State of Wisconsin
Department of Employee Trust Funds
Employee Trust Funds Board
Wisconsin Retirement Board
Teachers Retirement Board

The scope statement for this rule, SS 025-17, was approved by the Governor on March 6, 2017, published in Register No. 735A2, on March 13, 2017, and approved by ETF Secretary Robert Conlin on March 23, 2017.

The Wisconsin department of employee trust funds proposes an order to repeal ETF 50.30 (1) (a) to (c) and 50.40 (2); to renumber and amend ETF 50.30 (1) (intro.) and 50.40 (1); to amend ETF 50.30 (1), 50.44 (1) and (2) (a), 50.48 (4) (a) and (c), 50.54 (1), 50.56 (1) (j), (2) (e) and (3) (b), and 50.60 (2) (b); to repeal and recreate ETF 50.46 (2) (d); and create ETF 50.30 (1g), 50.30 (3m) and 50.48 (7), relating to closing the Long-Term Disability Insurance program (LTDI) to new claims and re-opening the Wis. Stat. §40.63 Disability Annuity Program (40.63) to all eligible employees effective January 1, 2018.

Analysis Prepared by the Department of Employee Trust Funds

1. Statutes interpreted:

   Sections 40.63, Stats.

2. Statutory authority:

   Sections 40.03 (1) (i), 40.03 (2) (i) and 227.11 (2) (a), Stats.

3. Explanation of agency authority:

   By statute, the ETF Secretary is expressly authorized, with approval by the Employee Trust Funds Board, to promulgate rules that are required for the efficient administration of the fund or of any of the benefit plans established by ch. 40 of the Wisconsin Statutes. Also by statute, the Employee Trust Funds Board may determine that some or all of the disability annuities and death benefits provided from the Wisconsin retirement system shall instead be provided through group insurance plans to be established by the group insurance board either as separate plans or as integral parts of the group life and income continuation insurance plans established under ch. 40 of the Wisconsin Statutes. By this rule, the ETF Board has determined that disability benefits claimed after December 31, 2017, shall no longer be provided through the Long-Term Disability Insurance group insurance plan that was established by the Group Insurance Board.

   In addition, each state agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

4. Related statutes or rules:

   There are no other related statutes or administrative rules directly related to this rule.

5. Plain language analysis:

The purpose of this rule is to close the Long-Term Disability Insurance program (LTDI) to new claims and re-open the Wis. Stat. §40.63 Disability Annuity Program (40.63) to all eligible employees effective January 1, 2018. Closing the LTDI program entails moving oversight of the program's runout from the Group Insurance Board to the Employee Trust Funds Board.

6. Summary of, and comparison with, existing or proposed federal statutes and regulations:

There are no existing or proposed federal regulations that directly pertain to this proposed rule.

7. Comparison with rules in adjacent states:

Minnesota State Retirement System. General employees disability benefit is calculated the same as retirement benefits, with no reduction in benefit if under normal retirement age. To qualify for disability benefits, employee must meet the definition of disability and have three years of service; five years if hired on or after June 30, 2010. The disability benefit will end in the month of death unless survivor coverage is selected.

Iowa Personnel System. Regular disability benefits equal the amount of the retirement benefit earned at the time employment was terminated, without reduction for retiring before normal retirement age. To qualify for disability benefits an employee must be vested; have ended all IPERS-covered employment and must be receiving Social Security Disability or Railroad Retirement benefits.

Illinois State Employee Retirement System. Non-occupational disability benefits are 50% of final average compensation or monthly rate of pay, whichever is greater for employees hired before 1/1/2011. Disability benefits are 50% of final average compensation for employees after 12/31/2010. Occupational Disability benefits are 75% of final average compensation or monthly rate of pay, whichever is greater for employees hired before 1/1/2011. Occupational Disability benefits are 75% of final average compensation for employees hired after 12/31/2010. To qualify for non-occupational disability benefits an employee must have 18 months of creditable service, must use all accrued sick days, and must be on a medical leave of absence. To qualify for occupational disability benefits an employee must be a member of SERS, must not be working, and must file a claim for Workers' Compensation.

Michigan Civil Service Commission. For full-time employees, long-term disability benefits equal 66.6667% of monthly rate of basic earnings. Bonuses, overtime pay and other extra compensation are not included. For less than full-time employees, the gross monthly payment is based on the number of basic hours paid in the prior fiscal year. Employees must wait 14 calendar days from the date of disability.

8. Summary of factual data and analytical methodologies:

ETF evaluated the programmatic implications of continuing to operate both the LTDI and 40.63 Disability Annuity and concluded that the option most beneficial to ETF and Wisconsin Retirement System members is to close the LTDI program to new claims. In addition, ETF's disability actuary, Milliman, Inc., analyzed the impact of closing the LTDI program.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

This rule does not have an effect on small businesses because private employers and their employees do not participate in, and are not covered by, the Wisconsin Retirement System. Please see attached economic impact analysis.

10. <u>Effect on small business:</u>

The rule has no effect on small businesses.

11. <u>Regulatory Flexibility Analysis</u>

The proposed rule has no effect on small businesses because only governmental employers and their employees may participate in the benefit programs under ch. 40 of the statutes administered by the Department of Employee Trust Funds.

12. <u>Fiscal Estimate</u>

Please see the attached fiscal estimate.

13. <u>Agency contact person (including e-mail and telephone):</u>

Please direct any questions about the proposed rule to David Nispel, General Counsel, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707. The e-mail address: david.nispel@etf.wi.gov. The telephone number is: (608) 264-6936.

14. <u>Place where comments are to be submitted and deadline for submissions:</u>

Written comments on the proposed rule may be submitted to David Nispel, General Counsel, Department of Employee Trust Funds, P.O. Box 7931, Madison, WI 53707. Written comments must be received at the Department of Employee Trust Funds no later than 4:30 p.m. on [date to be determined].

15. <u>Proposed Effective Date:</u>

This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

16. <u>Free Copies of Proposed Rule:</u>

Copies of the proposed rule are available without cost by contacting the General Counsel, Department of Employee Trust Funds, P. O. Box 7931, Madison, WI 53707-7931. You can also obtain a copy by calling (608) 264-6936 or by emailing david.nispel@etf.wi.gov.

Text of Proposed Rule

SECTION 1. ETF 50.30 (1) (intro.) is renumbered ETF 50.30 (1), and as renumbered is amended to read:

ETF 50.30 (1) A person may be eligible for a disability annuity under s. 40.63, Stats., provided the person ~~meets all of the following requirements:~~ <u>is not receiving benefits under subch. III.</u>

SECTION 2. ETF 50.30 (1) (a) to (c) are repealed.

SECTION 3. ETF 50.30 (1g) is created to read:

ETF 50.30 (1g) For purposes of eligibility under s. 40.63 (1), Stats., and notwithstanding s. ETF 50.46 (2) (b), an election of coverage filed under s. ETF 50.46 (1) to receive benefits under subch. III will not cause a person to be ineligible for a disability annuity if a claim is filed on or after January 1, 2018.

SECTION 4. ETF 50.30 (3m) is created to read:

ETF 50.30 (3m) For purposes of s. 40.63 (1) (a), Stats., only, if a participant was previously receiving a long-term disability insurance benefit under subch. III, which was terminated for reasons other than fraud, misrepresentation, error, mistake or failure to provide required information, the participant is deemed to have received full creditable service for any month for which the previous long-term disability insurance benefit was paid.

SECTION 5. ETF 50.40 (1) is renumbered ETF 50.40, and as renumbered is amended to read:

ETF 50.40 Purpose. The purpose of this subchapter is to provide long–term disability insurance coverage to participating employees as of October 15, 1992, who elect its benefits as provided in s. ETF 50.46 and to all persons who become participating employees on or after October 16, 1992<u>, who are receiving benefits under this subchapter or who have filed a claim for benefits with the department before January 1, 2018</u>.

SECTION 6. ETF 50.40 (2) is repealed.

SECTION 7. ETF 50.44 (1) is amended to read:

ETF 50.44 (1) PARTICIPATING EMPLOYEES ON OR AFTER OCTOBER 16, 1992. Except as provided in sub. (2), this subchapter applies to any person becoming a participating employee on or after October 16, 1992, regardless of any prior employment by a participating employer<u>, who is receiving benefits under this subchapter or has filed a claim for benefits with the department before January 1, 2018</u>.

SECTION 8. ETF 50.44 (2) (a) is amended to read:

ETF 50.44 (2) (a) This subchapter does not apply to a person who is a participating employee on October 15, 1992, and continuously employed by one or more successive participating employers from that date until terminating employment or taking a final leave of absence due to a medically determinable impairment, unless the person elects to be covered by this subchapter as provided in s. ETF 50.46<u>, and the person files a claim for benefits with the department before January 1, 2018</u>.

SECTION 9. ETF 50.46 (2) (d) is repealed and recreated to read:

ETF 50.46 (2) (d) An election to be covered under this subchapter will not be accepted unless a claim for benefits has been filed with the department before January 1, 2018.

SECTION 10. ETF 50.48 (4) (a) is amended to read:

ETF 50.48 (4) (a) The department shall report its determination to grant or deny each application for LTDI benefits to the employer and the claimant. A claimant or employer who wishes to contest the department's findings shall make a timely appeal to the ~~group insurance~~ employee trust funds board. If no timely appeal is filed, the department's determination to grant or deny the application for LTDI benefits shall be final.

SECTION 11. ETF 50.48 (4) (c) is amended to read:

ETF 50.48 (4) (c) If the department's denial is based solely on par. (b) 1. or 3., or both, and the claimant ~~may appeal to the group insurance board. The group insurance~~ appeals the denial, the employee trust funds board's decision shall include a finding as to whether the employer's responses on the employer statement form were reasonable and correct. If the ~~group insurance~~ employee trust funds board determines that the employer's responses were unreasonable and incorrect, the ~~group insurance~~ employee trust funds board decision shall include an order to the employer to amend the statement and an order to the department to process the LTDI application when the amended statement is received.

SECTION 12. ETF 50.48 (7) is created to read:

ETF 50.48 (7) Claims filed under this subchapter that are received by the department after December 31, 2017 will not be accepted.

SECTION 13. ETF 50.54 (1) is amended to read:

ETF 50.54 (1) Plan administrator. The department shall administer the plan established by this subchapter on behalf of the ~~group insurance~~ employee trust funds board unless otherwise expressly provided in an administrative services contract between the ~~group insurance~~ employee trust funds board and an outside administrator~~, in which the employee trust funds board concurs~~.

SECTION 14. ETF 50.56 (1) (j) is amended to read:

ETF 50.56 (1) (j) The duration of LTDI benefits for recipients whose LTDI benefit effective date is on or after the date the recipient attains age 61 shall be periodically reviewed and may be revised based on the actuary's determinations, as approved by the employee trust funds board, so as to provide LTDI benefits meeting equal cost standards under federal age discrimination law. As part of the regular 3-year general investigation under s. 40.03 (5) (b), Stats., beginning with the investigation based on data through 1996, the actuary shall determine the appropriate duration for LTDI benefits beginning at and after age 61. The employee trust funds board shall be responsible for approving any change to the duration of LTDI benefits. If the duration of LTDI benefits is changed, the duration of LTDI benefits being paid as the result of an application received by the department prior to the effective date of the change shall not be affected. Any such revision shall be effective upon promulgation as an amendment to this rule by the ~~group insurance~~ employee trust funds board.

SECTION 15. ETF 50.56 (2) (e) is amended to read:

ETF 50.56 (2) (e) If the department alters the amount of monthly LTDI benefits under par. (c) or terminates payment of LTDI benefits under par. (d), the department shall send notice of the action to the recipient. The notice shall be in the form of a written determination stating the reasons for the termination. The recipient may file a timely appeal of the alteration or termination with the ~~group insurance~~ employee trust funds board as provided in ch. ETF 11. If no timely appeal is filed, the alteration or termination of LTDI benefits is final.

SECTION 16. ETF 50.56 (3) (b) is amended to read:

ETF 50.56 (3) (b) If the department terminates payment of LTDI benefits under this subsection, the department shall send notice of the termination to the recipient. The notice shall be in the form of a written determination stating the reasons for the termination. The recipient may file a timely appeal of the termination with the ~~group insurance~~ employee trust funds board, as provided in ch. ETF 11. If no timely appeal is filed, the termination of LTDI benefits is final.

SECTION 17. ETF 50.60 (2) (b) is amended to read:

ETF 50.60 (2) (b) The initial amount of the required monthly premium shall be as determined and certified by the actuary. The actuary shall determine and certify future required premiums annually at the same time contribution rates are determined under s. 40.05, Stats., for the Wisconsin retirement system, based on the information available at the time the determination is made and on the assumptions the actuary recommends and the ~~group insurance~~ employee trust funds board approves.

SECTION 10. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.