

CHAPTER 195

GOVERNMENT - MUNICIPAL

SENATE BILL 93-142

BY SENATORS Peterson, Norton, Bishop, Feeley, Gallagher, Groff, L. Powers, Trujillo, and Weissmann;
also REPRESENTATIVES Dyer, Agler, Coffman, Armstrong, Foster, Kerns, Snyder, and Strom.

AN ACT**CONCERNING DISABILITY BENEFITS PROVIDED BY THE FIRE AND POLICE PENSION ASSOCIATION.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 31-30-1007 (2) (b), (3) (a), (3.5), and (4) (a), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended, and the said 31-30-1007 (4) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

31-30-1007. Retirement for disability. (2) (b) (I) At any time that an occupational disability ceases to exist, based upon periodic reexamination as may be required by the board, a member retired for such disability may be restored to active service, and the benefits provided by this subsection (2) shall be discontinued. Said member shall be restored to active service by his former employer if a vacancy exists in the same position he held prior to retirement, or if there is a position of equal base pay available, or if the member agrees to accept another available position which may not be the same or of equal base pay to his former position.

(II) IN ADDITION, IF THE POSITION TO WHICH THE MEMBER WILL BE RESTORED REQUIRES, AS A MATTER OF STATE LAW, THAT THE MEMBER MAINTAIN ANY TYPE OF STATE CERTIFICATION, THE EMPLOYER NEED NOT RESTORE THE MEMBER TO SUCH POSITION IF THE MEMBER DOES NOT HAVE THE NECESSARY CERTIFICATION OR THE MEMBER'S CERTIFICATION HAS OTHERWISE LAPSED, EXPIRED, OR BEEN REVOKED. THE EMPLOYER, HOWEVER, MUST AFFORD THE MEMBER AN OPPORTUNITY TO ATTAIN CERTIFICATION, RECERTIFICATION, OR REACTIVATION OF AN EXISTING CERTIFICATION AND MUST HOLD OPEN ANY POSITION WHICH THE MEMBER HAS AGREED TO ACCEPT PURSUANT TO THIS PARAGRAPH (b) FOR A PERIOD NOT TO EXCEED ONE YEAR. THE BOARD IS DIRECTED TO EVALUATE THE IMPACT OF THIS REQUIREMENT ON EMPLOYERS OF ASSOCIATION MEMBERS. THE ONE-YEAR PERIOD MAY EXTEND BEYOND THE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

FIVE-YEAR LIMITATION SET FORTH IN SUBPARAGRAPH (VI) OF THIS PARAGRAPH (b), AS LONG AS THE OPENING OCCURS WITHIN THE FIVE-YEAR PERIOD. DISABILITY BENEFITS WILL BE CONTINUED DURING ANY PERIOD, NOT TO EXCEED ONE YEAR, THAT THE MEMBER IS ATTEMPTING TO ATTAIN CERTIFICATION, RECERTIFICATION, OR REACTIVATION.

(III) IF, AT THE TIME OF A BOARD FINDING THAT A MEMBER'S OCCUPATIONAL DISABILITY HAS CEASED TO EXIST, THERE IS NO OPENING IN THE SAME POSITION THE MEMBER HELD PRIOR TO RETIREMENT OR ONE OF EQUAL BASE PAY AND THERE IS NO OPENING IN A POSITION OF LESSER BASE PAY WHICH THE MEMBER AGREES TO ACCEPT, THE BOARD MAY ORDER THE MEMBER TO PROCEED WITH ANY NECESSARY TRAINING IN ORDER TO ATTAIN, REINSTATE, OR REACTIVATE ANY CERTIFICATION REQUIRED FOR THE POSITION FROM WHICH THE MEMBER RETIRED. DISABILITY BENEFITS SHALL BE CONTINUED DURING THE TRAINING PERIOD UP TO A MAXIMUM OF ONE YEAR.

(IV) IF THE MEMBER REFUSES TO TAKE THE STEPS NECESSARY TO ATTAIN CERTIFICATION, RECERTIFICATION, OR REACTIVATION AS REQUIRED BY SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH (b), OR IF AT THE END OF THE ONE-YEAR LIMITATION ON ATTAINING CERTIFICATION, RECERTIFICATION, OR REACTIVATION THE MEMBER HAS NOT ATTAINED THE NECESSARY CERTIFICATION, RECERTIFICATION, OR REACTIVATION, DISABILITY BENEFITS SHALL BE DISCONTINUED, AND THE EMPLOYER SHALL BE RELIEVED OF FURTHER OBLIGATIONS PURSUANT TO THIS PARAGRAPH (b).

(V) If a member refuses to accept the same or a position of equal base pay, the benefits provided by this subsection (2) shall be discontinued, but a member shall not lose benefits if there is no such vacancy, or if he refuses to accept a position which is not the same or of equal base pay to his former position, or if the employer refuses to restore him to active service, EXCEPT AS PROVIDED PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH (b).

(VI) If at least two members of the three-member physician panel examining the member agree that an occupational disability ceases to exist, and if the board determines that such disability ceases to exist, and if no appropriate vacancy is available at that time, the member shall have the first right of refusal to fill such a vacancy if it occurs within ~~three~~ FIVE years from the date of original disablement. In the event an occupational disability is based on a medical determination of mental impairment or disease, all three members of the physician panel must agree, and the board must determine, that the occupational disability ceases to exist before the member is granted such first right of refusal.

(VII) At least thirty days prior to making its determination, the board shall provide written notice to the employer and member of the agreement of the appropriate number of physicians and of the opportunity for a hearing, upon request of the employer or member, before the board. IF A HEARING IS REQUESTED, THE BOARD SHALL PROVIDE THE EMPLOYER WITH COPIES OF THE MEDICAL REPORTS PREPARED BY THE PHYSICIAN PANEL WITH RESPECT TO ANY EXAMINATION OR REEXAMINATION OF THE MEMBER. NEITHER THE EMPLOYER, THE AGENTS OF THE EMPLOYER, INCLUDING ANY PHYSICIAN RETAINED TO REVIEW SUCH REPORTS, NOR THE ASSOCIATION SHALL RELEASE SUCH REPORTS TO ANY OTHER PERSON EXCEPT AS OTHERWISE ALLOWED PURSUANT TO SECTION 24-72-204 (3) (a) (I), C.R.S.

(VIII) If the member refuses ~~such vacancy~~ A VACANCY IN THE SAME POSITION HE HELD PRIOR TO RETIREMENT OR IN A POSITION OF EQUAL BASE PAY TO HIS FORMER POSITION, the benefits provided by this subsection (2) shall be discontinued. EXCEPT AS OTHERWISE PROVIDED PURSUANT TO THIS PARAGRAPH (b), if the employer refuses to allow a member who exercises such first right of refusal to fill the vacancy, the employer shall thereafter pay the cost of the benefits provided by this subsection (2).

(3) (a) If a member has any earned income other than that provided by a disability benefit award under subsection (1) or subsection (2) of this section and, if applicable, a workers' compensation award that provides a total income greater than an amount equal to one hundred percent of the base salary provided to an active member of the same rank at which the member retired, the disability benefit shall be reduced by twenty-five percent of the additional earned income. IN CALCULATING TOTAL INCOME FOR PURPOSES OF THIS PARAGRAPH (a), THE AMOUNT INCLUDABLE WITH RESPECT TO MONEY PURCHASE PLAN BENEFITS WHICH A MEMBER IS ELIGIBLE TO RECEIVE SHALL BE THE SAME AMOUNT AS CALCULATED PURSUANT TO SUBSECTIONS (7), (8), AND (9) OF THIS SECTION, AS APPLICABLE.

(3.5) If, subsequent to disability benefits being awarded to a member pursuant to the provisions of this section but prior to a decision of the board that an occupational disability ceases to exist pursuant to paragraph (b) of subsection (2) of this section, a member is employed or reemployed ~~by an employer~~ IN THIS STATE OR ANY OTHER JURISDICTION, pursuant to either an agreement or court order, in a FULL-TIME SALARIED position which ~~qualifies the person as a member~~, NORMALLY INVOLVES WORKING AT LEAST ONE THOUSAND SIX HUNDRED HOURS IN ANY GIVEN CALENDAR YEAR AND THE DUTIES OF WHICH ARE DIRECTLY INVOLVED WITH THE PROVISION OF POLICE OR FIRE PROTECTION AS DETERMINED BY THE BOARD, the benefits provided pursuant to this section shall be discontinued. Any application for retirement for disability made by the member after such appointment or reinstatement shall be treated in all respects as a new application.

(4) (a) The determination of disability, whether occupational or total, shall be made by the board, and the board shall consider a report to be made by a panel of three physicians who shall be appointed by the board upon the recommendation of a medical advisor with whom the board shall contract to provide advisory services. The board shall not make a determination of disability unless two of the three physicians examining the applicant agree that a disability exists, but the board shall not be bound by the physicians' determination that a disability exists. ~~No determination of occupational disability shall be made unless the employer employing the member applying for disability certifies either that no position exists within the employer's department for which said member is able to carry out assigned duties or that such position exists but no vacancy exists in the position.~~

(c) IF THE BOARD DETERMINES THAT AN APPLICANT FOR RETIREMENT FOR DISABILITY IS NOT DISABLED AND THE APPLICANT IS ON SICK LEAVE, DISABILITY LEAVE, OR OTHER TYPE OF LEAVE OF ABSENCE, IS SERVING IN A TEMPORARY POSITION PENDING THE DETERMINATION OF AN APPLICATION, OR HAS BEEN TERMINATED FROM EMPLOYMENT BY THE EMPLOYER ON THE BASIS OF AN ALLEGED DISABILITY, THE EMPLOYER SHALL REINSTATE THE APPLICANT TO ACTIVE SERVICE IN THE SAME POSITION THE APPLICANT HELD PRIOR TO THE COMMENCEMENT OF SUCH LEAVE, ASSIGNMENT TO A TEMPORARY POSITION, OR TERMINATION. IF THE EMPLOYER

REFUSES TO REINSTATE THE APPLICANT TO HIS PRIOR POSITION, THE EMPLOYER SHALL THEREAFTER PAY BENEFITS TO THE APPLICANT AS IF THE APPLICANT HAD BEEN DETERMINED OCCUPATIONALLY DISABLED BY THE BOARD. THE EMPLOYER SHALL CONTINUE TO PAY SUCH BENEFITS UNTIL THE APPLICANT IS REINSTATED TO HIS PRIOR POSITION OR DECLINES AN OFFER OF REINSTATEMENT.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 6, 1993