

Chapter 6. Long-term Disability

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Long-term Disability

Long-term disability benefits provide income replacement for employees who become disabled and unable to work for an extended period of time. Long-term disability is a non-work related or work-related condition that prevents the employee from performing the full duties of the job for an extended period of time. A work-related disability is the result of an occupational illness or injury that occurs on the job and the cause is determined to be work related under the Virginia Workers' Compensation Act. Long-term disability benefits begin at the expiration of the maximum period of short-term disability.

While on long-term disability, employees continue to accrue service as a VRS-covered member. Long-term disability participants are not considered employees of the Commonwealth of Virginia while on long-term disability and your agency is allowed to recruit for and fill the position.

Long-term disability is in effect when the employee:

- Is not working at all;
- Is working at the his or her agency for less than 20 hours per week in a full-time position; or
- Is working at his or her agency for less than 20 hours per week in a qualified part-time position.

WAITING PERIOD

Long-term disability benefits provide income protection to an employee who has been on short-term disability for 125 work days.

For major chronic conditions, the 125 work days are cumulative, not consecutive, and can be interrupted by periods of work that is full-duty and full-time of less than 45 consecutive calendar days. If an employee returns to work for 45 or fewer consecutive calendar days during the 125 work day waiting period and cannot continue to work, the periods of work are not counted towards the 125 work day waiting period.

LONG-TERM DISABILITY INTRODUCTION PACKET

In the fifth month of the short-term disability period, Reed Group sends a long-term disability introduction packet to the employee. The packet includes a letter encouraging the employee to use GENEX, the free Social Security assistance provider. The packet also includes forms that Reed Group uses to transition the employee into long-term disability status and should be returned to Reed Group or the employer, as instructed. The documents include:

- Long-term disability Repayment Agreement,
- Authorization for Release of Medical Information,
- VSDP Outside Earned Income Reporting,
- W-4, and
- Request for Health Insurance Credit.

INCOME REPLACEMENT

For employees hired before July 1, 2009, long-term disability benefits provide income replacement of 60 percent of the pre-disability income, including any salary increases received while on short-term disability. Income replacement is 80 percent for a catastrophic condition. See the Disability Conditions section for more information. Income replacement may adjust to 80 percent for catastrophic conditions.

Example: An employee's pre-disability income was \$5,500 per month. Her long-term disability benefit would be \$5,500 times 60%, or \$3,300 per month.

Employees on long-term disability over a full calendar year (January 1 to December 31) become eligible for a cost-of-living adjustment (COLA) on the following July 1 if still on long-term disability, provided a COLA is authorized by the VRS Board.

If the employee's Workers' Compensation claim is approved, it becomes the primary long-term disability benefit. The employee will receive $66 \frac{2}{3}$ of his or her average weekly salary at the time of the disability, within limits established by the State Employees' Workers' Compensation Services. VSDP will supplement this benefit up to the applicable income replacement level. The VSDP benefit supplements the Workers' Compensation benefit if the Workers' Compensation benefit is less than the VSDP guaranteed income replacement.

EMPLOYMENT STATUS

An employee on long-term disability is considered to be an inactive employee of the Commonwealth. As a result, the return to the pre-disability position is not guaranteed. *Creditable service* is earned during periods of long-term disability and counts towards the five years required for vesting and towards VRS service retirement. Service cannot be purchased during periods of long-term disability.

During the first 24 months of disability, an employee is considered to be in long-term disability status when he or she is not able to perform all of the essential functions of the original position on a full-time basis. After 24 months of disability, an employee is deemed disabled if he or she meets at least one of the following conditions:

- Unable to perform the essential functions of any job for which he or she is qualified or
- Earns 80 percent or less of his or her creditable compensation.

If your agency has not filled the employee's pre-disability position at the time the employee is ready to return to full-time duty, he or she may return to the original position. Otherwise, return to full-time, covered employment must be accomplished through the competitive recruitment process.

SOCIAL SECURITY DISABILITY BENEFITS

An employee who is going into long-term disability is required to apply for Social Security Disability Insurance (SSDI) benefits, if Reed Group advises it.

Reed Group provides Social Security filing assistance through GENEX at no cost to the member. If the member does not use this service, his or her VSDP long-term disability benefit will be reduced by an estimated Social Security benefit amount during the Social Security application process.

If the employee does not apply, he or she is sent a SSDI Suspend Pay letter. The letter informs the employee that disability benefits from Reed Group will cease until the employee:

- Provides evidence of applying for SSDI or
- Receives an SSDI award.

The letter instructs the employee how to apply for SSDI if he or she has not already done so. It also provides the mailing address to mail evidence if he or she has already applied for SSDI.

WORKERS' COMPENSATION

Work-related long-term disability benefits are coordinated through VSDP, the Department of Human Resource Management and the Office of Workers' Compensation.

Workers' Compensation is the primary benefit. VSDP benefits are secondary and are offset by payments received under Workers' Compensation. VSDP supplemental payments will not exceed 60 percent of the employee's pre-disability income (80 percent if catastrophic), adjusted for any wages and salary from employment.

An employee receiving VSDP benefits cannot take service retirement until all Workers' Compensation benefits have been paid and offset.

See the Workers' Compensation Adjustments section to determine how the VSDP payment is offset.

EFFECT OF LONG-TERM DISABILITY ON LEAVE

Sick Leave

Sick leave cannot be used to supplement the difference in pay between the 60 percent received under long-term disability and the employee's full-time salary. Employees will not be compensated for unused balances when transitioning from short-term disability (or long-term disability working) to long-term disability or to long-term disability working.

An employee in long-term disability working status will receive the allotment on January 10th of the new calendar year. The employee will received either the full-time or part-time work allotment based on the hours he or she is working.

If the employee is in long-term disability status on January 10th, he or she will not receive any new sick leave until returning to active employment. If the employee did not receive the leave on January 10th, credits are applied based on the employee's months of state service as of January 10. If the employee received leave for the year and is returning prior to January 10, any leave lost when transitioning to long-term disability will be restored.

Time spent on long-term disability does not count towards months of service for accruals.

Family and Personal Leave

The employee may not use any unused family and personal leave to supplement the difference in pay between the percentage received under long-term disability and his or her regular, full-time salary. An employee is not paid for any unused family and personal leave when moving from short-term disability to long-term disability.

An employee in long-term disability working status will receive the allotment on January 10th of the new calendar year. The employee will received either the full-time or part-time work allotment based on the hours he or she is working. If the employee is on long-term disability working, he or she can use the leave for income replacement.

If the employee is in long-term disability status on January 10th, he or she will not receive any new family and personal leave until returning to active employment. If the employee did not receive the leave on January 10th, credits are applied based on the employee's months of state service as of January 10. If the employee received leave for the year and is returning prior to January 10, any leave lost when transitioning to long-term disability will be restored. Time spent on long-term disability does not count towards months of service for accruals.

Annual Leave

Your agency should pay the employee the balance of accrued annual leave, up to the maximum allowed under policy, when the employee goes from short-term disability into long-term disability. The annual leave is paid at the rate of the employee's pre-disability income.

During long-term disability, the employee does not accrue additional annual leave. If the employee returns to active employment within 18 months, he or she may repurchase all or part of the annual leave that was paid out. The cost is at the lesser of:

- The employee's current rate of pay or
- The rate at which the leave was paid out.

If the employee returns to full-time work, he or she will begin to accrue annual leave based on a percentage of full-time employment. For example, if an employee works 50 percent of a full-time position, he or she will accrue annual leave at 50 percent of the full-time rate. The employee must complete a full pay period before accruals begin. Time spent on long-term disability does not count towards years of service for accruals.

Note: If the employee is on long-term disability working, he or she is not paid annual leave and may use the leave for income replacement.

Disability Credits

An employee who elected to participate in VSDP during the 1999 and 2002 enrollments may have converted his or her sick leave to disability credits. Disability credits are sick leave balances that were converted to credits at the time of enrollment, to be used for income replacement. The credits are used in eight hour increments; eight disability credits equal one day of one hundred percent income replacement.

At the onset of long-term disability, Reed Group applies any disability credits for income replacement for the period of 60 percent pay (80 percent for

catastrophic conditions). Your agency must provide to Reed Group the number of disability credits remaining at the time the employee enters into long-term disability. The use of these disability credits is mandatory.

Note: If the employee is on long-term disability working, he or she has the option to use disability credits for income replacement or not.

If less than eight hours of disability credits remain, the employer pays the employee at the start of long-term disability. If the employee has five or more years of classified service, he or she will be paid 25 percent of the remaining credits, up to \$5,000.

Overtime Leave and Compensatory Leave

Your agency should pay the employee the balance of accrued overtime leave and compensatory leave when the employee goes from short-term disability into long-term disability.

Note: If the employee is on long-term disability working, he or she is not paid for overtime and compensatory leave. The employee can use the leave for income replacement.

Taxes

The benefits paid under (non-work-related) long-term disability are fully taxable. While the employee receives non-work related disability benefits, pay for the following benefits are fully taxable:

- Disability credits,
- Annual leave,
- Family and personal leave, or
- Other eligible leave used to supplement income replacement at 100 percent.

DISABILITY CONDITIONS

If the employee's disability condition meets the requirements outlined below, the employee may be eligible for higher income replacement. For income

replacement information, see the Income Replacement section of this chapter.

Major Chronic Condition

A disability is determined to be major chronic if it is a life threatening health condition which exists over a prolonged period of time and is not expected to resolve in the foreseeable future. The employee must:

- Be determined to be disabled by a licensed treating professional,
- Have experienced a period of disability for the same condition within the last six months, and
- Be under the ongoing care of a licensed treating professional.

The determination of a life threatening health condition is made at the discretion of the VSDP plan administrator. All cases are reviewed and updated with additional medical information on an individual basis.

Catastrophic Condition

If it is determined that the disability is catastrophic, the 60 percent income replacement level may be increased to 80 percent for the duration of the disability. Reed Group will consult with the employee's licensed treating professional and determine if the employee's condition is catastrophic and when the 80 percent disability payments begin.

A disability is determined to be catastrophic if an employee has a severe cognitive impairment or is unable to perform at least two of the activities of daily living (ADL) without assistance. These activities are:

- Bathing,
- Dressing,
- Eating (ability to feed oneself),
- Controlling the bladder or bowel,
- Toileting (ability to get on and off the toilet and a reasonable level of personal hygiene), and
- Transferring (getting in or out of bed or chairs).

The employee may also be eligible for catastrophic disability benefits if he or she is placed in a guardianship or under supervision because of a severe cognitive impairment, such as Alzheimer's disease.

If the employee's condition improves so he or she no longer meet the criteria for catastrophic disability, but is still on long-term disability, the income replacement returns to 60 percent of the pre-disability income.

Note: VSDP benefits are secondary and are offset by payments received under Workers' Compensation. VSDP supplemental payments will not exceed 80 percent of the employee's pre-disability income for catastrophic conditions,

Successive Periods of Long-term Disability Due to the Same Condition

If the employee returns to work and is able to perform the full duties of the pre-disability job without any restrictions, but become disabled again from the same condition within 125 work days, the disability is considered to be a continuation of the prior disability. The employee goes on long-term disability with no waiting period.

This condition applies if you return to your pre-disability job on a full-time and performing the full duties of the job. After 24 months, this condition applies if you return to your pre-disability job or any job for which you are reasonably qualified to perform based on your training and experience.

If the employee becomes disabled from the same condition after returning to work for 125 work days or more, he or she will need to file a claim for a new period of short-term disability and satisfy the seven calendar day waiting period. The employee must still be working in a VSDP-eligible position.

If work is arranged through a vocational rehabilitation program or return to work program, or if the employee returns to work with job modifications or reduced hours, the days worked are not counted as part of the 125 work day limitation.

ADJUSTMENTS TO DISABILITY BENEFITS

Long-term disability benefits are adjusted by any benefits payable as a result of the same disability. The employee cannot receive more than one hundred percent of his or her pre-disability income.

Employees are responsible for reporting any additional income to Reed Group using the Other Income Reporting Form (for long-term disability) included in the VSDP introductory packet. Employees who are overpaid are required to repay, with interest, any overpayment to Reed Group.

Long-term disability benefit payments will be adjusted by any income from the following sources:

- Wages and salary received from employment. Wages and salary include income reported on W-2 forms and income from self-employment.
- Disability payments from the Social Security Administration or other similar government program benefits that the employee or his or her family is entitled to as a result of the qualifying disability.
- Benefits paid under any other governmental disability program, including local government disability benefits, federal civil service benefits that are paid for the same disabling condition.
- Benefits payable from any other state agency-sponsored group insurance contract for the purpose of providing income replacement for the same disabling condition (does not include any disability insurance purchased directly by the employees).
- Benefits paid under any compulsory benefits law, such as Workers' Compensation, severance or unemployment compensation.

Cost-of-living increases received in payments from sources listed above will not be considered in the offset of the VSDP benefit.

Disability benefit payments are offset by any amount from any of the above payment sources, whether or not the employee receives the payments. This includes cases where the employee is denied benefits and fails to appeal

the denial. However, any benefits that are denied on an appeal that was requested by Reed Group will not reduce the employee's disability payment.

Benefits under some of the programs listed above that have been applied for, but not yet approved, will not reduce the employee's disability benefit until the approval has been obtained and the benefits from the other program begin. If the benefits from other programs are made retroactively, appropriate adjustments will be made to collect the overpayment.

Calculating Adjustments

Benefits are adjusted by any salary and wages from employment during the first six months of long-term disability, based on the income level the employee receives under VSDP.

For example, the employee's pre-disability income is \$5,500 per month. He is working 50 percent of his normal hours, earning \$2,750 per month.

$$\$5,500 \text{ (pre-disability income)} \times 60\% = \$3,300 \text{ (disability benefit)}$$

$$\$2,750 \text{ (earned wages and salary from employment)} \times 60\% = \$1,650$$

$$\$3,300 - \$1,650 = \$1,650 \text{ (adjusted long-term disability benefits)}$$

The earned income of \$2,750 added to the adjusted long-term disability benefit of \$1,650 gives the employee \$4,400 of income from the combined sources.

After the first six months of long-term disability, benefits are adjusted by 70 percent of wages and salary from employment.

For example, the employee's pre-disability income is \$5,500 per month. He is working 50 percent of his normal hours, earning \$2,750 per month.

$$\$5,500 \text{ (pre-disability income)} \times 60\% = \$3,300 \text{ (disability benefit)}$$

$$\$2,750 \text{ (earned wages and salary from employment)} \times 70\% = \$1,925$$

$$\$3,300 - \$1,925 = \$1,375 \text{ (adjusted long-term disability benefits)}$$

The earned income of \$2,750 added to the adjusted long-term disability benefit of \$1,375 gives the employee \$4,125 of income from the combined sources.

Benefit Overpayments

If an overpayment is made, the employee is required to repay Reed Group. VRS may also recover from the employee, with interest, payments due to:

- Falsification of statements,
- Falsification of any record knowingly made by or on behalf of the employee, or
- The employee's failure to make any report of change in disability status.

This recovery may be made in one of the following ways:

- As an offset of future VSDP payments due to the employee,
- By payment from an employee's refund,
- By payment from an employee's life insurance benefit,
- By offset to the employee's retirement benefit, or
- By action of law against the employee.

For an overpayment of Social Security benefits, the employee is sent an Overpayment SSDI Is Being Paid letter and a calculation of overpayment. Unless the overpayment is returned to Reed Group, the employee's benefits are applied to the overpayment until it has been paid. Reed Group may recover the overpayment through increments taken from future benefit payments or the employee may pay the amount in full.

Workers' Compensation Adjustments

If the disability is work related and the employee is receiving a Workers' Compensation benefit, the Workers' Compensation benefit is paid first. If the Workers' Compensation benefit is greater than the adjusted long-term disability benefit, no VSDP benefit is payable for an employee on long-term disability working. Instead, the total income would be the Workers' Compensation benefit plus the full amount of the employee's earned income. The VSDP benefit, when combined with other income from employment, may not exceed 100 percent of the pre-disability income.

Lump-sum settlements under Workers' Compensation are prorated over the period during which the employee receives the VSDP disability benefit.

Payments made under the Workers' Compensation Act for permanent partial disabilities and medical, legal or rehabilitation expenses are not included in determining the prorated amount.

Example: An employee receives \$600 a week under Workers' Compensation. He accepts a lump sum settlement amount of \$12,000, which includes a payment of \$6,000 to cover both medical and legal expenses. Subtracting the medical and legal expenses from the \$12,000 yields a net lump sum payment of \$6,000. This net lump sum of \$6,000 is divided by the \$600 per week payment he would have received if he had not accepted the settlement ($\$6,000 \div \$600 = 10$ weeks).

The VSDP supplemental benefit would apply as though the weekly Workers' Compensation benefit was being paid for a period of 10 weeks. After the 10 weeks, the full VSDP benefit would be paid at the appropriate income replacement level.

9-, 10- AND 11-MONTH EMPLOYEES

If the employee transitions into long-term disability before the end of the contract period, he or she remains on long-term disability benefits the same as any other employee as long as the disability continues to be certified for benefits. Reed Group will continue to work with the employee upon return to work, if feasible, but the return will not be to the employee's pre-disability position if there was a non-renewal of the contract.

Non-Pay Status

Even if an employee does not receive pay during periods he or she is not working (e.g., summer time), the time on disability counts toward long-term disability benefits until released by the licensed treating professional to return to active employment.

Example: An employee on an 18-period pay cycle is injured and initiates a VSDP claim in May. She is not expected to be able to return to work until November. Even though she does not receive pay or benefits in June, July and August, the days count towards the long-term disability period.

Non-Renewal of Employment Contract

If an employee transitions to long-term disability before the end of the contract period, he or she remains on long-term disability as long as the disability continues to be certified for benefits. Reed Group will continue to work with the employee to return to work if possible, but the return will not be to the employee's pre-disability position because there was a non-renewal of the contract. The employee is responsible for continuing to report to Reed Group for case management.

MISCELLANEOUS

Benefits

Service credited during long-term disability counts towards VRS service retirement and the health insurance credit. No employer or employee contributions are to be reported to VRS by the agency.

See Appendix 1, Benefits for more detailed information about the benefits available under VSDP.

Performance Appraisals

An employee on long-term disability will not have a performance evaluation and will not be awarded any performance increase.

An employee on long-term disability working is evaluated, according to the agency's policies and procedures. If the employee receives a performance increase, it will be applied to the hours worked. The increase will not be applied to the long-term disability supplemental benefit.

The performance appraisal must not negatively impact the employee's overall performance rating or his performance increase.

An employee is eligible for a retroactive performance increase upon completion of the performance evaluation if the evaluation is not current.

Disciplinary Suspension/Termination

If an employee receives a disciplinary suspension or termination while receiving long-term disability benefits, the benefits stop as of the date of suspension or termination.

An employee placed on suspension in the following circumstances is not eligible to receive VSDP benefits during the period of suspension:

- Pending investigation;
- Pending outcome of employment related court action; or
- Pending outcome of disciplinary suspension¹.

Depending on the case facts, the employee may not be eligible for Workers' Compensation benefits.

If the employee is reinstated in a covered position, benefits will be retroactive from the date of disability.

Holiday Pay While on Disability

An employee on long-term disability receives 60 percent or 80 percent (depending on the employee's benefit income level as of the holiday) for the hours he or she does not work on the holiday, provided the disability absence is authorized.

An employee on long-term disability working receives holiday pay based on the percentage of work hours scheduled. He or she must use accrued leave to supplement VSDP benefits to receive income replacement at 100 percent.

¹ Department of Human Resource Management Policy 1.60, Standards of Conduct

END OF LONG-TERM DISABILITY

Long-term disability benefits end when the employee:

- Is able to perform the full duties of the pre-disability job without any restrictions during the first 24 months of disability;
- Is able to perform the regular duties of any job for which he or she is reasonable qualified after 24 months of disability or earns 80 percent or more of the pre-disability income;
- Takes a refund of the VRS contributions and interest²;
- Is no longer medically eligible;
- Does not cooperate or comply with the requirements of VSDP;
- Begins to receive a VRS service retirement benefit; or
- Dies.

Note: An employee is not allowed to take service retirement while receiving Workers' Compensation benefits.

If the employee dies during long-term disability, his or her survivor may be eligible for a benefit. The survivor should contact your agency's human resource office for more information about death-in-service survivor benefits.

RETURN TO WORK

The employee will continue to receive the VSDP disability benefit while working under a return to work program. However, the VSDP benefit will be adjusted by any income earned while in the program. In addition, the employee continues to receive the VRS health insurance credit and is billed directly for healthcare premiums.

It is up to the individual agency to determine whether or not to hold a position open for an employee out on long-term disability, even if the

² See the VRS Employer Manual, Chapter 7, Refunds.

employee is tenured. There is no guarantee of positions being held when an employee is on long-term disability.

Long-term Disability Working

An employee is eligible to receive long-term disability benefits while working. Long-term disability status is in effect if the employee is able to work 20 or more hours a week, but is restricted from performing the full duties of his or her job or work a regular schedule. Long-term disability working status also applies to eligible part-time employees.

Note: If the employee drops below 20 hours, he or she moves to long-term disability and may not return to long-term disability working status.

To receive long-term disability benefits while working, the employee must have been in a short-term disability working status on the 125th workday of the waiting period. If the employee is not in a short-term disability working status on the 125th workday, he or she cannot be placed in long-term disability working on the 126st workday.

Your agency should submit a VSDP Long-term Disability Working form to Reed Group to report wages paid during the month. In addition, you should review the employee's long-term disability working status every 30 days to ensure your agency can continue the restrictions. If your agency cannot continue the restrictions, the employee is placed back into long-term disability status.

Note: If the employee receives Workers' Compensation benefits while on long-term disability working, retirement begins at the time the Workers' Compensation benefits cease, if the employee is beyond normal retirement age.

On-site Medical and Vocational Rehabilitation

And employee may be required to participate in a rehabilitation plan while receiving long-term disability benefits. The goal is to assist the employee with rehabilitation and a safe return to gainful employment. When an employee goes on long-term disability, it may not be possible to return to the

same job and agency because the previous position may no longer be available.

The plan may be either:

- A medical plan prescribed by the licensed treating professional or
- A vocational rehabilitation or return to work plan coordinated by Reed Group or a rehabilitation services provider.

The plan must be consistent with the licensed treating professional's recommendations regarding the employee's ability to return to work.

The following will be taken into consideration when the vocational case manager assists the employee with writing and implementing his or her own formal vocational rehabilitation plan:

- Physical/mental capabilities,
- Educational background,
- Work history,
- Transferable skills,
- Pre-disability wages and salary,
- Interests, and
- Aptitudes.

If the employee does not comply with vocational rehabilitation services, his or her long-term disability benefits may be reduced by at least 50 percent or stopped. In addition, the employee may be subject to termination from the program.

RESPONSIBILITIES

Each of the following key parties work to make the disability process as easy as possible and return the employee to work, as soon as he or she is medically able.

Employee

Throughout the period of long-term disability, an employee must comply with any medical or vocational rehabilitation requirements that Reed Group has established, reporting to Reed Group any outside income received, and communicating with his or her supervisor. The employee:

- Signs and returns information sent by Reed Group;
- Completes the Health Insurance Form to continue coverage, if electing to do so;
- Complies with return to work initiatives;
- Uses any remaining disability credits; and
- Complies with assigned vocational rehab and/or other rehab services.

Employer

Employers are responsible for helping employees during the transition from short-term disability to long-term disability. The employer:

- Pays the employee for any annual, compensatory or overtime leave;
- Transfers disability credits (if applicable) to Reed Group;
- Communicates COBRA and other benefit information to the employee;
- Communicates that the job is or is not being held;
- Provides the Health Insurance form to the employee;
- Discontinues paying short-term disability benefits;
- Discontinues reporting the employee to VRS; and
- Keys the appropriate PMIS transaction.

Healthcare Treating Professional

The employee's healthcare treating professional plays an important role in helping the employee return to work. The healthcare treating professional:

- Receives a copy of the medical release form;
- Provides medical information to Reed Group;
- Participates in planning for the employee's rehabilitation; and

- Works with Reed Group, employer and employee with return to work.

Reed Group

Reed Group, the third party administrator for VSDP, serves as the coordinator of the long-term disability process. Reed Group:

- Mails LTD packet to employee;
- Obtains medical information;
- Approves or denies claim;
- Pays employee directly for long-term disability benefits and the health insurance credit, if applicable; and
- Reports employee to VRS.