

VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

CHAPTER 889

An Act to amend and reenact §§ 51.1-1100, 51.1-1103, 51.1-1104, 51.1-1105, 51.1-1107, 51.1-1110, 51.1-1112, 51.1-1114, 51.1-1121, 51.1-1123, 51.1-1125, 51.1-1135, 51.1-1135.1, and 51.1-1136 of the Code of Virginia, relating to the Sickness and Disability Program for state employees.

[S 28]

Approved April 9, 2000

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-1100, 51.1-1103, 51.1-1104, 51.1-1105, 51.1-1107, 51.1-1110, 51.1-1112, 51.1-1114, 51.1-1121, 51.1-1123, 51.1-1125, 51.1-1135, 51.1-1135.1, and 51.1-1136 of the Code of Virginia are amended and reenacted as follows:

§ 51.1-1100. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Act" means the Virginia Workers' Compensation Act (§ 65.2-100 et seq.).

"Company" means an insurance company issuing a long-term disability insurance policy purchased by the Board pursuant to this chapter.

"Disability" means a partial disability or total disability.

"Disability benefit" means income replacement payments payable to a participating employee under a short-term or long-term disability benefit program pursuant to this chapter. Disability benefits do not include benefits payable under the Act.

"Eligible employee" means (i) a state employee as defined in § 51.1-124.3 who is a member of the retirement system, (ii) an employee as defined in § 51.1-201, (iii) *an employee as defined in § 51.1-212,* or (iii) (iv) a qualifying part-time employee. Any person participating in a plan established pursuant to §§ 51.1-126, 51.1-126.1, 51.1-126.4, 51.1-126.5, 51.1-502.1, 51.1-502.2 or § 51.1-502.3 shall not be an eligible employee.

"Existing employee" means an employee who elected to participate in the Virginia Sickness and Disability Program.

"Partial disability" exists ~~when~~ *during the first twenty-four months following the occurrence or commencement of an illness or injury when an employee is earning less than eighty percent of his predisability earnings and,* as a result of an injury or illness, ~~an employee~~ is (i) able to perform one or more, but not all, of the ~~material and substantial duties essential job functions~~ of his own ~~or any other~~ job on an active employment or a part-time basis or (ii) able to perform all of the ~~material and substantial duties essential job functions~~ of his own ~~or any other~~ job *only* on a part-time basis. ~~An employee shall be eligible for partial disability benefits if he is earning twenty percent or more of his predisability earnings.~~

"Participating employee" means any eligible employee required or electing to participate in the program.

"Program" means the program providing sick leave, family and personal leave, short-term disability, and long-term disability benefits for participating employees established pursuant to this chapter.

"Qualifying part-time employee" means any person who would qualify as a state employee as defined in § 51.1-124.3 but, rather than being regularly employed full time on a salaried basis, is regularly employed part time for at least twenty hours but less than forty hours per week on a salaried basis.

"State service" means the employee's total period of state service as an eligible employee, including all periods of classified full-time and classified part-time service and periods of leave without pay, but not including periods during which the employee did not meet the definition of an eligible employee.

"Total disability" exists (i) during the first twenty-four months following the occurrence or commencement of an illness or injury if an employee is unable to perform *all of his normal job duties, essential job functions* or (ii) after twenty-four months following the occurrence or commencement of an illness or injury if an employee is unable to perform ~~the main duties~~ of any job for which he is reasonably qualified based on his training or experience and earning less than ~~twenty~~ *eighty* percent of his predisability earnings.

"Work-related injury" means an injury, as such term is defined in § 65.2-101, to a participating employee for which benefits are payable under the Act and the Commonwealth is the employer for purposes of the Act.

In addition to the definitions listed above, the definitions listed in § 51.1-124.3 shall apply to this chapter except as otherwise provided.

§ 51.1-1103. Participation in the program.

A. All eligible employees commencing employment or who are reemployed on or after January 1, 1999, shall participate in the program. The effective date of participation in the program for such

employees shall be their first day of employment.

B. All eligible employees who commenced employment prior to January 1, 1999, may elect to participate in the program. Any election to participate in the program shall be in writing and shall be submitted to the Board or its designee during an enrollment period commencing January 1, 1999, and ending on March 31, 1999. Any election to participate in the program shall be irrevocable. Any such eligible employee who does not elect to participate in the program during the enrollment period shall be ineligible to participate in the program for the period of his continued employment by the Commonwealth. Any eligible employee who does not affirmatively elect to participate in the program shall be deemed to have declined to participate in the program. The effective date of participation in the program for electing employees shall be the first day of the pay period following the delivery of notice of the election to the Board or its designee.

C. Any eligible employee who is employed by an institution of higher education in a faculty position performing teaching, research or administrative duties may elect to participate in the program established under this chapter or under an existing program provided by the institution. For eligible employees who commenced employment prior to January 1, 1999, the election shall be in accordance with subsection B. For eligible employees commencing employment or who are reemployed on or after January 1, 1999, an irrevocable decision to participate in either program established under this chapter or the program provided by the institution shall be made not later than ninety days from the time of entry upon the performance of his duties.

D. In addition to the conditions set forth in subsection B, any eligible employee commencing employment or who is reemployed prior to January 1, 1999, who is a member of the retirement system shall select one of the following options at the time of making his election to participate in the program:

1. To convert his sick leave balance as of the effective date of coverage to service credit under the retirement system on the basis of one month of service for each 173 hours of sick leave, rounded to the next highest month; or

2. To convert his sick leave balance as of the effective date of coverage to disability credits as provided in subsection F.

E. Any participating employee commencing employment prior to January 1, 1999, who elects to participate in the program and is not a member of the retirement system shall convert his sick leave balance as of the effective date of coverage to disability credits as provided in subsection F.

F. Any participating employee converting his sick leave balance as provided in subdivision D 2 or subsection E shall receive one hour of disability credit for each hour of sick leave. Disability credits shall be used to continue periods for which the participating employee receives income replacement during periods of short-term and long-term disability at 100 percent of creditable compensation. Disability credits shall be reduced by one day for each day that the participating employee receives short-term or long-term disability benefits. Upon leaving state service, the employee shall be paid for the balance of such disability credits under the same terms and subject to the same conditions as are in effect for the ~~conversion~~ payment of sick leave benefits in the employee's agency on December 31, 1998. *Upon entry into long-term disability, the employee may be paid for the balance of such disability credits under the same terms and subject to the same conditions in effect for payment of sick leave benefits in the employee's agency as of December 31, 1998.*

G. Eligibility for participation in the program shall terminate upon the earliest to occur of an employee's (i) termination of employment, (ii) death, or (iii) retirement from service. Eligibility for participation in the program shall be suspended during periods that an employee is placed on nonpay status, including leave without pay, if such nonpay status is due to disciplinary action.

§ 51.1-1104. Sick leave benefit for participating employees.

A. On the effective date of ~~participation in the program~~ *coverage for existing employees*, and thereafter on each January 10, existing participating full-time employees shall receive an amount of sick leave based on the employee's number of months of state service as an eligible employee, as follows:

Months of state service	Number of hours
Less than 60	64
60 to 119	72
120 or more	80

B. Participating full-time employees ~~commencing employment or who are reemployed on or after January 1, 1999, except for those described in subsection A~~, shall receive an *initial* amount of sick leave ~~for the calendar year during which at the time their employment or reemployment commences based on their first date of employment~~, as follows:

Date employment commenced	Number of hours
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January 1 through July 9	64
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July 10 through January 9	40
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Thereafter, on each January 10 such employees shall receive an amount of sick leave as provided in subsection A.

C. On the effective date of ~~participation in the program~~ coverage for existing qualifying part-time employees, and thereafter on each January 10, existing participating qualifying part-time employees shall receive an amount of sick leave based on the employee's number of months of state service as an eligible employee, as follows:

Months of state service	Number of hours
Less than 120	32
120 or more	40

D. Participating qualifying part-time employees ~~commencing employment or who are reemployed on or after January 1, 1999, except for those described in subsection C,~~ shall receive an *initial* amount of sick leave ~~for the calendar year during which at the time their employment or reemployment commences based on first date of employment,~~ as follows:

Date employment commenced	Number of hours
January 1 through July 9	32
July 10 through January 9	20

Thereafter, on each January 10 such employees shall receive an amount of sick leave as provided in subsection C.

E. Any partial calendar month during which a participating employee was employed ~~prior to January 10, 1999,~~ shall constitute one month of state service for purposes of this section.

F. Participating employees shall not be paid or otherwise compensated upon leaving employment for any balance of unused sick leave provided to them under this section.

G. Unused balances of sick leave granted under this section shall not be carried forward beyond the calendar year in which such leave is granted.

H. Employees receiving disability benefits on January 10 of any year shall be granted sick leave for such year on the date they return to active employment. The amount of sick leave granted for such year shall be determined as if they were continuing employment on the date of their return to work as provided in subsections A through D.

§ 51.1-1105. Use of sick leave by participating employees.

Participating employees shall be eligible to take sick leave to account for absences due to a ~~short-term~~ incident, illness, or injury for periods when disability benefits are not payable. Participating employees shall be compensated by their employers at 100 percent of creditable compensation for each hour of sick leave taken, not to exceed the employee's sick leave balance.

§ 51.1-1107. Family and personal leave benefit.

A. On the effective date of ~~participation in the program~~ coverage for existing employees, and thereafter on each January 10, existing participating employees shall receive an amount of family and personal leave based on the number of months of state service as an eligible employee, as follows:

Months of state service	Number of hours
Less than 120	32
120 or more	40

B. Any partial calendar month during which a participating employee was employed ~~prior to January 10, 1999,~~ shall constitute one month of state service for purposes of this section.

C. Participating employees ~~commencing employment or who are reemployed on or after January 1, 1999, except for those described in subsection A,~~ shall receive an *initial* amount of family and personal leave ~~for the first calendar year of at the time their employment based on the date employment commenced or reemployment commences,~~ as follows:

Date employment commenced	Number of hours
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January 1 through July 9 32

July 10 through January 9 16

Thereafter, on each January 10 such employees shall receive an amount of family and personal leave as provided in subsection A.

D. Participating employees shall not be paid or otherwise compensated upon leaving employment for any balance of unused family and personal leave provided to them under this section.

E. Unused balances of family and personal leave granted under this section shall not be carried forward beyond the calendar year in which such leave is granted.

F. Employees receiving disability benefits on January 10 of any year shall be granted family and personal leave for such year on the date they return to active employment. The amount of family and personal leave granted for such year shall be determined as if they were continuing employment on the date of their return to work as provided in subsections A, B and C.

§ 51.1-1110. Short-term disability benefit.

A. Short-term disability benefits for participating employees shall commence upon the expiration of a seven-calendar-day waiting period. The waiting period shall commence ~~on~~ the *first day following the commencement* of a disability or a period of maternity leave. If an employee returns to work for one day or less during the seven-calendar-day waiting period but cannot continue to work, the periods worked shall not be considered to have interrupted the seven-calendar-day waiting period. Additionally, the seven-calendar-day waiting period shall not be considered to be interrupted if the employee works twenty hours or less during the waiting period. Short term disability benefits payable as the result of a catastrophic disability or major chronic condition shall not require a waiting period.

B. Except as provided in subsection D and § 51.1-1131, short-term disability coverage shall provide income replacement for a percentage of a participating employee's creditable compensation during the period specified below that an employee is disabled, on maternity leave, or takes periodic absences due to a major chronic condition, as determined by the Board or its designee, based on the number of months of state service as an eligible employee, as follows:

Months of state service	Work days of 100% replacement of creditable compensation	Work days of 80% replacement of creditable compensation	Work days of 60% replacement of creditable compensation
Less than 60	5	20	100
60 to 119	25	25	75
120 to 179	25	50	50
180 or more	25	75	25

C. Creditable compensation during periods an employee receives short-term disability benefits shall include *general* salary increases awarded during the period of short-term disability coverage.

D. An employee's disability credits may be used, on a day for day basis, to extend the period an employee receives short-term disability benefits paid at 100 percent of replacement of creditable compensation.

E. Short-term disability benefits shall be payable only during periods of (i) total disability, (ii) partial disability, (iii) maternity leave, or (iv) periodic absences due to a major chronic condition as defined by the Board or its designee.

§ 51.1-1112. Long-term disability benefit.

A. Long-term disability benefits for participating employees shall commence upon the expiration of a 180-calendar-day waiting period. The waiting period shall commence ~~on~~ the *first day following the commencement* of the disability. If an employee returns to work for fourteen or fewer consecutive calendar days during such 180-calendar-day waiting period and cannot continue to work, the periods worked shall not be deemed to have interrupted the 180-calendar-day waiting period. However, if the cause of the participating employee's disability is a major chronic condition, as defined by the Board or its designee, the 180-calendar-day waiting period is cumulative from the *first day following the commencement* of the disability and can be interrupted by periods of active employment.

B. Except as provided in subsection D and § 51.1-1131, long-term disability benefits shall provide income replacement in an amount equal to sixty percent of a participating employee's creditable compensation.

C. Creditable compensation during periods an employee receives long-term disability benefits shall (i) not include salary increases awarded during the period covered by long-term disability benefits and (ii) be increased annually by an amount recommended by the actuary of the Virginia Retirement System and approved by the Board.

D. An employee's disability credits shall be used, on a day for day basis, to extend the period an

employee receives long-term disability benefits paid at 100 percent of replacement of creditable compensation.

E. Long-term disability benefits shall be payable only during periods of (i) total disability or (ii) partial disability.

F. *To be eligible for benefits under this section, the employee must apply for Social Security disability benefits.*

§ 51.1-1114. Adjustments to disability benefits.

A. Disability benefit payments shall be offset by an amount equal to any sums payable to a participating employee from the following sources:

1. During the first twelve months the employee receives disability benefits, ~~the portion of an amount equal to the employee's wages and salary from any employment times the creditable compensation replacement percentage that causes the total of the disability benefits and wages and salary to exceed 100 percent of creditable compensation;~~

2. After the first twelve months the employee receives disability benefits, an amount equal to seventy percent of the employee's wages and salary from any employment;

3. ~~Social security~~ Disability payments ~~from the Social Security Administration~~ or other similar governmental disability program benefits received by the employee or his family as a result of the qualifying disability;

4. Benefits received from any other group insurance contract provided by the Commonwealth for the purpose of providing income replacement; and

5. Benefits paid under any compulsory benefits law.

B. Disability benefit payments shall be offset by amounts from any of the sources listed in subdivisions A 3, A 4, and A 5 for which a participating employee is eligible as if the employee received such amounts. However, if the employee has applied for such benefits ~~and their payment, and has reapplied and appealed denials of the claim as requested by the administrator of the plan, and the claim~~ is not approved, the employee's disability payments shall not be reduced thereby.

C. If a participating employee's disability benefit payments are reduced as the result of payments from sources listed in subdivisions A 3, A 4, and A 5 or pursuant to subsection B, the employee's disability benefits shall not thereafter be further reduced on account of cost-of-living increases in payments from such sources.

D. Participating employees shall be required to repay, with interest to the Board or their employer, any overpayments of disability benefits on account of the failure of the employee to provide the Board or its designee with information necessary to make any of the reductions required to be made under this article.

E. Any payment to a participating employee that is later determined by the Board or by the employer to have been procured on the basis of any false statement or falsification of any record knowingly made by or on behalf of the member, or the employee's failure to make any required report of change in disability status, may be recovered from the employee by the Board, *with interest*, either by way of a credit against future payments due the employee or by an action at law against the employee.

§ 51.1-1121. Supplemental short-term disability benefit.

A. Payments of supplemental short-term disability benefits payable under this article shall be reduced by an amount equal to any benefits paid to the employee under the Act, or which the employee is entitled to receive under the Act, excluding any payments for medical, legal or rehabilitation expenses.

B. Supplemental short-term disability benefits for participating employees shall commence upon the expiration of a seven-calendar-day waiting period. The waiting period shall commence ~~on~~ *on the first day following the commencement* of a disability. If an employee returns to work for one day or less during the seven calendar days following the commencement of a disability but cannot continue to work, the periods worked shall not be considered to have interrupted the seven-calendar-day waiting period. Additionally, the seven-calendar-day waiting period shall not be considered to be interrupted if the employee works twenty hours or less during the waiting period. Short-term disability benefits payable as the result of a catastrophic disability or major chronic condition shall not require a waiting period.

C. Except as provided in subsection E and § 51.1-1131, supplemental short-term disability coverage shall provide income replacement for a percentage of a participating employee's creditable compensation during the period specified below that an employee is disabled *or takes periodic absences due to a major chronic condition, as determined by the Board or its designee*, based on the number of months of state service as an eligible employee, as follows:

	Work days of 100% replacement of creditable compensation	Work days of 80% replacement of creditable compensation	Work days of 60% replacement of creditable compensation
Months of state service			
Less than 60	65	25	35
60 to 119	85	25	15
120 or more	85	40	0

D. Creditable compensation during periods an employee receives supplemental short-term disability benefits shall include salary increases awarded during the period of short-term disability coverage.

E. An employee's disability credits may be used, on a day for day basis, to extend the period an employee receives supplemental short-term disability benefits paid at 100 percent of replacement of creditable compensation.

F. Supplemental short-term disability benefits shall be payable only during periods of (i) total disability, (ii) partial disability as determined by the Board or its designee, or (iii) periodic absences due to a major chronic condition as defined by the Board or its designee.

§ 51.1-1123. Supplemental long-term disability benefit.

A. Supplemental long-term disability benefits for participating employees shall commence upon the expiration of a 180-calendar-day waiting period. The waiting period shall commence ~~on the first day following the commencement~~ of the disability. If an employee returns to work for fourteen or fewer consecutive days during such 180-calendar-day period and cannot continue to work, the periods worked shall not be deemed to interrupt the 180-calendar-day waiting period. However, if the cause of the participating employee's disability is a major chronic condition, as defined by the Board or its designee, the 180-calendar-day waiting period is cumulative from the *first day following the commencement* of the disability and can be interrupted by periods of active employment.

B. Except as provided in subsection D and § 51.1-1131, supplemental long-term disability benefits shall provide income replacement in an amount equal to sixty percent of a participating employee's creditable compensation.

C. Creditable compensation during periods an employee receives supplemental long-term disability benefits shall (i) not include salary increases awarded during the period covered by long-term disability benefits and (ii) be increased annually by an amount recommended by the actuary of the Virginia Retirement System and approved by the Board.

D. An employee's disability credits ~~may~~ *shall* be used, on a day-for-day basis, to extend the period an employee receives supplemental long-term disability benefits paid at 100 percent of replacement of creditable compensation.

E. Payments of supplemental long-term disability benefits payable under this article shall be reduced by an amount equal to any benefits paid to the employee under the Act, for which the employee is entitled to receive under the Act, excluding any benefit for medical, legal or rehabilitation expenses.

F. Supplemental long-term disability benefits shall be payable only during periods of total and partial disability.

G. To be eligible for benefits under this section, the employee must apply for Social Security disability benefits.

§ 51.1-1125. Adjustments in supplemental disability benefits.

A. In addition to offsets equal to the amount of any benefits paid to a participating employee under the Act, supplemental disability benefit payments shall be offset by an amount equal to any sums payable to a participating employee from the following sources:

1. During the first twelve months the employee receives disability benefits, ~~the portion of an amount equal to the employee's wages and salary from any employment that causes the total of the supplemental disability benefits, earnings, and benefits payable under the Act to exceed 100 percent of creditable compensation times the income replacement percentage payable;~~

2. After the first twelve months the employee receives disability benefits, an amount equal to seventy percent of the employee's wages and salary from any employment;

3. ~~Social security~~ Disability payments *from the Social Security Administration* or other similar governmental disability program benefits received by the employee or his family as a result of the qualifying disability;

4. Benefits received from any other group insurance contract provided by the Commonwealth for the purpose of income replacement;

5. Benefits paid under any compulsory benefits law; and

6. If the participating employee receives a settlement in lieu of periodic payments for a disability compensable under the Act, an amount determined by dividing the workers' compensation benefit which such employee would have received had the lump-sum settlement not been consummated into the settlement actually accepted by the employee.

B. Supplemental disability benefit payments shall be reduced by amounts from any of the sources listed in subdivisions A 3, A 4, and A 5 for which a participating employee is eligible as if the employee received such amounts. However, if the employee has applied for such benefits, *and has reapplied and appealed denials of the claim as requested by the administrator of the plan, and their payment the claim* is not approved, the employee's supplemental disability payments shall not be reduced thereby.

C. If a participating employee's disability benefit payments are reduced as the result of payments from sources listed in subdivisions A 3, A 4, and A 5 or pursuant to subsection B, the employee's disability benefits shall not thereafter be further reduced on account of cost-of-living increases in

payments from such sources.

D. Participating employees shall be required to repay, *with interest*, to the Board or the employer any overpayments of supplemental disability benefits on account of the failure of the employee to provide the Board or its designee with information necessary to make any of the reductions required to be made under this article.

E. Any payment to a participating employee that is later determined by the Board or by the employer to have been procured on the basis of any false statement or falsification of any record knowingly made by or on behalf of the employee, or the employee's failure to make any required report of change in disability status, may be recovered from the employee by the Board, with interest, either by way of a credit against future payments due the employee or by an action at law against the employee.

~~E. F.~~ If a participating employee's payments under the Act are adjusted or terminated for refusal to work or to comply with the requirements of § 65.2-603, his disability benefits shall be computed as if he were receiving the compensation to which he would otherwise be entitled under the Act.

§ 51.1-1135. Exclusions and limitations.

A. Disability benefits shall not be payable to any participating employee ~~who is convicted~~ (i) *whose disability results from the employee's commission of a felony during a period of state employment or if incarcerated during any portion of the disability period* (ii) *during any period when the employee is incarcerated.*

B. Long-term disability benefits shall not be payable to any participating employee whose disability results from the abuse of alcohol, the misuse of any prescribed medication, or the misuse of any controlled substance, unless the employee is actively receiving treatment and, in the judgment of the case manager, is fully complying with the treatment plan and is making substantial progress toward rehabilitation.

C. Disability benefits shall not be payable if the participating employee is determined by the Board or its designee to be noncompliant with the program.

§ 51.1-1135.1. Appeals.

In lieu of the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.), the Board may elect to allow appeals of case decisions related to the payment of disability payments under this chapter *to be made under a process developed by the Board which shall be modeled after the claims provisions* as provided for in the federal Employee Retirement Income Security Act of 1974, as amended.

§ 51.1-1136. Limitation on coverage.

No person shall have more than one coverage under a disability benefit program. Any person employed in more than one position which provides coverage under a disability benefit program shall elect one position on which his coverage shall be based by written notification to the Board. *No person shall receive more than one disability benefit under this chapter at the same time.*