

LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' PLAN 2 RETIREMENT BOARD

Duty Disability Retirement Conversion Preliminary Report

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1. Issue

Members who retired as a result of duty related disabilities prior to the creation of duty disability retirements are not receiving the favorable tax treatment on their benefits to which they are entitled.

2. Staff

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3. Members Impacted

As of September 30, 2006 there were 15,718 active members and 779 retirees and beneficiaries. Data regarding the number of duty related disability retirements are limited.

The Office of the State Actuary projected for previous legislation (2004-2006) that duty-related deaths occur at a rate of approximately 2-3 per year and that duty-related disabilities occur at a rate of approximately 11-12 per year. These projections however, should only be relied upon for the previous legislation to which they were related.

4. Current Situation

All members of the Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF) Plan 2 are eligible for normal retirement at age 53, and early retirement beginning at age 50. A member who is disabled from a duty related injury can retire earlier. There are three levels of duty-related disability benefits in LEOFF Plan 2 including a minimum disability benefit, an occupational disability benefit, and a catastrophic disability benefit. Some of the duty related disability benefits receive favorable tax treatment.

The LEOFF Plan 2 duty related disability benefits that have been enacted since 2004 have mostly been prospective. Only the Survivor Health Care benefit and the favorable tax treatment for the Minimum Disability benefit were enacted retroactively.

5. Background Information and Policy Issues

Duty Related Disability Benefits

Prior to 2004, there were no specific duty related disability retirement benefits for a member who was injured in the course of employment. Members who were disabled in the course of employment received the same benefits as members whose disability was not duty related.

A disabled member with 10 or more years of service was eligible to receive an actuarially reduced¹ retirement benefit or could request a refund of 150 percent of their accumulated contributions. A member with less than 10 years of service could request 100 percent of their contributions and interest. These benefits did not receive favorable tax treatment.

Legislation enacted since 2004 created three levels of duty related disability benefits in LEOFF Plan 2. The disability program now includes a minimum disability benefit, an occupational disability benefit, and a catastrophic disability benefit. While some of the duty related disability benefits provide favorable tax treatment, only those members who retired due to duty disability under the new provisions receive the favorable tax treatment. Members who retired due to duty disability under the prior provisions do not receive favorable tax treatment.

Minimum Duty Disability Benefit

Legislation enacted in 2004 created the minimum duty related disability benefit in 2004. This legislation created a minimum level of benefits provided to a member disabled in the course of employment and qualifies for favorable tax treatment.

A LEOFF Plan 2 member who leaves service as a result of a line of duty disability can receive a retirement allowance of at least 10 percent of final average salary. If the 2 percent per year of service disability benefit, actuarially reduced for the difference between age 53 and age at retirement, results in a greater benefit than the minimum 10 percent, the member receives the greater benefit. In either case, the first 10 percent of the line of duty disability benefit is not subject to federal income tax.

Alternatively, a member of LEOFF 2 who is disabled in the line of duty may request a refund of 150 percent of his or her accumulated contributions in lieu of the disability retirement allowance. This withdrawal benefit is receives favorable tax treatment.

The line of duty disability minimum benefit was effective June 10, 2004 and applied to all LEOFF Plan 2 members disabled in the line of duty on or after January 1, 2001 so that affected members could take advantage of the favorable tax treatment and file amended tax returns.

¹ The actuarial reduction was based on the difference between the member's age and age 53

Occupational Duty Disability Benefit

Legislation enacted in 2005 created the Occupational Duty Disability Benefit. This legislation removed the actuarial reduction from the monthly retirement benefit for members with 10 or more years of service whose duty-related disability prevents them from engaging in any future employment as a law enforcement officer or fire fighter.

The Occupational Duty Disability Benefit did not provided any additional favorable tax treatment beyond that provided by the Minimum Duty Disability Benefit where the first 10 percent of the benefit receives favorable tax treatment.

The Occupational Duty Disability was prospective from its effective date of May 13, 2005.

Catastrophic Duty Disability Benefit

Legislation enacted in 2006 created the Catastrophic Duty Disability Benefit. This legislation created a disability allowance equal to 70 percent of final average salary, which receives favorable tax treatment and is not actuarially reduced for early retirement, for a LEOFF Plan 2 member who is catastrophically disabled in the course of employment.

A catastrophic disability is defined as a member's inability to perform any substantial gainful activity due to a physical or mental condition that may be expected to result in death or last for at least 12 months. Substantial gainful activity is defined as average earnings of more than \$940 per month (2008), adjusted annually based on Federal Social Security standards.

The total disability benefit is reduced to the extent that in combination with certain workers' compensation payments and Social Security disability benefits, the disabled member would not receive more that 100 percent of final average salary.

The Catastrophic Duty Disability was prospective from its effective date of March 14, 2006.

Identifying Duty Disability Retirees

Prior to 2004, actuarial reductions resulted in only a modest duty disability retirement. Due to the inadequacy of this benefit, it is believed that most duty disabled members opted for a refund of accumulated contributions in lieu of the actuarially reduced duty disability retirement benefit.

Data prior to the 2004 duty disability legislation regarding the number of duty related disability retirements is limited. According to the Department of Retirement Systems (DRS) there were 66 disability retirements prior to 2004 and 11 disability withdrawals. However, there were also 5,022 member withdrawals, any of which could have been related to a duty related disability. There were also 292 service retirements prior to 2004. Any member who was disabled on the job and was retirement eligible would have likely been processed as a service retirement rather than a disability retirement.

Given this information it is clear that it is difficult to specifically determine the number of members that suffered a duty-related disability. Thus, it would be a challenge to identify those that might be eligible to have their benefits converted to duty related. Additionally, it could be challenging to contact some of those identified as duty related disabilities.

Members that retired as service or disability retirees can be contacted as they must still have current contact information on file with DRS to receive pension payments. However, for members who withdrew their account it is highly unlikely that current address information or other contact information is available. If these members can be identified, it is possible that information such as their social security number could be utilized to locate the member.

6. Policy Options

Option 1

Convert eligible service and disability retirements to occupational disability retirements only for the purpose of allowing affected retirees to take advantage of favorable tax treatment on the first 10% of the benefit. This option does not recalculate the base benefit of the retiree.

Option 2

Convert eligible service and disability retirements to occupational disability retirements and recalculate benefits. This option would remove any early retirement reduction factors applied to the original benefit calculation and allows for favorable tax treatment on the first 10% of the member's salary.

Option 3

Convert eligible withdrawn accounts to occupational duty disability retirement. Under this option an eligible member would restore their withdrawn account and then have a disability benefit calculated providing a monthly annuity.

Option 4

Convert eligible service and disability retirements (and possibly eligible withdrawn accounts) to catastrophic disabilities. This option would assure that the member would receive at least 70% of their Final Average Salary and favorable tax treatment.