

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 459
OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED

03/26/2025 5:16 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amend the rule in accordance with petition to begin rulemaking dated September 9, 2024.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/25/2025 1:05 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.

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11410 SW 68th Pkwy
Tigard, OR 97223

Filed By:
Joel Mellor
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 04/22/2025

TIME: 2:00 PM - 3:00 PM

OFFICER: Joel Mellor

IN-PERSON HEARING DETAILS

ADDRESS: PERS Headquarters, 11410 SW 68th Pkwy, Tigard, OR 97223

SPECIAL INSTRUCTIONS:

Hearing held in the Boardroom

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 971-300-4342

CONFERENCE ID: 165337034

SPECIAL INSTRUCTIONS:

Meeting ID: 214 051 506 842

Passcode: Q83fN7ss

NEED FOR THE RULE(S)

On September 9, 2024, PERS received a petition to begin rulemaking from stakeholder, Karl Koenig, President of Oregon State Fire Fighters Council (OSFFC), requesting the agency consider amending OARs 459-015-0010 and 459-076-0005. Specifically, they suggested aligning PERS duty designation for disability claims with those of Worker's Compensation. The draft rules presented have been amended accordingly and have been reviewed by OSFFC representatives.

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 , 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.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

ORS 238.650, ORS 238.005 - 238.585; ORS 238A.120 & ORS 238A.450, ORS 238A.140 & ORS 238A.235

All can be found online.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

This rule will not affect racial equity in Oregon.

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:

459-015-0005, 459-076-0005

AMEND: 459-015-0005

RULE SUMMARY: On September 9, 2024, PERS received a petition to being rulemaking from stakeholder, Karl Koenig, President of Oregon State Fire Fighters Council (OSFFC) , requesting the agency consider amending OARs 459-015-0010 and 459-076-0005 . Specifically, they suggested aligning PERS duty designation for disability claims with those of Worker's Compensation. The draft rules presented have been amended accordingly and have been reviewed by OSFFC

representatives.

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, 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.

CHANGES TO RULE:

459-015-0005

Eligibility for Disability Retirement Allowances ¶¶

- (1) A member must be totally, not partially, disabled and unable to perform any work for which qualified for an extended duration to be eligible for a disability retirement allowance.¶¶
- (2) In determining a member's eligibility for a disability retirement allowance, the burden of proof is upon the applicant. The Board is not required to prove whether the applicant is or is not eligible for a disability retirement allowance. ¶¶
- (3) Eligibility requirements for duty disabilities. ¶¶
 - (a) To be eligible for a duty disability a member must prove:¶¶
 - (A) The mental or physical incapacitation arose out of and in the course of duty and was not intentionally self-inflicted; and¶¶
 - (B) The on the job injury must be the material contributing cause of the disability even if the member has a pre-existing condition.¶¶
 - (b) For work related stress to be considered the material contributing cause of the disability all of the following criteria must be met:¶¶
 - (A) The employment conditions producing the work-related stress exist in a real and objective sense; ¶¶
 - (B) The employment conditions producing the work-related stress are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles; ¶¶
 - (C) There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community; and ¶¶
 - (D) There is evidence that the work-related stress arose out of and in the course of employment. ¶¶
- (c) If a member has been approved for a disability retirement benefit under ORS 238.320 and has also been approved for benefits under ORS Chapter 656 for the same injury or disease, when making the duty designation determination:¶¶
 - (A) PERS will consider it a rebuttable presumption that the member is eligible for duty disability; ¶¶
 - (B) The presumption in (A) will be:¶¶
 - (i) Rebuttable with clear and convincing evidence:¶¶
 - (ii) Applicable to any payments made on or after the later of: ¶¶
 - (I) January 1 of the year in which the documentation of the approval of benefits under ORS Chapter 656 has been received by PERS or¶¶
 - (II) Effective date of disability retirement; ¶¶
 - (C) The member is responsible for submitting documentation of approval for benefits under ORS Chapter 656 to PERS. ¶¶
- (4) Eligibility requirements for non-duty disabilities. A member applying for non-duty disability retirement must

have a minimum of 10 years of employment in a PERS qualifying position. Years of employment are calculated pursuant to ORS 238.320(6) as follows: ¶

(a) Members with no prior service credit under ORS 238.442 receive: ¶

(A) One year of employment for each 12-month period or major fraction thereof, calculated from the date on which the member begins the six-month waiting period required for establishing membership under ORS 238.015 to the date of disability; and ¶

(B) Up to 90 days for sick leave used after the date of disability. No other leave of absence after the date of disability will count toward years of employment. ¶

(b) Members with prior service credit under ORS 238.442 receive: ¶

(A) One year of employment for each year of prior service credit; and ¶

(B) One year of employment for any minor fraction of a year of prior service, if continuous as certified by the employer and for which no prior service credit was granted; and ¶

(C) One year of employment for each 12-month period or major fraction thereof, calculated from the date on which membership is established in the system to the date of disability; and ¶

(D) Up to 90 days for sick leave used after the date of disability. No other leave of absence after the date of disability will count toward years of employment. ¶

(5) A member's disability retirement allowance shall be calculated based on: ¶

(a) Creditable service; and ¶

(b) Granted service if the member had not attained: ¶

(A) Age 55 if the last qualifying position was as a police officer or a firefighter. ¶

(B) Age 58 if the last qualifying position was as other than a police officer or firefighter. ¶

(6) Granted service is: ¶

(a) Not included in the calculation of increased benefits payable under ORS 238.364. ¶

(b) Included in the calculation of increased benefits payable under ORS 238.366. ¶

(7) Termination of membership. Disability retirement allowances are available only to PERS members. Former PERS members who have terminated their membership pursuant to ORS 238.095 are not eligible to receive PERS disability retirement allowances.

Statutory/Other Authority: ORS 238.650

Statutes/Other Implemented: ORS 238.320 - 238.345

RULE SUMMARY: On September 9, 2024, PERS received a petition to being rulemaking from stakeholder, Karl Koenig, President of Oregon State Fire Fighters Council (OSFFC), requesting the agency consider amending OARs 459-015-0010 and 459-076-0005. Specifically, they suggested aligning PERS duty designation for disability claims with those of Worker's Compensation. The draft rules presented have been amended accordingly and have been reviewed by OSFFC representatives.

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, 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.

CHANGES TO RULE:

459-076-0005

Eligibility for Disability Benefits ¶¶

(1) A member who was an active member as of the date of disability must be totally, not partially, disabled and unable to perform any work for which qualified for an extended duration to be eligible for a disability benefit.¶¶

(2) A member with disabilities arising after the member's date of termination from a qualifying position(s) is not eligible for a disability benefit.¶¶

(3) In determining a member's eligibility for disability benefits, the burden of proof is upon the applicant. The Board is not required to prove whether the applicant is or is not eligible for disability benefits. ¶¶

(4) Eligibility requirements for duty disabilities.¶¶

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

(A) The mental or physical incapacitation arose out of and in the course of duty and was not intentionally self-inflicted; and¶¶

(B) The on the job injury must be the material contributing cause of the disability, even if the member has a pre-existing condition.¶¶

(b) For work related stress to be considered the material contributing cause of the disability all of the following criteria must be met: ¶¶

(A) The employment conditions producing the work related stress exist in a real and objective sense; ¶¶

(B) The employment conditions producing the work related stress are conditions other than conditions generally inherent in every working situation or reasonable disciplinary, corrective or job performance evaluation actions by the employer, or cessation of employment or employment decisions attendant upon ordinary business or financial cycles; ¶¶

(C) There is a diagnosis of a mental or emotional disorder which is generally recognized in the medical or psychological community; and ¶¶

(D) There is evidence that the work related stress arose out of and in the course of employment. ¶¶

(c) If a member has been approved for a disability benefit under ORS 238A.235 and has also been approved for benefits under ORS Chapter 656 for the same injury or disease, when making the duty designation determination:¶¶

(A)PERS will consider it a rebuttable presumption that the member is eligible for duty disability; ¶¶

(B) The presumption in (A) will be:¶¶

(i) rebuttable with clear and convincing evidence:¶¶

(ii) applicable to any payments made on or after the later of: ¶

(I) January 1 of the year in which the documentation of the approval of benefits under ORS Chapter 656 has been received by PERS or ¶

(II) effective date of disability retirement: ¶

(C) The member is responsible for submitting documentation of approval for benefits under ORS Chapter 656 to PERS. ¶

(5) Eligibility requirements for non-duty disabilities. A member applying for non-duty disability benefits must meet the 10 or more years of service requirements pursuant to ORS 238A.235(2)(a) or (b). ¶

(6) Termination of OPSRP membership. Disability benefits are available only to OPSRP Pension Program members who have not terminated membership pursuant to ORS 238A.110. ¶

(7) Return to work. If a member who is receiving a disability benefit becomes employed or receives earned income, the member's disability benefit will be terminated, effective the first of the month following employment or issuance of earned income. PERS will invoice the member for, or recover under ORS 238.715, any overpayment of benefits. ¶

(8) PERS may contact other public or private agencies, such as the Oregon Employment Department, the Oregon Department of Revenue, or the U.S. Internal Revenue Service to obtain employment information. ¶

(9) Upon request by PERS, a member must provide PERS with a copy of the member's federal income tax returns, together with copies of IRS forms W-2.

Statutory/Other Authority: ORS 238A.120, ORS 238A.450

Statutes/Other Implemented: ORS 238A.140, ORS 238A.235