

VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

CHAPTER 417

An Act to amend and reenact §§ 51.1-1110, 51.1-1114, 51.1-1121, 51.1-1125, and 51.1-1127 of the Code of Virginia, relating to the Virginia Retirement System; disability benefits.

[H 350]

Approved March 30, 2012

Be it enacted by the General Assembly of Virginia:

1. That §§ 51.1-1110, 51.1-1114, 51.1-1121, 51.1-1125, and 51.1-1127 of the Code of Virginia are amended and reenacted as follows:

§ 51.1-1110. Short-term disability benefit.

A. Except as provided in subsection D of § 51.1-1103, 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 subsections C and E of this section 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:

	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	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 section 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 that he is disabled, on maternity leave, or takes periodic absences due to a major chronic condition~~, 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 as determined by the Board or its designee, 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			
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.

§ 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 12 months the employee receives disability benefits, an amount equal to the employee's wages and salary from any employment times the creditable compensation replacement percentage;

2. After the first 12 months the employee receives disability benefits, an amount equal to 70 percent of the employee's wages and salary from any employment;

3. ~~Except as provided in subsection F, disability~~ Disability payments from the Social Security Administration, ~~military disability benefits~~, local government disability benefits, federal ~~or~~ civil service disability benefits, 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.

Notwithstanding the foregoing, disability benefit payments shall not be offset by military disability benefits payable to a participating employee.

B. If the plan administrator deems a participating employee to be eligible for benefits from any of the sources listed in subdivisions A 3, A 4, and A 5, the plan administrator may direct the participating employee to apply for those benefits and to pursue whatever additional steps are necessary to obtain the benefits. If a participating employee fails or refuses to pursue the available benefits as directed by the plan administrator, disability benefit payments may 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 deemed eligible by the plan administrator 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 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, his survivor and beneficiaries or by an action at law against the employee.

~~F. Supplemental disability payments will not be offset for a participating employee if the employee is receiving a primary retirement benefit for service in the United States armed services, even if a percentage of that primary retirement benefit has been declared a disability payment. Any disability payment that is not a part of the primary retirement benefit will be offset.~~

§ 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 the first day 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~~ 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.

C. Except as provided in ~~subsection E~~ subsections D and F and §§ 9.1-401.1 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	Work days of 80% replacement	Work days of 60% replacement
Months of state service	of creditable compensation	of creditable compensation	of creditable compensation
Less than 60	65	25	35

60 to 119	85	25	15
120 or more	85	40	0

D. For all eligible employees commencing employment or reemployment on or after July 1, 2009, except as provided in subsection F and §§ 9.1-401.1 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 attained by an employee who is disabled, on maternity leave, or takes periodic absences due to a major chronic condition, as determined by the Board or its designee, 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			
60 to 119	85	25	15
120 or more	85	40	0

Ð E. 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.

Ð F. 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.

Ð G. 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.

§ 51.1-1125. 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 12 months the employee receives disability benefits, an amount equal to the employee's wages and salary from any employment times the income replacement percentage payable;

2. After the first 12 months the employee receives disability benefits, an amount equal to 70 percent of the employee's wages and salary from any employment;

3. Except as provided in subsection G, disability Disability payments from the Social Security Administration, military disability benefits, local government disability benefits, federal civil service disability benefits, 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.

Notwithstanding the foregoing, supplemental disability benefit payments shall not be offset by military disability benefits payable to a participating employee.

B. If the plan administrator deems a participating employee to be eligible for benefits from any of the sources listed in subdivisions A 3, A 4, and A 5, the plan administrator may direct the participating employee to apply for those benefits and to pursue whatever additional steps are necessary to obtain the benefits. If a participating employee fails or refuses to pursue the available benefits as directed by the plan administrator, supplemental disability benefit payments may 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 deemed eligible by the plan administrator 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 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.

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.

~~G. Supplemental disability payments will not be offset for a participating employee if the employee is receiving a primary retirement benefit for service in the United States armed services, even if a percentage of that primary retirement benefit has been declared a disability payment. Any disability payment that is not a part of the primary retirement benefit will be offset.~~

§ 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~~ G 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~~ 65;
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~~ 65, if the participating employee is a not a member of the retirement system and is no longer receiving benefits under the Act; or
7. The effective date of the participating employee's service retirement under any provision of this title.

2. That an emergency exists and this act is in force from its passage.