



# Oregon

Tina Kotek, Governor

## Public Employees Retirement System

Headquarters

11410 S.W. 68<sup>th</sup> Parkway, Tigard, OR

Mailing Address:

P.O. Box 23700

Tigard, OR 97281-3700

888-320-7377

TTY (503) 603-7766

[www.oregon.gov/pers](http://www.oregon.gov/pers)

March 31, 2025

TO: Members of the PERS Board

FROM: Melanie Chandler, Research Policy Coordinator, Policy Analysis and Compliance Section  
Stephanie Vaughn, Manager, Policy Analysis and Compliance Section

SUBJECT: Notice of Rulemaking for Duty Disability Requirements:  
OAR 459-015-0005 *Eligibility for Disability Retirement Allowances*  
OAR 459-076-0005 *Eligibility for Disability Retirement Allowances*

### OVERVIEW

- Action: None. This is notice that staff has begun rulemaking.
- Reason: Amend the rule in accordance with petition to begin rulemaking dated September 9, 2024.
- Policy Issue: *Should PERS establish by rule a presumption of duty-caused disability when a member has been approved for Worker's Compensation for the same condition they have been approved by PERS for disability?*

### BACKGROUND

On September 9, 2024, PERS received a petition to begin rulemaking from stakeholder, Karl Koenig, President of [Oregon State Fire Fighters Council \(OSFFC\)](http://www.osffc.org/)<sup>1</sup>, requesting the agency consider amending OARs 459-015-0010 and 459-076-0005 (Petition attached). Specifically, they suggested aligning PERS duty designation for disability claims with those of Worker's Compensation. Staff met with OSFFC representatives on October 16, 2024, to discuss their request and potential amendments to rule(s). The parties in that meeting determined that establishing a presumption would satisfy OSFFC's request and is something that PERS can administer. The draft rules presented have been amended accordingly and have been reviewed by OSFFC representatives.

### POLICY QUESTION

*Should PERS establish by rule a presumption of duty-caused disability when a member has been approved for Worker's Compensation for the same condition they have been approved by PERS for disability?*

To put this question in context, let us first point out that the gross monthly benefit for a duty disability is the same as the gross monthly benefit for a non-duty disability. The difference is in how the benefit is taxed, in that a duty disability benefit is at least partially, sometimes wholly,

<sup>1</sup> <https://www.osffc.org/>

exempt from federal income tax. From this perspective, there is no difference in the cost to the system of a duty vs. non-duty disability retirement/benefit. However, because a member must have ten years of service to be eligible for a non-duty disability, the duty designation is particularly important for members who have less than ten years of service.

PERS relies on medical professional opinions to determine whether a member is disabled and whether the disability is duty-caused. While PERS and Workers Compensation operate under different criteria and systems for decision-making regarding disability claims, it does make sense to use the Workers' Compensation determination when determining whether or not a condition PERS has already concluded meets the criteria for PERS disability is duty-caused. PERS already uses information from Workers' Compensation in reviewing a member's application for disability. Relying on the Workers' Compensation determination for the same condition would streamline PERS' disability determination process.

OSFFC's original request was to always align the PERS duty designation with the Workers' Compensation determination. However, to avoid a potential conflict between the Workers' Compensation statute<sup>2</sup>, which contains presumptions of duty-caused designation for certain conditions, and PERS' statutes that specifically require an examination and opinion by a physician, staff recommends a presumption instead. As outlined in the amended rules, the presumption can be rebutted by clear and convincing evidence that the condition is not duty-caused. Staff has amended the rules accordingly and unless instructed otherwise by the Board, will move forward with the rule as presented.

#### PUBLIC COMMENT AND HEARING TESTIMONY

A rulemaking hearing will be held remotely on April 22, 2025, at 2:00 p.m. The public comment period ends April 25, 2025, at 5:00 p.m.

#### LEGAL REVIEW

The attached rules were submitted to the Department of Justice for legal review and any comments or changes will be incorporated before the rules are presented for adoption.

#### IMPACT

Mandatory: NO

Benefit: A presumption of duty for members who have been found to be disabled by both PERS and Workers Compensation Division for the same injury or disease streamlines the duty versus non-duty evaluation that PERS staff performs for disability claims.

Cost: There are no discrete costs attributable to these rules.

#### RULEMAKING TIMELINE

March 28, 2025: Staff began the rulemaking process by filing Notice of Rulemaking with the Secretary of State.

April 1, 2025: Secretary of State publishes the Notice in the Oregon Administrative Rules Database. Notice is sent to employers, legislators, and interested parties. Public comment period begins.

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<sup>2</sup> See ORS 656.802.

## Notice of Rulemaking for Duty Disability Requirements

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March 31, 2025:	PERS Board notified that staff began the rulemaking process.
April 22, 2025:	Rulemaking hearing to be held remotely at 2:00 p.m.
April 25, 2025:	Public comment period ends at 5:00 p.m.
May 30, 2025:	Staff will propose adopting the rule modifications, including any changes resulting from public comment or reviews by staff or legal counsel.

### NEXT STEPS

A rulemaking hearing will be held remotely on April 22, 2025. The rule is scheduled to be brought before the PERS Board for adoption at the May 30, 2025, board meeting.

B.1. Attachment 1 – *OAR 459-015-0005 Eligibility for Disability Retirement Allowances*

B.1. Attachment 2 – *OAR 459-076-0005 Eligibility for Disability Benefits*

B.1. Attachment 3 – *Petition To Promulgate or Amend OAR 459-015-0010 and 459-076-005*