

Chapter 48

2023 Regular Session

Subject Duty Disability**Bill** H.F. 1234**Analyst** Colbey Sullivan**Date** June 30, 2023

Overview

Among other things, this act requires treatment of a psychological condition before a peace officer or firefighter may apply for duty disability benefits from the Minnesota State Retirement System (MSRS) or the Public Employees Retirement Association (PERA). The bill also modifies vesting and disability reemployment offset requirements for PERA's Police and Fire Plan and modifies total and permanent disability benefits for both the MSRS State Patrol Retirement Plan and the PERA Police and Fire Plan.

Section 2 requires public employers to provide wellness training or an employee assistance program to peace officers and firefighters in order to be eligible for state reimbursement of certain treatment, employee compensation, and health insurance costs. Sections 3 to 12 apply to members of the State Patrol Retirement Plan administered by MSRS. Sections 13 to 29 and 33 apply to PERA members. Section 30 requires the Department of Public Safety (DPS) to create a wellness training course, makes wellness training a prerequisite for peace officer licensing beginning July 1, 2024, and requires local and state law enforcement agencies to provide in-service wellness training. Sections 31 and 32 allocate a total of \$104 million for PERA and MSRS psychological treatment administration and DPS payments to public employers through the modified public safety officer's benefit account.

Governor Tim Walz signed this act into law on May 19, 2023.

Summary

Section	Description
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1	Public safety officer's benefit account.
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	Requires DPS to report to the legislature annually regarding the financial status of the public safety officer's benefit account. If DPS anticipates that money in the account will be insufficient to fund all eligible reimbursements and payments, the agency
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	must report the estimated additional amount required to fully fund these anticipated expenses.
2	Public employer reimbursement. Modifies an existing provision requiring the state to reimburse public employers for statutorily required continued medical insurance for eligible disabled peace officers and firefighters. Beginning January 1, 2024, a public employer must provide peace officers and firefighters annual wellness training or an employee assistance or peer support program to be eligible for this reimbursement. Specifies criteria for wellness training and wellness training program development.
3	Member. [MSRS] Provides that a member of the State Patrol Retirement Plan who applies for duty disability benefits based on a psychological condition remains a member even if the member transfers to or accepts a noneligible position with their employer.
4	Total and permanent duty disability. [MSRS] Defines this term for purposes of the State Patrol Retirement Plan.
5	Duty disability. [MSRS] Modifies duty disability requirements for an applicant with a psychological condition to require the applicant to provide evidence that they are unable to perform the duties of the position they held at the time of their injury, or a similar position to the one they held at the time of injury.
6	Total and permanent duty disability. [MSRS] Sets total and permanent duty disability benefits at 99 percent of a member's average monthly salary. Specifies the benefit impact for a member whose condition ceases to qualify as a total and permanent duty disability.
7	Applying for benefits; accrual. [MSRS] References the new psychological condition treatment requirements under section 10.
8	Proof of disability. [MSRS] References the proof of disability requirements for a psychological condition under section 10.
9	Application for disability benefit. [MSRS] References the new psychological condition treatment requirements under section 10. Clarifies that an applicant for duty disability based on a psychological condition

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	must meet the additional requirements under section 10, including completion of treatment.
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10	Application for psychological condition treatment. [MSRS]
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Subd. 1. Definitions. Defines terms used in the new psychological condition treatment requirements for an MSRS State Patrol retirement plan member, including specifications for the type of treatment required. Defines “psychological condition” as having a “mental illness,” also as defined in this subdivision.

Subd. 2. Application; dual diagnosis. Clarifies that the new psychological condition treatment required under this section does not apply to a duty disability applicant with a dual diagnosis of both a psychological and a physical condition. A dual diagnosis applicant may elect to seek treatment but is not required as a prerequisite.

Subd. 3. Approval. Establishes the application process for the psychological condition treatment. Requires the applicant to submit an application to MSRS with a report from one mental health professional indicating they are diagnosed with a mental illness and unable to perform the normal duties of their position, as well as employer documentation of their dates of employment in an applicable position. Requires the employer to provide certification within five days, and requires approval by MSRS within 14 days of application.

Subd. 4. Treatment required. Requires completion of up to 24 weeks of treatment as outlined in this subdivision before an applicant with a psychological condition may apply for duty disability benefits. Provides that an applicant is not penalized for nonconsecutive treatment periods that are unintentional. Requires the employer to pay treatment costs not covered by the employee’s health insurance. Includes progress reporting requirements for the employee’s treatment provider, and outlines options for full- or part-time return to work, return to light duties, and related presumption of fitness for duty. Limits treatment to three times in ten years.

Subd. 5. Continuation of salary and benefits. Requires an employer to continue to pay a current employee’s full salary and employer-provided benefits, including health and retirement benefits, dependent benefits, and any benefits provided under an applicable collective bargaining agreement during the treatment period. Provides for a 30-day grace period for a continuation of salary and benefits if an employee is unable to receive treatment due to circumstances beyond their control. The grace period may be extended beyond 30 days with written documentation from a mental health provider or facility regarding the treatment start date.

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Subd. 6. Termination or continuation of psychological condition treatment.

After the applicant completes up to 24 weeks of treatment, MSRS can make one of three determinations: (1) continue treatment approval for an additional eight weeks of treatment; (2) end the psychological condition treatment because the employee is able to return to their position full-time or to another comparable position; or (3) confirm the employee has met and completed the psychological condition treatment requirements (or additional treatment requirements, if applicable), after which the employee may apply for disability benefits based on a psychological condition as provided under existing law. MSRS will approve the disability benefit under the process provided under existing law. A fitness for duty presumption generally applies to an employee who is deemed able to return to work as provided in this subdivision.

Subd. 7. Additional treatment. Provides for eight weeks of additional treatment at the end of the 24 weeks at the direction of a mental health professional when the employee's prognosis is expected to improve with further treatment. Provides that an applicant is not penalized for nonconsecutive treatment periods that are unintentional. Requires the employer to pay treatment costs not covered by the employee's health insurance. Includes progress reporting requirements for the employee's treatment provider, and outlines options for full- or part-time return to work, return to light duties, and related presumption of fitness for duty. Limits treatment to three times in ten years.

Subd. 8. Treatment data. Provides that a health record arising from treatment under this section is private data on individuals under the Minnesota Government Data Practices Act and cannot be shared or disclosed, including through a legal action or investigation.

Subd. 9. Employing entity reimbursement; limit. Allows an employer to apply for reimbursement for the costs of treatment and continuing salary and benefits as provided under this section. Limits an employer's liability per employee to no more than three periods of treatment plus the associated continuation of salary and benefits in ten years.

Subd. 10. Fitness for duty presumption. Establishes a fitness for duty presumption for an employee who is cleared to return to work or light duty as provided under this section, unless an exception applies. An employee found to be unfit for duty is presumed eligible for a duty disability or may appeal that determination to a qualified independent medical provider of their choosing from an established panel. Requires a panel of five licensed psychologists or psychiatrists, established by mutual agreement of specified entities, for the purposes of this independent appeal. If an employee does not select a qualified

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professional from the panel within ten days, the employer may do so. Provides that the psychologist's or psychiatrist's appeal determination is final and binding.

Subd. 11. Report. Requires the executive director of MSRS to submit a report to the legislature about the impact of this section on public safety duty disability trends and costs within four years of enactment.

Subd. 12. Relationship to workers' compensation. Provides that this section does not affect workers' compensation claims procedures, with one exception – treatment for a psychological condition under this section is not compensable under workers' compensation.

11	Psychological condition treatment account. [MSRS]
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Establishes the psychological condition treatment account and appropriates money in the account to MSRS for the costs of administration of psychological condition treatment under the previous section. Authorizes MSRS to invoice DPS for these costs if the psychological condition treatment account balance is depleted. Requires DPS to pay an invoice from the public safety officer's benefit account modified in section 1.

12	Termination. [MSRS]
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Specifies that unlike duty disability (Minn. Stat. § 325B.10, subd. 1) and regular disability benefits (Minn. Stat. § 325B.10, subd. 2), total and permanent duty disability benefits are not subject to automatic termination under section 325B.105, subdivision 1, when the disabilitant transfers to retirement annuitant status.

13	Vesting. [PERA]
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Amends the vesting schedule for the PERA police and fire plan by eliminating the separate 20-year vesting schedule that applied only to those who joined the plan after June 30, 2014.

14	Application. [PERA]
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Clarifies that an applicant for duty disability based on a psychological condition must satisfy the new treatment requirements under section 19, including completion of treatment.

15	Procedure to determine eligibility; generally. [PERA]
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Clarifies application requirements for disability benefits, including the required application form and two medical reports. Requires PERA to notify the employer of a disability application, and requires the employer to report certain information to PERA within 30 days.

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16	<p>Additional requirements; eligibility for police and fire or local government correctional service retirement plan disability benefits. [PERA]</p> <p>Modifies duty disability requirements for an applicant with a psychological condition to require the applicant to provide evidence that they are unable to perform the duties of the position they held, or a similar position.</p>
17	<p>Proof of eligibility upon reapplication. [PERA]</p> <p>Modifies that statute that governs the PERA disability reapplication process. Requires a member to reapply and provide proof of disability each year for the first five years and every three years thereafter. Authorizes PERA to waive this requirement under certain circumstances. Provides that a person whose application is denied bears the burden of proof upon appeal.</p>
18	<p>Application approval or denial; decision of executive director. [PERA]</p> <p>Makes conforming changes to PERA's reapplication process.</p>
19	<p>Application for psychological condition treatment. [PERA]</p> <p>Subd. 1. Definitions. Defines terms used in the new psychological condition treatment requirements for a PERA police and fire plan member, including specifying the type of treatment required. Defines "psychological condition" as having a "mental illness," as that term is defined in this subdivision.</p> <p>Subd. 2. Application; dual diagnosis. Clarifies that the new psychological condition treatment under this section does not apply to a duty disability applicant with a dual diagnosis of both a psychological and a physical condition. A dual diagnosis applicant may elect to seek treatment but is not required as a prerequisite.</p> <p>Subd. 3. Approval. Establishes the application process for the psychological condition treatment. Requires the applicant to submit an application to PERA with a report from one mental health professional indicating they are diagnosed with a mental illness and unable to perform the normal duties of their position, as well as employer documentation of their dates of employment in an applicable position. Requires the employer to provide certification within five days, and requires approval by PERA within 14 days of application.</p> <p>Subd. 4. Treatment required. Requires completion of up to 24 weeks of treatment as outlined in this subdivision before an applicant with a psychological condition may apply for duty disability benefits. Provides that an applicant is not penalized for nonconsecutive treatment periods that are unintentional. Requires the employer to pay the treatment costs not covered by the employee's health insurance up to a limit. Includes progress reporting requirements for the employee's treatment provider, and outlines options for full- or part-time return</p>

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	to work, return to light duties, and related presumption of fitness for duty. Limits treatment to three times in ten years.
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Subd. 5. Continuation of salary and benefits. Requires an employer to continue to pay a current employee's full salary and employer-provided benefits, including health and retirement benefits, dependent benefits, and any benefits provided under an applicable collective bargaining agreement during the treatment period. Provides for a 30-day grace period for a continuation of salary and benefits if an employee is unable to receive treatment due to circumstances beyond their control. The grace period may be extended beyond 30 days with written documentation from a mental health provider or facility regarding the treatment start date.

Subd. 6. Termination or continuation of psychological condition treatment. After completing up to 24 weeks of treatment, PERA can make one of three determinations: (1) continue treatment approval for an additional eight weeks of treatment; (2) end the psychological condition treatment because the employee is able to return to their position full time or to another comparable position; or (3) confirm the employee has met and completed the psychological condition treatment requirements (or additional treatment requirements, if applicable), after which the employee may apply for disability benefits based on a psychological condition as provided under existing law. PERA will approve the disability benefit under the process provided under existing law. A fitness for duty presumption generally applies to an employee who is deemed able to return to work as provided in this subdivision.

Subd. 7. Additional treatment. Provides for eight weeks of additional treatment at the end of the 24 weeks at the direction of a mental health professional when the employee's prognosis is expected to improve with further treatment. Provides that an applicant is not penalized for nonconsecutive treatment periods that are unintentional. Requires the employer to pay the additional treatment costs up to a limit. Includes progress reporting requirements for the employee's treatment provider, and outlines options for full- or part-time return to work, return to light duties, and related presumption of fitness for duty. Limits treatment to three times in ten years.

Subd. 8. Treatment data. Provides that a health record arising from treatment under this section is private data on individuals under the Minnesota Government Data Practices Act and cannot be shared or disclosed, including through a legal action or investigation.

Subd. 9. Employer reimbursement; limit. Allows an employer to apply for reimbursement for the costs of treatment and continuing salary and benefits as provided under this section. Limits an employer's liability per employee to no

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	<p>more than three periods of treatment plus the associated continuation of salary and benefits in ten years.</p> <p>Subd. 10. Fitness for duty presumption. Establishes a fitness for duty presumption for an employee who is cleared to return to work or light duty as provided under this section, unless an exception applies. An employee found to be unfit for duty is presumed eligible for a duty disability or may appeal that determination to a qualified independent medical provider of their choosing from an established panel. Requires a panel of five licensed psychologists or psychiatrists, established by mutual agreement of specified entities, for the purposes of this independent appeal. If an employee does not select a qualified professional from the panel within ten days, the employer may do so. Provides that the psychologist's or psychiatrist's appeal determination is final and binding.</p> <p>Subd. 11. Report. Requires the executive director of PERA to submit a report to the legislature about the impact of this section on public safety duty disability trends and costs within four years of enactment.</p> <p>Subd. 12. Relationship to workers' compensation. Provides that this section does not affect workers' compensation claims, with one exception – treatment for a psychological condition under this section is not compensable under workers' compensation.</p>
20	<p>Psychological condition treatment account. [PERA]</p> <p>Establishes the psychological condition treatment account and appropriates money in the account to PERA for the costs of administration of psychological condition treatment under the previous section. Authorizes PERA to invoice DPS for these costs if the psychological condition treatment account balance is depleted. Requires DPS to pay an invoice from the public safety officer's benefit account modified in section 1.</p>
21	<p>Disabilitant earnings reports. [PERA]</p> <p>Prohibits PERA from requiring a disability benefit recipient to report any workers' compensation benefits they receive.</p>
22	<p>Duty disability; computation of benefits. [PERA]</p> <p>Makes clarifying changes to duty disability and computation of benefits provisions.</p>
23	<p>Total and permanent duty disability; computation of benefits. [PERA]</p> <p>Increases total and permanent duty disability benefits to 99 percent of a member's average salary and makes conforming changes to total and permanent disability provisions.</p>

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24	Optional annuity election. [PERA] Modifies the statute governing disabled members' optional annuity election.
25	Regular disability benefit. [PERA] Makes clarifying changes to a statute governing disabled members' regular disability benefit.
26	Total and permanent regular disability; computation of benefits. [PERA] Makes clarifying changes to a statute governing regular total and permanent disability benefits. Defines "normal disability benefit" as a monthly benefit payable for life.
27	Limitation on disability benefit payments. [PERA] Establishes two offsets to the disability benefit for members who are also receiving reemployment earnings, unless the member is receiving total and permanent disability benefits. Prohibits implementation of the new offsets until January 1, 2024.
28	Disability survivor benefits for members disabled before July 1, 2007. [PERA] Makes conforming changes.
29	Entitlement to receive a disability benefit. [PERA] Makes conforming changes.
30	Wellness training. Requires the Peace Officer Standards and Training (POST) Board to create learning objectives and the DPS to establish a training course to prepare peace officers for the stressful and traumatic events that are common to policing and to teach officers methods to process and cope with this occupational stress and trauma. Requires both those participating in a peace officer education program and licensed peace officers to receive the training and makes this training a prerequisite for peace officer licensing beginning July 1, 2024. Requires state and local law enforcement agencies to maintain records of training compliance.
31	Transfers to the psychological condition treatment account. Transfers onetime resources to the new MSRS and PERA psychological condition treatment accounts.
32	Transfers to the public safety officer's benefit account. Transfers onetime resources to the public safety officer's benefit account to pay for DPS wellness training and administrative costs, PERA and MSRS administrative costs,

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	and to reimburse public employers for eligible costs incurred. Establishes a priority order if onetime resources are insufficient to pay all valid costs and reimbursements.
33	Repealer. [PERA] Repeals the workers' compensation offset for disability benefits.



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