

# DISABILITY RETIREMENT

# EMPLOYER MANUAL

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An eligible employee who becomes unable to perform his job duties because of a physical or mental disability that is likely to be permanent may be eligible to apply for disability retirement benefits. An employee who participates in the Virginia Sickness and Disability Program (VSDP), the Virginia Local Disability Program (VLDP), or an employer's plan that is comparable to VLDP is not eligible for disability retirement. For more information about these programs, see the VSDP Benefits Chapter or the VLDP Benefits Chapter of the Employer Manual, or contact the employer's human resource office in the case of an alternative disability plan.

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## ELIGIBILITY

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An employee working in a VRS-covered position is eligible to be considered for disability retirement if he is a:

- Teacher, administrator, manager or clerical employee of a local school division who is covered by Plan 1 or Plan 2;
- Employee of a VRS-participating political subdivision, such as a city, county, town, authority or commission, including a school maintenance, janitorial or cafeteria employee or a school bus driver as elected by the school division, who is covered by Plan 1 or Plan 2;
- State employee hired before January 1, 1999 who retained eligibility to be considered for VRS disability retirement instead of opting to transfer to VSDP who did not elect to transfer to the Hybrid Retirement Plan;
- Employee covered under the Judicial Retirement System (JRS) or member of the General Assembly.

To apply for disability retirement, the employee must be mentally or physically unable to perform job duties and the incapacity is likely to be permanent and there must be objective medical evidence to support that the disability exists. The employee does not have to be vested to be eligible. Coverage is available from the first day of employment in a VRS-covered position unless the disability existed prior to employment. If a disability existed prior to employment, the employee may apply for disability retirement only if the condition worsened substantially since employment.

**Note:** Political subdivisions may offer an employee with enhanced hazardous duty benefits the option to move to an available non-hazardous duty position, maintaining the hazardous duty coverage as an alternate to disability retirement.

## DISABILITY RETIREMENT

An employee is not eligible for disability retirement if he:

- Is covered under VSDP or VLDP;
- Is a member of the Hybrid Retirement Plan (exception: JRS Hybrid members are eligible);
- Defers retirement;
- Leaves employment and takes a refund of his member contributions and interest;
- Terminated active employment more than 90 days earlier;
- Has a disability that is not likely to be permanent;
- Has been on a leave without pay status for more than 24 months; or
- Is a faculty member who has opted to be covered under his employer's plan in lieu of VSDP;
- Is currently receiving a service retirement benefit and applies for work-related disability.

**Note:** An employee on military leave without pay who suffers a disabling condition may apply for disability retirement even if the leave without pay period exceeds 24 months.

A participant in an Optional Retirement Plan (ORP) is not covered for disability by any program administered by VRS. A participant in the ORP for Higher Education must obtain disability coverage through a plan provided by his employer. Participants in an ORP for Political Appointees or an ORP for School Superintendents are advised to obtain individual coverage.

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### NON-WORK-RELATED DISABILITY

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If the disability is approved, the benefit amount is based on whether the employee has five years of service credit (vested) or not. If the employee is vested and applied for Social Security disability benefits, the amount of the monthly benefit is the higher of the VRS formula amount or the minimum guaranteed benefit. If the employee is vested but did not apply for Social Security disability benefits, the amount of the monthly benefit is the lesser of the VRS formula amount or the minimum guaranteed benefit. An employee who is not vested receives the minimum guaranteed benefit. Disability retirement estimates can be created using myVRS.

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### MINIMUM GUARANTEED BENEFIT

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A disability retiree is paid the minimum guaranteed benefit if it is higher than the VRS formula amount. The employee applying for disability retirement must also apply for Social Security disability benefits. The minimum guaranteed benefit is calculated based on whether the employee qualifies for Social Security disability benefits or not. <sup>1</sup>

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<sup>1</sup> See *Code of Virginia* § 51.1-157(D).

**DISABILITY RETIREMENT**

<b>Employee qualifies for Social Security disability benefits</b>	<b>Employee does not qualify for Social Security disability benefits</b>
33⅓% of AFC*	50% of AFC*

\* The Average Final Compensation (AFC) for Plan 1 is the average of the 36 consecutive months of highest creditable compensation, wherever they occur in the salary history as a covered employee. The AFC for Plan 2 and the Hybrid Retirement Plan is the average of the 60 consecutive months of highest creditable compensation, wherever they occur in the salary history as a covered employee.

An employee who has met the normal retirement age as defined by the Social Security Administration does not qualify for Social Security disability benefits but is eligible for Social Security normal retirement age benefits. Evidence of applying for Social Security disability benefits must be submitted to VRS if the employee is younger than Social Security normal retirement age.

**Social Security Normal Retirement Age**

Year of Birth	Normal Retirement Age
1937 and prior	65
1938	65 years 2 months
1939	65 years 4 months
1940	65 years 6 months
1941	65 years 8 months
1942	65 years 10 months
1943-1954	66
1955	66 years 2 months
1956	66 years 4 months
1957	66 years 6 months
1958	66 years 8 months
1959	66 years 10 months
1960 and later	67

If...	then VRS will pay...
the employee does not provide evidence of applying for Social Security disability benefits	the lesser of 33 ⅓% of the AFC or the VRS formula amount, until evidence is received, if the employee is vested OR 33 ⅓% of the AFC until evidence is received, if the employee is not vested
Social Security disability benefits are approved for a future date	50% of the AFC from the retirement date until the effective date of Social Security disability benefits
Social Security disability benefits are denied	the higher of the formula amount or 50% of the employee's AFC upon receipt of a reimbursement agreement and an appeal statement, if the employee is vested OR 50% of the employee's AFC upon receipt of a reimbursement agreement and an appeal statement, if the employee is not vested

## DISABILITY RETIREMENT

**Note:** Employees must notify VRS of any status changes in Social Security benefits until they reach normal retirement age as defined by the Social Security Administration.

### VRS FORMULA AMOUNT

The employee's age at the time of disability and the employee's plan determine how the VRS formula amount is calculated. If the VRS formula amount is less than 50% of the employee's AFC, the minimum guaranteed benefit amount is paid.<sup>2</sup>

Plan	Employees under age 60 receive whichever is less:	Employees over age 60
VRS Plan 1 (including eligible political subdivision hazardous duty employees with enhanced benefits), VaLORS Plan 1, SPORS Plan 1, JRS employees appointed prior to 1-1-13	$(AFC^* \times 1.7\%) \times (2 \times \text{service})$  OR  $(AFC \times 1.7\%) \times (\text{actual service credit} + \text{number of years remaining between the employee's age at disability retirement and age 60})$	$(AFC \times 1.7\%) \times \text{service credit}$
VRS Plan 2 (including eligible political subdivision hazardous duty employees with enhanced benefits), VaLORS Plan 2, SPORS Plan 2, JRS employees appointed between 1-1-13 and 12-31-13)	$(AFC^* \times 1.65\%) \times (2 \times \text{service})$  OR  $(AFC \times 1.65\%) \times (\text{actual service credit} + \text{number of years remaining between the employee's age at disability retirement and age 60})$	$(AFC \times 1.65\%) \times \text{service credit}$
JRS Hybrid Retirement Plan employees appointed on or after 1-1-14	$(AFC^* \times 1.00\%) \times (2 \times \text{service})$  OR  $(AFC \times 1.00\%) \times (\text{actual service credit} + \text{number of years remaining between the employee's age at disability retirement and age 60})$	$(AFC \times 1.00\%) \times \text{service credit}$

The following salary increases should not be reported to VRS as creditable compensation and cannot be included in an employee's AFC:

- Increases not related to a promotion;
- Increases that exceed the average increase received by other employees of the same employer holding comparable positions;
- Increases of a temporary nature including pay for performing extra duties or such as pay for teachers who provide coaching or act as an advisor for special activities;
- Housing, travel, vehicle or cell phone allowances.

<sup>2</sup> See *Code of Virginia* § 51.1-157.

## **DISABILITY RETIREMENT**

If an employer is found to have reported these types of increases as creditable compensation and an overpayment of retirement benefits result, VRS may recover from the employer the overpayment of benefits paid to the retiree. For more information on creditable compensation exclusions, see the Enroll and Maintain Employees Chapter of the Employer Manual.

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### **WORK-RELATED DISABILITY**

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An employee who becomes disabled from a cause compensable under the Virginia Workers' Compensation Act may apply for work-related disability retirement. A work-related disability is a disability for which the employee has received a workers' compensation award and the compensable condition is determined as the primary cause of the disability. The employee must apply for work-related disability retirement while employed in a VRS-covered position, before completing 24 consecutive months of leave without pay, or within 90 days of leaving employment. The employee should apply for work-related disability retirement when it is determined that the disability is likely to be permanent.

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### **MANDATORY REFUND**

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An employee approved for a work-related disability retirement receives a mandatory refund of his Member Contribution Account (MCA) in addition to a monthly benefit. The MCA consists of employee-paid contributions, employer-paid employee contributions and accrued interest on those retirement contributions. When paid to the employee, a refund is subject to a federal tax withholding of 20% and a Virginia state withholding of 4% if the employee's legal residence is in Virginia. Mandatory taxation may be deferred if the employee rolls over the refund into an individual retirement account (IRA) or another qualified plan. For more information, see the Refunds and Distributions Chapter of the Employer Manual.

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### **MONTHLY BENEFIT**

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If the work-related disability is approved, the benefit amount is based on whether the employee is vested or not. If the employee is vested, the amount of the monthly benefit is the higher of the VRS formula amount or the minimum guaranteed benefit. An employee who is not vested receives the minimum guaranteed benefit.

The VRS formula amount for work-related disability is calculated the same as a non-work-related disability. The amount of the guaranteed benefit depends on whether the employee qualifies for Social Security disability benefits.

## **DISABILITY RETIREMENT**

<b>Employee qualifies for Social Security disability benefits</b>	<b>Employee does not qualify for Social Security disability benefits</b>
50% of AFC*	66 $\frac{2}{3}$ % of AFC*

Since the VRS formula amount is a taxable benefit, the employer should advise employees to consider the tax implications before selecting the VRS formula amount. Refer to the Taxes on Benefits section of this chapter for more information.

### **WORKERS' COMPENSATION PAYMENTS**

The Workers' Compensation Commission determines if an employee is eligible to receive a workers' compensation award for the injury and provides either a monthly benefit or a lump-sum settlement. The employee should submit a copy of the workers' compensation award or settlement agreement to VRS along with the disability application.

An employee who is eligible for a workers' compensation benefit that is equal to or greater than the VRS benefit for work-related disability is not eligible to receive benefits from VRS while receiving the workers' compensation benefit. If the workers' compensation benefit is less than the VRS benefit, VRS pays the difference between the benefits. The offset of the VRS benefit can occur up to a maximum of 500 weeks. At that time, VRS pays the full guaranteed benefit, upon receipt of the workers' compensation notice.

If an employee receives a lump-sum workers' compensation settlement, VRS will determine the monthly value of the settlement and then offset the VRS benefit accordingly. Any offset for a settlement begins on the first of the month following the date that the signed settlement order is entered by the Workers' Compensation Commission. When the settlement is received, it is calculated to determine the date VRS can begin paying the monthly benefit. Any fees such as legal and medical will be deducted from the settlement. If there is a remaining balance after the fees are deducted, the employee may not receive a disability retirement benefit from VRS for a number of months. VRS will offset the VRS monthly benefit for the remaining months until the settlement end date. If there is no remaining balance after fees have been deducted, VRS will begin paying the full monthly VRS benefit.



## **DISABILITY RETIREMENT**

If the employee refuses employment, whether it is the former job or a light duty position, or refuses to comply as provided by law<sup>3</sup> and workers' compensation benefits cease, VRS benefits will continue to be offset as if the employee were receiving workers' compensation benefits.

When an employee successfully performs a full-time, light-duty position for a year or more and later applies for disability retirement based on the disability that caused the assignment to the light duty position, the new position description at the time of application must be submitted with the application for disability retirement.

In addition, if the employee is assigned to a light duty position and is not successfully performing that job due to limitations caused by the medical condition as a result of the injury, the position description from the former position must be submitted with the application for disability retirement. In either case, the employee should be reported to VRS either as an active member or as on leave-without-pay.

An employee who is placed in a part-time position loses eligibility to apply for disability retirement 90 days after ceasing employment in the full-time position and loses eligibility for group life insurance within 31 days.

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### **DISABILITY RETIREMENT PAYOUT OPTIONS**

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The employee may choose either the Basic Benefit or the Survivor Option under both non-work-related and work-related disability. The Advance Pension Option and the Partial Lump-Sum Option Payment are not available to a disability retiree. Employers and their employees can use myVRS to create a retirement estimate for the available payout options.

If an employee is married or separated, the employee's spouse must acknowledge the payout option chosen by the employee. The employee will not receive a retirement benefit until the proper acknowledgement form is received by VRS.

VRS has developed procedures for situations where the employee is unable to locate his or her spouse or the spouse is unwilling or unable to sign the acknowledgement. If an employee is

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<sup>3</sup> See *Code of Virginia* § 65.2-603.

## DISABILITY RETIREMENT

unable to obtain spousal acknowledgement, the employer should contact VRS for more information.

### **BASIC BENEFIT**

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Under the Basic Benefit, an employee with five or more years of service credit receives the higher of either the VRS formula amount or the guaranteed benefit amount. An employee with fewer than five years of service credit receives the guaranteed benefit amount.

The Basic Benefit is payable to the employee only and does not provide a survivor benefit. However, if the employee retires under regular disability and dies before receiving any benefits, the amount of accumulated member retirement contributions plus interest (including employer-paid member contributions paid after July 1, 1980) are paid in a lump sum to the designated beneficiary. An employee who retires under work-related disability receives a mandatory refund of member retirement contributions plus interest at retirement, and no further benefits are payable at death under this provision.

If the Basic Benefit is selected as the benefit payout option, it cannot be changed once the date of retirement has passed. In addition, if the employee returns to VRS-covered employment and retires again, the same payout option applies to any subsequent retirements.<sup>4</sup>

### **SURVIVOR OPTION**

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If an employee selects the Survivor Option, a monthly retirement benefit is paid to the survivor(s), after the employee's death. The employee's Basic Benefit is actuarially reduced based on the ages of the employee and the survivor at the date of the employee's retirement.<sup>5</sup> The employee may choose to have any whole percentage of the monthly benefit paid to the survivor, from 10% to 100%. The smaller the percentage of a monthly benefit the employee leaves to the survivor, the smaller the reduction to the employee's monthly benefit. Payments continue until the survivor's death. If an employee dies after a service or disability retirement application is received and scanned by VRS, but before the effective date of retirement, and the employee has selected the Survivor Option naming the spouse, minor child or parent as the survivor, then the survivor is eligible for either the death-in-service benefit or the Survivor

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<sup>4</sup> See *Code of Virginia* § 51.1-165 (F).

<sup>5</sup> See *Code of Virginia* § 51.1-165 (2).

## **DISABILITY RETIREMENT**

Option, whichever is greater. See the Death Benefits Chapter of the Employer Manual for more information.

The survivor may be any individual(s) selected by the employee. If an employee elects more than one survivor, the benefit is calculated based on the age of the youngest and divided equally. If the survivor is the employee's spouse, a percentage limitation does not apply, regardless of the age difference between the employee and the spouse. The Internal Revenue Service (IRS), however, limits the percentage of the benefit payable to a non-spouse survivor. An employee who chooses a non-spouse survivor whose age difference is 11 years or greater cannot select a 100% Survivor Option. The greater the age difference between the employee and the non-spouse survivor, the smaller the benefit the non-spouse survivor can receive. The benefit amount that can be paid depends on the age difference between the member and the survivor when the member begins to receive benefits. For additional information, see the Survivor Option section in the Service Retirement Chapter of the Employer Manual.

The employee's age, the survivor's age and the survivor option percentage that was chosen are used to calculate the Survivor Option under disability retirement. If the Survivor Option is chosen, it may be changed only in certain situations, such as the death of the survivor. For additional information on changing the payout option, see the Changing Retirement Options section in the Service Retirement Chapter of the Employer Manual.

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### **APPLYING FOR DISABILITY RETIREMENT**

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The *VRS Disability Retirement Handbook for Members* contains all of the required forms an employee must submit and provides a summary of the disability retirement process and the available options. Copies of the booklet can be ordered by calling VRS or can be found on the Publications page of the VRS website.

Disability retirement applications must be submitted while the member is employed in a VRS-covered position, within 90 days of leaving a covered position, or before completing 24 consecutive months of leave without pay. An employee on military leave without pay who suffers a disabling condition may apply for disability retirement even after 24 months.

In all cases, the application should be submitted to VRS when it is determined that the condition is likely to be permanent, and if possible, before the employee has used all annual or sick leave.

## **DISABILITY RETIREMENT**

If an employee has exhausted all annual and sick leave, the employee should be placed on leave without pay. These steps must be followed:

1. The employee completes the Application for Disability Retirement (VRS-6), including the spouse's acknowledgment of the retirement option selected, if married or separated. The employee is required to complete the Informed Consent and Authorization form enclosed with the application

**Note:** If the employee is unable to complete the application, someone with specific court authority to execute the form or someone who has durable power of attorney containing specific authorization may complete the form. If the employee selects a Survivor Option, the court order must specify the name of the person who is to receive the survivor benefit or in the case of a durable power of attorney, the person is given the authority to name the survivor.

2. The employee must complete an Explanation of Disability (VRS-6A) to provide an interpretation of how he is unable to perform his job duties.
3. The physician must provide information about the employee's condition using a Physician's Report (VRS-6B). The physician submits this form along with other necessary medical records directly to VRS. The employee is responsible for any costs incurred from submitting this information.
4. The employer must complete an Employer Information for Disability Application (VRS-6D) to provide information about the employee's current position.
5. The employee's human resource office must provide an official position description. Teaching faculty in higher education are exempt from this requirement.
6. The employee must complete an Authorization for Direct Deposit of Monthly Benefit (VRS-57). The retirement application is considered incomplete if the VRS-57 is missing.
7. The employee may complete a Designation of Beneficiary (VRS-2) to update his designated beneficiary.
8. The employee should submit a copy of the workers' compensation award or settlement agreement to VRS along with the disability application, if applicable.
9. The employee must complete a Request for Health Insurance Credit (VRS-45). A disability retiree receives the maximum health insurance credit provided by his employer. (Some political subdivisions have elected not to participate in this program. The employer should advise employees whether the health insurance credit is offered.) Political subdivision employees who are constitutional officers, employees of a constitutional officer, sheriffs, sheriff's deputies, or local social services employees are eligible for the health insurance credit regardless of whether their employer has elected to participate. To receive the health insurance credit, the employee must have his employer complete a Certification of Employment for Health Insurance Credit Eligibility (VRS-76) to certify eligibility.

**Note:** Once the retirement benefit has been determined, a retirement certificate is sent to the member. If the member is eligible for the health insurance credit, the retirement certificate reflects the maximum amount that can be paid. If the retiree does not submit a VRS-45 with the retirement application, a copy of the form can be obtained from the VRS website. See the Service Retirement Chapter of the Employer Manual for additional information regarding the health insurance credit.

## DISABILITY RETIREMENT

In addition to the forms previously mentioned, the following documentation may be required:

- A copy of the Social Security disability letter of award or denial, or if a decision has not been reached, a receipt-of-application letter. The employee may apply for Social Security disability by calling the Social Security Administration at 800-772-1213, by going to a Social Security office, or by going online to <https://ssa.gov/disabilityssi/>.
- A State Health Benefits Program Enrollment Form for Retirees, Survivors and LTD Participants (T-20879), which applies to state employees only, may be obtained from the VRS website.
- A copy of the accident report and a copy of the workers' compensation award letter (only for work-related disability).

The employer cannot sign the application form on behalf of the employee unless the employee is physically or mentally unable to sign the form. If the employer signs the form under these circumstances, he must select the Basic Benefit as the payout option. All required forms and documentation must be sent to VRS before a disability application can be approved for payroll. However, the employee should not hold a disability retirement application while awaiting medical information or a decision from the Social Security Administration. Even though this information is required to approve a disability retirement application, it is important to initiate the application process as soon as possible to avoid missing the deadline to apply, within 90 days of termination. Once the application is received, processing time is up to 30 days from the medical board approval date.

Once the employee has submitted the VRS-6, the employer will receive a myVRS Navigator secure notification that the retirement was received, with instructions if additional steps are needed. Once the retirement is approved, the employer will receive a secure notification to certify the retirement and separate the employee. For step-by-step instructions about how to certify a retirement, view the *Enroll and Maintain Employees Course* located in VRS University.

**Note:** The disability retirement date is the first of the month following the last month in which creditable compensation is reported for the member. If the employee is on leave without pay, the retirement date may be backdated up to 90 days from first receipt of the application by VRS, upon verification by the employer. The adjusted retirement date must be the first of the month.

### SERVICE RETIREMENT WITH PENDING DISABILITY APPLICATION

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An employee who meets the eligibility requirements may apply for service retirement while waiting for a decision concerning disability retirement. If the disability is work-related, VRS cannot process the service retirement application unless the work-related disability retirement application is rescinded. This is done to avoid any potential overpayment due to workers'

## **DISABILITY RETIREMENT**

compensation benefits. If the service retirement application is received and processed, and VRS later receives a work-related disability application while the member is still within 90 days of termination, the work-related application will not be processed unless the service retirement benefit is canceled.

The employee must submit the Application for Service Retirement (VRS-5) to VRS at the same time as the Application for Disability Retirement (VRS-6) and must select either the Basic Benefit or the Survivor Option. If the member selects the Survivor Option, the percentages payable to the survivor must be identical on both applications. The employee may reserve the right to retire under a different option if the disability retirement is denied, by submitting a request in writing with the disability retirement application.

**Note:** When an employee submits applications concurrently, the VRS-5 is held for 30 days to allow time for a non-work-related disability retirement decision to be made. If more than 30 days are needed for the VRS Medical Review Board to make a recommendation, VRS processes the VRS-5 and begins to pay a monthly benefit. If a non-work-related disability retirement is subsequently approved, VRS adjusts the employee's benefit retroactively to the date of retirement. If the employee's non-work-related disability retirement is denied, he continues to receive the service retirement benefit.

### **EMPLOYEES WITH TERMINAL MEDICAL CONDITIONS**

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If an employee has a terminal medical condition, the VRS-6 must be received by VRS (via mail or fax) before he dies. In order to be considered received by VRS, the Member Section of the VRS-6 must be scanned into the VRS imaging system. The date and time recorded by imaging is the official time of receipt. For the disability retirement to be processed, the VRS-6 must be completely filled out, including:

- Payout option;
- If choosing a Survivor Option, the percentage to be paid to the survivor;
- Spousal acknowledgement.

The employer must certify the application before the case is sent to the Medical Review Board.

VRS must receive the completed VRS-6 before the employee dies in order for him to retain his right to a Survivor Option, if chosen. If the application is not received by VRS prior to the death of the employee, the application will be processed as a death in service. For information about death in service, see the Death Benefits Chapter of the Employer Manual.

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**DISABILITY RETIREMENT AND GROUP LIFE INSURANCE**

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An employee who retires under disability remains eligible for the death benefit and accelerated death benefit at no cost under the Basic Group Life Insurance Plan. However, the provision that allows for payment of double the death benefit for an accidental death ceases upon retirement. Dismemberment insurance also ceases upon retirement.

The amount of the retained coverage is the same amount in force on the last day the member performed services. For disability retirees, the 25% annual January 1 coverage reduction begins 12 months after the retiree reaches normal retirement age (age 65 for Plan 1 and Social Security retirement age for Plan 2 members) and continues thereafter until it reaches 25% of its original life insurance policy amount, which equals approximately 50% of the employee's pre-retirement salary. For a disability retiree with at least 30 years of creditable service, the reduction will never decrease below \$8,463.<sup>6</sup>

If enrolled, Optional Group Life Insurance in force at retirement continues until the end of the month in which the disability retiree reaches normal retirement age. When the retiree reaches the normal retirement age the employee may, if eligible, continue a portion into retirement.

- A disability retiree who has not yet reached normal retirement age at retirement retains the level of pre-retirement optional life insurance coverage in force until normal retirement age.
- A disability retiree who reaches normal retirement age while in retirement may elect to continue optional coverage beyond normal retirement age. The retiree must have been covered for a period of at least 60 continuous months prior to reaching normal retirement age. The election must be made within 31 days of the end of the month that the retiree reaches normal retirement age.
- A disability retiree who has met normal retirement age or older at retirement must have had 60 months of continuous coverage to continue optional life insurance into retirement. The election must be made within 31 days of leaving service.

If the retiree elects to continue the optional life insurance coverage, the rates are the same as those for the active member group. However, the amount of the insurance that may be continued is limited. A retiree may only select Option 1 or 2, which is one or two times his annual salary, respectively. A retiree cannot select an option higher than what he previously had. In addition, the maximum amount cannot exceed \$275,000 for a retiree continuing in the group plan. Spouse and dependent children coverage may continue at the corresponding level

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<sup>6</sup> See *Code of Virginia* § 51.1-505(B).

## **DISABILITY RETIREMENT**

of insurance selected by the retiree. The employee completes the Retiree Optional Life Continuation (VRS-39R), which can be found on the VRS website.

Optional life that is continued for eligible employees, retirees and spouses reduces 25% at the employee's normal retirement age. The amount continues to reduce 25% every five years, with all insurance terminating at age 80.

If the retiree is not eligible or chooses not to continue his policy, he has 31 days from the month in which the last premium was paid to convert to an individual policy. This could be 31 days from the month before retirement or 31 days from the month the retiree reaches normal retirement age. The cost of conversion is at non-group rates.

In retirement, the optional life death benefit and accelerated benefit are retained. However, the provision that allows for payment of double the death benefit for an accidental death ceases upon retirement. Dismemberment insurance also ceases upon retirement.

Refer to the Group Life Insurance Chapter of the Employer Manual for more information on life insurance.

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### **HEALTH INSURANCE CREDIT**

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Members who retire under VRS disability are not required to fulfill the minimum 15-year service requirement for health insurance credit eligibility. A disability retiree receives the maximum health insurance credit provided by his employer. However, the credit cannot exceed the amount of the member's individual health insurance premium. Use the following chart to determine the amount of health insurance credit for the referenced category of employees who retire under disability:

<b>Employee Type</b>	<b>Credit</b>
State	The greater of: <ul style="list-style-type: none"><li>• \$120; or</li><li>• \$4 a year for each year of creditable service at the time of disability retirement;</li></ul>



## DISABILITY RETIREMENT

Employee Type	Credit
Teachers	\$4 multiplied by the smaller of: <ul style="list-style-type: none"> <li>• Twice the amount of creditable service at the time of disability retirement; or</li> <li>• The amount of creditable service the member would have at age 60, if the member had remained in service;</li> </ul>
Local Officers, Local Social Services Employees, General Registrars and Employees of General Registrars	Maximum monthly health insurance credit of \$45  Note: If the employee does not retire from one of the positions in this category of employees, or if the employee retires from an employer that does not provide the health insurance credit, he must have 15 or more years of prior service as a local officer, local social services employee, general registrar and/or employee of general registrar.
Political Subdivision * (includes cafeteria workers, school bus drivers and custodians)	Maximum monthly health insurance credit of \$45  Note: The employee must retire from an employer who participates in the health insurance credit program in order to be eligible for the credit.

*\* This category of employees may also receive an additional \$1 per month credit, if the employer has elected the enhanced credit.*

See the Service Retirement Chapter of the Employer Manual for more information on the health insurance credit.

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## DEFERRED COMPENSATION AND CASH MATCH PLANS

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Employees of the state and of participating political subdivisions and school divisions are eligible to participate in the Commonwealth of Virginia (COV) 457 Deferred Compensation Plan and Virginia Cash Match Plan, regardless of whether they are Plan 1, Plan 2 or Hybrid members.

A participant is generally not required to take a distribution from the COV 457 Deferred Compensation Plan or from the Virginia Cash Match Plan at retirement. The participant may continue to manage his account and withdraw funds at a later date but must begin taking minimum distributions from the plan by April 1 of the year following the year he attains age 70½.

For more information about available distribution options, visit [www.varetire.org/457](http://www.varetire.org/457) or call VRS-DCPLAN1 (877-327-5261).

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## **DIRECT DEPOSIT**

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VRS deposits monthly benefits through Electronic Funds Transfer (EFT) into a retiree's or beneficiary's bank, credit union, or other financial institution. Deposits are made on the first of each month or the last working day of the preceding month, if the first falls on a holiday or weekend. The annual direct deposit schedule is published in the winter edition of *Retiree News*. Participation in direct deposit is required of retirees and beneficiaries, unless an exception has been filed and approved by VRS. Processing of the disability retirement application will be delayed until the VRS-57 is received or an exception has been approved.

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## **TAXES ON BENEFITS**

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A work-related disability benefit is exempt from federal and state tax withholding if the member receives the guaranteed benefit. If the member receives the VRS formula amount under a work-related disability, the monthly benefit is taxed and a VRS-15 is required.

For regular and work-related disabilities not determined under the guaranteed benefit, the retiree must pay federal and state taxes on the retirement benefit. The retiree includes a VRS-15 with his retirement application. The VRS-15 allows the retiree to elect how federal and state income taxes will be withheld from the monthly benefit payment. If VRS does not have this form on file, taxes are automatically withheld based on a status of married claiming three allowances for federal income taxes and zero allowances for state income taxes.

A retiree who does not want taxes withheld should notify VRS using a VRS-15. A retiree who does not have taxes withheld may be responsible for paying estimated taxes; tax penalties may be assessed if the retiree's withholding and estimated tax payments are insufficient.

A retiree may change the withholding amount at any time during the year by filing a new VRS-15. A change to the withholding may be needed if the retiree married, divorced or had other changes affecting tax status during the past year. A retiree who is not claiming resident status in Virginia and will not file income taxes with the Commonwealth of Virginia must complete the VRS-15, marking the block indicating "non-resident" status for state taxes.

In addition, the value of a retiree's basic life insurance coverage in excess of \$50,000 is subject to FICA and federal and state income tax. The imputed income is reported each year on a W-2

## DISABILITY RETIREMENT

form. Any taxes withheld for FICA and federal and state income taxes are deducted from the monthly benefit.

The member will receive a 1099-R each year for the taxable benefit or an annual income letter each year if the benefit is non-taxable. The staff of the nearest IRS office or a personal tax advisor can help a retiree determine actual federal tax liability. The retiree can also contact the Virginia Department of Taxation at 804-367-8031 for help determining state tax liability. VRS makes every effort to provide the best tax information available; however, it is the member's responsibility to ensure compliance with federal and state tax laws.

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### COST-OF-LIVING ADJUSTMENTS

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A disability retiree is eligible for a cost-of-living adjustment (COLA) on July 1 of the second full calendar year (January through December) after retirement. Because VRS pays retirement benefits in arrears, the COLA is reflected in the August 1 payment. Adjustments are effective yearly thereafter on July 1.

**Example:** If a person retired on disability on September 1, 2018, the first COLA is effective with the July 1, 2020 payment, payable on August 1, 2020.

**Note:** A January 1 retirement date is considered to be in the previous calendar year, and the retiree is eligible for a COLA after the first calendar year of retirement. For example, a person retiring on disability on January 1, 2018 is eligible for a COLA effective July 1, 2019, reflected in the August 1, 2019 payment.

The amount of the COLA is directly dependent upon the Consumer Price Index-Urban (CPI-U). A Plan 1 retiree receives the full amount of the first 3% increase in the CPI-U plus one half of the next 4% increase up to a maximum of 5%. A Plan 2 or JRS Hybrid retiree receives the full amount of the first 2% increase in the CPI-U plus one half of any additional increases, with a maximum of 3% in any given year.

Because COLAs are based on the rate of inflation, they are not guaranteed to occur each year. If there is no increase or even if there is a decrease in the CPI-U, the monthly retiree benefit amount will not be reduced.

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## **DISABILITY RECALL AND RE-EXAMINATION**

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VRS can require a disability retiree to provide updated medical information or to have a follow-up examination once per year until normal retirement age. If a retiree refuses the examination and the refusal continues for six months, or the examination reveals that the retiree is no longer disabled, all rights to further disability benefits cease. The retiree may then:

- Receive a refund of any accumulated retirement contributions in excess of the disability retirement allowances received;
- Return to work in a position covered by VRS, in which case the original service credit and the period of disability retirement is credited as service in the member's record; or
- Receive a service retirement allowance upon reaching retirement age if the total of the membership service and the period of disability retirement equal at least the five years required for vesting.

**Note:** A retiree who is found no longer eligible for disability retirement and who does not qualify for service retirement at the time of termination of benefits loses life insurance coverage if not returning to covered employment, but may convert to an individual policy within 31 days of losing retirement benefits. VRS has no responsibility for the reemployment of disability retirees.

A retiree may appeal a medical board decision to suspend disability benefits. Disability benefits continue to be paid during the appeal process until a final case decision is rendered. If the final case decision determines that the member is no longer disabled, benefits are terminated with the subsequent payroll cycle. For more information, refer to the Administrative Appeals Process section of this chapter.

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## **WORKING AFTER RETIREMENT**

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A member who has been approved for disability retirement may work in any job not covered by VRS, JRS, VaLORS, SPORS, hazardous duty positions, or an ORP as long as the duties are not the same or similar to the ones VRS found the member unable to perform. VRS requires a copy of the job description from the potential or new employer to compare the duties. If the member accepts a position with the same or similar duties, VRS disability benefits cease.

If the member accepts a temporary, hourly or other non-covered position with a VRS-participating employer, the employee may continue to receive disability retirement benefits provided the duties are not the same as or similar to the ones VRS found the member unable to perform. VRS requires a copy of the job description from the potential or new employer to compare the duties.

## **DISABILITY RETIREMENT**

VRS is a qualified pension plan as defined by the IRS. The IRS requires a severance of employment for an employee to be eligible to receive a plan distribution. To ensure there has been a severance in employment, VRS requires that the employee have at least a full calendar month break in service before returning to non-covered employment with his pre-retirement employer. Summer months (July and August) do not constitute a break-in-service for contracts less than 12 months.

If an employer disregards the break-in-service rules, the member's benefit will be adjusted going forward and VRS may collect the overpayment of retirement and other benefits paid to the retiree from the employer.

If the member accepts re-employment in a covered position, disability retirement benefits cease and he becomes an active member of the retirement system. The period of disability retirement is counted as service credit toward future retirement. To avoid overpayment of retirement benefits, an employer must enroll the member in myVRS Navigator with an effective date of employment before the next pay cycle.

A member who returns to work in a VRS-covered position with a state agency or a political subdivision may be enrolled in VSDP or VLDP.

When returning to work after retirement, the employee may return under the same plan and must retire under the same retirement option selected at the initial retirement.

Since Social Security rules govern Social Security benefits, an employer should advise disability retirees who receive Social Security benefits to consult the nearest Social Security office concerning reemployment.

**Note:** VRS has no responsibility for the reemployment of disability retirees.

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### **ATTACHMENTS TO DISABILITY RETIREMENT BENEFITS**

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VRS retirement benefits are exempt from county or municipal taxes and are not subject to execution, attachment, garnishment or any other process whatsoever, except under the following conditions:

## DISABILITY RETIREMENT

- IRS tax levies (A retiree who is subject to IRS tax levies is notified by the IRS and VRS regarding the amount and duration of the attachment);
- Debt to an employee's employer;
- Child support payments;
- Marital property as stated in an Approved Domestic Relations Order (ADRO).

Retirement benefits and assets are deemed to be marital property and can be divided or transferred by a court by direct assignment to a spouse or former spouse.<sup>7</sup>

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### APPROVED DOMESTIC RELATIONS ORDERS

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If a retiree divorces, the VRS benefit may be regarded as marital property in a property settlement. The *Code of Virginia* authorizes VRS to make direct payment to a former spouse if the court awards the spouse part of the VRS benefit. The law does not require a court to divide VRS benefits but simply authorizes VRS to make direct payment if the court divides the benefit. The court, not VRS, makes the decision whether to divide the retirement benefit and how it is to be divided.

The language of the ADRO must conform to VRS requirements. The member's attorney should provide VRS with a draft of the order before filing it with the court to ensure that the language is acceptable to VRS. An ADRO guide and model language can be found on the VRS website under the ADRO section of the Publications page.

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### ADMINISTRATIVE APPEALS PROCESS

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The VRS Board of Trustees ("Board") has authority over all decisions concerning disability retirement benefits. The Board has authority to create one or more medical boards composed of physicians or other health care professionals.<sup>8</sup>

The medical board is a group of Board-certified physicians whose members are not eligible to participate in VRS. The medical board reviews all applicant reports of medical examinations, investigates all essential health and medical statements and certificates filed in connection with a disability claim, and submits its conclusions and recommendations to the Board. The medical board makes its recommendations based on objective medical evidence submitted by or on behalf of the applicant.

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<sup>7</sup> See *Code of Virginia* §20-89.1 et seq; §20-107.3

<sup>8</sup> See *Code of Virginia* § 51.1-124.23.

## **DISABILITY RETIREMENT**

The medical board may require that the applicant submit to an independent medical examination. The applicant is notified by mail as to the date, time and location for the examination. The independent medical examiner will furnish the medical board with a report of findings.

An employee who receives written notification from VRS that the application for disability retirement has been denied may appeal.

### **FIRST DENIAL AND APPEAL NOTICE**

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A disability retirement applicant may file an appeal by sending written notice to VRS within 90 days from the date of the denial letter (whether sent to the applicant or the applicant's attorney). The applicant must also submit any new significant medical information within this 90-day period or inform VRS that there is no additional medical information. If the applicant's notification of appeal is not received within the 90-day period, the appeal process is terminated and the Board's decision becomes final.

When the applicant's appeal notice is received by VRS, the medical file is returned to the medical board for review of any new medical information along with all previous medical documentation. Even if the applicant submitted to an independent medical examination on the first review, the medical board may require another examination.

If, however, no new medical information is submitted, the applicant's agency record is forwarded to the Compliance Unit for an administrative appeal under the Administrative Process Act (APA).

### **SECOND DENIAL AND APPEAL NOTICE**

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A disability retirement applicant may file a second appeal by sending written notice to VRS within 30 days from the date of the denial letter (whether sent to the applicant or the applicant's attorney). The applicant must also submit any significant new medical information within this 30-day period or inform VRS that there is no additional medical information to submit. If the applicant's notification of appeal is not received within the 30-day period, the appeal process is terminated and the Board's decision becomes final.

## **DISABILITY RETIREMENT**

After the medical information is submitted or if no new medical information is submitted, the applicant's agency record is forwarded to the Compliance Unit for an administrative appeal under the APA.

The Compliance Unit assigns the appeal to an Individual Fact Finder (IFF), who conducts an informal fact-finding proceeding under the APA.<sup>9</sup> The IFF contacts the applicant or the applicant's attorney regarding a date and location for the informal fact-finding proceeding. The IFF makes a recommendation to the medical board regarding the applicant, and the Board issues a final case decision. This decision can receive judicial review from a Circuit Court in Virginia under the Virginia APA. For information about appealing the final case decision, contact VRS.

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<sup>9</sup> See *Code of Virginia* § 2.2-4019.