

# OREGON PUBLIC EMPLOYEES RETIREMENT BOARD

**Friday  
May 20, 2005  
1:00 P.M.**

**PERS  
11410 SW 68<sup>th</sup> Parkway  
Tigard, OR**

	ITEM	PRESENTER
<b>A. Administration</b>		
1.	April 15, 2005 Board Meeting Minutes	CLEARY
2.	Director's Report	
a.	Forward-Looking Calendar	
b.	OIC Investment Report	
c.	Budget Report	
d.	Miscellaneous	
<b>B. Contested Cases</b>		
1.	Contested Case Hearing of Raymond Murray	KUTLER / RODEMAN
<b>C. Consent Action and Information Items</b>		
1.	Adoption of OPSRP/IAP Definition Rules	GRIMSLEY / KRIPALANI / RODEMAN
<b>D. Action and Discussion Items</b>		
1.	2006 PERS Retiree Health Insurance Plan Adjustments and Rate Changes	GRIMSLEY / ENGLISH CHAPMAN/RODEMAN HALLMARK ROCKLIN / RODEMAN ROCKLIN / RODEMAN GRIMSLEY / DELANEY PITTMAN
2.	"Equal to or Better Than" Initial Determination Report	
3.	Managing Employer Rates – Actuarial Methods	
4.	Adoption of Division 15 Disability Rules	
5.	Adoption of Division 76 Disability Rules	
6.	Legislative Update	
7.	Board Governance Matters	
<b>E. Executive Session Pursuant to ORS 192.660 (2) (f) (h) and ORS 40.225</b>		
1.	Litigation Update	LEGAL COUNSEL

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**Note:** If you have a disability that requires any special materials, services or assistance, call (503) 603-7575 at least 48 hours before the meeting.

Michael Pittman, Chair \* James Dalton \* Thomas Grimsley \* Eva Kripalani \* Brenda Rocklin \* Paul R. Cleary, Executive Director

# **PUBLIC EMPLOYEES RETIREMENT BOARD**

PERS Board Meeting  
1:00 P.M.  
April 15, 2005  
Tigard, Oregon

MEETING	<b>5-20-05</b>
DATE	
AGENDA	<b>A.1.</b>
ITEM	4-15-05 Minutes

## **MINUTES**

### **Board Members:**

Mike Pittman, Chair  
Brenda Rocklin  
Thomas Grimsley  
Eva Kripalani  
James Dalton

### **Staff:**

Paul R. Cleary, Director  
Donna Allen  
Marsha Bacon  
David Crosley  
Steve Delaney

Brian DeForest  
Stephanie Gillette  
Brian Harrington  
Jenny Kumm  
Jeff Marecic  
Dale Orr

Steve Rodeman  
Craig Stroud  
Dave Tyler  
Brendalee Wilson

### **Others:**

Gordon Allen  
Bruce Adams  
Bob Andrews  
DeAnn Artiacco  
Tom Chamberlain  
Marcia Chapman  
BethAnne Darby  
Myrnie Daut  
Eric DeFreest

Linda Ely  
Marsha Ehlers  
Marc Feldesman  
Heidi Franklin  
Richard Gilbert  
Jim Green  
Bill Hallmark  
DeeAnn Hardt  
Greg Hartman  
Maria Keltner

Keith Kutler  
Beckie Lee  
Joseph M. Malkin  
Steve Manton  
Amol Mhatre  
Victor Nolan  
Cora Parker  
Angie Peterman  
Robert Rosenthal  
Tracy Rutten

Carol Samuels  
Jim Scherzinger  
Katie Schwab  
Tricia Smith  
Alan Stonewall  
Jessie Villarreal, Jr.  
Pat West  
Dallas Weyand  
Denise Yunker

Board Chair Michael Pittman called the meeting to order at 1:00 P.M.

## **ADMINISTRATION**

### **A.1. BOARD MEETING MINUTES OF MARCH 29, 2005**

Tom Grimsley moved and Eva Kripalani seconded to approve the minutes of the March 29, 2005 meeting. The motion passed unanimously.

### **A.2. DIRECTOR'S REPORT**

Director Paul Cleary reported that the 2006 PERS Retiree Health Insurance Plan and Rate Changes would be discussed at the May 20, 2005 Board meeting. Cleary presented a memo from Benefit Payments Division Administrator Craig Stroud on methods staff would use to calculate estimated retirement benefit payments pending the Oregon Supreme Court's decision in the *City of Eugene* case. Cleary noted that the Stroud memo had been shared with legal counsel for the respective parties, and there were no objections to the proposed estimated payment calculation methods.

## **CONTESTED CASES**

NONE

## **CONSENT ACTION AND DISCUSSION ITEMS**

### **C.1. NOTICE OF RULEMAKING FOR ELECTRONIC FUNDS TRANSFER RULES**

C.1.a. OAR 459-005-0225, *Requirement to Make Payments by Electronic Funds Transfer*

C.1.b. OAR 459-070-0100, *Employer Reporting, and Remittance of Contributions*

Policy, Planning and Legislative Analysis Division (PPLAD) Administrator, Steve Rodeman, presented the notice of rulemaking and background information for the two separate rules. Rodeman said these rules, open for public comment through June 2005, would allow PERS to require employer payments via Electronic Fund Transfers (EFT), providing for safer and more efficient processing of payments while also addressing employer concerns about penalties.

## **ACTION AND DISCUSSION ITEMS**

### **D.1. POLICE AND FIRE MORTALITY STUDY**

Deputy Director Steve Delaney provided legislative history for the Milliman Consultants and Actuaries' report on Police and Fire (P&F) Actuarial Equivalency Factors. Delaney said that 2003 legislation (HB 2004) required the PERS Board to conduct a study of the life expectancy of PERS members defined as certain categories of firefighters or police officers to determine if their life expectancies are substantially shorter than the average for all system members.

Milliman actuary Mark Johnson presented results of the special actuarial study that was performed as a result of HB 2004. Johnson said that HB 2004 had specified a subset of certain P&F members, but the observed mortality rates for the specified subset of P&F members were not significantly different than the mortality rates for all P&F members. Johnson said the average post-retirement life expectancies of P&F members are generally about 5% to 7% shorter than the average life expectancies of all PERS members, and that gender appears to have a more significant effect on average life expectancies than job classification. Johnson reported that if new actuarial equivalency factors were produced for P&F members, all other member actuarial factors would require revision to exclude the P&F members to keep the entire set "cost neutral." Johnson said that implementing these changes would create minimal changes in benefits at retirement age for P&F members (less than 2% increase) and for all other members (about 0.3% decrease).

Pat West, for Oregon State Firefighters Council, said that the legislature requested a review of P&F mortality tables to determine if there were significant mortality differences in the specified P&F classifications and other PERS members. West noted that the legislature did not specifically define the standard (substantially shorter life expectancy), which the Board was to apply in making the determination.

Based on the results of the special actuarial study, James Dalton moved and Eva Kripalani seconded to adopt the actuary's recommendation to not adopt separate actuarial equivalency factor tables under ORS 238.607 for the purpose of computing the payments made to select PERS P&F members. Tom Grimsley voted no. The motion passed.

#### D.2. SYSTEM BENEFITS AND EMPLOYER RATE ANALYSIS

Marcia Chapman and Bill Hallmark, actuaries with Mercer Human Resource Consulting presented a report on recent benefit changes and projected future employer rates, including the impact of the Strunk ruling.

Hallmark described the standard financial management framework for managing retirement plans, including funding, benefit, and investment policies. Hallmark said that the cost of the system is determined by the benefits provided, less the investment returns. The funding policy, which is controlled by the Board, includes actuarial methods, economic and demographic assumptions, and employer contribution rates.

Chapman outlined the 2003 PERS Reform Legislation including the Oregon Public Service Retirement Plan (OPSRP) and the Individual Account Program (IAP) for members who were hired after August 28, 2003. Chapman reviewed the diversion of Tier One / Tier Two member contributions to the IAP after December 31, 2003; the change in Money Match and Full Formula benefits after PERS reform; the calculation of employer rates and member contributions; and the projections for future employer rates at varying investment returns.

Chair Pittman requested a follow-up actuarial report for the May Board meeting. Pittman also noted the need for a joint meeting with the Oregon Investment Council (OIC) once the City of Eugene case is decided to review actuarial reports and initiate the PERS Fund asset/liability study. The Board emphasized the need for continued system funding evaluation and transparency so all parties can gain a better understanding of the benefits, costs and complexities of the PERS system.

#### D.3. SUPREME COURT STRUNK RULING – CONTINGENCY BUDGET PACKAGES

Budget and Fiscal Operations Manager Brian DeForest described the projected fiscal and staffing impacts resulting from the Oregon Supreme Court Strunk ruling and additional potential impacts from the pending Oregon Supreme Court decision in the City of Eugene case. DeForest reviewed the staffing needs for benefit recalculations and other related agency operations and the contractual services to make necessary programming changes to implement the Strunk ruling. DeForest requested the Board's approval to submit the Strunk related budget packages to the agency's Budget and Management Analyst (BAM), and Legislature Fiscal Analyst (LFO) for consideration in the agency's 2005 – 07 budget hearing process.

Brenda Rocklin moved and Tom Grimsley seconded to approve forwarding the 2005 – 07 Strunk ruling contingency budget packages to BAM and LFO for their review and subsequent consideration in the agency's budget hearing process. The motion passed unanimously.

PERS Board meeting

4/15/05

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D.4. LEGISLATIVE UPDATE

Delaney reviewed legislative bills that could impact PERS. Delaney reported that Lane County is re-drafting their proposed HB3303, which originally stated that when a state agency and a local government sign a contract, if the local government's funds are depleted, they can be released from their contract obligations. The revised bill would exclude PERS along with several other state agencies.

D.5. BOARD GOVERNANCE MATTERS

There were no Board governance matters.

**EXECUTIVE SESSION**

Pursuant to ORS 192.660 (2) (f), (h) and ORS 40.255, the Board went into executive session at 3:15 P.M.

The Board reconvened to open session.

Chair Pittman adjourned the meeting at 3:30 P.M.

Respectfully submitted,

Paul R. Cleary  
Executive Director

*Prepared by Donna R. Allen, Executive Assistant*

MEETING	<b>5-20-05</b>
DATE	
AGENDA	<b>A.2.a.</b>
ITEM	Forward Calendar

## **PERS Board Meeting Forward-Looking Calendar**

### **June 2005**

**Meeting: 1:00 P.M. June 24, 2005**

- ETOB Final Report
- Adoption of Miscellaneous Rules Cleanup
- Appeal of Dawn Gloeckner
- Appeal of Corine Emerson
- Appeal of John Joyce

### **July 2005**

**July Meeting Date and Agenda TBD**

### **August 2005**

**August Meeting Date and Agenda TBD**



# Oregon

Theodore R. Kulongoski, Governor

May 10, 2005

(503) 598-7377  
TTY (503) 603-7766  
www.pers.state.or.us

**TO:** Members of the PERS Board  
**FROM:** Brian DeForest, Budget and Fiscal Operations Manager  
**SUBJECT:** May, 2005 Budget Report

MEETING DATE	<b>5-20-05</b>
AGENDA ITEM	<b>A.2.c. Budget</b>

## ACTUAL EXPENDITURES VS. PROJECTIONS

The projected budget surplus for the Administrative appropriation is approximately \$1.8 million with accounting data for the month of March and re-forecasting remaining expenditures. Total actual expenditures for the Administrative appropriation were \$2,192,258, an increase of \$343,859 above February expenditures. The increase in 'surplus' is reflective of the delay in the start date for the RIMS Conversion Project to accommodate staffing and contracting needs. The total RIMS Conversion Project cost is expected to remain at the \$27.5 million level, but the delayed start date will shift project expenditures from the 2003-05 biennium into the 2005-07 and 2007-09 biennium.

## ISSUES/OPPORTUNITIES

Budget staff is developing division and section level Budget Execution Reports, similar to the monthly agency report reviewed by the Board. Beginning in July, section managers will be able to track and manage expenditures against the 2005-07 Legislatively Adopted Budget. Agency managers will provide input into the expenditure projections at a finer level of detail than is presented to the Board. This information will be aggregated to the agency-wide level and be reviewed by the agency administrators and then the full Board. The goal is to create a set of management tools to more quickly identify budget issues and allow agency management as much time as possible to develop strategic plans to either mitigate an emergency or leverage an opportunity.

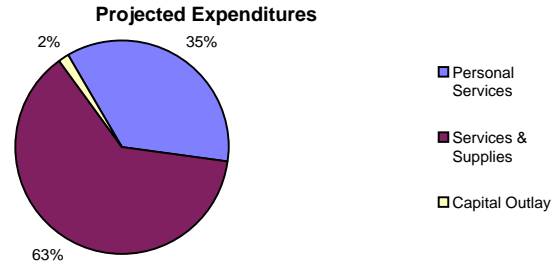
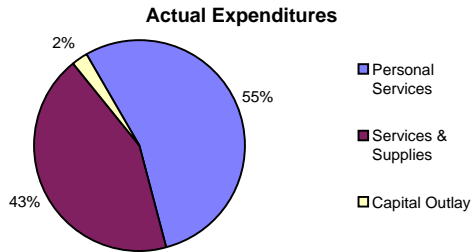
## BUDGET VARIANCES

Budget variances remained relatively stable compared to the previous report except as noted above with Professional Services related to the RIMS Conversion Project start-up date.

**2003-05 Admin Budget Execution  
Summary Budget Analysis  
For the Month of: Mar. 2005**

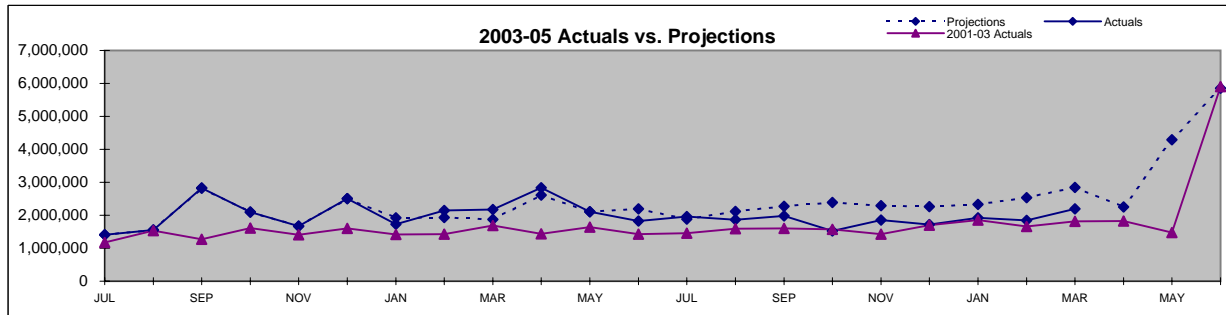
**Biennial Summary**

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2003-05 LAB	Variance
Personal Services	22,612,791	4,402,706	27,015,498	32,782,666	5,767,168
Services & Supplies	18,128,574	7,813,419	25,941,993	22,242,381	(3,699,612)
Capital Outlay	996,037	190,691	1,186,728	968,686	(218,042)
Special Payments					
<b>Total</b>	<b>41,737,403</b>	<b>12,406,816</b>	<b>54,144,219</b>	<b>55,993,733</b>	<b>1,849,514</b>



**Monthly Summary**

Category	Actual Exp.	Projections	Variance	Avg. Monthly Actual Exp.	Avg. Projected Expenditures
Personal Services	1,064,677	1,178,880	114,204	1,076,800	1,467,569
Services & Supplies	1,100,228	1,662,370	562,142	863,265	2,604,473
Capital Outlay	27,353		(27,353)	47,430	63,564
Special Payments					
<b>Total</b>	<b>2,192,258</b>	<b>2,841,250</b>	<b>648,993</b>	<b>1,987,495</b>	<b>4,135,605</b>



**2001-03 Biennium Summary**

Category	Actual Exp. To Date	Projected Expenditures	Total Est. Expend.	2001-03 LAB	Variance
Personal Services					
Services & Supplies					
Capital Outlay					
Special Payments					
<b>Total</b>					







# Oregon

Theodore R. Kulongoski, Governor

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May 9, 2005

**TO:** Members of the PERS Board  
Key Reviewers: Eva Kripalani  
Thomas Grimsley

**FROM:** Steven Patrick Rodeman, Administrator, PPLAD

**SUBJECT:** Adoption of OAR 459-070-0001, *Definitions*

MEETING	<b>5-20-05</b>
DATE	
AGENDA	<b>C.1.</b>
ITEM	OAR 459-070-0001 PERS / OPSRP

## OVERVIEW

- **Action:** Repeal the temporary rule OAR 459-070-0001 and adopt permanent modifications to OAR 459-070-0001.
- **Temporary Rule Status:** The PERS Board adopted these modifications in a temporary rule at their February 18, 2005 meeting. The temporary rule will expire on August 15, 2005. Staff now returns to have the modifications adopted after following the permanent rulemaking process.
- **Subject:** Clarifies the definition of “qualifying position” so staff can administer contributions into and distributions from the IAP; makes the definition consistent with the PERS Chapter 238 Program members who are now members of the IAP; simplifies the tracking and administration of these member accounts.
- **Policy Issue:** Should the definition of “qualifying position” for OPSRP members be consistent with the PERS Chapter 238 Program and provide for continued active membership when a member leaves covered service before performing 600 hours in calendar year?

## SUMMARY OF RULE AND POLICY ISSUE

This rule defines “qualifying service” for the OPSRP Pension Program and the IAP in a manner consistent with the PERS Chapter 238 Program.

Generally, an eligible employee is not an active member of the PERS Chapter 238 Program or OPSRP unless they perform 600 hours in a calendar year. However, under the previously adopted version of OAR 459-070-0001 (OPSRP) and OAR 459-010-0003 (PERS), for the initial determination of eligibility, an employee will be considered to be in a qualifying position if the employee performs less than 600 hours in their first calendar year and performs at least 600 hours in the subsequent year. Otherwise, employees hired into qualifying positions late in the year would not begin their waiting periods even though they were in qualifying positions.

Although the previously adopted OPSRP rule provides the same consideration for incoming employees as the PERS Chapter 238 Program rules, the PERS rule provides for the same treatment of employees leaving the system as it does for those coming into the system. The current version of the OPSRP rule does not. Unless the two sets of rules are consistent, PERS Chapter 238 Program members who separate from employment early in the year before performing 600 hours of service would receive service credit but not IAP contributions.

The rule provides for a member who is in a qualifying position to have active membership continue until separation if that member was in a qualifying position for the previous year. This provision mirrors the provisions in the PERS Chapter 238 Program rule. Creating consistent standards will simplify the administration of benefits and eliminate the current confusion for employers trying to report into the system.

As a procedural matter, the Board must repeal the temporary rules the Board adopted in February as part of the permanent rule adoption.

#### PUBLIC COMMENT AND HEARING TESTIMONY

The comment period ended on April 29, 2005. PERS did not receive any public comment. A rulemaking hearing was held on March 29, 2005 and no members of the public attended.

#### LEGAL REVIEW

The attached draft of OAR 459-070-0001 was submitted to legal counsel for review. No changes were recommended.

#### EFFECTIVE DATE

This rule will become effective upon filing but will be retroactively applied back to January 1, 2004.

#### RULEMAKING TIMELINE

February 15, 2005	Staff initiated rulemaking process. Stakeholders and legislators notified and the public comment period begins.
February 18, 2005	PERS Board adopted the temporary rule.
March 1, 2005	<i>Oregon Bulletin</i> published the Notice of Rulemaking Hearing.
March 29, 2005	Rulemaking hearing took place.
April 29, 2005	Public comment period ended.
May 20, 2005	PERS Board may adopt the proposed new permanent rule.

#### IMPACT

**Mandatory:** Not statutorily mandated, but clarification for administration is needed.

**Impact:** Minimal if adopted. Stakeholders would have a clearer understanding of their eligibility criteria.

**Cost:** There is no substantial cost to stakeholders or the Fund as a result of the adoption of these rule modifications. To the contrary, failure to adopt them could result in increased inquiries and disputes if member eligibility is not clearly established.

- ♦ *Members.* IAP and PERS Chapter 238 Program members may experience delays in obtaining benefits if there are not consistent administrative provisions. Likewise, lack of direction and clarification could result in over- or under-payments of benefits. By creating consistency between the programs, the required transactions and processes can be handled more efficiently.

- ♦ *Employers.* Employers will be required to pay applicable contributions for members in qualifying positions.
- ♦ *Administration.* The implementation of OPSRP, in general, has resulted in a significant administrative impact. New PERS positions have been added by the Oregon Legislature to handle this impact.
- ♦ *Fund.* There is no direct cost to the fund.

### BOARD OPTIONS

The Board may:

1. Make a motion to "repeal the temporary rule OAR 459-070-0001 and adopt the permanent rule modifications to OAR 459-070-0001, as presented, with a retroactive effective date of January 1, 2004."
2. Take no action and direct staff to make changes to the rule or take other action.

### STAFF RECOMMENDATIONS

Staff recommends the Board adopt OAR 459-070-0001 as presented.

- **Reason:** Adoption of this rule would clearly articulate the standards by which qualification for members can be consistently determined.

**If the Board does not adopt:** Staff would return with rule modifications that more closely fit the Board's policy direction if the Board determines that a change is warranted. The temporary rule that the Board adopted on February 18, 2005 will expire on August 15, 2005.

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 70 – OREGON PUBLIC SERVICE RETIREMENT PLAN,  
GENERALLY

1 OAR 459-070-0001 is Amended as Follows:

MEETING	5-20-05
DATE	
AGENDA	C.1.
ITEM	OAR 459-070-0001 PERS / OPSRP

1 **459-070-0001**

2 **Definitions**

3 The words and phrases used in this Division have the same meaning given them in  
4 *[chapter 733, Oregon Laws 2003 (Enrolled HB 2020)]* [ORS 238A.005](#) unless otherwise  
5 indicated in this rule. Specific and additional terms for purposes of Divisions 70, 75 and  
6 80 are defined as follows unless context requires otherwise:

7 (1) "Break in service" means a period concluding on or after August 29, 2003,  
8 during which a member of PERS performs no service, as defined below, with a  
9 participating public employer in a qualifying position for a duration of:

10 (a) Six or more consecutive calendar months; or

11 (b) 12 or more consecutive calendar months under one of the following  
12 circumstances:

13 (A) The member of PERS ceases performance of service for purposes that have  
14 qualified the member for family leave, as described in *[section 2(3)(c), chapter 733,*  
15 *Oregon Laws 2003 (Enrolled HB 2020)]* [ORS 238A.025\(3\)\(c\)](#), as determined by the  
16 employer; or

17 (B) The member of PERS ceases performance of service for career development  
18 purposes, as described in *[section 2(3)(d), chapter 733, Oregon Laws 2003 (Enrolled HB*  
19 *2020)]* [ORS 238A.025\(3\)\(d\)](#).

1 (2) "Calendar month" means a full month beginning on the first calendar day of a  
2 month and ending on the last calendar day of the same month.

3 (3) "Calendar year" means 12 calendar months beginning on January 1 and ending  
4 on December 31 following.

5 (4) "Employee" has the same meaning as "eligible employee" in *[section 1(4),*  
6 *chapter 733, Oregon Laws 2003 (Enrolled HB 2020)]* [ORS 238A.005\(4\)](#).

7 (5) "Employee class" means a group of similarly situated employees whose positions  
8 have been designated by their employer in a policy or collective bargaining agreement as  
9 having common characteristics.

10 (6) "Employee contributions" means contributions made to the individual account  
11 program by an eligible employee under *[section 32, chapter 733, Oregon Laws 2003*  
12 *(Enrolled HB 2020)]* [ORS 238A.330](#), or on behalf of the employee under *[section 34,*  
13 *chapter 733, Oregon Laws 2003 (Enrolled HB 2020)]* [ORS 238A.335](#).

14 (7) "Member" has the same meaning given the term in *[section 1(10), chapter 733,*  
15 *Oregon Laws 2003 (Enrolled HB 2020)]* [ORS 238A.005\(10\)](#).

16 (8) "Member account" means the account of a member of the individual account  
17 program.

18 (9) "Member of PERS" has the same meaning as "member" in ORS 238.005(12)(a),  
19 but does not include retired members.

20 (10) "OPSRP" means the Oregon Public Service Retirement Plan.

21 (11) "Overtime" means the salary or hours, as applicable, that an employer has  
22 designated as overtime.

23 (12) "PERS" means the retirement system established under ORS chapter 238.

1 (13)(a) "Qualifying position" means a position or positions in which an employee is  
2 expected to perform 600 or more combined hours of service in a calendar year.

3 (b) If an employee is employed in a position or positions not designated as  
4 qualifying and performs 600 or more total hours of service in a calendar year, the position  
5 or positions will be considered qualifying and the employee shall be considered to have  
6 performed service in a qualifying position from the date of employment or January 1 of  
7 the calendar year in which the employee performed more than 600 hours of service,  
8 whichever is later.

9 (c) Except as provided in subsection (d) of this section, if an employee is employed  
10 in a position or positions designated as qualifying and performs less than 600 hours of  
11 service in a calendar year, the position will be considered non-qualifying from the date of  
12 employment or January 1 of the calendar year in which the employee performed less than  
13 600 hours of service, whichever is later.

14 (d) For purposes of determining qualification upon initial employment in a position  
15 or positions, but not for determining a break in service or any other purpose, if an  
16 employee is employed in a position or positions for less than a full calendar year and  
17 performs less than 600 hours of service in that calendar year, but would have performed  
18 600 hours of service or more if the employee had performed service in the same  
19 position(s) for the full calendar year, and if the employee performs 600 or more hours of  
20 service in the following calendar year, the position or positions will be considered  
21 qualifying as of the date of employment.

22 **(e) For purposes of determining qualification upon separation from**  
23 **employment in a position or positions, but not for any other purpose, if an employee**

1 was employed in a position or positions for less than a full calendar year and  
2 performed less than 600 hours of service in that calendar year, but would have  
3 performed 600 hours of service or more if the employee had performed service in  
4 the same position or positions for the full calendar year, and if the employee  
5 performed 600 or more hours of service in the previous calendar year, the position  
6 or positions will be considered qualifying as of the date of separation.

7 (14)(a) "Salary" has the same meaning given the term in *[section 1(16), chapter 733,*  
8 *Oregon Laws 2003 (Enrolled HB 2020)]* ORS 238A.005(16).

9 (b) Salary is considered earned when paid except as provided in subsection (c) of  
10 this section and as otherwise provided in *[section 1(16)(b)(E), chapter 733, Oregon Laws*  
11 *2003 (Enrolled HB 2020)]* ORS 238A.005(16)(b)(E).

12 (c) Salary is considered earned when earned for purposes of calculating final average  
13 salary.

14 (15) "School employee" has the meaning given the term in *[section 11(6), chapter*  
15 *733, Oregon Laws 2003 (Enrolled HB 2020)]* ORS 238A.140(6).

16 (16) "Service." Except as provided in subsection (c) of this section, a person is still  
17 providing "service," for purposes of determining whether a "break in service" has  
18 occurred under Section *[s 2 and 2a of chapter]* 2a, Chapter 733, Oregon laws 2003  
19 (Enrolled HB 2020), during any calendar month that a member:

20 (a) Is in an employer/employee relationship; and

21 (b) Receives a payment of "salary," as that term is defined in ORS 238.005(20) or  
22 similar payment from workers compensation or disability.



1 (c) A member who is a school employee will be considered to provide "service"  
2 during any calendar month the institution is not normally in session so long as the  
3 member is in an employer/employee relationship both before and after the period the  
4 institution is not normally in session.

5 **(17) The provisions of this rule are effective on January 1, 2004.**

6 Stat. Auth.: *[OL 2003 Ch. 733]* **238A.450**

7 Stats. Implemented: *[OL 2003 Ch. 733]* **238A.005, 238A.025, 238A.140, 238A.330**  
8 **and 238A.335.**



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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May 6, 2005

**TO:** Members of the PERS Board  
**FROM:** Gloria English, Retiree Insurance Program Manager  
**SUBJECT:** Proposed 2006 PERS Retiree Health Insurance Plan Adjustments and Rate Changes

MEETING	<b>5-20-05</b>
DATE	
AGENDA	<b>D.1.</b>
ITEM	Retiree Health Insurance Plan

### HISTORICAL BACKGROUND

PERS has provided health insurance options to PERS retirees since 1958. The PERS Board has, over the years, designed and managed this insurance program in ways that have enhanced the value to retirees and their spouses and/or dependents by maintaining stability for the enrolled retirees, and providing benefits that exceed those available in the market place for Medicare eligible retirees.

The PERS Board has been proactive over the years to adapt the insurance program to changes in the market place, as well as the many changes to the federal Medicare program since its inception in 1966. The PERS Board began contracting with managed care organization in the 1980s, and has embraced the model of providing health plan choices for retirees enrolled within the PERS insurance program whenever possible and practical to do so.

In 1991, the PERS Board made a visionary decision that added a prescription drug benefit to all of the health plans offered to PERS retirees. Only three of the ten Medicare approved plans sold commercially to Medicare eligible retirees have prescription drug benefits available, and all three have annual spending caps. That PERS Board decision of 14 years ago allows Oregon PERS to be uniquely positioned to take advantage of the benefits available through the Medicare Modernization Act of 2003 for PERS retirees.

### INSURANCE PROGRAM DESCRIPTION

The Oregon PERS insurance program is a voluntary insurance group where eligible retirees pay the majority of their own premium for the insurance plans of their choice. The retiree cost to participate in the PERS health insurance program includes both the health plan premium, and additional fees for PERS' administrative costs. In 1987 the legislature added a premium subsidy (RHIA) for Medicare enrolled PERS retirees with eight or more years of service who were enrolled in the PERS health insurance program. The subsidy amount is limited by statute to \$60 per eligible enrolled retiree per month.

In 1991, another premium subsidy (RHIPA) was added for non-Medicare eligible retirees of the State of Oregon who had eight or more years of PERS service. This subsidy for 2005 varies from \$112 to \$223 depending upon qualifying years of PERS service. About 75% of the retirees enrolled in the PERS health insurance program receive one of these subsidies. The subsidies total approximately 30% of the total health plan premiums collected for program enrollees. These subsidies are funded actuarially, and added to the employer rate

established by PERS actuaries and approved by the PERS Board. The current RHIA employer rate is 0.59% and the RHIPA (State of Oregon payroll only) rate is 0.13%.

Ninety-five percent of the enrolled retirees of the PERS plans are Medicare eligible retirees who have many commercially marketed Medicare plans competing for their premium. The key to PERS' success has been the Board's approach in maintaining an acceptable balance between the benefits and premiums over the years that meets retiree's needs.

Following are some demographics and statistics that describe the Oregon PERS retiree insurance program as of **March 2005**:

	<u>Enrollment</u>	<u>Receiving Subsidy</u>	<u>Average Age</u>
Medical Plans <b>(total)</b>	47,340	<b>36,078</b>	74
Medicare	44,875	<b>35,167</b>	75
Non-Medicare	<b>2,465</b>	911	58
Dental Plans	20,992		

Additional statistics can be found in Exhibit I.

The enrollment numbers confirm that the PERS health insurance program is primarily a plan for Medicare enrolled retirees. Since 1985, Oregon public employers have been required by ORS 243.303 to offer their employee group insurance benefits to their retirees and their spouse/dependents at the group insurance rate until the insured becomes eligible for Medicare. This option ensures that most pre-Medicare eligible retirees have health insurance available to them, and that the premium rate is less than most plans available in the commercial market place for this age group. PERS also offers health insurance plans for retirees and their spouses/dependents not yet Medicare eligible. However, the PERS health plans for this age group is quite expensive due to the average age and health mix of the PERS insured group. Consequently, not many retirees choose the PERS non-Medicare health insurance program for health care coverage at the time of retirement.

PROPOSED HEALTH PLAN CONTRACTS CONDITIONS AND CHANGES FOR 2006

- PERS will continue to contract with Clear Choice Health Plans, Kaiser Permanente Health Plans, ODS Health Plans, and Providence Health Plan for medical insurance for PERS enrolled Medicare and non-Medicare retirees.
- PERS will continue to contract with Kaiser Permanente Health Plans and ODS Health Plans for dental insurance for PERS enrolled Medicare and non-Medicare retirees.
- The existing PERS prescription drug program will become an Employer Sponsored Medicare Prescription Drug Plan (PDP) for PERS Medicare retirees now insured through ODS Health Plans, Providence Health Plans, and Clear Choice Health Plans. This Employer Sponsored PDP will be insured and administered by ODS Health Plans using substantially the same insurance and administration model that has been in place between PERS and ODS Health Plans for the past several years. Please refer to Exhibit

II. This model (one of three models available under the MMA to large employer groups like Oregon PERS) provides the greatest financial benefit from the MMA for PERS' Medicare enrolled retirees, and brings the least disruption and change for enrolled retirees.

- Kaiser Permanente will continue to insure and administer medical benefits and the new MMA prescription drug benefits to PERS retirees who are enrolled in Kaiser Permanente Health Plans thereby also provide continuity and stability for PERS retirees. Kaiser is currently a Medicare Advantage Plan, and that status permits them to contract directly with employers for unique benefit designs so long as the benefits offered are actuarially equal to Medicare's standard prescription drug benefit.
- Enhance the PERS prescription drug benefit from the current 50% benefit to a 60% benefit per prescription to meet the actuarial equivalency required by the MMA. The current out-of-pocket maximum per prescription will remain at \$150. The Medicare catastrophic benefit begins after \$3,600 out-of-pocket expenses to the retirees.
- Add a Medicare Advantage PPO plan through ODS Health Plans for PERS retirees who live within Oregon. This new plan will offer Medicare eligible retirees additional choice in areas where choice is now limited to the ODS Medicare supplement plan.
- Offer a medical plan Open Enrollment Opportunity to PERS retirees who are Medicare eligible and also eligible for the PERS health insurance program, but did not enroll when initially eligible. The PERS Board last offered Open Enrollment for retirees in 1994. With the passage of the MMA, Medicare eligible retirees will now have many prescription drug plans available to them. PERS staff expects that the PERS retirees who elect to enroll in the PERS plans at this time will most likely be those PERS members who are also subsidy eligible.
- Implement health plan premium rates as shown on Exhibit III along with associated rates that include spouses and/or dependents.

## CONCLUSIONS

Board Member Thomas Grimsley, PERS Health Insurance Program retiree advisors, PERS staff, and consultants, met March 29, 2005 to review the health plan rates and benefit adjustments proposed for 2006. There also was considerable discussion and planning over the last year regarding the impact and the opportunities to the PERS Health Insurance Program brought by the Medicare Modernization Act (MMA) of 2003. You may recall that staff introduced this concept and provided initial projections concerning the impact to the PERS program when briefing the Board at this time last year.

Staff are very pleased to bring these proposals to the Board, and thereby conclude a year of hard work by PERS consultants, health plans, retiree advisors, and PERS staff. It is not often that an insurance program such as PERS can offer current enrolled retirees rate reductions without also reducing the benefits offered. This is the year that we can do that for our

Medicare eligible enrolled retirees, not only will there be a rate reductions for these enrolled retirees, but they will also enjoy a prescription drug benefit increase. It is satisfying for all involved to bring this good news.

If the PERS Board approves the proposals outlined above, PERS retirees will be notified of the Open Enrollment Opportunity in late summer, and current enrolled retirees will also receive their Plan Change Materials at about the same time. PERS staff and the Administrator's staff will begin Retiree Meetings around the state, and will most likely have the opportunity to meet with 5,000 or more PERS retirees and their dependents. The Plan Change and Open Enrollment meetings will occur from mid-September through October.

Please review the attachments and feel free to call if you have questions. I can be reached at 503-378-3730 x234 or email at [Gloria.English@state.or.us](mailto:Gloria.English@state.or.us).

STAFF RECOMMENDATION

The staff recommends that the Board approve the proposed 2006 PERS Retiree Health Insurance Plan adjustments, rate changes and open enrollment opportunity as presented.

March 20, 2005

**Health Insurance Plans**

	Totals	Medicare	Non-Medicare
Program Enrollment			
Covered Lives	47,340	44,875	2,465
Retirees (or Surviving Spouses)	38,017	36,582	1,435
Spouses/Dependents	9,323	8,293	1,030
Average Age of Enrolled Retirees	74	75	58

Health Plan Membership Enrollment

Clear Choice Health Plans (Central Oregon)	953	937	16
Kaiser Permanente (Portland to Salem)	9,157	8,328	829
Kaiser (Calif. & Hawaii)	78	62	16
ODS Health Plans (All 50 states)	24,909	24,019	890
Providence Health Plan (Portland to Eugene)	12,234	11,529	714
ODS Dental Plan	17,429	16,480	949
Kaiser Dental	3,563	3,247	316

**Statutory Health Insurance Premium Subsidies**

Retirees Receiving RHIA*	35,167	35,167	
Retirees Receiving RHIPA**	911		911

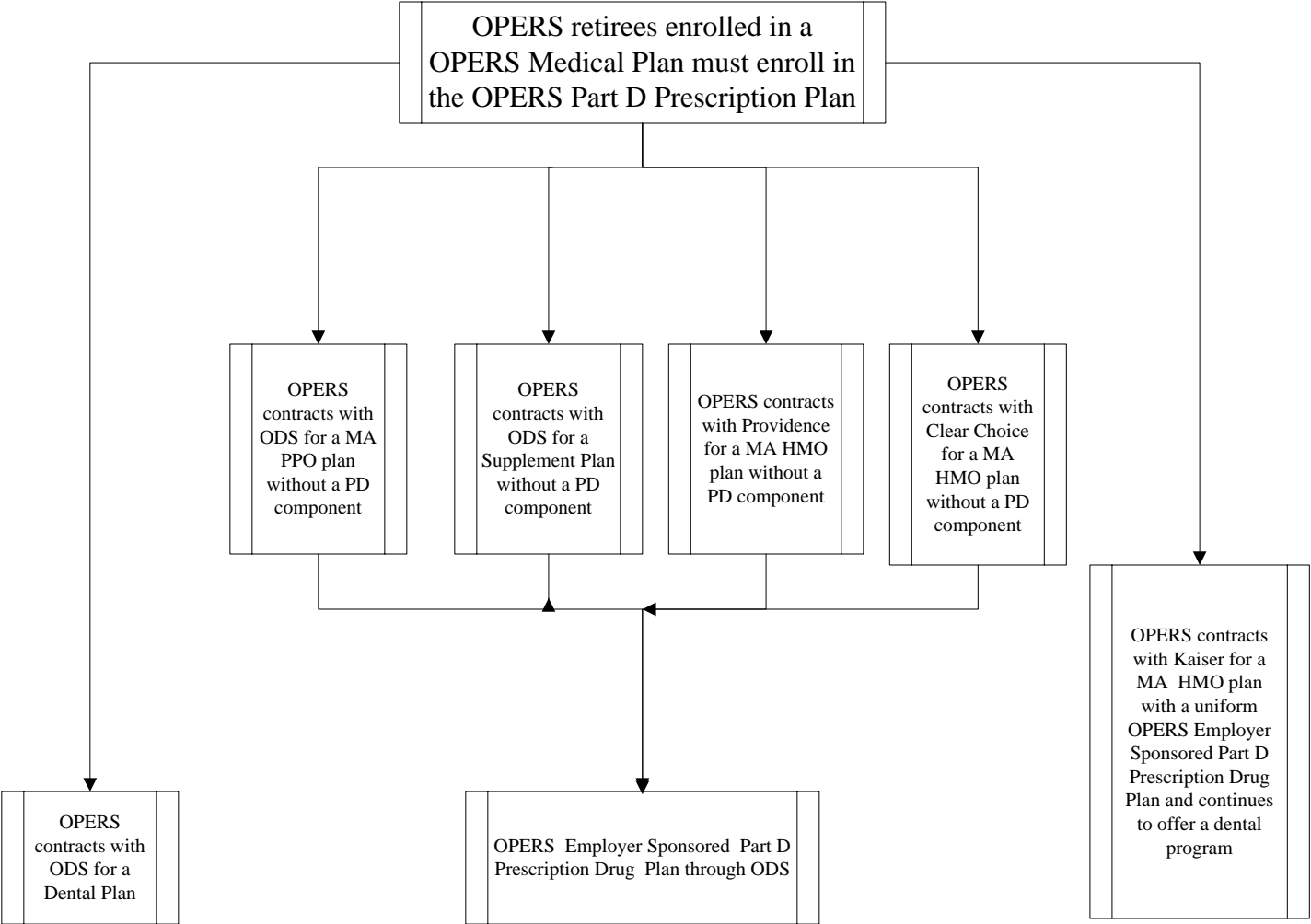
\*The RHIA subsidy is \$60 per month

\*\* The RHIPA subsidy is for State of Oregon retirees only. The subsidy varies from \$111.64 (8 years) to \$223.28 (30+ years) depending on the employees' years of service.

RHIA Monthly Payment - March 2005	\$2,109,156	
RHIPA Monthly Payment - March 2005	\$ 176,015	
Total Monthly Premium paid to Health Plans	\$9,602,270	

Oregon Public Employee Retirement System (OPERS)  
Employer Sponsored Medical Plans, Dental Plans and Prescription  
Drug Plans

Proposed View for 2006



<b>PERS PROPOSED RENEWAL RATES</b>				
<b>2005 vs. 2006 All Carrier Rates</b>				
<i>Including All Administrative Fees</i>				
<i>Effective January 1, 2006</i>				
<b>SUMMARY</b>				
Medical and Prescription Rates to Members before Statutory and Program Subsidies	April 2005 Enrollment	2005	2006	Percentage Change 2005 vs. 2006
<i>(Includes Fixed Costs)</i>				
<b>ODS MEDICAL / RX</b>				
<i>Medicare Supplement</i>	24,116	\$176.59	\$152.52	-13.6%
<i>Medicare PPO</i>			\$139.91	N/A
<i>non-Medicare PPO</i>	910	\$576.26	\$692.90	20.2%
<b>PROVIDENCE HEALTH PLANS</b>				
<i>Medicare</i>	11,542	\$160.45	\$133.37	-16.9%
<i>non-Medicare</i>	694	\$488.33	\$550.49	12.7%
<b>CLEAR CHOICE HEALTH PLANS</b>				
<i>Medicare</i>	952	\$172.49	\$123.37	-28.5%
<i>non-Medicare PPO</i>	16	\$555.84	\$590.57	6.2%
<b>KAISER HEALTH PLANS</b>				
<i>Medicare In Area</i>	8,347	\$148.68	\$130.70	-12.1%
<i>Medicare Out-of-Area</i>		\$224.07	\$218.21	-2.6%
<i>Non-Medicare</i>	829	\$396.03	\$474.30	19.8%
<b>DENTAL</b>				
<i>Kaiser Dental</i>	3,568	\$43.17	\$45.67	5.8%
<i>ODS Dental</i>	17,631	\$45.16	\$45.92	1.7%





# Oregon

Theodore R. Kulongoski, Governor

May 11, 2005

(503) 598-7377  
TTY (503) 603-7766  
[www.pers.state.or.us](http://www.pers.state.or.us)

**TO:** Members of the PERS Board

**FROM:** Dale S. Orr  
Actuarial Analysis Coordinator

MEETING	<b>5-20-05</b>
DATE	
AGENDA	<b>D.2.</b>
ITEM	ETOB

**SUBJECT:** "Equal To or Better Than" Initial Determination Report

On May 20, 2005, Mercer Human Resource Consulting will provide a preliminary determination whether or not benefits provided by non-PERS police and fire (P&F) pension plans are equal to or better than the P&F pension benefits offered by PERS. This analysis complies with ORS 237.620 (4) which requires that a study be conducted once every two years.

This report will be informational only. A final report is scheduled to be presented at the June Board meeting.



# Oregon

Theodore R. Kulongoski, Governor

May 11, 2005

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[www.pers.state.or.us](http://www.pers.state.or.us)

**TO:** Members of the PERS Board

**FROM:** Dale S. Orr  
Actuarial Analysis Coordinator

MEETING	<b>5-20-05</b>
DATE	
AGENDA	<b>D.3.</b>
ITEM	Managing Emp. Rates

**SUBJECT:** Managing Employer Rates – Actuarial Methods

On May 20, 2005, Mercer Human Resource Consulting will report on its analysis of actuarial methods used to value the PERS system and set employer rates. This review is being conducted in the context of the Board's ongoing employer rate evaluation and management efforts.

This report will be informational only.



# Oregon

Theodore R. Kulongoski, Governor

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May 9, 2005

**TO:** Members of the PERS Board  
Key Reviewer: Brenda Rocklin

**FROM:** Steven Patrick Rodeman, Administrator, PPLAD

**SUBJECT:** Adoption of Amendments to Division 15 Rules Related to  
Disability Retirement Allowances for PERS Chapter 238 Members

<b>MEETING DATE</b>	<b>5-24-05</b>
<b>AGENDA ITEM</b>	<b>D.4.</b> Ch 238 Disability

OAR 459-015-0000, *Purpose* (New)  
OAR 459-015-0001, *Definitions* (New)  
OAR 459-015-0005, *Eligibility for Disability Retirement* (Amend)  
OAR 459-015-0010, *Criteria for Granting and Denying Disability Retirement Allowances; Initial Determination* (Amend)  
OAR 459-015-0015, *Commencement of Disability* (Repeal)  
OAR 459-015-0020, *Application Required* (Amend)  
OAR 459-015-0025, *Application Processing – Independent Examinations and Appeals* (Amend)  
OAR 459-015-0045, *Return to Work* (Amend)  
OAR 459-015-0050, *Periodic Reviews* (Amend)  
OAR 459-015-0055, *Selection of Benefit Option and Commencement of Allowance* (Amend)  
OAR 459-015-0060, *Reduction Due to Workers' Compensation Payment* (Amend)

## OVERVIEW

- **Action:** Adopt new rules and permanent rule modifications to Division 15 disability rules.
- **Reason:** To provide PERS Chapter 238 Program members applying for a disability retirement allowance with adequate guidance on major administrative and policy issues. These rule modifications clarify standards and practices so members have sufficient, consistent information.
- **Subject:** Standards for determining eligibility and the administration of the disability program under the PERS Chapter 238 Program.
- **Policy Issues:** The following are a list of policy decisions addressed by these rule modifications:
  1. Should “regular monthly salary” exclude “passive income?” (459-015-0001)
  2. In determining “similar in compensation” to what a member earned prior to disability, should overtime pay that a member regularly received be included? (459-015-0001)

3. Should guidelines for establishing disability due to work related stress be adopted? (459-015-0005)
4. Should we expand the situations where a specialist is required? (459-015-0010)
5. Should the PERS' information release requirements be revised to accommodate employer and medical provider needs and legal concerns including HIPAA requirements? (459-015-0020)
6. Should a member be allowed to apply for both service and disability benefits at the same time? (459-015-0025)
7. Should PERS obtain an independent medical examination or a vocational evaluation in every case? (459-015-0025)
8. Should staff review all disability retirements on the same schedule? (459-015-0050)
9. Should staff waive the requirement for the review of disability retirements in some cases? (459-015-0050)

SUMMARY OF RULES, POLICY ISSUES, AND MODIFICATIONS TO RULES SINCE NOTICE

The policy issues identified above were discussed when these rules were noticed for rulemaking at the Board's September meeting. The resolutions of those policy issues are reflected in the rule modifications as presented. In brief summary, they are:

1. "Regular monthly salary" excludes certain types of "passive income."
2. Overtime pay is not included in determining "similar in compensation" to what a member earned prior to disability.
3. Guidelines for establishing disability due to work related stress are set forth.
4. The types of cases where a specialist is required are expanded.
5. Information release requirements are revised to accommodate HIPAA requirements.
6. Members can apply for service retirement after their disability application is denied, with an effective retirement date as if the applications had been submitted concurrently.
7. PERS will not obtain an independent medical examination or a vocational evaluation in every case.
8. Staff will review disability retirements as warranted, not on the same schedule for all.
9. Staff may waive the requirement for the review of disability retirements in some cases.

Several modifications were made to the proposed rules between the Notice of Rulemaking and the first reading at the November PERS Board meeting. Those modifications were summarized in the November 5, 2004 Board Memo, which is attached. Since first reading, further staff review and public comment have prompted additional modifications to the rules as presented, and those are summarized below.

**459-015-0001, Definitions (New) - Modifications:**

- “Any work for which qualified” – Clarified definition.
- “Date of disability” – Clarified terminology.
- “Extended duration” – Clarified definition to include eligibility where disability is expected to result in death within 90 days.
- “Major contributing cause” – Clarified definition.
- “Performance of duty” – Removed legal standard per public comment.
- “Pre-existing condition” – Added definition.
- “Reasonable training” – Added definition to clarify narrow application.
- “Severe disability” – Removed per public comment.

**459-015-0005, Eligibility for Disability Retirement (Amend) - Modifications:**

- Section (3) – Modified legal standard per public comment. Clarified pre-existing condition.

**459-015-0010, Criteria for Granting and Denying Disability Retirement Allowances; Initial Determination (Amend) - Modifications:**

- New Section (5) – Clarifies current review standard in contested cases.
- New Section (6) – Clarifies statutory provisions for denial or discontinuance.

**459-015-0020, Application Required (Amend) - Modifications:**

- Section (4) – Removed approved notification to employer language, which contradicted language in OAR 459-015-0025.
- Section (6)(b) – Clarified requirements for inactive members applying for a disability retirement allowance.
- Section (8) – Included “insurance carrier” as one of the entities PERS may request information from.

**459-015-0025, Application Processing – Independent Examinations and Appeals (Amend) - Modifications:**

- Section (1)(b) – Clarified that PERS will inform a member in writing of the decision to require a vocational exam.
- Section (1)(d) – Clarified that the failure of the vocational consultant or locator service to send a notice of exam to the member will constitute good cause for missing an appointment.
- Section (1)(e) – Clarified that refusal to accept certified mail does not constitute good cause for missing an appointment.

***459-015-0045, Return to Work (Amend)*** - Modifications:

Sections (1)(a) and (2) – Clarified return to work provisions.

***459-015-0050, Periodic Reviews (Amend)*** - Modifications:

Rearranged sections for better presentation of review process.

Section (1) – Clarified waiver of periodic reviews.

Section (2) – Clarified periodic review of new medical conditions.

Section (5) – Inserted language to clarify discontinuation process.

***459-015-0055, Selection of Benefit Option and Commencement of Allowance (Amend)***  
- Modifications:

All Sections – Rearranged sections for better readability.

Section (2) – Clarified benefit option process.

New Section (3) – Clarified process when member fails to make a beneficiary designation or option choice.

**PUBLIC HEARING AND TESTIMONY**

Public hearings were held on October 18 and 27 but no testimony was received at those hearings. The public comment period ended on November 19, 2004. On that date, we received a letter from Nelson Hall of Bennett, Hartman, Morris & Kaplan, LLP, commenting on the proposed rule changes. A copy of Mr. Hall's letter is included in the Board packet. Mr. Hall's comments, and our responses, are set forth below.

Inadequate notice. Mr. Hall argues that the Notice of Rulemaking was misleading in that it noticed only "minor" changes to the Division 15 rules for the PERS Chapter 238 Program.

The Notice of Rulemaking clearly stated that the rule amendments were being proposed because the current rules did "not adequately set out **major** administrative and policy issues." [emphasis added] The current rules were last amended in 1992. In the intervening 13 years, the administration of the disability program has evolved in response to a more complicated and sophisticated medical field as well as the decisions that have come out of contested cases hearings and appellate court cases. Almost all of the changes are reflections of current practices in the administration of the program and are meant to clarify the existing requirements necessary for qualifying for a disability retirement. No changes have been made in response to this comment.

Cost to members. Mr. Hall argues that the proposed changes "radically change the standards" a member must meet to qualify for a disability retirement under the PERS Chapter 238 Program.

To the contrary, the rules clarify what is already currently required. Adopting the proposed changes will assist members in understanding what standards are required to provide them the opportunity to meet their burden of showing they are totally disabled. No changes have been made in response to this comment.

Statutory authority. Mr. Hall argues that the rule amendments propose a greater proof in establishing a disability by requiring members who are claiming a duty disability to prove their work is the “major contributing cause” of their disability. Mr. Hall further argues that in the world of workers’ compensation, the higher standard of “major contributing cause” is reserved only for certain types of claims and should not be a standard for PERS.

The rules, however, should not be confused with the rules that apply to workers’ compensation. The proposed rules define “major contributing cause” in a manner which conforms to the standard set forth in ORS chapter 238 and not as the term is used in workers’ compensation cases. No changes have been made in response to this comment.

Definition of disability. Mr. Hall argues that the proposed amendments change the definition of disability by requiring the speculation of future potential when determining whether a member is totally disabled and unable to perform “any work for which qualified.”

The statute and current rules clearly require a member to show they are totally disabled and unable to perform any job for which they are qualified, not whether they are unable to perform their last job. In some cases, the member may not be able to perform their last job, but may be able to perform another job which may require some additional, but reasonable, training. For instance, a state trooper may be diagnosed with Post Traumatic Stress Disorder and unable to perform as a state trooper, but may be able to work as a dispatcher or in another job field.

Additionally, the proposed rule amendments define “any work for which qualified” as a job the applicant is physically and psychologically capable of performing, and where the applicant has, or may obtain with reasonable training, the knowledge, skills and abilities to perform. The term is narrowly defined as training necessary for the applicant to perform any job the member is determined to be able to perform through a vocational evaluation. No changes have been made in response to this comment.

Definition of duty disability. Mr. Hall argues that the proposed rule amendments requiring that the disability “arise out of or in the course of duty” is not contemplated by statute and that it is really a requirement under workers’ compensation, not the PERS disability retirement program.

The proposed rule amendments define “performance of duty,” so the standard is clear as to what is required for a duty disability. However, because the phrase “arises out of or in the course of duty” appears to be controversial in the workers’ compensation field and may become the source of the same type of confusion in the PERS Chapter 238 Program, the terminology has been removed from the definition of “performance of duty.”

Severe disability. Mr. Hall argues that the proposed definition of severe disability is too high of a standard.

The proposed definition was in only applicable to periodic reviews. Periodic reviews are required to determine a member's continuing eligibility for disability retirement benefits. Staff proposed the rule definition to be able to waive the periodic review of a member who meets the definition of "severely disabled." Staff has encountered situations where a member up for periodic review may be unable to go to a physician or a notary to submit the required documentation. Waiving the review in such cases makes sense as the severity of the member's disability precludes them complying with the review process requirements. Because of possible confusion, however, staff has removed the definition while still providing separately that staff can waive periodic reviews when the member is severely disabled.

Definition of Similar in Compensation. Mr. Hall argues that the exclusion of overtime from the definition of similar in compensation is a significant change.

The program has always been administered to exclude overtime in the comparison of salary for the narrow purposes of the return to work provisions because of the uncertainty of overtime. Accordingly, the language clarifies, not changes, the current administration of the program. No changes have been made in response to this comment.

Extended duration. Mr. Hall argues that the use of the phrase "extended duration" is confusing since the clear standard is that the disability must last for ninety or more days.

The definition of "extended duration" is clearly stated in the rules and the definition reflects Mr. Hall's concerns. No changes have been made in response to this comment.

Clear and convincing requirement. Mr. Hall argues that the proposed changes raise the standard required by the member in proving a duty disability.

The language was intended to apply only to the very narrow issue of work related stress, not for duty disabilities as a whole. This is a new provision and attempts to clarify an area of contention – what proof is sufficient for a work related stress disability? The proposal attempted to more clearly set forth such requirements. The standard of "clear and convincing," however, may be perceived as increasing the member's burden of proof so we have removed this legal standard from the proposed changes.

Medical specialists. Mr. Hall argues that "there is no criteria or standards by which a member can be informed of the specialized requirements."

The current rules allow staff to require the opinion of a specialist in some cases. The opinion of a specialist is necessary to make a determination for some disabilities. The proposed rules clarify and inform members of the specialist requirements for certain types of disability claims. No changes have been made in response to this comment.



Cap on fees for missed appointments. The rules give notice to members that they will be responsible for any fees charged by the IME provider if the member misses the appointment. Mr. Hall argues that a cap should be placed on the fees charged by Independent Medical Examination (IME) providers when a member cancels or misses an appointment.

The fees charged by the IME providers are not determined or controlled by PERS. A member missing an appointment without good cause should bear that cost responsibility; imposing a cap shifts part of that duty to PERS. No changes have been made in response to this comment.

Recovery of overpayments. Mr. Hall argues that because of the inevitable delay that may occur between the time a member is released for work and the date PERS stops a disability retirement benefit, any resulting overpayments should not be recovered.

Members who are no longer disabled are not entitled to a disability retirement allowance and are required to immediately notify PERS if they are released to work. Additionally, PERS is required by law to recover all overpayments. No changes have been made in response to this comment.

Immediate discontinuance. Mr. Hall argues that the provision which allows staff to immediately discontinue disability retirement benefits during periodic review where a member refuses to provide current medical documentation or to submit to an examination is a denial of due process.

In the discontinuance of a disability retirement allowance, staff has always followed the procedures set forth in OAR 459-015-0025 for denial of an application for a disability retirement. However, to clarify the process for discontinuance, language has been placed in the rules to show that the process used for discontinuance follows the same procedures as for initial denial, which provides a member with notice and an opportunity for appeal.

Division 76. Finally, Mr. Hall submits the same comments for Division 76 where the rules are parallel. Our responses for Division 76 are the same as those set forth above. Additionally, he notes that the definition for disability in Division 76 is not the same as in Division 15. This was an oversight in the first draft and the definition has been changed to be consistent with Division 15.

#### LEGAL REVIEW

The attached drafts of OAR 459-015-0000 through 459-015-0060 were submitted to the Department of Justice for review. Assistant Attorney General Joe Dunne reviewed the drafts and his recommendations have been incorporated into these modifications.

#### IMPACT

**Mandatory:** No. Amending the current rules, however, will bring clarity to this program and is long overdue.

**Impact:** Moderate. Most of these provisions have already been incorporated in the administration of the ORS Chapter 238 Program.

**Cost:**

- ♦ *Members:* There will be no additional cost to members that is not already a part of the administration of the program.
- ♦ *Employers:* There are intrinsic costs to employers since disability retirement allowances are borne by the employer. Clarification of the standards will allow the disability program to be administered in a more efficient and consistent manner, which should result in the payment of disability benefits under a clear, consistent framework.
- ♦ *Administration:* Although some minor changes to the program are proposed, the changes will require little administrative adjustment and will not substantially affect costs to review, process, or administer disability benefits. The majority of changes are clarifications of how the program is already administrated.
- ♦ *Fund:* There will be no effect on the Fund.

**RULEMAKING TIMELINE**

September 15, 2004	Staff began the rulemaking process. Deadline to file Notice of Rulemaking with the Secretary of State.
September 17, 2004	Board notified that staff began the rulemaking process.
October 1, 2004	<i>Oregon Bulletin</i> published the Notice and the public comment period began.
October 18, 2004	A public hearing was held in Salem in conjunction with OPSRP Division 76 disability rulemaking.
October 27, 2004	A public hearing was held in Tigard in conjunction with OPSRP Division 76 disability rulemaking.
November 19, 2004	First reading. Public comment period ended.
May 24, 2005	PERS Staff will request adoption of the proposed rules.

**BOARD OPTIONS**

The Board may:

1. Make a motion to “adopt the permanent rule modifications to Division 15, as presented, to be effective upon filing.”
2. Take no action and direct staff to make changes to the rules or take other action.

**STAFF RECOMMENDATION**

Staff recommends the Board choose Option #1.

**Reason:** The rule modifications are needed to provide clarity to staff and members on how the disability program is administered.



# Oregon

Theodore R. Kulongoski, Governor

## Public Employees Retirement System

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**MEETING 11-19-04**

**DATE**

**AGENDA C.4.**

**ITEM Ch 238 Disability**

November 5, 2004

**TO:** Members of the PERS Board  
Key Reviewer: Brenda Rocklin (Housekeeping)

**FROM:** Steven Patrick Rodeman, Manager, PPLAG

**SUBJECT:** First Reading of Division 15 Rules Related to Disability Retirement Allowances for PERS Chapter 238 Members

OAR 459-015-0000, *Purpose* (New)  
OAR 459-015-0001, *Definitions* (New)  
OAR 459-015-0005, *Eligibility for Disability Retirement* (Amend)  
OAR 459-015-0010, *Criteria for Granting and Denying Disability Retirement Allowances; Initial Determination* (Amend)  
OAR 459-015-0015, *Commencement of Disability* (Repeal)  
OAR 459-015-0020, *Application Required* (Amend)  
OAR 459-015-0025, *Application Processing – Independent Examinations and Appeals* (Amend)  
OAR 459-015-0045, *Return to Work* (Amend)  
OAR 459-015-0050, *Periodic Reviews* (Amend)  
OAR 459-015-0055, *Selection of Benefit Option and Commencement of Allowance* (Amend)  
OAR 459-015-0060, *Reduction Due to Workers' Compensation Payment* (Amend)

### OVERVIEW

- **Action:** None. This is the first reading of these rules.
- **Reason:** The statutory framework for PERS Chapter 238 plan members applying for a disability retirement allowance does not adequately set out major administrative and policy issues. These rule modifications would clarify those standards so members have consistent information.
- **Subject:** Standards for determining eligibility and the administration of the disability program under the PERS Chapter 238 Plan.
- **Policy Issues:** The following are a list of policy decisions that the Board may consider:
  1. Should “regular monthly salary” exclude “passive income?” (459-015-0001)
  2. In determining “similar in compensation” to what a member earned prior to disability, should overtime pay that a member regularly received be included? (459-015-0001)
  3. Should we expand our requirements of when a specialist is required? (459-015-0010)

4. Should the PERS' information release requirements be revised to accommodate employer and medical provider needs and legal concerns including HIPAA requirements? (459-015-0020)
5. Should a member be allowed to apply for both service and disability benefits at the same time? (459-015-0025)
6. Should PERS obtain an independent medical examination or a vocational evaluation in every case? (459-015-0025)
7. Should staff review all disability retirements on the same schedule? (459-015-0050)
8. Should staff waive the requirement for the review of disability retirements in some cases? (459-015-0050)

### **BACKGROUND**

Policy issues in the PERS Chapter 238 Disability Program have been discussed for the last couple of years. In early 2003, stakeholders and PERS staff had a roundtable discussion of the disability program with a goal to begin rulemaking in 2004. The results of those discussions are reflected in these proposed rule modifications.

### **SUMMARY OF RULES, POLICY ISSUES AND MODIFICATIONS TO RULES SINCE NOTICE**

Modifications that staff is recommending to the rules since they were first released in conjunction with the Notice of Rulemaking are summarized below, except for changes due to grammar and typographical errors. Those areas modified from the previous version are shaded in the attached rules: additions are bold and underlined; deletions are bracketed and italicized.

***459-015-0000, Purpose (New)*** Clarifies the purpose of the PERS Chapter 238 Disability Program in a separate rule.

Modifications:

Redundant provisions have been deleted.

***459-015-0001, Definitions (New)*** Defines words and terms used in this disability program.

Modifications:

“Any work for which qualified” – Per DOJ, expanded definition to include the ability to be trained for work for which qualified.

“Date of disability” – Clarified to reflect practice; removed “incapacitation” since removed from definitions.

“Effective date of benefits” – Moved to OAR 459-015-0005.

“Effective date of disability retirement allowance” – Moved to OAR 459-015-0005.

“Incapacitated” – Removed; term is not used in rules.

“Independent medical exam” – Clarified that exam is at the request of PERS.

“Material contributing cause” – Changed “material” to “major” for more clarity.

“Performance of duty” – Per DOJ, included language to more adequately reflect proper employment standard.

“Physical capacities evaluation” – Removed; term is not used in rules.

“Prior service” - Removed; term is not used in rules.

“Severe disability” – Clarified.

“Similar duration” - Removed; term is not used in rules.

“Similar in compensation” – Included exclusion of overtime.

**459-015-0005, *Eligibility for Disability Retirement (Amend)*** Modifies rule to remove language regarding purpose (included in proposed new rule 459-015-0000). Clarifies the requirement of total disability, and sets forth eligibility requirements for both duty- and non-duty disability.

Modifications:

Section (2) – Removed redundant provisions. Clarified that disability must be for an extended duration.

Section (4) – Per DOJ, clarified provisions for work related stress to more closely reflect the standard under ORS Chapter 656 (Worker’s Compensation).

**459-015-0010, *Criteria for Granting and Denying Disability Retirement Allowances; Initial Determination (Amend)*** Clarifies criteria for disability eligibility. Adds requirements for specialist determinations in claims of neurological injury or illness and fibromyalgia.

Modifications:

New Section (2) - Per DOJ, undeleted provision allowing denial of claim for refusal to release medical information or submit a completed application.

Old Section (2) – Deleted; unnecessary.

Section (4)(b) – added “neurosurgeon;” experience has shown this specialty as necessary for some orthopedic injuries.

Section (4)(e) – Clarified.

**459-015-0015, *Commencement of Disability (Repeal)*** The provisions of this rule are included in other, more appropriate rules in Division 15 making this rule unnecessary.

**459-015-0020, *Application Required (Amend)*** Clarifies that the applicant must be separated from service to apply for a disability retirement allowance. Modifies section (8)

to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements.

Modifications:

Section (6) – Clarified provisions for eligibility; removed redundant Subsection (b).

Section (8) – Per DOJ, included language to reiterate refusal to allow release of information may result in denial of claim.

Section (9) – Clarified that staff will contact employer for information.

**459-015-0025, Application Processing – Independent Examinations and Appeals (Amend)** Clarifies circumstances under which PERS will request an Independent Medical Exam (IME), a vocational evaluation, or a physical capacities evaluation. Modifies what constitutes “good cause” for missing a scheduled appointment. Clarifies payment of assessed penalty for missing a scheduled appointment, and eligibility for service retirement if the member does not qualify for disability.

Modifications:

Section (1) – Separated notification for independent medical exam from vocational examination to reflect correct process.

Section (7) – Clarified definitional term for “confidential information.”

**459-015-0045, Return to Work (Amend)** Clarifies return to work provisions, member requirements for returning to work, and restoration of account and creditable service for disability members returning to PERS covered employment.

**459-015-0050, Periodic Reviews (Amend)** Clarifies who is subject to periodic reviews, when periodic reviews will take place, and criteria for continuance of disability retirement allowance.

Modifications:

Section (1)(c) – Clarified new information is also required.

**459-015-0055, Selection of Benefit Option and Commencement of Allowance (Amend)** Clarifies benefit options available for disability retirement allowances. Adds provisions to clarify estimated payments, ability to change benefit option, make purchases, minimum benefits, and provisions for benefit if an applicant dies prior to approval.

Modifications:

All Sections - Rearranged sections for better readability.

Section (1) – Clarified to reflect actual practice for preliminary choices.

New Section (6) – Clarified commencement of disability retirement allowance.

**459-015-0060, Reduction Due to Workers' Compensation Payment (Amend)** Clarifies provisions for reducing the disability retirement benefits of a Tier Two member who is receiving Workers' Compensation benefits.

### **PUBLIC HEARING AND TESTIMONY**

Public hearings were held on October 18 and 27 but no testimony was submitted. The public comment period ends on November 19, 2004, and to date, PERS has received no public comment.

### **LEGAL REVIEW**

The attached drafts of OAR 459-015-0000 through 459-015-0060 were submitted to the Department of Justice for review. Assistant Attorney General Joe Dunne reviewed the drafts and discussed his recommendations with staff.

### **IMPACT**

**Mandatory:** No. Amending the current rules, however, will bring clarity to this program and is long overdue.

**Impact:** Rule modifications would clarify standards for determining eligibility and provide consistent information to members and staff on major administrative and policy issues.

#### **Cost:**

- ♦ *Members:* There will be no additional cost to members. Requiring members to pay for assessed penalties when the member has missed a scheduled IME or vocational evaluation is already in practice.
- ♦ *Employers:* There are intrinsic costs to employers since disability retirement allowances are borne by the employer. Clarification of the standards will allow the disability program to be administered in a more efficient and consistent manner, which should result in the payment of disability benefits under a clear, consistent framework.
- ♦ *Administration:* Although some minor changes to the program are proposed, the changes will require little administrative adjustment and will not substantially affect costs to review, process, or administer disability benefits.
- ♦ *Fund:* There will be no effect on the Fund.

### **RULEMAKING TIMELINE**

September 15, 2004	Staff began the rulemaking process. Deadline to file Notice of Rulemaking with the Secretary of State.
September 17, 2004	Board notified that staff began the rulemaking process.
October 1, 2004	<i>Oregon Bulletin</i> published the Notice and the public comment period began.
October 18, 2004	A public hearing was held in Salem in conjunction with OPSRP Division 76 disability rulemaking.
October 27, 2004	A public hearing was held in Salem in conjunction with OPSRP Division 76 disability rulemaking.

- November 19, 2004 First reading. Public comment period ends at 5:00 PM.
- December 10, 2004 PERS Staff will request adoption of the proposed amendments, adoptions and one repeal including any amendments warranted by public comment or further research.

### **BOARD OPTIONS**

The Board may:

1. Take no action at this time.
2. Direct staff to make changes to the draft rule.

### **STAFF RECOMMENDATION**

Staff recommends the Board take no action at this time.

### **NEXT STEPS**

This is the first reading of the rule. PERS staff will return with these rules to request adoption by the Board at its meeting on December 10, 2004.



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

OAR 459-015-0000 is Added as Follows:

1 **459-015-0000**

2 **Purpose**

3 (1) The Legislative Assembly has established within the Public Employees  
4 Retirement System (PERS) a program for early retirement by reason of disability. The  
5 disability retirement program is solely intended to provide benefits to those members  
6 who are unable to work because they are disabled and cannot perform any work for  
7 which they are qualified.

8 (2) Disability retirement is an expedited retirement allowance resulting from a  
9 disability and is intended solely to provide benefits to PERS members who are unable to  
10 work because they are disabled. A disability retirement allowance is not in addition to a  
11 service retirement allowance.

12

13 Stat. Auth: ORS 238.650

14 Stat. Implemented: ORS 238.320 to 238.345

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYES' RETIREMENT BOARD  
CHAPTER 459  
DIVISION 015 - DISABILITY RETIREMENT**

OAD 459-015-0001 is Added as Follows:

1 **459-015-0001**

2 **Definitions**

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

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

8 (a) Is physically and psychologically capable of performing, and

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

11 (2) Certified vocational consultant: A person who satisfies the criteria set forth under  
12 either of the following:

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

17 (b) Accredited as a “Certified Rehabilitation Counselor (CRC)” by the Commission  
18 on Rehabilitation Counselor Certification; as a “Certified Insurance Rehabilitation  
19 Specialist (CIRS)” by the Certified Insurance Rehabilitation Specialist Commission; or a  
20 “Certified Vocational Evaluation Specialist (CVE)” or a “Certified Work Adjustment

1 Specialist (CWA)” by the Commission on Certification of Work Adjustment and  
2 Vocation Evaluation specialist.

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

5 (4) Date of disability: The later of:

6 (a) The day an active member ceased to work because of injury or disease,

7 (b) The date an inactive member separated from employment if the inactive member  
8 applies for a disability retirement allowance within five years from date of separation and  
9 the disability has been continuous from the date of separation, or

10 (c) The date an inactive member was disabled if such disability occurred within six  
11 months from date of separation.

12 (5) Date of termination: The date a member terminates from employment such that  
13 an employee/employer relationship no longer exists; the last day worked (physically on  
14 the job), the last day of paid leave, or the last day of an official leave of absence,  
15 whichever is the later.

16 (6) Extended duration: (a) A period of not less than 90 consecutive calendar days, or

17 (b) The disability is expected to result in the death of the disabled member in less  
18 than 90 days.

19 (7) Independent medical exam: An exam or exams conducted by a physician chosen  
20 by PERS for purposes other than treatment which results in the issuance of a report or  
21 reports based on those exams, giving an opinion regarding the claimed injury or disease.

22 (8) Major contributing cause: The efficient, dominant, and proximate cause of the  
23 disability, without which the member would not be disabled.

1 (9) Monthly salary: "Salary" as defined in ORS 238.005(20)(a) that is earned in the  
2 last full calendar month of employment, and includes employer payments under ORS  
3 238.205.

4 (a) Retroactive payments or payments made due to clerical errors, paid in accordance  
5 with ORS 238.005(20)(b)(C), are allocated to the period the salary was earned or should  
6 have been earned.

7 (b) Payments of salary paid within 31 days of separation are allocated to the period  
8 the salary was earned and should be considered as paid on the last date of employment.

9 (10) Monthly salary received: The salary paid, as defined in section (9) of this rule,  
10 for the last full calendar month of employment prior to date of disability.

11 (11) Normal retirement age: The age at which a member can retire without a reduced  
12 benefit.

13 (a) For police officers and firefighters, age 55 or age 50 with 25 or more years of  
14 creditable service.

15 (b) For other than police officers or firefighters:

16 (A) Tier One members at the age of 58 or any age with 30 or more years of  
17 creditable service.

18 (B) Tier Two members at age 60 or any age with 30 or more years of creditable  
19 service.

20 (12) Other income: Includes, but is not limited to:

21 (a) Salary received as an employee;

22 (b) Self-employment income from:

23 (A) Services industry,

- 1 (B) Sales,
- 2 (C) Assembly or manufacturing,
- 3 (D) Consulting,
- 4 (E) Property management,
- 5 (F) Hobby income, or
- 6 (G) Book advances;
- 7 (c) "Other income" does not include:

- 8 (A) Investment income,
- 9 (B) Rent, and
- 10 (C) Royalties.

11 (13) Physician: A medical doctor, a doctor of osteopathy, a doctor of oral surgery, a  
12 chiropractic doctor, a naturopathic doctor, or a doctor of psychology practicing only  
13 within the purview of their license issued by the designated authority of a state.

14 (14) Periodic review: A review of a member receiving a disability retirement  
15 allowance to determine whether or not a continued allowance is warranted.

16 (15) Performance of duty: Mental or physical incapacitation caused by injury or  
17 disease sustained while actually on the job and is not intentionally self-inflicted. The  
18 injury or disease must be initially caused, aggravated or accelerated to cause  
19 incapacitation by the performance of the member's duties in the employment of a  
20 participating public employer. The job must be the major contributing cause of the injury  
21 or disease, not merely a contributing factor. Performance of duty includes whatever an  
22 employee may be directed, required or reasonably expected to do in connection with his  
23 or her employment, and not solely the duties peculiar to his or her position.

1 (16) Pre-existing condition: A condition which contributes to a duty disability; must  
2 be the major contributing cause of the disability.

3 (17) Protected health information: Health information created or received by a health  
4 care provider, health plan, or health care clearinghouse, where an individual has a  
5 reasonable belief that the information can identify the individual, which relates to:

6 (a) the past, present, or future physical or mental health of an individual,

7 (b) the provision of health care to an individual, or

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

10 (18) Qualifying position: One or more concurrent positions with a participating  
11 employer, in a participating class, which requires 600 or more hours in a calendar year.

12 (19) Separation from all service entitling the member to membership in the system:  
13 means the last day worked (physically on the job), the last day of paid leave, or the last  
14 day of an official leave of absence, whichever is the later.

15 (20) Similar in compensation: Salary or income, excluding overtime, equaling at  
16 least 80% of the monthly salary, as defined in section (9) of this rule, at the time of  
17 disability.

18 (21) Similar location: A position in the same general area of the applicant's  
19 residence or last employment location.

20 (22) Training or vocational rehabilitation program: A comprehensive, coordinated  
21 program, usually state or federally funded, to train and assist individuals with disabilities  
22 in securing gainful employment commensurate with their abilities and capabilities.

1 (23) Vocational evaluation: An evaluation conducted by a certified vocational  
2 consultant, to determine the ability of an applicant to perform any work for which they  
3 are qualified.

4 (24) Work related stress: conditions or disabilities resulting from, but not limited to:

5 (a) Change of employment duties;

6 (b) Conflicts with supervisors;

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

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

9 (e) Specific or general job dissatisfaction;

10 (f) Work load pressures;

11 (g) Subjective perceptions of employment conditions or environment;

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

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

14 (j) Objective or subjective stresses of employment; or

15 (k) Personnel decisions.

16

17 Stat. Auth: ORS 238.650

18 Stats. Implemented: ORS 238.320 to 238.345 and 238.435(5)

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 015 - DISABILITY RETIREMENT

OAD 459-015-0005 is Amended as Follows:

1 **459-015-0005**

2 ***[Purpose]* Eligibility for Disability Retirement *[Benefits]* Allowances**

3 *[(1) The Legislative Assembly has established within the Public Employes’*  
4 *Retirement System (PERS) a program for early retirement by reason of disability. If a*  
5 *member meets the eligibility requirements, the member can draw disability retirement*  
6 *benefits using creditable service time as though the member had continuously worked for*  
7 *a PERS participating employer through normal retirement age. Disability retirement is*  
8 *an expedited retirement benefit due to disability and based on each individual’s*  
9 *particular length of service and creditable service time.]*

10 *[(2)] (1) [Total disability is required, not partial disability.]* The Legislative  
11 Assembly has adopted rigorous criteria for eligibility to draw disability retirement  
12 **allowance*[benefits:]* . **Total, not partial disability, for an extended duration is**  
13 **required and eligibility for a disability retirement allowance requires that:****

14 **(a) A member be disabled to such an extent that the member is unable to**  
15 **perform any work for which qualified as defined in OAR 459-015-0001(1), and**

16 **(b) Is unable to generate any income that is similar in compensation as**  
17 **defined in OAR 459-015-0001(20) as of date of disability.**

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



1 **allowance.** *[a member must be disabled to such an extent that the member is "unable to*  
2 *perform any work for which qualified" (ORS 237 .171(1), (3) and OAR 459-015-*  
3 *0010(4)). A member who is unable to perform his or her usual job but is able and*  
4 *qualified to do other work, does not meet the eligibility criteria; except as provided for in*  
5 *OAR 459-015-0045. (Emphasis added)]*

6 *[(3) A member fails to meet the eligibility criteria for a PERS disability*  
7 *retirement allowance if the member is able to perform any work for which qualified. The*  
8 *PERS disability retirement program is solely intended to provide benefits to those*  
9 *members who are unable to work because they are disabled and cannot perform any*  
10 *work for which they are qualified.]*

11 **(3) Duty Disabilities. Applicants with less than ten years of PERS**  
12 **employment must establish that they are members of PERS and were disabled while**  
13 **in the actual performance of duty, as defined in OAR 459-015-0001(15).**

14 **(a) A pre-existing condition will be considered in the eligibility of a duty**  
15 **disability if the condition contributes to the duty disability and is the efficient,**  
16 **dominate, and proximate cause of the disability.**

17 **(b) Work related stress, as defined in OAR 459-015-0001(24), will not be**  
18 **considered as the major contributing cause of a duty disability unless the applicant**  
19 **establishes all of the following:**

20 **(A) The employment conditions producing the work related stress exist in a**  
21 **real and objective sense,**

22 **(B) The employment conditions producing the work related stress are**  
23 **conditions other than conditions generally inherent in every working situation or**

1 reasonable disciplinary, corrective or job performance evaluation actions by the  
2 employer, or cessation of employment or employment decisions attendant upon  
3 ordinary business or financial cycles,

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

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

8 (4) Non-Duty Disabilities. Eligible applicants must have a minimum of ten  
9 years of employment as calculated pursuant to ORS 238.320(6).

10 (5) If a member meets the eligibility criteria, the member's disability  
11 retirement allowance shall be based on creditable service time as though the  
12 member had continuously worked for a PERS participating employer to:

13 (a) Age 55 if retiring due to disability when the applicant's last PERS  
14 covered position was as a police officer or a firefighter,

15 (b) Age 58 if retiring due to disability when the applicant's last PERS  
16 covered position was as other than a police officer or firefighter.

17 (c) Actual service if member is over age 55 or 58 as used in (a) and (b) above.

18 (6) Termination of membership. Disability retirement allowances are  
19 available only to PERS members. PERS membership is terminated by either loss of  
20 membership or withdrawal of the member account balance as provided in ORS  
21 238.095. Therefore, former PERS members who have terminated their membership  
22 through loss of membership or withdrawal are not eligible to receive PERS  
23 disability retirement allowances.

1

2 Stat. Auth: ORS 238.650 and 238.095

3 Stat. Implemented: ORS 238.320 to 238.345

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 015 - DISABILITY RETIREMENT

OAR 459-015-0015 is Repealed:

1    *[459-015-0015*

2    ***Commencement of Disability***

3            *The effective date of disability retirement shall be the date determined by the staff*  
4    *according to applicable statutes and administrative rules, but a disability retirement*  
5    *allowance shall not in any event begin in any month in which the member received salary*  
6    *or paid leave benefits from a participating employer, exclusive of the cash pay-off of*  
7    *accrued vacation or compensatory time.]*

8

9    Stat. Auth: ORS 238.650

10    Stats. Implemented: ORS 238.005(11) and 238.320

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 015 - DISABILITY RETIREMENT

OAD 459-015-0010 is Amended as Follows:

1 **459-015-0010**

2 **Criteria for Granting and Denying Disability Retirement Allowances[; *Initial***  
3 ***Determination*]**

4 (1) Medical documentation is required by *[the staff]* **PERS**. Each disability  
5 retirement applicant shall supply any treating or consulting physician’s examination  
6 report or other medical information requested by *[the staff]* **PERS**. **PERS** *[The staff]* may  
7 *[adopt]* make its determination based on a treating or consulting physician’s medical  
8 examination report or have the applicant examined by one or more physicians selected by  
9 *[the staff]* **PERS**. *[No disability retirement allowance shall be granted unless the*  
10 *diagnosis of injury or disease is supported by a written report or reports, prepared by*  
11 *one or more physicians based on a medical examination or examinations. [The Board*  
12 *may deny any application or discontinue any disability retirement allowance in the case*  
13 *of any person who refuses to submit to any medical examination or supply a completed*  
14 *application or review form.*

15 (2)*Extended Duration. Each eligible applicant shall be “incapacitated for an*  
16 *extended duration” (ORS 237.171(1), (3)). An “extended duration” means at 90*  
17 *consecutive days.]*

18 (2) *[A physician means a medical doctor, a doctor of osteopathy, a doctor of oral*  
19 *surgery, a chiropractic doctor, a naturopathic doctor, or a doctor of psychology*  
20 *practicing only with the purview of their license issued by the designated authority of a*

1 *state.] All claims of a disability [shall] **must** be supported by at least one physician's*  
2 *report, **resulting from a** [of] physical examination,[.] **documenting how the injury or***  
3 ***disease incapacitates the member.***

4 (3) In addition, a disability retirement applicant shall be required to furnish the  
5 following:

6 (a) For claims of mental or emotional disorder, at least one report of examination  
7 by a psychiatrist or at least one report of evaluation by psychologist when accompanied  
8 by a report of physical examination by a treating or consulting physician; *[and]*

9 (b) For claims of orthopedic injury or disease, at least one report of a treating or  
10 consulting orthopedic specialist;

11 **(c) For claims of neurological injury or disease, at least one report of treating**  
12 **or consulting neurologist or neurosurgeon;**

13 **(d) For claims of fibromyalgia, at least one report of a treating or consulting**  
14 **rheumatologist; and**

15 **(e) Any other specialized physician's report that PERS deems necessary,**  
16 **after consultation with the PERS medical advisor.**

17 (4) To demonstrate that he or she is [*"]unable to perform any work for which*  
18 *qualified["], **as defined in OAR 459-015-0001(1),***[an eligible] the applicant shall*  
19 *document how the injury or disease **incapacitates** [impairs] the applicant['s ability to*  
20 *perform. The standard is subjective (that is, whether the applicant is actually*  
21 *incapacitated) not objective (that is, whether a "normal" member would have been*  
22 *incapacitated by the same events): ]**

1 (a) In determining what work for which a member is qualified, the following  
2 factors shall be considered:

3 (A) Previous employment experience;

4 (B) Formal education;

5 (C) Formal training;

6 (D) Transferable skills;

7 (E) Age; and

8 (F) Physical or mental impairment.

9 (b) In determining what work for which a member is qualified, **PERS** [*the staff*]  
10 may request, **at PERS expense**, a vocational evaluation be done by a vocational  
11 consultant who is fully certified **as set forth in OAR 459-015-0001(2)(a) or (b).** [*under*  
12 *paragraphs (A) and (B) of this subsection, at PERS expense:*

13 (A) *Full certification as a vocational consultant requires a Master's Degree in*  
14 *vocational rehabilitation; or a Master's Degree in a field related to vocational*  
15 *rehabilitation, and one year of experience in performing vocational evaluations or*  
16 *developing individualized return-to-work plans; or a Bachelor's Degree and two years of*  
17 *such experience. All degrees must have been earned at an accredited institution;*

18 (B) *Regardless of these requirements, an individual will be considered fully*  
19 *certified if accredited as a "Certified Rehabilitation Counselor (CRC)" by the*  
20 *Commission on Rehabilitation Counselor Certification; as a "Certified Insurance*  
21 *Rehabilitation Specialist (CIRS)" by the Certified Insurance Rehabilitation Specialist*  
22 *Commission; or a "Certified Vocational Evaluation Specialist (CVE)" or a "Certified*

1 *Work Adjustment Specialist (CWA)" by the Commission on Certification of Work*  
2 *Adjustment and Vocation Evaluation Specialist.*

3 *(c) Any work means a suitable job which the applicant is physically capable of*  
4 *performing and is substantially similar to the former job in compensation, location and*  
5 *duration.]*

6 *[(d)] (c) The inability of the applicant to perform the duties of his or her last job,*  
7 *in itself does not satisfy the criterion.*

8 **(5) When there is a dispute among medical experts, more weight will be given**  
9 **to those medical opinions that are both well reasoned and based on complete**  
10 **information.**

11 **(6) The Board may deny any application or discontinue any disability**  
12 **retirement allowance if an applicant refuses to submit to an independent medical or**  
13 **vocational examination.**

14 *[(5) Duty Disabilities. Applicants with less than ten years of PERS qualified*  
15 *employment must establish that they are members of PERS and were disabled on the job;*  
16 *the applicant's disability must arise out of and in the course of the applicant's*  
17 *employment (ORS 237.171(2)):*

18 *(a) In performance of duty: Each duty disability retirement applicant shall*  
19 *establish that the claimed disability was "sustained while in the actual performance of*  
20 *duty" (ORS 237.171(1)). That means that the injury or disease was initially caused*  
21 *aggravated or accelerated by the performance of the member's duties in the employment*  
22 *of a participating public employer, not that the job is merely a contributing factor. The*  
23 *job must be the material contributing cause of the injury or disease. Performance of duty*



1 *includes whatever an employee may be directed, required or reasonably expected to do*  
2 *in connection with his or her employment, and not solely the duties peculiar to his or her*  
3 *position;*

4 *(b) Pre-existing condition or disease: Although a pre-existing condition or*  
5 *disease may contribute to the result, the on-the-job injury or disease must be the efficient,*  
6 *dominate and proximate cause of the duty disability.*

7 *(6) Non-Duty Disabilities. Eligible applicants must have eight years, six months*  
8 *and one day of PERS creditable service that when added to any six-month waiting*  
9 *period, prior service credit or service credit pursuant to an integration totals a minimum*  
10 *of ten years of PERS qualified employment (ORS 237 .171(6)).*

11 *(7) Withdrawal of PERS member's account. Disability retirement allowances are*  
12 *available only to PERS members (ORS 237 .171(1), (3)). PERS membership is terminated*  
13 *by withdrawal of the member's account balance (ORS 237.109(1)). Therefore, former*  
14 *PERS members who have withdrawn their accounts are not eligible to receive PERS*  
15 *disability retirement allowances.]*

16 Stat. Auth: ORS 238.650

17 Stat. Implemented: ORS 238.320 and 238.335

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 015 - DISABILITY RETIREMENT

OAR 459-015-0020 is amended as follows:

1 **459-015-0020**

2 **Application Required**

3 (1) No disability retirement allowance [*shall*] **will** be paid unless the member files a  
4 timely and complete application. [*with the staff.*]

5 (2) Applications [*shall*] **will** be made on forms prescribed by **PERS** [*the staff*]. **PERS**  
6 [*the staff*] may require the member to provide any information that **PERS** [*the*  
7 *staff*] considers necessary to determine the applicant's eligibility for a disability retirement  
8 allowance.

9 (3) Application may be made by a member or the member's authorized representative.  
10 A representative shall submit to **PERS** [*the staff*] written proof of the representative's  
11 authority; such as, a power of attorney, guardianship or conservatorship appointment.

12 (4) Upon the filing of an application for a disability retirement **allowance** [*benefit, the*  
13 *applicant must authorize the staff to notify the applicant's employer(s) of such application.*  
14 *Upon the filing of an application,*] **PERS** [*the staff shall*] **will** notify the applicant's current  
15 or most recent employer of the filing. Additionally, **PERS** [*the staff*] may request of an  
16 employer information pertaining to current or previous employment.

17 (5) When an employee member is disabled due to injury or disease, the member may  
18 make application immediately after the last day worked even though the member may be  
19 on a paid leave or on an official leave of absence without pay. No application will be  
20 accepted [*which*] **that** predates the last day the member was actually on the job.

1 (6) An application *[shall]* **will** be considered filed in a timely manner when received  
2 by PERS as follows:

3 (a) For a member who is disabled due to injury or disease and **has terminated**  
4 **employment from all PERS covered service** *[entitling the member to membership not*  
5 *separated from membership]*, the member must file an application for a disability  
6 retirement allowance within five calendar years of the **date of termination.***[last day*  
7 *worked; even though the member may continue on a paid leave or on an official leave of*  
8 *absence without pay.]* The disabling condition must be continuous from the date **of**  
9 **termination** *[the member last worked]* to the date the application is filed;

10 (b) For a member who is disabled due to injury or disease **after terminating**  
11 **employment** *[is separated from all service entitling the member to membership in the*  
12 *system]* from all **PERS covered service** *[entitling the member to membership]* and has not  
13 withdrawn the amount credited to the account of the member in the system, the member  
14 must file an application for a disability retirement allowance within six months *[five*  
15 *calendar years]* after the date of **termination.** *[separation. The termination of employment*  
16 *must be due to the disability and the disabling condition must be continuous from the date*  
17 *the member last worked to the date of application and the separation must be continuous*  
18 *from the date of separation to the date the application is filed;]*

19 *[(c) For a member who is disabled due to injury or disease after the date of separation*  
20 *from all service entitling the member to membership in the system and has not withdrawn*  
21 *the amount credited to the account of the member in the system, the member must file an*  
22 *application for a disability retirement allowance within six months after the date of*  
23 *separation. The disabling condition must be continuous from the date of onset to the date*

1 of application and the separation must be continuous from the date of separation to the  
2 date the application is filed.]

3 **(A) The disabling condition must be continuous from the date of onset to the date**  
4 **of application;**

5 **(B) The separation must be continuous from the date of separation to the date the**  
6 **application is filed.**

7 **(C)The member must have a minimum of ten years of employment as calculated**  
8 **pursuant to ORS 238.320(6).**

9 (7) In determining the effective date of a disability retirement allowance, **PERS** [*the*  
10 *staff*] may allow up to 60 months of benefits retroactive from the date the application is  
11 filed with PERS, but in no case earlier than the **first day of the month** following the **date**  
12 **of termination.** [*last day worked or the last day of paid leave, whichever is later.*]

13 [(8) For purposes of this rule, the term "separation from all service entitling the  
14 member to membership in the system" means the last day worked (physically on the job),  
15 the last day of paid leave, or the last day of an official leave of absence, whichever is the  
16 later.]

17 [(9)] **(8)** When making application for a PERS disability retirement allowance, [*the*  
18 *applicant shall*] **PERS will request the applicant** authorize any physician, health  
19 practitioner, hospital, clinic, pharmacy, employer, employment agency, or government  
20 agency to release and disclose to [*the*] PERS [*staff*], or independent physicians and  
21 vocational consultants retained by **PERS** [*staff*], any information within their records or  
22 knowledge, including that information otherwise protected under federal or state law,  
23 regarding the applicant's health and employment which **PERS determines** relates [*solely*]

1 to the applicant's claim of disability and inability to perform any work for which qualified.  
2 *[When filing an application for disability retirement allowance, the applicant shall*  
3 *complete and sign a consent form which specifically authorizes the release and disclosure*  
4 *of such information.]*

5 **(9) When filing an application for disability retirement allowance, if the applicant**  
6 **wishes to authorize release and disclosure of protected health information, as defined**  
7 **in OAR 459-015-0001(17), the applicant must complete and sign a consent form**  
8 **which specifically authorizes the release and disclosure of such information.**

9 **(a) This authorization is voluntary. Because PERS is not a covered entity as**  
10 **defined in 45 C.F.R., Parts 160 and 164, the protected health information is not**  
11 **subject to federal and state health information privacy laws, but is protected under**  
12 **Oregon State Public Record disclosure laws.**

13 **(b) This authorization may be revoked in writing at any time, except to the extent**  
14 **the entities named on the authorization form(s) have taken action in reliance of the**  
15 **authorization.**

16 **(c) If the applicant refuses to give or revokes authorization to disclose to PERS**  
17 **medical information that PERS determines it needs to evaluate the application,**  
18 **eligibility for a disability retirement allowance may be affected.**

19  
20 Stat. Auth.: ORS 183.310 - ORS 183.550, ORS 237 .171, ORS 237 .191, ORS 237.263,  
21 and 45 CFR Parts 160 and 164.

22 Stats. Implemented:

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 015 - DISABILITY RETIREMENT

OAR 459-015-0025 is Amended as Follows:

1 **459-015-0025**

2 **Application Processing – Independent Examinations and Appeals**

3 (1) Following the timely filing of a completed application, *[the]* **PERS may, at**  
4 **its discretion, request an independent medical exam or a vocational evaluation.** *[or a*  
5 *physical capacities evaluation].* **If PERS requests one or more of these exams or**  
6 **evaluations, PERS will pay the reasonable associated expenses.** *[select one or more*  
7 *physicians and may select one or more vocational consultants to examine the applicant*  
8 *at PERS' expense.]*

9 (a) **For independent medical exams,** *[The staff]* **PERS** shall inform the  
10 applicant **in writing and postmarked** not less than ten days prior to a scheduled  
11 examination of the identity of the physician(s) *[or vocational consultant(s)]* selected to  
12 examine the applicant, together with location, date and time. *[by certified mail, return*  
13 *receipt requested]*

14 **(b) For vocational evaluations, the vocational consultant or locator service**  
15 **shall inform the applicant of the location, date and time of the scheduled**  
16 **examination.**

17 *[(b)c]* If the applicant fails to meet the scheduled appointment or fails to  
18 reschedule the examination within five days of notification, PERS will not reschedule an  
19 examination at PERS' expense unless the applicant can demonstrate good cause for

1 having failed to meet the scheduled appointment or reschedule the appointment as  
2 required.

3 (d) Good cause includes, but is not limited to:

4 (A) Physical or mental incapacitation preventing the member from meeting or  
5 rescheduling the examination;

6 (B) *[f]* Failure of *[staff]* **PERS or the vocational consultant or locator service**  
7 to send the member notice as described above; or

8 (C) A death in the member's immediate family.

9 *[(D) the death of the member.]*

10 (d) Good cause does not include:

11 (A) *[a]* A member's refusal to attend the scheduled appointment;

12 (B) *[a]* A member's refusal to accept certified mail; *[or]*

13 (C) *[a]* A member's failure to meet the appointment with no reason provided; **or**

14 **(D) A member's failure to make appropriate transportation arrangements.**

15 *[(c)]* (2) When **PERS** *[the staff]* requires an applicant to travel to be examined by  
16 a physician, vocational consultant, or other professional, *[the system]* **PERS** *[shall]* **will**  
17 reimburse the applicant's reasonable transportation costs based on the least costly  
18 alternative and on availability. Travel by private vehicle shall be compensated at the rate  
19 applicable to travel by unrepresented state employees on state business. Transportation  
20 by **taxi, bus,** rail*[road]*, *[bus]* or other public carrier shall be paid only upon presentation  
21 of receipts from the providers. Lodging and subsistence shall be allowed only when an  
22 overnight stay is necessary and shall be paid at the rate applicable to unrepresented state  
23 employees traveling on state business. Reimbursements will be reduced by the amount of

1 any penalty assessed by PERS because of a member's failure to meet a scheduled  
2 appointment.

3 **(3) In the event a member fails to meet a scheduled appointment in**  
4 **accordance with section (1) of this rule, and PERS is assessed a penalty by the**  
5 **service provider for the failure to meet the scheduled appointment, the disability**  
6 **applicant shall bear the cost of the penalty as follows:**

7 **(a) If the disability application is not approved, by making direct payment to**  
8 **the service provider who assessed the penalty, or**

9 **(b) If the disability application is approved:**

10 **(A) By making direct payment to the service provider who assessed the**  
11 **penalty, or**

12 **(B) By having the amount of the penalty deducted from the disability**  
13 **retirement allowance payable to the member until the invoice is satisfied; but in no**  
14 **case shall the deduction exceed ten percent of the monthly payment due the**  
15 **member.**

16 [(2)] **(4) The Director, or the Director's designee,** is hereby authorized to  
17 approve or deny a disability retirement application. Upon receipt and review of all  
18 necessary documentation, staff shall present applicant's claim to the Director, **or the**  
19 **Director's designee,** with a recommendation to approve or to deny a disability  
20 retirement allowance. The Director, **or the Director's designee,** may accept or reject the  
21 staff's recommendation [*The Director may*], **or refer** the application back to staff for  
22 further documentation and review. *[:]* .



1 (a) If the Director, **or the Director's designee,** *[accepts]* **approves** a disability  
2 claim, the staff *[shall]* **will** notify the applicant and the applicant's employer of such  
3 approval. *[;]*

4 (b) If **the Director denies** *[the staff's recommendation is to deny]*, the  
5 *[application]* **disability claim,** the staff shall issue an *[initial denial]* **Intent to Deny**  
6 letter by **regular and** certified mail, return receipt requested. *[, prior to the Director's*  
7 *action.] [This]* **The denial** letter shall advise the applicant that additional information to  
8 substantiate the claim, or a request for an extension of 30 days to present additional  
9 information, may be submitted to the staff in writing within 30 days of the date of the  
10 **Intent to Deny** letter.

11 **(c) An applicant who is otherwise eligible for a service retirement allowance**  
12 **shall have 30 days from the date of the Intent to Deny letter to apply for a service**  
13 **retirement allowance and be entitled to establish an effective date of service**  
14 **retirement [which is the later of] for the first of the month that the application for**  
15 **disability retirement allowance was received by PERS. [or the first of the month**  
16 **following the last day the member performed service for a participating employer.]**

17 **(d) The application for a service retirement allowance as provided for in**  
18 **subsection (c) of this section shall not preclude a disability applicant from**  
19 **requesting a contested case hearing under OAR 459-015-0030.**

20 *[(3)]* **(5)** Following the issuance of an *[initial denial]* **Intent to Deny** letter, staff  
21 *[shall]* **will** review any additional information which is submitted in a timely manner. *[;]*

1 (a) If the additional information results in a recommendation to approve the  
2 application, staff shall resubmit the application to the Director, or the Director's  
3 designee, with **the** recommendation. [;]

4 (b) If the additional information does not result in a recommendation to approve  
5 the application, **PERS** [staff shall] **will** issue a final denial letter by **regular and** certified  
6 mail, return receipt requested. [;]

7 (c) If no additional information is received, **PERS** [staff shall] **will** issue a final  
8 denial letter by **regular and** certified mail, return receipt requested.

9 [(4) A] **(6)** The final denial letter [shall] **will** provide the applicant with  
10 notification of the right to request a contested case hearing as provided for in OAR 459-  
11 015-0030 and 459-001-0035.

12 [(5)] **(7)** **PERS** [The staff shall] **will** notify the most recent employer of the  
13 [acceptance] **approval** or the denial of an application for a disability retirement  
14 allowance, a request for review of the Director's determination, and the Director's final  
15 action. Such notification [shall] **will** not contain any [information of a] confidential  
16 [nature] **information as defined in OAR 459-015-0001(3)**.

17 [(6) The Director shall produce a summary of activity pertaining to PERS'  
18 disability retirement applications for Board review and comment at each of its regularly  
19 scheduled meetings.]

20

21 Stat. Auth: ORS 238.650

22 Stat. Implemented: ORS 238.320 and 238.335

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 015 - DISABILITY RETIREMENT

OADR 459-015-0045 is Amended as Follows:

1 **459-015-0045**

2 *[Notification - ]* **Return to Work**

3 (1) The Public *[Employes']* **Employees** Retirement Board allows **a member who**  
4 **is receiving a disability allowance to** return to work as follows: *[(ORS 237.187 (3)):]*

5 (a) **Returning to work in a PERS qualifying position.** A member *[receiving a*  
6 *disability retirement allowance]* who has not been medically released for any work for  
7 which qualified, may return to work in a PERS qualify*[ied]***ying position, as defined by**  
8 **OAR 459-010-0003,** for a 90-day trial period without losing disability retirement status.  
9 *[Benefits will not be paid during the trial period. Wages paid during the 90 day trial*  
10 *period are excluded from the definition of salary/wages for purposes of computing PERS*  
11 *contributions or determining PERS retirement benefits unless the member continues the*  
12 *employment beyond 90 days. The disability retirement allowance will be reinstated at the*  
13 *end if the 90 day period, or sooner, if the member us unable to continue employment due*  
14 *to the disabling injury or illness as confirmed by medical documentation;]* **While the**  
15 **member is working during this trial period:**

16 (A) **Benefits will be suspended.**

17 (B) **Wages are excluded from the definition of salary for purposes of**  
18 **computing PERS contributions or determining PERS retirement benefits unless the**  
19 **member continues the employment beyond 90 days. If the member continues**  
20 **beyond the 90 days, the period will be considered qualifying as of the first day the**

1 **member returned to work and retroactive contributions, without interest, are**  
2 **required.**

3 *[(b) A member receiving a disability retirement allowance who has not been*  
4 *medically released for any work for which qualified, may return to work with a PERS*  
5 *participating employer in a position not qualified for PERS membership. Income earned*  
6 *by the member is not subject to PERS contributions. The monthly disability retirement*  
7 *allowance shall be adjusted by any earned or paid income which, when added to the*  
8 *disability retirement allowance, exceeds the gross monthly salary earned or paid at the*  
9 *time of retirement for disability;*

10 *(c) A member receiving a disability retirement allowance who has not been*  
11 *medically released for any work for which qualified, may be employed by other than a*  
12 *PERS participating employer. The monthly disability retirement allowance shall be*  
13 *adjusted by any earned or paid income which, when added to the disability retirement*  
14 *allowance, exceeds the gross monthly salary earned or paid at the time of retirement for*  
15 *disability.]*

16 **(b) Returning to work in a PERS non-qualifying position. A member who has**  
17 **not been medically released for any work for which qualified, may return to work**  
18 **with a PERS participating employer in a position not qualifying for PERS active**  
19 **membership. Unless the member has reached normal retirement age, the monthly**  
20 **disability retirement will be adjusted by any earned income which, when added to**  
21 **the disability retirement allowance, exceeds the gross monthly salary earned at the**  
22 **time of retirement for disability;**

1 (c) Returning to work in a non-PERS position. A member who has not been  
2 medically released for any work for which qualified, may be employed by other  
3 than a PERS participating employer. Unless the member has reached normal  
4 retirement age, the monthly disability retirement allowance shall be adjusted by any  
5 earned income which, when added to the disability retirement allowance, exceeds  
6 the gross monthly salary earned at the time of retirement for disability.

7 *[(2) A member receiving a disability retirement allowance who returns to work*  
8 *under subsection (1)(b) and/or (c) of this rule and continues that employment for a*  
9 *period exceeding six full calendar months is deemed to be performing work for which*  
10 *qualified and benefits shall be terminated as of the beginning of the seventh calendar*  
11 *month.]*

12 *(3) Exclusive of section (2) of this rule, a member receiving a disability retirement*  
13 *allowance who has not been medically released for any work for which qualified, but is*  
14 *medically approved for therapeutic employment, may return to work. Employment under*  
15 *this section shall be within the constraints prescribed by an attending or consulting*  
16 *physician. The monthly disability retirement allowance shall be adjusted by any earned*  
17 *or paid income as provided for in subsections (1)(b) and (c) of this rule].*

18 *[(4)]* **(2)** A member's disability retirement allowance *[shall]* **will** be terminated if  
19 the member has been medically released for any work for which qualified~~].~~, **whether**  
20 **the member returns to work or not, and PERS will invoice the member for, or**  
21 **recover under ORS 238.715, any overpayment of benefits.**

22 *[(5)]* **(3) If** [A] **a** member *[receiving a disability retirement allowance]* **returns**  
23 **to work as provided in section (1) of this rule, the member must:**

1           (a) [shall n] Notify PERS in writing of the [member's] reemployment within 30  
2 days of such reemployment[.], **and**

3           **(b) Report monthly to PERS the amount of any earned income.**

4           **(4) PERS may contact the Oregon Employment Department or the Oregon**  
5 **Department of Revenue to obtain employment information.**

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

8           (6) The Board may require medical examination reports **or vocational**  
9 **evaluations** for any member receiving a disability retirement allowance who is  
10 reemployed.

11           **(7) If the member is reemployed under section (1) of this rule and is unable**  
12 **to continue employment due to the disabling injury or disease as confirmed by**  
13 **medical documentation, the member or employer must notify PERS. If medical**  
14 **documentation substantiates that the disability prevents the completion of the trial**  
15 **period, the disability retirement allowance will be reinstated at the end of the 90 day**  
16 **period, or as of the date the member leaves the trial employment, whichever is**  
17 **sooner.**

18           *[(7) If a member returns to work as provided in subsection (1)(b) or (c) or section*  
19 *(3) of this rule, the member shall report monthly to PERS the amount of any earned or*  
20 *paid income. Upon the request by PERS, a member shall provide PERS with a copy of*  
21 *the member's federal income tax returns, together with copies of IRS forms W-2.*

22           (8) *If a member returns to work as provided in subsection (1)(b) or (c) or section*  
23 *(3) of this rule and the member has reached normal retirement age, the member is no*

1 *longer required to report any earned or paid income and the member's disability*  
2 *retirement allowance shall no longer be adjusted by any amount of earned or paid*  
3 *income.]*

4 [(9)] **(8)** A disability retirement allowance shall not be discontinued solely by  
5 reason of the retired member entering a training or vocational rehabilitation program **as**  
6 **defined in OAR 459-015-0001(22).**

7 **(9) Restoration of member account after return to work. If a member**  
8 **returns to PERS covered employment after the 90-day trial period, or is medically**  
9 **released at any time for any work for which they are qualified, the disability claim**  
10 **will be closed and the member's regular and variable PERS account(s) will be**  
11 **restored to the dollar amount of the account as of the effective date of disability.**

12 **(10) Creditable service. A member does not receive creditable service while**  
13 **drawing disability benefits. If, however, the member returns to PERS covered**  
14 **employment, their disability claim is closed, and they subsequently retire under a**  
15 **service retirement, service time for the period of disability will be restored as**  
16 **follows:**

17 **(a) For duty disabilities, creditable service will be granted to the member at**  
18 **no cost to the member.**

19 **(b) For non-duty disabilities, creditable service may be purchased by the**  
20 **member under the provisions of ORS 238.175.**

21

22 Stat. Auth: ORS 238.320, 238.335, 238.330, 238.650, and 238.715

23 Stat. Implementation: ORS 238.175 and 238.330

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 015 - DISABILITY RETIREMENT

OAR 459-015-0050 is Amended as Follows:

1 **459-015-0050**

2 **Periodic Reviews**

3 (1) Members receiving disability retirement allowance are subject to periodic  
4 reviews of their disabled status **until the member reaches normal retirement age or**  
5 **staff, in consultation with the PERS medical advisor, determines that periodic**  
6 **reviews are no longer warranted.** *[The reviews may be either medical or vocational in*  
7 *nature. The staff shall establish review dates for each member receiving a disability*  
8 *retirement allowance. Upon review, the staff may accept treating or consulting physician*  
9 *reports or may require independent medical or vocational examinations. The staff may*  
10 *discontinue immediately the disability retirement allowance of any person who refuses to*  
11 *provide current medical evidence or refuses to submit to an examination.]*

12 **(2) Periodic reviews will be used to determine that continued disability**  
13 **retirement allowances are warranted. In recommending the continuance or**  
14 **discontinuance of a disability retirement allowance, for the original approved**  
15 **disability or a new medical condition, PERS will follow the criteria established**  
16 **under OAR 459-015-0010.**

17 **(3) For duty disability, the periodic review will not revisit the original**  
18 **determination that the injury or disease was duty caused, unless there is evidence of**  
19 **misrepresentation or fraud.**



1           **(4) PERS will establish review dates for each member subject to a periodic**  
2 **review depending on type of disability, extent of disability, and medical reports**  
3 **unique to each individual case.**

4           **(a) The reviews may be medical or vocational in nature, or both.**

5           **(b) Upon review, PERS may accept or require:**

6           **(A) new treating or consulting physician or specialist reports,**

7           **(B) updated physician or specialist reports,**

8           **(C) independent medical or vocational examinations, or**

9           **(D) employment and wage information, including but not limited to, tax**  
10 **returns or information from the State Employment Department.**

11           **(c) PERS may immediately discontinue the disability retirement allowance of**  
12 **any person who refuses to provide current medical evidence or refuses to submit to**  
13 **an examination.**

14           **(A) If the Director discontinues the disability claim, the staff shall issue an**  
15 **Intent to Discontinue letter by regular and certified mail, return receipt requested.**  
16 **The discontinuation letter shall advise the applicant that additional information to**  
17 **substantiate the claim, or a request for an extension of thirty (30) days to present**  
18 **additional information, may be submitted to the staff in writing within thirty (30)**  
19 **days of the date of the Intent to Discontinue letter.**

20           **(B) Following the issuance of an Intent to Discontinue letter, staff will review**  
21 **any additional information which is submitted thirty (30) days.**

1 (i) If the additional information results in a recommendation to approve the  
2 application, staff shall resubmit the application to the Director, or the Director's  
3 designee, with the recommendation.

4 (ii) If the additional information does not result in a recommendation to  
5 approve the application, PERS will issue a final discontinuation letter by regular  
6 and certified mail, return receipt requested.

7 (C) If no additional information is received within thirty (30), PERS will  
8 issue a final discontinuation letter by regular and certified mail, return receipt  
9 requested.

10 (D) The final discontinuation letter will provide the applicant with  
11 notification of the right to request a contested case hearing as provided for in OAR  
12 459-015-0030 and 459-001-0035.

13 (5) The member has the burden to prove continuing eligibility for a disability  
14 retirement allowance.

15 *[(2) Periodic reviews, investigations, and examinations to determine a member's*  
16 *continued disability retirement allowance will be waived by the staff upon the member*  
17 *reaching normal retirement age.]*

18 *[(3) The Director is hereby authorized to approve or deny the continuance of a*  
19 *disability retirement allowance].*

20 *[(4) In recommending the continuance or discontinuance of a disability*  
21 *retirement allowance, staff shall follow the procedure established under OAR 459-015-*  
22 *0010(25)(2), (3) and (4)].*

1           **(6) The Director, or the Director’s designee, is authorized to approve or deny**  
2 **the continuance of a disability retirement allowance.**

3           *[(5) The Director shall produce a summary of activity pertaining to PERS’*  
4 *continuance or discontinuance of disability retirement allowance for Board review and*  
5 *comment at each of this regularly scheduled meetings].*

6           **[(6)] (7) If the Director, or the Director’s designee, directs that a disability**  
7 **retirement allowance be discontinued, the** [A] denial letter shall provide the applicant  
8 with notification of the right to request a contested case hearing as provided for in OAR  
9 459-015-0030 and 459-001-0035.

10

11 Stat. Auth: ORS 238.650

12 Stat. Implemented: ORS 238.320 and 238.335

OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 015 - DISABILITY RETIREMENT

OAD 459-015-0055 is Amended as Follows:

1 **459-015-0055**

2 **Selection of Benefit Option and Commencement of Allowance**

3 (1) Upon filing an *[written]* application for a disability retirement allowance, the  
4 member *[shall]* may make a preliminary designation of beneficiary and a preliminary  
5 selection of benefit option. *[The designation and selection shall be effective only upon*  
6 *the Board's approval of the application for disability retirement allowance.]*

7 **(a) A member may choose from retirement Options 1, 2, 2A, 3, 3A, 15 year**  
8 **certain or refund annuity as set forth in ORS 238.300 and 238.305, or an optional**  
9 **disability retirement allowance under ORS 238.325.**

10 **(b) A member may not choose a lump-sum option.**

11 (2) Within 90 days following the *[Board's]* **Director's, or the Director's**  
12 **designee's,** approval of the application for disability retirement allowance, the member  
13 *[may change the]* **must complete a final** designation of beneficiary *[or the]* **and**  
14 selection of benefit option *[by filing written notice with the staff]* **on forms provided by**  
15 **PERS. Receipt of the final forms will supercede any preliminary beneficiary**  
16 **designation or benefit option.**

17 **(a) The final option selected applies only to the corresponding time period**  
18 **the member is receiving a disability retirement allowance.**

19 **(b) The beneficiary designation or benefit option may be changed up to 60**  
20 **days after the date of the first benefit payment as provided in ORS 238.325(2).**

1           **(c) If a member’s disability retirement allowance is canceled, the option**  
2 **selected for the purposes of that disability retirement allowance is canceled and a**  
3 **new option may be selected upon a subsequent disability or a service retirement.**

4           **(3) If the member does not complete a final selection of benefit option within**  
5 **90 days following the Director’s, or the Director’s designee’s, approval of the**  
6 **application for disability retirement allowance:**

7           **(a) The benefit will be the benefit as set forth under ORS 238.320(1), and**

8           **(b) The latest beneficiary designation on file for the PERS Chapter 238**  
9 **Program will be used to determine the default beneficiary. If no designation exists,**  
10 **the standard designation will be used.**

11           *[(3) The payment of the disability retirement allowance shall commence within*  
12 *ten days following receipt by the staff of all of the following items, but not earlier than*  
13 *the first of the month following the 90 consecutive day period of incapacitation or the*  
14 *first full calendar month following final payment by employer of any wages or paid*  
15 *leaves:*

16           *(a) From the member:*

17           *(A) Confirmation of Benefit Option Selection;*

18           *(B) Birth Proof for the member;*

19           *(C) Birth Proof of age for the designated beneficiary if a joint survivor option is*  
20 *elected.*

21           *(b) From the employer:*

22           *(A) Separation for Disability Retirement form, or*

23           *(B) Separation from PERS Covered Employment form.]*

1           **(4) Purchases. If a member is eligible to purchase additional creditable**  
2 **service or retirement credit under ORS chapter 238, the payment for the**  
3 **purchase(s) shall accompany the final selection of benefit option form.**

4           **(5) The payment of a disability retirement allowance shall commence within**  
5 **ten days following receipt by PERS of all of the following items, or the date the first**  
6 **payment is due, as set forth in Section (6) of this rule, whichever is later:**

7           **(a) From the member:**

8           **(A) Final designation of beneficiary and selection of benefit option form;**

9           **(B) Proof of member's age;**

10           **(C) Proof of age for the designated beneficiary if a joint survivor option is**  
11 **elected; and**

12           **(D) Spousal consent form.**

13           **(b) From the employer:**

14           **(A) Separation for Disability Retirement form, or**

15           **(B) Separation from PERS Covered Employment form.**

16           **(6) A disability payment is first due on the later of:**

17           **(a) The first of the calendar month in which the member files an complete**  
18 **application for disability benefits with PERS, or**

19           **(b) The first of the month following the first full calendar month after final**  
20 **payment by the employer of any wages or paid leave benefits to the member,**  
21 **excluding any cash payoff of accrued vacation or compensatory time,**

22           **(c) The first of the calendar month following the date that the disability**  
23 **application is approved by the Director.**

1 (d) Notwithstanding subsections (a), (b) and (c) of this section, no payment  
2 shall be made prior to the end of the period of 90 consecutive days beginning with  
3 the date of disability as defined in OAR 459-015-0001(4), and

4 (e) A disability retirement allowance shall be retroactive to the effective date  
5 of disability.

6 (7) If PERS cannot calculate the actual disability benefit payment, an  
7 estimated payment will be made until PERS receives all the necessary information  
8 needed to calculate the actual benefit payment. The payment will be made  
9 retroactive to the effective date of disability if the benefits become due before the 90  
10 consecutive day period of incapacitation has elapsed.

11 (a) If the estimated payment results in an underpayment of \$10 or more a  
12 month, the member will receive interest based on the provisions set forth in OAR  
13 459-007-0015.

14 (b) If the estimated payment results in an overpayment of any amount, the  
15 overpayments may be recovered by decreasing the monthly benefit amount until the  
16 difference between the amount the member received and the amount the member  
17 should have received is recovered.

18 (8) Within the 60 day period following the issue date of the first actual (not  
19 estimated) benefit payment, the member may change their benefit option. The  
20 Option change will be retroactive to the effective disability retirement date.

21 (9) Minimum disability benefit. A disability benefit will not be less than \$100  
22 per month under the non-refund Option 1 benefit or the amount the member would  
23 have received for service retirement, if eligible, whichever is higher.

1           **(10) In the event a member applying for a disability retirement allowance**  
2 **dies prior to the Director’s approval of the application, and:**

3           **(a) the member has made a preliminary designation of beneficiary or**  
4 **selected a benefit option, the preliminary election(s) shall be effective upon the**  
5 **Director’s approval of that application.**

6           **(A) If the beneficiary is the surviving spouse, the surviving spouse may,**  
7 **within 90 days from the date the disability application is approved, elect to have**  
8 **either Option 2 or 3 disability benefits or pre-retirement death benefits, as provided**  
9 **in ORS 238.390 or 238.395, if eligible.**

10           **(B) If the surviving spouse elects either Option 2 or 3, the spouse cannot**  
11 **name a beneficiary and all benefits will cease upon the spouse’s death.**

12           **(b) the member has not made a preliminary designation of beneficiary or**  
13 **selected a benefit option, the member will be considered as having died before**  
14 **retirement.**

15 Stat. Auth: ORS 238.650

16 Stat. Implemented: ORS 238.320, 238.325, and 238.335



OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 015 - DISABILITY RETIREMENT

OAR 459-015-0060 is amended as follows:

1 **459-015-0060**

2 **Reduction Due to Workers' Compensation Payment**

3 (1) PERS disability payments are reduced by payments a Tier Two member  
4 receives from Workers' Compensation. There is no reduction for a Tier One  
5 member. Other disability-related income, such as Social Security and/or private  
6 disability insurance plan payments will not affect the amount of a PERS disability  
7 retirement allowance. [For the purposes of this rule:

8 (a) A "Tier Two member" means an employee who establishes membership in  
9 PERS on or after January 1, 1996, as described in ORS 238 .430. ]

10 [(b)] (2) A Tier Two member's disability retirement allowance will be offset  
11 by any gross ["M]monthly workers' compensation payment[" means any gross  
12 payment] paid in a calendar month on account of temporary total disability or permanent  
13 total disability under the provisions of ORS Chapter 656; regardless of whether the  
14 condition on which the worker's compensation claim is based is related to the condition  
15 on which the PERS disability retirement claim is based. [A monthly workers'  
16 compensation payment:]

17 (a) A monthly workers' compensation payment includes:

18 [(A) Shall include:]

19 (A) Weekly gross payments;

20 (B) Semi-monthly gross payments;

1 (C) Monthly gross payments; and

2 (D) That portion of a lump sum payment of a workers' compensation disability  
3 claim that is expressly designated as compensation for temporary total disability or  
4 permanent total disability.

5 ~~[(B)]~~ *[Shall]* **A monthly workers' compensation payment does** not include:

6 (A) Payments for medical services;

7 (B) Payments for vocational training;

8 (C) Reemployment assistance payments; and

9 (D) Any payment based on an employee's waiver of all rights to, and includes no  
10 payment for, a temporary total disability or a permanent total disability claim.

11 *[(C) Shall be based]* **(c) The payment will be considered paid** on the date that  
12 payment is issued, and *[shall]* **will** not be allocated to any period other than the month  
13 payment is issued.

14 *[(c) "Monthly disability retirement allowance" means the PERS gross disability*  
15 *retirement allowance payable under the benefit option elected by the member prior to*  
16 *any deductions. ]*

17 *[(d) "Monthly salary" means salary as defined in ORS 238 .005(11)(a) that is*  
18 *earned in the last full calendar month of employment prior to date of disability.]*

19 *[(e) "Date of disability" shall have the same meaning as provided in OAR 459-*  
20 *015-0015.]*

21 *[(2)]* **(3) In the event a Tier Two member is eligible to receive a PERS**  
22 **disability retirement allowance,** PERS *[staff shall]* **will** request of the Workers

1 Compensation Division documentation of the portion of a lump sum settlement that is  
2 made on account of a temporary total disability or a permanent total disability.

3 [(3)] **(4)** *[In the event a Tier Two member is eligible to receive a PERS disability*  
4 *retirement allowance, t]The **disability** allowance **of a Tier Two member** [shall] **will** be*  
5 reduced by the amount by which the combined monthly benefits payable from both PERS  
6 and any monthly worker's compensation payment on account of temporary total disability  
7 or permanent total disability exceed the monthly salary of the member at time of  
8 disability.

9 [(4)] **(5)** A Tier Two member who is eligible to receive a disability retirement  
10 allowance [shall] **must** report immediately to PERS the receipt or the award of any  
11 monthly worker's compensation payment as described in section [(1)(b)] **(2)(a)** of this  
12 rule.

13 [(5)] **(6)** In the event a Tier Two member receives one or more monthly worker's  
14 compensation payment(s) while also receiving a disability retirement allowance [*as*  
15 *described in OAR 459-015-0015*], but PERS is not notified of the worker's compensation  
16 payment until after making one or more disability retirement allowance payments:

17 (a) PERS [shall] **will** recalculate the disability retirement allowance, taking the  
18 monthly worker's compensation payments into account; and

19 (b) PERS [shall] **will** invoice the member for, or recover under ORS 238.715, any  
20 overpayment of PERS benefits.

21 [(6)] **(7)** A Tier Two member's PERS disability retirement allowance:

1 (a) [*Shall*] **Will** first be calculated in accordance with ORS 238.435(5) and this  
2 rule prior to determining any reduction to the PERS disability retirement allowance under  
3 ORS 238.330(3).

4 (b) Any reduction under ORS 238.330(3) [*shall*] **will** be made to the adjusted  
5 PERS disability retirement allowance established under ORS 238.435(5) and this rule.

6

7 Stat. Auth.: ORS 238.650

8 Stats. Implemented: ORS 238.435(5) & ORS 238.330(3)



# Oregon

Theodore R. Kulongoski, Governor

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May 9, 2005

**TO:** Members of the PERS Board  
Key Reviewer: Brenda Rocklin

**FROM:** Steven Patrick Rodeman, Administrator, PPLAD

**SUBJECT:** Adoption of Division 76 Rules Related to Disability Benefits  
for OPSRP Ch. 238A Members

OAR 459-076-0000, *Purpose* (New)  
OAR 459-076-0001, *Definitions* (New)  
OAR 459-076-0005, *Eligibility for Disability Benefits* (New)  
OAR 459-076-0010, *Criteria for Granting and Denying Disability  
Benefits; Initial Determination* (New)  
OAR 459-076-0020, *Application Required* (New)  
OAR 459-076-0025, *Application Processing – Independent Examinations  
and Appeals* (New)  
OAR 459-076-0045, *Cessation of Disability Benefits upon reaching  
Normal Retirement Age ed* (New)  
OAR 459-076-0050, *Periodic Reviews* (New)  
OAR 459-076-0055, *Payment of Disability Benefit* (New)  
OAR 459-076-0060, *Reduction Due to Workers' Compensation Payment*  
(New)

MEETING DATE	5-24-05
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AGENDA ITEM	<b>D.5.</b> Ch 238A Disability
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## OVERVIEW

- **Action:** Adopt new rules in Division 76 relating to disability benefits under the OPSRP Pension Program.
- **Reason:** House Bill 2020, the legislation that established the Oregon Public Service Retirement Plan (OPSRP), requires new administrative rules to clarify and implement its provisions; in this case, related to disability benefits under ORS 238A.235.
- **Subject:** Standards for determining eligibility and the administration of the disability program under the OPSRP Pension Plan.
- **Policy Issues:** These new rules incorporate the policy decisions reflected in the Division 15 rules on the PERS Chapter 238 disability program, reflecting the policy to keep disability standards parallel when possible.

## BACKGROUND

The statutory standards for the OPSRP disability benefit are generally identical to the language in the PERS Chapter 238 Plan. There is no explicit direction that the OPSRP program mirror Chapter 238. However, keeping the programs parallel would be simpler to administer and easier for members. Those areas where the OPSRP statutes are clearly different (e.g., only benefit is 45% of salary) are preserved.

Staff's recommendation and assumption (unless otherwise directed by this Board) is to adopt policies and practices that are consistent between the two programs. The rules presented here are based on that premise.

#### SUMMARY OF RULES AND MODIFICATIONS TO RULES SINCE NOTICE

Several modifications were made to the proposed rules between the Notice of Rulemaking and the first reading at the November PERS Board meeting. Those modifications were summarized in the November 5, 2004 Board Memo, which is attached. Since first reading, further staff review and public comment have prompted additional modifications to the rules as presented, and those are summarized below.

##### **459-076-0001, *Definitions*** - Modifications:

“Any work for which qualified” – Clarified definition.

“Extended duration” – Clarified definition to include eligibility where disability is expected to result in death within 90 days.

“Major contributing cause” – Clarified definition.

“Performance of duty” – Removed legal standard per public comment.

“Pre-existing condition” – Added definition.

“Reasonable training” – Added definition to clarify narrow application.

“Severe disability” – Removed per public comment.

##### **459-076-0005, *Eligibility for Disability Benefit*** - Modifications:

Section (3) – Modified legal standard per public comment.

Section (5) – Clarified pre-existing condition.

##### **459-076-0010, *Criteria for Granting and Denying Disability Benefits; Initial Determination*** - Modifications:

New Section (6) – Clarifies current review standard in contested cases.

New Section (7) – Clarifies statutory provisions for denial or discontinuance.

##### **459-076-0020, *Application Required*** - Modifications:

Section (7) – Included “insurance carrier” as one of the entities PERS may request information from.

##### **459-076-0025, *Application Processing – Independent Examinations and Appeals*** - Modifications:

Section (1)(a) – Clarified that PERS will inform a member in writing of the decision to require a vocational exam.

Section (1)(d) – Clarified that the failure of the vocational consultant or locator service to send a notice of exam to the member will constitute good cause for missing an appointment.

Section (1)(e) – Clarified that refusal to accept certified mail does not constitute good cause for missing an appointment.

**459-076-0050, Periodic Reviews -Modifications:**

Rearranged sections for better presentation of review process.

Section (1) – Clarified waiver of periodic reviews.

Section (2) – Clarified periodic review of new medical conditions.

Section (4) – Inserted language to clarify discontinuation process.

**PUBLIC HEARING AND TESTIMONY**

Public hearings were held on October 18 and 27 but no testimony was received at those hearings. The public comment period ended on November 19, 2004. On November 19, we received a letter from Nelson Hall of Bennett, Hartman, Morris & Kaplan, LLP, commenting on the proposed rule changes. Mr. Hall's comments, and our responses, are set forth in the Board memo presented at this meeting for the Division 15 disability rules. (Agenda Item D.4.), and a copy of his November 19, 2004 letter is included with that Board packet.

**LEGAL REVIEW**

After consulting with attorneys at the Department of Justice (DOJ) and Orrick, the attached drafts of proposed rules for Division 76 were submitted to the DOJ for review since the Division 76 rules closely follow, where possible, the provisions of the PERS Division 15 disability rules. Assistant Attorney General Joe Dunne reviewed the drafts and his recommendations are incorporated.

**IMPACT**

**Mandatory:** No, but clarification of the new program will benefit staff, members, and stakeholders.

**Impact:** Moderate. Most of these provisions have already been incorporated in the administration of the ORS Chapter 238 Program and the OPSRP Pension Program is building off those provisions where applicable.

**Cost:**

- ♦ *Members:* There will be no additional cost to members that is not already a part of the administration of the PERS Chapter 238 Program.
- ♦ *Employers:* There are intrinsic costs to employers since disability benefits are borne by the employer. Clarification of the standards, however, will allow the OPSRP disability program to be administered in a more efficient and consistent manner, which should result in the payment of disability benefits under a clear, consistent framework.
- ♦ *Administration:* The proposed rules will require little administrative adjustment from the PERS Chapter 238 Program and will not substantially affect costs to review, process, or administer disability benefits for the new disability program.

- ♦ *Fund:* There will be no effect on the Fund.

#### RULEMAKING TIMELINE

September 15, 2004	Staff began the rulemaking process. Deadline to file Notice of Rulemaking with the Secretary of State.
September 17, 2004	Board notified that staff began the rulemaking process.
October 1, 2004	<i>Oregon Bulletin</i> published the Notice and the public comment period began.
October 18, 2004	A public hearing was held in Salem in conjunction with PERS Division 15 disability rulemaking.
October 27, 2004	A public hearing was held in Tigard in conjunction with PERS Division 15 disability rulemaking.
November 19, 2004	First reading. Public comment period ended.
May 24, 2005	PERS Staff will request adoption of the proposed rules.

#### BOARD OPTIONS

The Board may:

1. Make a motion to “adopt the proposed rules for Division 76, as presented, to be effective upon filing.”
2. Take no action and direct staff to make changes to the rules or take other action.

#### STAFF RECOMMENDATION

Staff recommends the Board choose Option #1.

**Reason:** These rules are needed to provide clarity to staff and members on how the disability program is to be administered.





# Oregon

Theodore R. Kulongoski, Governor

<b>MEETING DATE</b>	<b>11-19-04</b>
<b>AGENDA ITEM</b>	<b>C.5. Ch 238A Disability</b>

## Public Employees Retirement System

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November 5, 2004

**TO:** Members of the PERS Board  
Key Reviewer: Brenda Rocklin (Housekeeping)

**FROM:** Steven Patrick Rodeman, Manager, PPLAG

**SUBJECT:** First Reading of Division 76 Rules Related to Disability Benefits for OPSRP Ch. 238A Members

OAR 459-076-0000, *Purpose* (New)  
OAR 459-076-0001, *Definitions* (New)  
OAR 459-076-0005, *Eligibility for Disability Benefits* (New)  
OAR 459-076-0010, *Criteria for Granting and Denying Disability Benefits; Initial Determination* (New)  
OAR 459-076-0020, *Application Required* (New)  
OAR 459-076-0025, *Application Processing – Independent Examinations and Appeals* (New)  
OAR 459-076-0045, *Cessation of Disability Benefits upon reaching Normal Retirement Age* (New)  
OAR 459-076-0050, *Periodic Reviews* (New)  
OAR 459-076-0055, *Payment of Disability Benefit* (New)  
OAR 459-076-0060, *Reduction Due to Workers' Compensation Payment* (New)

### OVERVIEW

- **Action:** None. This is the first reading of these rules.
- **Reason:** House Bill 2020, the legislation that established the Oregon Public Service Retirement Plan (OPSRP), requires new administrative rules to clarify and implement its provisions; in this case related to disability benefits under ORS 238A.235.
- **Subject:** Standards for determining eligibility and the administration of the disability program under the OPSRP Pension Plan.
- **Policy Issues:** The policy issues have not changed since these rules were noticed. As previously stated, staff will consider the policy decisions made by the Board in the PERS Chapter 238 Division 15 disability rules as applying to the OPSRP Division 76 rules, unless the Board directs otherwise.

### BACKGROUND

The statutory standards for the OPSRP disability benefit are generally identical to the language in the PERS Chapter 238 Plan. There is no explicit direction that the OPSRP program mirror Chapter 238. However, keeping the programs parallel would be simpler to administer and easier for members. Those areas where the OPSRP statutes are clearly different (45% of salary as a benefit) are preserved, but where the same language is used, such as whether a disability has lasted for an “extended duration,” the rules are identical.

Staff's recommendation and assumption (unless otherwise directed by this Board) is to adopt policies and practices that are consistent between the two programs. The rules presented here are based on that premise.

### **SUMMARY OF RULES AND MODIFICATIONS TO RULES SINCE NOTICE**

Modifications since Notice of Rulemaking are summarized below, except for changes due to grammar and typographical errors. One universal change has been made: "disability retirement allowance" to "disability benefit" to conform to the statutory terminology. Modifications are denoted in the rules by shading. Additions are bold and underlined; deletions are bracketed and italicized.

***459-076-0000, Purpose*** This rule mirrors the purpose provisions of the PERS Chapter 238 disability program, except it takes into account the special provisions in ORS 238A.235(4) that stops disability benefits when the member reaches normal retirement age. Clarifies the purpose of the OPSRP disability program.

Modifications:

Included a clarification that the benefit ends upon death of the member.

Section (1) – Clarified that members who have reached normal retirement age may not apply for disability benefits.

New Section (2) – Clarified that member becomes inactive when no longer receiving a disability benefit or a service retirement benefit.

***459-076-0001, Definitions*** This rule defines words and terms used in the OPSRP disability program. It mirrors the provisions of the PERS disability program, including the proposed new Division 15 rule, except that it takes into account the special provisions in ORS 238A.235.

Modifications:

"Any work for which qualified" – Per DOJ, expanded definition to include the ability to be trained for work for which qualified.

"Date of disability" – Clarified to reflect practice; removed "incapacitation" since removed from definitions.

"Date of separation" - Removed; term is not used in rules.

"Effective date of disability benefit" – Moved provisions to OAR 459-076-0055.

"Incapacitated" – Removed; term is not used in rules.

"Independent medical exam" – Clarified that exam is at the request of PERS.

"Material contributing cause" – Changed "material" to "major" for more clarity.

"Non-traditional medical advisor" - Removed; term is not used in rules.

"Performance of duty" – Per DOJ, included language to more adequately reflect proper employment standard.

"Physical capacities evaluation" – Removed; term is not used in rules.

"Severe disability" – Clarified.

“Similar duration” - Removed; term is not used in rules.

“Similar in compensation” – Included exclusion of overtime.

“Training or vocational rehabilitation program” - Removed; term is not used in rules.

**459-076-0005, *Eligibility for Disability Benefit*** This rule mirrors the eligibility provisions of the PERS Chapter 238 disability program, including the proposed modifications to the Division 15 rules, except that it takes into account the special provisions in ORS 238A.235(2)(a) regarding eligibility requirements for an OPSRP disability allowance. The rule further clarifies the requirement of total disability and reiterates the statutory provision for the effect of withdrawal on the eligibility provisions for a disability benefit.

Modifications:

All - Clarified that disability benefits under OPSRP are available only for disabilities that are expected to last for an extended duration and that arise while the applicant is an active member.

Section (2) – Removed redundant provisions.

Section (5) – Per DOJ, clarified provisions for work related stress to more closely reflect the standard under ORS Chapter 656 (Worker’s Compensation).

**459-076-0010, *Criteria for Granting and Denying Disability Benefits; Initial Determination*** This rule clarifies criteria for disability eligibility, mirroring the criteria in the Chapter 238 disability program.

Modifications:

The same proposed modifications to the Division 15 rules on adding additional specialist requirements for medical documentation for claims of neurological injury or illness and fibromyalgia.

New Section (2) - Per DOJ, undeleted provision allowing denial of claim for refusal to release medical information or submit a completed application.

Old Section (2) – Deleted; unnecessary.

Section (4)(b) – added “neurosurgeon;” experience has shown this specialty as necessary for some orthopedic injuries.

Section (4)(e) – Clarified.

**459-076-0020, *Application Required*** This rule mirrors the application requirements of the PERS disability program, including the proposed modifications to the Division 15 rules to clarify separation from service and to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements.

Modifications:

Section (1) – Clarified application deadlines; clarified injury or illness must arise while the applicant was an active member.

Section (4) – Moved provision to new Section (6).

New Section (6) - Clarified that PERS will notify current employer when application for disability has been received.

Section (7) – Per DOJ, included language to reiterate refusal to allow release of information may result in denial of claim.

**459-076-0025, Application Processing – Independent Examinations and Appeals** This rule mirrors the application processing provisions of the PERS disability program, including the proposed modifications to the Division 15 rules on circumstances under which PERS will request an Independent Medical Exam (IME), a vocational evaluation, or a physical capacities evaluation. Also clarifies what constitutes “good cause” for missing a scheduled appointment, payment of assessed penalty for missing a scheduled appointment, and eligibility for service retirement if the member does not qualify for a disability benefit.

Modifications:

Section (1) – Separated notification of independent medical exams from vocational examination to reflect correct process.

Section (7) - Clarified definitional term for “confidential information.”

**459-076-0045, Return to Work** This rule does not mirror the return to work provisions in the PERS disability program because of differences in statute. Clarifies return to work restrictions, requirements for applying for service retirement, and provisions addressing calculation of service retirement benefits and retirement credit after period of disability or upon member reaching normal retirement age.

Modifications:

Section (1) – Clarified that member must submit application for retirement benefits and clarified time period for receiving retirement benefits upon cessation of disability benefits.

Section (3) – Clarified provisions for calculation of retirement benefit.

New Section (7) – Clarified status of member who is not receiving either disability or retirement benefits.

**459-076-0050, Periodic Reviews** This rule mirrors the criteria in the PERS disability program, including the proposed modifications to the Division 15 rules, on who is subject to periodic reviews, when periodic reviews will take place, and criteria for continuance of disability benefit.

Modifications:

Section (1)(c) – Clarified new information is also required.

**459-076-0055, Payment of Disability Benefit** This rule mirrors the criteria in the PERS disability program, including the proposed modifications to the Division 15 rules, except that it takes into account the special provisions in ORS 238A.235(1) and (3) regarding

the disability benefit payment. Clarifies provisions for estimated payments and for benefit distribution if an applicant dies prior to, or after, approval of application.

**Modification:**

Section (1) – Clarified provisions for commencement of disability benefit.

Section (3) - Removed provisions that do not apply to the OPSRP Disability Program.

New Section (4) – Clarified to more adequately reflect the statutory treatment of the disability benefit as a distinct and separate benefit from the retirement allowance provided under OPSRP. Noted that IAP account(s) will also be paid out.

New Section (5) – Clarified provision for treatment of member who dies after approval; included clarification of credit for vesting purposes.

**459-076-0060, *Reduction Due to Workers' Compensation Payment*** This rule mirrors the criteria in the PERS disability program, where applicable, including the proposed modifications to the Division 15 rules, on reducing disability benefits of members receiving Workers' Compensation benefits.

**Modifications:**

Section (1) – Clarified that payments from disability benefits and worker's compensation may not exceed 75% of member's salary at time of disability.

**PUBLIC HEARING AND TESTIMONY**

Public hearings were held on October 18 and 27 but no testimony was submitted. The public comment period ends on November 19, 2004 and, to date, PERS has received no public comment.

**LEGAL REVIEW**

The attached drafts of OAR 459-076-0000 through 459-076-0060 were submitted to the Department of Justice for review since the Division 76 rules closely follow, where possible, the provisions of the PERS Division 15 disability rules. Assistant Attorney General Joe Dunne reviewed the drafts and discussed his recommendations with staff.

**IMPACT**

**Mandatory:** Not generally, but clarification of the program will benefit staff, members, and stakeholders.

**Impact:** Rule adoption would help staff clarify and implement the provisions of HB2020 related to disability benefits established under the Oregon Public Service Retirement Plan.

**Cost:**

- ♦ *Members:* There will be no cost to members.
- ♦ *Employers:* There are intrinsic costs to employers since disability benefits are borne by the employer. Clarification of the standards, however, will allow the OPSRP

disability program to be administered in a more efficient and consistent manner, which should result in the payment of disability benefits under a clear, consistent framework.

- ♦ *Administration:* Although some minor changes to the program are statutorily required, the proposed rules will require little administrative adjustment and will not substantially affect costs to review, process, or administer disability benefits for the new disability program.
- ♦ *Fund:* There will be no effect on the Fund.

### **RULEMAKING TIMELINE**

September 15, 2004	Staff began the rulemaking process. Deadline to file Notice of Rulemaking with the Secretary of State.
September 17, 2004	Board notified that staff began the rulemaking process.
October 1, 2004	<i>Oregon Bulletin</i> published the Notice and the public comment period began.
October 18, 2004	A public hearing was held in Salem in conjunction with PERS Division 15 disability rulemaking.
October 27, 2004	A public hearing was held in Salem in conjunction with PERS Division 15 disability rulemaking.
November 19, 2004	First reading. Public comment period ends at 5:00 PM.
December 10, 2004	PERS Staff will request adoption of the proposed adoptions including any amendments warranted by public comment or further research.

### **BOARD OPTIONS**

The Board may:

1. Take no action at this time.
2. Direct staff to make changes to the draft rule.

### **STAFF RECOMMENDATION**

Staff recommends the Board take no action at this time.

### **NEXT STEPS**

This is the first reading of the rule. PERS staff will return with these rules to request adoption by the Board at its meeting on December 10, 2004.

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 076 - DISABILITY BENEFIT**

1 OAR 459-076-0000 is Added as Follows:

1 **459-076-0000**

2 **Purpose**

3 (1) The Legislative Assembly has established within the Oregon Public Service  
4 Retirement Plan (OPSRP) Pension Program a program for *[early retirement by reason*  
5 *of]* **a disability benefit**. The disability benefit program is solely intended to provide  
6 benefits to those members **who have not reached normal retirement age as defined in**  
7 **OAR 459-076-0001(11)** and who are unable to work because they are disabled and  
8 cannot perform any work for which they are qualified. A disability benefit is not *[in lieu*  
9 *of, or]* in addition to a service retirement allowance and is payable until **the member:**

10 (a) *[The member]* is no longer disabled, **or**

11 (b) *[The member]* reaches normal retirement age as defined in OAR 459-076

12 0001(14), **or**

13 (b) **dies.**”

14 **(2) A member who is no longer receiving a disability benefit due to**  
15 **conditions set forth under section (1)(a) or (b) and has not applied for a service**  
16 **retirement benefit after reaching normal retirement age will be considered an**  
17 **inactive member as defined in ORS 238A.005(8).**

18  
19 Stat. Auth: ORS 238A.450

20 Stat. Implemented: ORS 238A.235

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYES' RETIREMENT BOARD  
CHAPTER 459  
DIVISION 076 - DISABILITY BENEFIT**

1 OAR 459-076-0001 is Added as Follows:

1 **459-076-0001**

2 **Definitions**

3 The words and phrases used in this Division have the same meaning given them in  
4 ORS chapter 238A and OAR 459-070-0001. Additional terms are defined as follows  
5 unless the context requires otherwise.

6 (1) Any work for which qualified: A job, not necessarily the last or usual job, which  
7 the applicant for disability benefits:

8 (a) Is physically and psychologically capable of performing, and

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

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

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

17 (b) Accredited as a “Certified Rehabilitation Counselor (CRC)” by the Commission  
18 on Rehabilitation Counselor Certification; as a “Certified Insurance Rehabilitation  
19 Specialist (CIRS)” by the Certified Insurance Rehabilitation Specialist Commission; or a  
20 “Certified Vocational Evaluation Specialist (CVE)” or a “Certified Work Adjustment



1 Specialist (CWA)” by the Commission on Certification of Work Adjustment and  
2 Vocation Evaluation specialist.

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

5 (4) Date of disability: The day an active member ceased to work because of injury or  
6 disease,

7 (5) Effective date of disability benefit: The first of the month following the later of:

8 (a) The last day the member worked for a participating employer,

9 (b) The last day the member was on paid leave, or

10 (c) The last day the member received any salary or paid leave benefits from a  
11 participating employer, exclusive of the cash pay-off for accrued vacation or  
12 compensatory time, as long as that payment is made within the 31 days after the member  
13 separates from PERS covered employment.

14 (6) Extended duration: (a) A period of not less than 90 consecutive calendar days, or

15 (b) The disability is expected to result in the death of the disabled member in less  
16 than 90 days.

17 (7) Independent medical exam: An exam or exams conducted by a physician chosen  
18 by PERS for purposes other than for treatment which results in the issuance of a report or  
19 reports based on those exams, giving an opinion regarding the claimed injury or disease.

20 (8) Major contributing cause: The efficient, dominant, and proximate cause of the  
21 disability, without which the incapacitation would not have occurred.

22 (9) Monthly salary: Salary as defined in ORS 238A.005(16) that is earned in the last  
23 full calendar month of employment.

1 (a) Retroactive payments or payments made due to clerical errors, paid in accordance  
2 with ORS 238A.005(16)(b)(E), are allocated to the period the salary was earned or  
3 should have been earned.

4 (b) Payments of salary paid within 31 days of separation are allocated to the period  
5 the salary was earned and should be considered as paid on the last date of employment.

6 (10) Monthly salary received: The salary paid, as defined in section (11) of this rule,  
7 for the last full calendar month of employment prior to date of disability.

8 (11) Normal retirement age: The age at which a member can retire without a reduced  
9 benefit.

10 (a) For police officers and firefighters who have held a position as a police officer or  
11 firefighter continuously for a period of not less than five years immediately preceding the  
12 effective date of disability, age 60 or age 53 with 30 or more years of creditable service.

13 (b) For all others, age 65 or age 58 with 30 or more years of creditable service.

14 (12) Other income: includes, but is not limited to:

15 (a) Salary/wage received as an employee;

16 (b) Self-employment income from:

17 (A) Services industry,

18 (B) Sales,

19 (C) Assembly or manufacturing,

20 (D) Consulting,

21 (E) Property management,

22 (F) Hobby income, or

23 (G) Book advances;

1 (c) "Other income" does not include:

2 (A) Investment income,

3 (B) Rent, and

4 (C) Royalties.

5 (13) Physician: A medical doctor, a doctor of osteopathy, a doctor of oral surgery, a  
6 chiropractic doctor, a naturopathic doctor, or a doctor of psychology practicing only  
7 within the purview of their license issued by the designated authority of a state.

8 (14) Periodic review: A review of an active claim to determine whether or not the  
9 claim for disability benefit is still valid.

10 (15) Performance of duty: Mental or physical incapacitation caused by injury or  
11 disease sustained while actually on the job and is not intentionally self-inflicted. The  
12 injury or disease must be initially caused, aggravated or accelerated to cause  
13 incapacitation by the performance of the member's duties in the employment of a  
14 participating public employer. The job must be the major contributing cause of the injury  
15 or disease, not merely a contributing factor. Performance of duty includes whatever an  
16 employee may be directed, required or reasonably expected to do in connection with his  
17 or her employment, and not solely the duties peculiar to his or her position;

18 (16) Pre-existing condition: A condition which contributes to a duty disability; must  
19 be the major contributing cause of the disability.

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

23 (a) the past, present, or future physical or mental health of an individual,

1 (b) the provision of health care to an individual, or

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

4 (18) Qualifying position: One or more positions with a participating employer, in a  
5 participating class, which requires performance of 600 or more hours in a calendar year.

6 (19) Separation from all service: The date a member terminates from employment  
7 such that an employee/employer relationship no longer exists; the last day worked  
8 (physically on the job), the last day of paid leave, or the last day of an official leave of  
9 absence, whichever is the later.

10 (20) Similar in compensation: Salary or income, excluding overtime, equaling at  
11 least 80% of the monthly salary, as defined in section (9) of this rule, at the time of  
12 disability.

13 (21) Similar location: A position in the same general area of the applicant's  
14 residence or last employment location.

15 (22) Vocational evaluation: An evaluation conducted by a certified vocational  
16 consultant, to determine the ability of an applicant to perform any work for which they  
17 are qualified.

18 (23) Work related stress: conditions or disabilities resulting from, but not limited to:

19 (a) Change of employment duties;

20 (b) Conflicts with supervisors;

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

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

23 (e) Specific or general job dissatisfaction;

- 1 (f) Work load pressures;
- 2 (g) Subjective perceptions of employment conditions or environment;
- 3 (h) Loss of job or demotion for whatever reason;
- 4 (i) Fear of exposure to chemicals, radiation biohazards, or other perceived hazards;
- 5 (j) Objective or subjective stresses of employment; or
- 6 (k) Personnel decisions.

7

8 Stat. Auth: ORS 238A.450

9 Stats. Implemented: ORS 238A.235

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 076 - DISABILITY BENEFIT**

1 OAR 459-076-0005 is Added as Follows:

1 **459-076-0005**

2 **Eligibility for Disability Benefits**

3 (1) Only disabilities arising while the member is an active member of the OPSRP  
4 Pension Program and are expected to last for an extended duration qualify for the  
5 disability benefit under ORS Chapter 238A. Members with disabilities arising after a  
6 member has terminated employment from a qualifying position(s) are not eligible for a  
7 disability benefit.

8 (2) A member fails to meet the eligibility criteria for an OPSRP disability benefit:

9 (a) If the member is able to perform any work for which qualified, and

10 (b) Is able to generate other income that is similar in compensation, as defined in

11 OAR 459-076-0001(20), as of date of disability.

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

15 (4) Duty Disabilities. Applicants with less than ten years of OPSRP retirement  
16 credit must establish that they are members of OPSRP and were disabled while in the  
17 actual performance of duty. Work related stress, as defined in OAR 459-076-0001(23),  
18 will not be considered as the material contributing cause of a duty disability unless the  
19 applicant establishes all of the following:

1 (a) The employment conditions producing the work related stress exist in a real  
2 and objective sense,

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

8 (c) There is a diagnosis of a mental or emotional disorder which is generally  
9 recognized in the medical or psychological community, and

10 (d) There is evidence that the work related stress arose out of and in the course of  
11 employment.

12 (5) Non-Duty Disabilities. Eligible applicants must have a minimum of ten years  
13 of OPSRP retirement credit as calculated pursuant to ORS 238A.140, and the disability  
14 must arise while the applicant is an active member of the OPSRP Pension Program.

15 (6) Termination of OPSRP membership. Disability benefits are available only to  
16 OPSRP members. OPSRP membership is terminated by withdrawal under ORS  
17 238A.120 or forfeiture of retirement credit under ORS 238A.145. Therefore, former  
18 OPSRP members who have withdrawn or forfeited are not eligible to receive OPSRP  
19 disability benefit.

20

21 Stat. Auth: ORS 238A.120 and 238A.450

22 Stat. Implemented: ORS 238A.140 and 238A.235

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 076 - DISABILITY BENEFIT**

1 OAR 459-076-0010 is Added as Follows:

1 **459-076-0010**

2 **Criteria for Granting and Denying Disability Benefits**

3 (1) Medical documentation is required by PERS. Each disability benefit applicant  
4 shall supply any treating or consulting physician’s examination report or other medical  
5 information requested by PERS. PERS may make its determination based on a treating or  
6 consulting physician’s medical examination report or have the applicant examined by one  
7 or more physicians selected by PERS.

8 (2) The Board may deny any application or discontinue any disability benefit in  
9 the case of any person who refuses to submit to any medical examination or supply a  
10 completed application or review form.

11 (3) All claims of a disability must be supported by at least one physician’s report  
12 resulting from a physical examination documenting how the injury or disease  
13 incapacitates the member.

14 (4) In addition, a disability benefit applicant shall be required to furnish the  
15 following:

16 (a) For claims of mental or emotional disorder, at least one report of examination  
17 by a psychiatrist or at least one report of evaluation by psychologist when accompanied  
18 by a report of physical examination by a treating or consulting physician;

19 (b) For claims of orthopedic injury or disease, at least one report of a treating or  
20 consulting orthopedic specialist or neurosurgeon;



1 (c) For claims of neurological injury or disease, at least one report of treating or  
2 consulting neurologist or neurosurgeon;

3 (d) For claims of fibromyalgia, at least one report of a treating or consulting  
4 rheumatologist; and

5 (e) Any other specialized physician's report PERS deems necessary, after  
6 consultation with the PERS medical advisor.

7 (5) To demonstrate that he or she is unable to perform any work for which  
8 qualified, as defined in OAR 459-076-0001(1), the applicant shall document how the  
9 injury or disease incapacitates the applicant.

10 (a) In determining what work for which a member is qualified, the following  
11 factors shall be considered:

12 (A) Previous employment experience;

13 (B) Formal education;

14 (C) Formal training;

15 (D) Transferable skills;

16 (E) Age; and

17 (F) Physical or mental impairment.

18 (b) In determining what work for which a member is qualified, PERS may  
19 request, at PERS expense, a vocational evaluation be done by a vocational consultant  
20 who is fully certified as set forth in OAR 459-076-0001(2).

21 (c) The inability of the applicant to perform the duties of his or her last job, in  
22 itself, does not satisfy the criterion.

1           (5) When there is a dispute among medical experts, more weight will be given to  
2 those medical opinions that are both well reasoned and based on complete information.

3           (6) The Board may deny any application or discontinue any disability benefit if an  
4 applicant refuses to submit to an independent medical or vocational examination.

5

6 Stat. Auth: ORS 238A.450

7 Stat. Implemented: ORS 238A.235

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 076 - DISABILITY BENEFIT**

OAD 459-076-0020 is Added as follows:

1 **459-076-0020**

2 **Application Required**

3 (1) No disability benefit will be paid unless the member files a timely and complete  
4 application with PERS.

5 (a) For a member who is disabled due to injury or disease while the applicant is an  
6 active member and is separated from all service entitling the member to active  
7 membership in the system, but not separated from membership, the member must file an  
8 application for a disability retirement allowance within five calendar years of the last day  
9 worked; even though the member may continue on a paid leave or on an official leave of  
10 absence without pay. The disabling condition must have arisen while the applicant was  
11 an active member and be continuous from the date the member last worked to the date  
12 the application is filed.

13 (b) Members who become disabled due to injury or disease after the date of  
14 separation from all service entitling the member to active membership in the system, are  
15 not eligible for a disability benefit under ORS Chapter 238A.

16 (2) Applications will be made on forms prescribed by PERS. PERS may require the  
17 member to provide any information that PERS considers necessary to determine the  
18 applicant's eligibility for a disability benefit.

19 (3) Application may be made by a member or the member's authorized  
20 representative. A representative must submit to PERS written proof of the

1 representative's authority; such as, a power of attorney, guardianship or conservatorship  
2 appointment

3 (4) A member may make application immediately after the last day worked even  
4 though the member is on a paid leave or on an official leave of absence without pay. No  
5 application will be accepted that predates the last day the member was actually on the  
6 job.

7 (5) In determining the effective date of a disability benefit PERS may allow up to 60  
8 months of benefits retroactive from the date the application is filed with PERS, but in no  
9 case earlier than the first day of the month following the date of termination.

10 (6) Upon the filing of an application for a disability retirement benefit, PERS will  
11 notify the applicant's current or most recent employer of the filing. Additionally, PERS  
12 may request of an employer information pertaining to current or previous employment.

13 (7) When making application for a PERS disability benefit, PERS will request the  
14 applicant authorize any physician, health practitioner, hospital, clinic, pharmacy,  
15 employer, employment agency, or government agency to release and disclose to PERS,  
16 or independent physicians and vocational consultants retained by PERS, any information  
17 within their records or knowledge, including that information otherwise protected under  
18 federal or state law, regarding the applicant's health and employment which PERS  
19 determines relates to the applicant's claim of disability and inability to perform any work  
20 for which qualified.

21 (8) When filing an application for disability benefit, if the applicant wishes to  
22 authorize release and disclosure of protected health information, as defined in OAR 459-

1 015-0001(17), the applicant must complete and sign a consent form which specifically  
2 authorizes the release and disclosure of such information.

3 (a) This authorization is voluntary. Because PERS is not a covered entity as defined  
4 in 45 C.F.R. Parts 160 and 164, the protected health information is not subject to federal  
5 and state health information privacy laws, but is protected under Oregon State Public  
6 Record disclosure laws.

7 (b) This authorization may be revoked in writing at any time, except to the extent the  
8 entities named on the authorization form(s) have taken action in reliance of the  
9 authorization.

10 (c) If the applicant refuses to give or revokes authorization to disclose to PERS  
11 medical information that PERS determines it needs to evaluate the application, eligibility  
12 for a disability retirement allowance may be affected.

13

14 Stat. Auth.: ORS 238A.450 and 45 CFR Parts 160 and 164

15 Stats. Implemented: ORS 238A.235

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 076 - DISABILITY BENEFIT**

OAR 459-076-0025 is Added as Follows:

1 **D.5. Attachment 5459-076-0025**

2 **Application Processing – Independent Examinations and Appeals**

3 (1) Following the timely filing of a completed application, PERS may, at its  
4 discretion, request an independent medical exam or a vocational evaluation. If PERS  
5 requests one or more of these exams or evaluations, PERS will pay the reasonable  
6 associated expenses.

7 (a) For independent medical exams, PERS will inform the applicant in writing  
8 and postmarked not less than ten days prior to a scheduled examination, of the identity of  
9 the physician(s) selected to examine applicant, together with location, date and time.

10 (b) For vocational evaluations, the vocational consultant or locator service shall  
11 inform the applicant of the location, date and time of the scheduled examination.

12 (c) If the applicant fails to meet the scheduled appointment or fails to reschedule  
13 the examination within five days of notification, PERS will not reschedule an  
14 examination at PERS’ expense unless the applicant can demonstrate good cause for  
15 having failed to meet the scheduled appointment or reschedule the appointment as  
16 required.

17 (d) Good cause includes, but is not limited to:

18 (A) Physical or mental incapacitation preventing the member from meeting or  
19 rescheduling the examination;

1 (B) Failure of PERS or the vocational consultant or locator service to notify  
2 member by certified mail, return receipt requested;

3 (C) A death in the member's immediate family.

4 (e) Good cause does not include:

5 (A) A member's refusal to attend the scheduled appointment;

6 (B) A member's refusal to accept certified mail;

7 (C) A member's failure to meet the appointment with no reason provided; or

8 (D) A member's failure to make appropriate transportation arrangements.

9 (2) When PERS requires an applicant to travel to be examined by a physician,  
10 vocational consultant, or other professional, PERS will reimburse the applicant's  
11 reasonable transportation costs based on the least costly alternative and on availability.  
12 Travel by private vehicle will be compensated at the rate applicable to travel by  
13 unrepresented state employees on state business. Transportation by taxi, bus, rail, or other  
14 public carrier will be paid only upon presentation of receipts from the providers. Lodging  
15 and subsistence will be allowed only when a stop-over is necessary and will be paid at  
16 the rate applicable to unrepresented state employees traveling on state business.  
17 Reimbursements will be reduced by the amount of any penalty assessed PERS because of  
18 a member's failure to meet a scheduled appointment.

19 (3) In the event a member fails to meet a scheduled examination in accordance  
20 with section (1) of this rule, and PERS is assessed a penalty by the service provider for  
21 the failure to meet the scheduled appointment, the disability applicant will bear the cost  
22 of the penalty as follows:

1 (a) If the disability application is not approved, by making direct payment to the  
2 service provider who assessed the penalty, or

3 (b) If the disability application is approved:

4 (A) By making direct payment to the service provider who assessed the penalty,  
5 or

6 (B) By having the amount of the penalty deducted from the disability benefit  
7 payable to the member until the invoice is satisfied; but in no case will the deduction  
8 exceed ten percent of the monthly payment due the member.

9 (4) The Director, or the Director's designee, is hereby authorized to approve or  
10 deny a disability benefit application. Upon receipt and review of all necessary  
11 documentation, staff will present applicant's claim to the Director, or the Director's  
12 designee, with a recommendation to approve or to deny a disability benefit. The Director,  
13 or the Director's designee, may accept or reject the staff's recommendation, or refer the  
14 application back to staff for further documentation and review.

15 (a) If the Director, or the Director's designee, approves a disability claim, the staff  
16 will notify the applicant and the applicant's employer of such approval.

17 (b) If the Director, or the Director's designee, denies the disability claim, the staff  
18 will issue an Intent to Deny letter by regular and certified mail, return receipt requested.

19 The Intent to Deny letter will advise the applicant that additional information to  
20 substantiate the claim, or a request for an extension of 30 days to present additional  
21 information, may be submitted to the staff in writing within 30 days of the date of the  
22 Intent to Deny letter.



1 (5) Following the issuance of an Intent to Deny letter, staff will review any  
2 additional information submitted in a timely manner.

3 (a) If the additional information results in a recommendation to approve the  
4 application, staff will resubmit the application to the Director with the recommendation.

5 (b) If the additional information does not result in a recommendation to approve  
6 the application, PERS will issue a final denial letter by regular and certified mail, return  
7 receipt requested.

8 (c) If no additional information is received, PERS will issue a final denial letter  
9 by regular and certified mail, return receipt requested.

10 (6) The final denial letter will provide the applicant with notification of the right  
11 to request a contested case hearing as provided for in OAR 459-015-0030 and 459-001-  
12 0035.

13 (7) PERS will notify the most recent employer of the approval or the denial of an  
14 application for a disability benefit, a request for review of the Director's determination,  
15 and the Director's final action. Such notification will not contain any confidential  
16 information as defined in OAR 459-076-0001(3).

17

18 Stat. Auth: ORS 183.310 to 183.550, and 238A.450

19 Stat. Implemented: ORS 238A.235

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 076 - DISABILITY BENEFIT**

OAR 459-076-0045 is Added as Follows:

1 **459-076-0045**

2 **Cessation of Disability Benefits upon reaching Normal Retirement Age.**

3 (1) If a member who is receiving an OPSRP disability benefit reaches normal  
4 retirement age, as defined in OAR 459-076-0001(11), disability benefits will cease as of  
5 the first of the following month.

6 (2) The disability benefit will not automatically convert to a retirement benefit  
7 upon the member reaching normal retirement age. The member must apply for service  
8 retirement benefits before receiving them. In order to receive a service retirement benefit  
9 beginning in the month in which a disability benefit ceases under section (1) above, the  
10 member must:

11 (a) Complete the applicable Service Retirement application(s), and

12 (b) Submit the application(s) to PERS 92 days before the first of the month in  
13 which the disability benefit ceases under section (1). In no case will a service retirement  
14 benefit become payable during a month in which a member receives a disability benefit  
15 or earlier than the first of the month in which an application was submitted.

16 (3) The OPSRP retirement pension benefit will be based on:

17 (a) The adjusted salary as set forth in section (4) of this rule, and

18 (b) The total retirement credit accrued, set forth in section (5) of this rule.

19 (4) The salary the member was receiving immediately prior to leaving active  
20 employment as a result of disability will be adjusted for the cost-of-living for each year

1 after the member left employment and before the member's effective date of service  
2 retirement.

3 (a) Cost-of-living adjustments will be based on the Portland-Salem, OR-WA CPI  
4 and may not exceed a two percent increase or decrease for any year.

5 (b) Cost-of-living adjustments will be made only for calendar years in which the  
6 member received an OPSRP disability benefit for at least six months during a calendar  
7 year.

8 (5) Retirement credit. A member receiving OPSRP disability benefits will accrued  
9 retirement credit, as well as hours of service credit toward vesting, for the entire period of  
10 disability until:

11 (a) The member is no longer disabled, or

12 (b) The member reaches normal retirement age.

13 (6) The retirement credit will accrue under the same employment classification in  
14 which the member was immediately employed prior to becoming disabled.

15 (7) A member who is receiving disability benefits who reaches normal retirement  
16 age and has not applied for a service retirement will become an inactive member on the  
17 first of the month following the month in which they reach normal retirement age.

18

19 Stat. Auth: ORS 238A.450

20 Stat. Implementation: ORS 238A.155 and 238A.235

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 076 - DISABILITY BENEFIT**

OAD 459-076-0050 is Added as Follows:

1 **459-076-0050**

2 **Periodic Reviews**

3 (1) Members receiving a disability benefit are subject to periodic reviews of their  
4 disabled status until the member reaches normal retirement age or staff, in consultation  
5 with the PERS medical advisor, determines that periodic reviews are no longer  
6 warranted.

7 (2) Periodic reviews will be used to determine that continued disability retirement  
8 allowances are warranted. In recommending the continuance or discontinuance of a  
9 disability retirement allowance, for the original approved disability or a new medical  
10 condition, PERS will follow the criteria established under OAR 459-076-0010.

11 (3) For a duty disability, the periodic review will not revisit the original  
12 determination that the injury or disease was duty caused, unless there is evidence of  
13 misrepresentation or fraud.

14 (4) PERS will establish review dates for each member subject to a periodic review  
15 depending on type of disability, extent of disability, and medical reports unique to each  
16 individual case.

17 (a) The reviews may be medical or vocational in nature, or both.

18 (b) Upon review, PERS may accept or require:

19 (A) new treating or consulting physician or specialist reports,

20 (B) updated physician or specialist reports,

1 (C) independent medical or vocational examinations, or  
2 (D) employment and wage information, including but not limited to, tax returns or  
3 information from the State Employment Department.

4 (c) PERS may immediately discontinue the disability benefit of any person who  
5 refuses to provide current medical evidence or refuses to submit to an examination.

6 (A) If the Director discontinues the disability claim, the staff shall issue an Intent  
7 to Discontinue letter by regular and certified mail, return receipt requested. The  
8 discontinuation letter shall advise the applicant that additional information to substantiate  
9 the claim, or a request for an extension of 30 days to present additional information, may  
10 be submitted to the staff in writing within 30 days of the date of the Intent to Discontinue  
11 letter.

12 (B) Following the issuance of an Intent to Discontinue letter, staff will review any  
13 additional information which is submitted within 30 days.

14 (i) If the additional information results in a recommendation to approve the  
15 application, staff shall resubmit the application to the Director, or the Director's  
16 designee, with the recommendation.

17 (ii) If the additional information does not result in a recommendation to approve  
18 the application, PERS will issue a final discontinuation letter by regular and certified  
19 mail, return receipt requested.

20 (C) If no additional information is received within 30 days, PERS will issue a  
21 final discontinuation letter by regular and certified mail, return receipt requested.

1 (D) The final discontinuation letter will provide the applicant with notification of  
2 the right to request a contested case hearing as provided for in OAR 459-015-0030 and  
3 459-001-0035.

4 (5)The member has the burden to prove continuing eligibility for a disability  
5 benefit.

6 (6) In recommending the continuance or discontinuance of a disability benefit,  
7 PERS shall follow the criteria established under OAR 459-076-0010.

8 (7) The Director, or Director's designee, is hereby authorized to approve or deny  
9 the continuance of a disability benefit.

10 (8) If the Director, or Director's designee directs that a disability benefit be  
11 discontinued, the denial letter shall provide the applicant with notification of the right to  
12 request a contested case hearing as provided for in OAR 459-015-0030 and 459-001-  
13 0035.

14

15 Stat. Auth: ORS 238A.450

16 Stat. Implemented: ORS 23A8.235

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 076 - DISABILITY BENEFIT**

OAD 459-076-0055 is Added as Follows:

1 **459-076-0055**

2 **Payment of Disability Benefit**

3 (1) The payment of a disability benefit will commence on the later of:

4 (a) The first of the calendar month in which the member files an complete  
5 application for disability benefits with PERS, or

6 (b) The first of the month following the first full calendar month after final  
7 payment by the employer of any wages or paid leave benefits to the member, excluding  
8 any cash payoff of accrued vacation or compensatory time,

9 (c) Notwithstanding subsections (a) and (b) of this section, no payment shall be  
10 made prior to the end of the period of 90 consecutive days beginning with the date of  
11 disability as defined in OAR 459-015-0001(4), and

12 (d) A disability benefit will be retroactive to the effective date of disability  
13 benefit, as defined in Oar 459-076-0001(5).

14 (2) If PERS cannot calculate the actual disability benefit payment, an estimated  
15 payment will be made until PERS receives all the necessary information needed to  
16 calculate the actual benefit payment. The payment will be made retroactive to the  
17 effective date of disability if the benefits become due before the ninety consecutive day  
18 period of incapacitation has elapsed.

19 (a) If the estimated payment results in an underpayment of \$10 or more a month,  
20 the member will receive interest under the provisions of OAR 459-007-0015.

1 (b) If the estimated payment results in an overpayment of any amount, the  
2 overpayments may be recovered by decreasing the monthly benefit amount until the  
3 difference between the amount the member received and the amount the member should  
4 have received is recovered.

5 (3) In the event a member applying for a disability benefit dies prior to the  
6 Director's approval of the application:

7 (a) The application will be considered cancelled effective on the date of the  
8 member's death.

9 (b) The member will be considered as dying prior to retirement.

10 (c) If the member was vested and married at the time of death, the spouse of the  
11 deceased member will be eligible for an OPSRP death benefit as set forth in ORS  
12 238A.230.

13 (d) The amounts in the member's Individual Account Program (IAP) account(s),  
14 to the extent the member is vested in those accounts, will also be paid in a lump sum to  
15 the beneficiary or beneficiaries designated by the member for the purposes of the IAP.

16 (5) In the event a member applying for a disability benefit dies after the Director's  
17 approval of the application, the member will be considered as dying prior to retirement. If  
18 a married member is vested, the member's spouse will be eligible for an OPSRP death  
19 benefit as set forth in ORS 238A.230.

20 (6) For the period during which a member is receiving a disability benefit,  
21 retirement credit, as well as hours of service toward vesting, will be credited to the  
22 member if:



1           (a) The member accrued 10 years or more of retirement credit under the OPSRP  
2 pension Program prior to becoming disabled, or

3           (b) The member became disabled by reason of injury or disease sustained while in  
4 the performance of duty.

5

6 Stat. Auth: ORS 238.450

7 Stat. Implemented: ORS 238A.230 and 238A.235

**OREGON ADMINISTRATIVE RULE  
PUBLIC EMPLOYEES RETIREMENT BOARD  
CHAPTER 459  
DIVISION 076 - DISABILITY BENEFIT**

OAD 459-076-0060 is Added as follows:

1 **459-076-0060**

2 **Reduction Due to Workers' Compensation Payment**

3 (1) The total payments received by an OPSRP member receiving both OPSRP  
4 disability benefits and payments from Workers' Compensation may not exceed 75  
5 percent of the member's monthly salary as of the date the member becomes disabled.

6 Other disability-related income, such as Social Security and/or private disability  
7 insurance plan payments will not affect the amount of OPSRP disability benefits.

8 (2) A member's disability benefit will be offset by any gross monthly workers'  
9 compensation payment paid in a calendar month on account of temporary total disability  
10 or permanent total disability under the provisions of ORS Chapter 656; regardless of  
11 whether the condition on which the worker's compensation claim is based is related to the  
12 condition on which the OPSRP disability benefit claim is based.

13 (a) A monthly workers' compensation payment includes:

14 (A) Weekly gross payments;

15 (B) Semi-monthly gross payments;

16 (C) Monthly gross payments; and

17 (D) That portion of a lump sum payment of a workers' compensation disability  
18 claim that is expressly designated as compensation for temporary total disability or  
19 permanent total disability.

20 (b) A monthly workers' compensation payment does not include:

- 1 (A) Payments for medical services;
- 2 (B) Payments for vocational training;
- 3 (C) Reemployment assistance payments; and
- 4 (D) Any payment based on an employee's waiver of all rights to, and includes no  
5 payment for, a temporary total disability or a permanent total disability claim.

6 (c) The payment will be considered paid on the date that payment is issued, and  
7 will not be allocated to any period other than the month payment is issued.

8 (3) In the event a member is eligible to receive an OPSRP disability benefit,  
9 PERS will request of the Workers Compensation Division documentation of the portion  
10 of a lump sum settlement that is made on account of a temporary total disability or a  
11 permanent total disability.

12 (4) The disability allowance of a member will be reduced by the amount by  
13 which the combined monthly benefits payable from both PERS and any monthly worker's  
14 compensation payment on account of temporary total disability or permanent total  
15 disability exceed 75 percent of the monthly salary of the member on the date of  
16 disability.

17 (5) In determining whether the combined monthly benefits exceed 75 percent of  
18 the monthly salary of the member on the date of disability, cost-of-living adjustments  
19 will not be considered.

20 (6) A member who is eligible to receive a disability benefit must report  
21 immediately to PERS the receipt or the award of any monthly worker's compensation  
22 payment as described in section (2)(a) of this rule.

1           (7) In the event a member receives one or more monthly worker's compensation  
2 payment(s) while also receiving a disability benefit as described in OAR 459-076-0015,  
3 but PERS is not notified of the worker's compensation payment until after making one or  
4 more disability benefit payments:

5           (a) PERS will recalculate the disability benefit, taking the monthly worker's  
6 compensation payments into account; and

7           (b) PERS will invoice the member for, or recover under ORS 238.715, any  
8 overpayment of OPSRP disability benefits.

9

10 Stat. Auth.: ORS 238.715 and 238A.450

11 Stats. Implemented: ORS 238A.235



# Oregon

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May 9, 2005

**TO:** Members of the PERS Board  
**FROM:** Steve Delaney, PERS Deputy Director  
Tom Grimsley, PERS Board Member

MEETING	<b>5-20-05</b>
DATE	
AGENDA	<b>D.6.</b>
ITEM	Legislative Update

**SUBJECT:** 2005 LEGISLATIVE UPDATE

Both House and Senate committees are working to complete public hearings for those bills introduced in their respective chambers. It is anticipated that beginning this week committees will begin public hearings for bills passed by the other chamber. This is particularly relevant to PERS, as the PERS Board's five sponsored bills (SB 54, 108, 109, 110, and 111) have all passed out of the Senate and have been assigned to the House Business, Labor and Consumer Affairs Committee for several weeks.

No questions have been posed by House members with regard to the PERS Board-sponsored bills. It does appear that a dash 3 amendment will be introduced in the House Business, Labor and Consumer Affairs Committee for SB 111 [Clarify PERS is a single plan with four component programs]. Judge members are seeking modifications to their PERS retirement benefits (see SB 271) and believe the best chance of the Legislature adopting those modifications is by attaching them to the PERS Board's bill.

SB 1024, deleting the "earned when earned" language from the definition of "final average salary" for Oregon Public Service Retirement Plan (OPSRP) pension members is still under discussion by both employer and labor representatives. PERS has a strong interest in seeing this compromise through, as the administrative burden on the agency will be substantial if the current language is left unchanged. Presently assigned to the Senate Rules Committee, it is anticipated this bill may get a hearing some time this week.

PERS staff will provide a complete report on the status of each major PERS-related bill at the May 20 meeting of the PERS Board.

## NEW BILLS INTRODUCED SINCE THE APRIL BOARD MEETING

SB 766A – When introduced, this bill pertaining to salary contracts with school administrators did not directly impact PERS benefits. However, the A-engrossed version now includes a provision to allow the school district to make contributions to an optional retirement plan for administrators in lieu of making contributions to PERS.

HB 3471 – A revised version of HB 2641, which would have impacted the retirement benefits of public employees only. HB 3471 imposes minimum fine for individuals, public or private, convicted of a felony if the court determines that conduct on which conviction is based occurred while person was engaged in performance of a person's duties as an official or employee, or that individual was able to engage in the conduct because of the individual's job or position. Provides that if the individual has a retirement plan funded in part by individual's employer, fine may not be less than 25 percent of value of employee's interest in plan. Provides that 25 percent of beneficiary's interest in retirement plan is subject to execution for purpose of satisfying judgment in criminal action.

PERS BILLS

As of Monday, May 9 2005, the following 42 bills have been introduced relating to PERS:

Bill Numbers	Basic Concept
SB 54	A PERS Board Bill – Changes the trigger date for conversion to an Option 1 benefit from the date PERS is notified, to the date the event occurs.
SB 105	Modifies break in service rule governing membership in OPSRP by person who leaves public employment for more than six months. Provides that employee does not have break in service by reason of period of time during which employee leaves public employment because of injury or disease that entitles employee to receive service disability allowance.
SB 108	A PERS Board Bill – Housekeeping measure pertaining to the interaction of PERS 238 and OPSRP 238A.
SB 109	A PERS Board Bill – Amends unclear statutory direction regarding interest earnings for estimated payments.
SB 110	A PERS Board Bill – Provides that withdrawal of an account invalidates any beneficiary notification on file with PERS.
SB 111	A PERS Board Bill – For tax qualification purposes, clarifies that PERS is a single plan with component parts.
SB 188	Modifies break in service rule governing membership in OPSRP by person who leaves public employment for more than six months. Provides that seasonal employee does not have break in service by reason of period of time during which employee leaves employment based on seasonal nature of employment.
SB 271	Provides that judge member of PERS who fails to make plan election be retired under Plan B. Allows judge to retire under Plan B if judge is at least 58 years of age and has at least 21.75 years of creditable service as judge.

SB 302	Limits number of terms to which member of OIC may be appointed. Limits number of years a chairperson may serve. Requires sound recording be made of every meeting.
SB 497	Prohibits PERS Board from paying increased benefit by reason of state income taxation of payments made by board if person receiving payments is not resident of State and does not pay Oregon income tax.
SB 499	Classifies telecommunicators certified by Department of Public Safety Standards and Training as police officers for purposes of benefits under PERS.
SB 506	Classifies dog control officers and persons commissioned by sheriff to perform animal control duties as police officers for purposes of benefits under PERS.
SB 508	Removes limit on number of hours retired member may work and still qualify for retirement under OPSRP if retired member is employed by school district or education service district as other than teacher or management employee.
SB 766A	Limits amount of salary and benefits that school district, education service district or public charter school may pay administrator at end of contract. {+ Defines 'administrator' for purposes of Act. +} Prohibits district or school from granting administrator retirement benefits that are not available to other employees. {+ Provides that district or school may make contributions to retirement plan of administrator in lieu of making contributions to Public Employees Retirement System. +} Declares emergency, effective on passage.
SB 767	Provides that new employee of OSBA may not become member of PERS by reason of service to association.
SB 874	Requires PERS Board to allow retired members and beneficiaries to make voluntary annual contributions to organizations representing interests of retirees that have at least 100 members who are retired members of PERS and to certain charitable organizations.
SB 893	Allows school district or education service district to employ retired member of PERS to teach technology courses for any number of hours without affecting right of member to receive service retirement allowance if member has teaching license related to professional technical education.
SB 941	Identical to SB 893, allows retired member hired by a school district or education service district "to teach technology courses" to work unlimited hours.
SB 980	Classifies doctors and nurses who work at Oregon State Hospital as police officers for purposes of benefits under Public Employees Retirement System.

SB 1010	Allows member of Public Employees Retirement System who served in elective office before becoming member of system to acquire retirement credit for periods of service in elective office. Requires that member pay employee contributions for period of service sought, and interest.
SB 1019	Modifies break in service rule for members of Public Employees Retirement System. Among other provisions directs that person who is inactive member of Public Employees Retirement System on August 28, 2003, and who is reemployed in qualifying position on or before August 27, 2005, does not have break in service.
SB 1020	Provides that member of Public Employees Retirement System who retires under Oregon Public Service Retirement Plan and who is also receiving retirement allowance under ORS chapter 238 may be reemployed for period of time allowed under ORS chapter 238 and continue to receive pension under Oregon Public Service Retirement Plan.
SB 1021	Requires that Public Employees Retirement Board credit community college employee engaged in teaching with hours of service based on number of credit hours taught. Provides formula for determining number of hours of service attributable to each credit hour. Declares emergency, effective on passage.
SB 1022	Requires that Public Employees Retirement Board commence payment of death benefit under Oregon Public Service Retirement Plan as of date of death of member. Allows surviving spouse or other person entitled to payment to elect to delay payment of death benefit until specified date. Provides that death benefit under ORS chapter 238 includes amount contributed by employer equal to amount in employee account established for member under individual account program of Oregon Public Service Retirement Plan.
SB 1023	Provides that member of Public Employees Retirement System does not have break in service by reason of period of time during which member leaves employment with participating public employer pursuant to agreement with employer. Requires that agreement specify length of leave or provide that member will return to employment upon occurrence of specified event.



<p>SB 1024</p>	<p>(1) Modifies definition of 'final average salary' used to compute pension of member of Oregon Public Service Retirement Plan by eliminating the "earned when earned" provisions of ORS 238A.                  (2) Modifies overtime limitation on salary used for determination of pension under Oregon Public Service Retirement Plan. Allows public employer to establish more than one overtime average for class of employees based on geographic placement of employees.                  (3) Requires that Public Employees Retirement Board use definition of 'salary' provided by ORS chapter 238 for purpose of computing employee contributions of certain members of individual account program of Oregon Public Service Retirement Plan.</p>
<p>HB 2060</p>	<p>Authorizes community college districts to offer alternative retirement programs.</p>
<p>HB 2104</p>	<p>Modifies provisions governing Optional Retirement Plan established by State Board of Higher Education. Provides that employer contribution rate for plan be based on employer contributions to PERS without adjustment for lump sum payments to system by employers.</p>
<p>HB 2189</p>	<p>Provides that salary used to determine benefits of members of PERS includes wages of deceased member paid to spouse or dependent children.</p>
<p>HB 2434</p>	<p>Requires that employer of Tier One or Tier Two members continue to make contributions for member as though member continued to work during period in which member receives temporary total disability benefits under Workers' Compensation Law. Provides that contributions be based on salary of member at time member left work. Provides that final average salary of member be calculated as though member continued to work during period of temporary total disability, based on salary of member at time member left work.</p>
<p>HB 2436</p>	<p>Expands definition of 'salary' for purposes of benefits under Public Employees Retirement System. Provides that salary includes amounts contributed by employee to Health Savings Account or Health Reimbursement Arrangement.                  Expands definition of 'salary' for purposes of benefits under Public Employees Retirement System. Provides that salary includes amounts contributed by employee to Health Savings Account or Health Reimbursement Arrangement.</p>
<p>HB 2572</p>	<p>Directs PERS Board to calculate or recalculate retirement benefits of member of PERS if member is convicted of certain work related felonies. Requires board to pay convicted member only benefits that are funded by employee contributions.</p>

HB 2615	Provides that rules for accrual of retirement credit by school employees under OPSRP apply to employees of Oregon Health and Science University engaged in teaching or other school activity.
HB 2641	Provides that employer-funded portion of pension or retirement plan of public employee is subject to execution if employee is convicted of felony and court determines that conduct on which conviction is based occurred while employee was engaged in performance of duties, or that employee's position allowed employee to engage in conduct that is basis of conviction.
HB 2735	Provides that state agency may employ retired member of PERS to fill position only if state agency certifies to Oregon DAS that state agency has made good faith efforts for at least 45 days to fill position and public employer has been unable to find suitable person who is not retired member to fill position.
HB 2925	Classifies certain public employees as police officers for purposes of benefits under PERS. Applies only to service rendered on or after effective date of Act. This bill applies to certain employees with Oregon Military Department, OHSU & Juvenile case and detention workers.
HB 3041	Allows member of PERS who is police officer to receive retirement credit for service as public safety officer with another state, or political subdivision of another state, before being employed in position that entitled member to credit in system. Requires lump sum payment of full cost of retirement credit
HB 3262	Provides that member of PERS who acquires retirement credit for active service in Armed Forces may elect to have service retirement allowance determined under any calculation for which person is eligible, even if calculation does not produce largest service retirement allowance.
HB 3410	Allows eligible state employee who has deferred compensation to direct PERS Board to pay all or part of deferred amounts to individual rollover account. Allows use of moneys in rollover accounts established by members of PERS to pay costs of restoring forfeited creditable service and purchasing retirement credit as authorized by law.

<p>HB 3471</p>	<p>Imposes minimum fine for certain persons convicted of felony if court determines that conduct on which conviction is based occurred while person was engaged in performance of person's duties as official or employee, or that person was able to engage in conduct because of person's job or position. Provides that if person has retirement plan funded in part by person's employer, fine may not be less than 25 percent of value of employee's interest in plan. Provides that 25 percent of beneficiary's interest in retirement plan is subject to execution for purpose of satisfying judgment in criminal action.</p>
<p>HB 5059</p>	<p>Limits biennial expenditures from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by Public Employees Retirement System. Authorizes specified non-limited expenditures.</p>
<p>HB 5060</p>	<p>Approves new or increased fee adopted by Public Employees Retirement Board.</p>