

**OREGON ADMINISTRATIVE RULE
PUBLIC EMPLOYEES RETIREMENT BOARD
CHAPTER 459
DIVISION 015: DISABILITY RETIREMENT ALLOWANCES**

459-015-0001

Definitions

The words and phrases used in this division have the same meaning given them in ORS Chapter 238 and OAR 459-005-0001. Additional terms are defined as follows unless the context requires otherwise.

(1) "Any work for which qualified" means a job, not necessarily the last or usual job, which the applicant for a disability retirement allowance:

(a) Is physically and psychologically capable of performing ; and

(b) Has, or may obtain with reasonable training, the knowledge, skills and abilities, to perform the job

(2) "Certified vocational consultant" means a person who satisfies the criteria set forth under either of the following:

(a) A Master's Degree in vocational rehabilitation, and one year of experience in performing vocation evaluations or developing individualized return-to-work plans; or a Bachelor's Degree and two years of such experience. All degrees must have been earned at an accredited institution; or

(b) Accredited as a Certified Rehabilitation Counselor (CRC) by the Commission on Rehabilitation Counselor Certification; as a Certified Disability Management Specialist (CDMS) by the Certification of Disability Management Specialists Commission; or a Certified Vocational Evaluation Specialist (CVE) or a Certified Work Adjustment Specialist (CWA) by the Commission on Certification of Work Adjustment and Vocational Evaluation Specialists.

(3) "Confidential information" means information of a personal nature such that disclosure would constitute an unreasonable invasion of privacy as defined by state law.

(4) "Date an application for disability retirement is filed" means the receipt date as determined pursuant to OAR 459-005-0220.

(5) "Date of disability" means the later of:

(a) The date an active member ceased to work because of inability to perform any work for which qualified due to injury or disease; or

(b) The date an inactive member became unable to perform any work for which qualified provided such inability occurred within six months after the date of separation from service.

(6) "Date of separation from service" means the later of: the last day worked or the last day of paid leave with a PERS participating employer.

(7) "Date of termination" means the date a member terminates from employment such that an employee/employer relationship no longer exists.

(8) "Earned income" means income that includes, but is not limited to:

(a) Salary or wages received as an employee;

(b) Self-employment income from:

(A) Services industry;

(B) Sales;

(C) Assembly or manufacturing;

(D) Consulting;

(E) Property management;

- (F) Gambling, other than income from sweepstakes, lotteries, bingo, keno, or slot machines;
- (G) Hobby income; or
- (H) Book advances.
- (c) “Earned income” does not include:
 - (A) Investment income;
 - (B) Rent; and
 - (C) Royalties.
- (d) Earned income is deemed to be received by the member on the date it is issued by the payer, except retroactive payments included in ORS 238.008 shall be deemed to be received by the member during the period for which the payment is allocated.
- (e) Earned income includes the net profits of any business entity owned solely or jointly by a member and for which the member materially participates in the business, as defined by the Internal Revenue Service under 26 CFR 1.469-5T, as in effect on July 1, 2021.
- (9) “Effective date of disability retirement” means the first day of the month following the date of disability in which all of the following has been met:
 - (a) The member is paid no salary from a participating employer, and
 - (b) The member does not receive paid leave from a participating employer except for any lump sum payment for accrued vacation leave or compensatory time.
- (10) “Extended duration” means a period of not less than 90 consecutive calendar days, unless the disability is expected to result in the death of the disabled member in less than 90 days.
- (11) “Granted service” means that portion of creditable service used solely to calculate a disability retirement allowance under ORS 238.320 that is not performed or earned.
- (12) “Independent medical exam” means an exam or exams conducted by a physician chosen by PERS for purposes other than treatment which results in the issuance of a report or reports based on those exams, giving an opinion regarding the claimed injury or disease.
- (13) “Material contributing cause” means the efficient, dominant, and proximate cause of the disability, without which the member would not be disabled.
- (14) “Monthly salary” means “salary” as defined in ORS 238.005 that is earned in the last full calendar month of employment, and includes employer payments under ORS 238A.335 and differential wage payments as defined in OAR 459-005-0001.
 - (a) Retroactive payments or payments made due to clerical errors, paid in accordance with ORS 238.005, are allocated to the period the salary was earned or should have been earned.
 - (b) Payments of salary paid within 31 days of separation are allocated to the period the salary was earned and should be considered as paid on the last date of employment.
- (15) “Monthly salary received” means the greater of the monthly salary paid for the last full calendar month of:
 - (a) Employment before the date of disability; or
 - (b) Differential wage payments made before the date of disability. This subsection is effective January 1, 2009.
- (16) “Normal retirement age” means the age at which a member can retire without a reduced benefit as set forth under ORS 238.005 and 238.280.
- (17) “Performance of duty” means whatever an employee may be directed, required or reasonably expected to do in connection with his or her employment, and not solely the duties particular to his or her position.
- (18) “Periodic review” means a review of a member receiving a disability retirement allowance to determine whether or not a continued allowance is warranted.

(19) “Physical capacity evaluation” means a comprehensive and objective evaluation performed by a physician, physical therapist, or occupational therapist to determine a member’s physical or functional capacity to perform work. The evaluation may include an analysis of the member’s ability to perform a specified job based on a position description and the member’s abilities or limitations.

(20) “Physician” means a doctor of medicine, a doctor of osteopathy, a doctor of oral surgery, a chiropractic doctor, a naturopathic doctor, a doctor of podiatric medicine, or a doctor of psychology practicing only within the purview of their license issued by the designated authority of a state.

(21) “Pre-existing condition” means a condition that was not sustained in actual performance of duty in a qualifying position with a participating employer.

(22) “Protected health information” means health information created or received by a health care provider, health plan, or health care clearinghouse, where an individual has a reasonable belief that the information can identify the individual, which relates to:

(a) The past, present, or future physical or mental health of an individual;

(b) The provision of health care to an individual; or

(c) The past, present, or future payment for the provision of health care to an individual.

(23) “Similar in compensation” means salary or other earned income, excluding overtime, equaling at least 80% of the monthly salary.

(24) “Total disability” means the inability to perform any work for which qualified for an extended duration due to physical or mental incapacitation.

(25) “Training or vocational rehabilitation program” means a comprehensive, coordinated program, usually state or federally funded, to train and assist individuals with disabilities in securing gainful employment commensurate with their abilities and capabilities.

(26) “Vocational evaluation” means an evaluation conducted by a certified vocational consultant, to determine the ability of an applicant to perform any work for which they are qualified.

(27) “Work related stress” means conditions or disabilities resulting from, but not limited to:

(a) Change of employment duties;

(b) Conflicts with supervisors;

(c) Actual or perceived threat of loss of a job, demotion, or disciplinary action;

(d) Relationships with supervisors, coworkers, or the public;

(e) Specific or general job dissatisfaction;

(f) Work load pressures;

(g) Subjective perceptions of employment conditions or environment;

(h) Loss of job or demotion for whatever reason;

(i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;

(j) Objective or subjective stresses of employment; or

(k) Personnel decisions.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.320 - 238.345

Hist.: PERS 15-2005, f. & cert. ef. 10-3-05; f. & cert. ef. 2-12-09; f. & cert. ef. 5-28-2010; f. & cert. ef. 10-5-11; f. & cert. ef. 10-2-20