

# WEST VIRGINIA CODE: §5-10-25

## §5-10-25. Disability retirement.

(a) Upon the application of a member of the retirement system, or his or her present or past employing authority, any member who is in the employ of a participating public employer or was in the employ of a participating public employer on a date which is twelve months or less from the date upon which the member became incapacitated, who has ten or more years of credited service of which three years is contributing service, and who becomes totally and permanently incapacitated for employment, by reason of a personal injury or disease, may be retired by the board if after a medical examination of the member made by or under the direction of a medical committee consisting of two physicians, one of whom shall be named by the board, and one by the member, the medical committee reports, in writing, to the board that the member is physically or mentally totally incapacitated for employment, that the incapacity will probably be permanent, and that the member should be retired. In the event the two above-mentioned examining physicians do not agree in their findings, then the board may, at its discretion, appoint a third physician to examine the member and, based upon the third physician's report in writing, the board may retire the member. A member who was not in the employ of a participating public employer on a date which is twelve months or less from the date upon which the member became incapacitated may receive disability retirement under the provisions of this subsection if, in the opinion of the medical committee, the incapacity occurred during the time that the member was employed by a participating public employer and the incapacity otherwise qualifies the member for retirement under this subsection.

(b) A member with less than ten years of credited service shall have the service requirement provided in subsection (a) above (including the requirement of three years contributing service) waived in the event: (1) The board finds his or her total and permanent disability to be the natural and proximate result of a personal injury or disease arising out of and in the course of his or her actual performance of duty in the employ of a participating public employer; and (2) he or she is receiving or has received workers' compensation benefits on account of the physical or mental disability.

(c) For any member retiring and any member retired, as of March 1, 1970, he or she shall receive a straight life annuity computed according to section twenty-two hereof and he or she shall have the right to elect an option provided in section twenty-four hereof: Provided, That his or her straight life annuity payable to his or her attainment of age sixty-five years may not be less than fifty percent of his or her final average salary; and his or her straight life annuity payable from and after his or her attainment of age sixty-five years may not be less than twenty percent of his or her final average salary: Provided, however, That his or her annuity shall be subject to section twenty-six hereof.