

1987 Assembly Bill 975

Date of enactment: April 22, 1988  
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## 1987 Wisconsin Act 363

AN ACT to renumber and amend 40.65 (2); to amend 40.65 (3) and (4) (c) 3, 40.65 (5) (b) (intro.) and 40.65 (7) (a) (intro.); to repeal and recreate 40.02 (52) and 40.65 (5) (a); and to create 40.05 (2) (ar), 40.65 (2) (b) and 40.65 (7) (am) of the statutes, relating to disability benefits for the Wisconsin retirement system.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. **Legislative intent.** The intent of this act is not to affect the operation of section 891.45 of the statutes.

SECTION 2. 40.02 (52) of the statutes is repealed and recreated to read:

40.02 (52) "Salary index" means the percentage increase in the average of the total wages, as determined under 42 USC 415 (b) (3) (A), between the year before the preceding year and the preceding year.

SECTION 3. 40.05 (2) (ar) of the statutes is created to read:

40.05 (2) (ar) Participating employers of employees subject to s. 40.65 shall contribute an additional per-

centage or percentages of those employes' earnings based on the experience rates determined to be appropriate by the board with the advice of the actuary.

SECTION 4. 40.65 (2) of the statutes is renumbered 40.65 (2) (a) and amended to read:

40.65 (2) (a) This paragraph applies to participants who first apply for benefits before the effective date of this paragraph .... [revisor inserts date]. Any person desiring a benefit under this section must apply to the department of industry, labor and human relations, which department shall determine whether the applicant is eligible to receive the benefit and the participant's monthly salary. Appeals from the eligibility decision shall follow the procedures under ss. 102.16 to 102.26. If it is determined that an applicant is eligi-

ble, the department of industry, labor and human relations shall notify the department of employe trust funds and shall certify the applicant's monthly salary. If at the time of application for benefits an applicant is still employed in any capacity by the employer in whose employ the disabling injury occurred or disease was contracted, that continued employment shall not affect that applicant's right to have his or her eligibility to receive those benefits determined in proceedings before the department of industry, labor and human relations or the labor and industry review commission or in proceedings in the courts. The department of industry, labor and human relations may promulgate rules needed to administer this ~~subsection~~ paragraph.

SECTION 5. 40.65 (2) (b) of the statutes is created to read:

40.65 (2) (b) 1. This paragraph applies to participants who first apply for benefits under this section on or after the effective date of this subdivision .... [revisor inserts date].

2. An applicant for benefits under this section shall submit or have submitted to the department an application that includes written certification of the applicant's disability under sub. (4) by at least 2 physicians, as defined in s. 448.01 (5), who practice in this state and one of whom is approved or appointed by the department, and a statement from the applicant's employer that the injury or disease leading to the disability was duty-related.

3. The department shall determine whether or not the applicant is eligible for benefits under this section on the basis of the evidence in subd. 2. An applicant may appeal a determination under this subdivision to the department of industry, labor and human relations.

4. In hearing an appeal under subd. 3, the department of industry, labor and human relations shall follow the procedures under ss. 102.16 to 102.26.

5. The department shall be an interested party in an appeal under subd. 3, and the department shall receive legal assistance from the department of justice, as provided under s. 165.25 (4).

SECTION 6. 40.65 (3) and (4) (c) 3 of the statutes are amended to read:

40.65 (3) The Wisconsin retirement board shall determine the amount of each monthly benefit payable under this section and its effective date. The board shall periodically review the dollar amount of each monthly benefit and adjust it to conform with the provisions of this section. The board may request any income or benefit information, or any information concerning a person's marital status, which it considers to be necessary to implement this subsection and ~~may~~ shall require a participant to submit a certified copy of his or her most recent state or federal income tax return. The board may terminate the monthly benefit of any person who refuses to submit information requested by the board or who submits false information to the board.

(4) (c) 3. The employee's promotional opportunities within the service are adversely affected if state or local employer rules, ordinances, policies or written agreements specifically prohibit promotion because of the disability.

SECTION 7. 40.65 (5) (a) of the statutes is repealed and recreated to read:

40.65 (5) (a) The monthly benefit payable to participants who qualify for benefits under s. 40.63 or disability benefits under OASDHI is 80% of the participant's monthly salary adjusted under par. (b) and sub. (6), except that the 80% shall be reduced by 0.5% for each month of creditable service over 30 years or over 25 years for persons who are eligible for benefits under subch. II at the date of application, but not to less than 50% of the participant's monthly salary. For participants who do not qualify for benefits under s. 40.63 or disability benefits under OASDHI, the monthly benefit under this section is 75% of the participant's monthly salary adjusted under par. (b) and sub. (6), except that the 75% shall be reduced by 0.5% for each month of creditable service over 30 years or over 25 years for persons who are eligible for benefits under subch. II on the date of application.

SECTION 8. 40.65 (5) (b) (intro.) of the statutes is amended to read:

40.65 (5) (b) (intro.) The Wisconsin retirement board shall reduce the amount of a participant's monthly benefit under this section by the amounts under subds. 1 to 6, except that the board may determine not to reduce a participant's benefit because of income related to therapy or rehabilitation. The Wisconsin retirement board may assume that any benefit or amount listed under subds. 1 to 6 is payable to a participant until it is determined to the board's satisfaction that the participant is ineligible to receive the benefit or amount, except that the department shall withhold an amount equal to 5% of the monthly benefit under this section until the amount payable under subd. 3 is determined.

SECTION 9. 40.65 (7) (a) (intro.) of the statutes is amended to read:

40.65 (7) (a) (intro.) This paragraph applies to benefits based on applications filed before the effective date of this paragraph .... [revisor inserts date]. If a protective occupation participant dies as a result of an injury or a disease for which a benefit is paid or would be payable under sub. (4), and the participant is survived by a spouse or an unmarried child under age 18, a monthly benefit shall be paid as follows:

SECTION 10. 40.65 (7) (am) of the statutes is created to read:

40.65 (7) (am) This paragraph applies to benefits based on applications filed on or after the effective date of this paragraph .... [revisor inserts date]. If a protective occupation participant dies as a result of an injury or a disease for which a benefit is paid or would be payable under sub. (4), and the participant is sur-

vived by a spouse or an unmarried child under the age of 18, a monthly benefit shall be paid as follows:

1. To the surviving spouse until the surviving spouse remarries, if the spouse was married to the participant on the date that the participant was disabled under sub. (4), 50% of the participant's monthly salary at the time of death, but reduced by any amount payable under sub. (5) (b) 1 to 6.

2. To a guardian for each of that guardian's wards who is an unmarried surviving child under the age of 18, 10% of the participant's monthly salary at the time of death, payable until the child marries, dies or reaches the age of 18, whichever occurs first. The marital status of the surviving spouse shall have no effect on the payments under this subdivision.

3. The total monthly amount paid under subds. 1 and 2 may not exceed 70% of the participant's monthly salary at the time of death reduced by any amounts under sub. (5) (b) 1 to 6 that relate to the participant's work record.

4. Benefits payable under this paragraph shall be increased each January 1 by the salary index determined for the prior year.

**SECTION 11. Initial applicability.** (1) For non-state employees, the treatment of section 40.65 (4) (c) 3

and (5) (a) and (b) (intro.) of the statutes first applies to benefits in respect to applications filed on the effective date of this subsection.

(2) For state employees covered by a collective bargaining agreement under subchapter V of chapter 111 of the statutes, the treatment of section 40.65 (4) (c) 3, (5) (a) and (b) (intro.) and (7) (a) (intro.) and (am) of the statutes first applies after approval by the collective bargaining representative and by the joint committee on employment relations.

(3) For state employees not covered by a collective bargaining agreement under subchapter V of chapter 111 of the statutes, the treatment of section 40.65 (4) (c) 3, (5) (a) and (b) (intro.) and (7) (a) (intro.) and (am) of the statutes first applies after recommendation by the secretary of employment relations and approval by the joint committee on employment relations.

**SECTION 12. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) The treatment of section 40.02 (52) of the statutes takes effect on January 1, 1989.

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