

## Chapter ETF 50

### DISABILITY BENEFITS

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**Subchapter I — Income Continuation Insurance**

**ETF 50.10 Public employer income continuation insurance.** (1) An employee of an employer, other than the state, shall be eligible for income continuation insurance under s. 40.61 (3), Stats., if the requirements of ss. 40.02 (46) and 40.22, Stats., are satisfied.

(3) The employer shall pay an employer contribution toward the income continuation insurance premium which is not less than the corresponding gross premium for the 180-day waiting period plan.

**History:** Cr. Register, December, 1987, No. 384, eff. 1–1–88; **CR 16–034: am.** (1) (intro.), r. (1) (a), (b), (c), (2) **Register April 2017 No. 736, eff. 5–1–17.**

**Subchapter II — Disability Annuity**

**ETF 50.30 Eligibility for a disability annuity.** (1) A person may be eligible for a disability annuity under s. 40.63, Stats., provided the person is not receiving benefits under subch. III.

(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 will not cause a person to be ineligible for a disability annuity if a claim is filed on or after January 1, 2018.

(1m) For purposes of eligibility under s. 40.63 (2), Stats., employment which is substantial gainful activity has intervened if, during any 12 consecutive calendar months beginning with the first of the month following the date service for the participating employer terminated, the participant received aggregate earnings, wages, salary and other earned income exceeding the annual dollar amount determined under s. 40.63 (11), Stats., that is in effect at the end of the 12 consecutive calendar month period.

(2) If the department determines that an applicant does not meet the requirements of s. 40.63 (1) (a), Stats., or this subchapter, the department shall deny the application. The applicant may file a written request for an appeal to the appropriate board under ch. ETF 11 no later than 90 days after the date the department's determination was mailed to the applicant.

(3) In measuring creditable service earned in a calendar year for purposes of s. 40.63 (1) (a), Stats., and in totaling accumulated creditable service for purposes of s. 40.63 (4), Stats., the creditable service shall be determined based upon the service that would have been credited if the participant's account had not been divided by a qualified domestic relations order to which s. 40.08 (1m) (b) 1., Stats., applied.

(3m) For purposes of s. 40.63 (1) (a), Stats., only, if a participant was previously receiving a long-term disability insurance benefit under subch. III, which was terminated for reasons other than fraud, misrepresentation, error, mistake or failure to provide required information, the participant is deemed to have received

full creditable service for any month for which the previous long-term disability insurance benefit was paid.

(4) For purposes of benefits administered under ch. 40, Stats., the participant shall be treated as terminated for all ch. 40, Stats., purposes effective on the date before the s. 40.63, Stats., annuity is effective or on the termination date reported to the department by the employer, whichever is earlier. The benefits include, but are not limited to, health insurance coverage, sick leave credit usage, life insurance coverage, income continuation insurance coverage, Wisconsin retirement system coverage and death benefits under s. 40.73 (1) (am) and (c), Stats., and deferred compensation contributions and benefits under s. 40.80, Stats. This rule does not preclude a participating employer from placing the participant on an administrative leave of absence for purposes of benefits not administered under ch. 40, Stats.

**History:** Cr. Register, September, 1983, No. 333, eff. 10–1–83; emerg. renum. to be (2) and am., cr. (1), eff. 10–15–92; renum. to be (2) and am., cr. (1) and (1m), Register, May, 1993, No. 449, eff. 6–1–93; cr. (3), Register, July, 1999, No. 523, eff. 8–1–99; am. (1m), Register, September, 2000, No. 537, eff. 10–1–00; **CR 08–026: cr.** (4) Register September 2009 No. 645, eff. 10–1–09; **CR 17–031: renum.** (1) (intro.) to (1) and am., r. (1) (a) to (c), cr. (1g), (3m) **Register December 2017 No. 744, eff. 1–1–18.**

**ETF 50.31 Cancellation of a disability annuity application.** An application for a disability annuity under s. 40.63, Stats., shall be canceled upon request of the applicant if the applicant's written request for cancellation is received by the department no later than the close of the department's regular office hours on the day before the participant's account in the employee accumulation reserve is debited for funding the benefit as provided by s. ETF 10.633 (1) (b). If the day before the debiting date falls on a Saturday, Sunday or holiday under s. 230.35 (4) (a), Stats., the request to cancel shall be considered timely only if received in the department by the close of regular office hours on the last working day preceding the Saturday, Sunday or holiday. Repayment in full of any sum paid under the application for which cancellation is sought shall be required. The employer may not make this payment on behalf of the recipient of the benefit.

**History:** Cr. Register, September, 1983, No. 333, eff. 10–1–83; am. Register, January, 1996, No. 481, eff. 2–1–96.

**ETF 50.32 Definitions.** In this subchapter and s. 40.63, Stats.:

(1) "Last day paid" means the most recent date for which the employee was paid earnings, including accumulated sick leave, other paid leave, vacation, compensatory time or worker's compensation temporary disability benefits which may result in the last day paid being subsequent to the date the employee last rendered services.

(2) "Last rendered services" means most recently performed actual work for which entitled to earnings, excluding any subsequent period on sick leave, other paid leave, vacation, compen-

satory time and worker's compensation temporary disability benefits.

(3) "Substantial gainful activity" means any work of a nature generally performed for remuneration or profit, involving the performance of significant physical or mental duties, or a combination of both, for which annual compensation exceeds an amount equal to \$6,573 for determinations made in the calendar year commencing on January 1, 1992. For determinations made in subsequent calendar years, this dollar amount shall be increased by the salary index for each subsequent year, ignoring fractions of the dollar. Work is considered substantial even if performed part-time and even if it is less demanding or less responsible than the individual's previous employment. Work is considered gainful even if it pays less than the individual's previous employment.

(4) The date on which service for the participating employer terminated, for purposes of s. 40.63 (2), Stats., is the date on which the person last rendered services as defined under sub. (2).

**History:** Emerg. cr. eff. 10–15–92; cr. Register, May, 1993, No. 449, eff. 6–1–93; cr. (4), Register, September, 2000, No. 537, eff. 10–1–00.

### Subchapter III — Long-Term Disability Insurance

**ETF 50.40 Purpose.** The purpose of this subchapter is to provide long-term disability insurance coverage to 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 with the department before January 1, 2018.

**History:** Emerg. cr. eff. 10–15–92; cr. Register, May, 1993, No. 449, eff. 6–1–93; CR 17–031: renum. (1) to ETF 50.40 and am., r. (2) Register December 2017 No. 744, eff. 1–1–18.

**ETF 50.42 Definitions.** Words, phrases and terms used in this subchapter have the same meaning as set forth in s. 40.02, Stats., and s. ETF 10.01, except as defined in this subchapter or where the context clearly indicates a different meaning. In this subchapter:

(1) "Claimant" means a person making a claim for long-term disability benefits under this subchapter.

(2) "Earnings limit" means an amount equal to \$6,573 for determinations made in the calendar year commencing on January 1, 1992, and for determinations made in subsequent calendar years, this amount shall be increased by the salary index for each subsequent year, ignoring fractions of the dollar.

(3) "Final average salary" or "FAS" means:

(a) Except as provided in par. (b), a monthly rate of earnings, ignoring any fractions of a dollar, obtained by dividing 36 into the participant's total earnings received and for which contributions are made under s. 40.05 (1) and (2), Stats., during the 3 annual earnings periods (excluding any period more than 3 years prior to the effective date for any participating employer) in which the earnings were the highest.

(b) If the claimant does not meet the minimum service requirements of s. ETF 50.50 (2) (b) and the claimant's medically determinable impairment is a result of employment as a participating employee for an employer, then the FAS is calculated as follows:

1. Divide the total earnings received by the employee in the portion of the annual earnings period in which the last day paid occurs and the 2 immediately preceding annual earnings periods by,

2. The number of months, with all fractions of a month rounded to the next higher whole number, between the last day paid and the commencement date of the earliest annual earnings period in subd. 1. or, if later, the date the claimant commenced participating employment.

(3m) "Last day paid," with respect to a claimant under this subchapter, has the same meaning as in s. ETF 50.32 (1).

(4) "Last rendered services" means most recently performed actual work for which entitled to earnings, excluding any subsequent period on sick leave, other paid leave, vacation, compensatory time or worker's compensation temporary disability benefits.

(5) "Long-term disability insurance" or "LTDI" means long-term disability insurance as provided under this subchapter.

(6) "Medically determinable impairment" means an impairment which has medically demonstrable anatomical, physiological or psychological abnormalities. The described abnormalities are medically determinable if they manifest themselves as signs or laboratory findings apart from symptoms which are not medically determinable.

(7) "Recipient" means a person receiving LTDI benefits under this subchapter.

(8) "Substantial gainful activity" has the same meaning as stated in s. ETF 50.32 (3).

(9) "Totally and permanently disabled" means the inability to engage in any substantial gainful activity by reason of a medically determinable impairment, whether physical or mental, which can reasonably be expected to result in death or to be permanent, or of indefinite and long-continued duration.

**History:** Emerg. cr. eff. 10–15–92; cr. Register, May, 1993, No. 449, eff. 6–1–93.

**ETF 50.44 Scope and application.** (1) PARTICIPATING EMPLOYEES ON OR AFTER OCTOBER 16, 1992. Except as provided in sub. (2), 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.

(2) PARTICIPATING EMPLOYEES PRIOR TO OCTOBER 16, 1992. (a) This subchapter does not apply to a person who is a participating employee on October 15, 1992, and continuously employed by one or more successive participating employers from that date until terminating employment or taking a final leave of absence due to a medically determinable impairment, unless the person elects to be covered by this subchapter as provided in s. ETF 50.46, and the person files a claim for benefits with the department before January 1, 2018.

(b) "Continuously employed" as used in this subsection means employed by successive employers without intervening periods of either unemployment or employment by anyone other than a participating employer.

**History:** Emerg. cr. eff. 10–15–92; cr. Register, May, 1993, No. 449, eff. 6–1–93; CR 17–031: am. (1), (2) (a) Register December 2017 No. 744, eff. 1–1–18.

**ETF 50.46 Optional election of coverage.** (1) RIGHT TO ELECT COVERAGE. Notwithstanding s. ETF 50.44 (2) (a), any participating employee not otherwise automatically covered under this subchapter may elect to be covered under the LTDI plan in lieu of coverage under s. 40.63, Stats.

(2) MANNER, EFFECTS AND DEADLINE. (a) An election must be in writing, signed by the employee and in a form approved by the department.

(b) The election to be covered under this subchapter is an irrevocable and absolute waiver of all rights to benefits of any kind under s. 40.63, Stats., by the participating employee and on behalf of his or her dependents, beneficiaries and estate.

(c) The election is effective upon receipt by the department.

(d) An election to be covered under this subchapter will not be accepted unless a claim for benefits has been filed with the department before January 1, 2018.

**Note:** Form ET-5321, "LTDI Election," may be obtained at no charge by writing to: department of employee trust funds, P.O. Box 7931, Madison, Wisconsin 53707-7931, or by calling (608) 266-3285 or toll free at (877) 533-5020.

**History:** Emerg. cr. eff. 10–15–92; cr. Register, May, 1993, No. 449, eff. 6–1–93; CR 17–031: r. and recr. (2) (d) Register December 2017 No. 744, eff. 1–1–18.

**ETF 50.48 Claim for benefits.** (1) CLAIMANT'S APPLICATION. A claimant shall establish that he or she meets all the

requirements to receive benefits under this subchapter. A claimant shall apply for benefits by making an application on the form approved by the department or by contacting the third-party administrator.

**Note:** Form ET-5313, "Long-Term Disability Benefit Claim Form" may be obtained at no charge by writing to: department of employee trust funds, P.O. Box 7931, Madison, Wisconsin 53707-7931, or by calling (608) 266-3285 or toll free at (877) 533-5020.

**(2) MEDICAL REPORTS.** Except as the department shall otherwise direct in writing, the claimant, at his or her own cost, shall be responsible for obtaining and delivering to the department medical reports from physicians approved or appointed by the department supporting the application, as provided in s. ETF 50.50 (6).

**Note:** Form ET-5338, "LTDI Medical Report" is sent to the applicant with the LTDI claim form ET-5313. Form ET- 5353, "LTDI Special Disability Medical Report" will be sent with the LTDI claim form upon request of a protective occupation participant.

**(3) EMPLOYER STATEMENT.** (a) The department shall provide the employer with a form for the employer to state the information necessary under s. ETF 50.50 (5).

(b) Each participating employer shall provide and state the following information to the department in response to an application for LTDI benefits:

1. The employer shall state the date on which the employee last rendered services.

2. The employer shall state the employee's last day paid and provide an explanation if this date is different from the date the employee last rendered services. The employer's explanation shall expressly identify payments including accumulated sick leave, other paid leave, vacation, compensatory time or worker's compensation temporary disability benefits which caused the last day paid to follow the date the employee last rendered services.

3. The employer shall state whether the employer has paid to the employee all earnings to which the employee is entitled and provide an explanation of earnings to which the employee remains entitled.

4. The employer shall describe the employee's present employment status, expressly including, if applicable, a statement that the claimant's employment is terminated or that the claimant is on a leave of absence and is not expected to resume active service. The statement shall include the date of the termination or of commencement of leave of absence, as applicable.

5. The employer shall state in writing on the employer statement form the reason for the employee's termination or leave of absence.

6. For a claimant who is an elected official only, the employer shall state the date of the end of the elected official's term of office.

(c) If an employer fails to provide the required report within 90 days of the department's request for an employer statement, the department may charge the employer \$20 for each calendar day following until the report is received by the department, plus interest at 0.04% per day on the unpaid balance of any charges under this paragraph as provided in s. 40.06 (3), Stats. This paragraph shall not in any way limit the employer's liability to a claimant whose application is void under sub. (5) as a result of the employer's failure to provide information required under this subsection.

**Note:** Form ET-5315, "Employer Statement (LTDI)," is sent to the employer by the department after a claim form is received.

**(4) DEPARTMENT DETERMINATION.** (a) The department shall report its determination to grant or deny each application for LTDI benefits to the employer and the claimant. A claimant or employer who wishes to contest the department's findings shall make a timely appeal to the employee trust funds board. If no timely appeal is filed, the department's determination to grant or deny the application for LTDI benefits shall be final.

(b) The department shall deny the application for LTDI benefits if it determines the claimant does not meet the applicable requirements or if any of the following apply:

1. The department receives a statement from the employer certifying that the employee's participating employment has not

been terminated, or the employee is on a leave of absence and is expected to resume active service.

2. The department determines the claimant fails to meet the minimum service requirements under s. ETF 50.50 (2) (b) and the physicians deny that the medically determinable impairment described in the claimant's application is a result of employment as a participating employee with the employer.

3. The department receives a written statement from the employer on the employer statement form indicating that the employee's termination or leave of absence was for a reason other than a medical issue.

(c) If the department's denial is based solely on par. (b) 1. or 3., or both, and the claimant appeals the denial, the employee trust funds board's decision shall include a finding as to whether the employer's responses on the employer statement form were reasonable and correct. If the employee trust funds board determines that the employer's responses were unreasonable and incorrect, the employee trust funds board decision shall include an order to the employer to amend the statement and an order to the department to process the LTDI application when the amended statement is received.

**(5) INCOMPLETE APPLICATION VOID.** Except as provided in sub. (6), if any of the evidence required by subs. (1) to (3) and s. ETF 50.50 (1) to (6) is not received within 12 months after the date the claimant's application for LTDI benefits is received by the department, the application shall be canceled and void. The claimant may reapply for LTDI benefits if otherwise still eligible.

**(6) DEATH OF CLAIMANT.** (a) If a claimant dies prior to the date a decision regarding the approval or disapproval of an application for LTDI benefits becomes final under sub. (4) (a), the application is deemed to have been approved prior to the claimant's death if all of the following apply:

1. The claimant was eligible for the disability benefit.

2. Prior to the date of the claimant's death, the department received an application for LTDI benefits in the form approved by the department and at least one written qualifying medical certification under s. ETF 50.50 (6).

3. The claimant died on or after the date which would have been the effective date of the LTDI benefits.

(b) For the purposes of this subsection, a claimant is conclusively presumed not eligible for LTDI benefits if the application is based on an alleged medically determinable impairment which was the basis for a previous application which the department denied.

(c) This subsection shall not be construed to create any entitlement for any person to receive LTDI benefits for any period beyond the applicable termination date under s. ETF 50.56.

(d) Payment for LTDI benefits owed to the deceased claimant under this subsection shall be made to the claimant's estate, regardless of any beneficiary under s. 40.02 (8), Stats.

**(7) Claims filed under this subchapter that are received by the department after December 31, 2017 will not be accepted.**

**History:** Emerg. cr. eff. 10-15-92; cr. Register, May, 1993, No. 449, eff. 6-1-93; cr. (4) (c), Register, December, 1998, No. 516, eff. 1-1-99; CR 02-057; am. (3) (a), (b) and (c) and (4) (b) 1. to 3. and (c), r. and recr. (3) (b) 5. and 6, r. (3) (b) 7., to 10., Register November 2002 No. 563, eff. 12-1-02; CR 14-055; am. (1), (3) (a), (b) 5., (4) (b) 3., (c) Register May 2015 No. 713, eff. 6-1-15; CR 17-031; am. (4) (a), (c), cr. (7) Register December 2017 No. 744, eff. 1-1-18.

**ETF 50.50 Eligibility for LTDI benefits.** Any participant in the Wisconsin retirement system is entitled to LTDI benefits if all of the following requirements are met:

**(1) PARTICIPATING EMPLOYEE.** (a) The claimant is a participating employee or deemed to be a participating employee under par. (c).

(b) A participating employee may file an application for LTDI benefits as if the last day worked were the last day paid, provided the employer certifies that the employee's date of termination of employment is being extended past the last day worked due to a

payment for accumulated sick leave, vacation, compensatory time, or payment of worker's compensation temporary disability benefits.

(c) A claimant who terminated employment with an employer prior to applying for LTDI benefits is deemed to be a participating employee for purposes of this subsection if all of the following apply:

1. The termination of active service for the participating employer was due to a medically determinable impairment.

2. The claimant is not employed by any employer as defined in s. 40.02 (28), Stats.

3. Excluding earnings from the claimant's last participating employer, the claimant has not received aggregate earnings, wages, salary and other earned income in any 12 consecutive calendar months beginning with the first of the month following the date the claimant last rendered services to the participating employer exceeding the annual dollar amount determined under s. ETF 50.32 (3) that is in effect at the end of the 12 consecutive calendar month period.

**(2) SERVICE QUALIFICATIONS.** (a) *Minimum period of employment.* An employee must first qualify as a participating employee to be eligible for benefits under this subchapter. Notwithstanding s. 40.22 (6), Stats., or sub. (1), no employee who terminates employment with an employer after a period of less than 30 calendar days is eligible for benefits under this subchapter.

(b) *Minimum creditable service.* Except as provided in par. (c), the claimant must have 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 is received by the department. Service credit purchased under s. 40.285 (2) (a), Stats., may be counted towards this requirement only if the service itself was rendered during the calendar year of the application or the preceding 7 calendar years. For this purpose, the service credit purchased under s. 40.285 (2) (a), Stats., shall be allocated to the specific year or years as the forfeited service was originally credited. Purchase of forfeited service may not qualify a person under this paragraph if the person would not have qualified had no service been forfeited. Creditable military service granted under s. 40.02 (15) (a), Stats., or the federal uniformed services employment and reemployment rights act is counted towards this requirement as if the employee had been employed by a participating employer during the period of service. Creditable military service granted under s. 40.02 (15) (c), Stats., does not satisfy this requirement.

**Note:** The use of purchased service credit to meet this requirement for creditable service in certain annual earnings periods is an express exception to the general rule of s. ETF 20.17 (1) (d) 4.

(c) *Creditable service; previous disability annuity.* For purposes of par. (b) only, if a claimant was previously receiving a disability annuity under s. 40.63, Stats., which was terminated, or LTDI benefits which were terminated for reasons other than fraud, misrepresentation, error, mistake or failure to provide required information, the claimant is deemed to have received creditable service for any month or portion of a month for which the terminated disability annuity or LTDI benefit was paid.

(d) *Waiver for work-related disability.* The minimum creditable service requirement of par. (b) is waived if the claimant meets both of the following qualifications:

1. The claimant's medically determinable impairment is a result of employment as a participating employee for an employer.

2. The claimant last rendered services as an employee to a participating employer not more than 2 years prior to the date the claim for LTDI benefits is received by the department.

**(3) TOTALLY AND PERMANENTLY DISABLED.** The claimant is totally and permanently disabled and suffered the medically determinable impairment associated with the disability in the time period during which the claimant was a participating employee.

**Note:** For claimant who is a protective occupation participant, see alternative degree of disability in s. ETF 50.58 (1) (a).

**(4) NO EARNINGS PAYABLE.** The claimant is not entitled to any earnings from any participating employer. In this subsection and sub. (5), "earnings" does not include bonus compensation to which the employee is entitled under s. 25.156 (7) (a), 1997 Stats.

**Note:** Section 25.156, Stats., was repealed by 1999 Wis. Act 9, but the compensation allowed by that section is still potentially payable.

**(5) EMPLOYER STATEMENT.** (a) The department receives a statement from the employer certifying the information required under s. ETF 50.48 (3) (b) and certifying that the employer has paid to the employee all earnings to which the employee is entitled, and that one of the following applies:

1. The employee is on a leave of absence and is not expected to resume active service and, as a consequence, the employee is not entitled to any further earnings from the employer.

2. The employee's participating employment has been terminated and, as a consequence, the employee is not entitled to any further earnings from the employer.

(b) The requirement of par. (a) is not met if the employer certifies the employee was not terminated or not on leave of absence or because the employee's termination or leave of absence was for a reason other than a medical issue.

**(6) PHYSICIAN CERTIFICATIONS.** Except as provided in s. ETF 50.48 (6) (a) 2., the department has received certifications in writing from at least 2 licensed and practicing physicians approved or appointed by the department that the employee is disabled as described in sub. (3) or, for a protective occupation participant who meets the requirements of s. ETF 50.58 (1) (a), disabled as described in s. ETF 50.58 (1) (a) 3.

**History:** Emerg. cr. eff. 10–15–92; cr. Register, May, 1993, No. 449, eff. 6–1–93; am. (1) (c) 3., Register, September, 2000, No. 537, eff. 10–1–00; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register November 2002 No. 563; CR 02–057: am. (5) (a) (intro.) and 2., cons. and am. (5) (b) (intro.) and 1., Register November 2002 No. 563, eff. 12–1–02; CR 07–062: am. (2) (b) Register June 2008 No. 630, eff. 7–1–08; CR 14–055: am. (1) (c) 2., (5) (b) Register May 2015 No. 713, eff. 6–1–15.

**ETF 50.52 LTDI benefits. (1) BASIC BENEFIT.** (a) *Benefit amount.* The basic LTDI benefit payable to recipients shall be a monthly payment of 40% of the recipient's final average salary or 50% of FAS for a recipient not personally covered under OASD-HI. The basic benefit amount, once determined, shall subsequently be adjusted at the same time and by the same percentages as applicable to post-retirement annuity adjustments under s. 40.27, Stats.

(b) *Reductions and offsets.* 1. The department shall reduce the amount of a recipient's monthly LTDI benefits under par. (a) by the amounts in subs. 2. and 3. The amount by which any lump sum benefit or separation benefit under subd. 2. exceeds the basic monthly LTDI benefit otherwise payable shall be carried over to reduce basic LTDI benefits payable in future months until the amount of the lump sum or separation benefit has been completely offset.

2. LTDI benefits shall be offset by an amount equal to the portion of any retirement annuity or lump sum benefit or separation benefit under s. 40.23, 40.24 or 40.25, Stats., on which the recipient is subject to federal income tax. This subdivision applies to any retirement annuity or lump sum benefit or separation benefit which is paid to the recipient as a result of the recipient's application for the annuity or benefit, excluding any benefit funded by employee additional contributions. This subdivision does not apply to an annuity or lump sum benefit for which the recipient is eligible solely as a beneficiary, alternate payee or joint survivor of another participant.

3. LTDI benefits shall be offset by the amount of any normal form retirement annuity or lump sum retirement benefit under s. 40.23 or 40.25, Stats., for which the recipient is eligible, including a separation benefit that the recipient is eligible to receive under s. 40.23 (2m) (er) or 40.23 (3) (b), Stats., excluding the portion of any annuity or lump sum benefit or separation benefit on which

the recipient would not be subject to federal income tax, or a benefit funded by employee additional contributions. Except for a protective occupation recipient, this offset shall be computed as of the recipient's normal retirement age. This subdivision applies only after a recipient's normal retirement date as defined by s. 40.02 (42), Stats. For a protective occupation recipient, the offset shall be computed as of the recipient's 62<sup>nd</sup> birthday. This subdivision does not apply to an annuity for which the recipient is eligible solely as a beneficiary, alternate payee or joint survivor of another participant.

(c) *Proration.* Initial monthly LTDI benefits beginning on other than the first day of a month and final LTDI benefits ending on other than the last day of a month are prorated based on effective date and termination date as provided in s. ETF 50.62.

(2) **LTDI RETIREMENT SUPPLEMENTAL BENEFIT.** (a) In addition to the basic LTDI benefit payable to a recipient, the LTDI program shall pay a retirement supplemental benefit in the form of an employer additional contribution to the Wisconsin retirement system for recipients qualifying under this subsection.

(b) The LTDI retirement supplemental benefit due shall be 7% of the recipient's FAS for each month a recipient qualifies under par. (d). Except as provided in sub. (1) (c), the LTDI retirement supplemental benefit is not prorated. If a recipient is not qualified for the LTDI supplemental benefit on any day during a month, no LTDI supplemental benefits are payable for that month. The supplemental LTDI benefit amount, once determined, shall subsequently be adjusted at the same time and by the same percentages as applicable to post-retirement annuity adjustments under s. 40.27, Stats.

(c) As of December 31 each year, the supplemental LTDI benefit due for each of the preceding 12 months during which the recipient qualified under par. (d) to receive the retirement supplemental LTDI benefit shall be credited to the recipient's WRS employer additional contributions account.

(d) A recipient qualifies for retirement supplemental LTDI benefits if all of the following apply:

1. LTDI benefits have not been terminated or suspended under s. ETF 50.56.

2. The recipient does not earn any creditable service.

3. Payment of the LTDI retirement supplemental benefit would not exceed any limitation on additional contributions or cause the Wisconsin retirement system to fail to meet requirements for a qualified plan under the U.S. internal revenue code, applicable regulations adopted under the U.S. internal revenue code, including proposed regulations in force pending adoption, or rules of the department.

4. The recipient has not applied for any retirement annuity or lump sum retirement or separation benefit from the Wisconsin retirement system, other than a benefit funded by employee additional contributions or from a Wisconsin retirement system account held as an alternate payee. Qualification ceases on the effective date of a retirement annuity or other benefit or the approval date of a separation benefit. This subdivision shall not apply if the application is withdrawn, void, canceled or not granted.

5. The recipient is not qualified to receive duty disability benefits under s. 40.65, Stats., regardless of the amount of duty disability benefits actually received.

(e) Monthly LTDI retirement supplemental benefits due are prorated based on the effective beginning date and termination date as provided in s. ETF 50.62.

(3) **CONTINUATION OF GROUP HEALTH INSURANCE COVERAGE FOR STATE EMPLOYEES.** Pursuant to s. 40.51 (3), Stats., a recipient of LTDI benefits under this subchapter who is an insured employee under any group health insurance plan for state employees insured directly by the public employee trust fund shall also be entitled to continuation of that group health insurance in the

same manner and to the same extent as is a disability annuitant under s. 40.63, Stats. Effective no later than January 1, 1993, contracts between the group insurance board and other insurers of group health insurance plans covering state employees shall provide the same continuation rights for recipients insured under those plans.

**History:** Emerg. cr. eff. 10–15–92; cr. Register, May, 1993, No. 449, eff. 6–1–93; CR 11–040: am. (2) (a) Register July 2012 No. 679, eff. 8–1–12; CR 14–055: am. (1) (b) 3. Register May 2015 No. 713, eff. 6–1–15.

#### **ETF 50.54 Administration. (1) PLAN ADMINISTRATOR.**

The department shall administer the plan established by this subchapter on behalf of the employee trust funds board unless otherwise expressly provided in an administrative services contract between the employee trust funds board and an outside administrator.

(2) **EFFECTIVE DATE OF BENEFITS.** The department shall begin payment of LTDI benefits on the later of the following dates:

(a) The first day of the first month beginning on or after 90 days preceding receipt of the application for LTDI benefits by the department.

(b) The first day after the date of termination of employment from the last participating employer by which the recipient was employed, as reported to the department by the employer. When the claimant is on a leave of absence, the date of termination of employment for effective date purposes shall be deemed to be the recipient's last day paid.

(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.

**Note:** Form ET–5909, "Recertification Medical Report," is sent to the claimant by the department as necessary.

(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.

(5) **APPLICATION OF ANTI-FRAUD STATUTE.** This subchapter is an employee benefit program created under ch. 40, Stats., through rule-making authority expressly granted in that chapter, for purposes of enforcement of the prohibitions of s. 943.395 (1) (c), Stats. Prohibited acts include presenting or causing to be presented false or fraudulent information, including a claim or benefit application, proof in support of a claim or benefit application, or information which would affect a future claim or application.

(6) **OVERPAYMENT.** Section 40.08 (4), Stats., shall apply to obtain repayment of any overpayment of LTDI benefits.

**History:** Emerg. cr. eff. 10–15–92; cr. Register, May, 1993, No. 449, eff. 6–1–93; CR 17–031: am. (1) Register December 2017 No. 744, eff. 1–1–18.

**ETF 50.56 Termination of benefits. (1) DURATION OF BENEFITS.** Except as otherwise provided in this section:

(a) For a recipient whose LTDI benefit effective date is prior to the date the recipient attains age 61, all LTDI benefits terminate at the end of the month in which the recipient attains age 65.

(b) For a recipient whose LTDI benefit effective date is on or after the date the recipient attains age 61 and prior to the date the recipient attains age 63, all LTDI benefits terminate at the end of the month in which the recipient attains age 66.

(c) For a recipient whose LTDI benefit effective date is on or after the date the recipient attains age 63 and prior to the date the recipient attains age 65, all LTDI benefits terminate at the end of the month in which the recipient attains age 67.

(d) For a recipient whose LTDI benefit effective date is on or after the date the recipient attains age 65 and prior to the date the recipient attains age 67, all LTDI benefits terminate at the end of the month in which the recipient attains age 68.

(e) For a recipient whose LTDI benefit effective date is on or after the date the recipient attains age 67 and prior to the date the recipient attains age 68, all LTDI benefits terminate at the end of the month in which the recipient attains age 69.

(f) For a recipient whose LTDI benefit effective date is on or after the date the recipient attains age 68 and prior to the date the recipient attains age 69, all LTDI benefits terminate at the end of the month in which the recipient attains age 70.

(g) For a recipient whose LTDI benefit effective date is on or after the date the recipient attains age 69, all LTDI benefits terminate 12 months after the LTDI benefit effective date.

(h) Notwithstanding pars. (a) to (g), no LTDI benefits shall be payable for any date after the recipient's death.

(i) The effective date used to determine the duration of LTDI benefits is the effective date of the benefits being paid, not the effective date of terminated LTDI benefits paid under a previous application.

(j) The duration of LTDI benefits for recipients whose LTDI benefit effective date is on or after the date the recipient attains age 61 shall be periodically reviewed and may be revised based on the actuary's determinations, as approved by the employee trust funds board, so as to provide LTDI benefits meeting equal cost standards under federal age discrimination law. As part of the regular 3-year general investigation under s. 40.03 (5) (b), Stats., beginning with the investigation based on data through 1996, the actuary shall determine the appropriate duration for LTDI benefits beginning at and after age 61. The employee trust funds board shall be responsible for approving any change to the duration of LTDI benefits. If the duration of LTDI benefits is changed, the duration of LTDI benefits being paid as the result of an application received by the department prior to the effective date of the change shall not be affected. Any such revision shall be effective upon promulgation as an amendment to this rule by the employee trust funds board.

**(2) TERMINATION FOR FRAUD, MISREPRESENTATION, ERROR OR MISTAKE.** (a) Payment of LTDI benefits may be terminated immediately and overpayment recovered upon a department determination of either of the following:

1. LTDI benefits were granted as the result of fraud or misrepresentation in the application or in required evidence of eligibility.

2. LTDI benefits were granted due to an error or mistake by the department or due to an error or mistake in the information supplied by the employer used for determining eligibility, effective date or amount of LTDI benefits.

(b) A department determination under par. (a) shall be treated as a department denial of the application for LTDI benefits as provided in s. ETF 50.48 (4).

(c) The amount of monthly LTDI benefits may be altered upon a determination that the amount of LTDI benefits was computed in error.

(d) LTDI benefits may be terminated effective upon a determination by the department that the recipient has made misrepresentations or submitted false or fraudulent information regarding continued disability, earnings, wages, salary or other earned income.

(e) If the department alters the amount of monthly LTDI benefits under par. (c) or terminates payment of LTDI benefits under par. (d), the department shall send notice of the action to the recipient. The notice shall be in the form of a written determination stat-

ing the reasons for the termination. The recipient may file a timely appeal of the alteration or termination with the employee trust funds board as provided in ch. ETF 11. If no timely appeal is filed, the alteration or termination of LTDI benefits is final.

**(3) TERMINATION UPON RECOVERY OR FOR FAILURE TO FURNISH INFORMATION.** (a) The payment of LTDI benefits shall be terminated based on a determination by the department of any of the following:

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 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.

2. The recipient refuses to submit to an examination under s. ETF 50.54 (3) or refuses to submit information regarding earnings, wages, salary or other earned income as requested by the department. LTDI benefits shall not be payable for any month following the deadline for the recipient's compliance set by the department.

(b) If the department terminates payment of LTDI benefits under this subsection, the department shall send notice of the termination to the recipient. The notice shall be in the form of a written determination stating the reasons for the termination. The recipient may file a timely appeal of the termination with the employee trust funds board, as provided in ch. ETF 11. If no timely appeal is filed, the termination of LTDI benefits is final.

**(4) TERMINATION OR SUSPENSION BASED ON EARNINGS.** (a) Except as provided in par. (b) and s. ETF 50.58 (1) (c), 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.

(b) On the first occasion that the department determines that the recipient has exceeded the earnings limitation as described in par. (a), the payment of LTDI benefits shall be suspended rather than terminated. Payment of LTDI benefits suspended under this paragraph shall resume on the earlier of the first day of the next calendar year or the first day of the second month following the termination of personal services due to recurrence of the medically determinable impairment which was the basis for payment of LTDI benefits. A recipient's LTDI benefits may only be suspended once and must be terminated if par. (a) subsequently applies.

**(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).

**History:** Emerg. cr. eff. 10-15-92; cr. Register, May, 1993, No. 449, eff. 6-1-93; CR 17-031: am. (1) (j), (2) (e), (3) (b) Register December 2017 No. 744, eff. 1-1-18.

**ETF 50.58 Special provisions applicable to certain categories of employment.** **(1) PROTECTIVE OCCUPATION PARTICIPANTS.** (a) *Not totally and permanently disabled.* Notwithstanding s. ETF 50.50 (3), an otherwise qualifying claimant who is a protective occupation participant is not disqualified from receiving LTDI benefits although not totally and permanently disabled, provided all of the following apply:

1. The claimant has accumulated 15 or more years of creditable service and also meets the requirements of s. ETF 50.50 (2) (b).

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

2. The claimant would attain age 55 in 60 months or less after the occurrence of disability.

3. The medical evidence, as provided in s. ETF 50.50 (6), establishes a disability to the extent that the participant can no longer efficiently and safely perform the duties required by the participant's position, and that the condition is likely to be permanent.

**Note:** Form ET-5353, "LTDI Special Disability Medical Report" is available upon request from the department, P.O. Box 7931, Madison, Wisconsin 53707-7931.

(b) *Integration with benefits under s. 66.191, 1981 Stats.* Any person entitled to payments of LTDI benefits who may otherwise be entitled to payments under s. 66.191, 1981 Stats., may file with this department and the department of workforce development a written election to waive payments due under this subchapter and accept in lieu of the payments under this subchapter payments as may be payable under s. 66.191, 1981 Stats., but no person may receive payments under both s. 66.191, 1981 Stats., and this subchapter. However, any person otherwise entitled to payments under this subchapter may receive the payments, without waiver of any rights under s. 66.191, 1981 Stats., during any period as may be required for a determination of the person's rights under s. 66.191, 1981 Stats. Upon the final adjudication of the person's rights under s. 66.191, 1981 Stats., if waiver is filed under this paragraph, the person shall immediately cease to be entitled to payments under this subchapter and the LTDI account shall be reimbursed from the award made under s. 66.191, 1981 Stats., for all payments made under this subchapter.

(c) *Exceeding earnings limit.* Notwithstanding s. ETF 50.56 (4) (a), LTDI benefits for a recipient under sub. (1) 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.

(d) *Reemployment in law enforcement or fire fighting.* Payment of LTDI benefits shall be immediately terminated upon employment of a recipient under sub. (1) in a law enforcement or fire fighting capacity.

(2) **ELECTED OFFICIALS.** For purposes of the department's determination of eligibility under s. ETF 50.50 (1), an elected official shall be considered to have terminated active service due to disability if the medically determinable impairment is determined to exist at the end of the elected official's term of office.

**History:** Emerg. cr. eff. 10-15-92; cr. Register, May, 1993, No. 449, eff. 6-1-93; CR 11-040: am. (1) (b) Register July 2012 No. 679, eff. 8-1-12.

**ETF 50.60 Plan accounting.** (1) **LTDI ACCOUNT.** A separate account for the LTDI program shall be maintained within the public employee trust fund.

(2) **INSURANCE PREMIUMS.** (a) The employee trust funds board shall pay a monthly premium to the LTDI program account for the LTDI coverage provided to participating employees under this subchapter.

(b) The initial amount of the required monthly premium shall be as determined and certified by the actuary. The actuary shall determine and certify future required premiums annually at the same time contribution rates are 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 assump-

tions the actuary recommends and the employee trust funds board approves.

**History:** Emerg. cr. eff. 10-15-92; cr. Register, May, 1993, No. 449, eff. 6-1-93; CR 17-031: am. (2) (b) Register December 2017 No. 744, eff. 1-1-18.

**ETF 50.62 Proration of adjustment percentages and monthly benefits.** (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%, no increase shall result.

<b>Effective Date Benefits Began in Prior Year</b>	<b>Proration Multiplier</b>
January 1	1.000
January 2 through February 1	0.917
February 2 through March 1	0.833
March 2 through April 1	0.750
April 2 through May 1	0.667
May 2 through June 1	0.583
June 2 through July 1	0.500
July 2 through August 1	0.417
August 2 through September 1	0.333
September 2 through October 1	0.250
October 2 through November 1	0.167
November 2 through December 31	0.083

**EXAMPLE 1:** A recipient begins to receive LTDI benefits effective August 10. The annual adjustment for the following year is an increase of 5%. The recipient would instead receive an increase of 1.67% ( $5\% \times 0.333 = 1.67\%$ ). 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%. The recipient would receive no increase. Although  $5\% \times 0.083 = 0.415\%$ , this is less than 1% and therefore no increase results. The following year the annual adjustment is an increase of 6%. The recipient receives the entire 6% increase.

(2) **PRORATION OF MONTHLY BENEFITS.** (a) The amount of the initial and final monthly LTDI basic benefits and LTDI retirement supplemental benefits paid shall be prorated based on the date in the month on which LTDI benefits begin or end.

(b) The first payment of LTDI benefits shall be prorated based on the first date in the month for which benefits are paid and based on the number of days in the month, according to Table 2.

(c) The last payment of LTDI benefits due to termination or suspension of benefits or ceasing to qualify for benefits shall be prorated based on the effective date of the action and based on the number of days in the month, according to table 3.

Effective Begin Date of LTDI Benefits			Percent of Monthly LTDI Benefit Paid
In 31-day month	In 30-day month	In February	
1	-	-	100.0%
2	1	-	100.0
3	2	-	100.0
4	3	1	100.0
5	4	2	97.2
6	5	3	93.6
7	6	4	90.0
8	7	5	86.4
9	8	6	82.8
10	9	7	79.2
11	10	8	75.6
12	11	9	72.0
13	12	10	68.4
14	13	11	64.8
15	14	12	61.2
16	15	13	57.6
17	16	14	54.0
18	17	15	50.4
19	18	16	46.8
20	19	17	43.2
21	20	18	39.6
22	21	19	36.0
23	22	20	32.4
24	23	21	28.8
25	24	22	25.2
26	25	23	21.6
27	26	24	18.0
28	27	25	14.4
29	28	26	10.8
30	29	27	7.2
31	30	28 or 29	3.6

LTDI Benefit Termination or Suspension Effective Date			Percent of Monthly LTDI Benefit Paid
In 31-day month	In 30-day month	In February	
1	-	-	0.0%
2	1	-	0.0
3	2	-	0.0
4	3	1	2.8
5	4	2	6.4
6	5	3	10.0
7	6	4	13.6
8	7	5	17.2
9	8	6	20.8
10	9	7	24.4
11	10	8	28.0
12	11	9	31.6
13	12	10	35.2
14	13	11	38.8
15	14	12	42.4
16	15	13	46.0
17	16	14	49.6
18	17	15	53.2
19	18	16	56.8
20	19	17	60.4
21	20	18	64.0
22	21	19	67.6
23	22	20	71.2
24	23	21	74.8
25	24	22	78.4
26	25	23	82.0
27	26	24	85.6
28	27	25	89.2
29	28	26	92.8
30	29	27	96.4
31	30	28 or 29	100.0

**History:** Emerg. cr. eff. 10-15-92; cr. Register, May, 1993, No. 449, eff. 6-1-93; reprinted to restore dropped copy in Table 3, Register, December, 1999, No. 528.