



Ohio Revised Code

Section 145.35 Providing disability coverage for on-duty illness or injury.

Effective: October 3, 2023

Legislation: House Bill 33

(A) As used in this section and sections 145.362 and 145.363 of the Revised Code:

(1) "Examining physician" means a physician appointed by the public employees retirement board to conduct a medical examination of a disability benefit applicant or recipient.

(2) "Medical consultant" means a physician appointed by the board to review a member's application for a disability benefit or an appeal of a denial or termination of a benefit.

(3) "On-duty illness or injury" means an illness or injury that occurred during or resulted from performance of duties under the direct supervision of a public employer.

(B) The public employees retirement system shall provide disability coverage to each member who has at least five years of total service credit and disability coverage for on-duty illness or injury to each member who is a PERS law enforcement officer or PERS public safety officer, regardless of length of service.

The coverage shall extend only to illness or injury that occurs before the member's contributing service terminates or, in the case of illness or injury that results from contributing service, becomes evident not later than two years after the date the contributing service ends. The coverage shall not extend to disability resulting from elective cosmetic surgery other than reconstructive surgery.

Not later than October 16, 1992, the public employees retirement board shall give each person who is a member on July 29, 1992, the opportunity to elect disability coverage either under section 145.36 of the Revised Code or under section 145.361 of the Revised Code. The board shall mail notice of the election, accompanied by an explanation of the coverage under each of the Revised Code sections and a form on which the election is to be made, to each member at the member's last known address. The board shall also provide the explanation and form to any member on request.



Regardless of whether the member actually receives notice of the right to make an election, a member who fails to file a valid election under this section shall be considered to have elected disability coverage under section 145.36 of the Revised Code. To be valid, an election must be made on the form provided by the retirement board, signed by the member, and filed with the board not later than one hundred eighty days after the date the notice was mailed, or, in the case of a form provided at the request of a member, a date specified by rule of the retirement board. Once made, an election is irrevocable, but if the member ceases to be a member of the retirement system, the election is void. If a person who makes an election under this section also makes an election under section 3307.62 or 3309.39 of the Revised Code, the election made for the system that pays a disability benefit to that person shall govern the benefit.

Disability coverage shall be provided under section 145.361 of the Revised Code for persons who become members after July 29, 1992, and for members who elect under this division to be covered under section 145.361 of the Revised Code.

The retirement board may adopt rules governing elections made under this division.

(C) Application for a disability benefit may be made by a member, by a person acting in the member's behalf, or by the member's employer, provided the member has disability coverage under section 145.36 or 145.361 of the Revised Code and is not receiving a disability benefit under any other Ohio state or municipal retirement program. Application must be made within two years from the date the member's contributing service under the PERS defined benefit plan terminated or the date the member ceased to make contributions to the PERS defined benefit plan under section 145.814 of the Revised Code, unless the board's medical consultant determines that the member's medical records demonstrate conclusively that at the time the two-year period expired, the member was physically or mentally incapacitated for duty and unable to make an application. Application may not be made by or for any person receiving age and service retirement benefits under section 145.33, 145.331, 145.332, 145.335, or 145.37 or former section 145.34 of the Revised Code or any person who, pursuant to section 145.40 of the Revised Code, has been paid the accumulated contributions standing to the credit of the person's individual account in the employees' savings fund. The application shall be made on a form provided by the retirement board.

(D) The benefit payable to any member who is approved for a disability benefit shall become



effective on the first day of the month immediately following the later of the following:

- (1) The last day for which compensation was paid;
- (2) The attainment of eligibility for a disability benefit.

(E) Medical examination of a member who has applied for a disability benefit shall be conducted by a competent disinterested examining physician to determine whether the member is mentally or physically incapacitated for the performance of duty by a disabling condition either permanent or presumed to be permanent. The disability must have occurred since last becoming a member or have increased since last becoming a member to such extent as to make the disability permanent or presumed to be permanent. A disability is presumed to be permanent if it is expected to last for a continuous period of not less than twelve months following the filing of the application.

The standard used to determine whether a member is incapacitated for duty is that the member is mentally or physically incapable of performing the duties of the most recent public position held by the member.

A member shall receive a disability benefit under section 145.36 or 145.361 of the Revised Code if all of the following apply:

- (1) The board's examining physician determines that the member qualifies for a disability benefit and the board's medical consultant concurs with the determination;
- (2) The board concurs with the medical consultant's determination;
- (3) The member agrees to medical treatment as specified in division (F) of this section.

A disability benefit described in this division may be commenced prior to the board's concurrence with the determination if the conditions specified in divisions (E)(1) and (3) of this section are met.

The action of the board shall be final.



(F) The public employees retirement board shall adopt rules requiring a disability benefit recipient, as a condition of continuing to receive a disability benefit, to agree in writing to obtain any medical treatment recommended by the board's medical consultant and submit medical reports regarding the treatment. If the board determines that a disability benefit recipient is not obtaining the medical treatment or the board does not receive a required medical report, the disability benefit shall be suspended until the treatment is obtained, the report is received by the board, or the board's medical consultant certifies that the treatment is no longer helpful or advisable. Should the recipient's failure to obtain treatment or submit a medical report continue for one year, the recipient's right to the disability benefit shall be terminated as of the effective date of the original suspension.

The board shall require the recipient of a disability benefit who is described in section 145.363 of the Revised Code to comply with that section.

(G) A disability benefit that has been granted a member but has not commenced shall not be paid if the member continues in or returns to employment with the same employer in the same position or in a position with duties similar to those of the position the member held at the time the benefit was granted.

(H) In the event an employer files an application for a disability benefit as a result of a member having been separated from service because the member is considered to be mentally or physically incapacitated for the performance of the member's present duty, and the board's medical consultant reports to the board that the member is physically and mentally capable of performing service similar to that from which the member was separated and the board concurs in the report, the board shall so certify to the employer and the employer shall restore the member to the member's previous position and salary or to a similar position and salary.