

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

1 **459-015-0005**

2 **Eligibility for Disability Retirement Allowances**

3 (1) **Eligibility Standards:**

4 **(a) A member who was employed as other than a police officer or**
5 **firefighter** must be totally, not partially, disabled and unable to perform
6 any work for which qualified for an extended duration to be eligible for a
7 disability retirement allowance.

8 **(b) A member who was last employed as a police officer or firefighter**
9 **as defined in ORS 238.005 must be unable to perform the work the**
10 **member performed at the time the member became disabled for an**
11 **extended duration to be eligible for a disability retirement allowance.**

12 **(A) This standard applies to members applying for disability**
13 **retirement benefits who were last employed in a qualifying**
14 **position as a police officer or firefighter.**

15 **(B) This standard is applicable for duty and non-duty**
16 **disability retirement applications under ORS 238.320.**

17 **(C) For members who are concurrently employed by two or**
18 **more employers in qualifying positions as a police officer**
19 **or firefighter and as other than a police officer or**
20 **firefighter, the “work performed at the time the member**
21 **became disabled” standard is the standard to be used in**
22 **determining eligibility. The standard applies to the**
23 **qualifying position worked as a police officer or firefighter**
24 **member.**

25 (2) In determining a member’s eligibility for a disability retirement allowance, the
26 burden of proof is upon the applicant. The Board is not required to prove whether
27 the applicant is or is not eligible for a disability retirement allowance.

28 (3) Eligibility requirements for duty disabilities.

29 (a) To be eligible for a duty disability a member must prove:

- 1 (A) The mental or physical incapacitation arose out of and in the
2 course of duty and was not intentionally self-inflicted; and
- 3 (B) The *[on the job injury]* incapacitation must be the material
4 contributing cause of the disability even if the member has a pre-
5 existing condition.
- 6 (b) For work related stress to be considered the material contributing cause of
7 the *[disability]* incapacitation all of the following criteria must be met:
- 8 (A) The employment conditions producing the work-related stress
9 exist in a real and objective sense;
- 10 (B) The employment conditions producing the work-related stress
11 are conditions other than conditions generally inherent in every
12 working situation or reasonable disciplinary, corrective or job
13 performance evaluation actions by the employer, or cessation of
14 employment or employment decisions attendant upon ordinary
15 business or financial cycles;
- 16 (C) There is a diagnosis of a mental or emotional disorder which is
17 generally recognized in the medical or psychological community;
18 and
- 19 (D) There is evidence that the work-related stress arose out of and in
20 the course of employment.
- 21 (4) Eligibility requirements for non-duty disabilities. A member applying for non-
22 duty disability retirement must have a minimum of 10 years of employment in a
23 PERS qualifying position. Years of employment are calculated pursuant to ORS
24 238.320(6) as follows:
- 25 (a) Members with no prior service credit under ORS 238.442 receive:
- 26 (A) One year of employment for each 12-month period or major
27 fraction thereof, calculated from the date on which the member
28 begins the six-month waiting period required for establishing
29 membership under ORS 238.015 to the date of disability; and

- 1 (B) Up to 90 days for sick leave used after the date of disability. No
2 other leave of absence after the date of disability will count
3 toward years of employment.
- 4 (b) Members with prior service credit under ORS 238.442 receive:
- 5 (A) One year of employment for each year of prior service credit;
6 and
- 7 (B) One year of employment for any minor fraction of a year of prior
8 service, if continuous as certified by the employer and for which
9 no prior service credit was granted; and
- 10 (C) One year of employment for each 12-month period or major
11 fraction thereof, calculated from the date on which membership
12 is established in the system to the date of disability; and
- 13 (D) Up to 90 days for sick leave used after the date of disability. No
14 other leave of absence after the date of disability will county
15 toward years of employment.
- 16 (5) A member's disability retirement allowance shall be calculated based on:
- 17 (a) Creditable service; and
- 18 (b) Granted service if the member had not attained:
- 19 (A) Age 55 if the last qualifying position was as a police officer or a
20 firefighter.
- 21 (B) Age 58 if the last qualifying position was as other than a police
22 officer or firefighter.
- 23 (6) Granted service is:
- 24 (a) Not included in the calculation of increased benefits payable under ORS
25 238.364.
- 26 (b) Included in the calculation of increased benefits payable under ORS
27 238.366.
- 28 (7) Termination of membership. Disability retirement allowances are available only
29 to PERS members. Former PERS members who have terminated their
30 membership pursuant to ORS 238.095 are not eligible to receive PERS disability
31 retirement allowances.