Senate Engrossed House Bill

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

CHAPTER 114

HOUSE BILL 2145

AN ACT

AMENDING SECTIONS 38-797.07, 38-797.08 AND 38-797.11, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA STATE RETIREMENT SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 38-797.07, Arizona Revised Statutes, is amended to read:

38-797.07. LTD program benefits; limitations; definitions

A. The LTD program is subject to the following limitations:

1. Except as provided in paragraph 7 of this subsection, monthly benefits shall not exceed two-thirds of a member's monthly compensation at the time disability commences, reduced by:

(a) FOR A MEMBER WHOSE DISABILITY COMMENCES BEFORE JULY 1, 2008, sixty-four per cent of social security disability benefits that the member or the member's dependents are eligible to receive.

(b) FOR A MEMBER WHOSE DISABILITY COMMENCES ON OR AFTER JULY 1, 2008, EIGHTY-FIVE PER CENT OF SOCIAL SECURITY DISABILITY BENEFITS THAT THE MEMBER OR THE MEMBER'S DEPENDENTS ARE ELIGIBLE TO RECEIVE, BUT NOT INCLUDING:

(i) THE AMOUNT OF ATTORNEY FEES APPROVED PURSUANT TO SOCIAL SECURITY ADMINISTRATION RULES AND REASONABLE DOCUMENTED COSTS PAID TO AN ATTORNEY TO SECURE THAT DISABILITY BENEFIT.

(ii) ANY COST OF LIVING ADJUSTMENTS THAT ARE GRANTED AFTER THE MEMBER COMMENCES BENEFITS UNDER THIS SECTION.

(c) FOR A MEMBER WHOSE DISABILITY COMMENCES BEFORE JULY 1, 2008, eighty-three per cent of social security retirement benefits that the member is eligible to receive.

(d) FOR A MEMBER WHOSE DISABILITY COMMENCES ON OR AFTER JULY 1, 2008, EIGHTY-FIVE PER CENT OF SOCIAL SECURITY RETIREMENT BENEFITS THAT THE MEMBER IS ELIGIBLE TO RECEIVE, BUT NOT INCLUDING ANY COST OF LIVING ADJUSTMENTS THAT ARE GRANTED AFTER THE MEMBER COMMENCES BENEFITS UNDER THIS SECTION.

~~(c)~~ (e) All of any workers' compensation benefits.

~~(d)~~ (f) All of any payments for a veteran's disability if both of the following apply:

(i) The veteran's disability payment is for the same condition or a condition related to the condition currently causing the member's total disability.

(ii) The veteran's disability is due to, or a result of, service in the armed forces of the United States.

~~(e)~~ (g) All of any other benefits by reason of employment that are financed partly or wholly by an employer, including payments for sick leave. This subdivision does not include any retirement benefit that is received by the member pursuant to a state retirement system or plan other than ASRS.

~~(f)~~ (h) Fifty per cent of any salary, wages, commissions or other employment related pay that the member receives or is entitled to receive from any gainful employment in which the member actually engages.

2. Monthly benefits are not payable until a member has been totally disabled for a period of six consecutive months.

3. Monthly benefits are not payable to a member who is receiving retirement benefits from ASRS.

4. Monthly benefits are not payable to a member whose disability is due to, or a result of, any of the following:

(a) An intentionally self-inflicted injury.

(b) War, whether declared or not.

(c) An injury incurred while engaged in a felonious criminal act or enterprise.

(d) FOR A MEMBER WHOSE MOST RECENT MEMBERSHIP IN THE LTD PROGRAM COMMENCES BEFORE JULY 1, 2008, an injury or sickness for which the member received medical treatment within three months before the date of the member's coverage under the LTD program. This subdivision does not apply to a member who either:

(i) Has been an active member of an employer for twelve continuous months.

(ii) Is employed by an employer ~~as of June 30~~ BEFORE JULY 1, 1988.

(e) FOR A MEMBER WHOSE MOST RECENT MEMBERSHIP IN THE LTD PROGRAM COMMENCES ON OR AFTER JULY 1, 2008, AN INJURY OR SICKNESS FOR WHICH THE MEMBER RECEIVED MEDICAL TREATMENT WITHIN SIX MONTHS BEFORE THE DATE OF THE MEMBER'S COVERAGE UNDER THE LTD PROGRAM. THIS SUBDIVISION DOES NOT APPLY TO A MEMBER WHO HAS BEEN AN ACTIVE MEMBER OF AN EMPLOYER FOR TWELVE CONTINUOUS MONTHS.

5. Monthly benefits cease to be payable to a member at the earliest of the following:

(a) The date the member ceases to be totally disabled.

(b) The date the member:

(i) Ceases to be under the direct care of a doctor.

(ii) Refuses to undergo any medical examination or refuses to participate in any work rehabilitation program for which the member is reasonably qualified by education, training or experience and that is requested by the insurance company or claims administrator that is selected by the board to administer the LTD program.

(c) The date the member withdraws employee contributions with interest and ceases to be a member.

(d) The later of the following:

(i) The member's normal retirement date.

(ii) The month following sixty months of payments if disability occurs before sixty-five years of age.

(iii) The month following attainment of seventy years of age if disability occurs at sixty-five years of age or after but before sixty-nine years of age.

(iv) The month following twelve months of payments if disability occurs at or after sixty-nine years of age.

(e) If the member is convicted of a criminal offense and sentenced to more than six months in a jail, prison or other penal institution, the first day of the month following the first thirty continuous days of the member's confinement for the remainder of the confinement.

6. Monthly benefits are payable under the LTD program only for disabilities that commence on or after July 1, 1988.

7. The minimum benefit for a member who is entitled to receive benefits under the LTD program is fifty dollars per month.

8. Members are eligible to receive the benefits and payments described in paragraph 1 of this subsection, and the reductions provided by paragraph 1 of this subsection apply even though the benefits are not actually paid as follows:

(a) For primary and dependent social security benefits, the members are eligible for the benefits until the benefits are actually awarded, or if the benefits are denied, until the member pursues the social security appeal process through a hearing before a social security administrative law judge or until the insurance company or claims administrator determines that the member is not eligible for social security disability benefits.

(b) For benefits and payments from any other source provided in paragraph 1 of this subsection, the members are eligible for the benefits if it is reasonable to believe that the benefits will be paid on proper completion of the claim or would have been paid except for the failure of the member to pursue the claim in time.

9. A member shall be considered totally disabled if:

(a) During the first thirty months of a period of disability, the member is unable to perform all duties of the position held by the member when the member became totally disabled.

(b) For a member who has received monthly benefits for twenty-four months within a five-year period, the member is unable to perform any work for compensation or gain for which the member is reasonably qualified by education, training or experience in an amount at least equal to the scheduled benefits prescribed in paragraph 1 of this subsection.

B. A member who receives monthly benefits from the LTD program is entitled to receive service credit pursuant to article 2 of this chapter from the time disability commences until benefits cease to be payable, except that for a member who receives monthly benefits from the LTD program on or after June 30, 1999 the number of years of service credited to the member's retirement account during the period the member receives LTD benefit payments shall not cause the member's total credited service for retirement benefits to exceed the greater of thirty years or the total years of service credited to the member's retirement account on the commencement of disability.

C. This section does not prohibit a member whose disability has been established to the satisfaction of the board from relying on treatment by prayer through spiritual means in accordance with the tenets and practice of a recognized church, religious denomination or Native American traditional medicine by a duly accredited practitioner of the church, denomination or Native American traditional medicine without suffering reduction or suspension of the member's monthly benefits.

D. For the purposes of this section:

1. "Received medical treatment" means that the member consulted with or received the advice of a licensed medical or dental practitioner, including advice given during a routine examination, and it includes situations in which the member received medical or dental care, treatment or services, including the taking of drugs, medication, insulin or similar substances.

2. "Social security" and "social security disability" includes the railroad retirement act of 1974 (P.L. 93-445; 88 Stat. 1305; 45 United States Code sections 231 through 231u).

Sec. 2. Section 38-797.08, Arizona Revised Statutes, is amended to read:

38-797.08. Errors; benefit recomputation

If any change or error in the records results in any member receiving from the LTD program more or less than the member would have been entitled to receive if the records had been correct, the board shall correct the error and shall adjust the payments in a manner so that the equivalent of the benefit to which the member was correctly entitled is paid. The board shall correct any change or error and shall pay the appropriate monies to a member or shall recover monies from the member if the member is overpaid. THE BOARD SHALL RECOVER MONIES BY REDUCING ANY BENEFIT THAT IS OTHERWISE PAYABLE BY ASRS OR THE LTD PROGRAM TO AN ACTIVE, INACTIVE, DISABLED OR RETIRED MEMBER, SURVIVOR, CONTINGENT ANNUITANT, BENEFICIARY OR ALTERNATE PAYEE.

Sec. 3. Section 38-797.11, Arizona Revised Statutes, is amended to read:

38-797.11. Exemptions from execution, attachment and taxation; exception

A. The benefits, the employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are not subject to execution or attachment and are nonassignable except as specifically provided in this article OR ARTICLE 2 OF THIS CHAPTER. The employer and member contributions and the securities in the LTD trust fund established by section 38-797.02 are exempt from state, county and municipal income taxes. Benefits received by a member from the LTD program are subject to tax pursuant to title 43.

B. Interest, earnings and all other credits pertaining to benefits are not subject to execution or attachment and are nonassignable.

APPROVED BY THE GOVERNOR APRIL 24, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2007.