



MEMORANDUM

TO: Teachers' and State Employees' Retirement System Board of Trustees
Local Governmental Employees' Retirement System Board of Trustees

FROM: Timothy M. Melton, Assistant General Counsel

DATE: October 26, 2023

RE: Summary of Session Law 2023-105 Administrative Rules Proposal

The General Assembly recently enacted Session Law 2023-105, which, in pertinent part, creates a deadline for reimbursement of short-term disability benefits to the employer, authorizes the Retirement Systems Division (RSD) to review and approve short-term and extended short-term disability benefits, amends the deadline to apply for extended short-term disability benefits, and amends recovery options regarding overpaid benefits resulting entirely from administrative error on the part of RSD. This act, which becomes effective January 1, 2024, requires the Board of Trustees to adopt rules to implement the provisions of Parts II, III and IV. Department of State Treasurer (DST) staff also recommends the adoption of rules to implement the provisions of Parts VIII.

Short-Term Disability Notification Date Rule

Part II of Session Law 2023-105 addresses changes related to reimbursement of the second six months of short-term disability benefits under the Disability Income Plan of North Carolina (DIPNC). More specifically, G.S. § 135-105(d) was amended to add the following sentence regarding reimbursement of short-term disability benefits that began before July 1, 2019:

“The Plan shall not reimburse any employer for amounts related to notifications made on or after January 1, 2024.”

Prior to July 1, 2019, after the initial six months of short-term disability benefits, the employer continued to maintain its responsibility for administering the benefit and notified DIPNC at the conclusion of the short-term disability period or upon termination, if earlier, of the amount of short-term benefits and State Health Plan Insurance premiums paid by the employer. DIPNC would then reimburse the employer for the amounts paid during the second six months of short-term disability benefits. As of July 1, 2019, the employer became fully responsible for the payment of disability benefits during the entire short-term disability period.

Part II of Session Law 2023-105 effectively sunsets the time in which the employer reimbursement can occur. Employers who have not yet sought reimbursement of short-term disability benefits that began before July 1, 2019 are required to notify RSD prior to January 1, 2024. DST staff prepared proposed rule text to address the definition of “notifications made”, which is included in the Board materials for this agenda item.



Short-Term and Extended Short-Term Disability Approvals Rule

Part III of Session Law 2023-105 addresses changes related to the review and approval of short-term and extended short-term disability benefits. Previously, only the Medical Board was authorized to make these eligibility determinations under DIPNC. Part III of Session Law 2023-105 amended the following statutes to allow RSD to make determinations of eligibility for short-term and extended short-term disability benefits: G.S. § 135-5(a)(5); G.S. § 135-6(k); G.S. § 135-102(d); G.S. § 135-105(f); and G.S. § 135-105(g).

DST staff prepared proposed rule text to identify those positions or entities that are authorized to make determinations of eligibility for short-term and extended short-term disability benefits on behalf of RSD and to address extent of their authority. The proposed rule text, which is included in the Board materials, allows for specific staff to approve but not deny eligibility for short-term or extended short-term disability benefits. Only the Medical Board will remain authorized to deny an application for short-term or extended short-term disability benefits. The proposed rule would also require that any DST staff who apply for short-term or extended short-term disability benefits must have their application reviewed by the Medical Board.

Extended Short-Term Disability Application Date Rule

Part IV of Session Law 2023-105 addresses changes related to the application for extended short-term disability benefits through DIPNC. More specifically, G.S. § 135-105(g) was amended by adding:

“The extended period shall commence on the first day succeeding the conclusion of the first 365-day short-term disability period, provided the beneficiary or participant makes an 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”

Prior to this amendment, a member could apply for extended short-term disability benefits, which provides for an additional 365 days of disability benefits, at any time following the conclusion of the initial short-term disability benefit period of 365 days. Part IV of Session Law 2023-105 amended G.S. § 135-105(g) to require the member to apply for extended short-term disability benefits within 180 days from the conclusion of the first period of benefits. Notably, this is analogous with the requirements to apply for long-term disability benefits. DST staff prepared proposed rule text to address the definition of “makes an application”, which is included in the Board materials.

TSERS and LGERS Overpayment Safe Harbor Rules

Part VIII of Session Law 2023-105 addresses changes related the recovery of funds overpaid to beneficiaries by RSD. Part VIII amended G.S. § 128-31 and G.S. § 135-9 by adding subsection (c1) to provide:



“Notwithstanding G.S. 143-64.80(b), in the case of an overpayment of benefits under this Chapter that the Board of Trustees determines was entirely due to administrative error on the part of the Retirement Systems Division, the Retirement Systems Division shall be deemed to satisfy its duty to pursue repayment of the overpayment if all of the following occur:

- (1) The Retirement Systems Division, as provided under subsection (b) of this section, offsets any return of contributions, lump sum death benefit payment, retroactive benefit adjustment payment for periods before the determination of the overpayment, or other one-time payment accruing under this Chapter, by the full amount of the payment as computed after payment deductions, and applies the offset toward the overpayment;
- (2) The Retirement Systems Division, as provided under subsection (b) of this section, offsets any recurring monthly benefit accruing under this Chapter for periods coincident with or following the determination of the overpayment as follows:
 - a. By no more than twenty-five percent (25%) of the monthly benefit as computed after payment deductions and not less than eight and one-half percent (8.5%) of the monthly benefit as computed after payment deductions;
 - b. Or by offsetting the amount of the overpayment in two or fewer monthly benefit payments when the overpayment amount is less than five hundred dollars (\$500);
- (3) The wage offset as provided under subsection (c) of this section is applied as required; and
- (4) The setoff debt provisions of Chapter 105A of the General Statutes are applied as required.”

RSD has a duty to pursue repayment of State funds by all lawful means available under G.S. § 143-64.80(b) and may not forgive repayments of an overpayment of State funds. Part VIII of Session Law 2023-105 sets forth less stringent recovery parameters that still allow RSD to satisfy its duty to pursue repayment if the overpayment occurred “entirely due to administrative error on the part of the Retirement Systems Division”. DST staff prepared proposed rule text to identify specific causes of overpayments which are not considered entirely due to administrative error and to establish a process for RSD or members to initiate review of an overpayment. The proposed rule text for both the Teachers' and State Employees' Retirement System (TSERS) and Local Governmental Employees' Retirement System (LGERS) is included in the Board materials.

Permanent Rulemaking Process

RSD has provided the rule text proposals to the North Carolina Office of State Budget and Management (OSBM) in accordance with G.S. 150B-21.4. OSBM has determined that the rules will have little to no impact on state or local governments and no substantial economic impact, and a fiscal note is not required.



North Carolina
Total Retirement Plans



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The next step of the permanent rulemaking process calls for the Boards to approve the proposed rule texts. If the Boards approve the proposed text, DST staff will submit them to the Office of Administrative Hearings to be published in the North Carolina Register. The publication will start the 60-day public comment period and the 15-day period in which a member of the public can request a public hearing.

Staff recommends the following Board actions:

TSERS Board

As the rulemaking body, the TSERS Board hereby approves the proposed rule text related to 20 NCAC 02O .0104, .0105, and .0106, and 20 NCAC 02B .0215. The TSERS Board further authorizes DST staff to take all additional necessary steps required to complete the permanent rulemaking process in accordance with N.C. Gen. Stat. § 150B-21.2.

LGERS Board

As the rulemaking body, the LGERS Board hereby approves the proposed rule text related to 20 NCAC 02C .0212, and authorizes DST staff to take all additional necessary steps required to complete the permanent rulemaking process in accordance with N.C. Gen. Stat. § 150B-21.2.