



NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 459
OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED
07/31/2020 11:11 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Include certain forms of gambling winnings under definition of "earned income" for disability benefit eligibility.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/01/2020 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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Filed By:
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NEED FOR THE RULE(S):

Include certain forms of gambling winnings under definition of "earned income" for disability benefit eligibility.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ORS 238.650, ORS 238.320 - 238.345, ORS 238A.450, ORS 238A.235, These documents are available on the Internet at: https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx

FISCAL AND ECONOMIC IMPACT:

There are no discrete costs attributable to the rules.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

None

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The rules do not affect small businesses and therefore small businesses were not involved in the development of the rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

A public hearing will be held and the PERS Board solicits input on rules from any interested or affected parties.

RULES PROPOSED:

459-015-0001, 459-076-0001

AMEND: 459-015-0001

RULE SUMMARY: Clarifies what constitutes "earned income" for purposes of determining disability benefit eligibility.

CHANGES TO RULE:

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
- (GH) 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.
- (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) "Physician" means a medical doctor, a doctor of osteopathy, a doctor of oral surgery, a chiropractic doctor, a naturopathic doctor, or a doctor of psychology practicing only within the purview of their license issued by the designated authority of a state.
- (20) "Pre-existing condition" means a condition that was not sustained in actual performance of duty in a qualifying position with a participating employer.
- (21) "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.

(22) "Similar in compensation" means salary or other earned income, excluding overtime, equaling at least 80% of the monthly salary.¶¶

(23) "Total disability" means the inability to perform any work for which qualified for an extended duration due to physical or mental incapacitation.¶¶

(24) "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.¶¶

(25) "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.¶¶

(26) "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.

Statutory/Other Authority: ORS 238.650

Statutes/Other Implemented: ORS 238.320 - 238.345

AMEND: 459-076-0001

RULE SUMMARY: Clarifies what constitutes "earned income" for purposes of determining disability benefit eligibility.

CHANGES TO RULE:

459-076-0001

Definitions ¶¶

The words and phrases used in this division have the same meaning given them in ORS Chapter 238A and OAR 459-070-0001. 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 disability benefits:¶¶

(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 a disability benefit is filed" means the receipt date as determined pursuant to OAR 459-005-0220.¶¶

(5) "Date of disability" means the date an active member ceased to work because of inability to perform any work for which qualified due to injury or disease.¶¶

(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" 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¶¶

(G) 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.¶¶

- (9) "Effective date of disability benefit" means the first day of the month following the date of disability, in which:
- (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) "Independent medical exam" means an exam or exams conducted by a physician chosen by PERS for purposes other than for treatment which results in the issuance of a report or reports based on those exams, giving an opinion regarding the claimed injury or disease.
- (12) "Material contributing cause" means the efficient, dominant, and proximate cause of the disability, without which the member would not be disabled.
- (13) "Monthly salary" means salary as defined in ORS 238A.005 that is earned in the last full calendar month of employment and includes a differential wage payment, as defined in OAR 459-005-0001.
- (a) Retroactive payments or payments made due to clerical errors, paid in accordance with ORS 238A.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.
- (14) "Monthly salary received" means the greater of the 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.
- (15) "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.
- (16) "Periodic review" means a review of a member receiving a disability benefit to determine whether or not a continued benefit is warranted.
- (17) "Physician" means a medical doctor, a doctor of osteopathy, a doctor of oral surgery, a chiropractic doctor, a naturopathic doctor, or a doctor of psychology practicing only within the purview of their license issued by the designated authority of a state.
- (18) "Pre-existing condition" means a condition that was not sustained in actual performance of duty in a qualifying position with a participating employer.
- (19) "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.
- (20) "Total disability" means the inability to perform any work for which qualified for an extended duration due to physical or mental incapacitation.
- (21) "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.
- (22) "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.

Statutory/Other Authority: ORS 238A.450

Statutes/Other Implemented: ORS 238A.235