

## ARTICLE V

### **DISABILITY PENSION BENEFITS**

---

Each Employee whose employment is terminated prior to Regular Retirement Age because of a total and permanent disability and who meets the requirements set forth below shall be eligible for a disability pension payable in the amount and for the time periods set forth below.

5.01 **Total and Permanent Disability Defined.** As used in this Article, the term “total and permanent disability” shall mean:

- (a) The inability to engage in any substantial gainful activity in the hotel, restaurant, and bartending industry by reason of any medically determinable, physical impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months, or “blindness” which shall mean central visual acuity of 20/200 or less, in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less.

Effective commencing May 1, 1988, and solely with respect to Employees whose Date of Disability (as that term is defined in Section 5.03 (a) of this Article) occurs on or after such date, the term “substantial gainful activity in the hotel, restaurant and bartending industry” shall exclude employment in the job classifications of room service dispatcher, room inspector and cashier, provided that the Employee’s usual and customary employment was not one of those enumerated classifications. Employees whose Date of Disability occurs prior to the above referenced effective date shall continue to have their entitlement to Disability Pension benefits determined under the original rules.

- (b) A “total and permanent disability” may be caused by or result from any bodily injury or disease, either occupational or nonoccupational in cause, but excludes any disabilities resulting from service in the armed forces of any country unless the Employee first becomes totally and permanently disabled after he has accumulated at least five years of Credited Service following his separation from service in the armed forces.
- (c) The term “total and permanent disability” excludes any mental or emotional illness or condition preventing the Participant from any substantial gainful employment, as well as any condition relating to alcoholism or drug abuse, or any intentionally self-inflicted injury.

Any disability prior to January 1, 1971, from any cause is also excluded.

5.02 **Qualification for Disability Benefit.** In order to qualify for a disability retirement benefit, the individual seeking the benefit must meet each of the following tests:

- (a) **Active Service.** An Employee must have been engaged in Covered Employment and have been a Participant in the Plan for at least an aggregate of 300 hours during the Plan Year including the first day on which he was unable to work because of an injury, disease, or physical impairment, which thereafter became the event upon which he bases his disability, and the preceding Plan Year combined.

Notwithstanding the foregoing, effective January 1, 1992, in the event that an Employee fails to earn the required minimum number of hours solely as a result of a labor dispute resulting in economic action involving his current Employer, the Board of Trustees may, in the exercise of its sole discretion, waive the active service requirement if the Employee worked at least an aggregate of 300 hours in Covered Employment during the Plan Year in which the labor dispute commenced and the preceding Plan Year combined.

- (b) **Credited Service.** The individual must have accumulated at least five years of past or future “Credited Service,” without a Permanent Break in Service, prior to the first day on which he was unable to work because of an injury, disease, or physical impairment, which thereafter became the event upon which he bases his disability.
- (c) **No Early Pension.** The Employee must have never received an Early Pension benefit.
- (d) **Filing of Claims.** The Employee must have filed a claim, in writing, with the Trust for a disability retirement benefit within one year after his date of disability. If the claim is not filed within such time, then no benefits shall be payable for any period prior to the filing of a written claim with the Trust. The Trustees, in their sole discretion, may waive the one year filing limitation if they determine that failure to file within the one year time period was due to the physical incapacity of the Participant.
- (e) **Determination by Trustees.** The Board of Trustees shall, in its sole discretion, determine that:
  - (1) The Employee applying for disability retirement benefits has complied with all provisions of this Article;
  - (2) Has incurred an injury, illness, or condition of the type deemed to be a disability hereunder; and
  - (3) The date which was the first day on which he was unable to work because of an injury, disease, or physical impairment, which thereafter became the event upon which he bases his disability. In making this determination, the Board may, but need not necessarily, base its decision upon a grant of a social security disability insurance award by the Social Security Administration. The Board may use, in making its determination, such evidence as is reasonably acceptable to it.

5.03 **Amount of Disability Benefit.** The amount of the benefit shall be determined as follows:

- (a) If the Employee has at least five years of Pension Credit his or her benefit shall be an amount equal to the benefit computed under Section 4.03 of this Plan as of the date of his or her disability. “Date of Disability” shall mean the first day on which the Employee was unable to work because of an injury, disease, or physical impairment, which thereafter became the event upon which he or she bases his or her disability.
- (b) If the Employee has less than five years of Pension Credit on the date of disability, he or she shall receive no retirement disability pension.

5.04 **Applicable only to Disability Benefits First Payable Before January 1, 1992 (now superseded by Section 5.05).** An Employee eligible for a retirement disability benefit shall receive a monthly benefit for life, and, except as noted above in 5.02 (c), it shall commence as of the first day of the first calendar month following his date of disability. However, actual payment shall not be made prior to ninety days after the filing of the claim with the Trust plus such additional time as is reasonably necessary to process and make a determination on the claim. An Employee may elect in writing not to take his retirement disability benefit in the form of a single life annuity, but may instead elect a 50% joint and survivor annuity. Under this optional annuity, the Employee receives a reduced monthly pension and, following the death of the Employee, the surviving spouse receives for life 50% of the reduced pension to the Employee. In this regard, there shall be an adjustment in benefit amount payable to the Employee determined on the basis of the Actuarial Equivalents considering the Employee's age when payment is to commence and the age of the Employee's spouse. The effective date of the spouse's benefit shall be the first day of the month following the death of the Employee. To be eligible for the 50% joint and survivor annuity benefit, the Employee and his spouse must have been married at least twelve months prior to the date of the commencement of pension benefits. The election to accept the 50% joint and survivor annuity benefit may be revoked by the Employee at any time prior to the final determination of disability by the Board of Trustees.

There shall be no lump sum option and no lump sum payment of any benefits on disability retirement.

Notwithstanding anything in this Section 5.04 to the contrary, any benefits payable under this Article V beginning on or after January 1, 1989, shall be paid in the form specified in Section 8.04 of this Plan, except that no portion of such benefit may be paid in a lump sum under Section 8.02 of this Plan.

5.05 **Disability Benefits First Payable On or After January 1, 1992.** Notwithstanding anything in this Plan to the contrary, an Employee whose disability retirement benefit becomes payable on or after January 1, 1992, shall be paid as follows:

- (a) **Unmarried Employee.** The benefits of an Employee who is not married on the date his benefits first become payable shall be paid in the form of a life annuity. Except as provided below in Sections 5.05(b) and 5.05(d), the payments under a life annuity shall be made to an Employee for his life and shall cease upon the death of such Employee.
- (b) **Married Employee.** The benefits of an Employee who is married on the date his benefits first become payable shall be paid in the form of a Qualified Joint and Survivor Annuity. For Employees whose date of disability occurs on or after March 1, 2002, such benefits shall be paid in the form of a Qualified Joint and Survivor Annuity With Increase Feature.

If the Employee dies before the date he otherwise would become eligible to retire on a Regular Pension in accordance with the provisions of Section 4.01 of the Plan, is married on his date of death, and he and his spouse were married to each other at all times during the twelve-month period ending on his date of death, the Employee's surviving spouse will receive the greater of: (1) a Qualified Pre-retirement Survivor Annuity, or (2) the survivor benefit payable under the Qualified Joint and Survivor Annuity (or, as applicable, the Qualified Joint and Survivor Annuity With Increase Feature) provided under this Article V. For purposes of the foregoing, the Qualified Pre-retirement Survivor Annuity shall only be payable with respect to the benefits in which the Employee was vested under Section 6.05 immediately prior to death.

Except as provided below in Section 5.05(d), if an Employee dies after the date he otherwise would become eligible to retire on a Regular Pension in accordance with the provisions of Section 4.01 of the Plan, is married on his date of death, and he and his spouse were married to each other at all times during the twelve-month period ending on his date of death, the Employee's surviving spouse will receive the survivor benefit payable under the Qualified Joint and Survivor Annuity or Qualified Joint and Survivor Annuity With Increase Feature, as applicable.

- (c) An Employee's retirement disability benefit shall commence as of the first day of the first calendar month following his date of disability. However, actual payment shall not be made prior to ninety (90) days after such additional time as is reasonably necessary to process and make a determination of the claim.
- (d) In the case of an Employee who was Vested under Section 6.05 immediately prior to his date of disability, the payment of retirement disability benefits shall cease as of the date he otherwise would become eligible to retire on a Regular Pension in accordance with the provisions of Section 4.01 of the Plan. Commencing on that date, the Employee's Regular Pension shall be payable in the manner and form provided in Article VIII of the Plan. However, no person who is receiving or who has received retirement disability benefits under this Article V shall be eligible to receive or elect to receive a lump sum payment under Article VIII of the Plan.

5.06 **Disability Benefit Ceases When Employee No Longer Disabled.** If a retired Employee receiving a pension benefit under this Section shall cease to be totally and permanently disabled prior to his Regular Retirement Date, his disability pension benefit under this Article V shall cease as of the month in which he ceased to be totally and permanently disabled.

5.07 **Notification By Employee When Disability Ceases.** An Employee receiving a disability pension who ceases to be totally and permanently disabled shall so notify the Board of Trustees in writing within thirty days after such event. An Employee who is receiving a pension under this Section shall be required to submit proof (including submission to an examination by a physician of the Trustees' choice if requested by the Trustees, at the Trustees' expense) of his continuing total and permanent disability if requested to do so in writing by the Board of Trustees not more frequently than annually and, if he shall fail to comply with any such request within sixty days after the date of mailing of such request to his latest address on file with the Board of Trustees, any further benefit payments are to be suspended until the requested proof shall have been furnished. If any disagreement shall arise as to whether the retired Employee continues to be totally and permanently disabled, such disagreement shall be resolved in the manner provided for the resolution of pension claims under this Plan. Any Employee receiving a disability retirement benefit who engages in any gainful employment, in the hotel, restaurant, or bartending industry except for the purposes of rehabilitation as approved in advance by the Board of Trustees, will be deemed to be recovered and his disability pension will cease.

5.08 **Limitations.** Any and all early or Vested retirement benefits paid to an Employee under this Plan prior to attaining age 65 shall be deemed to be paid as the result of a "permanent and total disability" as defined in Section 22(e)(3) of the Internal Revenue Code of 1986, as amended. No person who is receiving or who has received disability retirement benefits under this Plan shall be eligible to receive or elect to receive a lump sum payment under Article VIII of the Plan.

- 5.09 **Miscellaneous.** Any person who was, prior to March 1, 1981, a Participant in this Plan and who ceased employment because of some form of disability, shall be deemed to have been a Participant in this Plan on March 1, 1981, and accordingly, shall be entitled to apply for and receive disability retirement benefits under this resolution as though the disability had first occurred on March 1, 1981.
- 5.10 **Effective Date.** The effective date of this benefit is March 1, 1981.