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**IDAPA 59
TITLE 01
CHAPTER 04**

59.01.04 - PERSI DISABILITY RULES

**Subchapter A -- General Provisions
(Rules 001 through 099)**

001. LEGAL AUTHORITY (RULE 1).

PERSI rules are adopted under the legal authority of Sections 50-1507, 50-1508, 50-1524, 59-1301, 59-1305, 59-1314, 59-1372, 59-1383, 59-1392, 72-1405, and 72-1406, Idaho Code. (4-5-00)

002. TITLE AND SCOPE (RULE 2).

01. Title. The title of this chapter is IDAPA 59.01.04, "PERSI Disability Rules". (4-5-00)

02. Scope. This chapter relates to disability retirement under the PERSI plan, and as indicated, under the Firefighter's Retirement Fund (FRF) plan. (4-5-00)

003. WRITTEN INTERPRETATIONS--AGENCY GUIDELINES (RULE 3).

Written interpretations of these rules, to the extent they exist, are available from PERSI, at the following locations:

PERSI Boise Office
607 North Eighth Street
Boise, Idaho 83702
Phone: 208/334-3365 or 1-800-451-8228
Fax: 208/334-3804

PERSI Pocatello Office
850 E. Center, Suite D
Pocatello, Idaho 83201
Phone: 208/236-6225 or 1-800-762-8228
Fax: 208/236-6159

PERSI Coeur d'Alene Office
2005 Ironwood Parkway, Suite 142
Coeur d'Alene, Idaho 83814
Phone: 208/769-1474 or 1-800-962-8228
Fax: 208/769-1476 (4-5-00)

004. ADMINISTRATIVE APPEAL (RULE 4).

Administrative appeals are conducted pursuant to IDAPA 59.01.01, "Rules of Administrative Procedure of the Public Employees Retirement System of Idaho". (4-5-00)

005. PUBLIC RECORDS ACT COMPLIANCE (RULE 5).

All public records not exempt from disclosure are available by making a written request to the "Records Custodian" at PERSI's Boise office listed in Rule 3. Requested records must be identified with specificity. (4-5-00)

006. DEFINITIONS (RULE 6).

PERSI adopts through incorporation by reference as if set forth fully herein all of the definitions listed in IDAPA 59.01.02, Section 005, "Eligibility Rules of the Public Employee Retirement System of Idaho". (4-5-00)

007. CITATION (RULE 7).

The official citation of this Chapter is IDAPA 59.01.04.000, et seq. For example, this Section's citation is IDAPA 59.01.04.007. In documents submitted to PERSI or issued by PERSI these rules may be cited as PERSI Disability Rules with Section number less leading zeros. For example, this rule may be cited as PERSI Disability Rule 7. Within

these rules, where a rule number is cited without reference to a chapter, the citation is to the numbered rule within that chapter. For example, a reference to "Rule 2" within this chapter would be a reference to Disability Rule 2. (4-5-00)

008. EFFECTIVE DATE (RULE 8).

Unless otherwise indicated, the effective date of each rule is noted in brackets at the end of each Rule. (4-5-00)

009. -- 099. (RESERVED).

Subchapter B -- Eligibility for Disability Retirement
(Rules 100 through 199)

100. GENERAL RULE (RULE 100).

Only active members of PERSI with ten (10) years of credited service, including at least six (6) months of membership service, are eligible for disability retirement. (4-5-00)

101. SERVICE RELATED DISABILITY FOR POLICE AND FIREFIGHTERS (RULE 101).

Police and certain firefighter members are eligible for disability retirement beginning from the first day of employment when the disability is caused by occupational hazards, as provided in Section 59-1352(2), Idaho Code. (4-5-00)

102. DISABLED PRIOR TO SEPARATION (RULE 102).

The applicant must demonstrate that, before he separated from service, he was disabled under the applicable disability standard. In other words, the applicant must demonstrate that, while an active member, he was disabled under the applicable standard. (4-5-00)

103. -- 199. (RESERVED).

Subchapter C -- Application for Disability Retirement
(Rules 200 through 299)

200. APPLYING FOR DISABILITY RETIREMENT (RULE 200).

Eligible members may apply for disability retirement by completing a required form available from any PERSI office. The application process may include an interview by a PERSI representative. Applicants must release all medical records and information to PERSI. (4-5-00)

201. APPLICATION REVIEW -- SERVICE REQUIREMENTS (RULE 201).

Applications will first be reviewed to determine whether the applicant meets service eligibility requirements. If service eligibility requirements are met, the application will proceed to disability assessment review. If service requirements are not met, the applicant will be notified. Eligibility determinations are subject to subsequent review, audit and adjustment. (4-5-00)

202. DISABILITY ASSESSMENT REVIEW (RULE 202).

Applicants will be assessed to determine whether they qualify for disability retirement under the applicable standard. The assessment may include without limitation, records review, medical and psychological examinations, vocational assessments, or any combination thereof as determined by PERSI. Failure to timely comply with any request made by PERSI during the assessment process shall result in automatic denial of disability retirement. At the conclusion of the assessment process, PERSI will notify applicants in writing whether or not they qualify for disability retirement. (4-5-00)

203. RECONSIDERATION OF DISABILITY ASSESSMENT DECISION (RULE 203).

Applicants who are denied disability retirement as a result of an adverse disability assessment decision, and wish to contest that decision, are required to participate in a reconsideration process. A request for reconsideration must be made within thirty (30) days of the issuance of the disability assessment decision. Any additional information the applicant wishes to be considered must be submitted to PERSI within thirty (30) days of the request for reconsideration. The additional information will be reviewed and a reconsideration decision will be issued in writing

to the applicant. (4-5-00)

204. ADMINISTRATIVE REVIEW OF THE RECONSIDERATION DECISION (RULE 204).

A reconsideration decision shall be considered a final decision under Section 59-1314(2), Idaho Code, and may be appealed to the board for review. In any related administrative hearing, the applicant shall be limited to presenting facts and evidence made available to PERSI in the reconsideration process. No new or additional evidence may be presented at the hearing. If the applicant has additional facts or evidence that were not made available to PERSI during the assessment or reconsideration process, the applicant must submit a new application for disability retirement, proceed again through the assessment process, and pay the costs associated with the second or subsequent assessment process. This rule is intended to promote the efficient use of fund resources by encouraging full and complete disclosure of information during the disability assessment process. (4-5-00)

205. DELEGATION (RULE 205).

PERSI may, by contract or otherwise, delegate all or part of these processes to third parties. Where such delegation has been made, the term "PERSI" includes those third parties. (4-5-00)

206. REASSESSMENT OF DISABILITY RETIREES (RULE 206).

Disability retirees are subject to reassessment of their disability at any time to determine whether they continue to be disabled under the standard in Section 59-1302(12), Idaho Code. However, pursuant to Section 59-1302(12)(b), Idaho Code, after two (2) years of continuous disability retirement, a disability retiree is not required to undergo medical examinations more often than every twelve (12) months. Disability retirees who are notified that they have been selected for reassessment are under the same obligation as applicants to supply information. (4-5-00)

207. ATTORNEY'S FEES AND COSTS (RULE 207).

Attorney's fees and costs incurred by an applicant in his efforts to obtain disability retirement are the sole responsibility of the applicant and shall not be paid by PERSI except for fees related to judicial review for which applicant is found to be entitled under applicable law. (4-5-00)

208. -- 299. (RESERVED).

**Subchapter D -- Applying the Disability Standard
(Rule 300 through 399)**

300. BURDEN ON APPLICANT (RULE 300).

Disability retirement is only available to active members. Applicant must demonstrate that, on or before applicant's last day of employment, he was disabled under the disability standard. The last day of employment is the last day applicant earned compensation, including annual leave and sick leave. (4-5-00)

301. STATUTORY STANDARD (RULE 301).

In applying the disability standard in Section 59-1302(12), Idaho Code, substantially all avenues of employment are reasonably closed if the applicant is permanently prevented, due to bodily injury or disease, from performing every substantial and material duty of any occupation for which the applicant is reasonably qualified by education, training or experience. (4-5-00)

302. DEFINITION OF "LIKELY" (RULE 302).

For the purpose of Section 59-1302(12)(b), Idaho Code, "likely" means with reasonable medical certainty. (4-5-00)

303. HIRE-ABILITY OF APPLICANT (RULE 303).

The inability of the applicant to secure employment in and around the area where the applicant resides is not considered in determining whether or not the applicant is disabled. If the applicant is able to perform every substantial and material duty of any jobs existing in the economy for which the applicant is reasonably qualified by education, training or experience, the applicant will not be considered disabled regardless of other factors that might affect the applicant's ability to actually secure employment, such as employer decisions and practices or the fact that there are no open positions or that the applicant is not selected for those positions. (4-5-00)

304. -- 399. (RESERVED).

Subchapter E -- Payment
(Rule 400 through 499)

400. COMMENCEMENT AND DURATION OF DISABILITY ALLOWANCE (RULE 400).

The commencement and duration of payment of disability benefits is governed by Section 59-1354, Idaho Code. For purposes of Section 59-1354(1)(b), Idaho Code, a member "becomes eligible" on the first of the month following the date selected by the member which follows the date on which the member is unable to and thereafter does not return to work on a regular basis for two (2) consecutive weeks but not later than the date on which the member ceases to make contributions. (4-5-00)

401. DETERMINING WORKER'S COMPENSATION OFFSET (RULE 401).

To determine the offset required by Section 59-1353, Idaho Code, the amount payable under the provisions of any worker's compensation law which represents income benefits as defined in Section 72-102, Idaho Code, shall be converted to a monthly equivalent and deducted from the monthly retirement allowance. (4-5-00)

402. EFFECT OF UNUSED SICK LEAVE ON DISABILITY ALLOWANCE (RULE 402).

Unused sick leave entitlement provided for by either Section 33-1228, 33-2109A, or 67-5339, Idaho Code, shall not be considered salary or compensation in the application of Section 59-1354(1), Idaho Code. (4-5-00)

403. -- 499. (RESERVED).

Subchapter F -- Firefighter's Retirement Fund (FRF)
(Rules 500 through 599)

500. APPLICATION OF THIS CHAPTER TO FRF DISABILITY RETIREMENT (RULE 500).

All the provisions of this chapter, except rules 100, 101, 206, 301, 302, 401 and 402, apply also to applications for disability retirement under the FRF plan to the extent they do not conflict with the provisions of Title 72, Chapter 14, Idaho Code. (4-5-00)

501. -- 999. (RESERVED).

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