

## **97B.50A Disability benefits for special service members.**

1. *Definitions.* For purposes of this section, unless the context otherwise provides:

a. "*Member*" means a vested member who is classified as a special service member under section 97B.1A, subsection 22, at the time of the alleged disability. "*Member*" does not mean a volunteer fire fighter.

b. "*Net disability retirement allowance*" means the amount determined by subtracting the amount paid during the previous calendar year by the member for health insurance or similar health care coverage for the member and the member's dependents from the amount of the member's disability retirement allowance, including any dividends and distributions from supplemental accounts, paid for that year pursuant to this section.

c. "*Reemployment comparison amount*" means an amount equal to the current covered wages of an active special service member at the same position on the salary scale within the rank or position the member held at the time the member received a disability retirement allowance pursuant to this section. If the rank or position held by the member at the time of retirement pursuant to this section is abolished, the amount shall be computed by the system as though the rank or position had not been abolished and salary increases had been granted on the same basis as granted to other ranks or positions by the former employer of the member. The reemployment comparison amount shall not be less than the three-year average covered wage of the member, based on all regular and special service covered under this chapter.

2. *In-service disability retirement allowance.*

a. A member who is injured in the performance of the member's duties, and otherwise meets the requirements of this subsection, shall receive an in-service disability retirement allowance under this subsection, in lieu of a monthly retirement allowance as provided in section 97B.49A, 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as applicable.

b. Upon application of a member, a member who has become totally and permanently incapacitated for duty in the member's special service occupation as the natural and proximate result of an injury, disease, or exposure occurring or aggravated while in the actual performance of duty at some definite place and time shall be eligible to retire under this subsection, provided that the medical board, as established by this section, shall certify that the member is mentally or physically incapacitated for further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired. The system shall make the final determination, based on the medical evidence received, of a member's total and permanent disability. However, if a person's special service membership in the retirement system first commenced on or after July 1, 2000, the member shall not be eligible for benefits with respect to a disability which would not exist but for a medical condition that was known to exist on the date that membership commenced. A member who is denied a benefit under this subsection, by reason of a finding by the system that the member is not mentally or physically incapacitated for the further performance of duty, shall be entitled to be restored to active service in the same or comparable special service occupation position held by the member immediately prior to the application for disability benefits.

c. Disease under this subsection shall mean heart disease or any disease of the lungs or respiratory tract and shall be presumed to have been contracted while on active duty as a result of strain, exposure, or the inhalation of noxious fumes, poison, or gases. However, if a person's special service membership in the retirement system first commenced on or after July 1, 2000, and the heart disease or disease of the lungs or respiratory tract would not exist, but for a medical condition that was known to exist on the date that special service membership commenced, the presumption established in this paragraph shall not apply.

d. Upon retirement for an in-service disability as provided by this subsection, a member shall have the option to receive a monthly in-service disability retirement allowance calculated under this subsection or a monthly retirement allowance as provided in section 97B.49A, 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as

applicable, that the member would receive if the member had attained fifty-five years of age. The monthly in-service disability allowance calculated under this subsection shall consist of an allowance equal to one-twelfth of sixty percent of the member's three-year average covered wage or its actuarial equivalent as provided under section 97B.51.

*3. Ordinary disability retirement allowance.*

*a.* A member who otherwise meets the requirements of this subsection shall receive an ordinary disability retirement allowance under this subsection in lieu of a monthly retirement allowance as provided in section 97B.49A, 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as applicable.

*b.* Upon application of a member, a member who has become totally and permanently incapacitated for duty in the member's special service occupation shall be eligible to retire under this subsection, provided that the medical board, as established by this section, shall certify that the member is mentally or physically incapacitated for further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired. The system shall make the final determination, based on the medical evidence received, of a member's total and permanent disability. However, if a person's special service membership in the retirement system first commenced on or after July 1, 2000, the member shall not be eligible for benefits with respect to a disability which would not exist, but for a medical condition that was known to exist on the date that special service membership commenced. A member who is denied a benefit under this subsection, by reason of a finding by the system that the member is not mentally or physically incapacitated for the further performance of duty, shall be entitled to be restored to active service in the same or comparable special service occupation position held by the member immediately prior to the application for disability benefits.

*c.* Upon retirement for an ordinary disability as provided by this subsection, a member shall receive the greater of a monthly ordinary disability retirement allowance calculated under this subsection or a monthly retirement allowance as provided in section 97B.49A, 97B.49B, 97B.49C, 97B.49D, or 97B.49G, as applicable. The monthly ordinary disability allowance calculated under this subsection shall consist of an allowance equal to one-twelfth of fifty percent of the member's three-year average covered wage or its actuarial equivalent as provided under section 97B.51.

*4. Waiver of allowance.* A member receiving a disability retirement allowance under this section may file an application to receive benefits pursuant to section 97B.50, subsection 2, in lieu of receiving a disability retirement allowance under this section, if the member becomes eligible for benefits under section 97B.50, subsection 2. An application to receive benefits pursuant to section 97B.50, subsection 2, shall be filed with the system within sixty days after the member becomes eligible for benefits pursuant to that section or the member shall be ineligible to elect coverage under that section. On the first of the month following the month in which a member's application is approved by the system, the member's election of coverage under section 97B.50, subsection 2, shall become effective and the member's eligibility to receive a disability retirement allowance pursuant to this section shall cease. Benefits payable pursuant to section 97B.50, subsection 2, shall be calculated using the option choice the member selected for payment of a disability retirement allowance pursuant to this section. An application to elect coverage under section 97B.50, subsection 2, is irrevocable upon approval by the system.

*5. Offset to allowance.* Notwithstanding any provisions to the contrary in state law, or any applicable contract or policy, any amounts which may be paid or payable by the employer under any workers' compensation, unemployment compensation, employer-paid disability plan, program, or policy, or other law to a member, and any disability payments the member receives pursuant to the federal Social Security Act, 42 U.S.C. § 423 et seq., shall be offset against and payable in lieu of any retirement allowance payable pursuant to this section on account of the same disability.

*6. Reexamination of members retired on account of disability.*

a. Once each year during the first five years following the retirement of a member under this section, and once in every three-year period thereafter, the system may, and upon the member's application shall, require any member receiving an in-service or ordinary disability retirement allowance who has not yet attained the age of fifty-five years to undergo a medical examination as arranged by the medical board as established by this section. The examination shall be made by the medical board or by an additional physician or physicians designated by the medical board. If any member receiving an in-service or ordinary disability retirement allowance who has not attained the age of fifty-five years refuses to submit to the medical examination, the allowance may be discontinued until the member's withdrawal of the refusal, and should the member's refusal continue for one year, all rights in and to the member's disability retirement allowance shall be revoked by the system.

b. If a member is determined under paragraph "a" to be no longer eligible for in-service or ordinary disability benefits, all benefits paid under this section shall cease. The member shall be eligible to receive benefits calculated under section 97B.49B or 97B.49C, as applicable, when the member reaches age fifty-five.

#### *7. Reemployment.*

a. If a member receiving a disability retirement allowance is returned to covered employment, the member's disability retirement allowance shall cease, the member shall again become an active member, and shall contribute thereafter at the same rate payable by similarly classified members. If a member receiving a disability retirement allowance returns to special service employment, then the period of time the member received a disability retirement allowance shall constitute eligible service as defined in section 97B.49B, subsection 1, or section 97B.49C, subsection 1, as applicable. Upon subsequent retirement, the member's retirement allowance shall be calculated as provided in section 97B.48A.

b. (1) If a member receiving a disability retirement allowance is engaged in a gainful occupation that is not covered employment, the member's disability retirement allowance shall be reduced, if applicable, as provided in this paragraph.

(2) If the member is engaged in a gainful occupation paying more than the difference between the member's net disability retirement allowance and one and one-half times the reemployment comparison amount for that member, then the amount of the member's disability retirement allowance shall be reduced to an amount such that the member's net disability retirement allowance plus the amount earned by the member shall equal one and one-half times the reemployment comparison amount for that member.

(3) The member shall submit sufficient documentation to the system to permit the system to determine the member's net disability retirement allowance and earnings from a gainful occupation that is not covered employment for the applicable year.

(4) This paragraph does not apply to a member who is at least fifty-five years of age and would have completed a sufficient number of years of service if the member had remained in active special service employment. For purposes of this subparagraph, a sufficient number of years of service shall be the applicable years of service for a special service member as described in section 97B.49B or twenty-two for a special service member as described in section 97B.49C.

8. *Death benefits.* A member who is receiving an in-service or ordinary disability retirement allowance under this section shall be treated as having elected a lifetime monthly retirement allowance with death benefits payable under section 97B.52, subsection 3, unless the member elects an optional form of benefit provided under section 97B.51, which shall be actuarially equivalent to the lifetime monthly retirement allowance provided under this section.

9. *Medical board.* The system shall designate a medical board to be composed of three physicians from the university of Iowa hospitals and clinics who shall arrange for and pass upon the medical examinations

required under this section and shall report in writing to the system the conclusions and recommendations upon all matters duly referred to the medical board. Each report of a medical examination under this section shall include the medical board's findings as to the extent of the member's physical or mental impairment. Except as required by this section, each report shall be confidential and shall be maintained in accordance with the federal Americans with Disabilities Act, and any other state or federal law containing requirements for confidentiality of medical records.

10. *Liability of third parties subrogation.*

a. If a member receives an injury for which benefits are payable under this section, and if the injury is caused under circumstances creating a legal liability for damages against a third party other than the system, the member or the member's legal representative may maintain an action for damages against the third party. If a member or a member's legal representative commences such an action, the plaintiff member or representative shall serve a copy of the original notice upon the system not less than ten days before the trial of the action, but a failure to serve the notice does not prejudice the rights of the system, and the following rights and duties ensue:

(1) The system shall be indemnified out of the recovery of damages to the extent of benefit payments made by the retirement system, with legal interest, except that the plaintiff member's attorney fees may be first allowed by the district court.

(2) The system has a lien on the damage claim against the third party and on any judgment on the damage claim for benefits for which the retirement system is liable. In order to continue and preserve the lien, the system shall file a notice of the lien within thirty days after receiving a copy of the original notice in the office of the clerk of the district court in which the action is filed.

b. If a member fails to bring an action for damages against a third party within thirty days after the system requests the member in writing to do so, the system is subrogated to the rights of the member and may maintain the action against the third party, and may recover damages for the injury to the same extent that the member may recover damages for the injury. If the system recovers damages in the action, the court shall enter judgment for distribution of the recovery as follows:

(1) A sum sufficient to repay the system for the amount of such benefits actually paid by the retirement system up to the time of the entering of the judgment.

(2) A sum sufficient to pay the system the present worth, computed at the interest rate provided in section 535.3 for court judgments and decrees, of the future payments of such benefits for which the retirement system is liable, but the sum is not a final adjudication of the future payment which the member is entitled to receive.

(3) Any balance shall be paid to the member.

c. Before a settlement is effective between the system and a third party who is liable for any injury, the member must consent in writing to the settlement; and if the settlement is between the member and a third party, the system must consent in writing to the settlement; or on refusal to consent, in either case, the district court in the county in which either the employer of the member or the system is located must consent in writing to the settlement.

d. For purposes of subrogation under this section, a payment made to an injured member or the member's legal representative, by or on behalf of a third party or the third party's principal or agent, who is liable for, connected with, or involved in causing the injury to the member, shall be considered paid as damages

because the injury was caused under circumstances creating a legal liability against the third party, whether the payment is made under a covenant not to sue, compromise settlement, denial of liability, or is otherwise made.

11. *Document submissions.* A member retired under this section, in order to be eligible for continued receipt of retirement benefits, shall submit to the system any documentation the system may reasonably request which will provide information needed to determine payments to the member under this section.

12. *Additional contributions.* The expenses incurred in the administration of this section by the system shall be paid through additional contributions as determined pursuant to section 97B.49B, subsection 3, or section 97B.49C, subsection 3, as applicable.

13. *Applicability retroactivity.*

*a.* This section applies to a member who becomes disabled on or after July 1, 2000, and also applies to a member who becomes disabled prior to July 1, 2000, if the member has not terminated special service employment as of June 30, 2000.

*b.* To qualify for benefits under this section, a member must file a completed application with the system within one year of the member's termination of employment. A member eligible for a disability retirement allowance under this section is entitled to receipt of retroactive adjustment payments for no more than six months immediately preceding the month in which the completed application for receipt of a disability retirement allowance under this section is approved.

14. *Rules.* The system shall adopt rules pursuant to chapter 17A specifying the application procedure for members pursuant to this section.

2000 Acts, ch 1077, §51; 2001 Acts, ch 68, §21, 24; 2002 Acts, ch 1119, §126; 2002 Acts, ch 1135, §24; 2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §17, 18; 2004 Acts, ch 1103, §41