

98-050-ETF 52-DUTY DISABILITY
BENEFIT PROG.

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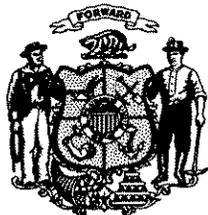
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RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 98-050

AN ORDER to create chapter ETF 52, relating to the duty disability benefit program.

Submitted by **DEPARTMENT OF EMPLOYE TRUST FUNDS**

03-30-98 RECEIVED BY LEGISLATIVE COUNCIL.

04-27-98 REPORT SENT TO AGENCY.

RNS:DD:kjf;jt

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
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FAX: (608) 266-3830

CLEARINGHOUSE RULE 98-050

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

a. Depending upon how "practice in this state," as it appears in s. 40.65 (2) (b) 2., Stats., is interpreted, s. ETF 52.06 (5) (b) may arguably conflict with s. 40.65 (2) (b) 2., Stats.

b. Does the department have authority to deny, under s. ETF 52.06 (8), an application for duty disability benefits based on failure of the *employer* to submit the required information? Section ETF 52.06 (8) penalizes the employe for a failure on the part of the employer.

c. In light of the specificity of the last sentence of s. 40.65 (3), Stats., one could argue that s. ETF 52.06 (10), to the extent that it allows denial of an application for simply submitting false information, regardless of whether eligibility requirements are otherwise met based on accurate information submitted, exceeds the scope of the department's authority. On the other hand, the department can argue that sub. (10) is merely a reasonable extension to the application process of the authority granted under s. 40.65 (3) that applies when a person is already receiving monthly benefits.

d. Is the second sentence of s. ETF 52.16 (2) consistent with the use of "payable" in s. 40.65 (5) (b) 1., Stats.? [*cf. Coutts v. Wisconsin Retirement Board*, cited in the department's analysis.]

2. Form, Style and Placement in Administrative Code

a. An introductory clause that follows the format in s. 1.02 (1), Manual, should be included. Further, if the secretary is promulgating the rule under s. 40.03 (2) (i), Stats., there is no indication that the rule has received the required approval of the board.

b. In s. ETF 52.01 (1), "This chapter applies" should replace "These rules apply." In sub. (2), "chapter" should replace "rule."

c. In s. ETF 52.02 (1), "under" should replace "as provided in" and the material beginning with the comma may be deleted from the definition.

d. In s. ETF 52.02 (4), the second "concerning" could be replaced by "of."

e. In s. ETF 52.02 (6), "under" should replace "in accord with."

f. The title of s. ETF 52.04 would be more descriptive if it were revised to read: **"Department authority and duties."**

g. The title to s. ETF 52.04 (1), given the nature of the other subsection titles, should be revised to "ADMINISTER."

h. Consideration should be given to relocating s. ETF 52.04 (4). Arguably, it deserves separate section status and might most appropriately be located at or near the end of the chapter.

i. In s. ETF 52.04 (5), "any" should be "a." Also, "day" should be inserted after "first."

j. Section ETF 52.06 (1) should begin as follows: "An application for duty disability benefits made on or after May 3, 1988 shall be filed with . . ." Further, "any," as it appears in the subsection, should be replaced by "an." For consistency with other provisions, "former" should precede "department of."

k. In s. ETF 52.06 (2) (b), "deemed to be" should be deleted. It is suggested that the Note following par. (b) be placed after sub. (5).

l. In s. ETF 52.06 (3) (e), "to the application" should be added to the end of the sentence.

m. In s. ETF 52.06 (5), third sentence, the reference to a "non-qualifying" report fails to use a defined term. [See s. ETF 52.02 (7); the proper reference would be to a report that is not a qualifying medical report.]

n. The Note following s. ETF 52.06 (5) (a) is substantive. [See s. 1.09 (1), Manual.]

o. Section ETF 52.06 (6) (a) should read: "A participant may withdraw his or her application and, upon withdrawal, the application is void."

p. In s. ETF 52.06 (7) (a) (intro.), "one of the following" should replace "either."

q. Is there a form for the certification, admission and statement referenced in s. ETF 52.06 (7) (a)? If so, see s. 1.09 (2), Manual.

r. In s. ETF 52.06 (7), is the omission of a par. (b) intentional? In par. (c), "to the requirement of par. (a)" should be added following "addition" in the first sentence.

s. Consideration should be given to relocating s. ETF 52.06 (9) or giving it separate section status.

t. In s. ETF 52.08 (1), "determined under" should be substituted for "provided in."

u. In s. ETF 52.08 (2), "for duty disability benefits" should be added after "eligibility." In this regard, see also subs. (3) and (4).

v. In s. ETF 52.08 (3) "is" should be substituted for "shall be"; and "the" should be substituted for "such" (all in the first sentence). In the second sentence, the first "the" can be eliminated.

w. In ss. ETF 52.08 (4) and 52.10 (1) (intro.), "is" should be substituted for "shall be."

x. In s. ETF 52.10 (2), can "effective date is" be substituted for "department shall deem the application to be"?

y. In s. ETF 52.12 (1) (a) 2., the comma after "occurred" should be deleted and "deemed to be" should be deleted.

z. In s. ETF 52.12 (1) (b), "the" should be substituted for "such." This change should be made in several provisions of the rule.

aa. In s. ETF 52.12 (1) (c) (intro.), last sentence, "then instead multiply" should be deleted and "shall be multiplied" should be inserted after "paid."

ab. In s. ETF 52.12 (1) (c) 1., a reference to "this employer" is awkward.

ac. In s. ETF 52.12 (2), "also" should be deleted.

ad. In s. ETF 52.14 (1), "in" should replace "by" in all three instances. In the first sentence, "is" should replace "shall be."

ae. In s. ETF 52.14 (2) and (3), "does" should replace "shall."

af. As drafted, the first sentence of s. ETF 52.16 (1) (a) is more appropriately placed in a note than in the text of the rule.

ag. In s. ETF 52.16 (1) (c), "apply to" should be eliminated.

ah. In s. ETF 52.16 (4) (a) 2., the first "then" should be eliminated.

ai. In s. ETF 52.16, "(3) UNEMPLOYMENT COMPENSATION. [Reserved.]" should be deleted.

aj. The title to s. ETF 52.16 (4) (a) should be underscored, not contained in single quotation marks.

ak. The acronym "OASDHI" is used in s. ETF 52.16 (2). It should be spelled out or defined.

al. In s. ETF 52.16 (4) (c), "Any and all" should be eliminated from the first sentence.

am. Section ETF 52.16 (5) (b) contains only one subdivision and sub. (6) contains only one paragraph. [See s. 1.03 (intro.), Manual.] It is suggested that par. (b) 1. be combined with par. (b) (intro.) and that sub. (6) (a) simply be sub. (6).

an. In s. ETF 52.18 (1), it appears that "consistently" may be substituted for "on a regular and steady basis."

ao. In s. ETF 52.22 (1), "the participant's" should be substituted for "his" in two locations.

ap. In s. ETF 52.22 (2) (intro.), "are" should be substituted for "will be"; in pars. (a) and (b), "does" should be substituted for "shall."

aq. The second s. ETF 52.24 should be numbered s. ETF 52.26.

4. Adequacy of References to Related Statutes, Rules and Forms

a. Pertinent citations may be missing from the listing of statutes providing authority for the rule and of statutes being interpreted. For example, see ss. 40.02 (22) (b) 14., 40.03 (1) (L) and 40.08 (4), Stats. A review of statutes utilized in this regard is in order.

b. In s. ETF 52.02 (7), "Stats." should follow the statutory reference. [See s. 1.07 (2), Manual.] This comment applies in a number of instances throughout the rule.

c. In s. ETF 52.04 (3), it appears that both references to "section" should instead be to "chapter."

d. In s. ETF 52.06 (7) (c), "to the requirement of par. (a)," should precede the first comma. The definition section should indicate that "municipal fire fighter" has the meaning given in s. 891.45, Stats. In the second sentence of the paragraph, ", if it applies," should replace "in such cases."

e. In s. ETF 52.10 (1) (a), it is suggested that "as determined under s. ETF 52.06 (2)" be inserted after "received."

f. In the Note following s. ETF 52.14 (2), "act" should be deleted. For similar treatment, see the Notes to sub. (3) and to s. ETF 52.22 (2) (a) and (b).

g. In s. ETF 52.16 (1) (c), the clause "Except as otherwise expressly provided for receipt of lump sum worker's compensation benefits or disability and retirement benefits" is inadequate. Specific reference should be given to the provisions that provide otherwise.

h. In s. ETF 52.16 (2), second sentence, it appears that "payments made in error" should be deleted and replaced by "an overpayment of duty disability benefits as provided in s. ETF 52.20."

i. In s. ETF 52.16 (4) (a) (intro.), it appears that the reference to s. ETF 52.14 (1) should be to the entire section, not solely to sub. (1).

j. In s. ETF 52.22 (2) (intro.), it appears that “, 1985-86 Stats.” should be deleted.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The usefulness of the department’s analysis would be enhanced if the provisions of the rule being described were cited.

b. In the first sentence of the first full paragraph on page 4 of the department’s analysis, the first comma should be deleted and “and” should be placed between the two terms within quotes. In the following paragraph, “concerns” in the first sentence should be in the singular.

c. In s. ETF 52.02 (3), it appears that “one” and the comma that follows should be deleted. Note that the examples following the definition of the term “lump sum payment” do not seem to reflect the term as defined. The definition says nothing about excluding the current benefit payment period from the term.

d. The necessity to define some of the terms for purposes of the entire chapter is unclear. In other words, if a term is only used in one provision of the rule, consideration should be given to defining the term only for purposes of that provision or incorporating the definition into the text.

e. Should the qualification “on other than a merely temporary basis” also apply to s. ETF 52.06 (3) (e)?

f. In s. ETF 52.06 (7) (c), it appears that the second sentence is intended to imply that the department may grant the application if the presumption under s. 891.45, Stats., is not overcome. See, generally, ch. 903, Stats., for the legal effect of a statutory presumption. Note, also, 1997 Enrolled Senate Bill 329.

g. In s. ETF 52.06 (9) (c) 3., second sentence, “criteria” should be “criterion.”

h. Is it possible under s. ETF 52.08 to have more than one qualifying date? For example, if a temporary but continuous reduction in position continues until the employer terminates the employe because of the disability, is there a qualifying date based on reduction in position and on termination of employment? See, in particular, the second sentence of s. ETF 52.08 (3). This appears to be addressed to some degree by s. ETF 52.12 (1) (a) 2. The relationship of the latter provision with s. ETF 52.08 should be reviewed.

i. Is the first sentence of s. ETF 50.12 (2) intended to mean that an employer’s calculation of a participant’s monthly salary will in all cases be reviewed by the department? If so, the provision should state this.

j. Is s. ETF 52.12 (3) necessary given s. ETF 52.04 (4)?

k. In s. ETF 52.14 (1), second sentence, is the inclusion of “not” correct?

l. Section ETF 52.16 (4) (b) is awkwardly drafted and its relationship to par. (c) is not clear. Perhaps more consistent use of terms such as "payable," "paid" and "received" would help clarify the two paragraphs. In addition, is the last sentence of par. (c) redundant given the first sentence of par. (c)?

m. Is s. ETF 52.16 (5) (b) 1. redundant, given the general provision of par. (b) (intro.)?

n. In s. ETF 52.24 (1), should the second sentence read as follows: "The department shall request the records at least annually and, upon request, the person shall supply the records to the department"?

Madison, Wisconsin, 53707-7931
Telephone: (608) 267-9035
FAX: (608) 267-0633

COPIES OF RULE

Copies of the proposed rule are available free upon request by calling or writing: Peg Narloch, Disability Programs Policy Specialist, Disability Programs Bureau, Department of Employee Trust Funds, P.O. Box 7931, Madison, Wisconsin, 53707-7931.

ANALYSIS OF THE PROPOSED RULE PREPARED BY THE DEPARTMENT OF EMPLOYEE TRUST FUNDS

Authority for rule: Wis. Stat. §§ 40.03 (2)(i) and 227.11 (2).

Statutes interpreted: Wis. Stat. §§ 40.03 (1)(i) and 40.65

The proposed rule codifies policies and procedures of the Department of Employee Trust Funds in administering the duty disability benefit program established by Wis. Stat. § 40.65. The proposed rule codifies the ruling of the Wisconsin Supreme Court in *Coutts v. Wisconsin Retirement Bd.*, 209 Wis. 2d 655; 562 N.W.2d 917 (1997) reviewing a decision of the Wisconsin Court of Appeals reported at 201 Wis. 2d 178, 547 N.W.2d 821 (Ct. App. 1996). The Supreme Court determined that "payable" as used in Wis. Stat. § 40.65 (5)(b)3, and (by implication) throughout Wis. Stat. § 40.65 (5)(b), refers to sums presently owing or to be remitted in the future. The DETF had previously reduced duty disability benefits by worker's compensation benefits received, regardless of when received, provided they were not unrelated to the disability for which duty disability benefits were being paid. The rule also changes DETF's previous method of determining the effective date of duty disability benefits, retroactive to the first date on which the individual met all the qualifications under Wis. Stat. § 40.65 (4). The Court of Appeals and Supreme Court ruled in the *Coutts* decision that duty disability benefits are not retroactive and that a person who waits to apply gives up the opportunity to receive those benefits in the interim. The proposed rule sets the effective date at the later of the date on which the individual becomes disabled within the meaning of Wis. Stat. § 40.65 (4) or the date on which the individual's application for duty disability benefits is received. The *Coutts* decision also ruled that another DETF practice must be changed. DETF had previously carried over worker's compensation payments until the entire worker's compensation benefit had been used to reduce duty disability benefits. The Supreme Court affirmed the Court of Appeals decision, which said:

... if the combined amount of other earnings or benefits exceeds the monthly duty disability benefit payment, that participant will not receive a monthly duty disability payment and the WRB may not carry forward or "bank" the excess amount and deduct it

from the participant's next month's duty disability benefit payment. That would be contrary to the statute because the statute only permits reductions for amounts payable when the monthly duty disability benefit payment is due and not amounts paid.

See *Coutts*, 201 Wis.2d 178, 547 N.W.2d 821, at 826 (Ct. App. 1996)

Accordingly, the rule adopts the interpretation that as benefits listed in Wis. Stat. § 40.65 (5)(b) are paid to the duty disability recipient, they will be offset against the duty disability benefit for that month. The date of the payment to the participant will control, without regard for the period intended to be covered by the payment in question. Exceptions are provided in Wis. Stat. § 40.65 (5)(b)3 and 4 for lump sum worker's compensation benefits and lump sum retirement system benefits. The proposed rule defines DETF's interpretation of what is meant by "lump sum" in those contexts.

Under this proposed rule, all worker's compensation benefits received by a person also entitled to duty disability benefits would be offset, regardless of the nature or date of the injury. Previously, DETF had not reduced duty disability benefits for worker's compensation benefits received which were clearly unrelated to the disability which was the basis for benefits under Wis. Stat. § 40.65. However, Wis. Stat. § 40.65 (5)(b)3 directs that duty disability benefits shall be reduced by the amount of "[a]ny worker's compensation benefit payable to the participant" Under the proposed rule, DETF would continue its practice of ignoring worker's compensation benefits paid as attorney fees or reimbursement of expenses.

The rule codifies DETF's present interpretation of the indexing of benefits. Because duty disability benefits are intended to operate as an income guarantee, based on the "monthly salary" at the time the individual first becomes disabled as defined by Wis. Stat. § 40.65 (4), the DETF believes the annual indexing of the monthly salary is also intended to begin after the disability date, which is defined in this proposed rule as the "qualifying date." If indexing began after the effective date, then an individual with a gap of years between the qualifying date and the effective date would begin receiving duty disability benefits based upon a monthly salary amount set years before and not indexed during the interim.

This proposed rule also codifies general policies and interpretations of Wis. Stat. § 40.65 which the department has adopted during its administration of the duty disability benefit program. The rule clearly delegates authority of Wisconsin Retirement Board to DETF to administer the duty disability program on behalf of the Board, including the termination of benefits. Any determination made by the DETF may be appealed to the Board by the aggrieved employer or participant.

Although Wis. Stat. 40.65 (4)(intro.) describes those eligible for benefits as "protective occupation participants," the DETF has (since 1991) focused on the applicant's status at the time the disability arose, not at the time of application. See *Department of Employee Trust Funds v. LIRC*, 160 Wis.2d 929, 468 N.W.2d 210 (Ct. App. 1991). This proposed rule would codify that

interpretation and require that the applicant have been a protective occupation participant and participating employe both on the date when injured and when the resulting disability met the description in Wis. Stat. § 40.65 (4). 83.0803

The proposed rule defines the terms "light duty," "reduction in pay or position" as used in the eligibility criteria for duty disability benefits in Wis. Stat. § 40.65 (4). The rule also prescribes how to compute "monthly salary" and particularly what overtime pay may be included.

Other provisions related to the reductions of duty disability benefits due to income received from other sources concern benefits received under the federal Old Age, Survivors, Disability and Health Insurance ("OASDHI") provisions of the Social Security Act and Long-Term Disability Insurance. The proposed rule codifies the current administrative practice of waiting until April to adjust the monthly reduction based on receipt of Social Security benefits. Increases in Social Security benefits are actually received beginning in January. For several months, duty disability recipients also receiving Social Security are therefore receiving benefits in excess of their entitlement under Wis. Stat. § 40.65 (5). Under the proposed rule, DETF would treat those excess benefits as money paid in error and collect the overpayments. The proposed rule also codifies DETF's current treatment of benefits received under the long-term disability insurance program under Wis. Admin. Code § ETF 50.40, *et seq.* This program was created by the Employe Trust Funds Board under authority of Wis. Stat. § 40.03 (1)(i) to replace disability annuity benefits under Wis. Stat. § 40.63. The rule provides that the LTDI benefits operate to reduce duty disability benefits as did the benefits under Wis. Stat. § 40.63.

The proposed rule includes a provision to establish estimated monthly reductions, so that income to a duty disability recipient will be fairly regular, with any necessary adjustments between the amount due and the amount paid being made during an annual reconciliation. The proposed rule also includes a provision for the participant to request adjustment of the estimate to more closely conform to actual income from sources listed in Wis. Stat. § 40.65 (5)(b).

The proposed rule also clarifies that the present statutory provisions of Wis. Stat. § 40.65 (5)(a) and (b)(intro) and (7)(a)(intro.) and (am) of the statutes do not apply to state employes, in accord with the initial applicability provision found in 1987 Wis. Act 363, act § 11 (2) and (3).

The proposed rule includes a provision that if duty disability benefits are terminated, the person may not reapply for duty disability benefits based upon the same disability.

Initial Fiscal Estimate: The duty disability program (benefits) is funded by premiums paid by the state, municipal and local government employers which employe protective occupation participants. See Wis. Stat. § 40.05 (2)(ar). These premiums are primarily risk-based, depending on the number of duty disability recipients for the particular employer, plus the adjusted monthly benefit being paid. The proposed rule will allow participants to delay application for the duty disability benefits and receive Worker's Compensation prior to the duty disability effective date.

Although there is no longer an offset for the Worker's Compensation benefit, there are also no retroactive duty disability benefits. Because of this, the benefit costs associated with the proposed rule are not determinable at this time.

Administrative costs associated with the changes to program administration necessitated by the *Coutts* decision and under the proposed rule equate to one fulltime equivalent permanent position. The costs are projected to be \$25,000 for the SFY97-99 biennium (position to start approximately January 1, 1999) and \$40,000 per year thereafter adjusted for applicable increases in salary/fringe and operational support.

Initial Regulatory Flexibility Analysis: This rule affects only a benefit program open exclusively to governmental employees classified as "protective occupation participants" under Wis. Stat. § 40.02 (48) and the state, municipal or local units of government which employ them. The Department therefore anticipates that the provisions of this proposed rule will have no direct adverse impact on small businesses.

10/10/19 - choose rule cf. 40,03 (2) (i)

(BEGINNING OF RULE TEXT)

1 SECTION 1. Chapter ETF 52 ~~(title)~~ is created to read:

2 Chapter 52

3 Duty Disability Benefits

4 SECTION 2. ETF 52.01 ~~through 52.24~~ are created to read:

5 ETF 52.01 PURPOSE & SCOPE. (1) SCOPE. These rules apply to the administration of
6 the duty disability program under s. 40.65, Stats.

7 (2) PURPOSE. The purpose of this rule is to codify the interpretations of s. 40.65,
8 Stats., and general policies adopted by the department with respect to its administration of the
9 duty disability benefit program under s. 40.65 (2)(a) and (2)(b), Stats.

10 ETF 52.02 DEFINITIONS. Unless the context clearly requires otherwise, words, phrases
11 and terms shall have the meanings set forth in s. 40.02, Stats., and s. ETF 10.01. In this
12 chapter: (1) "Effective date" means the date determined as provided in s. ETF 52.10, which
13 is the earliest date from which a participant may begin receiving duty disability benefits.

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

1 (3) "Lump sum payment" means a payment, or that portion of a payment, which covers
2 a period of more than the one, current benefit payment period.

3 EXAMPLE: Worker's compensation benefits are payable in weekly payments. If a
4 worker's compensation payment covered this week and the previous two weeks, the portion
5 for the previous two weeks would be a lump sum payment. Wisconsin retirement system
6 annuities are payable monthly. A payment covering the previous 12 months, but not the
7 current month, would be a lump sum payment.

Examples
not
consistent
with
stat.

8 (4) "Medical report" means a written certification on the form prescribed by the
9 department by a physician, as defined in s. 448.01(5), Stats., who practices in this state,
10 concerning the medical evaluation, diagnosis, prognosis and causal factors ^{of} concerning the
11 condition of an applicant for duty disability benefits.

12 NOTE: "Duty Disability Medical Report," form ET-5312. *where may obtain*

13 (5) "Protective occupation participant," as used in s. 40.65 (4)(intro.), Stats., means a
14 person who was a protective occupation participant within the meaning of s. 40.02 (48),
15 Stats., on the date the injury occurs, or the disease is contracted, which leads to the disability
16 under s. 40.65 (4), Stats.

17 (6) "Qualifying date" means the date on which a participant became disabled under
18 s. 40.65 (4) as determined in accord with s. ETF 52.08. *check*

19 (7) "Qualifying medical report" means a medical report, consistent with attached medical
20 records, which certifies that an applicant for duty disability benefits is disabled as described
21 by s. 40.65 (4).

1 (8) "Receiving duty disability benefits" as used in this chapter, or "receiving a benefit
2 under this section" as used in s. 40.65 (6), refers to a person who has applied for and been
3 found eligible to receive duty disability benefits under s. 40.65, regardless of the effect of any
4 monthly reductions on the net duty disability benefit payable.

5 ETF 52.04 DELEGATION OF AUTHORITY. (1) ADMINISTRATOR. The department
6 shall administer the duty disability benefit program on behalf of the Wisconsin retirement
7 board as provided in s. 40.65, Stats., and this chapter.

8 (2) REQUEST INFORMATION. The department may request any income or benefit
9 information, or any information concerning a person's marital status, which it considers to be
10 necessary to determine the amount of each monthly benefit payable under s. 40.65, Stats.,
11 and its effective date. The department shall require a participant receiving duty disability
12 benefits to submit a certified copy of his or her most recent state or federal income tax return
13 annually.

14 (3) DETERMINE BENEFITS. The department shall determine the amount of each
15 monthly benefit payable under this section and its effective date. The department shall
16 periodically review the dollar amount of each monthly benefit and adjust it to conform with
17 the provisions of this section. The department shall notify the participant of a determination
18 under this subsection.

19 (4) APPEALS. Determinations made by the department under this chapter are subject to
20 appeal to the Wisconsin retirement board as provided in ch. ETF 11. The employer may

1 appeal a determination granting an application for duty disability benefits, including
2 determinations based upon s. 891.45, Stats.

3 (5) PAY BENEFITS. The department shall pay the net duty disability benefits payable
4 to any participant. Payment shall be made on the first ^{day} of each month for the previous month.

5 ETF 52.06 APPLICATION FOR DUTY DISABILITY BENEFITS. (1) IN GENERAL.

6 Since May 3, 1988, any application for duty disability benefits must be filed with the
7 department, regardless of whether the person filed any application for duty disability benefits
8 with the ^{former} department of labor, industry and human relations prior to May 3, 1988.

9 (2) RECEIPT DATE. (a) An application for duty disability benefits is initiated on the
10 date the completed form, currently prescribed by the department for that purpose, is received
11 by the department in accord with s. ETF 10.82.

12 (b) The receipt date for applications filed with the department prior to January 1, 1995,
13 and for application materials filed prior to May 3, 1988, with the former department of
14 industry, labor and human relations is deemed to be the date of the receipt stamp affixed to
15 the document by the respective department, absent clear and convincing proof to the contrary.

16 NOTE: The "Duty Disability Application," form ET-5311, and an initial "Duty Disability
17 Medical Report," form ET-5312, are available free upon request from the Department of
18 Employee Trust Fund, Division of Insurance Services, Disability Programs Bureau, P.O. Box
19 7931, Madison WI 53707. Outdated versions should not be used and may be rejected.

20 (3) CRITERIA TO BE SPECIFIED. An applicant shall specify which of the following
21 eligibility criteria under s. 40.65 (4)(c) are satisfied:

1 (a) Terminated employment due to disability.

2 (b) Assigned to light duty due to disability, on other than a merely temporary basis.

3 (c) Pay reduced due to disability, on other than a merely temporary basis.

4 (d) Position reduced due to disability, on other than a merely temporary basis.

5 (e) Promotion specifically prohibited due to disability by employer rules, ordinances,
6 policies or written agreements. The rule, ordinance, policy or written agreement shall be
7 expressly identified or a copy attached.

8 (4) EMPLOYMENT STATUS. A person who was not both a participating employe and
9 a protective occupation participant both at the time he or she became injured or contracted an
10 occupational disease and when he or she became disabled as described by s. 40.65 (4), Stats.,
11 is not eligible for duty disability benefits. For purposes of this subsection only, aggravation
12 of an existing injury or disease is deemed the same as being injured or contracting a disease.

13 (5) APPLICATION MATERIALS; MEDICAL REPORTS (a) Upon request, the
14 department shall provide a blank copy of the currently approved application form and a blank
15 copy of the currently approved medical report form to a participant. Upon receipt of an
16 application form and a medical report from a physician chosen by the applicant, the
17 department shall provide the applicant with the name of at least one physician approved by
18 the department to complete a second medical report at the applicant's expense. If the medical
19 report from the physician chosen by the applicant is non-qualifying, the department shall
20 advise the applicant that it will be required to deny the application but that the applicant may
21 nevertheless wish to obtain the second medical report from a physician approved by the

1 department. The department may, by written notice to the applicant, establish a time limit of
2 at least 60 days for submission of the second report.

3 NOTE: If an application is denied based upon receipt of one non-qualifying and one
4 qualifying medical report and the participant appeals the denial as provided in s. 40.65
5 (2)(b)3., then the administrative law judge determining eligibility may decide between the
6 two conflicting medical reports.

7 (b) Notwithstanding the requirement of s. ETF 52.02 (4) that a medical report be
8 completed by a physician who practices in this state, the department may accept a medical
9 report from a physician licensed to practice in Wisconsin whose practice is located in
10 Minnesota or Michigan provided the participant resides north of a line formed by the
11 southern boundaries of Polk, Barron, Rusk, Taylor, Lincoln, Langlade, Menonimee and
12 Oconto counties.

13 (c) The department may request and consider any information from the physician who
14 completed a medical report which the department deems necessary to supplement or clarify
15 the physician's opinion, evaluation, diagnosis and prognosis concerning the participant's
16 condition and qualification for duty disability benefits.

17 (6) WITHDRAWAL OF APPLICATION. (a) Voluntary withdrawal. A participant
18 may withdraw his or her application and the application shall thereafter be treated as null and
19 void.

20 (b) Failure to submit medical reports. If the applicant fails to submit two qualifying
21 medical reports within one year after the date on which the application was filed, and the

1 department has not already denied the application, the application shall be deemed to have
2 been withdrawn with the same effect as under par. (a).

3 (7) REQUIRED EMPLOYER CERTIFICATION. (a) For each application for duty
4 disability benefits, the department shall obtain from the employer either:

5 1. A certification that the applicant is disabled as described in s. 40.65 (4), indicating the
6 specific criterion under s. 40.65 (4)(c), Stats., which has been satisfied, and an admission that
7 the injury or disease leading to the disability was duty-related.

8 2. A statement that the employer believes the applicant does not qualify for duty
9 disability benefits and the general basis for that belief.

10 (c) In addition, for each application for duty disability benefits by a municipal fire
11 fighter, the department shall obtain from the employer a certification whether the participant
12 had served a total of 5 years or more as a municipal fire fighter for that employer and a copy
13 of the qualifying medical examination given prior to the time the participant became a fire
14 fighter for that employer. The department shall determine whether s. 891.45, Stats., applies
15 and in such cases may grant an application for duty disability benefits despite the employer
16 assertion that the heart or respiratory disease underlying the disability is not due to the
17 participant's occupation. The presumption under s. 891.45, Stats., is rebuttable.

18 (8) DENIAL AND APPEAL OPTION ABSENT EMPLOYER RESPONSE. If the
19 employer fails, upon request of the department, to provide either the certification or the
20 statement required by sub. (7), the department shall deny the application. The department
21 shall allow the employer at least 30 days to respond to its request and may grant reasonable
22 extensions of time to the employer.

1 (9) **DISABILITY.** A participant is disabled within the meaning of s. 40.65 (4) if all of
2 the following apply:

3 (a) Work-related. The participant was injured while performing his or her duty as a
4 protective occupation participant of a participating employer or contracted a disease due to
5 that occupation.

6 (b) Permanency. The disability is likely, to a reasonable degree of medical certainty, to
7 be permanent.

8 (c) Severity. The disability is so severe that it causes one or more of the following:

9 1. The applicant is medically required to terminate the participating employment.

10 2. The employer assigns the applicant to light duty.

11 3. The employer reduces the applicant's pay. Only a reduction in base pay meets the
12 criteria of this subdivision. Loss of shift differential payments, uniform allowances, or other
13 collateral payments is not a reduction of pay within the meaning of s. 40.65 (4)(c)2., Stats.
14 Receipt of temporary disability compensation under s. 102.43, Stats., in lieu of regular pay
15 may be a reduction of pay for purposes of duty disability benefit eligibility when the
16 employer does not make up the difference and if the participant terminates employment while
17 still receiving temporary disability compensation.

18 4. The employer reduces the applicant's position. Assigning a formerly full-time
19 employe to a part-time position is a reduction of position. Assigning the applicant to a
20 position which does not satisfy the criteria under s. 40.02 (48) defining a protective
21 occupation participant is a reduction of position.

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1 NOTE: See Wis. Stat. § 40.02 (48)(b) 1. to 3. defining "police officer," "fire fighter,"
2 "deputy sheriff" and "county traffic police officer," concerning their continuing protective
3 occupation status even if temporarily assigned to other duties.

4 5. The employer prohibits the applicant from promotion for which the applicant is
5 otherwise fully qualified, solely on the basis of the applicant's disability and under the
6 express terms of a valid state or local employer rule, ordinance, policy, or written agreement
7 which is not superseded by state or federal law.

8 (d) Temporary actions non-qualifying. Assignments to light duty, or reductions in pay or
9 position or promotional opportunities, which are merely temporary in nature, such as actions
10 taken to allow recovery, are not consistent with a permanent disability and do not qualify a
11 participant for duty disability benefits.

12 (10) FALSE INFORMATION. The department may deny the application of any person
13 who submits false information in connection with an application for duty disability benefits.

14
15 ETF 52.08 QUALIFYING DATE. (1) IN GENERAL. A participant's qualifying date
16 is the date on which he or she becomes disabled within the meaning of s. 40.65 (4) and s.
17 ETF 52.06 (9), as provided in this section.

18 (2) RETIREMENT. If eligibility is based upon a disability which requires the employe
19 to retire from his or her job, the termination date is the qualifying date.

20 (3) REDUCTION OF PAY OR POSITION; ASSIGNMENT TO LIGHT DUTY. If
21 eligibility is based upon a reduction of pay or position or assignment to light duty, then the
22 qualifying date shall be the date on which the employer first made such reduction or

1 assignment permanent. For the purposes of this subsection, a reduction or assignment is
2 permanent even if initially characterized as temporary by the employer, if the reduction or
3 assignment remains continuously in effect while the participant is recovering or his or her
4 permanent condition is being assessed and the employer then determines that it is necessary,
5 because of the participant's disability, to make the reduction or assignment permanent, or that
6 employment be terminated. If the participant is restored to the unreduced pay or position or
7 assigned to full duty, the reduction or assignment was not permanent.

8 (4) PROMOTION PROHIBITED. If eligibility is based upon a prohibition against
9 promotion due to a disability, the qualifying date shall be the date on which the employe
10 became continuously subject to the prohibition.

11
12 ETF 52.10 EFFECTIVE DATE OF DUTY DISABILITY BENEFITS. (1)

13 DEPARTMENT TO ESTABLISH. The department shall establish an effective date for duty
14 disability benefits for each participant whose application for duty disability benefits is
15 granted. Duty disability benefits are not retroactive. The effective date for duty disability
16 benefits shall be the later of:

17 (a) The date the participant's application form was received, ignoring any previous
18 applications.

19 (b) The participant's qualifying date.

20 (2) For periods prior to May 3, 1988, the department shall deem the application to be the
21 earliest filing with the former department of industry, labor and human relations seeking a
22 determination of eligibility for duty disability benefits. (Such filings include a request for a

1 hearing on benefits under s. 40.65, Stats., or a stipulation between the employer and
2 participant agreeing to the participant's receipt of duty disability benefits.

3 ETF 52.12 MONTHLY SALARY AND SUBSEQUENT ADJUSTMENTS. (1)

4 INITIALLY DETERMINED BY EMPLOYER. A participant's monthly salary shall be
5 initially determined by the employer in whose service the disability occurred by adding
6 together the regular monthly earnings, prorated cash payments, and regular and dependable
7 overtime pay as determined pursuant to the following paragraphs:

8 (a) Regular monthly earnings. The participant's monthly earnings, as defined by s. 40.02
9 (22), Stats., as of the qualifying date, except as provided by subd. 1 and 2.

10 1. 'Exclusions.' All overtime pay, any payments excluded from earnings by s. 40.02
11 (22)(b), Stats., or any periodic payments made during that month which covered other
12 periods of time, such as a lump sum longevity award, shall be subtracted from the earnings
13 under this paragraph. Additions to pay which the participant was not eligible to receive on
14 the qualifying date and amounts which are not earnings reportable to the Wisconsin
15 retirement system may not be included in the amount under this paragraph.

16 2. 'Temporary disability compensation; effect'. If the participant is receiving temporary
17 disability compensation under s. 102.43 ^{starts} as of the qualifying date, and the qualifying date is
18 prior to the termination of employment with the participating employer in whose
19 employment the disabling injury occurred or the occupational disease was contracted, then
20 the participant's regular monthly earnings are deemed to be the amount of earnings the

1 employe would have received if the disability had not occurred, as provided by s. 40.29

2 (1)(b), Stats., subject to the exclusions in subd. 1.

3 (b) Prorated cash payments. A prorated amount reflecting the monthly equivalent of
4 periodic cash payments which are includable in the participant's annual Wisconsin retirement
5 system earnings, except that any category or type of payment for which the participant did
6 not qualify as of the qualifying date may not be included in this proration, regardless of the
7 participant's previous receipt of, or entitlement to, such payments.

8 (c) Regular and dependable overtime pay. A monthly prorated amount for overtime pay
9 which was regularly and dependably received. Subject to subds. 1 and 2, this amount shall
10 be calculated by taking the number of overtime hours for which the participant was paid in
11 the 5 calendar years preceding the calendar year of the qualifying date, dividing by 60, and
12 multiplying the result by the hourly overtime rate to which the participant was entitled as of
13 the qualifying date. If the participant has been employed by the employer for less than the
14 preceding 5 years, then instead multiply the monthly average of all overtime hours paid by
15 the hourly overtime rate as of the qualifying date.

16 1. If the participant received no overtime during one of the 5 years preceding the
17 calendar year of the qualifying date, while the employe was employed by this employer, then
18 no overtime was regularly and dependably received.

19 2. If the participant was in a position not eligible for overtime pay on the qualifying date
20 then no overtime pay may be included in the calculation of monthly salary. Eligibility for
21 compensatory time off is not eligibility for overtime. No form of compensatory time off is
22 overtime pay under this paragraph.

sure

1 (2) REVIEW BY DEPARTMENT. The employer's calculation of a participant's
2 monthly salary is subject to review by the department. The department shall notify the
3 participant of the department's determination of the monthly salary amount and shall also
4 notify the employer if the determination made by the department differs from the amount
5 provided by the employer.

6 (3) APPEAL. The calculation of the monthly salary amount may be appealed to the
7 Wisconsin retirement board by the participant or the employer by a timely request for appeal
8 as provided in chapter ETF 11. *Administrative Code*

9 (4) SALARY INDEX ADJUSTMENT. The monthly salary of a participant receiving
10 duty disability benefits shall be adjusted as of each January 1 after the participant's qualifying
11 date, using the salary index for the previous calendar year, in the manner provided by s. 40.65
12 (6), Stats.

13
14 ETF 52.14 DUTY DISABILITY BENEFITS FOR STATE EMPLOYEES. (1) Except as
15 provided by sub. (2) or (3), the gross monthly duty disability benefit payable to a participant
16 who is a state employe shall be 80% of the participant's monthly salary adjusted as provided
17 by s. 40.65 (5) (b) and (6), Stats., and ss. ETF 52.12 (4) and 52.16. Except as provided by
18 sub. (2) or (3), the department shall not withhold an amount equal to 5% of the monthly
19 benefits under this section until the amount payable under s. 40.65 (5)(b)3., Stats., is
20 determined.

21 (2) The treatment of s. 40.65 (5) (a) and (b) (intro.), 1985-86 Stats., by 1987 Wis. Act
22 363, concerning duty disability benefit amounts and withholding 5% pending resolution of

1 worker's compensation benefits, shall not apply to a state employe covered by a collective
2 bargaining agreement under subchapter V of chapter 111, Stats., until the department of
3 employment relations notifies the department that the treatment was approved by the
4 collective bargaining representative and by the joint committee on employment relations.

5 NOTE. See 1987 Wis. Act 363, ~~act~~ section 11 (2), concerning initial applicability.

6 (3) The treatment of s. 40.65 (5) (a) and (b) (intro.), 1985-86 Stats., by 1987 Wis. Act
7 363, concerning duty disability benefit amounts and withholding 5% pending resolution of
8 worker's compensation benefits, shall not apply to a state employe not covered by a collective
9 bargaining agreement under subchapter V of chapter 111, Stats., until the department of
10 employment relations notifies the department that the treatment was recommended by the
11 secretary of the department of employment relations and approved by the joint committee on
12 employment relations.

13 NOTE. See 1987 Wis. Act 363, act section 11 (3), concerning initial applicability.

14
15 ETF 52.16 REDUCTIONS IN MONTHLY DUTY DISABILITY BENEFITS. (1) IN
16 GENERAL. (a) Income guarantee. The duty disability benefit program is essentially an
17 income guarantee program which promises that income from all sources listed in s. 40.65
18 (5)(b) 1. to 6., will at least equal the percentage of monthly salary under s. 40.65 (5)(a), with
19 duty disability benefits making up any shortfall. The department shall reduce the amount of
20 a participant's gross monthly duty disability benefits as provided in s. 40.65 (5)(b)1 to 6, and
21 this section.

1 (b) Receipt assumed. The department may assume that any benefit or amount listed s.
2 40.65 (5)(b)1 to 6 is payable to a participant until it is determined to the department's
3 satisfaction that the participant is ineligible to receive the benefit or amount.

4 (c) No carryover. Except as otherwise expressly provided for receipt of lump sum
5 worker's compensation benefits or disability and retirement benefits, all amounts described in
6 s. 40.65 (5)(b) 1. to 6., Stats., received after the effective date shall apply to reduce a
7 participant's gross monthly duty disability benefit in the month in which received, without
8 any carryover to other months.

9 (d) Limit on reductions. Duty disability benefits for a particular month may not be
10 reduced below zero.

11 (2) OASDHI BENEFITS. The reduction of monthly duty disability benefits for
12 OASDHI benefits received shall be affected by annual increases in monthly OASDHI
13 benefits. If the department is unable to immediately adjust monthly duty disability benefits
14 as such increases are received, any excess duty disability benefits paid as a result shall be
15 treated as payments made in error.

16 (3) UNEMPLOYMENT COMPENSATION. [Reserved.]

17 (4) WORKER'S COMPENSATION. (a) 'Withholding requirement.' Until the worker's
18 compensation benefits are determined for the disability which is the basis of the duty
19 disability benefits, the department shall withhold an amount equal to 5% of the gross
20 monthly duty disability benefits, except as otherwise provided by s. ETF 52.14 (1).

21 1. If the participant receives a lump sum worker's compensation payment or compromise
22 settlement, only the portion of the lump sum which exceeds the accumulated total of the

1 amounts then withheld under this subsection shall be treated as a lump sum under s. 40.65
2 (5)(b)³ ~~that~~ for purposes of reducing the participant's monthly duty disability benefits.

3 2. If the accumulated total of the amounts then withheld under this subsection exceeds
4 the participant's lump sum worker's compensation payment or compromise settlement, then
5 the difference shall be refunded to the participant when the participant's worker's
6 compensation benefits have been determined. Worker's compensation benefits are
7 determined one year after the date a compromise agreement is approved or when the decision
8 in a contested case becomes final.

9 (b) Payable to the participant. All worker's compensation benefits are payable to the
10 participant except for amounts expressly identified in the worker's compensation order, or
11 order approving a compromise settlement, as being paid to an attorney fees, as medical
12 expenses or reimbursement for other costs.

13 (c) All worker's compensation benefits apply; no carryover except for lump sum
14 payments. Any and all worker's compensation benefits paid to a participant receiving duty
15 disability benefits after the effective date shall reduce the participant's gross monthly duty
16 disability benefits for the month in which paid, without regard for the nature or date of the
17 injury or the time period covered by the benefits. Any lump sum worker's compensation
18 benefit shall reduce the participant's gross monthly duty disability benefits as provided by s.
19 40.65 (5)(b)3. All other worker's compensation benefits shall reduce the participant's benefit
20 for the month in which the worker's compensation benefits were received.

21 (5) DISABILITY AND RETIREMENT BENEFITS. (a) Lump sum payments. The
22 treatment under s. 40.65 (5)(b)4 of the full amount received as a lump sum benefit applies

1 only to lump sum benefits received under s. 40.25, Stats. Lump sum payments received from
2 any other retirement system shall reduce duty disability benefits for the month in which
3 received only.

4 (b) Disability annuity alternatives. Notwithstanding s. 40.65 (5)(c), if the employe trust
5 funds board determines that some or all of a disability annuity benefit provided from the
6 Wisconsin retirement system shall instead be provided through group insurance plans
7 established by the group insurance board, then benefits received under the insurance plan
8 shall reduce monthly duty disability benefits as did the disability annuity benefits.

9 1. Monthly duty disability benefits shall be reduced by benefits received under s. ETF
10 50.52 (1).

11 (6) EARNINGS. (a) Income from therapy or rehabilitation. The department may elect
12 not to reduce a participant's benefit because of income related to therapy or rehabilitation.

13 *> 40.65 (5)(b) (1) (i)*

14 ETF 52.18 ESTABLISHING ESTIMATED MONTHLY REDUCTIONS. (1) The
15 department may reduce monthly duty disability benefits on a regular and steady basis through
16 a year by estimating applicable reductions and correcting any resulting over- or under-
17 payments in an annual reconciliation.

18 (2) The department shall provide each participant receiving duty disability benefits with
19 a written statement showing the monthly salary amount, effective date, gross amount of duty
20 disability benefits and reductions to monthly benefits.

21 NOTE: "Monthly Payment and Offsets," Form ET-5507.

where available *see the case* -17-

1 (3) A participant eligible to receive duty disability benefits may request that his or her
2 estimated reductions be adjusted to more accurately conform to anticipated income from
3 sources specified in s. 40.65 (5)(b).

4 ETF 52.20 COLLECTION OF EXCESS BENEFITS PAID IN ERROR. (1) The
5 department shall inform the participant of any overpayment of duty disability benefits as
6 identified and determined by the department. If not immediately repaid by the participant,
7 the department shall utilize its authority under s. 40.08 (4) to collect such amounts and
8 interest as it determines are due.

9 ETF 52.22 DEATH BENEFITS. (1) FATALITIES. For purposes of paying a death
10 benefit under s. 40.65 (7)(am), Stats., and sub. (2), a protective occupation participant who
11 suffers fatal injury while performing his duty, or who dies due to a disease contracted due to
12 his occupation, is deemed to have died as the result of an injury for which a benefit would be
13 payable under s. 40.65 (4), Stats., even if there was no inability to perform the job
14 immediately prior to death.

15 (2) STATE EMPLOYEE DEATH BENEFITS. Except as provided by par. (a) or (b),
16 death benefits with respect to deceased state employe participants receiving duty disability
17 benefits will be determined under s. 40.65 (7), 1985-86 Stats.

18 (a) The treatment of s. 40.65 (7) (a) (intro.) and (am), 1985-86 Stats., by 1987 Wis. Act
19 363, affecting death benefits, shall not apply to a state employe covered by a collective
20 bargaining agreement under subchapter V of chapter 111, Stats., until the department of

1 employment relations notifies the department that the treatment was approved by the
2 collective bargaining representative and by the joint committee on employment relations.

3 NOTE. See 1987 Wis. Act 363, act section 11 (2), concerning initial applicability.

4 (b) The treatment of s. 40.65 (7) (a) (intro.) and (am), 1985-86 Stats., by 1987 Wis. Act
5 363, affecting death benefits, shall not apply to a state employe not covered by a collective
6 bargaining agreement under subchapter V of chapter 111, Stats., until the department of
7 employment relations notifies the department that the treatment was recommended by the
8 secretary of the department of employment relations and approved by the joint committee on
9 employment relations.

10 NOTE. See 1987 Wis. Act 363, act section 11 (3), concerning initial applicability.

11
12 ETF 52.24 REQUIRED REPORTING BY DUTY DISABILITY RECIPIENTS:

13 FAILURE TO SUBMIT. (1) MONTHLY EARNINGS FROM EMPLOYMENT. A person
14 receiving duty disability benefits shall keep records of all earnings received, including profits
15 from self-employment, during each month beginning with the effective date, whether paid by
16 the employer under whom the duty disability occurred or from any other employer. This
17 information shall be supplied to the department upon request and at least annually. As used
18 in this subsection and in s. 40.65 (5)(b) 6., the terms "earnings" and "employer" have their
19 broad, plain meaning and are not limited to the definitions in s. 40.02 (22) and (28). 4

20 (2) DUTY TO REPORT RECEIPT. A person receiving duty disability benefits shall
21 respond within 30 days to any request for income information from the department and,
22 regardless of any requests, shall disclose in writing, within 30 days after receipt, any

1 retroactive or other lump sum payment of any Social Security, worker's compensation,
2 unemployment compensation, disability or retirement benefit or employment earnings,
3 including sums received in lieu of earnings, such as an award for lost earnings, which is
4 received on any date after the participant's duty disability benefit effective date.

5 (3) DUTY TO REPORT KNOWN ERRORS. A person receiving duty disability
6 benefits shall disclose in writing to the department any error known to the person with regard
7 to the amounts by which the department is reducing the participant's monthly duty disability
8 benefits due to the participant's receipt of Social Security, worker's compensation,
9 unemployment compensation, disability or retirement benefit or earnings, including sums
10 received in lieu of earnings.

11 ETF 52.24 TERMINATION OF DUTY DISABILITY BENEFITS. (1) The department
12 may terminate duty disability benefits for any person who refuses to submit or fails to timely
13 submit information requested by the department, including but not limited to income or
14 benefit information, or information concerning a person's marital status, or who submits false
15 information.

16 (2) A person whose duty disability benefits are terminated may not reapply for duty
17 disability benefits based upon the same disability.

18 (END OF RULE TEXT)

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

4 Approved for publication: This proposed rule making is approved for submission to the
5 Legislative Council Staff for review under s. 227.15, Stats., and for submission to the Revisor
6 of Statutes under s. 227.17, Stats., in order to provide notice of the scheduled public hearing.

7 Signed at Madison, Wisconsin this 27th day of March, 1998.

8 WISCONSIN DEPARTMENT OF EMPLOYEE TRUST FUNDS

9 

10 Eric O. Stanchfield, Secretary