State of Wisconsin
Department of Employee Trust Funds
Employee Trust Funds Board
Wisconsin Retirement Board
Teachers Retirement Board

The scope statement for this rule, SS 017-19, was approved by the Governor on January 30, 2019, published in Register No. 758A2, on February 11, 2019, and approved by ETF Secretary Robert Conlin on March 22, 2019.

An order to repeal ETF 50.42 (3m) and (4), 50.44 (2), 50.46, 50.48, 50.50, 50.54 (2), and 50.56 (2) (b); to renumber and amend 50.44 (1); to amend ETF 50.30 (1g), 50.40, 50.42 (1), 50.54 (3) and (4), 50.56 (title), (3) (a) 1., 4 (a), and (5), 50.62 (1) and (Notes) 1. and 2., 52.16 (4) (b) 2., and 52.22 (3); and to repeal and recreate ETF 50.58 and 50.60; relating to updating ETF rules to reflect the closure of the Long-Term Disability Insurance program to new claims and making technical changes to the ETF rules related to the Duty Disability Program established by s. 40.65, Stats.

Analysis Prepared by the Department of Employee Trust Funds

1. Statutes interpreted:
   Sections 40.63 and 40.65 Stats.

2. Statutory authority:
   Sections 40.03 (2) (i) and 227.11 (2) (a), Stats.

3. Explanation of agency authority:
   By statute, the ETF Secretary is expressly authorized, with approval by the Employee Trust Funds Board, Wisconsin Retirement Board and Teachers Retirement Board, to promulgate rules that are required for the efficient administration of the fund or of any of the benefit plans established by ch. 40 of the Wisconsin Statutes.

   In addition, each state agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

4. Related statutes or rules:
   There are no other related statutes or administrative rules directly related to this rule.

5. Plain language analysis:
   The purpose of this rule is to make technical updates to account for the previous closure of the LTDI program to new claims effective January 1, 2018. This consists of changes to ETF 50 such as repealing sections of the rules that are no

longer in effect due to the closure of LTDI, changing verb tenses to past tense, removing references in ETF 50 to sections of ETF 50 that are being repealed, and updating the percentages used to calculate annual adjustments to benefits to reflect current percentages.

Additionally, ETF proposes two minor technical modifications to the regulations related to the Duty Disability Program established by s. 40.65, Stats. These modifications clarify the amount of benefits refunded when the amount of benefits withheld pending receipt of worker's compensation benefits exceeds the amount of lump sum worker's compensation benefits eventually received and clarify to whom survivor benefits are not available in certain situations.

6. Summary of, and comparison with, existing or proposed federal statutes and regulations:
   There are no existing or proposed federal regulations that directly pertain to this proposed rule.

7. Comparison with rules in adjacent states:
   As the changes proposed are technical updates to correct obsolete language and make ETF rules consistent with recent program changes, there is no directly applicable comparison to adjacent states. Periodically, similar agencies in adjacent states promulgate technical rules to update existing administrative rules.

8. Summary of factual data and analytical methodologies:
   Due to the closure of the LTDI program to new claims, the ETF rules contain obsolete regulatory provisions, terms, and cross-references. These changes would allow ETF rules to be consistent with recent program changes, rather than continuing with outdated language in the code.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:
   This rule does not have an effect on small businesses because private employers and their employees do not participate in, and are not covered by, the Wisconsin Retirement System. Please see attached economic impact analysis.

10. Effect on small business:
    The rule has no effect on small businesses.

Text of Proposed Rule

SECTION 1. ETF 50.30 (1g) is amended to read:

ETF 50.30 (1g) For purposes of eligibility under s. 40.63 (1), Stats., ~~and notwithstanding s. ETF 50.46 (2) (b),~~ an election of coverage ~~filed under s. ETF 50.46 (1)~~ to receive benefits under subch. III previously filed with the department will not cause a person to be ineligible for a disability annuity if a claim is filed on or after January 1, 2018 and the person is not receiving benefits under subch. III.

SECTION 2. ETF 50.40 is amended to read:

ETF 50.40 Purpose. The purpose of this subchapter is to ~~provide~~ administer the long-term disability insurance ~~coverage to~~ program for participating employees ~~as of October 15, 1992, who elect its benefits as provided in s. ETF 50.46 and to all persons who become participating employees on or after October 16, 1992,~~ who are receiving benefits under this subchapter ~~or who have filed a claim for benefits~~. For a claim to be approved under this subchapter, it must have been filed with the department before January 1, 2018.

SECTION 3. ETF 50.42 (1) is amended to read:

ETF 50.42 (1) "Claimant" means a person ~~making~~ who made a claim for long-term disability benefits under this subchapter before January 1, 2018.

SECTION 4. ETF 50.42 (3m) and (4) are repealed.

SECTION 5. ETF 50.44 (1) is renumbered to ETF 50.44 and amended to read:

ETF 50.44 Scope and application. ~~Participating employees on or after October 16, 1992. Except as provided in sub. (2), this~~ This subchapter applies to any person ~~becoming a participating employee on or after October 16, 1992, regardless of any prior employment by a participating employer,~~ who is receiving benefits under this subchapter or has filed a claim for benefits with the department before January 1, 2018.

SECTION 6. ETF 50.44 (2) is repealed.

SECTION 7. ETF 50.46, 50.48 and 50.50 are repealed.

SECTION 8. ETF 50.54 (2) is repealed.

SECTION 9. ETF 50.54 (3) and (4) are amended to read:

ETF 50.54 (3) PERIODIC MEDICAL REVIEW. The department may require that any recipient shall be examined by at least one licensed and practicing physician, designated or approved by the department, during any calendar year the recipient receives benefits under this subchapter. The examining physician shall file with the department a written report of the examination which shall be in a form approved by the department and indicate whether the recipient is still totally and permanently disabled or, for a recipient qualifying under s. ETF 50.58 ~~(1)~~ only, whether the recipient recovered to the extent that the recipient can efficiently and safely perform the duties required by the recipient's former position as a protective occupation participant and whether the recipient recovered to the extent that the impaired condition is not likely to be permanent.

(4) REQUESTS FOR INFORMATION. The department may request any information on earnings, salary, wages, earned income, compensation or OASDHI benefits or entitlements as it deems necessary to implement the provisions of ~~sub. (2) and~~ s. ETF 50.52 (1), including but not limited to copies of state and federal income tax returns.

SECTION 10. ETF 50.56 (title) is amended to read:

ETF 50.56 Termination <u>or suspension</u> of benefits.

SECTION 11. ETF 50.56 (2) (b) is repealed.

SECTION 12. ETF 50.56 (3) (a) 1., (4) (a) and (5) are amended to read:

ETF 50.56 (3) (a) 1. The written physician's report required in s. ETF 50.54 (3) indicates that the recipient has recovered from the medically determinable impairment so that the recipient is no longer totally and permanently disabled, or, for a recipient ~~qualifying~~ <u>who qualified</u> under s. ETF 50.58 ~~(1)~~, recovered to the extent that the recipient can efficiently and safely perform the duties required by the recipient's former position as a protective occupation participant or that the recipient's impaired condition is not likely to be permanent. LTDI benefits are payable up to the date of recovery.

(4) (a) Except as provided in par. (b) and s. ETF 50.58 ~~(1) (c)~~ <u>(2)</u>, the payment of LTDI benefits shall be terminated and no LTDI benefits shall be payable after the first of the month in which a determination is made by the department that the recipient has received during the calendar year earnings or other earned income exceeding the earnings limit.

(5) TERMINATION UPON CERTAIN REEMPLOYMENT. LTDI benefits for a recipient under s. ETF 50.58 (1) ~~(a)~~ shall be terminated upon reemployment as provided in s. ETF 50.58 ~~(1) (d)~~ <u>(3)</u>.

SECTION 13. ETF 50.58 is repealed and recreated to read:

ETF 50.58 Special provisions applicable to protective occupation participants.

(1) NOT TOTALLY AND PERMANENTLY DISABLED. An LTDI recipient who is a protective occupation participant is not disqualified from receiving LTDI benefits although not totally and permanently disabled, provided the recipient's LTDI benefit was approved based on all of the following:

(a) The recipient had accumulated 15 or more years of creditable service and earned at least 0.33 years of creditable current service or prior service, or both, in each of at least 5 calendar years not including any calendar year preceding by more than 7 calendar years the year in which the claim for LTDI benefits was received by the department.

Note: The accumulated creditable service need not be in the protective employment category and may include military service.

(b) The recipient would have attained age 55 in 60 months or less after the occurrence of disability.

(c) The medical evidence established a disability to the extent that the participant could no longer efficiently and safely perform the duties required by the participant's position, and that the condition was likely to be permanent. In this paragraph, “medical evidence” means written certifications received by the department from at least 2 licensed and practicing physicians who have been approved or appointed by the department.

(2) EXCEEDING EARNINGS LIMIT. Notwithstanding s. ETF 50.56 (4) (a), LTDI benefits for a recipient under this section may not be terminated for exceeding the earnings limit. The payment of LTDI benefits shall be suspended and no LTDI benefits shall be payable after the first of the month in which a determination is made by the department that the recipient has received during the calendar year earnings or other earned income exceeding the earnings limit. Payment of LTDI benefits suspended under this paragraph shall resume on the first day of the next calendar year.

(3) REEMPLOYMENT IN LAW ENFORCEMENT OR FIRE FIGHTING. Payment of LTDI benefits shall be immediately terminated upon employment of a recipient in a law enforcement or fire fighting capacity.

SECTION 14. ETF 50.60 is repealed and recreated to read:

ETF 50.60 Plan funding. The actuary shall determine liabilities for the LTDI program annually and include those liability determinations in the calculation of contribution rates as determined under s. 40.05, Stats., for the Wisconsin retirement system, based on the information available at the time the determination is made and on the assumptions the actuary recommends and the employee trust fund board approves.

SECTION 15. ETF 50.62 (1) and (Notes) 1. and 2. are amended to read:

ETF 50.62 (1) Annual adjustments to benefits. The percentage of the annual adjustment to a recipient's LTDI basic benefits or retirement supplemental benefits under s. ETF 50.52 (1) (a) or (2) (b) shall be prorated in the first calendar year after the effective date of the benefits. The applicable adjustment percentage shall be determined by multiplying the percentages as applicable to post-retirement annuity adjustments under s. 40.27, Stats., by the proration factor from Table 1 according to the effective date the benefits began. If the resulting prorated adjustment percentage is less than ~~1%~~ 0.1%, no increase shall result.

EXAMPLE 1: A recipient begins to receive LTDI benefits effective August 10. The annual adjustment for the following year is an increase of ~~5%~~ 1%. The recipient would instead receive an increase of ~~1.67% (5% x 0.333 = 1.67%)~~ 0.33% (1% x 0.333 = 0.33%). The following year the annual adjustment is an increase of 6%. The recipient receives the entire 6% increase.

EXAMPLE 2: A recipient begins to receive LTDI benefits effective November 30. The annual adjustment for the following year is an increase of ~~5%~~ 1%. The recipient would receive no increase. Although ~~5% x 0.083 = 0.415%~~ 1% x 0.083 = 0.083%, this is less than ~~1%~~ 0.1% and therefore no increase results. The following year the annual adjustment is an increase of 6%. The recipient receives the entire 6% increase.

SECTION 16. ETF 52.16 (4) (b) 2. is amended to read:

ETF 52.16 (4) (b) 2. If the accumulated total of the amounts withheld under this subsection exceeds the participant's lump sum worker's compensation payment or compromise settlement, then the difference between the duty disability benefit that was paid and the benefit that would have been paid had the 5% not been withheld shall be refunded to the participant when the participant's worker's compensation benefits have been determined and the lump sum payment shall not otherwise reduce monthly duty disability benefits.

SECTION 17. ETF 52.22 (3) is amended to read:

ETF 52.22 (3) LIMITATIONS. If a protective occupation participant who was approved for duty disability benefits dies of a disease listed under s. 891.45, 891.453, or 891.455, Stats., but the benefit was not approved based on that disease, the surviving spouse ~~or~~, domestic partner ~~is~~, or surviving children of the protective occupation participant are not eligible to apply for death benefits as a result of that disease.

SECTION 18. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.