



Legislature of the Virgin Islands

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POST AUDIT DIVISION

April 16, 2026

MEMORANDUM

TO: Honorable Novelle E. Francis, Jr.
Chairman, Committee on Budget, Appropriations and Finance
36th Legislature of the Virgin Islands

FROM: Post Audit Division

SUBJECT: Bill No. 36-0122 – An act amending title 3 Virgin Islands Code, chapter 27, section 711 and chapter 28a, section 760, by requiring the Government Employees Retirement System to discontinue making disability retirement annuity payments to a member who resumes any employment

PROPOSED AMENDMENT TO VIRGIN ISLANDS CODE

Bill No. 36-0122 Section 1 (a) seeks to amend title 3 Virgin Islands Code, chapter 27, section 711 (TIER I EMPLOYEES) and chapter 28a, section 760 (TIER II EMPLOYEES) in the following instances:

3 V.I.C. § 711

***** Statutes current through Act 8981 of the 2024 session of the 35th Legislature, including all code changes through February 28, 2025 *****

**Virgin Islands Code Annotated > TITLE THREE Executive (Chs. 1 — 42) >
Chapter 27. Retirement of Personnel; Federal Benefits (§§ 701 — 741)**

§ 711. Administration of disability annuities

- (a) At least once each year during the first five years following the allowance of a disability annuity to any member, and at least once in every three-year period thereafter, until a member's attainment of age 55, the Board shall require any disability beneficiary to undergo a medical examination to be made at the place of residence of said beneficiary, or any other place mutually agreed upon, by a physician or physicians engaged by the System. If an examination indicates that the beneficiary is no longer physically or mentally incapacitated for service in the position held by the member at the date of disability, payments by the system shall be discontinued. The name of such member shall then be placed on the appropriate list of candidates maintained for appointment to a position in the division for which he is found to be qualified at compensation at least equal to the rate he received at the time he last became a beneficiary.
- (b) ~~Should any member receiving a duty disability annuity or nonduty disability annuity resume a gainful occupation, and his earnings therefrom together with his disability annuity~~

~~exceed the rate of compensation of the member at the date of retirement, the System shall reduce the amount of disability annuity to an amount which, when added to the compensation being earned by the member, shall not exceed the rate of compensation of the member at the date he last became a disability beneficiary. “The System shall discontinue making duty disability retirement annuity payments or nonduty disability retirement annuity payments to a member who resumes any employment.”~~

- (c) Should any disability beneficiary refuse to submit to a medical examination as herein provided, payments by the system shall be discontinued until his withdrawal of such refusal, and should his refusal continue for one year, all rights of the member in any disability annuity shall be revoked by the System.

3 V.I.C. § 760

***** Statutes current through Act 8981 of the 2024 session of the 35th Legislature, including all code changes through February 28, 2025 *****

Virgin Islands Code Annotated > TITLE THREE Executive (Chs. 1 — 42) >

Chapter 28A. Tier II Retirement Benefits Program (§§ 750 — 770)

§ 760. Administration of disability retirement annuities

- (a) At least once each year during the first five years following the allowance of disability retirement annuity to any member, and at least once in every three-year period thereafter, until a member's attainment of age 65, the System shall require any disability beneficiary to undergo a medical examination to be made at the place of residence of the beneficiary, or any other place mutually agreed upon, by a physician or physicians engaged by the System. If an examination indicates that the beneficiary is no longer physically or mentally incapacitated for service in the position held by the member at the date of disability, payments by the system must be discontinued. The name of the member must then be placed on the appropriate list of candidates maintained for appointment to a position in the division for which he is found to be qualified at compensation at least equal to the rate he received at the time he last became a beneficiary.
- (b) ~~Any member receiving a duty disability retirement annuity or a non-duty disability annuity who resumes gainful employment, and his earnings together and disability retirement annuity, exceed the rate of compensation of the member at the date of retirement, the Board shall reduce the amount of disability annuity to an amount that, when added to the compensation being earned by the member, may not exceed the rate of compensation of the member at the date he last became a disability beneficiary. “The System shall discontinue making duty disability retirement annuity payments or nonduty disability retirement annuity payments to a member who resumes any employment.”~~
- (c) If disability beneficiary refuses to submit to a medical examination as herein provided, payments must be discontinued until a medical examination is conducted. If the medical examination is not conducted within one year, the System shall revoke all rights the member has to receive a disability retirement annuity.

VIRGIN ISLANDS CODE

Title 3 Virgin Islands Code, chapter 27 describes the **Duty Disability Annuity** steps and timeline for a member to receive disability annuity payments.

3 V.I.C. § 708

***** Statutes current through Act 8981 of the 2024 session of the 35th Legislature, including all code changes through February 28, 2025 *****

Virgin Islands Code Annotated > TITLE THREE Executive (Chs. 1 — 42) > Chapter 27. Retirement of Personnel; Federal Benefits (§§ 701 — 741)

§ 708. Duty disability annuity

- (a) Any member who becomes totally and permanently incapacitated for service as the proximate result of bodily injuries sustained or a hazard undergone while in the performance and within the scope of his duties, if such injuries or hazard were not the consequences of the wilful negligence of the member, shall receive a retirement duty disability annuity if:
- 1) Application is made not more than six months after being advised by a physician not selected or designated by the System that the member is permanently or totally incapacitated for service, if any accidental disability, or six months after the occurrence of disablement, if an occupational disease and proper proof is received from one or more physicians designated by the Board that such member is mentally or physically incapacitated; Provided, however, that if one or more of the physicians designated by the Board have provided proper proof that the member is mentally or physically incapacitated, or totally and permanently disabled, the member shall automatically be entitled to duty disability annuity and the member's disability application need not be presented to the Committee of Medical Review pursuant to § 710a herein.
 - 2) Notice of the accident has been filed with the System within 30 days next following the date of the accident.
 - 3) In the case of members found pursuant to section 584a, subsection (d) of this title to be permanently disabled and unfit to perform their duties, application must be made not more than three months after such determination is made pursuant to section 584a, subsection (d) of this title, and no prior notice of the accident to the office of the Board is required;
 - 4) The decision of the Board must be based on the opinion of the physician selected by the Board and not by the opinion of the physicians selected by the member or any other entity, including, but not limited to the Workers Compensation Administration.
- (b) The duty disability annuity shall be payable during disability and shall be equal to 75 percent of the member's rate of compensation at date of disability in an amount not to exceed \$65,000 per annum. The annuity shall be offset by any amounts received by the member as workers' compensation administration from the employer.
- (c) For the purpose of this section:
- 1) A member is totally disabled only if the member's physical or mental impairment or impairments are so severe that the member is unable to perform his previous

work and cannot engage in any other kind of gainful employment that exists in the territory.

- 2) Substantial gainful employment” means any work that is generally done for pay or profit which the member is able to perform with sufficient regularity and duration to provide a reliable source of income which provides an annual income that exceeds the poverty threshold for one person as determined by the Virgin Islands Department of Human Services, irrespective of the number of hours or days that the member actually works.

(d) The System may request earnings information from recipients of disability annuities to verify disability claims. The recipient shall provide the earnings information to the Board of Trustees within 30 days of the date of the request. If the recipient fails to provide the requested information within the prescribed time, the duty disability annuity must be discontinued until the requested information is provided. When the requested information is provided, the duty disability retirement annuity must resume.

SOCIAL SECURITY ADMINISTRATION

According to the Social Security Administration website, the definition of disability is: one must not be able to engage in any substantial gainful activity (SGA) because of medically determinable physical or mental disability(ies) that is either:

- Expected to result in death.
- Has lasted or is expected to last for a continuous period of at least twelve (12) months.

The term “substantial gainful activity” is used to describe a level of work activity and earnings. Work is “substantial” if it involves doing significant physical or mental activities or a combination of both. “Gainful” work activity may include:

- Work performed for pay or profit.
- Work of a nature generally performed for pay or profit.
- Work intended for profit, whether or not a profit is realized.
- Work performed on a part-time basis

The Social Security Administration's (SSA) Trial Work Period (TWP) allows disability beneficiaries to test their ability to work for at least nine months without losing their full benefits. You can earn any amount during these nine months, which don't need to be consecutive, and you still receive your full payment. After completing the TWP, you enter a 36-month [Extended Period of Eligibility \(EPE\)](#), during which the SSA will evaluate your earnings to see if you can still receive benefits based on the [Substantial Gainful Activity \(SGA\)](#) limit.

How the Trial Work Period works

- **Duration:** The TWP consists of nine months where you can work and receive your full disability benefits.
- **Timing:** These nine months do not have to be consecutive, but they must occur within a 5-year rolling period.
- **Notification:** You must report any work activity to the SSA, even if it's only for a short time.

- **Earnings:** There is no limit on how much you can earn in the months that count toward your TWP.
- **What counts as a TWP month:** A month counts as a TWP month if you earn more than the TWP threshold for that year. For 2025, this amount is \$1,160 per month.

What happens after the Trial Work Period

- **Extended Period of Eligibility (EPE):** After your nine TWP months are used, you enter a 36-month EPE.
- **Benefit evaluation:** During the EPE, the SSA will evaluate your work and earnings based on the SGA level to determine if you are still eligible for benefits.
- **SGA limits (2025):** The SGA limit is \$1,620 per month for non-blind individuals and \$2,700 for those who are blind.
- **Benefit payments:** If your earnings are below the SGA level during the EPE, you will continue to receive your full benefits.
- **Grace period:** During the EPE, you are also entitled to a three-month grace period if your earnings exceed the SGA level, during which you will continue to receive full benefits.

Important considerations

- **Keep the SSA informed:** Always report any work activity promptly and accurately.
- **Track your earnings:** Keep a close eye on your earnings to ensure you know whether you are above or below the SGA limit.
- **Use work incentives:** Look into using work incentives like [Impairment-Related Work Expense \(IRWE\)](#) deductions, which can reduce your countable income.
- **Seek professional advice:** The rules are complex. Consulting with an expert can help you avoid mistakes and understand how the program applies to your specific situation.

SUMMARY

A disability annuity provides regular payments to an individual who can no longer work due to a disabling injury or illness. Such annuities may be funded through a government program, a former employer, or a private insurance policy. A disability annuity differs from Social Security Disability Insurance (SSDI) in its eligibility requirements, benefit structure, and tax treatment.

It is the position of the Post Audit Division that a legal opinion is warranted. This recommendation is based on Title 3 Virgin Islands Code, Chapter 27, section 708, which states,

- a) *“Any member who becomes **totally and permanently incapacitated** for services as the proximate result of bodily injuries sustained or a hazard undergone while in the performance and within the scope of his duties, if such injuries or hazard were not the consequences of the wilful negligence of the member, shall receive a retirement duty disability annuity...”*
- c) For the purpose of this section:
 - 1) *A member is totally disable only if the member’s physical or mental impairment or impairments are so severe that the member is unable to perform his previous work and cannot engage in any other kind of gainful employment that exists in the territory.*

(2) Substantial gainful employment” means any work that is generally done for pay or profit which the member is able to perform with sufficient regularity and duration to provide a reliable source of income which provides an annual income that exceeds the poverty threshold for one person as determined by the Virgin Islands Department of Human Services, irrespective of the number of hours or days that the member actually works.

If a member is capable of resuming employment, that individual should return to work within the Government of the Virgin Islands, and the disability retirement annuity should be discontinued. Conversely, if a member continues to meet the statutory definition of total disability and does not return to work, annuity payments should continue.

Based on the intent of the legislation, the Post Audit Division recommends approval of **Bill No. 36-0122.**



Theodora Philip, DBA
Post Auditor