

- (5) If a surviving beneficiary commences receiving a benefit under subsection (1) or (2) above, but dies before all payments are made, the actuarial value of the remaining benefit will be paid to the surviving beneficiary's estate by December 31 of the calendar year of the beneficiary's death in a lump sum.
- (6) If there is no surviving beneficiary as of the member's death, and the estate is to receive the benefits, the actuarial equivalent of the member's entire interest must be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death.
- (7) The Uniform Lifetime Table in Treasury Regulations § 1.401(a)(9)-9 shall determine the payment period for the calendar year benefits commence, if necessary to satisfy the regulations.

(Ord. No. 00-22, § 1, 2-24-00; Ord. No. 09-03, § 4, 3-12-09; Ord. No. 16-60, § 5, 11-10-16; Ord. No. 22-03, § 4, 2-24-22)

Sec. 54-193. Disability.

(a) *Disability benefits in-line of duty.* Any member who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter or police officer, which disability was directly caused by the performance of his duty as a firefighter or police officer, shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension calculated as for normal retirement as set forth in section 54-191(b), but in any event the minimum amount paid to the member shall be 42 percent of the average final compensation of the member, provided, however, that the monthly benefit shall not exceed 95 percent of average final compensation. Notwithstanding the previous sentence, in the event a member is determined by the board to be disabled in-line of duty and the disability resulted from the perpetra-

tion of an intentional act of violence directed toward the firefighter or police officer and the board reasonably believes the perpetrator intended to cause great bodily harm or permanent disfigurement of the firefighter or police officer, the minimum amount paid to the member shall be 80 percent of the average final compensation of the member. Eligibility requirements for disability benefits are set forth in subsection (g), below.

(b) *In-line of duty presumptions.*

(1) *Presumption.* Any condition or impairment of health of a member caused by hypertension or heart disease shall be presumed to have been suffered in line of duty unless the contrary is shown by competent evidence, provided that such member shall have successfully passed a physical examination upon entering into such service, which examination failed to reveal any evidence of such condition; and provided further, that such presumption shall not apply to benefits payable or granted in a policy of life insurance or disability insurance.

(2) *Additional presumption.* The presumption provided for in this subsection (2), shall apply only to those conditions described in this subsection (2), that are diagnosed on or after January 1, 1996.

a. *Definitions.* As used in this subsection (2), the following definitions apply:

1. "Body fluids" means blood and body fluids containing visible blood and other body fluids to which universal precautions for prevention of occupational transmission of blood-borne pathogens, as established by the Centers for Disease Control, apply. For purposes of potential transmission of meningococcal meningitis or tuberculosis, the term "body fluids" includes respiratory, salivary, and sinus fluids, including droplets, sputum, and saliva, mucous,

and other fluids through which infectious airborne organisms can be transmitted between persons.

2. "Emergency rescue or public safety member" means any member employed full time by the city as a firefighter, paramedic, emergency medical technician, law enforcement officer, or correctional officer who, in the course of employment, runs a high risk of occupational exposure to hepatitis, meningococcal meningitis, or tuberculosis and who is not employed elsewhere in a similar capacity. However, the term "emergency rescue or public safety member" does not include any person employed by a public hospital licensed under F.S. ch. 395, or any person employed by a subsidiary thereof.

3. "Hepatitis" means hepatitis A, hepatitis B, hepatitis non-A, hepatitis non-B, hepatitis C, or any other strain of hepatitis generally recognized by the medical community.

4. "High risk of occupational exposure" means that risk that is incurred because a person subject to the provisions of this subsection, in performing the basic duties associated with his employment:

- i. Provides emergency medical treatment in a non-health-care setting where there is a potential for transfer of body fluids between persons;
- ii. At the site of an accident, fire, or other rescue or public safety operation, or in an emergency rescue or public safety vehicle,

- handles body fluids in or out of containers or works with or otherwise handles needles or other sharp instruments exposed to body fluids;
- iii. Engages in the pursuit, apprehension, and arrest of law violators or suspected law violators and, in performing such duties, may be exposed to body fluids; or
 - iv. Is responsible for the custody, and physical restraint when necessary, of prisoners or inmates within a prison, jail, or other criminal detention facility, while on work detail outside the facility, or while being transported and, in performing such duties, may be exposed to body fluids.
5. "Occupational exposure," in the case of hepatitis, meningococcal meningitis, or tuberculosis, means an exposure that occurs during the performance of job duties that may place a worker at risk of infection.
- b. *Presumption.* Any emergency rescue or public safety member who suffers a condition or impairment of health that is caused by hepatitis, meningococcal meningitis, or tuberculosis, that requires medical treatment, and that results in total or partial disability or death shall be presumed to have a disability suffered in the line of duty, unless the contrary is shown by competent evidence; however, in order to be entitled to the presumption, the member must, by written affidavit as provided in F.S. § 92.50, verify by written declaration that, to the best of his knowledge and belief:
1. In the case of a medical condition caused by or derived from hepatitis, he has not:
 - i. Been exposed, through transfer of bodily fluids, to any person known to have sickness or medical conditions derived from hepatitis, outside the scope of his employment;
 - ii. Had a transfusion of blood or blood components, other than a transfusion arising out of an accident or injury happening in connection with his present employment, or received any blood products for the treatment of a coagulation disorder since last undergoing medical tests for hepatitis, which tests failed to indicate the presence of hepatitis;
 - iii. Engaged in unsafe sexual practices or other high-risk behavior, as identified by the Centers for Disease Control or the Surgeon General of the United States or had sexual relations with a person known to him to have engaged in such unsafe sexual practices or other high-risk behavior; or
 - iv. Used intravenous drugs not prescribed by a physician.
 2. In the case of meningococcal meningitis, in the ten days immediately preceding diagnosis he was not exposed, outside the scope of his employment, to any person known to

- have meningococcal meningitis or known to be an asymptomatic carrier of the disease.
3. In the case of tuberculosis, in the period of time since the member's last negative tuberculosis skin test, he has not been exposed, outside the scope of his employment, to any person known by him to have tuberculosis.
- c. *Immunization.* Whenever any standard, medically recognized vaccine or other form of immunization or prophylaxis exists for the prevention of a communicable disease for which a presumption is granted under this section, if medically indicated in the given circumstances pursuant to immunization policies established by the Advisory Committee on Immunization Practices of the U.S. Public Health Service, an emergency rescue or public safety member may be required by the city to undergo the immunization or prophylaxis unless the member's physician determines in writing that the immunization or other prophylaxis would pose a significant risk to the member's health. Absent such written declaration, failure or refusal by an emergency rescue or public safety member to undergo such immunization or prophylaxis disqualifies the member from the benefits of the presumption.
- d. *Record of exposures.* The city shall maintain a record of any known or reasonably suspected exposure of an emergency rescue or public safety member in its employ to the disease described in this section and shall immediately notify the member of such exposure. An emergency rescue or public safety member shall file an incident or accident report with the city of each instance of known or suspected occupational exposure to hepatitis infection, meningococcal meningitis, or tuberculosis.
- e. *Required medical tests; preemployment physical.* In order to be entitled to the presumption provided by this section:
1. An emergency rescue or public safety member must, prior to diagnosis, have undergone standard, medically acceptable tests for evidence of the communicable disease for which the presumption is sought, or evidence of medical conditions derived therefrom, which tests fail to indicate the presence of infection. This paragraph does not apply in the case of meningococcal meningitis.
 2. On or after June 15, 1995, an emergency rescue or public safety member may be required to undergo a preemployment physical examination that tests for and fails to reveal any evidence of hepatitis or tuberculosis.
- (3) *Firefighter cancer presumption.* The presumption provided for in this paragraph (3) shall apply only to "cancer," as defined in F.S. § 112.1816(1)(a), as amended from time to time. Any firefighter member who becomes totally and permanently unable to perform useful and efficient service as a firefighter due to a diagnosis of cancer or circumstances that arise out of the treatment of cancer, will be conclusively presumed to be disabled in line of duty.
- (c) *Disability benefits not-in-line of duty.* Any member with ten years or more credited service who shall become totally and permanently disabled to the extent that he is unable, by reason of a medically determinable physical or mental impairment, to render useful and efficient service as a firefighter or police officer, which disability is not directly caused by the performance

of his duties as a firefighter or police officer shall, upon establishing the same to the satisfaction of the board, be entitled to a monthly pension calculated as for normal retirement as set forth in section 54-191(b), however, that the monthly benefit shall not exceed 95 percent of average final compensation. Eligibility requirements for disability benefits are set forth in subsection (g), below.

(d) *Conditions disqualifying disability benefits.* Each member who is claiming disability benefits shall establish, to the satisfaction of the board, that such disability was not occasioned primarily by:

- (1) Excessive or habitual use of any drugs, intoxicants or narcotics.
- (2) Injury or disease sustained while willfully and illegally participating in fights, riots or civil insurrections or while committing a crime.
- (3) Injury or disease sustained while serving in any branch of the Armed Forces.
- (4) Injury or disease sustained after his employment as a firefighter or police officer with the city shall have terminated.
- (5) For police officer members, injury or disease sustained by the member while working for anyone other than the city and arising out of such employment.

(e) *Physical examination requirement.* A member shall not become eligible for disability benefits until and unless he undergoes a physical examination by a qualified physician or physicians and/or surgeon or surgeons, who shall be selected by the board for that purpose. The board shall not select the member's treating physician or surgeon for this purpose except in an unusual case where the board determines that it would be reasonable and prudent to do so.

Any retiree receiving disability benefits under provisions of this article may be required by the board to submit sworn statements of his condition accompanied by a physician's statement (provided at the retiree's expense) to the board annually and may be required by the board to undergo additional periodic re-examinations by

a qualified physician or physicians and/or surgeon or surgeons who shall be selected by the board, to determine if such disability has ceased to exist. If the board finds that the retiree is no longer permanently and totally disabled to the extent that he is unable to render useful and efficient service as a firefighter or police officer, the board shall recommend to the city that the retiree be returned to performance of duty as a firefighter or police officer, and the retiree so returned shall enjoy the same rights that he had at the time he was placed upon pension. In the event the retiree so ordered to return shall refuse to comply with the order within 30 days from the issuance thereof, he shall forfeit the right to his pension.

The cost of the physical examination and/or re-examination of the member claiming or the retiree receiving disability benefits shall be borne by the fund. All other reasonable costs as determined by the board incident to the physical examination, such as, but not limited to, transportation, meals and hotel accommodations, shall be borne by the fund.

If the retiree recovers from disability and reenters the service of the city as a firefighter or police officer, his service will be deemed to have been continuous, but the period beginning with the first month for which he received a disability retirement income payment and ending with the date he reentered the service of the city will not be considered as credited service for the purposes of the system.

The board shall have the power and authority to make the final decisions regarding all disability claims.

(f) *Disability payments.* The monthly benefit to which a member is entitled in the event of the member's disability retirement shall be payable on the first day of the first month after the board determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determined such entitlement, and any portion due for a partial month shall be paid together with the first payment. The last payment will be:

- (1) If the retiree recovers from the disability, the payment due next preceding the date of such recovery; or

- (2) If the retiree dies without recovering from disability, the payment due next preceding his death or the 120 monthly payment, whichever is later.

Provided, however, the disability retiree may select, at any time prior to the date on which benefit payments begin, an optional form of benefit payment as described in section 54-195, subsection (a)(1) or (a)(2), which shall be the actuarial equivalent of the normal form of benefit.

(g) *Eligibility for disability benefits.* Subject to subsection (g)(4) below, only active members of the system on the date the board determines entitlement to a disability benefit are eligible for disability benefits.

- (1) Terminated persons, either vested or non-vested, are not eligible for disability benefits.
- (2) If a member voluntarily terminates his employment, either before or after filing an application for disability benefits, he is not eligible for disability benefits.
- (3) If a member is terminated by the city for any reason other than for medical reasons, either before or after he files an application for disability benefits, he is not eligible for disability benefits.
- (4) The only exception to subsection (1) above is:
 - a. If the member is terminated by the city for medical reasons and he has already applied for disability benefits before the medical termination, or;
 - b. If the member is terminated by the city for medical reasons and he applies within 30 days after the medical termination date.

If either subsection (4)a. or (4)b. above applies, the member's application will be processed and fully considered by the board.

(Ord. No. 00-22, § 1, 2-24-00; Ord. No. 01-59, § 3, 9-13-01; Ord. No. 02-43, § 2, 9-26-02; Ord. No. 09-03, § 5, 3-12-09; Ord. No. 16-60, § 6, 11-10-16; Ord. No. 17-35, § 2, 9-28-17; Ord. No. 19-08, § 1, 2-14-19; Ord. No. 20-14, § 1, 2-13-20)

Sec. 54-194. Vesting.

If a member terminates his employment as a firefighter or police officer, either voluntarily or by discharge, and is not eligible for any other benefits under this system, the member shall be entitled to the following:

- (1) If the member has less than six years credited service upon termination, the member shall be entitled to a refund of his accumulated contributions or the member may leave it deposited with the fund.
- (2) If the member has six or more years of credited service upon termination, the member shall be entitled to a monthly retirement benefit, determined in the same manner as for normal or early retirement and based upon the member's credited service, average final compensation and the benefit accrual rate as of the date of termination, payable to him commencing at the member's otherwise normal or early retirement date, determined based upon his actual years of credited service, provided he does not elect to withdraw his accumulated contributions and provided the member survives to his otherwise normal or early retirement date. If the member does not withdraw his accumulated contributions and does not survive to his otherwise normal or early retirement date, his designated beneficiary shall be entitled to a benefit as provided herein for a deceased member, vested or eligible for retirement under pre-retirement death.

- (3) Reserved.

(Ord. No. 00-22, § 1, 2-24-00; Ord. No. 05-12, § 1, 2-10-05; Ord. No. 09-03, § 6, 3-12-09)

Sec. 54-195. Optional forms of benefits.

- (a) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified herein, a member, upon written request to the board, may elect to

receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:

- (1) A retirement income of a monthly amount payable to the retiree for his lifetime only.
- (2) A retirement income of a modified monthly amount, payable to the retiree during the lifetime of the retiree and following the death of the retiree, 100 percent, 75 percent, 66½ percent or 50 percent of such monthly amount payable to a joint pensioner for his lifetime. Except where the retiree's joint pensioner is his spouse, the payments to the joint pensioner as a percentage of the payments to the retiree shall not exceed the applicable percentage provided for in the applicable table in the Treasury regulations. (See Q&A-2 of 1.401(a)(9)-6)
- (3) If a member retires prior to the time at which Social Security benefits are payable, he may elect to receive an increased retirement benefit until such time as Social Security benefits shall be assumed to commence and a reduced benefit thereafter in order to provide, to as great an extent as possible, a more level retirement allowance during the entire period of retirement. The amounts payable shall be as recommended by the actuaries for the system, based upon the Social Security law in effect at the time of the member's retirement.
- (4) For members who do not participate in the DROP, the member may elect a percentage of benefit in a lump sum as follows:
 - a. Ten percent of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining 90 percent paid under the normal form or as per subsection (1), (2) or (3) above.
 - b. Fifteen percent of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining

85 percent paid under the normal form or as per subsection (1), (2) or (3) above.

- c. Twenty percent of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining 80 percent paid under the normal form or as per subsection (1), (2) or (3) above.
- d. Twenty-five percent of the total actuarial equivalent value of the benefit paid as a lump sum with the remaining 75 percent paid under the normal form or as per subsection (1), (2) or (3) above.

(b) The member, upon electing any option of this section, will designate the joint pensioner (subsection (a)(2) above) or beneficiary (or beneficiaries) to receive the benefit, if any, payable under the system in the event of member's death, and will have the power to change such designation from time to time. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. A member may change his beneficiary at any time. If a member has elected an option with a joint pensioner and the member's retirement income benefits have commenced, the member may thereafter change his designated beneficiary at any time, but may only change his joint pensioner twice. Subject to the restriction in the previous sentence, a member may substitute a new joint pensioner for a deceased joint pensioner. In the absence of proof of good health of the joint pensioner being replaced, the actuary will assume that the joint pensioner has deceased for purposes of calculating the new payment.

(c) The consent of a member's or retiree's joint pensioner or beneficiary to any such change shall not be required. The rights of all previously-designated beneficiaries to receive benefits under the system shall thereupon cease.

(d) Upon change of a retiree's joint pensioner in accordance with this section, the amount of the retirement income payable to the retiree shall be actuarially redetermined to take into account the age of the former joint pensioner, the new joint pensioner and the retiree and to