

RESOLUTION NO. 487

WHEREAS, the Board of Trustees (Board) of the Bureau of Fire and Police Disability and Retirement (FPDR) determined that changes were necessary to the FPDR Administrative Rules; and

WHEREAS, FPDR staff and the City Attorney's office provided input; and

WHEREAS, a public Question and Answer session on proposed amendments to the FPDR Administrative Rules was held on February 14, 2014; and

WHEREAS, the Board has considered and recommends changes to Sections 5.7.05, 5.7.09, 5.7.12, 5.8.10 and 5.8.13 of the FPDR Administrative Rules as shown on Exhibits "A" and "B", attached hereto and by this reference made a part hereof; and

WHEREAS, the Board also authorizes FPDR staff to make any housekeeping changes to the proposed amendments that are strictly related to spacing, pagination, section lettering, cross-references in the Rules and Charter, and spelling that will not impact the meaning of the Administrative Rules.

WHEREAS, it is appropriate and in the public interest that the FPDR Administrative Rules be changed in accordance with the recommendations of the Board; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees that the sections of the FPDR Administrative Rules be amended as shown on Exhibit "B".

ADOPTED by the Board of Trustees on the 25th day of March 2014.



Samuel Hutchison
FPDR Director

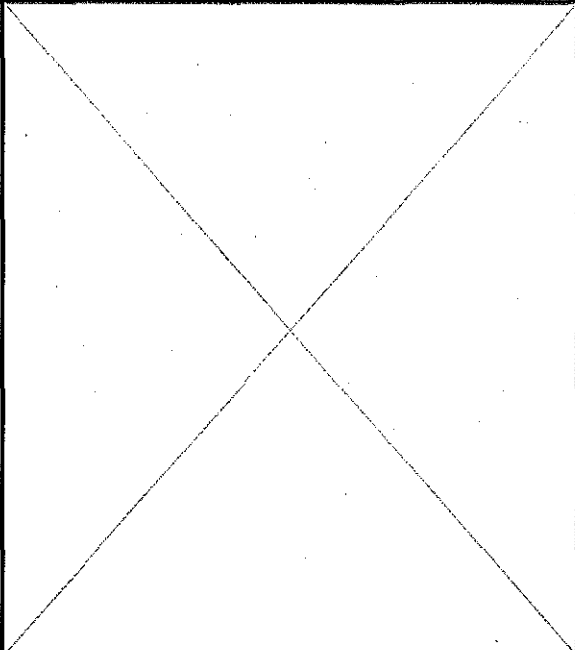
Proposed Rule Changes - Recipient of Disability Benefits

----- Existing Wording -----		Proposed New Wording
Row	<p>5.7.09 Service Connected Disability</p>	<p>5.8.10 Nonservice Connected Disability</p>
1	<p>(C) A Member receiving service-connected disability benefits, under Article 3 of the Plan, who is released to modified duty and capable of substantial gainful activity, but who is unable to return to the Bureau, shall pursue other employment within the Member's restrictions. "Pursue other employment" means: an active, serious, and continuing effort to seek full-time work each week that the Member claims benefits. The concept of an active work search includes consideration of the customary methods of obtaining work for which the Member is suited by experience, education, and/or training. A Member who is seeking employment will develop verifiable documentation of the reasonable efforts to find work without placing restrictions. Telephone inquiries are considered preliminary exploration of the job market and should be accompanied by appropriate follow-up contacts; personal visits; and submission of applications or résumés.</p>	<p>5.8.13 (B) A Member receiving service-connected disability benefits, under Article 3 of the Plan, who is released to modified duty and capable of substantial gainful activity, but who is unable to return to the Bureau, shall pursue other employment within the Member's restrictions. "Pursue other employment" means: an active, serious, and continuing effort to seek full-time work each week that the Member claims benefits. The concept of an active work search includes consideration of the customary methods of obtaining work for which the Member is suited by experience, education, and/or training. A Member who is seeking employment will develop verifiable documentation of the reasonable efforts to find work without placing restrictions. Telephone inquiries are considered preliminary exploration of the job market and should be accompanied by appropriate follow-up contacts; personal visits; and submission of applications or résumés.</p> <p>HOUSEKEEPING</p> <p>(C) A Member receiving service-connected disability benefits, under Article 3 of the Plan, who is released to modified duty and capable of substantial gainful activity, but who is unable to return to the Bureau, shall pursue Other Employment within the Member's restrictions. "Pursue Other Employment" means: an active, serious, and continuing effort to seek Full-time work each week that the Member claims benefits. The concept of an active work search includes consideration of the customary methods of obtaining work for which the Member is suited by experience, education, and/or training. A Member who is seeking employment will develop verifiable documentation of the reasonable efforts to find work without placing restrictions. Telephone inquiries are considered preliminary exploration of the job market and should be accompanied by appropriate follow-up contacts; personal visits; and submission of applications or résumés.</p> <p><i>Changes apply to 5.7 & 5.8</i></p> <p><i>Note: 5.8.13(B) is now moved to 5.8.10(C)</i></p>

Proposed Rule Changes - Offsets

----- Existing Wording -----		Proposed New Wording
Row	<div>5.7.12</div> <div>Service Connected Disability</div>	<div>5.8.13</div> <div>Nonservice Connected Disability</div>
1	<p>(A) Members receiving service-connected or occupational disability benefits under Article 3 of the Plan who intend to enter the employ of any person, firm or corporation, or engage in any activity which will result in the Member receiving "wages earned in other employment" shall notify the Director, in writing, of the Member's intention. The Notice shall be accompanied by a written statement reflecting an estimate of the Member's earnings from such activities. Thereafter, the Member shall furnish the Director with such information and at such intervals as the Director deems necessary to implement the wage offset provisions of this rule.</p>	<p>HOUSEKEEPING</p> <p>(A) Members receiving service-connected or occupational disability benefits under Article 3 of the Plan who intend to enter the employ of any person, firm or corporation, or engage in any activity which will result in the Member receiving "wages earned in Other Employment" shall notify the Director, in writing, of the Member's intention. The Notice shall be accompanied by a written statement reflecting an estimate of the Member's earnings from such activities. Thereafter, the Member shall furnish the Director with such information and at such intervals as the Director deems necessary to implement the wage offset provisions of this Administrative Rule.</p> <p><i>Change applies to 5.7.12 only</i></p>

Proposed Rule Changes - Offsets

----- Existing Wording -----		Proposed New Wording
Row	5.7.12 Service Connected Disability	5.8.13 Nonservice Connected Disability
2		(A) A Member eligible for nonservice-connected disability benefits under Article 3 of the Plan shall receive a benefit equal to 50 percent of the Member's Base Pay reduced by 50 percent of the wages earned by the Member in other employment. Wages earned by the Member in other employment has the same meaning as the term "wages earned in other employment" as defined subsection (D) (5), below. The notification procedure described paragraph (D) below, Guidelines for Wage Offset Administration, shall also apply to Members covered by this section who intend to engage in activities which will result in the receipt of "wages earned in other employment."
3		<p>(A) A Member eligible for nonservice-connected disability benefits under Article 3 of the Plan shall receive a benefit equal to 50 percent of the Member's Base Pay reduced by 50 percent of the wages earned by the Member in other employment. Wages earned by the Member in other employment has the same meaning as the term "wages earned in other employment" as defined subsection (D) (5), below. The notification procedure described paragraph (D) below, Guidelines for Wage Offset Administration, shall also apply to Members covered by this section who intend to engage in activities which will result in the receipt of "wages earned in other employment."</p> <p><i>(A) Members receiving nonservice-connected disability benefits under Article 3 of the Plan who intend to enter the employ of any person, firm or corporation, or engage in any activity which will result in the Member receiving "wages earned in Other Employment" shall notify the Director, in writing, of the Member's intention. The notice shall be accompanied by a written statement reflecting an estimate of the Member's earnings from such activities. Thereafter, the Member shall furnish the Director with such information and at such intervals as the Director deems necessary to implement the wage offset provisions of this Administrative Rule</i></p> <p><i>Change applies to 5.8.13 only</i></p>

Proposed Rule Changes - Offsets

----- Existing Wording -----		Proposed New Wording
Row	<div>5.7.12</div> <div>Service Connected Disability</div>	<div>5.8.13</div> <div>Nonservice Connected Disability</div>
4		<p>(B) A Member receiving nonservice-connected disability benefits under Article 3 of the Plan, who is released to modified duty and capable of Substantial Gainful Activity, but who is unable to return to the Bureau, shall pursue other employment within the Member's restrictions. "Pursue other employment" means: "an active, serious, and continuing effort to seek full-time work each week that the Member Claims benefits. The concept of an active work search includes consideration of the customary methods of obtaining work for which the Member is suited by experience, education, and/or training. A Member who is seeking employment will develop verifiable documentation of the reasonable efforts to find work without placing restrictions. Telephone inquiries are considered preliminary exploration of the job market and should be accompanied by appropriate follow-up contacts; personal visits; and submission of applications or resumes.</p>
5		<p>(C) A Member's failure to pursue other employment may result in a reduction or termination of benefits.</p>
6	<p>(B)(1) A Member must complete the "Outside Employment" section of the "Disability in Line of Duty Report" (DILD) at the time of Claim filing. The FPDR may require an update on the Member's outside employment status periodically throughout the Member's course of disability.</p>	<p>(1) A Member must complete the "Outside Employment" section of the "Disability in Line of Duty Report" (DILD) at the time of Claim filing. The FPDR Director may require an update on the Member's Other outside Employment status periodically throughout the Member's course of disability.</p>

Proposed Rule Changes - Offsets

Row	----- Existing Wording -----		Proposed New Wording
	5.7.12 Service Connected Disability	5.8.13 Nonservice Connected Disability	
7		(D) (1) A Member must complete the "Outside Employment" section of the "Nonservice Disability Report" at the time of Claim filing. The FPDR may require update on the Member's outside employment status periodically throughout the Member's course of disability.	HOUSEKEEPING A Member must complete the "Outside Employment" section of the "Nonservice- connected Disability Report" at the time of Claim filing. The FPDR Director may require update on the Member's Other outside E mployment status periodically throughout the Member's course of disability. <i>Change applies to 5.8.13 only</i>
8	(B)(2) If at anytime during the Member's disability he/she has or wishes to engage in outside employment, the Member will be required to submit a completed "Request to Engage in Outside Employment" form for the Director's approval. Failure to do so may result in a reduction or suspension of benefits	(D)(2) If at anytime during the Member's disability he/she has or wishes to engage in outside employment, the Member will be required to submit a completed "Request to Engage in Outside Employment" form for the Director's approval. Failure to do so may result in a reduction or suspension of benefits	HOUSEKEEPING (2) If at anytime any time during the Member's disability he/she has engaged or wishes to engage in Other outside-E mployment, the Member will be required to submit a completed "Request to Engage in Outside Employment" form for the Director's approval. Failure to do so may result in a reduction or suspension of benefits <i>Change applies to 5.7.12 & 5.8.13</i>
9	(B)(4) A Report of earnings report will be returned with proper documentation within time frame stated in the request. Failure to do so may result in a reduction or suspension of benefits	(D)(4) A Report of earnings report will be returned with proper documentation within time frame stated in the request. Failure to do so may result in a reduction or suspension of benefits.	HOUSEKEEPING (4) A "Report of eEarnings from Outside Employment " report will be returned with proper documentation within time-frame the timeframe stated in the request. Failure to do so may result in a reduction or suspension of benefits. <i>Change applies to 5.7.12 & 5.8.13</i>

Proposed Rule Changes - Offsets

----- Existing Wording -----			Proposed New Wording
Row	5.7.12 Service Connected Disability	5.8.13 Nonservice Connected Disability	
10	(B)(5) The term wages earned in other employment includes the gross salary, overtime pay, fees, commissions, or other remuneration received by a Member for services rendered as an employee to an employer other than the Bureau of Fire or Bureau of Police. The term wages earned in other employment also includes any salary, fees, commissions, profits or other remuneration that the Member receives from his or her self-employment in a profession, trade or business. The term wages does not include income from investments such as interest, dividends, rentals and capital gains. However, if you own a rental(s) and the IRS requires you to report your rental income as self-employment income, your rental income is considered "outside wages" and is subject to the wage offset.	(D)(5) The term wages earned in other employment includes the gross salary, overtime pay, fees, commissions, or other remuneration received by a Member for services rendered as an employee to an employer other than the Bureau of Fire or Bureau of Police. The term wages earned in other employment also includes any salary, fees, commissions, profits or other remuneration that the Member receives from his or her self-employment in a profession, trade or business. The term wages does not include income from investments such as interest, dividends, rentals and capital gains. However, if you own a rental(s) and the IRS requires you to report your rental income as self-employment income, your rental income is considered "outside wages" and is subject to the wage offset.	<p>MOVED to 5.7.01 and 5.8.01</p> <p>(5) The term "Wwages Earned in Other Employment" includes:</p> <p>(a) the gross salary, overtime pay, fees, commissions, or other remuneration received by a Member for services rendered as an employee to an employer in Other Employment, other than the Bureau of Fire or Bureau of Police. The term wages earned in other employment also includes;</p> <p>(b) any salary, fees, commissions, profits or other remuneration that the Member receives from his or her Self-Employment in a profession, trade or business; and</p> <p>(c) However, if you any rental income, if the Member owns a rental(s) and the IRS requires that the rental income be reported as Self-Employment income, your rental income is considered "outside wages" and is subject to the wage offset</p> <p>(6) The term "wages earned in Other Employment" does not include income from investments such as interest, dividends, rentals and capital gains.</p>

Proposed Rule Changes - Offsets

Row	Existing Wording		Proposed New Wording
	5.7.12 Service Connected Disability	5.8.13 Nonservice Connected Disability	
11		<p><i>alternative language adopted</i> →</p>	<p>(9) When a Member who has been determined to be capable of Substantial Gainful Activity (SGA) chooses to pursue Self-Employment rather than seek regular employment:</p> <p>(a) The Director will initially estimate the member's Self-Employment wages as one-third of the Member's Base Pay in Effect at Disability.</p> <p>(b) The Member will be required to submit his/her tax returns and other wage, hour and expense documentation annually or when requested by the Director.</p> <p>(c) After receipt of wage, hour and expense documentation, The Director will recalculate the wage offset for the past year and either pay the Member any additional benefits due or calculate an overpayment. The Director will also re-estimate the Member's Self-Employment wages for the current and next year.</p> <p>(d) The Director will recover any overpayment by offsetting one-twelfth of the overpaid amount from future payments until the overpayment is recovered in full.</p> <p>Change applies to 5.7.12 & 5.8.13</p> <p>Note: See 5.7.14 and 5.8.15 regarding overpayment collection</p>
12			<p>(8) The Member will have the option of choosing to have future disability benefits reduced to the 25% minimum in lieu of submitting wage information to FPDR for purpose of wage offset.</p> <p>Change applies to 5.7.12 only</p>

SELF EMPLOYMENT PROPOSED RULE CHANGES:

5.7.05 – AMOUNT OF BENEFITS

During the period the Member continues to be eligible under this section, benefits shall be paid as follows:

- (A) First year from date of disability:
 - (1) During the first year from the date of disability, the Member shall be paid 75 percent of the Member's rate of Base Pay in Effect at Disability.
 - (2) The Member's disability benefit rate shall be reduced by 50 percent of any wages earned in ~~e~~Other ~~e~~Employment during the period the benefit is payable.
- (B) Second year from date of disability and after:
 - (1) The Member shall continue to be paid the benefit described in "Paragraph A" after one year from the date of disability until the earliest date on which the Member is both medically stationary and capable of Substantial Gainful Activity.
- (C) Fourth anniversary of the date of disability:
 - (1) If not medically stationary sooner, the Member shall be deemed medically stationary for purposes of this Section on the fourth anniversary of the date of disability, regardless of the status of the Member's medical condition.
 - (2) If the Member is incapable of Substantial Gainful Activity, the benefit will remain at 75 percent of the Member's rate of Base Pay in Effect at Disability.
 - (3) If the Member is capable of Substantial Gainful Activity, the benefit shall be 50 percent of the Member's rate of Base Pay in Effect at Disability, reduced by 25 percent of any wages earned in ~~e~~Other ~~e~~Employment during the same period.
- (D) The minimum benefit shall be 25 percent of the Member's rate of Base Pay in Effect at Disability, regardless of the amount of wages earned in ~~e~~Other ~~e~~Employment.
- (E) Notwithstanding any other provision of Chapter 5 of the City Charter, a disabled Member receiving or eligible to receive service-connected or occupational disability benefits under Section 5-306 shall not receive any such benefit for periods of time during which the Member is incarcerated subsequent to and for the conviction of a crime. One-half of such benefit, however, shall be payable to the Member's spouse, if not incarcerated, or Member's minor children, during such periods of incarceration. FPDR reserves the right to recover overpaid amounts in situations where a Member has been incarcerated for a period of time prior to conviction of a crime and the sentence is for time served.

periodically throughout the Member's course of disability.

- (2) If at anytime **any time** during the Member's disability he/she has **engaged** or wishes to engage in outside **Other e**Employment, the Member will be required to submit a completed "Request to Engage in Outside Employment" form for the Director's approval. Failure to do so may result in a reduction or suspension of benefits.
- (3) Once the Request to Engage in Outside Employment has been approved by the Director, the Member will be required to submit a report of his/her outside earnings upon the request of and at intervals determined by the Director.
- (4) A "Report of eEarnings **from Outside Employment**" report will be returned with proper documentation within time frame **the timeframe** stated in the request. Failure to do so may result in a reduction or suspension of benefits.
- (5) ~~The term wages earned in other employment includes the gross salary, overtime pay, fees, commissions, or other remuneration received by a Member for services rendered as an employee to an employer other than the Bureau of Fire or Bureau of Police. The term wages earned in other employment also includes any salary, fees, commissions, profits or other remuneration that the Member receives from his or her self-employment in a profession, trade or business. The term wages does not include income from investments such as interest, dividends, rentals and capital gains. However, if you own a rental(s) and the IRS requires you to report your rental income as self-employment income, your rental income is considered "outside wages" and is subject to the wage offset.~~

Alternative Self-Employment offset wording

- (a) The Director will initially assume the Member's Self-Employment wages as zero dollars. The Director will calculate an estimate of Self-Employment wages when sufficient wage, hour and expense documentation is available but no later than six months after the Member's Self-Employment started.

- (c) **After receipt of wage, hour and expense documentation, the Director will recalculate the wage offset for the past year and either pay the Member any additional benefits due or calculate an overpayment. The Director will also re-estimate the Member's Self-Employment wages**

5.8.10 – RECIPIENT OF DISABILITY BENEFITS

- (A) All Members drawing disability benefits shall be examined at least once during each twelve-month period by the Member's identified Attending Physician or an Attending Physician appointed by the Director, unless otherwise determined by the Director. The purpose of the examination will be to determine if the Member's approved nonservice-connected injury/illness condition(s) continue to prevent the member from performing the Member's required duties in the Fire or Police Bureau.
- (B) Any Member receiving disability benefits under the Plan shall file with the Director a certificate from the Member's Attending or Specialty Physician of the Member's continued disability for each disability pay period, unless otherwise waived by the Director.
- (C) ***A Member receiving nonservice-connected disability benefits under Article 3 of the Plan, who is released to modified duty and capable of Substantial Gainful Activity, but who is unable to return to the Bureau, shall pursue Other Employment within the Member's restrictions. "Pursue Other Employment" means: an active, serious, and continuing effort to seek Full-Time Work each week that the Member claims benefits. The concept of an active work search includes consideration of the customary methods of obtaining work for which the Member is suited by experience, education, and/or training. A Member who is seeking employment will develop verifiable documentation of the reasonable efforts to find work without placing restrictions. Telephone inquiries are considered preliminary exploration of the job market and should be accompanied by appropriate follow-up contacts; personal visits; and submission of applications or résumés.***

* * *

5.8.13 – OFFSETS TO NONSERVICE-CONNECTED DISABILITY BENEFITS PAYABLE UNDER ARTICLE 3 OF THE PLAN

- (A) ~~A Member eligible for nonservice-connected disability benefits under Article 3 of the Plan shall receive a benefit equal to 50 percent of the Member's Base Pay reduced by 50 percent of the wages earned by the Member in other employment. Wages earned by the Member in other employment has the same meaning as the term "wages earned in other employment" as defined subsection (D) (5), below. The notification procedure described paragraph (D) below, Guidelines for Wage Offset Administration, shall also apply to Members covered by this section who intend to engage in activities which will result in the receipt of "wages earned in other employment."~~ ***Members receiving nonservice-connected disability benefits under Article 3 of the Plan who intend to enter the employ of any person, firm or corporation, or engage in any activity which will result in the Member receiving "wages earned in Other Employment" shall notify the Director, in writing, of the Member's intention. The notice shall be accompanied by a written statement reflecting an estimate of the Member's earnings from such activities. Thereafter, the Member shall furnish***

~~and the IRS requires you to report your rental income as self-employment income, your rental income is considered "outside wages" and is subject to the wage offset.~~

- (6)(5) Documentation acceptable for reporting outside employment wages include valid copies of payroll records, pay stubs, W-2 and income tax returns.

(D) Guidelines for Substantial Gainful Activity Wage Offset Administration

- (1) When a Member who has been determined to be capable of Substantial Gainful Activity (SGA) chooses to pursue Self-Employment rather than seek regular employment:**

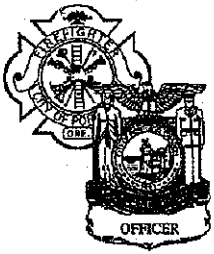
alternative language adopted

(a) The Director will initially estimate the Member's Self-Employment wages as one-third of the Member's Base Pay in Effect at Disability.

(b) The Member will be required to submit his/her tax returns and other wage, hour and expense documentation annually or when requested by the Director.

(c) After receipt of wage, hour and expense documentation, the Director will recalculate the wage offset for the past year and either pay the Member any additional benefits due or calculate an overpayment. The Director will also re-estimate the Member's Self-Employment wages for the current and next year.

(d) The Director will recover any overpayment by offsetting one-twelfth of the overpaid amount from future overpayments until the overpayment is recovered in full.



City of Portland, Oregon



BUREAU OF FIRE AND POLICE DISABILITY AND RETIREMENT

1800 SW First Ave., Suite 450, Portland, OR 97201 • (503) 823-6823 • Fax: (503) 823-5166

Samuel Hutchison, Director

fpdr@portlandoregon.gov

Statement of Rulemaking Need and Fiscal Impact (Resolution No. 487)

Purpose of Administrative Rule Amendment Recommendations – Staff proposes FPDR Administrative Rule amendments when it is deemed essential to providing clarity, consistency of application of Chapter 5 provisions, and full disclosure to all stakeholders.

Summary of Amendments:

FPDR Staff recommends amending Sections:

5.7 Service-Connected or Occupational Disability Benefits

5.7.05 Amount of Benefits

5.7.09 Recipient of Disability Benefits

5.7.12 Offsets to Service-Connected and Occupational Disability Benefits

5.8 nonservice Connected Disability Benefits

5.8.10 Recipient of Disability Benefits

5.8.13 Offsets to Nonservice-Connected Disability Benefits

See Exhibits "A" and "B" for complete description of proposed rule changes

Desired Outcome:

Board adopts amendments as recommended by staff.

Fiscal Impact Statement

FPDR finance staff has reviewed the proposed rules changes for fiscal impact:

No impact anticipated.

Definitions

"Full-Time Work." For the purpose of Other Employment, the term Full-Time Work" means working an average of at least 36 hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician.

[Found in 5.7.09(C) & 5.8.13(B) & 5.10.02]

{BHR Rule: 8.01 Hours of Work and Schedules}

"Self-Employment." The Term "Self-Employment" means the Member is working as:

- a sole proprietor who conducts a trade or business;
- an independent contractor;
- a member of a partnership that conducts a trade or business; or
- otherwise is in business for himself or herself

Self-Employment is considered Full-Time Work only when the Member is working an average of at least 36 hours per week or the maximum work hours documented in the permanent restriction(s) placed by the Attending Physician

[Found in 5.7.12(D)(5) & 5.8.13(D)(5)]

{This is based on what IRS uses to define self-employment.}

"Other Employment." The term "Other Employment" means employment with any person, firm, company, corporation, government agency, municipality or Self-Employment, and does not include employment as an Active Member of the Bureau of Fire or Bureau of Police, or work performed as part of an approved Transitional Duty Return to Work Program in accordance with Administrative Rule 5.10.03.

{This is based on Admin Rules: 5.7.02 (B); 5.12.05 (B)}