

# §40.65 Duty Disability and Survivor Benefits

## Wisconsin Retirement System



July 2009

## Overview

- Purpose
- Eligibility
- Benefit Calculation
- Benefit Offsets (reductions)
- Application Process
- Annual Processes
- Suspension/Termination of Benefit
- Survivor Benefits
- Appeal Process
- WRS Insurance

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§ 40.65  
DUTY DISABILITY  
AND  
SURVIVOR BENEFITS

Department of Employee Trust Funds  
P.O. Box 7931  
Madison, WI 53707-7931  
ET-5103 (REV 04/2008)

## Additional Reference

ET-5103

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## Purpose

***A lifetime income replacement benefit for protective occupation participants who have been injured or contracted a disease while performing their duties, where the disability prevents a them from working in their protective occupation***

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# Eligibility

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## Eligibility

Disabling condition must be:

- ◉ Work related
- ◉ Permanent
- ◉ The cause of one or more of following:
  - Reduction in pay or position
  - Employer assignment to light duty
  - Retirement
  - Promotion adversely affected
  - Death

Must have been serving in protective occupation **on** date of injury/illness **and** the qualifying date . . .

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## Eligibility

### Qualifying Date

First date on which a participant's work-related disability causes a permanent change in the person's employment status



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## Eligibility

### Employer must certify

- Illness or injury is work related
- Qualifying criteria and the date it was met
- Must provide presumptive information if applicable



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# Eligibility

## Firefighters Presumption

- Disabilities related to heart, respiratory system, or cancer requires:
  - 5 years employment (heart and respiratory)
  - 10 years employment (cancer)
  - Pre-employment physical (if applicable)
- Municipal firefighters who used tobacco products on or after January 1, 2001 excluded from *cancer* presumption
- ETF determines if presumption applies

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## Benefit Calculation

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## Benefit Calculation

### Effective date

- The LATER of ...
  - Date the participant's application form was received by ETF
- or
- Applicant's qualifying date



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## Benefit Calculation

### Monthly Salary

- Gross monthly salary is the basis for a benefit
  - As of *qualifying date*
  - Reported by the employer

Overtime can influence salary basis . . .

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## Benefit Calculation

### Overtime (OT)

- Must be eligible for OT on qualifying date
  - Must be *Regular and Dependable OT*
    - Received OT in each of the 5 years prior to qualifying date
- (Calculation: total hours / total months)



- Compensatory time *excluded*

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## Benefit Calculation

### Example of Salary Basis

- Injury on 11/12/2007
- Light duty began 2/1/2008 (*qualifying date*), never resumed full duties
- Gross monthly salary is based on 2/1/2008
  - Regardless of whether in full pay status and got a pay raise after 2/1/2008

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## Benefit Calculation

### Maximum Monthly Benefits

Are a percentage of the monthly salary

#### State Employee

80% of established salary

#### Local Employee

- 75% of established salary
- 80% if approved for WRS Disability or Social Security Disability Income (SSDI)
- Percentage reduced 0.5% for each month over 25 years service, not to exceed 50%

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## Benefit Offsets (Reductions)

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## Benefit Offsets (Reductions)

- Applies to income from
  - Social Security Administration
  - Wisconsin Retirement System
  - Worker's Compensation
  - Unemployment Compensation
  - Earnings from any employer or self-employment income
- Recipient must prove if not eligible for other benefits
- **Based on date of check**



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## Offsets (Reductions)

### Social Security (SSA) Offsets

- Disability (SSDI) or Regular Retirement
  - If appear eligible for SSDI, will be advised to apply **or**
  - At age 62, should apply for SS retirement
- Spouse and/or dependent benefits based on applicants work record
- Offsets based on gross amount

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## Offsets (Reductions)

### WRS Offsets

- ◉ If appear eligible, will be advised to apply
  - 40.63 Disability Retirement **or** Long-Term Disability Insurance (LTDI)
  - Retirement – at age 50
    - Offsets based on gross amount of option selected
  - Separation (*not required to apply*)
    - Any offset is applied monthly for recipients lifetime
    - Separation not allowed if Duty Disability based on cancer presumptive

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## Offsets (Reductions)

### Worker's Compensation (WC) Offsets

- ◉ Types
  - Temporary partial (TPD) or temporary total (TTD)
  - Permanent partial (PPD) or permanent total (PTD)
  - Compromise agreement
  - Lump sum
- ◉ Local Employees only
  - 5% of monthly Duty Disability benefit is offset *until* permanent WC awarded

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## Offsets (Reductions)

**Certifying Employer**  
= 100% offset  
(\$ for \$)

### Earnings Offsets - Two Types -

**Other employer or  
self-employment**

- Tiered offsets for earnings...
  - Less than 40% of monthly salary = 1/3
  - 40 to 80% = 1/2
  - Over 80% = 2/3

**Notify ETF within 30 days of receipt to avoid overpayments**

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## Sample

### Benefit Calculation with Earnings Offset

Monthly salary basis	\$4,200.00
Salary Percentage	x <u>.75</u>
Gross monthly duty disability benefit	\$3,150.00

Less --

Other Earnings Offset: Assumes monthly earnings of \$3,500

$(\$4,200 \times 40\%) = 1,680 \times 1/3 = \$ 560.00$

$(\$4,200 \times 40\%) = \underline{1,680} \times 1/2 = \$ 840.00$

**(\$3,360)**

$(\$3,500 - \underline{\$3,360}) = \$ 140 \times 2/3 = \$ 93.33$

Earnings \$3,500 = **\$1,493.33 Total Offset**

Gross monthly duty disability benefit	\$3,150.00
Earnings offset	- <u>\$1,493.33</u>
Net current monthly duty disability benefit	= <b>\$1,656.67</b>

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## Offsets: Overpayments

Unreported or under-reported income often results in an overpayment, which **must** be repaid

- Recipient should not spend duplicate benefits
- ETF calculates overpayments
- Repayment methods:
  - Deduction from monthly Duty Disability benefit until repaid **or**
  - Recipient sends check to ETF **or**
  - ETF may withhold from other WRS benefits
- Interest is assessed if recipient does not repay on schedule

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## Taxability



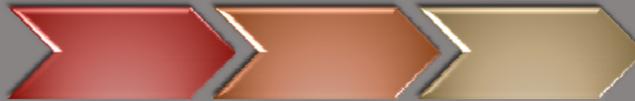
Not taxable

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## Application Process

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## Application Process

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1. Contact ETF to request Duty Disability application packet
  - Call, write or e-mail
2. Complete application and return to ETF
  - Should file while still in pay status
3. Give *Duty Disability Medical Report* (ET-5312) to physician
4. ETF sends *Duty Disability Employer Certification* (ET-5326) to employer

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## Application Process Medical Reports

- Two physicians, licensed and practicing in Wisconsin, must certify disability
- At least one physician must be specialist in area of disability
- Applicant pays for any cost of examination and completion of medical reports

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## Application Process Benefit Approval

After ETF receives required forms:

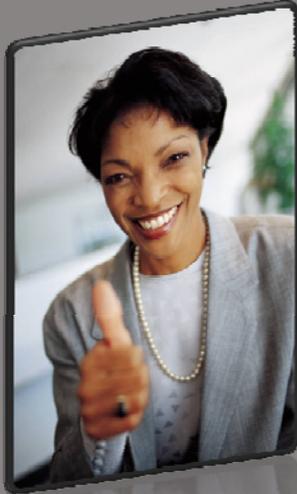
(Application, certifying medical reports and employer certification)

Then ETF requests --

- Salary certification from employer
- Income certification from applicant

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## Application Process Benefit Approval



- When application is approved, payments are made monthly by direct deposit
  - Dated 1<sup>st</sup> of month
  - Payment covers previous month
  - Initial check may cover multiple months

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## Application Process Denial/Cancellation

### Denial of Application

If medical evidence does not support both permanent and work-related disability

If employer fails to certify

OR

### Cancellation of Application

If applicant withdraws in writing

If ETF does not receive 2 medical reports within 12 months after application received

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## Annual Review



## Requirements and Benefit Adjustments

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## Annual Requirements Income Review

### ETF Requests

- Annual Income Statement (ET-5910)
- Copy of State or Federal tax return
  - If required to file based on income level, or if filing joint return
- Failure to provide will result in suspension of benefit



**All requirements due October 1st**

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## Annual Benefit Adjustments

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- February 1st payment reflects adjustments to:
  - Base salary
  - Social Security offset
- June 1st payment reflects adjustment to WRS benefit offsets  
(based on WRS annual adjustments each May)
  - LTDI **or**
  - 40.63 disability **or**
  - WRS retirement offset

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## Suspension/Termination of Benefit

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## Suspension or Termination of Benefits



- ◉ Suspended if:
  - Offsets exceed benefits
- ◉ Suspended or terminated if:
  - Failed to submit required information on time
  - Submitted false information
  - If benefit terminated, may not re-apply based on same disability

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## Survivor Benefits

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## Survivor Benefit

### Payable if:

- Recipient dies of injury or disease for which for Duty Disability benefits were approved (*or would be payable*)

### Payable to:

- Spouse to whom employee was married at time of disability AND at time of death
- And/or to guardian of minor dependents

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## Survivor Benefit

Benefit amount is based on ONE of three laws in effect at time of application

Under all laws, the Duty Disability Survivor Benefit is reduced if there is a Worker's Compensation death benefit

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## Survivor Benefit Amount

### *1982 Law*

- *All State Employees*
- *Some Local Employees* (§40.65 begin date before 1982)
- Surviving spouse receives 1/3 of monthly salary as of date of death
- \$15 per month, per minor child
- Total cannot exceed 65% of employee monthly salary
- Fixed amount -- no annual adjustment

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## Survivor Benefit Amount

### *1988 Law – Local Employees Only*

- Surviving spouse receives 50% of monthly salary at time of death
  - Reduced by other income sources (i.e. WRS, SSA & based on participant's work records)
- 10% per month, per minor child
- Total cannot exceed 70% of employee monthly salary, less offsets
- Adjusted annually

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## Survivor Benefit Amount

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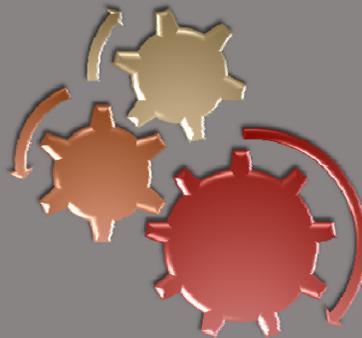
### *Cancer Presumptive Law*

- Surviving spouse receives 70% of monthly salary at time of death
  - Reduced by other income sources (i.e. WRS, SSA & based on participant's work records)
- If no surviving spouse (or spouse pre-deceased)
  - 10% per month, per minor child
  - Payable to guardian
  - No cap based on number of children
- Adjusted annually

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## Appeal Process

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## Appeal – Application Denied

- Participant or employer may submit written request to Department of Workforce Development - Worker's Compensation Division
- If further review desired, appeal to Labor Industry Relations Commission (LIRC)

Further information is available on our website about the Wisconsin Statutes and Administrative Code regarding the appeal process

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## Appeal -- Benefit Calculation

- ETF is responsible for all calculations of Duty Disability benefit amounts
  - File written appeal with Wisconsin Retirement Board
  - Must be received within 90 days of determination



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## WRS Health and Life Insurance

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## WRS Health Insurance

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- While on leave of absence
  - Pay premiums to employer
  - If terminated prior to benefit approval, employer offers COBRA - direct bill
- If Duty Disability is approved
  - Insurance carrier will bill direct
    - If eligible for conversion of unused sick leave - applicant may use sick leave credits to pay for insurance
- If coverage lapsed
  - May re-enroll within 30 days after Duty Disability approved

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## WRS Life Insurance

- Waiver of premiums:
  - Must be totally and permanently disabled from *any* occupation
  - Employer submits request for waiver to ETF within 36 months after last day paid
  - Applicant pays premiums until notified waiver is approved
- If waiver of premium is not approved
  - Have option to continue if applicant has 20 years of service AND is at least age 50
  - Individual pays premiums

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The End

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