

(2) "CBBC" means the contribution based benefit cap, a limit established by the public employees retirement board on the retirement allowance a member may receive.

(B) Based on the advice of an actuary appointed by the board, the board shall designate a number as the CBBC factor. The board may revise the factor pursuant to advice from an actuary appointed by the board.

(C) Prior to paying a retirement allowance, the public employees retirement system shall make the following calculations:

(1) Determine an amount equal to the value of the member's accumulated contributions, exclusive of contributions payable under divisions (D)(2)(b) and (c) or (D)(3)(b) and (c) of section 145.332 of the Revised Code but including any contributions made under section 145.483 of the Revised Code that represent member contributions, any contributions used to fund a benefit under section 145.36 of the Revised Code, with interest compounded at a rate approved by the board, and a portion of any amounts paid by an employer under sections 145.297 or 145.298 of the Revised Code, as determined by an actuary appointed by the board;

(2) Determine the amount of a single life annuity that is the actuarial equivalent of the amount determined under division (C)(1) of this section, adjusted for age of the member at the time of retirement or, when appropriate, the age at the time of the member's death;

(3) Multiply the annuity amount determined under division (C) (2) of this section by the CBBC factor.

(D) The amount determined under division (C)(3) of this section is the member's CBBC. Except as provided in division (E) of this section, if the retirement allowance the member would receive exceeds the member's CBBC, the allowance shall be reduced to an amount equal to the member's CBBC.

(E) The retirement allowance of a member eligible for age and service retirement under division (A) of section 145.32 of the Revised Code or division (A) of section 145.332 of the Revised Code shall not be reduced under division (D) of this section by more than five per cent of the member's single lifetime allowance computed under section 145.33 or 145.332 of the Revised Code, unless during any full month of service earned after January 1, 1987, the member's earnable salary was less than one thousand dollars.

Sec. 145.35. (A) As used in this section, "on-duty illness or injury" means an illness or injury that occurred during or resulted from performance of duties under the direct supervision of a ~~member's appointing authority~~ public employer.

(B) The public employees retirement system shall provide disability

coverage to each member who has at least five years of total service credit and disability coverage for on-duty illness or injury to each member who is a PERS law enforcement officer or PERS public safety officer, regardless of length of service.

The coverage shall extend only to illness or injury that occurs before the member's contributing service terminates or, in the case of illness or injury that results from contributing service, becomes evident not later than two years after the date the contributing service ends. The coverage shall not extend to disability resulting from elective cosmetic surgery other than reconstructive surgery.

Not later than October 16, 1992, the public employees retirement board shall give each person who is a member on July 29, 1992, the opportunity to elect disability coverage either under section 145.36 of the Revised Code or under section 145.361 of the Revised Code. The board shall mail notice of the election, accompanied by an explanation of the coverage under each of the Revised Code sections and a form on which the election is to be made, to each member at the member's last known address. The board shall also provide the explanation and form to any member on request.

Regardless of whether the member actually receives notice of the right to make an election, a member who fails to file a valid election under this section shall be considered to have elected disability coverage under section 145.36 of the Revised Code. To be valid, an election must be made on the form provided by the retirement board, signed by the member, and filed with the board not later than one hundred eighty days after the date the notice was mailed, or, in the case of a form provided at the request of a member, a date specified by rule of the retirement board. Once made, an election is irrevocable, but if the member ceases to be a member of the retirement system, the election is void. If a person who makes an election under this section also makes an election under section 3307.62 or 3309.39 of the Revised Code, the election made for the system that pays a disability benefit to that person shall govern the benefit.

Disability coverage shall be provided under section 145.361 of the Revised Code for persons who become members after July 29, 1992, and for members who elect under this division to be covered under section 145.361 of the Revised Code.

The retirement board may adopt rules governing elections made under this division.

(C) Application for a disability benefit may be made by a member, by a person acting in the member's behalf, or by the member's employer, provided the member has disability coverage under section 145.36 or

145.361 of the Revised Code and is not receiving a disability benefit under any other Ohio state or municipal retirement program. Application must be made within two years from the date the member's contributing service under the PERS defined benefit plan terminated or the date the member ceased to make contributions to the PERS defined benefit plan under section 145.814 of the Revised Code, unless the retirement board determines that the member's medical records demonstrate conclusively that at the time the two-year period expired, the member was physically or mentally incapacitated for duty and unable to make an application. Application may not be made by or for any person receiving age and service retirement benefits under section 145.33, 145.331, ~~145.34~~, 145.332, or 145.37 or former section 145.34 of the Revised Code or any person who, pursuant to section 145.40 of the Revised Code, has been paid the accumulated contributions standing to the credit of the person's individual account in the employees' savings fund. The application shall be made on a form provided by the retirement board.

(D) The benefit payable to any member who is approved for a disability benefit shall become effective on the first day of the month immediately following the later of the following:

- (1) The last day for which compensation was paid;
- (2) The attainment of eligibility for a disability benefit.

(E) Medical examination of a member who has applied for a disability benefit shall be conducted by a competent disinterested physician or physicians selected by the board to determine whether the member is mentally or physically incapacitated for the performance of duty by a disabling condition either permanent or presumed to be permanent. The disability must have occurred since last becoming a member or have increased since last becoming a member to such extent as to make the disability permanent or presumed to be permanent. A disability is presumed to be permanent if it is expected to last for a continuous period of not less than twelve months following the filing of the application.

The standard used to determine whether a member is incapacitated for duty is that the member is mentally or physically incapable of performing the duties of the position the member held at the time the disabling condition began or of a position with similar duties.

If the physician or physicians determine that the member qualifies for a disability benefit, the board concurs with the determination, and the member agrees to medical treatment as specified in division (F) of this section, the member shall receive a disability benefit under section 145.36 or 145.361 of the Revised Code. The action of the board shall be final.

(F) The public employees retirement board shall adopt rules requiring a disability benefit recipient, as a condition of continuing to receive a disability benefit, to agree in writing to obtain any medical treatment recommended by the board's physician and submit medical reports regarding the treatment. If the board determines that a disability benefit recipient is not obtaining the medical treatment or the board does not receive a required medical report, the disability benefit shall be suspended until the treatment is obtained, the report is received by the board, or the board's physician certifies that the treatment is no longer helpful or advisable. Should the recipient's failure to obtain treatment or submit a medical report continue for one year, the recipient's right to the disability benefit shall be terminated as of the effective date of the original suspension.

The board shall require the recipient of a disability benefit who is described in section 145.363 of the Revised Code to comply with that section.

(G) A disability benefit that has been granted a member but has not commenced shall not be paid if the member continues in or returns to employment with the same employer in the same position or in a position with duties similar to those of the position the member held at the time the benefit was granted.

(H) In the event an employer files an application for a disability benefit as a result of a member having been separated from service because the member is considered to be mentally or physically incapacitated for the performance of the member's present duty, and the physician or physicians selected by the board reports to the board that the member is physically and mentally capable of performing service similar to that from which the member was separated and the board concurs in the report, the board shall so certify to the employer and the employer shall restore the member to the member's previous position and salary or to a similar position and salary.

Sec. 145.36. A member who has elected disability coverage under this section, has not attained the applicable age ~~sixty~~, and is determined by the public employees retirement board under section 145.35 of the Revised Code to qualify for a disability benefit shall be retired on disability under this section.

The applicable age is sixty if the member is described in division (A) or (B) of section 145.32 or division (A), (B), or (E)(1), (3), or (4) of section 145.332 of the Revised Code. It is sixty-two if the member is described in division (C) of section 145.32 or division (E)(2) or (5) of section 145.332 of the Revised Code.

Upon disability retirement, a member shall receive an annual amount