

VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 694

An Act to amend and reenact §§ 51.1-1100, 51.1-1116, 51.1-1127, 51.1-1131, and 51.1-1135.1 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 2 of Title 2.1 a section numbered 2.1-20.1:9, and to repeal § 51.1-502.2 of the Code of Virginia, relating to the state sickness and disability program.

[H 1909]

Approved March 26, 2001

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-1100, 51.1-1116, 51.1-1127, 51.1-1131, and 51.1-1135.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 2 of Title 2.1 a section numbered 2.1-20.1:9 as follows:

§ 2.1-20.1:9. Employees of the University of Virginia Medical Center.

The University of Virginia Medical Center, hereafter referred to as the Medical Center, may purchase basic group life, accidental death and dismemberment, and disability insurance policies covering in whole or in part any of its employees. In addition, the Medical Center may establish, administer and make available to employees a program of optional insurance, including life, accidental death and dismemberment, and disability insurance. Employees of the Medical Center covered under the aforesaid basic insurance policies purchased by the Medical Center shall not be covered by the insurance program established pursuant to § 51.1-501 or be considered "eligible employees" under § 51.1-1100, unless the University of Virginia Board of Visitors, or a duly authorized agent or representative of the Board, purchases such insurance policies from the Virginia Retirement System. Nor shall they be required to present at their own expense evidence of insurability satisfactory to an insurance company upon changing from one form of coverage to another form of coverage provided pursuant to this section. Chapter 5 of Title 51.1 (§ 51.1-500 et seq.) shall not apply to any insurance coverage offered by the Medical Center except that the provisions of §§ 51.1-510 and 51.1-511 shall apply to such insurance coverage; provided that any administrative or ministerial functions performed by or on behalf of the Board of the Virginia Retirement System under §§ 51.1-510 and 51.1-511 shall be performed by the Medical Center.

Notwithstanding the definition of "state employee" contained in § 51.1-124.3, all employees of the Medical Center may be enrolled in a health care plan other than that provided for in § 2.1-20.1 at the election of the Medical Center and subject to the review and approval of the Board of Visitors of the University of Virginia; however, any Medical Center employee who was first employed by the Medical Center prior to July 1, 1996, and who had not been classified as a health care provider under the provisions of § 51.1-502.1 prior to July 1, 1996, shall be provided the option of enrolling in a health care plan elected by the Medical Center or enrolling in the health care plan established pursuant to § 2.1-20.1 until such time as the University of Virginia Board of Visitors may determine that it is not in the best interest of the University to continue to provide that option to any employees of the Medical Center. If the Board of Visitors determines that such health plan option will not continue to be provided, any Medical Center employees who must reenroll in a different health plan shall be allowed to do so with a waiver of preexisting medical conditions for the employees and, if applicable, their spouses and dependents.

Subject to such eligibility criteria as it may establish, the Medical Center may make available to any of its employees the insurance programs established pursuant to this section, including health plan coverage, notwithstanding the fact that such employees may not be eligible for participation in any retirement plan established pursuant to § 51.1-126.3 or the retirement system established pursuant to Chapter 1 (§ 51.1-124.1 et seq.) of this title.

The eligibility of any employee of the Medical Center for participation in any insurance program established pursuant to this section shall not of itself render such employees eligible for participation in the Virginia Retirement System or any optional retirement program.

§ 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 (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. *Employees of the University of Virginia Medical Center covered under the basic insurance policies purchased by the Medical Center shall not be considered eligible employees under this chapter, unless the University of Virginia Board of Visitors, or a duly authorized agent or representative of the Board of Visitors, purchases such insurance policies from the Virginia Retirement System.*

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

"Partial disability" exists 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, is (i) able to perform one or more, but not all, of the essential job functions of his own job on an active employment or a part-time basis or (ii) able to perform all of the essential job functions of his own job only on a part-time basis.

"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 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 any job for which he is reasonably qualified based on his training or experience and earning less than 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.

§ 51.1-1116. Cessation of disability benefits.

If not sooner terminated due to the end of the period of disability coverage as provided in subsection E of § 51.1-1110 or subsection E of § 51.1-1112, disability benefits shall cease to be paid to a participating employee upon the first to occur of the following:

1. The date of death of the participating employee;
2. (i) The participating employee's normal retirement date if the employee is a member of the retirement system or (ii) the date the employee attains age sixty-five if the employee is not a member of the retirement system; *or*
3. ~~After the first twelve months of long-term disability benefits, the date the participating employee's wages and salary from any employment exceed eighty-five percent of his predisability earnings; or~~
4. 3. The effective date of the participating full-time employee's service retirement under any provision of this title.

§ 51.1-1127. Cessation of supplemental disability benefits.

Supplemental disability benefits shall cease to be paid to a participating employee upon the first to occur of the following:

1. The end of the period of supplemental disability coverage as provided in subsection F of § 51.1-1121 or subsection F of § 51.1-1123;
2. The date of death of the participating employee;
3. On the date benefits under the Act cease to be paid, if the participating employee is a member of the retirement system and is receiving benefits under the Act on his normal retirement date;
4. On the date benefits under the Act cease to be paid, if the participating employee is a not a member of the retirement system and is receiving benefits under the Act on the date he attains age sixty-five;
5. On his normal retirement date, if the participating employee is a member of the retirement system and is no longer receiving benefits under the Act on his normal retirement date;
6. On the date the employee attains age sixty-five, if the participating employee is a not a member of the retirement system and is no longer receiving benefits under the Act; *or*
7. ~~After the first twelve months of long-term disability benefits, the date the participating employee's~~

wages and salary from any employment exceed eighty-five percent of his predisability earnings; or

~~8-~~ 7. The effective date of the participating employee's service retirement under any provision of this title.

§ 51.1-1131. Supplemental benefits for catastrophic disability.

Disability benefits shall be increased to eighty percent of creditable compensation for any disabled participating employee who (i) is unable to perform at least two of the ~~seven~~ six activities of daily living due to a loss of functional capacity or (ii) requires substantial supervision to protect the employee from threats to health and safety as a result of severe cognitive impairment. Determination of whether a participating employee satisfies either of these conditions shall be made in accordance with the policies of the Board or its designee.

§ 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 *develop an alternative process* to allow appeals of case decisions related to the payment of disability ~~payments~~ *benefits* 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.~~ *This alternative process shall be modeled after the claims provisions as provided for in the federal Employee Retirement Income Security Act of 1974, as amended. Articles 3, 3.1, and 5 of the Administrative Process Act (§ 9-6.14:1 et seq.) shall not apply to any portion of this alternative appeals process. However, any person aggrieved by, and claiming the unlawfulness of, a final case decision issued pursuant to this alternative appeals process, whether issued by the Board or by the Board's delegate, shall have a right to seek judicial review thereof. Such judicial review shall be in accordance with Article 4 of the Administrative Process Act (§ 9-6.14:15 et seq.).*

2. That § 51.1-502.2 of the Code of Virginia is repealed.