



## Ohio Revised Code

### Section 3309.41 Disability benefit recipient to retain membership status.

Effective: January 7, 2013

Legislation: Senate Bill 341 - 129th General Assembly

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(A) Notwithstanding any contrary provisions in Chapter 124. or 3319. of the Revised Code:

(1) A disability benefit recipient whose benefit effective date was before the effective date of this amendment shall retain membership status and shall be considered on leave of absence from employment during the first five years following the effective date of a disability benefit.

(2) A disability benefit recipient whose benefit effective date is on or after the effective date of this amendment shall retain membership status and shall be considered on leave of absence from employment during the first three years following the effective date of a disability benefit, except that, if the school employees retirement board has recommended medical treatment or vocational rehabilitation and the member is receiving treatment or rehabilitation acceptable to a physician or consultant selected by the board, the board may permit the recipient to retain membership status and be considered on leave of absence from employment for up to five years following the effective date of a disability benefit.

(B) The board shall require a disability benefit recipient to undergo an annual medical examination, except that the board may waive the medical examination if the board's physician or physicians certify that the recipient's disability is ongoing. Should any disability benefit recipient refuse to submit to a medical examination, the recipient's disability benefit shall be suspended until withdrawal of the refusal. Should the refusal continue for one year, all the recipient's rights in and to the disability benefit shall be terminated as of the effective date of the original suspension.

(C) On completion of the examination by an examining physician or physicians selected by the board, the physician or physicians shall report and certify to the board whether the disability benefit recipient meets the applicable standard for termination of a disability benefit. If the recipient's benefit effective date is before the effective date of this amendment or the benefit effective date is after the effective date of this amendment and the recipient is considered on a leave of absence under division (A)(2) of this section, the standard for termination is that the recipient is no longer



physically and mentally incapable of resuming the service from which the recipient was found disabled. If the recipient's benefit effective date is on or after the effective date of this amendment and the recipient is not considered on a leave of absence under division (A)(2) of this section, the standard is that the recipient is not physically or mentally incapable of performing the duties of a position that meets all of the following criteria:

- (1) Replaces not less than seventy-five per cent of the member's final average salary, adjusted each year by the actual average increase in the consumer price index prepared by the United States bureau of labor statistics (U.S. City Average for Urban Wage Earners and Clerical Workers: "All Items 1982-84=100");
- (2) Is reasonably to be found in the member's regional job market;
- (3) Is one that the member is qualified for by experience or education.

If the board concurs in the report that the disability benefit recipient meets the applicable standard for termination of a disability benefit, the payment of the disability benefit shall be terminated not later than three months after the date of the board's concurrence or upon employment as an employee. If the leave of absence has not expired, the retirement board shall certify to the disability benefit recipient's last employer before being found disabled that the recipient is no longer physically and mentally incapable of resuming service that is the same or similar to that from which the recipient was found disabled. The employer shall restore the recipient to the recipient's previous position and salary or to a position and salary similar thereto not later than the first day of the first month following termination of the disability benefit, unless the recipient was dismissed or resigned in lieu of dismissal for dishonesty, misfeasance, malfeasance, or conviction of a felony.

(D) Each disability benefit recipient shall file with the board an annual statement of earnings, current medical information on the recipient's condition, and any other information required in rules adopted by the board. The board may waive the requirement that a disability benefit recipient file an annual statement of earnings or current medical information on the recipient's condition if the board's physician or physicians certify that the recipient's disability is ongoing.

The board shall annually examine the information submitted by the recipient. If a disability benefit



recipient refuses to file the statement or information, the disability benefit shall be suspended until the statement and information are filed. If the refusal continues for one year, the recipient's right to the disability benefit shall be terminated as of the effective date of the original suspension.

(E) If a disability benefit recipient is employed by an employer covered by this chapter, the recipient's disability benefit shall cease.

(F) If disability retirement under section 3309.40 of the Revised Code is terminated for any reason, the annuity and pension reserves at that time in the annuity and pension reserve fund shall be transferred to the employees' savings fund and the employers' trust fund, respectively. If the total disability benefit paid is less than the amount of the accumulated contributions of the member transferred into the annuity and pension reserve fund at the time of the member's disability retirement, the difference shall be transferred from the annuity and pension reserve fund to another fund as may be required. In determining the amount of a member's account following the termination of disability retirement for any reason, the amount paid shall be charged against the member's refundable account.

If a disability allowance paid under section 3309.401 of the Revised Code is terminated for any reason, the reserve on the allowance at that time in the annuity and pension reserve fund shall be transferred from that fund to the employers' trust fund.

The board may terminate a disability benefit at the request of the recipient.

(G) If a disability benefit is terminated and a former disability benefit recipient again becomes a contributor, other than as an other system retirant as defined in section 3309.341 of the Revised Code, to this system, the public employees retirement system, or the state teachers retirement system, and completes an additional two years of service credit after the termination of the disability benefit, the former disability benefit recipient shall be entitled to receive up to two years of service credit for the period as a disability benefit recipient and may purchase service for the remaining period of the disability benefit. Total service credit received and purchased under this section shall not exceed the period of the disability benefit.

For each year of credit purchased, the member shall pay to the system for credit to the member's



accumulated account the sum of the following amounts:

- (1) The employee contribution rate in effect at the time the disability benefit commenced multiplied by the member's annual disability benefit;
- (2) The employer contribution rate in effect at the time the disability benefit commenced multiplied by the member's annual disability benefit;
- (3) Compound interest at a rate established by the board from the date the member is eligible to purchase the credit to the date of payment.

The member may choose to purchase only part of such credit in any one payment, subject to board rules.

(H) If any employer employs any member who is receiving a disability benefit, the employer shall file notice of employment with the retirement board, designating the date of employment. In case the notice is not filed, the total amount of the benefit paid during the period of employment prior to notice shall be paid from amounts allocated under Chapter 3317. of the Revised Code prior to its distribution to the school district in which the disability benefit recipient was so employed.