

## Fact Sheet:

# State Long Term or Permanent Disability

**Note: This applies only to employees with less than 5 years of total retirement service on or before August 1, 2007 (“non-vested” employees). Employees with 5 or more years of retirement service credit on or before August 1, 2007 (“vested” employees), please disregard. Long Term Disability benefits remain the same for “vested” employees (refer to the “Retirement Handbook” at [www.treasurer.state.nc.us](http://www.treasurer.state.nc.us)).**

### **Background:**

During the 2004 legislative session, House Bill 354 was ratified, changing the definition of disability. The North Carolina Association of Educators (NCAE), the North Carolina School Boards Association (NCSBA), and the North Carolina School Administrators Association (NCASA), members of the Retirement Coalition, led the charge to have the effective date delayed (initially August 1, 2005, then each subsequent year) while a study was to be conducted.

The “old” definition stated that an employee was eligible for Long Term Disability if he/she were no longer able to do his/her usual occupation (the job hired to do). The proposed definition (from House Bill 354 in 2004) stated that a person was eligible for Long Term Disability if he/she were “no longer eligible to perform any occupation or employment commensurate with the beneficiary’s or participant’s education, training, or experience, which was available in the same commuting area...” This proposed change in the definition of Long Term Disability was similar to the definition for Social Security Disability and was very restrictive.

A Study Commission was established each of the past three years to study the issue, but they failed to do so. NCAE and the aforementioned groups continued each year meeting with bill sponsors and key legislative leaders to delay the implementation of the law.

A proposed committee substitute for House Bill 1415 was ratified this year that changes the definition of Long Term or Permanent Disability for all “non-vested” members of the Retirement System (those with less than five years of retirement service). When efforts were made to delay this issue for further study met with resistance, NCAE worked with NCSBA and NCASA to draft language that would prevent the implementation of the more restrictive criteria. This new bill, House Bill 1415, continues Long Term Disability benefits for all “vested” employees with five years or more retirement service under the “old” definition of Long Term Disability (see second paragraph for “old” definition). In other words, everything remains the same for “vested” employees.

NCAE, along with NCSBA and NCASA, worked on key components of the compromise bill and was instrumental in its passage, literally just a few hours short of the effective date (8-1-2007). The employee group that opposed this bill did not like the compromise language. NCAE’s position was to stop a very restrictive law from being implemented that would impact “all” employees who became permanently disabled, while continuing to work to improve the language for the good of all employees.

## ***What's the Same, What's Different for "Non-Vested" Employees (2007-2008)***

### **What's the Same**

- Any employee permanently disabled (once eligibility is met) will still have to meet the "occupational test" **only** (not being able to do the job initially hired to do).
- Eligibility requires an employee to have at least 5 years of retirement service credit (a minimum of 10 months paid into the Retirement System each year of service for 10-month employees and 12 months paid into the Retirement System each year of service for 12-month employees).
- You still must be certified by the Retirement System's Medical Board to be permanently and totally disabled from your job.
- You still receive 65 percent of the total income earned prior to the onset of Short Term Disability.
- You still receive the full disability income without a Social Security offset during the first 36 months of receipt of Long Term Benefits (if not approved for Social Security during the 36-month period).
- The offset for Social Security Disability is still effective from the initial date of receipt (if received during the first 36 months of receiving Long Term Disability benefits).

### **What's Different**

- Effective August 1, 2007, approval for Social Security benefits must be obtained on or before the end of 36 months of receipt of Long Term Disability benefits.
- If Social Security is not approved on or before the end of the 36 months, receipt of Long Term Disability benefits will stop after the 36 months.
- If Long Term Disability benefits stop, health insurance stops as well. Employees can continue health insurance benefits under Cobra (this allows employees to pay the full premium for health coverage for up to 18 months).
- If an employee has filed for Social Security benefits *prior* to the end of the 36 months, but Social Security benefits are approved *after* the 36 months, all Long Term Disability benefits, including health insurance, will be restored retroactively to when benefits stopped.

### **What Else You Should Know**

- You should start the application process for Social Security benefits once your doctor has determined that you are totally and permanently disabled and can never return to your job (you can apply for Social Security benefits while you are on Short Term or Temporary Disability if the doctor thinks the condition is permanent).
- Employees should seek legal assistance on a contingency basis if Social Security Disability is initially denied. The employee only has to pay the attorney if approval from Social Security is granted.
- The Retirement System will be updating the Long Term Disability application, as well as providing employers with information regarding the early submission of Social Security applications.
- Employees in receipt of Long Term Disability will also be given information about retraining for employment their disability will allow, if they do not qualify for Social Security Disability.
- NCAE will work with Local Education Agencies (LEAs) to develop priority hiring policies for disabled and retrained public school employees.
- NCAE will continue to provide counseling and assistance as needed to all members of the Association who become disabled.