

## Chapter ETF 52

### DUTY DISABILITY BENEFITS

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**Note:** Corrections made under s. 13.93 (2m) (b) 6., Stats., Register, January 2004 No. 577.

**ETF 52.01 Purpose and scope.** (1) **SCOPE.** This chapter applies to the administration of the duty disability program under s. 40.65, Stats.

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

**History:** Cr. Register, September, 1998, No. 513, eff. 10-1-98.

**ETF 52.02 Definitions.** Unless the context clearly requires otherwise, words, phrases and terms shall have the meanings set forth in s. 40.02, Stats., and s. ETF 10.01. In this chapter:

(1) “Effective date” means the date determined under s. ETF 52.10.

(1m) “Fire fighter” means an employee of the fire department of a participating employer who was classified for that employment as a protective occupation participant as defined in s. 40.02 (48) (b) (2), Stats.

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

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

Example: Worker’s compensation benefits are payable in weekly payments. If a worker’s compensation payment covered this week and the previous 2 weeks, the portion covering the previous 2 weeks would be a lump sum payment. Wisconsin retirement system annuities are payable monthly. A payment covering the previous 12 months, but not the current month, would be a lump sum payment.

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

**Note:** “Duty Disability Medical Report,” form ET-5312.

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

(6) “Qualifying date” means the date on which a participant became disabled under s. 40.65 (4), Stats., as determined under s. ETF 52.08.

(7) “Qualifying medical report” means a medical report, consistent with attached medical records, which certifies that an

applicant for duty disability benefits is disabled as described by s. 40.65 (4), Stats.

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

**History:** Cr. Register, September, 1998, No. 513, eff. 10-1-98; **CR 13-029: renum. (4m) to (1m) and am., am. (2) Register November 2013 No. 695, eff. 12-1-13.**

**ETF 52.04 Department authority and duties.**

(1) **ADMINISTER.** The department shall administer the duty disability benefit program on behalf of the Wisconsin retirement board under s. 40.65, Stats., and this chapter.

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

**Note:** This rule (CR 09-057) amends s. ETF 52.04 (2) to conform to the treatment of s. 40.65 (3) by 2007 Wis. Act 131 by removing the mandate for the department to obtain a certified copy of each duty disability recipient’s tax return each year and treating a failure to provide a tax return, if requested, in the same manner as other refusals to provide requested information.

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

(4) **PAY BENEFITS.** The department shall pay the net duty disability benefits payable to a participant, spouse or domestic partner, or to an adjudicated guardian, as applicable. Payment shall be made on the first day of each month for the previous month.

**History:** Cr. Register, September, 1998, No. 513, eff. 10-1-98; CR 09-057: am. (2) Register May 2010 No. 653, eff. 6-1-10; **CR 13-029: am. (4) Register November 2013 No. 695, eff. 12-1-13.**

**ETF 52.06 Application for duty disability benefits.**

(1) **IN GENERAL.** An application for duty disability benefits made on or after May 3, 1988, shall be filed with the department, regardless of whether the person filed an application for duty disability benefits with the former department of labor, industry and human relations prior to May 3, 1988.

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

(b) The receipt date for applications filed with the department prior to January 1, 1995, and for application materials filed prior to May 3, 1988, with the former department of industry, labor and human relations, is the date of the receipt stamp affixed to the doc-

ument by the respective department, absent clear and convincing proof to the contrary.

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

- (a) Terminated employment due to disability.
- (b) Assigned to light duty by employer or physician due to disability, on other than a temporary basis regardless of whether a light duty position is available.
- (c) Pay reduced due to disability, on other than a temporary basis.
- (d) Position reduced due to disability, on other than a temporary basis.
- (e) Promotion specifically prohibited due to disability by employer rules, ordinances, policies or written agreements, on other than a temporary basis. The rule, ordinance, policy, or agreement shall be written and expressly identified or a copy attached to the application.

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

**(5) APPLICATION MATERIALS; MEDICAL REPORTS.** (a) Upon request, the department shall provide a blank copy of the currently approved application form and a blank copy of the currently approved medical report form to a participant. The applicant shall provide 2 medical reports at the applicant's expense. One report must be from a physician who specializes in the area of disability. If the first medical report received by the department is not a qualifying medical report, the department shall advise the applicant that the department will deny the application but that the applicant may nevertheless wish to obtain the second medical report from another physician to include in the applicant's file as supporting evidence if the applicant chooses to file an appeal under s. ETF 52.28. The department may, by written notice to the applicant, establish a time limit of at least 60 days for submission of the second report.

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

**Note:** The "Duty Disability Application," form ET-5311, and "Duty Disability Medical Report," form ET-5312, are available free upon request from the Department of Employee Trust Funds, P.O. Box 7931, Madison WI 53707. Outdated versions should not be used and may be rejected.

**(6) WITHDRAWAL OF APPLICATION.** (a) *Voluntary withdrawal.* Except as otherwise provided in this paragraph, a participant may withdraw his or her application and, upon withdrawal, the application is void. An applicant may not withdraw his or her application after it has been approved by the department, but may waive future benefits by requesting a waiver from the department.

(b) *Failure to submit medical reports.* If the applicant fails to submit two qualifying medical reports within one year after the date on which the application was filed, and the department has not already denied the application, the application shall be cancelled.

**(7) REQUIRED EMPLOYER CERTIFICATION.** (a) For each application for duty disability benefits, the department shall obtain from the employer one of the following:

1. A certification that the applicant is disabled as described in s. 40.65 (4), Stats., indicating the specific criterion under s. 40.65 (4) (c), Stats., which has been satisfied, and an admission

that the injury or disease leading to the disability was duty-related.

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

(b) In addition to the requirements of par. (a), for each application for duty disability benefits pursuant to s. 891.45 or 891.455, Stats., by a fire fighter, the department shall obtain from the employer a certification including the following:

1. Whether the participant had served a total of 5 years or more as a fire fighter within the meaning of s. ETF 52.02 (1m). The service need not have been continuous service. The current employer of a fire fighter may verify and certify past qualifying service as a firefighter for the purposes of this subsection.

2. Whether the participant had served at least 10 years as a fire fighter within the meaning of s. ETF 52.02 (1m). The service need not have been continuous service. The current employer of a fire fighter may verify and certify past qualifying service as a fire fighter for the purposes of this subsection.

3. An attached copy of the qualifying medical examination given prior to the time the participant became a fire fighter for that employer. If no qualifying medical examination is available, the employer must certify that there is no record of a medical examination but one would have been required prior to the participant's hire date.

(bm) In addition to the requirements of par. (a), for each application for duty disability benefits pursuant to s. 891.453, Stats., the department shall obtain from the employer a copy of the qualifying medical examination given prior to the time the participant worked for that employer in a position listed in s. 891.453, Stats. If no qualifying medical examination is available, the employer must certify that there is no record of a medical examination, but that one would have been required prior to the participant's hire date.

(c) The department shall determine whether s. 891.45, 891.453, or 891.455, Stats., applies. The presumptions under ss. 891.45, 891.453, and 891.455, Stats., are rebuttable. The department shall determine whether the applicant is eligible for benefits under s. 40.65, Stats., on the basis of evidence submitted pursuant to s. 40.65 (2) (b) 2., Stats.

**Note:** "Employer Certification - Duty Disability," form ET-5326, will be sent to the employer by the department following receipt of the employee's application for benefits. Outdated versions of the form should not be used and may be rejected.

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

**(9) FALSE INFORMATION.** The department may deny the application of any person who submits false information regarding an application for duty disability benefits.

**History:** Cr. Register, September, 1998, No. 513, eff. 10-1-98; CR 11-040: am. (9) Register July 2012 No. 679, eff. 8-1-12; CR 13-029: am. (3) (b) to (e), (5) (a), (6) (a), (b), (7) (a) 2., (b), cr. (7) (bm), am. (7) (c) Register November 2013 No. 695, eff. 12-1-13.

**ETF 52.07 Disability.** A participant is disabled within the meaning of s. 40.65 (4), Stats., if all of the following apply:

**(1) WORK-RELATED.** The participant was injured while performing his or her duty as a protective occupation participant of a participating employer or contracted a disease due to that occupation.

**(2) PERMANENCY.** The disability is likely, to a reasonable degree of medical certainty, to be permanent.

**(3) SEVERITY.** The disability is so severe that it causes one or more of the following:

(a) The applicant is medically required to terminate the participating employment.

(b) The employer or physician assigns the applicant to light duty regardless of whether a light duty position is available.

(c) The employer reduces the applicant's pay. Only a reduction in regular monthly earnings meets the requirement of this subsection. Loss of shift differential payments, uniform allowances, or other collateral payments are not reductions of pay within the meaning of s. 40.65 (4) (c) 2., Stats. Receipt of temporary disability compensation under s. 102.43, Stats., in lieu of regular pay may be a reduction of pay for purposes of duty disability benefit eligibility when the employer does not make up the difference between workers' compensation and regular monthly earnings, and if the participant terminates employment while still receiving temporary disability compensation. A situation in which the participant is not working and is not receiving any earnings would be considered a reduction in pay.

(d) The employer reduces the applicant's position. Assigning a formerly full-time employee to a part-time position or reducing a part-time employee's hours is considered a reduction of position for the purposes of this chapter. An employee who never returns to work is also considered to have received a reduction in position for the purposes of this chapter. Assigning the applicant to a position which does not satisfy the criteria under s. 40.02 (48), Stats., defining a protective occupation participant is a reduction of position for the purposes of this chapter.

**Note:** See s. 40.02 (48)(b) 1. to 3., Stats., defining "police officer," "fire fighter," "deputy sheriff" and "county traffic police officer;" concerning their continuing protective occupation status even if temporarily assigned to other duties.

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

**(4) TEMPORARY ACTIONS NON-QUALIFYING.** Assignments to light duty, or reductions in pay or position or promotional opportunities, which are temporary in nature, such as actions taken to allow recovery, are not consistent with a permanent disability and do not qualify a participant for duty disability benefits.

**History:** Cr. Register, September, 1998, No. 513, eff. 10-1-98; correction in (3) (c) made under s. 13.93 (2m) (b) 7., Stats., Register January 2004 No. 577; **CR 13-029; am. (3) (b) to (d), (4) Register November 2013 No. 695, eff. 12-1-13.**

**ETF 52.08 Qualifying date. (1) IN GENERAL.** A participant's qualifying date is the date on which he or she becomes disabled within the meaning of s. 40.65 (4), Stats., and s. ETF 52.07, as determined under this section.

**(2) RETIREMENT.** If eligibility for duty disability benefits is based upon a disability which requires the employee to retire from his or her job, the termination date is the qualifying date.

**(3) REDUCTION OF PAY OR POSITION; ASSIGNMENT TO LIGHT DUTY.** If eligibility for duty disability benefits is based upon a reduction of pay or position or assignment to light duty, then the qualifying date is the date on which the employee began the permanent reduction or assignment. For purposes of this subsection, a reduction or assignment is permanent even if initially characterized as temporary by the employer or physician, if the reduction or assignment remains continuously in effect while the participant is recovering or his or her permanent condition is being assessed and the employer or physician then determines that it is necessary, because of the participant's disability, to make the reduction or assignment permanent, or that employment be terminated. If the participant is restored to the unreduced pay or position then a previous reduction in pay or position was not permanent. If the participant is assigned to full duty then a previous assignment to light duty was not permanent.

**(4) PROMOTION PROHIBITED.** If eligibility for duty disability benefits is based upon a prohibition against promotion due to a disability, the qualifying date is the date on which the employee became continuously subject to the prohibition.

**History:** Cr. Register, September, 1998, No. 513, eff. 10-1-98; **CR 13-029; am. (3) Register November 2013 No. 695, eff. 12-1-13.**

#### **ETF 52.10 Effective date of duty disability benefits.**

**(1) DEPARTMENT TO ESTABLISH.** The department shall establish an effective date for duty disability benefits for each participant whose application for duty disability benefits is granted. Duty disability benefits are not retroactive. The effective date for duty disability benefits is the later of:

(a) The date the participant's application form was received, as determined under s. ETF 52.06 (2), ignoring any previous applications.

(b) The participant's qualifying date.

**(2)** If an applicant filed a document with the former department of industry, labor and human relations prior to May 3, 1988, seeking a determination of eligibility for duty disability benefits the department will treat the earliest document filed with respect to each claim as the application form regardless of the document title, including without limitation a request for a hearing or a stipulation between the employer and participant agreeing to the participant's receipt of duty disability benefits.

**History:** Cr. Register, September, 1998, No. 513, eff. 10-1-98.

#### **ETF 52.12 Monthly salary and subsequent adjustments. (1) INITIALLY DETERMINED BY EMPLOYER.**

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

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

1. 'Exclusions.' "Regular monthly earnings" for the purposes of this section do not include:

a. Overtime pay.

b. Any payments excluded from earnings by s. 40.02 (22) (b), Stats.

c. Any periodic payments made during any month which covered other periods of time, such as a lump sum longevity award.

d. Amounts which are not earnings reportable to the Wisconsin retirement system.

2. 'Temporary disability compensation; effect.' If the participant is receiving temporary disability compensation under s. 102.43, Stats., as of the qualifying date, and the qualifying date is prior to the termination of employment with the participating employer in whose employment the disabling injury occurred or the occupational disease was contracted, then the participant's regular monthly earnings are the amount of earnings the employee would have received under s. 40.29 (1) (b), Stats., if the disability had not occurred, subject to the exclusions in subd. 1.

(b) *Prorated cash payments.* A prorated amount reflecting the monthly equivalent of periodic cash payments which are includable in the participant's annual Wisconsin retirement system earnings. This includes lump sum payments for accumulated leave that are made at least once per calendar year to all employees, within a bargaining unit, specific employment category, classification or those whose job description contains the same primary job duties, regardless of whether an employee terminates employment during that year. This includes any unused compensatory time that is converted to pay in a lump sum payment if not due to termination of employment. Such payments are divided by 12 and the result is added to the participant's regular monthly earnings. Lump sum payments may only be included as prorated cash payments if, as of the participant's duty disability qualifying date:

1. The participant would have been in a position that was eligible for the pro-rated lump sum payment regardless of if or when paid; and

2. The participant would have received the lump sum payment in the calendar year of the participant's duty disability qualifying date.

(c) *Regular and dependable overtime pay.* For the purposes of this chapter, regular and dependable overtime pay means hours that are worked or for which an employee is required to be on call or standby by the employer, above the normal work hours. For the purposes of this paragraph, normal work hours are 80 hours in a biweekly pay period unless otherwise specifically designated by union contract. As set forth in this paragraph, this amount shall be calculated by taking the number of overtime hours for which the participant was paid in the 5 calendar years preceding the calendar year of the qualifying date, dividing by 60, and multiplying the result by the hourly overtime rate to which the participant was entitled as of the qualifying date. If the participant has been employed by the employer for less than the preceding 5 years, the monthly average of all overtime hours paid shall be multiplied by the hourly overtime rate as of the qualifying date. If the participant was in a position not eligible for overtime pay on the qualifying date then no overtime pay may be included in the calculation of monthly salary. No form of compensatory time off, even if converted to pay, is overtime pay under this paragraph.

(2) **REVIEW BY DEPARTMENT.** The employer's calculation of a participant's monthly salary will be reviewed by the department. The department shall notify the participant of the department's determination of the monthly salary amount and shall also notify the employer if the determination made by the department differs from the amount provided by the employer.

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

**History:** Cr. Register, September, 1998, No. 513, eff. 10-1-98; CR 13-029; renum. (1) (a) 1. to (1) (a) 1. (intro.), a. to d. and am., renum. (1) (b) to (1) (b) (intro.), cr. (1) (b) 1., 2., renum. (1) (c) (intro.), 1., 2. to (1) (c) and am. Register November 2013 No. 695, eff. 12-1-13.

**ETF 52.14 Duty disability benefits for state employees.** (1) Except as provided in sub. (2) or (3), the maximum monthly duty disability benefit payable to a participant who is a state employee is 80% of the participant's monthly salary adjusted as provided in s. 40.65 (5) (b) and (6), Stats., and s. ETF 52.12. Except as provided in sub. (2) or (3), the department shall withhold an amount equal to 5% of the monthly benefits under this section until the amount payable under s. 40.65 (5) (b) 3., Stats., is determined.

(2) The treatment of s. 40.65 (5) (a) and (b) (intro.), 1985-86 Stats., by 1987 Wis. Act 363, concerning duty disability benefit amounts and withholding 5% pending resolution of worker's compensation benefits, does not apply to a state employee covered by a collective bargaining agreement under subch. V of ch. 111, Stats., until the office of state employment relations notifies the department that the treatment was approved by the collective bargaining representative and by the joint committee on employment relations.

**Note:** See 1987 Wis. Act 363, section 11 (2), concerning initial applicability.

(3) The treatment of s. 40.65 (5) (a) and (b) (intro.), 1985-86 Stats., by 1987 Wis. Act 363, concerning duty disability benefit amounts and withholding 5% pending resolution of worker's compensation benefits, does not apply to a state employee not covered by a collective bargaining agreement under subch. V of ch. 111, Stats., until the office of state employment relations notifies the department that the treatment was recommended by the director of the office of state employment relations and approved by the joint committee on employment relations.

**Note:** See 1987 Wis. Act 363, section 11 (3), concerning initial applicability.

**History:** Cr. Register, September, 1998, No. 513, eff. 10-1-98.

**ETF 52.15 Reduction of duty disability monthly salary based on years of service.** (1) As of the date of receipt of the duty disability application, the department shall apply s. 40.65 (5) (a), Stats., as follows:

(a) If creditable service is 25 years or less, no reduction will be applied.

(b) If the participant is eligible for benefits under subchapter II of ch. 40, Stats., the reduction will be 0.5% for each month of creditable service over 25 years.

(c) If the participant is not eligible for benefits under subchapter II of ch. 40, Stats., the reduction will be 0.5% for each month of creditable service over 30 years.

(d) The duty disability monthly salary will not be reduced to less than 50% if the participant qualifies for benefits under s. 40.63, Stats., subchapter III of ch. ETF 50, or disability benefits under OASDHI.

(2) For purposes of this section, to be eligible for benefits under subchapter II of ch. 40, Stats., on the date the duty disability application is received by the department, the participant must have terminated from covered employment and the participant may not have been approved for benefits under s. 40.63, Stats., or benefits under subchapter III of ch. ETF 50.

(3) Except as otherwise provided in sub. (4), for purposes of this section, creditable service includes military service if, as of the date of receipt of the application:

(a) The service has already been credited to the participant's WRS record; or

(b) The department has received all documentation required for crediting military service for the participant.

(4) Military service will not be considered if the documentation required for crediting military service is received by the department after the date the department receives the duty disability application.

**History:** CR 13-029; cr. Register November 2013 No. 695, eff. 12-1-13.

**ETF 52.16 Reductions in monthly duty disability benefits.** (1) **IN GENERAL.** (a) *Income guarantee.* The duty disability benefit for eligible protective occupation participants shall be administered as an income guarantee program. The amount equal to the percentage of monthly salary guaranteed under s. 40.65 (5) (a), Stats., or under s. ETF 52.14 for state employees to whom s. 40.65 (5) (a), Stats., does not apply, and adjusted under s. ETF 52.12 (3), is both the guaranteed monthly income amount and the maximum amount payable as monthly duty disability benefits. If the combined income from all sources listed in s. 40.65 (5) (b) 1. to 6., Stats., does not equal or exceed the guaranteed amount, then the difference will be made up by duty disability benefits. To determine the monthly amount of duty disability benefits payable to an eligible person, the department shall determine the dollar amount of the guaranteed percentage of monthly salary then subtract all earnings and OASDHI, unemployment compensation, worker's compensation, disability and retirement benefits as provided in s. 40.65 (5) (b) 1. to 6., Stats., and this section.

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

(c) *No carryover.* All amounts described in s. 40.65 (5) (b) 1. to 6., Stats., received by a person entitled to duty disability benefits after that person's effective date shall apply to reduce the person's maximum monthly duty disability benefit in the month in which received without any carryover to other months, except that lump sum payments of worker's compensation benefits shall reduce duty disability benefits as provided in s. 40.65 (5) (b) 3., Stats., and sub. (4) and lump sum payments of disability or retirement benefits under s. 40.65 (5) (b) 4., Stats., shall reduce duty disability benefits as provided in that subdivision.

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

(2) **OASDHI BENEFITS.** The reduction of monthly duty disability benefits for OASDHI benefits received shall be affected by

annual increases in monthly OASDHI benefits. If OASDHI benefits are increased for a month during which the recipient is also entitled to duty disability benefits and the department is administratively unable to immediately adjust the person's monthly duty disability benefits, then any excess duty disability benefits paid for that month as a result shall be treated as an overpayment of duty disability benefits as provided in s. ETF 52.20.

**(3) UNEMPLOYMENT COMPENSATION.** Maximum duty disability benefits shall be reduced by the amount of unemployment compensation benefit paid to the participant for that month regardless of who employed the participant or the nature or period of employment which is the basis for the benefit.

**(4) WORKER'S COMPENSATION.** (a) Withholding requirement. Until the worker's compensation permanent disability benefits payable to the participant are paid or otherwise determined, the department shall withhold from each monthly payment of duty disability benefits an amount equal to 5% of the maximum monthly duty disability benefits, except as otherwise provided by s. ETF 52.14.

(b) If a person subject to 5% withholding under par. (a) subsequently receives a lump sum payment of worker's compensation benefits, including a lump sum payment made pursuant to a compromise settlement under s. 102.16 (1), Stats., the department shall do one of the following:

1. If the participant receives a lump sum worker's compensation payment or compromise settlement, only the portion of the lump sum which exceeds the accumulated total of the amounts then withheld under this subsection shall be treated as a lump sum under s. 40.65 (5) (b) 3., Stats., for purposes of reducing the participant's monthly duty disability benefits.

2. If the accumulated total of the amounts withheld under this subsection exceeds the participant's lump sum worker's compensation payment or compromise settlement, then the difference shall be refunded to the participant when the participant's worker's compensation benefits have been determined and the lump sum payment shall not otherwise reduce monthly duty disability benefits.

(c) Payable to the participant. Worker's compensation benefits payable to the participant, within the meaning of s. 40.65 (5) (b) 3., Stats., are all worker's compensation benefits other than amounts expressly identified in the worker's compensation order, or order approving a compromise settlement, as being paid as attorney fees, as medical expenses or as reimbursement for other costs, or any amounts awarded under s. 102.18 (1) (bp) or 102.22 (1), Stats.

(d) All worker's compensation benefits apply; no carryover except for lump sum payments. Worker's compensation benefits paid to a participant receiving duty disability benefits after the effective date shall reduce the participant's maximum monthly duty disability benefits for the month in which paid, without regard for the nature or date of the injury or the time period covered by the benefits. Any lump sum worker's compensation benefit shall reduce the participant's maximum monthly duty disability benefits as provided in s. 40.65 (5) (b) 3., Stats.

**(5) DISABILITY AND RETIREMENT BENEFITS.** (a) *Lump sum payments.* The treatment under s. 40.65 (5) (b) 4., Stats., of the full amount received as a lump sum benefit applies only to lump sum benefits received under s. 40.25, Stats. Lump sum payments received from any other retirement system shall reduce duty disability benefits for the month in which received only.

(b) *Disability annuity alternatives.* Monthly duty disability benefits shall be reduced by benefits received under s. ETF 50.52 (1). Notwithstanding s. 40.65 (5) (c), Stats., if the employee trust funds board determines that some or all of a disability annuity benefit provided from the Wisconsin retirement system shall instead be provided through group insurance plans established by the group insurance board, then benefits received under the insurance

plan shall reduce monthly duty disability benefits as did the disability annuity benefits.

**(6) EARNINGS; INCOME FROM THERAPY OR REHABILITATION.** The department may elect not to reduce a participant's benefit because of income related to therapy or rehabilitation, following written request by the participant.

**History:** Cr. Register, September, 1998, No. 513, eff. 10-1-98; **CR 13-029; renum. (4) (a) (intro.) to (4) (a) and am., r. (4) (a) 1., 2., am. (4) (c) Register November 2013 No. 695, eff. 12-1-13.**

**ETF 52.18 Establishing estimated monthly reductions.** **(1)** The department may reduce monthly duty disability benefits consistently during a year by estimating applicable reductions and correcting any resulting over- or under-payments in an annual reconciliation.

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

**Note:** "Monthly Payment and Offsets," Form ET-5507.

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

**History:** Cr. Register, September, 1998, No. 513, eff. 10-1-98.

**ETF 52.20 Collection of excess benefits paid in error.** The department shall inform the participant of any overpayment of duty disability benefits as identified and determined by the department. If not immediately repaid by the participant, the department shall utilize its authority under s. 40.08 (4), Stats., to collect the amount overpaid and the interest it determines to be due.

**History:** Cr. Register, September, 1998, No. 513, eff. 10-1-98.

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

**(2) STATE EMPLOYEE DEATH BENEFITS.** Except as provided in par. (a) or (b), death benefits with respect to deceased state employee participants receiving duty disability benefits are determined under s. 40.65 (7), Stats.

(a) The treatment of s. 40.65 (7) (a) (intro.) and (am), 1985-86 Stats., by 1987 Wis. Act 363, affecting death benefits, does not apply to a state employee covered by a collective bargaining agreement under subch. V of ch. 111, Stats., until the office of state employment relations notifies the department that the treatment was approved by the collective bargaining representative and by the joint committee on employment relations.

**Note:** See 1987 Wis. Act 363, section 11 (2), concerning initial applicability.

(b) The treatment of s. 40.65 (7) (a) (intro.) and (am), 1985-86 Stats., by 1987 Wis. Act 363, affecting death benefits, does not apply to a state employee not covered by a collective bargaining agreement under subch. V of ch. 111, Stats., until the office of state employment relations notifies the department that the treatment was recommended by the director of the office of state employment relations and approved by the joint committee on employment relations.

**(3) LIMITATIONS.** If a protective occupation participant who was approved for duty disability benefits dies of a disease listed under s. 891.45, 891.453, or 891.455, Stats., but the benefit was not approved based on that disease, the surviving spouse or domestic partner is not eligible to apply for death benefits as a result of that disease.

**Note:** See 1987 Wis. Act 363, section 11 (3), concerning initial applicability.

**History:** Cr. Register, September, 1998, No. 513, eff. 10-1-98; **CR 13-029: cr. (3) Register November 2013 No. 695, eff. 12-1-13.**

**ETF 52.24 Required reporting by duty disability recipients; failure to submit.** (1) **MONTHLY EARNINGS FROM EMPLOYMENT.** A person receiving duty disability benefits shall keep records of all earnings received, including profits from self-employment, during each month beginning with the effective date, whether paid by the employer under whom the duty disability occurred or from any other employer. The department shall request the records at least annually and, upon request, the person shall supply the records to the department. As used in this subsection and in s. 40.65 (5) (b) 6., Stats., the terms “earnings” and “employer” have their broad, plain meaning and are not limited to the definitions in s. 40.02 (22) and (28), Stats.

(2) **DUTY TO REPORT RECEIPT.** A person receiving duty disability benefits shall respond within 30 days to any request for income information from the department and, regardless of any requests, shall disclose in writing, within 30 days after receipt, any retroactive or other lump sum payment of any Social Security, worker’s compensation, unemployment compensation, disability or retirement benefit or employment earnings, including sums received in lieu of earnings, such as an award for lost earnings, which is received on any date after the participant’s duty disability benefit effective date.

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

earnings.

**History:** Cr. Register, September, 1998, No. 513, eff. 10-1-98.

**ETF 52.26 Termination of duty disability benefits.**

(1) The department may terminate duty disability benefits for any person who refuses to submit or fails to timely submit information requested by the department, including but not limited to income or benefit information, or information concerning a person’s marital status, or who submits false information.

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

**History:** Cr. Register, September, 1998, No. 513, eff. 10-1-98.

**ETF 52.28 Appeals.** (1) Except as provided in sub. (2) all determinations made by the department under this chapter, including, but not limited to the calculation of the applicant’s monthly salary, are subject to appeal to the Wisconsin retirement board as provided in ch. ETF 11. Both the applicant and the employer may request an appeal.

(2) Determinations made by the department under this chapter as to an applicant’s eligibility for duty disability benefits may be appealed to the department of workforce development under s. 40.65 (2) (b) 3, Stats. The department is a necessary party.

(a) The employer may appeal a determination granting an application for duty disability benefits, including determinations based upon ss. 891.45, 891.453, and 891.455, Stats.

(b) If an application is denied based upon receipt of a qualifying medical report and a medical report which was not a qualifying medical report, and the participant appeals the denial as provided in s. 40.65 (2) (b) 3., Stats., then the administrative law judge determining eligibility may decide between the 2 conflicting medical reports to determine eligibility.

**History:** Cr. Register, September, 1998, No. 513, eff. 10-1-98; **CR 13-029: am. (2) (a) Register November 2013 No. 695, eff. 12-1-13.**