

# Chapter 9. Disability Retirement

## Table of Contents

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<b>ELIGIBILITY</b>	<b>1</b>
Regular Disability	
VRS Formula Amount	
Minimum Guaranteed Benefit	
Work-Related Disability	
Mandatory Refund of the Member Contribution Account	
Monthly Benefit	
Workers' Compensation Lump-Sum Payments	
Loss of Work-Related Disability Benefits	
Disability Retirement and Group Life Insurance	
<b>DISABILITY RETIREMENT PAYOUT OPTIONS</b>	<b>9</b>
Spousal Acknowledgement	
Basic Benefit	
Survivor Option	
Changing Options	
<b>DISABILITY RETIREMENT ESTIMATES IN <i>MYVRS</i> FOR EMPLOYERS</b>	<b>12</b>
<b>APPLYING FOR DISABILITY RETIREMENT</b>	<b>12</b>
Members with Terminal Medical Conditions	
Service Retirement with Pending Disability Application	
Acceptable Evidence of Date of Birth	
<b>DIRECT DEPOSIT</b>	<b>17</b>
<b>COST-OF-LIVING ADJUSTMENTS</b>	<b>17</b>
<b>TAXES ON BENEFITS</b>	<b>18</b>
<b>WORKING AFTER RETIREMENT</b>	<b>19</b>
<b>ATTACHMENTS TO DISABILITY RETIREMENT BENEFITS</b>	<b>21</b>
<b>APPROVED DOMESTIC RELATIONS ORDERS</b>	<b>21</b>
<b>ADMINISTRATIVE APPEAL PROCESS</b>	<b>23</b>
First Denial and Appeal Notice	
Second Denial and Appeal Notice	
<b>DISABILITY RECALL AND RE-EXAMINATION</b>	<b>25</b>

## Disability Retirement

**M**embers who become unable to perform their job duties because of a physical or mental disability which is likely to be permanent may be eligible to apply for disability retirement benefits. State employees who participate in the *Virginia Sickness and Disability Program (VSDP)* are not eligible for disability retirement. For information on VSDP benefits, see the “VSDP Handbook” on the VRS Web site.

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### ELIGIBILITY

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A member who meets the following eligibility requirements may apply for disability retirement:<sup>1</sup>

- The member is actively employed, or if terminated and 90 days has not passed, and the member has not taken a refund;
- The member is mentally or physically unable to perform job duties and the incapacity is likely to be permanent;
- There is objective medical evidence to support that the disability exists;
- The member is employed in a VRS-covered position;
- The member has not been on leave without pay for more than 24 months (except members on active duty military leave) provided the member has not taken a *refund* of the *member contribution account*; and
- The member is not covered under VSDP.

*Eligible members may apply from the first day of employment.*

Vesting is not required of the member to be eligible to apply for disability retirement. Coverage is available from the first day of employment in a VRS-covered position unless the disability existed prior to employment. If a

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<sup>1</sup> See [Code of Virginia § 51.1-156](#).

disability existed prior to employment, the member may apply for disability retirement only if the condition worsened substantially since employment.

**Note:** A member on military leave without pay who suffers a disabling condition may apply for disability retirement, even if the leave without pay period exceeds 24 months.

Participants in an Optional Retirement Plan (ORP) are not covered for disability by any program administered by VRS. Participants in the ORP for Higher Education must obtain disability coverage through a plan provided by their employer. ORP for Political Appointees and ORP for School Superintendent participants are advised to obtain individual coverage.

### Regular Disability

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If the member is vested, the amount of the monthly benefit is the higher of the VRS formula amount or the minimum guaranteed benefit. If the member has fewer than five years of service credit, the member receives the minimum guaranteed benefit.

*VRS pays the formula amount or minimum guaranteed benefit.*

### VRS Formula Amount

The VRS formula amount is 1.7 percent of the member's average final compensation (AFC) multiplied by the number of years of service credit. For Plan 1 members, AFC is the average of the 36 consecutive months of highest creditable compensation, wherever they occur in the member's salary history.

For Plan 1 members, AFC is the average of the 36 consecutive months of highest creditable compensation, wherever they occur in the member's salary history.

**Plan 2:** For Plan 2 members, AFC is the average of the 60 consecutive months of highest creditable compensation, wherever it appears in the member's VRS salary history.

The following salary increases should not be reported to VRS as creditable compensation and cannot be included in a member's AFC:

- Increases not related to a promotion and/or
- Increases which exceed the average increase received by other employees of the same employer holding comparable positions.

If an employer is found to have reported these types of increases as creditable compensation and an overpayment of retirement benefits result, VRS may recover from the employer the overpayment of benefits paid to the retiree.

If the member is taking disability retirement before age 60, service credit is calculated by using the smaller of:

- Two times the member's actual service credit, or
- The member's actual service credit plus the number of years remaining between the member's age at disability retirement and age 60.

If the member qualifies for disability retirement after age 60, the member's actual service credit is used to calculate the benefit. If the VRS formula amount is less than 50 percent of the member's AFC, the minimum guaranteed benefit amount is paid.<sup>2</sup>

### **Minimum Guaranteed Benefit**

The minimum guaranteed benefit is equal to 33 and 1/3 percent of the member's AFC if the member qualifies for primary Social Security retirement benefits or 50 percent of the AFC if the member does not qualify for primary Social Security retirement benefits.<sup>3</sup> A primary Social Security retirement benefit is the amount the member would receive from the Social Security Administration if retirement were at full retirement age as defined by the Social Security Administration. Full retirement age can be found in Figure 9-1 Social Security Full Retirement Ages below. Persons of full retirement age and older do not qualify for Social Security disability benefits.

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<sup>2</sup> See [Code of Virginia § 51.1-157](#).

The member applying for disability retirement must also apply for Social Security benefits. If the member is not eligible for primary Social Security retirement benefits, he or she may be eligible for Social Security disability retirement benefits. A member who is eligible for primary Social Security retirement benefits (age 65 or later depending on year of birth) is paid the minimum guaranteed benefit if higher than the VRS formula amount.

Evidence of applying for Social Security disability benefits must be submitted to VRS when applying for VRS disability retirement. If VRS is not provided with evidence that the member has applied for Social Security disability benefits, VRS will pay the member the lesser of 33 1/3 percent of the AFC or the VRS formula amount, until such evidence is received. If Social Security disability benefits are approved for a future date, VRS will pay 50 percent of the AFC from the retirement date until the effective date of Social Security benefits. The higher of the formula amount or 33 1/3 percent of the AFC is paid from the commencement of the Social Security disability benefits. If Social Security disability benefits are denied, VRS will pay the higher of the formula amount or 50 percent of the member's AFC upon receipt of a reimbursement agreement and an appeal statement.

**Note:** Members must notify VRS of any status changes in Social Security benefits.

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<sup>3</sup> See Code of Virginia § 51.1-157(D).

**Figure 9-1 Social Security Full Retirement Ages**

Year of Birth	Normal Retirement Age
1937 and prior	65
1938	65 years 2 months
1939	65 years 4 months
1940	65 years 6 months
1941	65 years 8 months
1942	65 years 10 months
1943-1954	66
1955	66 years 2 months
1956	66 years 4 months
1957	66 years 6 months
1958	66 years 8 months
1959	66 years 10 months
1960 and later	67

### Work-Related Disability

A member who becomes disabled from a cause compensable under the *Virginia Workers' Compensation Act* may apply for *work-related disability* retirement. A work-related disability is a disability for which the member has received a workers' compensation award and the compensable condition is determined as the primary cause of the disability. The member must apply for work-related disability retirement while employed in a VRS-covered position, before completing 24 consecutive months of leave without pay, or within 90 days of leaving employment. The member should apply for work-related disability retirement when it is determined that the disability is likely to be permanent.

### Mandatory Refund of the Member Contribution Account

A member approved for a work-related disability retirement receives a mandatory refund of the member contribution account in addition to a monthly benefit. The member contribution account consists of member-paid contributions, employer-paid member contributions, and accrued interest on those retirement contributions. When paid to the member, a refund is subject to a federal tax withholding of 20 percent and a Virginia state withholding of 4 percent if the member's legal residence is in Virginia. Mandatory taxation may be deferred if the member rolls over the refund into

*Eligible members receive a monthly benefit plus a refund.*

an individual retirement account (IRA) or another qualified plan. For more information, see Chapter 7 “Refunds.”

### **Monthly Benefit**

If a member qualifies for a work-related disability benefit from VRS and is vested, the member receives the higher of either the VRS formula amount or the guaranteed benefit. Advise the member to consider the tax implications before selecting the VRS formula amount or the guaranteed benefit. Refer to the “Taxes on Benefits” section of this chapter for more information. A member who has fewer than five years of service is eligible only for the guaranteed benefit. The guaranteed benefit is 50 percent of the member’s AFC if the member qualifies for primary Social Security benefits, or 66 2/3 percent of AFC if the member does not qualify for primary Social Security benefits.

A member who is eligible for a Workers’ Compensation benefit that is equal to or greater than the VRS benefit for work-related disability is not eligible to receive benefits from VRS while receiving the Workers’ Compensation benefit. If the Workers’ Compensation benefit is less than the VRS benefit, VRS will pay the difference between the benefits.

### **Workers’ Compensation Lump-Sum Payments**

When a member accepts a lump-sum settlement of Workers’ Compensation benefits, VRS adjusts the member’s disability benefit as if the Workers’ Compensation benefit included in the lump-sum settlement was paid out over a period of months instead of in a lump sum. The member may not receive a disability retirement benefit from VRS for a number of months, as determined by several factors such as the amount of Workers’ Compensation the member would have received had the payment been monthly, or attorney fees that may be included in the settlement. Any offset for a settlement begins on the first of the month following the date that the signed settlement order is entered by the Workers’ Compensation Commission.

**Loss of Work-Related Disability Benefits**

*The VRS benefit is offset by the Workers' Compensation benefit.*

If a member was injured on the job, receives Workers' Compensation benefits, and is approved for a work-related disability retirement by VRS, the VRS benefit is offset by the amount of the Workers' Compensation benefits received for a maximum of 500 weeks. At that time, VRS pays the full guaranteed benefit. If the member refuses employment, whether it is the former job or a light duty position, or refuses to comply as provided by law<sup>4</sup> and Workers' Compensation benefits cease, VRS benefits will continue to be offset as if the member were receiving Workers' Compensation benefits.

When a member successfully performs a full-time, light-duty position for a year or more, and later applies for disability retirement based on the disability which caused the assignment to the light duty position, the new position description at the time of application must be submitted with the application for disability retirement. In addition, if the member is assigned to a light duty position and is not successfully performing that job due to limitations caused by the medical condition as a result of the injury, the position description from the former position must be submitted with the application for disability retirement. In either case, the member should be reported to VRS either as an active member or as on leave-without-pay. A member who is placed in a part-time position loses eligibility to apply for disability retirement 90 days after ceasing employment in the full-time position and eligibility for group life insurance within 31 days.

### Disability Retirement and Group Life Insurance

A member who retires under disability remains eligible for the death benefit and accelerated death benefit under the basic group life insurance program at no cost. However, the provision that allows for payment of double the death benefit for an accidental death ceases upon retirement.

Dismemberment insurance also ceases upon retirement.

The amount of the retained coverage is the same amount in force on the last day the member performed services. For disability retirees, the 25

percent annual January 1 coverage reduction begins 12 months after the retiree reaches normal retirement age and continues thereafter, until it reaches 25 percent of its original life insurance policy, which equals approximately 50 percent of the member's pre-retirement salary.<sup>5</sup>

The disability retiree's age affects how he or she may carry life insurance into retirement.

- Disability retirees who have met normal retirement age or older at retirement must have had 60 months of continuous coverage to continue optional life insurance into retirement.
- Disability retirees who have not yet reached normal retirement age at retirement do not have to satisfy the 60 month requirement and they retain the level of pre-retirement optional life insurance coverage in force.
- Disability retirees who reach age normal retirement age while in retirement may elect to continue optional coverage beyond normal retirement age. The retiree must have been covered for a period of at least 60 continuous months prior to reaching normal retirement age. The election must be made within 31 days of the end of the month that the retiree reaches normal retirement age.

If the retiree elects to continue the optional life insurance coverage, the rates would be the same as those for the active member group. However, the amount of the insurance that may be continued is limited. Retirees may only select Option 1 or 2, which is one or two times their annual salary, respectively. Retirees can't select a higher option than what they previously had. In addition, the maximum amount cannot exceed \$250,000 for retirees continuing in the group plan after July 1, 2009. The member completes the Retiree Optional Life Continuation (VRS-39R), which may be found on the VRS Web site.

Optional life that is continued for eligible members, retirees and spouses reduces 25 percent at the member's normal retirement age. The amount continues to reduce 25 percent every five years, with all insurance terminating at age 80.

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<sup>4</sup> See Code of Virginia § 65.2-603.

<sup>5</sup> See Code of Virginia § 51.1-505(B).

The disability retiree has 31 days from the month in which the last premium was paid to convert to an individual policy. This could be 31 days from the month before retirement or 31 days from the month the retiree reaches age 65. The cost of conversion is at non-group rates.

In retirement, the optional life death benefit and accelerated benefit are retained. However, the provision that allows for payment of double the death benefit for an accidental death ceases upon retirement. Dismemberment insurance also ceases upon retirement.

Refer to Chapter 5 “Group Life Insurance” and Chapter 10 “Post Retirement Benefits” of this manual for more information on life insurance.

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## DISABILITY RETIREMENT PAYOUT OPTIONS

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Under both regular disability and work-related disability, the member may choose either the Basic Benefit or the Survivor Option. If the member is married at the time the payout option is selected, the member’s spouse must acknowledge the form of the payout. The Advance Pension Option and the Partial Lump-Sum Option Payment (PLOP) are not available to disability retirees. Refer to “Disability Retirement Estimates in *myVRS* for Employers” in this chapter to calculate benefits under the two payout options.

### Spousal Acknowledgement

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If a member is married or separated, the member’s spouse must acknowledge the payout option chosen by the member. The member’s name will not be added to the retirement payroll until the proper acknowledgement form is received by VRS.

VRS has developed procedures for situations where the member is unable to locate his or her spouse or the spouse is unwilling or unable to sign the acknowledgement. If a member is unable to obtain spousal acknowledgement, contact VRS for more information.

## Basic Benefit

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*The Basic Benefit does not continue the benefit to a survivor.*

The Basic Benefit is the amount the member receives based on AFC, years of service, and age at retirement. Under the Basic Benefit, a member with five or more years of service credit receives the higher of either the VRS formula amount or the guaranteed benefit amount. A member with fewer than five years of service credit receives the guaranteed benefit amount.

The Basic Benefit is payable to the member only and does not provide a survivor benefit. However, if the member retires under regular disability and dies before receiving in benefits the amount of accumulated member retirement contributions plus interest (including employer-paid member contributions paid after July 1, 1980), any funds remaining in the member contribution account are paid in a lump sum to the designated beneficiary. A member who retires under work-related disability receives a mandatory refund of member retirement contributions plus interest at retirement, and no further benefits are payable at death under this provision.

If the Basic Benefit is selected as the benefit payout option, it cannot be changed once the date of retirement has passed. In addition, if the member returns to VRS-covered employment and retires again, the same payout option applies to any subsequent retirements.<sup>6</sup>

## Survivor Option

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*The Survivor Option continues the benefit to another person.*

If a member selects the Survivor Option, a monthly retirement benefit is paid to a second person(s), known as the contingent annuitant, after the member's death. The member's Basic Benefit is actuarially reduced based upon the ages of the member and the contingent annuitant at the date of the member's retirement.<sup>7</sup> The member may choose to have any whole percentage of the monthly benefit paid to the contingent annuitant, from 10 to 100 percent. The smaller the percentage of a monthly benefit the member leaves to the survivor, the smaller the reduction to the member's monthly benefit. Payments continue until the contingent annuitant's death. If a

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<sup>6</sup> See [Code of Virginia § 51.1-165 \(F\)](#).

member dies after a service or disability retirement application is received and scanned by VRS, but before the effective date of retirement and the member has selected the Survivor Option naming the spouse, minor child or parent as the contingent annuitant, the beneficiary is eligible for either the death-in-service benefit or the Survivor Option, whichever is greater. Please see Chapter 6, "Member Death-In-Service Benefits."

The contingent annuitant may be any individual(s) selected by the member. If a member elects more than one contingent annuitant, the benefit is calculated based on the age of the youngest and divided equally. If the contingent annuitant is the member's spouse, a percentage limitation does not apply, regardless of the age difference between the member and the spouse. The Internal Revenue Service (IRS), however, limits the percentage of the benefit payable to a non-spouse contingent annuitant. A member who chooses a non-spouse contingent annuitant whose age difference is 11 years or more cannot select a 100% Survivor Option. The greater the age difference between the member and the non-spouse contingent annuitant, the smaller the benefit the non-spouse contingent annuitant can receive. The benefit amount that can be paid depends on the age difference between the member and the survivor when the member begins to receive benefits. For additional information, see Appendix 8-A, "Maximum Non-Spouse Annuity Percentage," in Chapter 8, "Service Retirement," of this manual.

When calculating the Survivor Option under disability retirement, the member's age is always considered normal retirement age on the date of retirement. The contingent annuitant's age is adjusted using the difference between the member's age and the contingent annuitant's age at the time the member retires.

**Example:** At disability retirement, the member is 53 and the contingent annuitant is 57. Because a disability retiree is assumed to be normal retirement age at retirement, the member's age is adjusted to age 65 and the contingent annuitant's is considered to be age 69.

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<sup>7</sup> See Code of Virginia § 51.1-165 (2).

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## Changing Options

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If the Survivor Option is chosen, it may be changed only in certain situations. For example, if the member's contingent annuitant dies, the member may name a new contingent annuitant or revert to the Basic Benefit. For additional information on changing the payout option, see "Changing Options" in Chapter 8, "Service Retirement," of this manual.

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## DISABILITY RETIREMENT ESTIMATES IN *myVRS* FOR EMPLOYERS

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*myVRS* for Employers is a secure on-line application that allows you to obtain detailed information from VRS about your employees' current status on the VRS system. You can assist your employees by answering questions about the coverage and estimating their disability retirement benefit.

*myVRS for Employers makes it easy to calculate benefits.*

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## APPLYING FOR DISABILITY RETIREMENT

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For comprehensive retirement forms, distribute the "Applying for Disability Retirement" booklet to disability retirement applicants. This booklet contains all of the required forms a member must submit and provides a summary of the disability retirement process and the options available. Copies of the booklet are available on the VRS Web site or they may be ordered by calling VRS.

Disability retirement applications must be submitted while the member is employed in a VRS-covered position, within 90 days of leaving a covered position, or before completing 24 consecutive months of leave without pay. A member on military leave without pay who suffers a disabling condition may apply for disability retirement even after 24 months.

In all cases, the application should be submitted to VRS when it is determined that the condition is likely to be permanent, and if possible, before the member has used all annual or sick leave. If a member has

exhausted all annual and sick leave, the member should be placed on leave without pay. These steps must be followed:

1. The member completes the member's section of the Application for Disability Retirement (VRS-6). The member must obtain his or her spouse's acknowledgment of the retirement option selected, if married or separated.

**Note:** If the member is unable to complete the application, someone with specific court authority to execute the form or someone who has durable power of attorney containing specific authorization may complete the form. If the member selects a survivor option, the court order must specify the name of the person who is to receive the survivor benefit or in the case of a durable power of attorney, the person given the authority to name the survivor.

2. The member must complete an Explanation of Disability (VRS-6A) to provide an interpretation of how he or she is unable to perform his or her job duties.
3. The physician must provide information about the member's condition using a Physician's Report (VRS-6B). The physician submits this form along with other necessary medical records directly to VRS. The member is responsible for any costs incurred from submitting this information.
4. You must complete an Employer Information for Disability Application (VRS-6D) to provide information about the member's current position.
5. The employee's Human Resource Office must provide an official position description. Teaching faculty in higher education are exempt from this requirement.
6. The member must submit a birth certificate or other evidence of date of birth. See "Acceptable Evidence of Date of Birth" in this chapter for a list of documents that VRS accepts. In addition, if the member is selecting a survivor option, the member must submit a birth certificate or other evidence of date of birth for the *contingent annuitant*.
7. The member must submit a Request for Income Tax Withholding (VRS-15) with the application. If the VRS-15 is not submitted, VRS assumes married with three allowances for federal taxation, and zero allowances for state taxation. A member that applies for work-related disability does not need to submit the VRS-15 unless he or she wants taxes withheld.
8. The member must complete an Authorization for Direct Deposit of Monthly Benefit (VRS-57). The retirement application is considered incomplete if the VRS-57 is missing.
9. The member may complete a Designation of Beneficiary (VRS-2) to update his or her designated beneficiary.
10. The member must complete a Request for Health Insurance Credit (VRS-45). A disability retiree receives the maximum health insurance credit provided by his or her employer. (Some political subdivisions have

elected not to participate in this program. Advise your employees whether your entity has elected the health insurance credit.) Political subdivision employees who are constitutional officers, employees of a constitutional officer, sheriffs, sheriff's deputies, or local Social Service employees are eligible for the health insurance credit regardless of whether or not their employer has elected to participate. To be given the health insurance credit, the employee must have their employer complete a Certification of Employment for Health Insurance Credit Eligibility (VRS-76) to certify eligibility for the health insurance credit.

**Note:** Once the retirement benefit has been determined, a retirement certificate is sent to the member. If the member is eligible for the health insurance credit, the retirement certificate reflects the maximum amount that can be paid. If the retiree does not submit a Request for Health Insurance Credit (VRS-45) with the retirement application, a copy of the form can be obtained from the VRS Web site. Refer to Chapter 10 "Post Retirement Benefits" for additional information regarding the health insurance credit.

In addition to the forms previously mentioned, the following documentation may be required:

*Social Security information must be provided.*

- A copy of the Social Security disability letter of award or denial (based on medical reasons), or if a decision has not been reached, receipt of application letter. A member who has not achieved full Social Security age when applying for VRS disability retirement must apply for Social Security disability benefits. Eligibility for full Social Security retirement benefits occurs at the member's Social Security normal retirement, which ranges from age 65 to age 67 depending on the member's year of birth. The member may apply for Social Security disability by calling the Social Security Administration's toll-free number 1/800/772-1213, going to a Social Security office or online at [www.socialsecurity.gov/disability.html](http://www.socialsecurity.gov/disability.html).
- A State Health Benefits Program Enrollment/Waiver Form for Retirees and VSDP/LTD Participants. This form, which applies to state employees only, may be obtained from the VRS Web site.
- A copy of the accident report and a copy of the Workers' Compensation award letter (only for work-related disability).

*Review application for completeness.*

Once you receive the member's completed forms, review the member's certification for accuracy and complete the employer's section of the VRS-6. Send the completed forms and evidence of date of birth to VRS immediately. You cannot sign the application form on behalf of the employee unless the employee is physically or mentally unable to sign the form. If you do so, you must select the Basic Benefit as the payout option.

**All required forms and documentation must be sent to VRS before a disability application can be approved.** However, do not hold a disability retirement application while awaiting proof of birth, a decision from the Social Security Administration, or medical information. Even though this information is required to approve a disability retirement application, it is important to initiate the application process as soon as possible because processing may take up to 90 days.

**Note:** The disability retirement date is the first of the month following the last month in which *creditable compensation* is reported for the member. If the member is on leave without pay, the retirement date may be backdated up to 90 days from first receipt of the application by VRS. The adjusted retirement date must be the first of a month.

### Members with Terminal Medical Conditions

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**If the member has a terminal medical condition, the Application for Disability Retirement (VRS-6) must be received by VRS before the member dies.** In order to be considered as being received, the Member Section of the VRS-6 must be scanned into the VRS imaging system. The date and time recorded by imaging is the official time of receipt. It is not necessary that Part E, the Employer Certification, be complete for the disability retirement to be processed. However, Part A, B, C and D of the Member Certification, must be completely filled out including:

- Payout option,
- If choosing a Survivor Option, the percentage to be paid to the survivor, and
- Spousal acknowledgement.

VRS must receive the completed VRS-6 before the member dies to retain the member's right to a Survivor Option, if chosen. This is the only instance where VRS will accept a faxed application. If the application is not received by VRS prior to the death of the member, the application will be processed as a death in service. For information about death in service, see Chapter 10 "Post Retirement Benefits" in this manual.

## Service Retirement with Pending Disability Application

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A member who meets the eligibility requirements may apply for service retirement while waiting for a decision concerning disability retirement. If the disability is work-related, VRS cannot process the service retirement application unless the work-related disability retirement application is rescinded. This is done to avoid any potential overpayment due to the offset of Workers' Compensation benefits.

The member must submit the Application for Service Retirement (VRS-5) to VRS at the same time as the Application for Disability Retirement (VRS-6) and must select either the Basic Benefit or the Survivor Option. If the member selects the Survivor Option, the percentages payable to the survivor must be identical on both applications. The member may reserve the right to retire under a different option in the event the disability retirement is denied by submitting a request in writing with the disability retirement application.

**Note:** When a member submits applications concurrently, the VRS-5 is held for 30 days to allow time for a disability retirement decision to be made. If more than 30 days are needed for the VRS Medical Review Board to make a recommendation, VRS processes the Application for Service Retirement (VRS-5) and adds the member to the monthly payroll. If disability retirement is subsequently approved, VRS adjusts the member's benefit retroactively to the date of retirement. If the member's disability retirement is denied, the member continues to receive the service retirement benefit.

*Legible  
photocopies are  
acceptable.*

## Acceptable Evidence of Date of Birth

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A copy of one of the following documents must be submitted as evidence of date of birth for the member and contingent annuitant. Photocopies are acceptable as long as they are clear and legible.

- Public record of birth
- Report of confidential Social Security benefit information (Form 2458)
- Church record of birth or baptism
- Census Bureau notification of registration of birth
- Hospital birth record or certificate
- Flytningsbetyg or similar foreign birth record (provide translation if necessary)
- Physician's or midwife's birth record

- Certification of approved form of Bible or other family record
- Naturalization record
- Immigration record (provide translation if necessary)
- Military record
- Passport (active or expired)

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## DIRECT DEPOSIT

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VRS deposits monthly benefits through Electronic Funds Transfer (EFT) into a retiree's or beneficiary's bank, credit union, or other financial institution. Deposits are made on the first of each month or the last working day of the preceding month, if the first falls on a holiday or weekend. The annual direct deposit schedule is published in the winter edition of *Retiree News*.

Participation in direct deposit is required of retirees and beneficiaries, unless an exception has been filed and approved by VRS. Processing of the disability retirement application will be delayed until the Authorization for Direct Deposit of Monthly Benefit (VRS-57) is received or an exception has been approved.

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## COST-OF-LIVING ADJUSTMENTS

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A retiree is eligible for a *cost-of-living adjustment* (COLA) on July 1 of the second calendar year after retirement. Because VRS pays retirement benefits in arrears, the COLA is reflected in the August 1 payment. Adjustments are effective yearly thereafter on July 1.

**Example:** If a person retired on September 1, 2010, the first COLA is effective with the July 1, 2012 payment, payable on August 1, 2012.

**Note:** A January 1<sup>st</sup> retirement date is considered to be in the previous calendar year, and the retiree is eligible for a cost-of-living adjustment after the first calendar year of retirement. For example, a person retiring on January 1, 2010 is eligible for a COLA effective July 1, 2011, reflected in the August 1, 2011 payment.

*The amount of the COLA is determined by the CPI-Urban.*

The amount of the COLA is directly dependent upon the Consumer Price Index-Urban (CPI-U). A Plan 1 retiree receives the full amount of the first 3

percent increase in the CPI-U plus one half of the next four percent increase with a maximum of 5 percent.

**Plan 2:** A Plan 2 retiree receives the full amount of the first 2 percent increase in the CPI-U and half of any additional increases, up to 3 percent in any given year.

Because COLAs are based on the rate of inflation, they are not guaranteed to occur each year. If there is no increase or even if there is a decrease in the CPI-U, the monthly retiree benefit amount will not be reduced.

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## TAXES ON BENEFITS

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A work-related disability benefit is exempt from federal and state tax withholding if the member receives the guaranteed benefit. If the member receives the VRS formula amount under a work-related disability, the monthly benefit is taxed.

For regular disabilities and for work-related disabilities not determined under the guaranteed benefit, a retiree must pay federal and state taxes on the retirement benefit. The retiree includes a Request for Income Tax Withholding (VRS-15) with the retirement application. The VRS-15 allows retirees to elect how federal and state income taxes will be withheld from the monthly benefit payment. If VRS does not have this form on file, taxes are automatically withheld based on a status of married claiming three allowances for federal income taxes and zero allowances for state income taxes.

A retiree who does not want taxes withheld should notify VRS using a VRS-15. By not having taxes withheld, a retiree may be responsible for paying estimated taxes; tax penalties may be assessed if the retiree's withholding and estimated tax payments are insufficient.

A retiree may change the withholding amount at any time during the year by filing a new VRS-15. A change to the withholding may be needed if the retiree married, divorced or had other changes affecting tax status during the past year. A retiree who is not claiming resident status in Virginia and will not file income taxes with the Commonwealth of Virginia must complete the VRS-15, marking the block indicating “non-resident” status for state taxes.

In addition, the value of a retiree’s basic life insurance coverage in excess of \$50,000 is subject to FICA and federal and state income tax. The imputed income is reported each year on a W-2 form. Any taxes withheld for FICA and federal and state income taxes are deducted from the monthly benefit.

The staff of the nearest IRS office or a personal tax advisor can help a retiree determine actual federal tax liability. A retiree should contact the taxpayer assistance unit of the Virginia Department of Taxation at 804/367-8031 for help determining state tax liability.

VRS makes every effort to provide the best tax information available; however, it is the member’s responsibility to ensure compliance with federal and state tax laws.

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## WORKING AFTER RETIREMENT

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*Re-employment  
may terminate  
disability  
benefits.*

A member who has been approved for disability retirement may work in any job not covered by VRS, JRS, VaLORS, SPORS, hazardous duty positions, or an *Optional Retirement Plan (ORP)* as long as the duties are not the same or similar to the ones VRS found the member unable to perform. If the member accepts a position with the same or similar duties, VRS disability benefits cease.

If the member accepts a temporary, hourly or other non-covered position with a VRS-participating employer, the employee may continue to receive disability retirement benefits.

VRS is a qualified pension plan as defined by the IRS. The IRS requires a severance of employment for a member to be eligible to receive a plan distribution. To ensure there has been a severance in employment, VRS requires that a member have a least a full calendar month break in service before returning to non-covered employment with his or her pre-retirement employer.

If an employer disregards the break in service rules, the retiree's benefit will be adjusted going forward and VRS may collect the overpayment of retirement and other benefits paid to the retiree from the employer.

If the member accepts re-employment in a covered position, benefits cease and the member becomes an active member of the retirement system. The period of disability retirement is counted as service credit toward future retirement. The member and the new employer must fill out a Request for Termination of Monthly Benefit (VRS-7). This form can be obtained on the VRS Web site.

Returning to work in a VRS-covered position with a state agency may result in the member being enrolled in VSDP.

When returning to work after retirement, the member returns under the same Plan and must retire under the same retirement option selected at the initial retirement.

Advise retirees who receive Social Security benefits to consult the nearest Social Security office concerning reemployment because Social Security rules govern the maximum amount a person may earn and remain eligible for Social Security benefits.

**Note:** VRS has no responsibility for the reemployment of disability retirees.

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## ATTACHMENTS TO DISABILITY RETIREMENT BENEFITS

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VRS retirement benefits are exempt from county or municipal tax and are not subject to execution, attachment, garnishment or any other process whatsoever, except under the following conditions:

- IRS tax levies (A retiree who is subject to IRS tax levies is notified by the IRS and VRS regarding the amount and duration of the attachment.)
- Debt to a member's employer
- Child support payments
- Marital property as stated in an Approved Domestic Relations Order (ADRO)

Retirement benefits and assets created under Title 51.1 are deemed to be marital property pursuant to Chapter 5 (Section 20-89.1 et seq.) of Title 20 of the Code of Virginia and can be divided or transferred by a court by direct assignment to a spouse or former spouse pursuant to Section 20-107.3.<sup>8</sup>

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## APPROVED DOMESTIC RELATIONS ORDERS

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A copy of an ADRO must be sent to VRS for review to ensure that the language contained in the order is acceptable to VRS. This is a preventive measure meant to avoid refileing the ADRO with the court if the language is not acceptable to VRS or the benefit distribution does not conform to law. For more information, the "VRS Guide to Retirement Benefits and Divorce" is available on the VRS Web site under the Forms and Publications drop down menu. This publication is intended to be a source of reference for attorneys representing VRS members involved in divorce proceedings. The member or member's attorney may contact VRS and request a copy of this publication.

*ADRO language must be acceptable to VRS.*

An ADRO must clearly specify the following:

- The name and last known mailing address of the member and alternate payee;
- Social security number included on a Private Addendum;<sup>9</sup>

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<sup>8</sup> See Code of Virginia § 51.1-124.4.

<sup>9</sup> See Code of Virginia §20-121.03

- The amount or percentage of the member's or retiree's benefit to be paid to the alternate payee, or the manner in which the percentage is to be determined;
- The number of payments or the time period to which the order applies; and
- The plan to which the order applies.

The ADRO cannot require VRS to:

- Provide a benefit or option that is not otherwise provided by law or elected by the member;
- Provide increased benefits;
- Notify the alternate payee of changes to the benefits due the member or retiree other than the amount of payment specified in the ADRO; or
- Pay proceeds from a group life insurance policy or refunds of retirement contributions that may be due upon the death of the VRS member or retiree to anyone other than persons designated in writing by the member or retiree on the VRS-2 executed by the VRS member and filed with VRS.

The distribution to an alternate payee may be rolled over to an IRA if distributed through a refund to defer the 20 percent federal tax and 4 percent Virginia state tax withholding, if applicable. The refund distribution to an alternate payee cannot, however, be rolled over to another qualified plan.

A VRS member or alternate payee cannot borrow funds from the plan, nor can the alternate payee receive any payment until the member begins to draw a benefit or requests a refund.

To release information regarding a member's or retiree's benefits, the member must send a written request or release to VRS authorizing release of information to someone other than the member. Information may also be secured by a subpoena duces tecum. However, released information is limited to:

- The member contribution account balance,
- Benefit estimates through the marriage separation date and/or assuming continuous employment to retirement, and
- The current beneficiary designation for retirement contributions and group life insurance.

**Note:** VRS does not provide any present value calculations or serve as an expert witness in divorce cases.

When the ADRO is approved, VRS:

- Sends a letter of approval to the person submitting the order,
- Flags the member or retiree's record,
- Incorporates the ADRO into the record, and
- Begins processing a distribution in the case of a pending refund or monthly payment if the member is receiving a retirement benefit.

VRS notifies a member who selects a retirement option at retirement that does not conform to the ADRO and/or divorce decree on file with VRS. VRS cannot require a member to select a specific option. A member who retires may not change the retirement option. The payment under an ADRO to an alternate payee ceases at the death of the member or retiree. VRS cannot deduct health insurance payments, but can withhold taxes for the alternate payee. If the member dies before drawing benefits, the beneficiary designation determines how benefits are paid for retirement and life insurance.

**Note:** The alternate payee must notify VRS of any change to their name or address. VRS will only use the name and address that is on the file to process payments.

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## ADMINISTRATIVE APPEAL PROCESS

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The VRS Board of Trustees ("Board") has authority over all decisions concerning disability retirement benefits. The Board has authority to create one or more medical boards composed of physicians or other health care professionals.<sup>10</sup>

The Medical Board is a group of Board-certified physicians whose members are not eligible to participate in VRS. The Medical Board is statutorily charged to review all applicant reports of medical examinations, to investigate all essential health and medical statements and certificates filed in connection with a disability claim, and to submit its conclusions and

*Appeals must be received within 90 days of the denial letter.*

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<sup>10</sup> See [Code of Virginia § 51.1-124.23](#).

recommendations to the Board. The Medical Board makes its recommendations based on objective medical evidence submitted by or on behalf of the applicant.

The Medical Board may require that the applicant submit to an **independent medical examination**. The applicant is notified by mail as to the date, time, and location for the examination. The independent medical examiner will furnish the Medical Board with a report of findings.

A member who receives written notification from VRS that the application for disability retirement has been denied may appeal.

### First Denial and Appeal Notice

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A disability retirement applicant may file an appeal by sending written notice to VRS within 90 days from the date of the denial letter (whether sent to the applicant or the applicant's attorney). The applicant must also submit any new significant medical information within this 90-day period or inform VRS that there is no additional medical information. If the applicant's notification of appeal is not received within the 90-day period, the appeal process is terminated and the Board's decision becomes final.

When the applicant's appeal notice is received by VRS, the medical file is returned to the Medical Board for review of any new medical information along with all previous medical documentation. Even if the applicant submitted to an independent medical examination on the first review, the Medical Board may require another examination.

If, however, no new medical information is submitted, the applicant's agency record is forwarded to the Compliance Unit for an administrative appeal under the Administrative Process Act (APA).

### Second Denial and Appeal Notice

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A disability retirement applicant may file a second appeal by sending written notice to VRS **within 30 days** from the date of the denial letter (whether

sent to the member or the member's attorney). The applicant must also submit any significant new medical information within this 30-day period or inform VRS that there is no additional medical information to submit. If the applicant's notification of appeal is not received within the 30-day period, the appeal process is terminated and the Board's decision becomes final.

After the Medical Board reviews the medical information submitted, it recommends approval or denial of the application for disability retirement to VRS.<sup>11</sup> If, however, no new medical information is submitted, the applicant's agency record is forwarded to the Compliance Unit for an administrative appeal under the Administrative Process Act (APA).

The Compliance Unit assigns the appeal to an Individual Fact Finder (IFF), who conducts an informal fact-finding proceeding under the APA.<sup>12</sup> The IFF contacts the applicant or the applicant's attorney regarding a date and location for the informal fact finding proceeding. The IFF makes a recommendation to the Medical Board regarding the applicant, and the Board issues a final case decision. This decision can receive judicial review from a Circuit Court in Virginia under the Virginia Administrative Process Act. For information about appealing the final case decision, contact VRS.

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## DISABILITY RECALL AND RE-EXAMINATION

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*Disability retirees are subject to re-examination.*

VRS can require a disability retiree to provide updated medical information or to have a follow-up examination once per year until normal retirement age. If a retiree refuses the examination, and the refusal continues for six months, or the examination reveals that the retiree is no longer disabled, all rights to further disability benefits cease. The retiree may then:

- Receive a refund of any accumulated retirement contributions in excess of the disability retirement allowances received,
- Return to work in a position covered by VRS, in which case the original service credit and the period of disability retirement is credited as service in the member's record, or

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<sup>11</sup> See [Code of Virginia § 51.1-156](#).

<sup>12</sup> See [Code of Virginia § 2.2-4019](#).

- Receive a service retirement allowance upon reaching retirement age if the total of the membership service and the period of disability equal at least the five years required for vesting.

**Note:** A retiree who is found no longer eligible for disability retirement, and who does not qualify for service retirement at the time of termination of benefits, loses life insurance coverage if not returning to covered employment, but may convert to an individual policy within 31 days of losing retirement benefits. VRS has no responsibility for the reemployment of disability retirees.

A retiree may appeal a Medical Board decision to suspend disability benefits. Disability benefits continue to be paid during the appeal process until a final case decision is rendered. If the final case decision determines that the member is no longer disabled, benefits are terminated with the subsequent payroll cycle.