

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2004-78
HOUSE BILL 354**

AN ACT TO AMEND THE STATE DISABILITY INCOME PLAN.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 135-101(6) reads as rewritten:

"(6) "Disability" or "Disabled" shall mean the ~~physical or cognitive limitations that prevent working as determined by the Department of State Treasurer and the Board of Trustees;~~ mental or physical incapacity for the further performance of duty of a participant or beneficiary; provided that such incapacity was not the result of terrorist activity, active participation in a riot, committing or attempting to commit a felony, or intentionally self-inflicted injury."

SECTION 2. G.S. 135-105(a) reads as rewritten:

"(a) Any participant who becomes disabled and is ~~unable to perform the duties of the participant's job or any other available jobs with the State~~ no longer able to perform his usual occupation may, after at least 365 calendar days succeeding his date of initial employment as a teacher or employee and at least one year of contributing membership service, receive a benefit commencing on the first day succeeding the waiting period; provided that the participant's employer and attending physician shall certify that such participant ~~cannot perform the duties of the participant's job or any other jobs available with the State,~~ is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter; provided further that the requirement for one year of contributing membership service must have been earned within 36 calendar months immediately preceding the date of disability and further, salary continuation used during the period as provided in G.S. 135-104 shall count toward the aforementioned one year requirement.

Notwithstanding the requirement that the incapacity was incurred at the time of active employment, any participant who becomes disabled while on an employer approved leave of absence and who is eligible for and in receipt of temporary total benefits under The North Carolina Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, will be eligible for all benefits provided under this Article."

SECTION 3. G.S. 135-106(a) reads as rewritten:

"(a) Upon the application of a beneficiary or participant or of his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, any beneficiary or participant who has had five or more years of membership service may receive long-term disability benefits from the Plan upon approval by the Board of Trustees, commencing on the first day succeeding the conclusion of the short-term disability period provided for in G.S. 135-105, provided the beneficiary or participant makes application for such benefit within 180 days after the short-term disability period ceases, after salary continuation payments cease, or after monthly payments for Workers' Compensation cease, whichever is later; Provided, that the beneficiary or participant withdraws from active service by terminating employment as a teacher or State employee; Provided, that the Medical Board shall certify that such beneficiary or participant is ~~unable to perform any occupation for which the beneficiary or participant is reasonably qualified for by training or experience,~~ mentally or

physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent; Provided further that the Medical Board shall not certify any beneficiary or participant as disabled who is in receipt of any payments on account of the same incapacity which existed when the beneficiary first established membership in the Retirement System. The Board of Trustees may extend this 180-day filing requirement upon receipt of clear and convincing evidence that application was delayed through no fault of the disabled beneficiary or participant and was delayed due to the employers' miscalculation of the end of the 180-day filing period. However, in no instance shall the filing period be extended beyond an additional 180 days.

The Board of Trustees may require each beneficiary who becomes eligible to receive a long-term disability benefit to have an annual medical review or examination for the first five years and thereafter once every three years after the commencement of benefits under this section. However, the Board of Trustees may require more frequent examinations and upon the advice of the Medical Board shall determine which cases require such examination. Should any beneficiary refuse to submit to any examination required by this subsection or by the Medical Board, his long-term disability benefit shall be suspended until he submits to an examination, and should his refusal last for one year, his benefit may be terminated by the Board of Trustees. If the Medical Board finds that a beneficiary is no longer ~~unable to perform any occupation for which the beneficiary or participant is reasonably qualified for by training or experience, the Department of State Treasurer and mentally or physically incapacitated for the further performance of duty~~, the Medical Board shall so certify this finding to the Board of Trustees, and the Board of Trustees may terminate the beneficiary's long-term disability benefits effective on the last day of the month in which the Medical Board certifies that the beneficiary is no longer disabled.

As to the requirement of five years of membership service, any participant or beneficiary who does not have five years of membership service within the 96 calendar months prior to conclusion of the short-term disability period or cessation of salary continuation payments, whichever is later, shall not be eligible for long-term disability benefits.

Notwithstanding the requirement that the incapacity was incurred at the time of active employment, any participant who becomes disabled while on an employer approved leave of absence and who is eligible for and in receipt of temporary total benefits under The North Carolina Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, will be eligible for all benefits provided under this Article."

SECTION 4. Effective August 1, 2005, G.S. 135-106(a), as rewritten by Section 3 of this act, reads as rewritten:

"(a) Upon the application of a beneficiary or participant or of his legal representative or any person deemed by the Board of Trustees to represent the participant or beneficiary, any beneficiary or participant who has had five or more years of membership service may receive long-term disability benefits from the Plan upon approval by the Board of Trustees, commencing on the first day succeeding the conclusion of the short-term disability period provided for in G.S. 135-105, provided the beneficiary or participant makes application for such benefit within 180 days after the short-term disability period ceases, after salary continuation payments cease, or after monthly payments for Workers' Compensation cease, whichever is later; Provided, that the beneficiary or participant withdraws from active service by terminating employment as a teacher or State employee; Provided, that the Medical Board shall certify that such beneficiary or participant is ~~mentally or physically incapacitated for the further performance of duty~~, unable to perform any occupation or employment commensurate to the beneficiary's or participant's education, training, or experience, which is available in the same commuting area for State employees or within the same local school administrative unit for school personnel, without an adverse impact on the beneficiary's or participant's career status, and in which the beneficiary or participant can be expected

to earn not less than sixty-five percent (65%) of that beneficiary's or participant's predisability earnings, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent; Provided further that the Medical Board shall not certify any beneficiary or participant as disabled who is in receipt of any payments on account of the same incapacity which existed when the beneficiary first established membership in the Retirement System. The Board of Trustees may extend this 180-day filing requirement upon receipt of clear and convincing evidence that application was delayed through no fault of the disabled beneficiary or participant and was delayed due to the employers' miscalculation of the end of the 180-day filing period. However, in no instance shall the filing period be extended beyond an additional 180 days.

The Board of Trustees may require each beneficiary who becomes eligible to receive a long-term disability benefit to have an annual medical review or examination for the first five years and thereafter once every three years after the commencement of benefits under this section. However, the Board of Trustees may require more frequent examinations and upon the advice of the Medical Board shall determine which cases require such examination. Should any beneficiary refuse to submit to any examination required by this subsection or by the Medical Board, his long-term disability benefit shall be suspended until he submits to an examination, and should his refusal last for one year, his benefit may be terminated by the Board of Trustees. If the Medical Board finds that a beneficiary is no longer mentally or physically incapacitated for the further performance of duty, the Medical Board shall so certify this finding to the Board of Trustees, and the Board of Trustees may terminate the beneficiary's long-term disability benefits effective on the last day of the month in which the Medical Board certifies that the beneficiary is no longer disabled.

As to the requirement of five years of membership service, any participant or beneficiary who does not have five years of membership service within the 96 calendar months prior to conclusion of the short-term disability period or cessation of salary continuation payments, whichever is later, shall not be eligible for long-term disability benefits.

Notwithstanding the requirement that the incapacity was incurred at the time of active employment, any participant who becomes disabled while on an employer approved leave of absence and who is eligible for and in receipt of temporary total benefits under The North Carolina Workers' Compensation Act, Article 1 of Chapter 97 of the General Statutes, will be eligible for all benefits provided under this Article."

SECTION 5. Section 30.20(b) of S.L. 2003-284 reads as rewritten:

"SECTION 30.20.(b) The Commission shall be comprised of ~~seven~~13 members as follows:

- (1) ~~Two~~ Four persons appointed by the President Pro Tempore of the Senate. ~~One of these appointees shall be a State employee. Senate, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be familiar with disability issues relating to school employees, and one of whom shall be familiar with workers' compensation issues relating to State employees or school employees.~~
- (2) ~~Two~~ Four persons appointed by the Speaker of the House of Representatives. ~~One of these appointees shall be a State employee. Representatives, one of whom shall be familiar with disability issues relating to State employees, one of whom shall be familiar with disability issues relating to school employees, and one of whom shall be familiar with workers' compensation issues relating to State employees or school employees.~~
- (3) The State Treasurer, or the Treasurer's designee.
- (4) The Executive Administrator of the Teachers' and State Employees' Comprehensive Major Medical Plan.

- (5) The President of the North Carolina Association of Educators, or the President's designee. The Chair of the North Carolina Industrial Commission, or the Chair's designee.
- (6) One person appointed by the President of The University of North Carolina who is familiar with disability issues relating to university employees.
- (7) One person appointed by the President of the North Carolina Community Colleges System who is familiar with disability issues relating to community college employees.

Any vacancy shall be filled by the officer who made the original appointment."

SECTION 6. Sections 1 through 3 are effective retroactively from and after July 1, 2003. Section 4 of this act becomes effective August 1, 2005, and applies only to persons who are not vested in the disability plan in question on that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 30th day of June, 2004.

s/ Beverly E. Perdue
President of the Senate

s/ Richard T. Morgan
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 4:11 p.m. this 8th day of July, 2004