

**352.95 DISABILITY BENEFITS.**

Subdivision 1. **Job-related disability.** A covered correctional employee who becomes disabled and who is expected to be physically or mentally unfit to perform the duties of the position for at least one year as a direct result of an injury, sickness, or other disability that incurred in or arose out of any act of duty that makes the employee physically or mentally unable to perform the duties is entitled to a disability benefit. The disability benefit may be based on covered correctional service only. The benefit amount is 50 percent of the average salary defined in section 352.93, plus an additional percent equal to that specified in section 356.315, subdivision 5, for each year of covered correctional service in excess of 20 years, ten months, prorated for completed months.

Subd. 1a. **Optional annuity election.** A disabled correctional employee may elect the normal disability benefit or an optional annuity as provided in section 352.116, subdivision 3. The election of an optional annuity must be made before commencement of payment of the disability benefit and becomes effective the date on which the disability benefit begins to accrue as provided in subdivision 3. Upon becoming effective, the optional annuity shall begin to accrue on the same date as provided for the disability benefit.

Subd. 2. **Non-job-related disability.** A covered correctional employee who, after rendering at least one year of covered correctional service, becomes disabled and who is expected to be physically or mentally unfit to perform the duties of the position for at least one year because of sickness or injury that occurred while not engaged in covered employment is entitled to a disability benefit based on covered correctional service only. The disability benefit must be computed as provided in section 352.93, subdivisions 1 and 2, and must be computed as though the employee had at least 15 years of covered correctional service.

Subd. 3. **Applying for benefits; accrual.** No application for disability benefits shall be made until after the last day physically on the job. The disability benefit shall begin to accrue the day following the last day for which the employee is paid sick leave or annual leave but not earlier than 180 days before the date the application is filed.

Subd. 4. **Medical or psychological evidence.** (a) An applicant shall provide medical, chiropractic, or psychological evidence to support an application for disability benefits. The director shall have the employee examined by at least one additional licensed physician, chiropractor, or psychologist who is designated by the medical adviser. The physicians, chiropractors, or psychologists with respect to a mental impairment, shall make written reports to the director concerning the question of the employee's disability, including their expert opinions as to whether the employee is disabled within the meaning of this section. The director shall also

obtain written certification from the employer stating whether or not the employee is on sick leave of absence because of a disability that will prevent further service to the employer, and as a consequence, the employee is not entitled to compensation from the employer.

(b) If, on considering the reports by the physicians, chiropractors, or psychologists and any other evidence supplied by the employee or others, the medical adviser finds the employee disabled within the meaning of this section, the advisor shall make the appropriate recommendation to the director, in writing, together with the date from which the employee has been disabled. The director shall then determine the propriety of authorizing payment of a disability benefit as provided in this section.

(c) Unless the payment of a disability benefit has terminated because the employee is no longer disabled, or because the employee has reached either age 65 or the five-year anniversary of the effective date of the disability benefit, whichever is later, the disability benefit must cease with the last payment which was received by the disabled employee or which had accrued during the employee's lifetime. While disability benefits are paid, the director has the right, at reasonable times, to require the disabled employee to submit proof of the continuance of the disability claimed. If any examination indicates to the medical adviser that the employee is no longer disabled, the disability payment must be discontinued upon the person's reinstatement to state service or within 60 days of the finding, whichever is sooner.

**Subd. 5. Retirement status at normal retirement age.** The disability benefit paid to a disabled correctional employee under this section shall terminate at the end of the month in which the employee reaches age 65, or the five-year anniversary of the effective date of the disability benefit, whichever is later. If the disabled correctional employee is still disabled when the employee reaches age 65, or the five-year anniversary of the effective date of the disability benefit, whichever is later, the employee shall be deemed to be a retired employee. If the employee had elected an optional annuity under subdivision 1a, the employee shall receive an annuity in accordance with the terms of the optional annuity previously elected. If the employee had not elected an optional annuity under subdivision 1a, the employee may within 90 days of attaining age 65 or reaching the five-year anniversary of the effective date of the disability benefit, whichever is later, either elect to receive a normal retirement annuity computed in the manner provided in section 352.93 or elect to receive an optional annuity as provided in section 352.116, subdivision 3, based on the same length of service as used in the calculation of the disability benefit. Election of an optional annuity must be made within 90 days before attaining age 65 or reaching the five-year anniversary of the effective date of the disability benefit, whichever is later. If an optional annuity is elected, the optional annuity shall begin to accrue on the first of the

month following the month in which the employee reaches age 65 or the five-year anniversary of the effective date of the disability benefit, whichever is later.

**Subd. 6. Disability benefit for certain employees with regular plan service.** If the employee is entitled to receive a disability benefit as provided in subdivision 1 or 2 and has credit for less covered correctional service than the length of service upon which the correctional disability benefit is based, and also has credit for regular plan service, the employee is entitled to a disability benefit or deferred retirement annuity based on the regular plan service only for that service which when combined with the correctional service exceeds number of years on which the correctional disability benefit is based. The disabled employee who also has credit for regular plan service must in all respects qualify under section 352.113 for a disability benefit based on the regular plan service, except that the service may be combined to satisfy length of service requirements. Any deferred annuity to which the employee is entitled based on regular plan service must be augmented as provided in section 352.72 while the employee is receiving a disability benefit under this section.

**Subd. 7. Resumption of employment.** If the disabled employee resumes gainful work, the disability benefit must be continued in an amount which when added to current earnings and workers' compensation benefits does not exceed the salary rate of the disabled employee at the date of disability as adjusted by the same percentage increase in United States average wages used by Social Security in calculating average indexed monthly earnings for the same period.

**History:** 1973 c 653 s 44; 1980 c 342 s 6; 1981 c 68 s 12,13; 1983 c 128 s 15,16; 1984 c 564 s 16; 1984 c 574 s 9; 1Sp1985 c 7 s 7; 1986 c 444; 1987 c 229 art 6 s 1; 1989 c 319 art 13 s 22,23; art 17 s 4,5; 1993 c 307 art 1 s 22; art 2 s 6-8; 1994 c 465 art 3 s 30; 1996 c 438 art 2 s 2; 1997 c 233 art 1 s 27,28; 1Sp2001 c 10 art 3 s 11-13; 2002 c 392 art 11 s 52; 2004 c 267 art 8 s 5-7