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DELAWARE STATE SENATE

143rd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1

FOR

SENATE BILL NO. 243

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO THE DISABILITY INSURANCE PROGRAM.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 52A, Title 29, of the Delaware Code by adding a new section thereto as follows:

2 “§5257. Return to Work.

3 Once an employee has been determined to have the ability to return to employment by the Committee, the employee will receive the
4 following assistance:

5 (a) Merit employees may be placed in any vacant merit position, for which they qualify, by the Office of Management &
6 Budget.

7 (b) Non-merit state employees, and employees from non-state employers will be placed by that employer into a vacant
8 position within their respective agency for which the employee qualifies.”

9 Section 2. Amend §5201(b), Title 29, of the Delaware Code by striking “Chapter 52A” in the last sentence thereof and
10 substituting “§5253(c)” in lieu thereof.

11 Section 3. Amend §5201 (c), Title 29, of the Delaware Code by adding the following sentence at the end thereof:

12 “A "regular officer or employee" shall also include an employee who is receiving disability benefits pursuant to §5253(b) of this
13 Title.”

14 Section 4. Amend §5202(a), Title 29, of the Delaware Code by adding thereto a new paragraph (4) as follows:

15 “(4) Beginning January 1, 2006, employees identified under Title 14 of the Delaware Code who are receiving a Short-Term
16 Disability benefit for a period greater than 90 days pursuant to §5253(b) of this Title and have exhausted all of their paid leave.”

17 Section 5. Amend §5253(b) (4), Title 29, of the Delaware Code by striking the words “earned sick” therefrom substituting
18 “annual, sick, compensatory, or donated” in lieu thereof.

19 Section 6. Amend §5519, Title 29, of the Delaware Code by adding thereto a new subsection (c) as follows:
20 “(c) If it is determined by the State Pension Administrator that an employee is or was unable to make this election in a timely
21 manner due to circumstances beyond the employee's control, the Administrator, in his sole and absolute discretion, may extend the
22 time period for making the election beyond the periods specified in this section.”

23 Section 7. Amend §5253(d), Title 29, of the Delaware Code by deleting said subsection in its entirety and substituting the
24 following in lieu thereof:

25 “(d) Eligibility for participation in the program shall terminate upon the earliest to occur of an employee's (i) ability to
26 return to employment , (ii) death, or (iii) normal service retirement at age 65. If the employee becomes disabled after age 60, the
27 maximum duration of benefits will be subject to the following:

28	Age when disabled	Benefit duration (months)
29	61	48
30	62	42
31	63	36
32	64	30
33	65	24
34	66	21
35	67	18
36	68	15
37	69+	12”

38 Section 8. Amend §5501(d) (20), Title 29, of the Delaware Code by striking the phrase “90 days” wherever it appears
39 therein and by substituting “90 days or the balance for which the employee received payment” in lieu thereof.

40 Section 9. Amend §5253(c), Title 29, of the Delaware Code by adding thereto a new paragraph (5) as follows:
41 “(5) Once Long-term disability benefits commence the employee shall be eligible to receive a payoff of accrued unused sick leave
42 based on the rules in place by their employer.”

43 Section 10. Amend §9602 (a), Title 29, of the Delaware Code by deleting the words “Benefits and Insurance
44 Administrator” from the first sentence therein and substituting the words “Secretary of Health and Social Services” in lieu thereof;
45 and further amend §9602 (a), Title 29, of the Delaware Code by deleting the words “Benefits and Insurance Administrator” from
46 the last sentence therein and substituting the words “Director of the Office of Management and Budget” in lieu thereof.

47 Section 11. Amend Chapter 52 A, Title 29 of the Delaware Code, by adding thereto a new section 5258 to read as follows:

48 “§5258. Appeals.

49 The carrier shall notify a participating employee of its determination of the employee’s eligibility for short-term and/or long-term
50 disability benefits in writing by certified mail, return receipt requested, within ten (10) days of the carrier’s final determination.

51 Within twenty (20) days of the day that the carrier’s written notice of final determination of eligibility was mailed to the employee,
52 an aggrieved participating employee may appeal any denial of disability benefits by filing a written petition setting forth with
53 particularity the grounds for appeal with the Benefits and Insurance Administrator of the Office of Management and Budget
54 (“Administrator”) who shall meet with the employee and conduct an informal review, and who shall have the authority to reverse
55 all or any part of the decision of the carrier to deny benefits. The Administrator shall issue a final written decision and shall mail
56 the same to the employee by certified mail, return receipt requested, within thirty (30) days of meeting with the employee.

57 If the Administrator shall affirm the carrier’s decision to deny disability benefits or any part thereof, an aggrieved employee may
58 appeal to the Committee within twenty (20) days of the day the notice of determination was mailed by the Administrator by filing a
59 written petition with the Committee setting forth with particularity the grounds for appeal. The Committee may designate a hearing
60 officer to hear evidence presented by the participating employee or, in its sole discretion, it may decide to hear the appeal directly.
61 The Committee or hearing officer, as the case may be, shall determine whether the determination to deny benefits complies with the
62 applicable disability plan adopted by the Committee. The hearing officer and/or Committee shall have all of the following powers
63 in respect to the conduct at the hearing:

64 (a) To issue subpoenas and administer oaths in any proceeding. Any subpoena process or order or any notice or paper
65 requiring service shall be sent by certified mail, return receipt requested;

66 (b) To examine persons as witnesses, take evidence, require the production of documents, and do all other things pursuant
67 to law which are necessary to determine the appeal. In proceedings before the Committee or its hearing officer, if any person
68 neglects to produce any pertinent document, neglects or refuses to appear after having been subpoenaed, refuses to testify or be
69 examined, disobeys or resists any lawful order or process, or intentionally obstructs the hearing, the Committee shall certify facts
70 under the signature of its chairperson or the hearing officer to any Judge of the Superior Court, which Judge shall there upon hear
71 the evidence as to the acts complained of. The Judge shall, if the Judge deems the evidence so warrants, issue an order requiring
72 such person to testify or produce documents or otherwise comply with the requirements of the Committee, as the case may require.
73 Refusal to comply with the order of the Court shall constitute contempt of Court;

74 (c) Where the Committee assigns the matter to a hearing officer, the hearing officer shall decide the matter and prepare a
75 report containing findings of fact, and conclusions of law, within sixty (60) days of the hearing, and shall transmit the report, with
76 the full record of the hearing, to the Committee.

77 (d) The Committee may accept or modify the hearing officer’s final report, and shall notify the parties of its action by
78 certified mail, return receipt requested within sixty (60) days.

79 (e) If the Committee elects to hear the matter directly and not to assign it to a hearing officer, it shall issue its final
80 decision containing findings of fact and conclusions of law, within sixty (60) days of the hearing, and shall notify the parties of its
81 action by certified mail, return receipt requested.

82 (f) The Committee's final action may be appealed to the Superior Court within thirty (30) days after it is mailed to the
83 parties by the Committee. The appeal shall be on the record."

SYNOPSIS

This Act clarifies some issues for the Disability Insurance Program for employees covered by the State Employees Pension Plan.

Section 1 clarifies the return to work components for those merit and non-merit employees previously on disability

Section 2 clarifies that employees receiving Long-term disability benefits will be covered for health insurance as if they were a pensioner.

Section 3 clarifies that employees receiving Short-term disability benefits will be treated as an active employee for health insurance.

Section 4 provides that the State will pay the State share once an employee has been out on short-term disability for over 90 days and has exhausted their paid leave.

Section 5 allows earned annual, sick, compensatory or donated leave to be used to supplement an employee's short-term disability payment

Section 6 allows the Pension Administrator to resolve any outstanding issues that were involved with the election period for the program.

Section 7 defines the maximum duration of the payment of disability benefits for those employees who become disabled after age 60. After that point the employee would be eligible for normal service retirement benefit. Different employers within the State Employees Pension Plan have different rules for the payment of unused sick leave;

Section 8 alters the reference to 90 days and adds the generic reference that any unpaid sick leave would be eligible for purchase.

Section 9 allows employees that start receiving benefits under the Long-term disability program to receive a sick leave payoff at that point in time.

Section 10 substitutes the Secretary of Health and Social Services as a member of the State Employee Benefits Committee and removes the Benefits and Insurance Administrator in order to permit the Administrator to hear appeals as set forth in Section 11. This section also transfers the Administrator's role as committee chair to the Director of the Office of Management and Budget.

Section 11 provides participating employees in the State Disability Insurance Program with the opportunity to appeal the insurance carrier's determination of eligibility to receive short-term and/or long-term disability benefits. The first level of appeal is to the Benefits and Insurance Administrator. Second level appeals may be made to the State Employee Benefits Committee who may designate a hearing officer to hear evidence supporting the participating employee's appeal. The participating employee may present documentary evidence and testimony in support of their position. Final decisions of the Committee may be appealed to the Superior Court of Delaware.

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