

# VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

## CHAPTER 750

*An Act to amend and reenact §§ 51.1-1103, 51.1-1110, 51.1-1111, 51.1-1112, 51.1-1122, and 51.1-1123 of the Code of Virginia, relating to the Virginia Retirement System; sickness and disability plan.*

[H 560]

Approved April 13, 2010

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 51.1-1103, 51.1-1110, 51.1-1111, 51.1-1112, 51.1-1122, and 51.1-1123 of the Code of Virginia are amended and reenacted as follows:**

§ 51.1-1103. Participation in the program.

A. All prior elections to participate in the program shall be irrevocable.

B. 1. Except for eligible employees who are employed by an institution of higher education in a faculty position performing teaching, research or administrative duties, 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.

2. Except for such employees of an institution of higher education, all eligible employees not participating in the program prior to October 1, 2002, shall participate in the program effective January 10, 2003, unless such employee elects not to participate in the program as provided herein. An election not to participate shall be in writing, and on forms prescribed by the Retirement System, and shall be received by the Retirement System during the period commencing on October 1, 2002, but before January 1, 2003. An election not to participate in the program shall be irrevocable and such employee shall be ineligible to participate in the program for the period of his continued employment by the Commonwealth.

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. Any eligible employee who is (i) employed by an institution of higher education in a faculty position performing teaching, research or administrative duties prior to October 1, 2002, and (ii) not participating in the program, shall participate in the program established under this chapter effective January 10, 2003, unless such employee elects not to participate in the manner provided in subdivision B 2. Any eligible employee of an institution of higher education in a faculty position performing teaching, research or administrative duties employed or reemployed on or after October 1, 2002, shall participate in the program unless such employee elects not to participate in the program, in writing and on such forms as prescribed by the Retirement System, within 60 days from the time of entry upon the performance of his duties. The effective date of participation in the program for such employees shall be the first day following the expiration of such 60-day period or January 10, 2003, whichever is later.

Any eligible employee under this subsection shall participate in the sickness and disability program established by his institution of higher education until such time as the employee participates in the program established under this chapter. If the institution of higher education has not established its own sickness and disability program, such eligible employee shall participate in the program established under this chapter effective on his first day of employment.

An election not to participate in the program established under this chapter shall be irrevocable and such employee shall be ineligible to participate in the program for the period of his continued employment by the Commonwealth.

*D. Notwithstanding any provision to the contrary, no participating employee commencing employment or reemployment on or after July 1, 2009, shall receive benefits under Article 3 of this Chapter (Nonwork Related Disability Benefits) until the participating employee completes one continuous year of active employment or reemployment.*

~~D~~ E. The provisions of this subsection shall apply to any eligible employee who participates in the program under the provisions of subdivision B 2 or subsection C. Any eligible employee, including a person employed by an institution of higher education in a faculty position performing teaching, research or administrative duties, who (i) is a member of the Retirement System, and (ii) commenced employment or was reemployed prior to January 1, 1999, shall have his sick leave balances, as of the effective date of coverage in the program, converted to disability credits, as provided in subsection ~~E~~ F.

~~E~~ F. Any eligible employee converting his sick leave balance as provided in subsection ~~D~~ 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.

F G. Upon retiring directly from state service and receiving an immediate annuity, the eligible employee's unused disability credits shall be converted to service credit under the Retirement System at the rate of one month of service for each 173 hours of disability credits, rounded to the next highest month, unless the employee elects to 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 payment of sick leave benefits in the employee's agency on December 31, 1998. Upon leaving state service under any other circumstances, 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 payment of sick leave benefits in the employee's agency on December 31, 1998, unless he elects to have such credits converted to service credit under the Retirement System at the rate of one month of service for each 173 hours of disability credits, rounded to the next highest month. 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 H. 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 suspension pending investigation or outcome of employment-related court or disciplinary action.

§ 51.1-1110. Short-term disability benefit.

A. *Except as provided in subsection D of § 51.1-1103, ~~Short-term~~ short-term* disability benefits for participating employees shall commence upon the expiration of a seven-calendar-day waiting period. The waiting period shall commence the first day of a disability or 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 20 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 C~~ and E of this subsection 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. *For all eligible employees commencing employment or reemployment on or after July 1, 2009, except as provided in subsections B and E of this subsection and § 51.1-1131, short-term disability coverage shall provide income replacement for (i) 60 percent of a participating employee's creditable compensation for the first 60 months of continuous state service after employment or reemployment and (ii) thereafter, a percentage of a participating employee's creditable compensation during the periods specified below, based on the number of months of continuous state service, that an employee is disabled, on maternity leave, or takes periodic absences due to a major chronic condition:*

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
60 to 119	25	25	75
120 to 179	25	50	50
180 or more	25	75	25

D. 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.

E. 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.

F. 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.

F. Notwithstanding any other provision of this section, short-term disability benefits for elective medical procedures, including but not limited to surgery, shall not be payable during the first six months of employment or reemployment as an eligible employee without approval of the employer. The employee shall give reasonable advance notice to his immediate supervisor and the employer shall not unreasonably withhold authorization for such medically necessary absences.

§ 51.1-1111. Successive periods of short-term disability.

A. A participating employee's disability which is related or due to the same cause or causes as a prior disability for which short-term disability benefits were paid shall be deemed to be a continuation of the prior disability if the employee returns to his position on an active employment basis for less than ~~(i) fourteen consecutive calendar days or (ii) twenty-eight~~ 45 consecutive calendar days if the short-term disability is due to a major chronic condition, as defined by the Board or its designee, requiring periodic absences. *If a participating employee, after receiving short-term disability benefits, immediately returns to work for less than 45 consecutive calendar days and cannot continue to work, the days worked shall be deemed to have interrupted the short-term disability benefits period, and such days worked shall not be counted for purposes of determining the maximum period for which the participating employee is eligible to receive short-term disability benefits.* Days of work arranged pursuant to vocational, rehabilitation, or return-to-work programs shall not be counted in determining the duration of the period of the employee's return to work.

B. If a participating employee returns to his position on an active employment basis for ~~fourteen~~ 45 consecutive calendar days or longer, any succeeding period of disability shall constitute a new period of short-term disability. However, if the cause of the participating employee's disability is a major chronic condition, as defined by the Board or its designee, requiring periodic absences, and the participating employee returns to his position on an active employment basis for more than ~~twenty-eight~~ consecutive calendar days, any succeeding period of disability shall constitute a new period of short-term disability.

C. *The period of 45 days referred to in subsections A and B shall be consecutive calendar days that the participating employee is (i) actively at work and (ii) fully released to return to work full time, full duty. The Retirement System shall develop policies and procedures to administer the effects of the 45-day period in connection with participants who are deemed to have a major chronic condition.*

§ 51.1-1112. Long-term disability benefit.

A. ~~Except as provided in subsection D of § 51.1-1103, Long-term~~ long-term disability benefits for participating employees shall commence upon the expiration of the maximum period for which the participating employee is eligible to receive short-term disability benefits under § 51.1-1110. If an employee returns to work for 14 or fewer consecutive calendar days during the period in which he is receiving short-term disability benefits and cannot continue to work, the periods worked shall not be deemed to have interrupted the short-term disability benefits 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 short-term disability benefits period is cumulative from the first day of the period 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 60 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 Sickness and Disability Program 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. Unless otherwise directed, to be eligible for benefits under this section, the employee must apply for Social Security disability benefits.

G. An employee who is approved for disability benefits on or after age 60 shall be eligible for up to a maximum of five years of disability before the employee is required to retire under a service retirement. The five years includes short-term disability and long-term disability.

§ 51.1-1122. Successive periods of short-term disability.

A. A participating employee's disability which is related or due to the same cause or causes as a prior disability for which supplemental short-term disability benefits were paid shall be deemed to be a continuation of the prior disability if the employee (i) is eligible for benefits payable under the Act, whether or not he is receiving such benefits, and (ii) returns to his position on an active employment basis for less than ~~fourteen~~ 45 consecutive calendar days; ~~or twenty-eight consecutive calendar days if the short-term disability is due to a major chronic condition, as defined by the Board or its designee, requiring periodic absences.~~ *If a participating employee, after receiving short-term disability benefits,*

*immediately returns to work for less than 45 consecutive calendar days and cannot continue to work, the days worked shall be deemed to have interrupted the short-term disability benefits period, and such days worked shall not be counted for purposes of determining the maximum period for which the participating employee is eligible to receive short-term disability benefits. Days of work arranged pursuant to vocational, rehabilitation, or return-to-work programs shall not be counted in determining the duration of the period of the employee's return to work.*

B. If a participating employee returns to his position on an active employment basis for ~~fourteen~~ 45 consecutive calendar days or longer, any succeeding period of disability shall constitute a new period of short-term disability. ~~However, if the cause of the participating employee's disability is a major chronic condition, as defined by the Board or its designee, requiring periodic absences, and the participating employee returns to his position on an active employment basis for more than twenty-eight consecutive calendar days, any succeeding period of disability shall constitute a new period of short-term disability.~~

*C. The period of 45 days referred to in subsections A and B shall be consecutive calendar days that the participating employee is (i) actively at work and (ii) fully released to return to work full time, full duty. The Retirement System shall develop policies and procedures to administer the effects of the 45-day period in connection with participants who are deemed to have a major chronic condition.*

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

A. Supplemental long-term disability benefits for participating employees shall commence upon the expiration of the maximum period for which the participating employee is eligible to receive short-term disability benefits under § 51.1-1121. ~~If an employee returns to work for 14 or fewer consecutive days during the period in which he is receiving short-term disability benefits and cannot continue to work, the periods worked shall not be deemed to interrupt the short-term disability benefits 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 short-term disability benefits period is cumulative from the first day 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 60 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 program actuary 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 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. Unless otherwise directed, to be eligible for benefits under this section, the employee must apply for Social Security disability benefits.

H. An employee who is approved for disability benefits on or after age 60 shall be eligible for up to a maximum of five years of disability before the employee is required to retire under a service retirement. The five years includes short-term disability and long-term disability.