help you determine whether certain types of payments are basic salary under LEOFF Plan 1 or 2. Be sure to read the referenced rule to ensure that you have correctly identified the payment in question. The department determines basic salary based upon the nature of the payment, not the name applied to it. See WAC 415-104-311 (Plan 1) and WAC 415-104-360 (Plan 2).

Type of Payment	LEOFF 1 Basic Salary?	LEOFF 2 Basic Salary?
Additional Duty Pay	Yes - WAC 415-104-3205	Yes - WAC 415-104-360
Allowances (i.e. uniform)	No - WAC 415-104-3404	No - WAC 415-104-390
Basic Monthly Rate	Yes - WAC 415-104-3200	Yes - WAC 415-104-360
Cafeteria Plans	No - WAC 415-104-3303	Yes - WAC 415-104-367
Deferred Wages Attached to Position	Yes - WAC 415-104-3201(1)	Yes - WAC 415-104-363(1)
Deferred Wages not attached to a Position	No - WAC 415-104-3306	No - WAC 415-104-363(2)
Disability Payments	No - WAC 415-104-340	No - WAC 415-104-380
Education Attainment Pay	No - WAC 415-104-3301	Yes - WAC 415-104-375
Employer taxes/contributions	No - WAC 415-104-3401	No - WAC 415-104-383
Fringe Benefits, including insurance	No - WAC 415-104-3402	No - WAC 415-104-385
Illegal Payments	No - WAC 415-104-3403	No - WAC 415-104-387
Leave Cash Outs/Severance	No - WAC 415-104-3304	No - WAC 415-104-401

Type of Payment	LEOFF 1 Basic Salary?	LEOFF 2 Basic Salary?
Longevity	Yes - WAC 415-104-311	Yes - WAC 415-104-375
Overtime	No - WAC 415-104-3305	Yes - WAC 415-104-370
Paid Leave	Yes - WAC 415-104-3203	Yes - WAC 415-104-373
Payments in Lieu of Excluded Items	No - WAC 415-104-350	No - WAC 415-104-405
Performance Bonuses	No - WAC 415-104-3302	Yes - WAC 415-104-377
Retroactive Salary Increase	Yes - WAC 415-104-3202	Yes - WAC 415-104-365
Reimbursements	No - WAC 415-104-3404	No - WAC 415-104-390
Retirement or Termination Bonuses	No - WAC 415-104-3406	No - WAC 415-104-395
Shift Differential	Yes - WAC 415-104-3204	Yes - WAC 415-104-379
Special Salary or Wages	No - WAC 415-104-330	Yes - WAC 415-104-375
Standby Pay	No - WAC 415-104-3405	No - WAC 415-104-393
Tuition/Fee Reimbursement	No - WAC 415-104-3404	No - WAC 415-104-390
Workers' Compensation	Not Applicable	No - WAC 415-104-380

[Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW. WSR 03-06-042, § 415-104-299, filed 2/27/03, effective 4/1/03. Statutory Authority: RCW 41.50.050. WSR 99-16-075, § 415-104-299, filed 8/3/99, effective 9/3/99. Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-299, filed 12/6/96, effective 1/6/97.]

WAC 415-104-301 What is basic salary? (1) **Basic salary is the compensation used to determine LEOFF contributions and LEOFF retirement allowances.** A payment from an employer to a member does not qualify as basic salary unless it meets the statutory definition of basic salary in RCW 41.26.030(13) which is explained in greater detail in WAC 415-104-311 through 415-104-405.

(2) **The definition of basic salary is different for Plan I and Plan II.** WAC 415-104-311 through 415-104-350 define basic salary for Plan I. WAC 415-104-360 through 415-104-405 define basic salary for Plan II.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-301, filed 12/6/96, effective 1/6/97.]

LEOFF PLAN 1

WAC 415-104-305 Definitions. As used in WAC 415-104-299 through 415-104-405:

(1) "Salary or wages" means payments for services rendered by a law enforcement officer or firefighter to an employer. Payments which are not for services rendered to an employer are not a salary or wage and do not qualify as basic salary.

(2) "Longevity pay" means a payment in addition to the basic monthly rate of pay that is:

(a) Based solely upon the length of employment with the employer; and

(b) Paid to all law enforcement officers or firefighters who have served for the same length of time with the employer.

(3) "Position" means the employment held at any particular time. The employment held is defined by the duties required of the employee as a condition of employment.

Example: An employer employs two police officers, one who has a high school diploma and one who has a college degree. Although both officers have the same duties, the employer designates the first officer as an "officer 1" and the second officer as an "officer 2." The distinction between the two levels is conditioned upon different levels of education. The second officer is paid at a higher rate. For purposes of determining basic salary, both officers occupy the same position because both have the same duties. The difference in their two rates of pay is an education premium which does not qualify as basic salary, see WAC 415-104-3302.

(4) "Attached to a position" means a payment conditioned on specific duties required of the person holding the position.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-305, filed 12/6/96, effective 1/6/97.]

WAC 415-104-311 How is basic salary for LEOFF Plan I determined? (1) **A payment is LEOFF Plan I basic salary if it is part of the basic monthly rate of salary or wages attached to the position or longevity pay.** Special salary or wages are not part of the basic monthly rate and do not qualify as basic salary.

(2) **Basic salary is earned when the service is rendered, rather than when payment is made.**

Example: If a member works during July but does not receive payment for the work until August, the basic salary was earned during July and must be reported to the department as July earnings.

(3) **Salary characterizations are based upon the nature of the payment.** A payment is basic salary if it meets the criteria of subsection (1) of this section. The name given to the payment is not controlling in determining whether the payment is basic salary. The department determines whether a payment is basic salary by considering:

(a) What the payment is for; and

(b) Whether the reason for the payment brings it within the statutory definition of basic salary.

Example: A payment based upon educational attainment is not basic salary for LEOFF Plan I. Describing the payment as a "longevity" payment does not change the fact that the payment is for educational attainment. The payment will not be counted as basic salary despite being identified by the employer as a longevity payment.

(c) See the following sections for a discussion and examples of the following types of payments:

(i) "Salary or wages" - WAC 415-104-3200 through 415-104-3205;

(ii) "Special salary and wages" - WAC 415-104-330 through 415-104-3305;

(iii) "Payments excluded from basic salary because they are not a salary or wage" - WAC 415-104-340 through 415-104-3406.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-311, filed 12/6/96, effective 1/6/97.]

WAC 415-104-3200 Basic monthly rate is LEOFF Plan I basic salary. The basic monthly rate of compensation paid by an employer to a member for services rendered is basic salary in Plan I. "Basic monthly rate" means the rate of salary or wages attached to a position excluding overtime or special salary or wages.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-3200, filed 12/6/96, effective 1/6/97.]

WAC 415-104-3201 Deferred payments. (1) **Deferred payments attached to a position are basic salary.** If an employee defers a portion of his or her basic monthly rate of pay it is still basic salary. Deferred payments may include, but are not limited to: Member contributions to LEOFF; salaries or wages deferred pursuant to sections 401(k), 403(b), 414(h), 457, or other similar sections of the United States Internal Revenue Code.

(2) **Deferred wages that are not attached to a position are special salary or wages excluded from LEOFF Plan I basic salary.**

(a) Employer matching payments are not basic salary. If a member acquires an additional payment that is conditioned upon taking some action in addition to providing services, the payment is based upon the additional action. It is not a salary or wage earned for services rendered. The payment is not basic salary.

Example: An employer offers to make a contribution to a deferred compensation plan only if the member elects to defer a portion of his or her salary. Because the member does not have an absolute right to receive the additional contribution for performing the duties required of his or her position, the payment is special salary or wages and is not basic salary.

(b) Additional deferred compensation offered to an individual is not basic salary. If an employer pays deferred compensation to a member in addition to the member's basic rate of pay, the payment is special salary or wages and does not qualify as basic salary.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-3201, filed 12/6/96, effective 1/6/97.]

WAC 415-104-3202 Retroactive basic salary increases attached to a position are LEOFF Plan I basic salary. If a payment is part of the basic monthly rate of salary or wages attached to a position or is a longevity payment, it is basic salary even if the payment is retroactive. Payments upon reinstatement or in lieu of reinstatement are not considered retroactive basic salary increases. For treatment of those payments see WAC 415-104-3203(3).

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-3202, filed 12/6/96, effective 1/6/97.]

WAC 415-104-3203 Paid leave is LEOFF Plan I basic salary. Payments from an employer for authorized paid absences from work are basic salary.

(1) **Leave payments earned for services rendered:** Most LEOFF members earn a certain number of leave hours per month, such as sick leave. The leave hours are earned by rendering service during the month the leave was accumulated. The payment a member receives when he or she uses an earned leave day is a deferred salary or wage for services previously rendered. It is basic salary.

Example: Assume a member accrues eight hours sick leave per month. The accrued leave in the member's sick leave balance is earned for personal services rendered during a payroll period. When the member is absent from work and uses the sick leave, the sick leave payment is basic salary.

Leave payments earned for services rendered are basic salary only to the extent that they are equivalent to the basic salary a member would have earned had the member been working. The portion of any leave payment that exceeds that amount is not basic salary.

(2) **Leave payments not earned for services rendered:** If an employer authorizes a period of paid leave but does not require the use of leave previously earned for services rendered, the payment is not a salary or wage for services rendered. However, RCW 41.26.197 authorizes service credit for all periods of paid leave. Because the periods are creditable, the pay received is considered basic salary to the extent that it is equal to the basic salary the member would have earned had he or she been working. The portion of a leave payment that exceeds that amount is not basic salary.

Example: An officer is placed on administrative leave with pay pending an investigation. Although the officer is not rendering services, the period is creditable as an authorized paid leave period under RCW 41.26.197.

(3) **Payments upon reinstatement or in lieu of reinstatement are paid leave and therefore qualify as basic salary.** The payment will count as basic salary for the payroll periods when the person would have earned the payment had he or she been working.

(a) In order for a payment in lieu of reinstatement to qualify as paid leave the person's termination date must occur after the payroll period(s) when the payment would have been earned.

(b) Payments under WAC 391-45-410 are basic salary for the period(s) covered by the reinstatement.

(c) Payments upon reinstatement or in lieu of reinstatement are basic salary only to the extent that they equal the basic salary a member would have earned had the member been working.

(4) **Union leave.** Periods of authorized leave to serve as an elected official of a labor organization which meet the requirements of RCW 41.26.197 qualify for service credit. The salary payments provided by the employer subject to reimbursement from the union qualify as basic salary for LEOFF Plan I to the extent that the payments do not exceed the basic salary for the highest paid job class covered by the collective bargaining agreement negotiated between the labor organization and the employer. The portion of any payment identified as paid leave in excess of that amount is not basic salary.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-3203, filed 12/6/96, effective 1/6/97.]

WAC 415-104-3204 Shift differential is LEOFF Plan I basic salary. Additional payments to a member for working swing shift or night shift are attached to the duties of the position, e.g., working a non-standard shift. Those payments are basic salary for LEOFF Plan I.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-3204, filed 12/6/96, effective 1/6/97.]

WAC 415-104-3205 Additional duty pay is LEOFF Plan I basic salary. Salary or wages that a member receives for additional duty assignments are a part of the basic salary attached to the member's position. Those payments are basic salary for LEOFF Plan I.

Example: A police officer is assigned to the bomb squad and receives an additional monthly payment for the hazardous duty assignment. The additional payment is for duties required by the employer as part of the member's position. It is attached to the position and is basic salary for LEOFF Plan I.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-3205, filed 12/6/96, effective 1/6/97.]

WAC 415-104-330 What are special salary or wages? (1) Special salary or wages for services rendered are payments that do not qualify as basic salary because the payment is based upon the attributes of the individual instead of being attached to the position. A payment is not attached to a position if it is not tied to specific duties required of all persons holding the position. Payments that are not attached to a position include but are not limited to the payments described in WAC 415-104-3302 and 415-104-3303.

(2) Longevity pay is not attached to a position because it is based upon the attributes of an individual. It is, however, specifically included as part of basic salary under RCW 41.26.030.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-330, filed 12/6/96, effective 1/6/97.]

WAC 415-104-3301 Educational premium payments are not LEOFF Plan I basic salary. (1) If an employer provides additional salary based upon the member's level of education that payment is based upon the attributes of the individual and is not attached to the position. It is a special salary or wage and is not basic salary.

Example: An employer employs two different law enforcement officers in the position of sergeant. Although their duties are the same, one sergeant receives 3% more in salary than the other because she has a bachelor's degree which the other lacks. The additional 3% is not attached to the position because it is not attached to any additional duties. It is not basic salary for LEOFF Plan I.

(2) Payments conditioned upon acquiring and maintaining a designated certification such as emergency medical technician are a form of educational premium pay. The payment is based upon the attributes of the individual and is not attached to the position. It is a special salary or wage and is not basic salary.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-3301, filed 12/6/96, effective 1/6/97.]

WAC 415-104-3302 Performance bonuses are not LEOFF Plan I basic salary. Payments to a member for meeting or exceeding performance goals set by the employer are not attached to a position and are not basic salary.

Example: An employer offers an annual bonus to members who do not have an accident for a year. The bonus is not part of the basic monthly rate of salary and is not basic salary for LEOFF Plan I.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-3302, filed 12/6/96, effective 1/6/97.]

WAC 415-104-3303 Cafeteria plans are not LEOFF Plan I basic salary. Compensation paid under the provisions of a "cafeteria plan," "flexible benefits plan," or similar arrangement pursuant to section 125 of the United States Internal Revenue Code which give the member an absolute right to receive cash in lieu of the fringe benefits offered is a special salary or wage. Such compensation is not basic salary. If there is no cash option, the value of the fringe benefit is not a salary or wage and is not basic salary. See WAC 415-104-3402.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-3303, filed 12/6/96, effective 1/6/97.]

WAC 415-104-3304 Leave cash outs or other severance pay are not LEOFF Plan I basic salary. (1) A cash out for unused accrued leave is a deferred salary or wage for services previously rendered. A payment in lieu of an accrual of leave qualifies as a leave cash out. The payment is not basic salary in LEOFF Plan I because it is a special salary or wage in addition to the basic monthly rate of salary or wages.

(2) Any other form of severance payment based upon termination is special salary or wages and is not included as basic salary in LEOFF Plan I.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-3304, filed 12/6/96, effective 1/6/97.]

WAC 415-104-3305 Overtime is not LEOFF Plan I basic salary. Overtime, which is additional pay earned for working time in excess of regularly scheduled shift(s), is specifically excluded from basic salary for LEOFF Plan I by RCW 41.26.030 (13)(a). Overtime includes, but is not limited to:

(1) **Additional pay for working on a holiday.** If a member receives an extra payment because he or she worked on a scheduled holiday, the payment is overtime. The employer may make the additional payment when the holiday occurs or in a lump sum at some other time. In either case, the payment is not basic salary for LEOFF Plan I;

Example: A firefighter works on Christmas day. In compensation for working a holiday, she is given the option of taking some other day off with pay or of receiving an extra day's pay in addition to her basic monthly rate of pay. If she opts for the extra day of pay, this payment is overtime and is not LEOFF Plan I basic salary. If she opts to take a day off, this is paid leave and qualifies as LEOFF Plan I basic salary.

(2) **Callback pay,** which is a special rate of pay some employers offer for being called back to work after the end of the member's regular shift;

(3) **Court pay,** which is an additional payment for appearing in court or performing other duties outside of a member's regularly scheduled shift.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-3305, filed 12/6/96, effective 1/6/97.]

WAC 415-104-3306 Deferred wages that are not attached to a position are not LEOFF Plan I basic salary. See WAC 415-104-3201.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-3306, filed 12/6/96, effective 1/6/97.]

WAC 415-104-340 Disability payments are not LEOFF Plan I basic salary. (1) Payments from an employer during periods of disability leave for a duty disability (RCW 41.26.120) or a nonduty disability (RCW 41.26.125) are not a payment from the employer for services rendered. The payment is not basic salary for LEOFF Plan I.

(2) Any payment from a third party such as an insurance company for a period of excused absence from work because of an injury or other disability is not a payment from an employer for services rendered. The payment is not basic salary for LEOFF Plan I.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-340, filed 12/6/96, effective 1/6/97.]

WAC 415-104-3401 Employer taxes and contributions are not LEOFF Plan I basic salary. (1) Any employer payment of the employer or member portion of taxes imposed by the Federal Insurance Contribution Act (FICA) is not a salary or wage to a member and does not qualify as basic salary for LEOFF Plan I.

(2) Employer contributions to LEOFF are not a salary or wage and are not basic salary for LEOFF Plan I.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-3401, filed 12/6/96, effective 1/6/97.]

WAC 415-104-3402 Fringe benefits are not LEOFF Plan 1 basic salary. Fringe benefits provided by an employer are not a salary or wage, and therefore do not qualify as basic salary for LEOFF Plan 1. Fringe benefits include but are not limited to:

(1) Employer retirement contributions;

(2) Any type of insurance such as medical, dental, or life insurance; and any employer contribution to meet the premium or charge for the insurance; or

(3) Any payments by the employer into a private fund to provide health or welfare benefits for members and/or their dependents.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW. WSR 03-06-042, § 415-104-3402, filed 2/27/03, effective 4/1/03. Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-3402, filed 12/6/96, effective 1/6/97.]

WAC 415-104-3403 Illegal payments are not LEOFF Plan I basic salary. If an employer makes a payment without legal authority, that payment does not qualify as basic salary for LEOFF Plan I.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-3403, filed 12/6/96, effective 1/6/97.]

WAC 415-104-3404 Reimbursements or allowances in lieu of a reimbursement are not LEOFF Plan I basic salary. (1) **Reimbursements.** If an employer reimburses a member for expenses incurred in providing services for the employer, the purpose of the payment is to pay the member back for out-of-pocket expenses. The payment is not compensation. It is not a salary or wage and is not basic salary for LEOFF Plan I.

(2) **Allowances.** An allowance paid in lieu of a specific reimbursement for expenses a member is expected to incur in providing services for the employer is characterized the same as a specific reimbursement. The purpose of the payment is to reimburse the member for anticipated out-of-pocket expenses. The payment is not compensation. It is not a salary or wage and does not qualify as basic salary for LEOFF Plan I.

Example: An employer provides an annual stipend for the purchase of a uniform or other clothing required for the performance of a member's duties. The payment is a reimbursement for expenses incurred or expected to be incurred and is not basic salary for LEOFF Plan I.

(3) **Payments based on additional certification or qualifications.** If a member receives payments based upon personal expenses incurred in maintaining a certification or qualification, the payment is reimbursement, not compensation. It is not a salary or wage and is not LEOFF Plan I basic salary.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-3404, filed 12/6/96, effective 1/6/97.]

WAC 415-104-3405 Standby pay is not LEOFF Plan I basic salary. Payments to a member for time not actually worked when the member must be available to work if the need arises, are not a salary or wage for services rendered. Any such payment does not qualify as basic salary for LEOFF Plan I.

Example: Some employers provide payments to a member at less than the member's regular hourly rate in exchange for the member being available to come into work after his or her shift if called, although the member may not be called. Such payments, often referred to as "standby pay," are not basic salary for LEOFF Plan I.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-3405, filed 12/6/96, effective 1/6/97.]

WAC 415-104-3406 Retirement or termination bonuses are not LEOFF Plan I basic salary. (1) **Payments based on notification of intent to retire.** An additional payment based fully or partially on notification of a member's intent to terminate or retire is in consideration for the notification. The payment is not a salary or wage for services rendered and is not basic salary for LEOFF Plan I.

(2) **Payments based on retirement eligibility.** Payments based fully or partially on retirement eligibility are specific to the member and are not attached to the position. These payments are not LEOFF Plan I basic salary.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-3406, filed 12/6/96, effective 1/6/97.]

WAC 415-104-350 Payments in lieu. A payment or any other transfer in lieu of an item that does not qualify as basic salary is not basic salary for LEOFF Plan I.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-350, filed 12/6/96, effective 1/6/97.]

LEOFF PLAN 2

WAC 415-104-360 How is basic salary for LEOFF Plan 2 determined? (1) **What payments are included in LEOFF Plan 2 basic salary?** Other than the specific exclusions listed in WAC 415-104-397 and 415-104-401, a payment that is a salary or wage earned during a calendar month for personal services rendered by a member to an employer qualifies as LEOFF Plan 2 basic salary.

(a) Certain payments that are not for personal services rendered also qualify if there is a specific statutory provision identifying those payments as LEOFF Plan 2 basic salary. See WAC 415-104-373.

(b) Specific types of payments that qualify as LEOFF Plan 2 basic salary include, but are not limited to, the payments described in WAC 415-104-363(1) and 415-104-365 through 415-104-379.

(c) Other payments not specifically listed qualify as basic salary for LEOFF Plan 2 only if those payments are a salary or wage for services rendered.

(2) **Basic salary is earned when the service is rendered, rather than when payment is made.**

Example: At the end of a month, a firefighter is paid regular compensation for June, plus overtime compensation for May. When the payment is reported to the department, the payment must be properly distributed between what was earned in May and what was earned in June.

(3) **Salary characterizations are based upon the nature of the payment.** Whether a payment is basic salary depends upon whether the payment is earned as a salary or wage for services rendered. The name given to the payment is not controlling. The department determines whether a payment is basic salary by considering:

(a) What the payment is for; and

(b) Whether the reason for the payment brings it within the statutory definition of basic salary.

[Statutory Authority: RCW 41.50.050. WSR 20-24-109, § 415-104-360, filed 12/1/20, effective 1/1/21. Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-360, filed 12/6/96, effective 1/6/97.]

WAC 415-104-363 Deferred wages. (1) **If earned for services rendered, deferred wages are basic salary.** If a member earns salary or wages for services rendered during a payroll period but defers receipt of payment, those earnings are basic salary for LEOFF Plan II. Deferred wages include, but are not limited to:

(a) Member contributions to LEOFF;

(b) Salaries or wages deferred pursuant to sections 401(k), 403(b), 414(h), 457, or other similar sections of the United States Internal Revenue Code.

(2) **Deferred wages that a member does not have an absolute right to in exchange for rendering service to an employer are not basic salary.** If an employer offers additional payment that is conditioned on taking some action in addition to providing services, the payment is based upon the additional action and is not earned for services rendered. The payment does not qualify as basic salary for LEOFF Plan II.

Example: An employer offers to make a contribution to a deferred compensation plan on a member's behalf only if the member elects to defer a portion of his or her salary. Because the member does not have an absolute right to receive the contribution based solely on rendering service, the payment is not basic salary for LEOFF Plan II.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-363, filed 12/6/96, effective 1/6/97.]

WAC 415-104-365 Retroactive basic salary increases are LEOFF Plan II basic salary. A retroactive salary increase received for a pay period that a member worked is a salary or wage for services rendered and is basic salary for LEOFF Plan II.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-365, filed 12/6/96, effective 1/6/97.]

WAC 415-104-367 Cafeteria plans. Compensation received in any form under the provisions of a "cafeteria plan," "flexible benefits plan," or similar arrangement pursuant to section 125 of the United States Internal Revenue Code is basic salary for LEOFF Plan II if the member has an absolute right to receive cash or deferred payments in lieu of the fringe benefits offered. In such an instance, the fringe benefits are being provided in lieu of cash and are considered basic salary, just as the cash would be. If there is no cash option, the value of the fringe benefit is not a salary or wage and is not basic salary for LEOFF Plan II. See WAC 415-104-385.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-367, filed 12/6/96, effective 1/6/97.]

WAC 415-104-370 Overtime is included in LEOFF Plan 2 basic salary. Overtime, additional pay earned for working time in excess of regularly scheduled shift(s), is a salary or wage for services rendered. Overtime payments are considered part of basic salary for LEOFF Plan 2. Overtime includes, but is not limited to:

(1) **Additional pay for working on a holiday.** If a member receives an extra payment for working on a scheduled holiday, the payment is overtime. The employer may make the additional payment when the holiday occurs or in a lump sum at some other time. In either case, the payment is considered to be basic salary for LEOFF Plan 2;

Examples: A firefighter works on Christmas day. As compensation for working on a holiday, the firefighter is given the option of taking some other day off with pay or receiving an extra day's pay. If the firefighter opts for the extra day of pay, this payment is overtime and is LEOFF Plan 2 basic salary. If the firefighter opts to take a day off instead, this is paid leave that qualifies as LEOFF Plan 2 basic salary. Some employers create holiday leave banks for these employees, and it is considered a regular workday if an employee works on the holiday. Later, the employee may use hours from the holiday leave bank to take a day off and/or cash out all or some of the hours in the future. These cashed out days are reportable if the accrued leave was associated with state or federal holidays.

(2) **Callback pay**, which is a special rate of pay some employers provide members for being called back to work after the end of the member's regular shift;

(3) **Court pay**, which is an additional payment for appearing in court or performing other duties outside of a member's regularly scheduled shift.

(4) **Compensatory time (comp time)**, is paid time off given to an employee instead of overtime pay in compensation for extra hours of

work. However, if the employee later receives this leave as a paid cash out, that payment is for overtime previously worked and therefore is basic salary. Basic salary is earned when the service is rendered, rather than when the payment is made. If the comp time is used as leave, it is reported as leave when used.

Example: An employee works eight additional hours in March and receives twelve hours of comp time. The employer has a policy that all unused comp time must be paid out at the end of the fiscal year in June. When this cash out is paid to the employee, the compensation and eight hours were earned in March and should be reported as such. If the comp time is used as leave, it is reported as leave whenever it is used.

[Statutory Authority: RCW 41.50.050. WSR 20-24-109, § 415-104-370, filed 12/1/20, effective 1/1/21. Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-370, filed 12/6/96, effective 1/6/97.]

WAC 415-104-373 Paid leave is LEOFF Plan II basic salary. Payments received from an employer for authorized paid absences from work are basic salary for LEOFF Plan II. These payments may or may not be for services rendered. Paid leave is basic salary only to the extent that it is the equivalent of the basic salary a member would have earned had the member been working. The portion of any payment identified as paid leave that exceeds that amount is not basic salary.

(1) **Leave payments earned for services rendered.** Most LEOFF members earn a certain number of leave hours per month, such as sick leave. The leave hours are earned by rendering service during the month the leave was accumulated. The payment a member receives when he or she uses an earned leave day is a deferred salary or wage for services previously rendered. It is basic salary to the extent that it is equal to the basic salary the member would have earned had he or she been working.

Example: Assume a member accrues eight hours sick leave per month. The accrued leave in the member's sick leave balance is earned for personal services rendered during a payroll period. When the member is absent from work and uses the sick leave, the sick leave payment is basic salary.

(2) **Leave payments not earned for services rendered.** If an employer authorizes a period of paid leave but does not require the use of leave previously earned for services rendered, the payment is not a salary or wage for services rendered. However, RCW 41.26.520 authorizes service credit for all periods of paid leave. Because the periods are creditable, the pay received is considered basic salary to the extent that it is equal to the basic salary the member would have earned had he or she been working.

(3) **Payments upon reinstatement or in lieu of reinstatement are paid leave and therefore qualify as basic salary.** The payment will count as basic salary for the payroll periods when the person would have earned the payment had he or she been working. In order for a payment in lieu of reinstatement to qualify as paid leave, the person's termination date must occur after the payroll period when the payment would have been earned. Because the periods are creditable, the pay received is considered basic salary to the extent that it is

equal to the basic salary the member would have earned had he or she been working.

(4) **Union leave.** Periods of authorized leave to serve as an elected official of a labor organization which meet the requirements of RCW 41.26.520 qualify for service credit. The salary payments provided by the employer subject to reimbursement from the union qualify as basic salary for LEOFF Plan II to the extent that they do not exceed the highest paid job class covered by the collective bargaining agreement negotiated between the labor organization and the employer. The portion of any payment identified as paid leave in excess of that amount is not basic salary.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-373, filed 12/6/96, effective 1/6/97.]

WAC 415-104-374 LEOFF Plan 2 part-time leave of absence. (1) **What are the LEOFF Plan 2 part-time leave rules for law enforcement officers?**

(a) You must be a current LEOFF Plan 2 ***law enforcement*** member;

(b) Your employer must authorize you to work part time and go on an unpaid part-time leave of absence;

(c) While in part-time work/part-time leave status, you cannot do any other work for pay for your employer; and

(d) When you return to full-time employment, the employment must be with the same employer who granted you the part-time leave.

(2) **May I purchase service credit for periods of part-time leave?** See WAC 415-02-175 for information about purchasing service credit for an unpaid authorized leave of absence.

[Statutory Authority: RCW 41.50.050(5). WSR 04-20-005, § 415-104-374, filed 9/23/04, effective 10/24/04. Statutory Authority: RCW 41.50.050(5) and 41.26.520. WSR 02-18-047, § 415-104-374, filed 8/28/02, effective 9/1/02.]

WAC 415-104-375 Salary or wages not attached to a position are LEOFF Plan II basic salary. A salary or wage for services rendered to an employer is basic salary for LEOFF Plan II regardless of whether the services are attached to a position.

Example: If an employee receives additional salary based upon his or her education, that additional salary is basic salary for LEOFF Plan II even if his or her position does not require that level of education. The payment of a higher salary based upon educational attainment is part of the total compensation for the services provided by the employee.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-375, filed 12/6/96, effective 1/6/97.]

WAC 415-104-377 Performance bonuses are LEOFF Plan II basic salary. Payments you earn for meeting or exceeding performance goals set by your employer are a salary or wage for services rendered and qualify as basic salary for LEOFF Plan II. In order to qualify as basic salary, a performance bonus must be documented in an employer policy

or specific agreement between the employer and member prior to earning the bonus.

Example: An employer offers an annual bonus to a member if he or she meets a certain performance goal, i.e., stays accident free for a year. If the member meets the goal and is paid the bonus, the bonus would be considered basic salary.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-377, filed 12/6/96, effective 1/6/97.]

WAC 415-104-379 Shift differential is LEOFF Plan II basic salary. Additional payments to a member for working swing shift or night shift are a salary or wage for services rendered. Those payments are basic salary for LEOFF Plan II.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-379, filed 12/6/96, effective 1/6/97.]

WAC 415-104-380 Disability payments. (1) **Disability leave supplement.** Under certain circumstances, LEOFF II members are entitled to a disability leave supplement for periods of disability leave. See RCW 41.04.500 through 41.04.550.

(a) Employer contributions to the disability leave supplement under RCW 41.04.510(3) are not a salary or wage for services rendered and do not qualify as basic salary. Although the payments are paid leave, they are specifically excluded from basic salary by RCW 41.04.525.

(b) The member paid portion of the disability leave supplement is funded through use of the member's accumulated sick or vacation leave. This portion of the disability leave supplement is, therefore, basic salary, see WAC 415-104-373. The member will receive only partial service credit for the accumulated leave portion of the disability leave supplement.

(c) A member may apply to receive full service credit for some periods of duty disability under RCW 41.26.470(3).

(2) **Workers' compensation.** Payments made to a member under Title 51 RCW are neither a salary or wage for services rendered nor paid leave. The payments are not basic salary for LEOFF II. This is true whether the payments come from the workers' compensation trust fund or from an employers' self-insurance program authorized under Title 51 RCW.

(3) **Private insurance.** Some employers provide additional disability insurance as a supplement to workers' compensation. Any payment from a third party insurance company is neither paid leave nor payment for services rendered. It does not qualify as basic salary for LEOFF Plan II.

(4) **Disability leave banks.** If an employer maintains a disability leave bank which may be used to make salary replacement payments for members during periods of disability, such payments are paid leave and qualify as basic salary subject to the provisions of WAC 415-104-373.

[Statutory Authority: RCW 41.50.050(5). WSR 16-10-122, § 415-104-380, filed 5/4/16, effective 6/4/16. Statutory Authority: RCW 41.50.050 and

41.50.055. WSR 97-01-016, § 415-104-380, filed 12/6/96, effective 1/6/97.]

WAC 415-104-383 Employer taxes and contributions are not LEOFF Plan II basic salary. (1) Any payment by a member's employer of the employer portion of taxes imposed by the Federal Insurance Contribution Act is not a salary or wage and does not qualify as basic salary for LEOFF Plan II.

(2) Employer contributions to LEOFF Plan II are not a salary or wage paid to the member and do not qualify as basic salary.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-383, filed 12/6/96, effective 1/6/97.]

WAC 415-104-385 Fringe benefits are not LEOFF Plan 2 basic salary. Fringe benefits provided by an employer are not a salary or wage and therefore do not qualify as basic salary for LEOFF Plan 2. Fringe benefits include, but are not limited to:

(1) Employer retirement contributions;

(2) Any type of insurance such as medical, dental or life insurance; and any employer contribution to meet the premium or charge for the insurance; or

(3) Any employer payments into a private fund to provide health or welfare benefits for the member (or the member and the member's dependents), with the exception of compensation paid pursuant to a bona fide cafeteria plan, flexible benefit plan or similar arrangement as described in WAC 415-104-367.

[Statutory Authority: RCW 41.50.050(5) and chapter 41.26 RCW. WSR 03-06-042, § 415-104-385, filed 2/27/03, effective 4/1/03. Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-385, filed 12/6/96, effective 1/6/97.]

WAC 415-104-387 Illegal payments are not LEOFF Plan II basic salary. If an employer disburses a payment that the employer does not have legal authority to make, that payment does not qualify as basic salary for LEOFF Plan II.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-387, filed 12/6/96, effective 1/6/97.]

WAC 415-104-390 Reimbursements or allowances in lieu of a reimbursement are not LEOFF Plan II basic salary. (1) **Reimbursement.** If an employer reimburses a member for expenses incurred in providing services for the employer, the purpose of the payment is to pay the member back for out-of-pocket expenses. The payment is not compensation. It is not a salary or wage and is not basic salary for LEOFF Plan II.

(2) **Allowance.** An allowance paid in lieu of a specific reimbursement for expenses a member is expected to incur in providing services for the employer is characterized the same as a specific reimbursement. The purpose of the payment is to reimburse the member for out-

of-pocket expenses. The payment is not compensation. It is not a salary or wage and does not qualify as basic salary for LEOFF Plan II.

Example: An employer provides an annual stipend for the purchase of a uniform or other clothing required for the performance of a members' duties. The payment is a reimbursement for expenses incurred or expected to be incurred and is not basic salary for LEOFF Plan II.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-390, filed 12/6/96, effective 1/6/97.]

WAC 415-104-393 Standby pay is not LEOFF Plan II basic salary. Payments to a member for time not actually worked when the member must be available to work if the need arises, are not a salary or wage for services rendered. Any such payment does not qualify as basic salary for LEOFF Plan II.

Example: Some employers provide payments to a member at less than the member's regular hourly rate in exchange for the member being available to come into work after his or her shift if called, although the member may not be called. Such payments, often referred to as "standby pay," are not basic salary for LEOFF Plan II.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-393, filed 12/6/96, effective 1/6/97.]

WAC 415-104-395 Termination or retirement bonuses are not LEOFF Plan II basic salary. An additional payment based on notification of a member's intent to terminate or retire is in consideration for the notification of intent to retire or terminate. The payment is not a salary or wage for services rendered and is not basic salary for LEOFF Plan II.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-395, filed 12/6/96, effective 1/6/97.]

WAC 415-104-397 Statutorily excluded payments are not LEOFF Plan II basic salary. Payments authorized by a statute that excludes the payment from the calculation of a public retirement allowance do not qualify as basic salary.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-397, filed 12/6/96, effective 1/6/97.]

WAC 415-104-401 Cash outs of accrued leave or other forms of severance pay are not LEOFF Plan 2 basic salary. (1) A cash out from an employer for unused accrued leave is a deferred salary or wage for services previously rendered. However, the payment is not basic salary because it is specifically excluded from the definition of basic salary for LEOFF Plan 2 in RCW 41.26.030.

Example 1: "Kelly" days reduce the number of hours an employee works and are commonly used to minimize the need to pay overtime. A firefighter may accrue eleven "Kelly" days based on the shift schedule of the employee. If used as leave and paid at the normal rate of pay, these are basic salary. However, a cash out of this leave is excluded from the definition of basic salary.

Example 2: A police officer may receive a personal or "floating" holiday each year. If used as leave and paid at the normal rate of pay, this holiday pay is basic salary. However, a cash out of this leave is excluded from the definition of basic salary.

Example 3: An administrator may receive a monthly accrual of "executive leave" in lieu of additional salary, in recognition of additional hours of public service such as community meetings, council meetings, and major events. However, a cash out of this leave is excluded from the definition of basic salary.

(2) **Other forms of severance pay are not basic salary.** Any form of severance payment received from an employer upon termination is not included as basic salary in LEOFF Plan 2 because it is excluded from the statutory definition of basic salary.

[Statutory Authority: RCW 41.50.050. WSR 20-24-109, § 415-104-401, filed 12/1/20, effective 1/1/21. Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-401, filed 12/6/96, effective 1/6/97.]

WAC 415-104-405 Payments in lieu. A payment or any other transfer in lieu of an item that does not qualify as basic salary, is not basic salary. The only exception is compensation paid pursuant to bona fide cafeteria plan, flexible benefit plan or similar arrangement as described in WAC 415-104-3302.

[Statutory Authority: RCW 41.50.050 and 41.50.055. WSR 97-01-016, § 415-104-405, filed 12/6/96, effective 1/6/97.]

WAC 415-104-450 How do I designate a beneficiary, and who will receive a distribution if I die before retirement? This section applies to Plan 2 members.

(1) You may designate or change a beneficiary by submitting a *beneficiary designation form* to the department. Your designation will become effective upon the department's receipt of the form, only if it is completed properly and signed by you and a witness.

(2) You may name one or more of the following as a beneficiary or beneficiaries:

(a) An organization or person, including unborn or later adopted children. However, unborn or later adopted children must be specifically designated as beneficiaries on the form. You must indicate the date of birth for any living person you name as a beneficiary.

(b) Your estate.

(c) An existing trust, or a trust to be established at a later date or under your last will. If you designate a trust that is not in existence at the time of your death, or is not created under your last

will, the designation will be invalid. Before making distribution to any trust the department must receive:

(i) A copy of the entire trust document;

(ii) The name, address, telephone number of the current trustee; and

(iii) The tax identification number.

(3) You may name contingent beneficiaries in addition to primary beneficiaries.

(4) You may change your beneficiary designation at any time.

(5) A change in marital status may invalidate your prior designation.

(6) Your named beneficiary may not necessarily receive a distribution if you die prior to retirement. (See example three.) Distribution is governed by RCW 41.26.510.

(7) If your surviving spouse is eligible to receive a benefit under RCW 41.26.510(2), but your spouse dies before requesting a distribution, your minor children and your spouse's minor children may elect to receive either:

(a) Your accumulated contributions; or

(b) A monthly benefit, share and share alike, until each child reaches the age of majority. See example four.

Examples:

EXAMPLE ONE.

Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists the "Barbara Trust." His daughter Barbara is the trust beneficiary. He checks the box to indicate that the trust is a primary beneficiary.

Result

At John's death, Ann and the Barbara Trust are the primary beneficiaries. The department will require the name of the trustee, the tax identification number, a copy of the entire trust and other information specified in this rule before distribution to the trust. Distribution is governed by RCW 41.26.510.

EXAMPLE TWO.

Facts

John, a member, completes a beneficiary designation form.

In the place on the form reserved for persons, he names his daughter Ann. He checks the box to indicate that Ann is a primary beneficiary.

In the place on the form reserved for trust/organizational beneficiaries, he lists his daughter Barbara personally; i.e., no trust name is provided. John checks the corresponding box to indicate a primary beneficiary designation. At John's death, the department learns that John has created no trusts.

Result

Because John has created no trust, the designation of the Barbara Trust is void. Barbara, personally, will not be a beneficiary.

EXAMPLE THREE.

Facts

When she became a LEOFF Plan 2 member, Joan named her mother as her beneficiary. Joan later married, but did not file a new beneficiary form before she died with eleven years of service.

Result

Unless required to do otherwise by court order, the department will comply with RCW 41.26.510(2) and pay Joan's surviving spouse either a retirement allowance or lump sum. In this case, Joan's mother will not receive a distribution.

EXAMPLE FOUR.

Facts

John is a LEOFF 2 member with eleven years of service. He and his wife Mary have a total of three minor children. They have one child together, and each has one child from a previous marriage.

John and Mary were in a skydiving accident. John died instantly making Mary eligible for a benefit under RCW 41.26.510(2). However, Mary died the following week before requesting a distribution from the department.

Result

Since Mary died before requesting a distribution of John's account, John and Mary's three minor children are eligible and opt to receive a monthly benefit, share and share alike until each child reaches the age of majority.

[Statutory Authority: RCW 41.50.050(5). WSR 05-12-041, § 415-104-450, filed 5/25/05, effective 6/25/05. Statutory Authority: RCW 41.50.050. WSR 00-10-017, § 415-104-450, filed 4/21/00, effective 5/22/00.]

WAC 415-104-455 Are my spouse and dependent children eligible to have their health care insurance premiums paid for? If you are a Plan 2 member and you die in the line of duty, your surviving spouse and/or dependent children may be eligible for PEBB health care insurance and to have their monthly premiums paid for.

(1) **Who can have their health care insurance premiums paid for?** To have PEBB health care insurance premiums paid for, your beneficiary must:

(a) Be a surviving spouse or surviving dependent child, as defined in RCW 41.26.030, of a Plan 2 member who dies in the line of duty, as determined by L&I;

(b) Receive a death benefit; and

(c) Be approved for PEBB health care insurance.

(2) **Who makes this determination?** L&I, DRS, and HCA each play a role in determining your spouse or children's eligibility to have their PEBB health care insurance premiums paid for. L&I will determine whether you died in the line of duty and will notify DRS of their determination. DRS will identify your eligible spouse and dependent children and will notify the PEBB program within HCA. The PEBB program

will then determine eligibility for enrollment in PEBB health care insurance.

(3) **What do my spouse or dependent children need to do to receive these payments?** Once DRS is notified of your death in the line of duty, we will send your spouse or dependent children information about enrolling in PEBB health care insurance. If your spouse or dependent children want PEBB health care insurance, they must complete an enrollment application and send it to the PEBB program. DRS or the PEBB program may contact them for more information.

(4) **How will the monthly premiums be paid for?** Upon enrollment in PEBB health care insurance, DRS will make direct payment of your spouse or dependent children's monthly premiums to HCA. They do not need to send any money to DRS or HCA.

(5) **How long can my spouse or dependent children remain enrolled in PEBB health care insurance?** Your spouse or dependent children can remain enrolled in PEBB health care insurance so long as they are eligible under HCA rules (see chapters 182-08 and 182-12 WAC). As long as they are eligible for PEBB health care insurance, their monthly premiums will be paid for by DRS.

(6) **Definitions:**

(a) DRS - Department of retirement systems.

(b) HCA - Health care authority.

(c) L&I - Department of labor and industries.

(d) PEBB - Public employees benefits board.

[Statutory Authority: RCW 41.50.050(5) and 41.26.510. WSR 08-15-112, § 415-104-455, filed 7/18/08, effective 8/18/08.]

WAC 415-104-475 How does a firefighter who provides emergency medical services transfer PERS service credit to LEOFF Plan 2? (1) **Who may use this section?** You may use this section if you are:

(a) A member of PERS Plan 1 or Plan 2 eligible for membership in LEOFF Plan 2 as an EMT under RCW 41.26.030;

(b) Currently a LEOFF Plan 2 member who chose LEOFF membership after separating from service as an EMT in a PERS Plan 1 or Plan 2 eligible position; or

(c) Currently a LEOFF Plan 2 member and were formerly employed providing emergency medical services in a PERS Plan 1 or Plan 2 eligible position which was relocated by your employer to a fire department.

(2) **How do I know if my job providing emergency medical services was "*relocated*" to a fire department?** To be considered "relocated":

(a) The duties of the position must have required providing emergency medical services and the position must have been covered under PERS Plan 1 or Plan 2;

(b) The employer must have been a city, town, county, or district that transferred the position to a fire department; and

(c) The fire department must have determined the transferred position was eligible for LEOFF Plan 2.

(3) **Who determines whether or not my job providing emergency medical services was "*relocated*" to a fire department?** DRS will determine whether or not your job was relocated based on the criteria described in subsection (2) of this section. To do so, DRS will contact your former employer where you provided emergency medical services in a PERS eligible position and verify:

(a) That your position was relocated to a fire department; and

(b) The number of months you worked in that position.

(4) **I formerly worked as an EMT for a PERS employer that relocated the job to a fire department. I was not working in the job at the time it was relocated. I am now in a LEOFF Plan 2 eligible position. Can I transfer my PERS Plan 1 or Plan 2 EMT service to LEOFF Plan 2?** Yes, whether or not you were working in the job at the time it was relocated, you can transfer your PERS Plan 1 or Plan 2 EMT service as long as you are employed as a firefighter in a LEOFF Plan 2 eligible position at the time you request the transfer.

(5) **What do I need to do if I have PERS Plan 1 or Plan 2 EMT service that can be transferred to LEOFF Plan 2?** If you have PERS Plan 1 or Plan 2 EMT service that you want to transfer to LEOFF Plan 2, then you must do the following:

(a) Contact the LEOFF unit at DRS. Once DRS verifies you meet the criteria to transfer as described in subsection (1) of this section, DRS will provide you an *EMT Transfer Packet* that includes an "EMT transfer cost estimate" and an "EMT Request for Transfer" form. You may also request a benefit comparison. You must complete, sign, and return the form to the LEOFF unit to choose to transfer the service credit.

(b) You must pay the difference in the member contribution rates between the PERS rate and the LEOFF rate, plus interest, for each month of EMT service that you transfer. This bill must be paid in full within five years of your election to transfer your EMT service.

(6) **Do I have to pay the bill in a lump sum?** No, you do not have to pay the bill in a lump sum, you may make installment payments. Interest on the unpaid balance will accrue monthly, at a rate of eight percent annually.

(7) **Is there a deadline for requesting to transfer?** Yes, you must submit a completed "EMT Request to Transfer" form to the department no later than June 30, 2013.

(8) **When will the EMT service be transferred into my LEOFF Plan 2 account?** The EMT service will be transferred after:

(a) The bill is paid in full and five years have passed after DRS receives your request to transfer; or

(b) You meet one of the conditions described in subsection (15) of this section.

(9) **What if I choose not to transfer my PERS EMT service into LEOFF Plan 2?** If you do not choose to transfer your PERS Plan 1 or Plan 2 EMT service, it will remain in PERS. You may either withdraw it or begin receiving a PERS retirement benefit when you are eligible. If you do not withdraw or retire from PERS, you will be a dual member of PERS and LEOFF Plan 2 under the provisions of chapter 41.54 RCW.

(10) **Can I retire before the transfer of my PERS EMT service is completed?** Yes, you may retire from LEOFF Plan 2 once you are eligible, but your retirement benefit will be calculated using only your LEOFF Plan 2 service.

Once the conditions described in subsection (8) of this section have been met, the PERS Plan 1 or Plan 2 EMT service will be transferred into your LEOFF Plan 2 account and your retirement benefit will be recalculated and increased to include the transferred service. The increase will be prospective only from the day following the five-year waiting period.

For example, if you requested the transfer on September 15, 2006, made the required payment, and you retired on August 1, 2007, your retirement benefit would be increased on September 16, 2011.

(11) **What if I request to transfer my PERS Plan 1 or Plan 2 EMT service but change my mind before the transfer is completed?** If you decide not to transfer your PERS Plan 1 or Plan 2 EMT service into LEOFF Plan 2, you must notify the LEOFF unit at DRS within five years from the date you requested the transfer. LEOFF staff will cancel your request and refund any money you have paid on the transfer bill.

(12) **Can I transfer non-EMT PERS service into LEOFF Plan 2?** No, you may not transfer non-EMT PERS service into LEOFF Plan 2. Only the PERS Plan 1 or Plan 2 service credit you earned working as an EMT can be transferred into LEOFF Plan 2.

(13) **Can I transfer my PERS Plan 1 or Plan 2 EMT service into LEOFF Plan 2 and withdraw my non-EMT PERS service?** Yes, you may transfer your PERS Plan 1 or Plan 2 EMT service into LEOFF Plan 2 and withdraw your non-EMT PERS service. You can withdraw your non-EMT PERS service as soon as the PERS EMT service is fully transferred to LEOFF Plan 2. To be fully transferred, the conditions described in subsection (8) of this section must be met.

(14) **Can I transfer my PERS EMT service into LEOFF Plan 1?** No, you may not transfer your PERS EMT service into LEOFF Plan 1. If you reentered LEOFF Plan 1 membership after your position was relocated to a fire department, you may choose to remain in PERS or return to LEOFF Plan 1 membership, but you may not transfer the PERS EMT service into LEOFF Plan 1.

(15) **What happens if I die or retire for disability before the PERS EMT service is transferred into my LEOFF Plan 2 account?** If you elect to transfer your PERS Plan 1 or Plan 2 EMT service to LEOFF Plan 2 but die or retire for disability before the transfer is complete, then one of the following will occur:

(a) If your EMT bill **is** paid in full but the five-year waiting period has not expired, and you are approved for disability or you die, then DRS will transfer your applicable service credit, accumulated contributions, and interest to your LEOFF Plan 2 account immediately. The transferred service credit, accumulated contributions, and interest will be used to calculate your benefit or, in the case of your death, the benefit your spouse or minor children will receive.

(b) If your EMT bill **is not** paid in full and you **retire for disability**, DRS will transfer your applicable service credit, accumulated contributions, and interest into your LEOFF Plan 2 account and use them to calculate your benefit. You will then have the following options:

(i) Pay the bill in full;

(ii) Choose to have your monthly benefit actuarially reduced to reflect the unpaid amount of the bill; or

(iii) Continue to make payments against the remaining amount of the bill. You must pay the bill in full no later than five years from your original election date.

(c) If the EMT bill **is not** paid in full and you **die**, DRS will transfer your applicable service credit, accumulated contributions, and interest into your LEOFF Plan 2 account and use them to calculate the benefit for your spouse or minor children. Your spouse or minor children will have the following options:

(i) Pay the bill in full;

(ii) Choose to have their monthly benefit actuarially reduced to reflect the unpaid amount of the bill; or

(iii) Continue to make payments against the remaining amount of the bill. Your spouse or minor children must pay the bill in full no later than five years from **your** original election date.

Note: If the EMT bill is not paid in full within the five-year period, the monthly benefit will be actuarially reduced to reflect the unpaid amount of the bill.

(16) **Terms used:**

(a) DRS - Department of retirement systems.

(b) EMT - Emergency medical technician or paramedic who provides emergency medical services.

(c) LEOFF - Law enforcement officers' and firefighters' retirement system.

(d) PERS - Public employees' retirement system.

[Statutory Authority: RCW 41.50.050(5) and 41.26.547. WSR 09-05-011, § 415-104-475, filed 2/6/09, effective 3/9/09; WSR 04-04-039, § 415-104-475, filed 1/29/04, effective 3/1/04.]

WAC 415-104-478 Am I eligible for a LEOFF Plan 2 disability benefit? This section applies to you if you are a LEOFF Plan 2 member who becomes disabled.

Definitions. As used in this section:

Disabled - Totally incapacitated to perform the essential functions of his or her LEOFF Plan 2 eligible position.

(1) **Who is entitled to disability benefits?** Any member of LEOFF Plan 2 is entitled to disability benefits if the department determines the member has:

(a) Become disabled; and

(b) Separated from all LEOFF-eligible employment due to the disability.

(2) **Is there a time limit for filing an application for disability benefits?** There is no time limit for applying for benefits. However, your eligibility for a benefit will be based on your condition at the time of separation.

(3) **What happens if I become disabled after I retire?** Your medical condition at the time of separation will determine whether you qualify for a disability retirement.

(4) **What evidence will the department use to determine whether I am entitled to benefits under this section?**

(a) To determine if you are entitled to disability benefits, the department will consider any relevant information submitted by you or your employer, or otherwise available to the department, including:

(i) Information and determinations by the department of labor and industries (L&I), a self-insurer or the Social Security Administration;

(ii) Medical, vocational, and other information about your disability;

(iii) Your job description;

(iv) Your membership records, maintained by the department;

(v) Independent medical reviews made by DRS contracted vendors; and

(vi) Any other relevant evidence.

(b) The department reserves the right to consult with a contracted vendor for the purpose of providing an independent medical review of any LEOFF member who applies for disability benefits.

(5) **What would disqualify me for disability benefits?** You are not eligible for disability benefits if any of the following apply:

(a) Your application does not provide adequate proof that you are disabled;

(b) Your disability is the result of your criminal conduct committed after April 21, 1997 (RCW 41.26.061). Criminal conduct means:

(i) If a member is a defendant in a civil proceeding or has been formally charged in court with a crime, and the member is applying for or receiving a disability retirement benefit for a disability that is the result of the alleged criminal conduct, the department shall withhold payment of any disability benefits until:

(A) The case or charges, or both if both are pending, are dismissed; or

(B) The member is found not guilty in the criminal case or prevails in the civil proceeding, or both if both are pending; or

(C) The member is convicted or found to have engaged in criminal conduct in the civil proceeding.

(ii) If the case or charges, or both if both are pending, are dismissed or if a member is found not guilty or prevails in the civil proceeding, or both if both are pending, the department shall pay the member a disability benefit if he or she otherwise qualifies.

(iii) If the member is convicted or found to be liable for criminal conduct in a civil proceeding, and the member's disability is the result of the criminal conduct, the department shall not pay the member a disability benefit.

(iv) In the absence of a criminal conviction, a superior court may determine by a preponderance of the evidence whether the person participated in criminal conduct.

(6) **Who decides if I meet the requirements for benefits under this section?** The director of the department of retirement systems (DRS) or their designee will decide if you meet the requirements for benefits under this section.

(7) **What if I disagree with a decision made by the director or their designee?** If you disagree with the decision of the director of DRS or their designee, you may petition for review under chapter 415-04 WAC.

[Statutory Authority: RCW 41.50.050. WSR 18-13-078, § 415-104-478, filed 6/15/18, effective 7/16/18.]

WAC 415-104-479 Does my LEOFF Plan 2 disability qualify as a line of duty disability? This section applies to you if you are a LEOFF Plan 2 member who becomes disabled in the line of duty per RCW 41.26.470.

(1) **How is "line of duty" defined?** Line of duty means any action or activity occurring in conjunction with your employment or your status as a law enforcement officer or firefighter and required or authorized by law, rule, regulations, or condition of employment or service. "Line of duty" has the same meaning as "course of employment" in worker's compensation law, under RCW 51.08.013. If you have multiple conditions, some duty-related and some not, you may still qualify for a duty-related disability if:

(a) The duty-related condition or conditions, standing alone, would render you disabled; or

(b) The duty-related incident or incidents were the proximate cause of the disabling condition.

(2) **What if I have a preexisting condition?** The presence of a preexisting condition does not by itself disqualify a member from receiving benefits for duty-related disability.

Example: A LEOFF Plan 2 member has asymptomatic congenital osteoarthritis, a degenerative joint disease. While on duty, the member suffered a knee injury. Absent the osteoarthritis, the knee injury may not have been disabling. However, the preexisting degenerative joint disease prevented full recovery from the injury, leaving the member unable to resume LEOFF duties. In this case, the member could qualify for a LEOFF plan 2 duty disability benefit.

(3) **When are the duty disability provisions effective?** The duty disability provisions under RCW 41.26.470 (6) and (7) are effective June 10, 2004.

[Statutory Authority: RCW 41.50.050. WSR 18-13-078, § 415-104-479, filed 6/15/18, effective 7/16/18.]

WAC 415-104-480 Does my disability qualify me for a LEOFF Plan 2 catastrophic duty disability benefit? (1) If the department determines you are disabled and you became disabled in the line of duty, you qualify for a catastrophic duty disability if:

(a) The disability or disabilities that qualified you for a LEOFF Plan 2 duty disability benefit are so severe that considering your age, education, work experience, and transferable skills, you cannot engage in any other kind of substantial gainful activity in the labor market; and

(b) Your disability or disabilities have lasted or are expected to last at least 12 months, or are expected to result in your death.

(2) A person with multiple injuries/conditions, some duty-related and some not, could qualify for a catastrophic duty disability but only if the duty injury or injuries, standing on their own, are catastrophically disabling.

Examples:

• Totally disabled, but not from duty injury – Not eligible for catastrophic disability benefit.

A LEOFF Plan 2 member suffers a knee injury on duty, leaving the member disabled from LEOFF employment. The knee injury, by itself, is not totally disabling. The member also suffers from amyotrophic lateral sclerosis (ALS) or Lou Gehrig's disease, a progressive neurodegenerative disease that ultimately leaves the member totally disabled. Pursuant to the ALS diagnosis the member is granted a full disability from the Social Security Administration. In this case the member would qualify for a duty disability, but not for a catastrophic disability because the fully disabling condition, ALS, is not duty related.

• Totally disabled, duty injury totally disabling – Eligible for catastrophic disability benefits.

A LEOFF Plan 2 member suffers a knee injury while fishing. The knee injury, by itself, is neither duty related nor catastrophically disabling. The member also suffers severe burns while fighting a fire, leaving the member fully disabled. The Social Security Administration grants the member a full disability based on the member's total condition. The member qualifies for a LEOFF plan 2 catastrophic disability benefit because the burn injuries, by themselves, render the member totally disabled.

(3) Medical insurance premium reimbursement is an additional benefit for a member who is catastrophically disabled in the line of duty (RCW 41.26.470). However, if you choose to withdraw 150 percent of your accumulated contributions pursuant to RCW 41.26.470(6) you are not entitled to the medical insurance premium reimbursement.

(4) If you receive catastrophic duty disability benefits, the department will periodically review your income and medical status for

continued eligibility. This review is not a reassessment of your initial determination, but an assessment of whether there has been any change in your condition. If it is determined that there has been a change in your condition and you are no longer eligible under subsection (1) of this section, or if you fail to provide required documentation or cooperate with the review, your catastrophic duty disability benefit may be discontinued or converted to a different retirement status. DRS will notify you of your review at least 30 days before the beginning of your review.

(a) Income review: At least annually, you must submit documentation to verify that your income from earnings is below the defined income threshold as defined in subsection (5)(c) of this section. You must also notify the department within 30 calendar days of any changes in your income that could impact your eligibility including, but not limited to, wages and earnings from self-employment. (See subsection (5)(c), (d) and (f) of this section.) If DRS is not notified on time, you may be responsible for any resulting overpayment.

Documentation you may need to provide includes a federal or state income tax return from the most recent year, a copy of savings, checking or other bank accounts for the most recent two months, or other documentation as requested by the department.

(b) Medical review: The department will conduct a continuing disability review (CDR) at least once every three years if at the time of your last determination your condition is expected to improve, or every six years if your condition is not expected to improve, until you reach age 65. The department may increase the frequency of your CDRs and reserves the right to require a CDR at any time if notified of a change in your condition, but not more than once every 12 months. The department may also waive the CDR if your disability is determined to be permanent or terminal.

(i) DRS will first review any updated medical information available from any labor and industries claims related to your line of duty injury to determine if additional medical information is needed from you and your primary care provider.

(ii) If needed, the department will provide you with a Disability Review form, which asks for information about whether your medical condition has improved since your last eligibility determination. You will have at least 30 days to complete and return this form to the department or notify the department that you need additional time. Once received, the department will have 90 days to review this information and either notify you of your continued eligibility or the need for additional information. Before making a change to your disability retirement status, the department will consult with a contracted vendor for the purpose of providing an independent medical review.

(5) Definitions. As used in this section:

(a) **Catastrophically disabled** means the same as "totally disabled" as defined under RCW 41.26.470(9).

(b) **Continuing disability review (CDR)** means an assessment of your current medical condition to determine if it continues to be catastrophically disabling. The department's medical professional will review recent documentation, with supplemental assessment by external medical experts at the department's discretion.

(c) **Defined income threshold** means any substantial gainful activity that produces average earnings, as defined in (d) of this subsection, in excess of the federal Social Security disability standards, adjusted annually for inflation. Wages count toward earnings when they

are earned, not when you receive them. Self-employment income counts when you receive it, not when you earn it.

(d) **Earnings** are any income or wages received, which are reportable as wages or self-employment income to the IRS.

(e) **Labor market** is the geographic area within reasonable commuting distance of where you were last gainfully employed or where you currently live, whichever provides the greatest opportunity for gainful employment.

(f) **Substantial gainful activity** describes a level of work activity and earnings. Substantial gainful activity is work activity that is both substantial and gainful, and it may be, but is not required to be, from work or self-employment. Earnings as defined in this section includes compensated work activity that meets or exceeds the defined income threshold:

(i) Work activity is substantial if it involves doing significant physical or mental activities. Your work activity may be substantial even if it is done on a part-time basis or if you do less, or get paid less, or have less responsibility than when you worked in your LEOFF position.

(ii) Work activity is gainful if it is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

(iii) Generally, activities like taking care of yourself, household tasks, profits from rental income, hobbies, therapy, school attendance, club activities, or social programs are not substantial gainful activity.

(g) **Transferable skills** are any combination of learned or demonstrated behavior, education, training, work traits, and skills that you can readily apply. They are skills that are interchangeable among different jobs and workplaces.

[Statutory Authority: RCW 41.50.050. WSR 22-08-008, § 415-104-480, filed 3/23/22, effective 4/23/22; WSR 21-01-209, § 415-104-480, filed 12/23/20, effective 1/23/21; WSR 18-13-078, § 415-104-480, filed 6/15/18, effective 7/16/18. Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-104-480, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5) and 41.26.470 (6) and (7). WSR 06-18-007, § 415-104-480, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5) and 41.26.470. WSR 04-22-074, § 415-104-480, filed 11/1/04, effective 12/2/04.]

WAC 415-104-481 Does my disability qualify as a nonduty LEOFF Plan 2 disability? This section applies to you if you are a LEOFF Plan 2 member who becomes disabled not in the line of duty.

(1) **Who is entitled to nonduty disability benefits?** Any member of LEOFF Plan 2 who the department determines has become totally incapacitated to perform the essential functions of his or her LEOFF Plan 2 eligible position as a result of their disability, but did not have the qualifying disability occur in the line of duty, is entitled to a nonduty disability per RCW 41.26.470(1).

(2) **What if I have a preexisting condition or conditions?** The presence of a preexisting condition does not disqualify a member from receiving benefits.

Example: A LEOFF Plan 2 member has asymptomatic congenital osteoarthritis, a degenerative joint disease. While off duty, the member suffered a knee injury. Absent the osteoarthritis, the knee injury may not have been disabling. However, the preexisting degenerative joint disease prevented full recovery from the injury, leaving the member unable to resume LEOFF duties. In this case, the member could qualify for a LEOFF Plan 2 nonduty disability benefit.

[Statutory Authority: RCW 41.50.050. WSR 18-13-078, § 415-104-481, filed 6/15/18, effective 7/16/18.]

WAC 415-104-482 How are the different LEOFF Plan 2 disability benefits calculated? (1) **Line of duty:** As a line of duty disability retiree, you may choose between:

(a) A nontaxable, one-time lump sum payment equal to one hundred fifty percent of your retirement contributions; except that, any payments made to restore service credit after the five-year deadline will be paid at one hundred percent; or

(b) A monthly disability benefit equal to:

(i) Ten percent of your final average salary (FAS), which is nontaxable; and

(ii) Two percent of your FAS for each year of service beyond five years.

Calculation of monthly disability benefit:

Example 1: Chris was approved for line of duty disability. The final average salary (FAS) was $10,000. Chris had 20 years of service credit at the time of retirement. To determine the line of duty disability benefit amount:

1.	10% × FAS	=	Nontaxable amount
	.10 × $10,000	=	$1,000
2.	2% × FAS × Number of Service Years beyond Five Years	=	Taxable amount
	.02 × $10,000 × 15	=	$3,000
3.	Nontaxable amount + Taxable amount	=	Total benefit
	$1,000 + $3,000	=	$4,000

Example 2: Pat was approved for line of duty disability. The final average salary (FAS) was $10,000. Pat had 2 years of service credit at the time of retirement. To determine the line of duty disability benefit amount:

1.	10% × FAS	=	Nontaxable amount
	.10 × $10,000	=	$1,000
2.	2% × FAS × Number of Service Years beyond Five Years	=	Taxable amount
	.02 × $10,000 × 0	=	$0
3.	Nontaxable amount + Taxable amount	=	Total benefit
	$1,000 + $0	=	$1,000

(2) **Catastrophic duty disability:** As a catastrophic duty disability retiree, you may choose between:

(a) A nontaxable, one-time lump sum payment equal to one hundred fifty percent of your retirement contributions; except that, any payments made to restore service credit after the five-year deadline will be paid at one hundred percent. Under this option you waive your right to the medical insurance premium reimbursement; or

(b) A monthly disability benefit equal to:

(i) Seventy percent of your final average salary (FAS), which is nontaxable, reduced by any temporary disability benefits provided under Title 51 RCW and federal Social Security disability benefits, if necessary to ensure that the total combined benefits do not exceed one hundred percent of the member's final average salary (FAS). Any such adjustment will be applied prospectively from the time the Title 51 RCW or Social Security determination is made, even if the Title 51 RCW or Social Security disability benefits are retroactively adjusted.

(ii) The reduced benefit cannot be less than the earned service retirement benefit.

Calculation of monthly disability benefit:

Example 1: Terry was approved for catastrophic disability. The final average salary (FAS) was $10,000. Terry was not receiving benefits from LNI or Social Security disability insurance (SSDI). Terry had 20 years of service credit at the time of retirement. To determine the catastrophic benefit amount:

1. 70% of FAS = Monthly disability benefit
   .70 × $10,000 = $7,000

2. 2% × FAS × Service Years = Earned benefit
   .02 × $10,000 × 20 = $4,000

Since there is no offset and the monthly disability benefit is greater than the earned benefit, Terry's benefit will be $7000 a month.

Example 2: Pat was approved for catastrophic disability. The final average salary (FAS) was $10,000. Pat was receiving benefits from LNI and Social Security disability insurance (SSDI) in the amounts of $5,000 and $2,000. Pat had 2 years of service credit at the time of retirement. To determine the catastrophic benefit amount:

1. 70% of FAS = Monthly disability benefit
   .70 × $10,000 = $7,000

2. Monthly disability benefit + LNI benefits + SSDI benefit = Total of all benefits
   $7,000 + $5,000 + $2,000 = $14,000

3. Total of all benefits - FAS = Reduction amount
   $14,000 - $10,000 = $4,000

4. Monthly disability benefit - Reduction Amount = Reduced monthly benefit
   $7,000 - $4,000 = $3,000

5. 2% × FAS × Service Years = Earned benefit
   .02 × $10,000 × 2 = $400

Since the reduced monthly benefit amount is greater than the earned benefit, Pat's benefit will be $3,000 a month.

Example 3: Chris was approved for catastrophic disability. The final average salary (FAS) was $10,000. Chris was receiving benefits from LNI (Title 51 RCW) and Social Security disability insurance (SSDI) in the amounts of $5,000 and $2,000 respectively. Chris had 20 years of service credit at the time of retirement. To determine the catastrophic benefit amount:

1. 70% of FAS = Monthly disability benefit
   .70 × $10,000 = $7,000

2. Monthly disability benefit + LNI benefits + SSDI benefit = Total of all benefits
   $7,000 + $5,000 + $2,000 = $14,000

3.	Total of all benefits - FAS	=	Reduction amount (to not exceed 100% of FAS)
	$14,000 - $10,000	=	$4,000
4.	Monthly disability benefit - Reduction Amount	=	Reduced monthly benefit
	$7,000 - $4,000	=	$3,000
5.	2% × FAS × Service Years	=	Earned benefit
	.02 × $10,000 × 20	=	$4,000

Chris is entitled to the greater of the catastrophic retirement calculation or the earned benefit. Since the earned benefit is greater than the reduced catastrophic benefit, Chris' benefit will be $4,000 a month.

(3) **Nonduty disability:** As a nonduty disability retiree, you receive a benefit of two percent times your final average salary times your service credit years. This disability benefit will be actuarially reduced to reflect the difference in age at the time of disability retirement and age fifty-three.

Calculation of monthly disability benefit:

Example 1 – Full actuarial reduction:

Chris, age 47, was approved for a nonduty disability. The final average salary (FAS) was $10,000. Chris had 20 years of service credit at the time of retirement. To determine the nonduty disability benefit amount:

2% × FAS × Service Years × early retirement factor (2018 table)	=	Benefit amount
.02 × $10,000 × 20 × 0.5980	=	$2,392

[Statutory Authority: RCW 41.50.050. WSR 21-22-049, § 415-104-482, filed 10/28/21, effective 11/28/21; WSR 18-13-078, § 415-104-482, filed 6/15/18, effective 7/16/18. Statutory Authority: RCW 41.50.050(5). WSR 16-06-069, § 415-104-482, filed 2/25/16, effective 3/27/16. Statutory Authority: RCW 41.50.050(5) and 41.26.470. WSR 09-17-035, § 415-104-482, filed 8/10/09, effective 9/10/09.]

WAC 415-104-483 Is my disability benefit affected by choosing a survivor option? (1) If you choose a benefit option with a survivor feature at the time of retirement, your survivor beneficiary will receive an ongoing monthly disability benefit after your death. Your disability benefit will be actuarially reduced to offset the cost of providing payments over two lifetimes. The survivor options are further described in WAC 415-104-215. See WAC 415-02-380 for more information and examples on how the actuarial reduction is applied to your disability benefit.

(2) If your retirement status changes due to the acceptance of a new retirement application from service retirement to a nonduty, duty or catastrophic retirement, or duty to catastrophic retirement, you may select a different survivor benefit option. Your benefit will be recalculated to reflect your new survivor option.

Example 1: Pat retired with a duty disability retirement benefit with survivor option 3 (50%). Pat's condition worsened. Pat applied for and was granted a catastrophic duty disability retirement. Pat selected survivor option 2 (100%) on the catastrophic application. Pat's

catastrophic retirement benefit will be calculated to reflect this survivor option.

Example 2: Pat retired with a duty disability retirement benefit with survivor option 2 (100%) for their spouse. Pat's condition worsened. Pat applied for and was granted a catastrophic duty disability retirement benefit. Pat selected survivor option 1 (no ongoing survivor benefit after Pat's death). Pat's spouse will need to agree to this survivor option and the application will need to be notarized.

[Statutory Authority: RCW 41.50.050. WSR 22-11-040, § 415-104-483, filed 5/12/22, effective 6/12/22; WSR 18-13-078, § 415-104-483, filed 6/15/18, effective 7/16/18.]

WAC 415-104-484 Is my disability benefit reduced for early retirement? If you retire for line of duty disability or catastrophic duty disability, your disability benefit will not be reduced for early retirement. If you retire for nonduty disability, your disability benefit will be actuarially reduced to reflect the difference in age at the time of disability retirement and age fifty-three. See WAC 415-02-320 for more information and examples on how the actuarial reduction is applied to your disability benefit.

[Statutory Authority: RCW 41.50.050. WSR 18-13-078, § 415-104-484, filed 6/15/18, effective 7/16/18.]

WAC 415-104-485 How do I apply for a disability benefit? (1) The department must receive:

(a) A completed DRS disability retirement application;

(b) Additional information required by the department; and

(c) Any other material you want the department to consider.

(2) The process for determining eligibility for a disability benefit can be lengthy and may require additional documentation to complete.

[Statutory Authority: RCW 41.50.050. WSR 18-13-078, § 415-104-485, filed 6/15/18, effective 7/16/18. Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-104-485, filed 8/28/13, effective 10/1/13; WSR 07-09-032, § 415-104-485, filed 4/10/07, effective 5/11/07.]

WAC 415-104-486 When does my disability benefit end? The department may require comprehensive medical or psychological examinations to reevaluate your continued eligibility for disability benefits. For catastrophic benefits the department may also require or offer to provide comprehensive vocational examinations and/or submission of earnings information to evaluate your continued eligibility. You are required to contact the department if your medical/vocational or financial situation changes.

(1) Your duty or nonduty disability benefit will cease if:

(a) You return to work in a LEOFF-eligible position; or

(b) Medical examination reveals that you are no longer totally incapacitated for employment in a LEOFF-eligible position and you are no longer entitled to workers' compensation benefits under Title 51 RCW.

(2) Your catastrophic disability benefit will cease if:

(a) You return to work in a LEOFF-eligible position;

(b) Medical/vocational examination, or other information commonly available or provided to the department by an employer, reveals that your disability no longer prevents you from performing substantial gainful activity; or

(c) Your earnings exceed the threshold for substantial gainful activity.

If you believe you are capable of returning from your disability to work for your former employer and your employer agrees that you have met their requirements (examples could include a fit for duty test or polygraph), your disability benefit will end on the date you start working, as reported to the department by your employer. If you do not meet the requirements of your employer, you may challenge your employer's decision through the collective bargaining process, or other legal process against your employer.

[Statutory Authority: RCW 41.50.050. WSR 22-04-058, § 415-104-486, filed 1/27/22, effective 2/27/22; WSR 18-13-078, § 415-104-486, filed 6/15/18, effective 7/16/18.]

WAC 415-104-487 Can my disability retirement type change? Your disability retirement type may change depending upon the circumstances.

If your original disabling condition or conditions worsen, improve, or recover, the department may adjust your benefit.

(1) Worsening - If the condition or conditions that caused your duty disability worsen, your retirement may be changed to a catastrophic disability. You must submit an application and provide sufficient medical evidence to support a claim that your condition or conditions qualify you for a catastrophic disability. The worsening must be caused by or directly related to the original injury or injuries or illness and not due to the natural aging process or a succeeding cause.

Example: A member retires on a duty-related disability retirement due to a knee injury. The member has surgery related to the knee injury after retirement and suffers side effects from the surgery that prevent the member from performing any substantial gainful employment. The member is eligible to have their benefit adjusted because the aggravation is directly related to the original injury.

Example: A member retires on a duty-related disability retirement due to a knee injury. The member reinjures the knee in a skiing accident and is rendered unable to perform any substantial gainful employment. The member is not eligible to have their benefit adjusted because the aggravation is the result of a succeeding cause and not the original injury.

Example: A member retires on a duty-related disability retirement due to a knee injury. The condition gradually worsens over time until the member is no longer capable of substantial gainful employment. The member is not eligible to have their benefit adjusted because the aggravation is due to aging.

(2) Improvement - If your condition or conditions improve such that you are capable of substantial gainful employment, the department will adjust your catastrophic disability benefit to a duty disability benefit.

(3) Recovery - If your condition or conditions improve such that you are able to return to work in a LEOFF-eligible position, the department will terminate your disability retirement or convert you to a normal retirement benefit if you are eligible.

[Statutory Authority: RCW 41.50.050. WSR 18-13-078, § 415-104-487, filed 6/15/18, effective 7/16/18.]

WAC 415-104-490 Death or disability while performing nonduty emergency management service. (1) **If I die or become disabled while performing nonduty emergency management service, will I or my survivors be eligible for LEOFF benefits?** As a LEOFF Plan 2 member, you or your survivors may be eligible for nonduty disability or death benefits if you become disabled or die while you are performing nonduty emergency management service.

(2) **What are the criteria for eligibility?** To be eligible for benefits under this section, you must meet all of the following criteria:

(a) You must be determined by DRS to be eligible for disability benefits as described in RCW 41.26.470 and WAC 415-104-485, or death benefits as described in RCW 41.26.510.

(b) You must have "left the employ of an employer" to "perform service" as both of those terms are defined in WAC 415-104-011. You will need to show evidence, such as a DD214, proof of leave status from your LEOFF employer, orders, or other relevant sources of information.

(c) Your disability or death must have resulted from conditions or events that occurred while you were performing the service described in (b) of this subsection, on or after March 22, 2014.

(3) **Will I receive service credit for the emergency management service?**

(a) You or your survivors may apply for up to five years of service credit for your emergency management service:

(i) Up to the date of your separation from such service if you are disabled; or

(ii) Up to the date of your death if you die while performing service.

(b) There will be no cost to you for the service credit. The department will bill your employer for contributions. No interest will be charged.

(4) **How will the benefits be calculated?** If you are approved for benefits under this section, your benefit will be a minimum of ten percent of your average final salary, with an additional two percent for each year of service beyond five. Your benefit will not be reduced for early retirement.

(a) If your application for nonduty disability is approved under this section, the benefit will be calculated as described in RCW 41.26.470(11).

(b) If an application for death benefits filed by your survivors is approved under this section, the benefit will be calculated as described in RCW 41.26.510 (4)(c).

[Statutory Authority: RCW 41.50.050(5). WSR 17-10-035, § 415-104-490, filed 4/26/17, effective 5/27/17.]

MINIMUM MEDICAL AND HEALTH STANDARDS

WAC 415-104-500 LEOFF Plan 1 minimum medical and health standards. The minimum medical and health standards previously codified in WAC 415-104-510 through 415-104-755 are not currently necessary for administration of the plans and are hereby repealed.

[Statutory Authority: RCW 41.50.050. WSR 22-05-049, § 415-104-500, filed 2/9/22, effective 3/12/22. Statutory Authority: RCW 41.50.050(6) and 41.50.090. WSR 78-03-023 (Order IV), § 415-104-500, filed 2/15/78. Formerly WAC 297-50-010.]

ELECTED OFFICIALS

WAC 415-104-782 Option to preserve LEOFF I retirement rights. The following rules describe the process by which a LEOFF Plan I member whose retirement rights are protected by RCW 41.04.120 may preserve retirement rights as an active LEOFF member while serving in an elective public office.

A LEOFF Plan I member who is elected or appointed to elective office shall have the option to:

(1) Preserve his or her retirement rights as an active member of LEOFF Plan I; or

(2) Be considered to be on normal leave of absence from the LEOFF I employer.

[Statutory Authority: RCW 41.50.050(5) and 41.04.120. WSR 93-11-078, § 415-104-782, filed 5/18/93, effective 6/18/93.]

WAC 415-104-783 Verification of eligibility for preservation of LEOFF Plan I membership. A LEOFF Plan I elected official must provide the department with written verification of a leave of absence from the LEOFF employer for the express purpose of serving in the elective public office. The verification must state a beginning date and an ending date for the leave.

[Statutory Authority: RCW 41.50.050(5) and 41.04.120. WSR 93-11-078, § 415-104-783, filed 5/18/93, effective 6/18/93.]

WAC 415-104-784 Member contributions for LEOFF Plan I elected officials. A LEOFF Plan I elected official must pay member contributions directly to the department. Such member contributions will be calculated on the salary for the rank the member held at the time of taking the leave of absence. The department will bill the LEOFF I elected official on a monthly basis. Payment of each month's bill is due to the department by the 15th day of the next month. Failure to pay contributions for two consecutive billing months will result in suspension of LEOFF I elected official status. Such status can be reinstated if overdue contributions are paid within ninety days after notice of suspension.

[Statutory Authority: RCW 41.50.050(5) and 41.04.120. WSR 93-11-078, § 415-104-784, filed 5/18/93, effective 6/18/93.]

WAC 415-104-785 Employer contributions for LEOFF Plan I elected officials. The elective employer shall pay employer contributions for the LEOFF Plan I elected official. Such employer contributions will be calculated on the annual salary paid to the LEOFF I elected official for employment in the elective office. The elective employer will be directly billed by the department for employer contributions for a LEOFF I elected official. The elective employer shall pay employer contributions for LEOFF I elected officials in a timely manner as provided under chapter 415-114 WAC.

[Statutory Authority: RCW 41.50.050(5) and 41.04.120. WSR 93-11-078, § 415-104-785, filed 5/18/93, effective 6/18/93.]