



# EFFECTIVELY MANAGING YOUR CalPERS IDR PROGRAM

Advanced Industrial Disability Retirement (IDR) Training

Presented by:

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# OVERVIEW

- Legal Standard
- Application
- Take 'em Back or Retire 'em
- Coordination with WC, HR, & Police/Fire
- IDR Medical Examination
- CalPERS Publication – January 2019
- CalPERS Circular Letter – March 30, 2017
- CalPERS Audit Questionnaire



## LEGAL STANDARD: “Incapacity”

- “Disability of permanent or extended and uncertain duration . . . On the basis of competent medical opinion”
  - **GC §20026**
- “Substantial Incapacity” –i.e., Substantially unable to perform the usual duties of his/her position
  - ***Mansperger v. PERS, Cal.App.3d 873 (1970)***



# APPLICATION – Who?

- Who should file the application?
  - ER's must file IDR for eligible member “believed to be disabled”
    - *GC§ 21153*
- Why does it matter?
  - Burden of proof
- Consequences for ER not filing
  - Writ of Mandate to Superior Court
    - *Lazan v. County of Riverside,*
    - **140 Cal.App.4th 453 (2006)**



## APPLICATION – When?

- While the member is in service
- Within 4 months after the discontinuance of service
- While the member is physically or mentally incapacitated from discontinuance of service until time of application



## APPLICATION – How?

- New Employer-Originated Disability Retirement Application, updated 12/18 (2 pages)
- Employee Initiated Application (13 pages)



# EMPLOYER-INITIATED IDR APPLICATION



## Employer-Originated Disability Retirement Application

888 CalPERS (or 888-225-7377) • TTY: (877) 249-7442

Please complete and submit the employer-originated application along with any required documentation to initiate a disability or industrial disability retirement on behalf of the member. Upon receipt of the application, a retirement package will be sent to the member for completion. If the member does not comply, the employer-originated application will be canceled and both the employer and member will be notified.

### Application Type

Disability Retirement       Industrial Disability Retirement

**Section 1 Member Information**

Member's Name (First Name, Middle Initial, Last Name) \_\_\_\_\_ Member's Social Security Number or CalPERS ID \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_ Country \_\_\_\_\_

Birth Date (mm/dd/yyyy) \_\_\_\_\_ Sex  Male  Female \_\_\_\_\_ Daytime Phone \_\_\_\_\_ Alternate Phone \_\_\_\_\_

**Section 2 Member's Spouse or Registered Domestic Partner Information**

Spouse or Registered Domestic Partner's Name (First Name, Middle Initial, Last Name) \_\_\_\_\_ Date of Marriage \_\_\_\_\_

**Section 3 Employment Information**

Member's Last Day on Payroll (mm/dd/yyyy) \_\_\_\_\_ Member's Full Position Title \_\_\_\_\_

Employer/Agency Name \_\_\_\_\_

Is the employee working?  Yes  No

If yes, in what capacity?  Full time  Part time  Modified Duties

If you answered "yes" to any of the questions, provide a copy of the following documentation:

- Personnel Records
- Adverse Actions
- SPD Decisions
- Investigation Reports

Pursuant to Government Code section 21156, a disability retirement must not be used as a substitute for the disciplinary process.

Does the employee have a pending "Adverse Action" against him or her?  Yes  No

Was the employee terminated for cause?  Yes  No

Did the employee resign in lieu of termination?  Yes  No

Did the employee sign an agreement to waive his or her reinstatement rights?  Yes  No

Is the employee being investigated for or has been convicted of a work-related felony?  Yes  No

Put the member's name and Social Security number or CalPERS ID at the top of every page

Member's Name \_\_\_\_\_ Member's Social Security Number or CalPERS ID \_\_\_\_\_

**Section 4 Disability Information**

What is the member's specific disability? \_\_\_\_\_

Provide a copy of the following documentation:

- Job Duty Statement
- Physical Requirements of Position/ Occupational Title form (available on the CalPERS website)
- Medical information to support application (e.g., Fitness for Duty Reports, Doctor's Notes, etc.)

**Section 5 Workers' Compensation Detail**

Does the member have any workers' compensation claims?  Yes  No

For additional claim numbers and information, please attach a separate sheet and be sure to include the member's Social Security number or CalPERS ID.

Claim Number(s) \_\_\_\_\_ Date of Injury (mm/dd/yyyy) \_\_\_\_\_

Body Part(s) \_\_\_\_\_  Yes  No Liability Accepted

Workers' Compensation Carrier \_\_\_\_\_

Adjuster: First Name \_\_\_\_\_ Last Name \_\_\_\_\_

Phone Number \_\_\_\_\_ Fax \_\_\_\_\_ Email \_\_\_\_\_

Address of Workers' Compensation Claim Carrier \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

**Section 6 Employer Certification**

I certify to the best of my knowledge that the information provided on this application is true and correct.

Signature of Employer \_\_\_\_\_

Print Name of Employer \_\_\_\_\_

Position Title of Employer \_\_\_\_\_ Phone Number \_\_\_\_\_ Date (mm/dd/yyyy) \_\_\_\_\_

Mail to: CalPERS Benefit Services Division • P.O. Box 942711, Sacramento, California 94229-2711



# TAKE 'EM BACK OR RETIRE 'EM





## TAKE ‘EM BACK OR RETIRE ‘EM

- Employee “cannot, at the same time, be denied a disability retirement and also denied employment.”

*Montoya v. Retirement Board, City and County of San Francisco,*  
San Francisco Superior Court No. 321839 (2005)

*Roccaforte v. City of San Diego,* 89 Cal. App.3d 877 (1979)

- Employee must be given “IDR or placed into a full-time, full-pay, limited duty” position.

*Raygoza v. County of Los Angeles*(1993) 17 Cal. App.4th1240,1246



# TAKE 'EM BACK OR RETIRE 'EM

- **Lazan v. County of Riverside (2006)**
  - Work Comp division advised Lazan that it had no available work for her (i.e., NOPE letter)
  - Sheriff's Department refused to allow Lazan to return to work
  - Human Resources Department failed to use the interactive process
  - Disability Retirement Division, denied that Lazan was disabled (i.e. denied IDR)
- **Writ of Mandate to Superior Court**
  - Superior Court compelled IDR



# COORDINATION WITH WC, HR, & POLICE/FIRE



## COORDINATION WITH WC, HR & POLICE/FIRE DEPARTMENTS

- Change in Work Status
  - TTD/4580
  - TPD w/ work restrictions
  - Temporary light duty positions
- QIW / RTW determinations
  - Different legal standard between WC & IDR
- “Interactive Process” (ADA/FEHA)



## COORDINATION WITH WC, HR & POLICE/FIRE DEPARTMENTS

- Essential Functions Job Analysis
- Usual duties v. Occasional duties
  - Hiring criteria v. retention criteria
  - Frequency & Duration of strenuous tasks
- Injuries pose danger to deputy, fellow officers and the public
- Duties will inevitably worsen injury



## IDR MEDICAL EXAM

- Separate PERS medical exam & report ?\*\*
- “Substantial Incapacity” vs. prophylactic work restrictions
- Educate doctor on the PERS law and defenses
- IDR Doctor needs to be able to testify at hearing
- Credentials of doctor—Education, research, peer-reviewed & published articles, etc.

Govt Code 21154/55



# CalPERS Publications

## Public Agency & Schools Reference Guide

January 2019

California Public Employees' Retirement System



February 2020

**“Difficulty in performing certain tasks alone is not enough to support a finding of disability.”**

“If the member cannot substantially perform the duties of the position, then he/she is disabled for CalPERS retirement purposes; otherwise, the member is not disabled.”

**A CalPERS disability retirement must be based upon an actual and present (not prospective) inability to substantially perform the member's actual and usual job duties. Furthermore, prophylactic restrictions are not a basis for a disability retirement. If a disability is not currently present but just may occur in the future, the member is presently ineligible for a CalPERS disability retirement.”**



# CalPERS 3/30/2017 Circular Letter



## Retirement Benefits Circular Letter

California Public Employees' Retirement System  
P.O. Box 942715  
Sacramento, CA 94229-2715  
(888) CalPERS (or 888-225-7377)  
TTY: (877) 249-7442  
www.calpers.ca.gov

March 30, 2017

Circular Letter No: 200-018-17  
Distribution: VI

To: All Contracting Public Agencies

Subject: Information to be included in a Resolution/Determination Document for Disability Retirement, Requirements for submitting a Disability Retirement Application, and Disability Reevaluation Procedures

The purpose of this Circular Letter is to inform employers of the requirements for:

- submitting a disability retirement application,
- information to be included in resolution/determination documents in support of an application for disability retirement,
- twelve-month disability duration requirement,
- continuous disability requirement,
- medical qualifications for disability retirement, and
- disability re-evaluation procedures.

Government Code (G.C.) section 20026 defines "Disability" and "Incapacity for Performance of Duty". G.C. section 21156(a)(2) provides that the board or governing body of the contracting agency shall make a determination on a member's disability retirement on the basis of competent medical opinion and shall not use disability retirement as a substitute for the disciplinary process. G.C. section 21192 gives authority to the board or governing body of the employer from whose employment a person was retired to require any recipient of a disability retirement allowance under the minimum age for voluntary retirement for service applicable to members of his or her class to undergo medical examination. G.C. section 20221 provides that each employer must provide the California Public Employees' Retirement System (CalPERS) with any information concerning any member that CalPERS requires in the administration of the System. G.C. sections 20128 and 20223 provide that CalPERS may require a member to provide information it deems necessary to determine entitlement to benefits and information affecting his or her status as a member. The information provided in this Circular Letter is necessary for CalPERS to administer the System and to determine accurate benefits.

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### Disability Retirement Application Requirements

Local Safety members are required to complete all sections in the disability retirement application, with the exception of Section 13, the Employer-Originated Application. This section is to be used only when an employer originates an application. Along with the application, Local Safety members are required to complete, sign and date the following forms:

- [Employer Information for Disability Retirement](#)
- [Authorization to Disclose Protected Health Information](#)

Local Safety members must send the completed Employer Information for Disability Retirement form directly to their employers. Employers will use this form as a cover sheet for all documents submitted to CalPERS. Local Safety members must also provide the completed Authorization to Disclose Protected Health Information form to CalPERS.

### Determination of Members' Eligibility to Apply for Disability Retirement

An employer must forward all relevant personnel documents and medical records to CalPERS and obtain CalPERS' determination that the member is eligible to apply for disability retirement before an employer starts the process of a disability determination for any of the following circumstances:

- Disciplinary process underway prior to the member's separation from employment.
- The member was terminated for cause.
- The member resigned in lieu of termination.
- The member signed an agreement to waive his or her reinstatement right as part of a legal settlement (i.e., Employment Reinstatement Waiver).
- The member has been convicted of or is being investigated for a work related felony.

### Twelve-Month Disability Duration

The CalPERS Board has defined the disability duration in the eligibility requirements for disability retirement to be permanent or last at least twelve consecutive months from the date of an application for benefit or will result in death, as determined on the basis of competent medical opinion.

### Continuous Disability Requirement

A member must provide medical records of his or her physical or mental incapacity to perform the duties of his or her job from one year before his or her last day of physical work to present. To establish continuous disability, there must be medical substantiation in file from the last date of physical work to present, with no gaps in medical treatment records more than six months during this period. Rules of presumption do not apply. Even if the Workers' Compensation Appeals Board awards industrial disability benefits to a member under the Labor Code, the judgment does not bind the California Public Employees' Retirement System, which is governed by a different body of law.





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The medical determination must be based on the following:

- Competent medical opinion
- Medical records and other available information to support the medical opinion

#### **Medical Qualifications for Disability Retirement**

The law distinguishes between a person who suffers some impairment and one who suffers impairment sufficient to become eligible for disability retirement. The courts have concluded that the test is whether the member has a substantial inability to perform the usual and customary duties of the position. Difficulty in performing certain tasks alone is not enough to support a finding of disability. It is the inability to perform the essential functions of the actual and present job duties that determines whether the member is substantially incapacitated for the performance of his or her job duties.

If the member cannot substantially perform the duties of the position, then he or she is disabled for CalPERS retirement purposes; otherwise, the member is not disabled. A CalPERS disability retirement must be based upon an **actual and present** (not prospective) inability to substantially perform the member's actual and usual job duties. Furthermore, prophylactic restrictions are not basis for a disability retirement. If a disability is not currently present but just may occur in the future, the member is presently ineligible for a CalPERS disability retirement.

#### **Resolution / Determination Document for Disability Retirement**

In addition to other information, an employer must certify that its determination of disability was made based upon competent medical opinion and was not used as a substitute for the disciplinary process. An employer must also certify whether a member has an accepted Workers' Compensation Claim(s).

An employer's resolution/determination document for disability retirement must include all of the following information:

1. A statement certifying under penalty of perjury that the determination was made based on competent medical opinion.
2. A statement certifying under penalty of perjury that the determination was not used as a substitute for the disciplinary process. If any of the above mentioned circumstances is met, a statement must also be included that confirms that all relevant personnel documents were forwarded to CalPERS and CalPERS' determination that the member is eligible to apply for disability retirement was obtained prior to starting the process of determination.
3. A finding indicating the member has been found to be substantially incapacitated from the performance of the usual duties of his or her position.

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4. A statement confirming whether or not the member had filed a Workers' Compensation claim(s) for his or her disabling condition(s). If so, a statement is required as to whether the claim(s) was accepted.
5. A finding by the employer as to whether or not the causation of the disability was industrial.
  - a) In case of a dispute about the causation of the disability, the employer must provide a copy of the Findings and Award by the Workers' Compensation Appeals Board (WCAB) resolving the question of industrial causation.
  - b) A member must have a minimum of five years of credited service to qualify for non-industrial disability retirement. If a member does not meet the minimum service requirements for disability retirement, the member may still qualify by re-depositing previously withdrawn contributions or contributing an amount for service rendered prior to membership with CalPERS. Generally, time during which the member is absent from state service by reason of injury or illness, which is determined within one-year after the end of such absence to be job-related, shall be considered as time spent in state service for the purpose of qualification for retirement and death benefits.
6. A statement by the employer documenting the member's last day on payroll. In case of a dispute regarding the effective date of the member's retirement, a request must be filed with the WCAB for finding of fact to determine the date the member's condition became permanent and stationary. The employer must provide a copy of the Finding of Fact and that date then becomes the effective date of member's retirement (G.C. section 21164).
7. A statement by the employer as to whether there is, or is not, a possibility of third-party liability present (meaning whether the member's disability was caused by negligence or an intentional act of a party other than the employer).

If a person (other than the employer) caused an injury that results in certain CalPERS benefits being paid, then CalPERS has the right to recover up to one-half of the total retirement benefit costs payable due to this injury from the responsible party (G.C. section 20250).

The employer should also advise CalPERS if it is aware that the member is pursuing a claim (other than a Workers' Compensation claim) against any person or entity for the same injuries that also entitle the member to a disability retirement from CalPERS.



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8. A statement from the employer identifying the disabling condition(s) and body part(s) approved: i.e., orthopedic (right knee), psychological, cardiovascular, internal (kidney), neurological (leg) or other.
9. A statement from the employer that there is competent medical opinion certifying the disability is expected to be permanent or last at least twelve consecutive months from the date of an application for benefits or will result in death.
10. If Advance Disability Pension Payments (ADPP) have been or will be paid to the member, the employer must include the monthly amount and the beginning date. The employer must also provide the address to which the reimbursement check should be mailed.

**It is the employer's responsibility to report to CalPERS the amount of ADPP paid to a member. If an employer fails to notify CalPERS of ADPP or if the member retires, the local agency and the employee shall arrange for repayment. CalPERS will not reimburse the employer in these situations.**

All such documentation submitted by an employer must be signed by the governing body or its lawful delegate (i.e., City Manager, Chief Administrative Officer, County Executive, or other comparable individual). If the governing body chooses to delegate the responsibility of making a disability determination, a certified copy, which is approved and signed by the governing body, of the delegation order of this authority must accompany the finding by such delegate in every instance.

It is imperative for employers to provide all documentation and information referenced above to prevent the delay of benefit payments. Until CalPERS has received all required documentation and information, the disability determination will not be processed and CalPERS will be unable to put the member on a disability retirement roll.

**Local Agency Disability Re-Evaluation Procedures**

An employer should conduct regular re-evaluations of determinations for disability retirees who are under voluntary service retirement age. The purpose of the re-evaluations is to verify whether the recipient remains physically or mentally disabled from the position which they disability retired for the condition(s) that they were approved for. The re-evaluation process is not a process to discover new conditions. It should include, but is not limited to, gathering the following information:

- Is the retiree currently employed?
  - What type of work is he/she doing? Is he/she working within his/her work restrictions?

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- Obtain a duty statement and physical requirements of the job for comparison.
- When an independent medical examination is deemed necessary, submit these documents for the examiner's review.
- Is the retiree currently being treated for his/her disability?
  - If so, obtain a list of his/her treating physician(s) and contact information, and request his/her medical records since retirement.
- If the retiree is not currently being treated or the medical records received from the treating physician do not substantiate a continuous disability, the member should be evaluated by an Independent Medical Examiner.
- If indicated, consider surveillance.

Failure to cooperate with any stage of the re-evaluation process will be considered a refusal to submit to a medical examination. G.C. section 21175 states, "If any recipient of a disability retirement allowance under the minimum age of voluntary retirement for service applicable to members of his or her class refuses to submit to a medical examination, the pension portions of his or her allowance may be discontinued until his or her withdrawal of the refusal. If the refusal continues for one year his or her disability retirement allowance may be cancelled." **The agency should inform CalPERS to take appropriate actions if a retiree is uncooperative with the process.**

In accordance with G.C. section 20128, 20221 and 21192, the agency is requested to submit their determination on the re-evaluation or action requested for uncooperative retirees (discontinue the pension portions if refusal is less than a year; cancel the full allowance if refusal continues for one-year) to CalPERS in the form of a Resolution or determination letter.

**Other Resources**

For more information on these topics, please refer to the [Public Agency & Schools Reference Guide](#) which contains sample resolutions.

If you have any questions, please contact the CalPERS Customer Contact Center at **888 CalPERS (or 888-225-7377)**.

Anthony Suine, Chief  
Benefit Services Division



## CalPERS 3/30/2017 Circular Letter

- What is its purpose?
  - CalPERS Circular letters provide employers updates and information on changes to CalPERS policies, procedures, and programs
  - They are CalPERS “best practices guide”
  - While the Circular Letters are not legally binding, they are given judicial deference.
    - See Hudson v. Board of Administration (1997) 59 Cal.App.4th 1310, City of Sacramento v. Public Employees Retirement System (1991) 229 Cal.App.3d 1470, 1476-1477



# CalPERS' Fiduciary Duty

- **GC § 20125. Determination of Recipients**

The board shall determine who are employees and is the sole judge of the conditions under which persons may be admitted to and continue to receive benefits under this system.

- **GC § 20128. Information To Be Provided**

Notwithstanding any other provision of law, the board may require a member or beneficiary to provide information it deems necessary to determine this system's liability with respect to, and an individual's entitlement to, benefits prescribed by this part.



# CaIPERS 3/30/2017 Circular Letter

- Requirements for Submitting a Disability Retirement Application
- Info to be Included in Resolution/Determination & Supportive Documents
- 12 Month Disability Duration Requirement
- Continuous Disability Requirement
- Medical Qualifications for IDR
- Disability Re-Evaluation Procedures



# CalPERS 3/30/2017 Circular Letter Determination of Eligibility

- GC § 21156: IDR cannot be used as a substitute for the disciplinary process
- ER **MUST** forward all relevant personnel documents and medical records to CalPERS **before** starting determination process, if:
  - disciplinary process underway prior to EE's separation from employment
  - EE terminated for cause
  - EE resigned in lieu of termination
  - EE signed agreement to waive reinstatement rights
  - EE convicted/investigated for work-related felony



# CalPERS 3/30/2017 Circular Letter Determination of Eligibility

## Haywood v. Amer. River Fire (1998)

- Firefighter terminated for cause following disciplinary actions
- No valid claim before termination
- Can't claim IDR after separation from employment
- Termination for cause severed employer/employee relationship



**Authorization to Disclose  
Protected Health Information**

888 CalPERS (or 888-225-7377) • TTY: (877) 249-7442 • Fax: (916) 795-1280

**Section 1**

**Member Information**

Name of Member (First Name, Middle Initial, Last Name) \_\_\_\_\_ Social Security Number or CalPERS ID \_\_\_\_\_  
 ( ) \_\_\_\_\_ ( ) \_\_\_\_\_  
 Daytime Phone \_\_\_\_\_ Evening Phone \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

I authorize the disclosure of my protected health information, including, but not limited to, medical histories, diagnoses, examination reports, chart notes, testing and test results, X-rays, operative reports, lab and medication records, prescriptions, and any other records relating to the prognosis, treatment or diagnosis of any physical, mental, psychological or psychiatric condition, to the California Public Employees' Retirement System (CalPERS) or its representative, for the sole purposes of determining my physical or mental condition, illness, or disability and my right, if any, to retirement or reinstatement under the Public Employees' Retirement Law (PERL) (Government Code sections 20000, et seq.). I understand that any information about me disclosed pursuant to this Authorization will be used by CalPERS for the administration of its duties under the PERL, the Social Security Act, and the Public Employees' Medical and Hospital Care Act. I understand that submission of the requested information is mandatory under Government Code section 20128 and that failure to supply the information requested may result in CalPERS being unable to make a determination regarding my status.

This Authorization applies to any and all health and/or medical related information about me in the possession of any health care provider, health plan, insurance company or fund, employer or plan administrator, government agency, organization or entity administering a benefit program, rehabilitation organization or program.

I understand that if my protected health information is disclosed to someone who is not required to comply with federal privacy protection regulations, that information may be re-disclosed and would no longer be protected.

I understand that I have a right to revoke this Authorization at any time. My revocation must be in writing by letter directed to the CalPERS Benefit Services Division at the address below. I am aware that my revocation is not effective to the extent that persons I have authorized to use and/or disclose my protected health information have acted in reliance upon this Authorization. Unless cancelled by me in writing, this Authorization shall be valid for four years from the date shown below. A photocopy of this Authorization shall be as valid as the original. I understand that I may request a copy of this Authorization at any time.

**Section 2**

**Authorization to Release Information**

I also authorize the disclosure of any and all personnel and other employment-related records on file with any of my present or former employers which relate to my job duties, work performance, and other work-related issues including, but not limited to, attendance and sick leave records and records of administrative and judicial action arising out of, or related to, my past or present employment.

Signature of Member \_\_\_\_\_ Date (mm/dd/yyyy) \_\_\_\_\_

**Mail to:** CalPERS Benefit Services Division • P.O. Box 2796, Sacramento, California 95812-2796





# CalPERS 3/30/2017 Circular Letter – Disability Duration

- CalPERS IDR Eligibility Requirements
  - Permanent; **OR**
  - last at least 12 consecutive months from date of application; **OR**
  - Result in death
  - **Based on Competent Medical Opinion**



## CalPERS 3/30/2017 Circular Letter – Continuous Disability Requirement

- “physical or mental incapacity to perform the duties of his or her job from one year before his or her last day of physical work to present.”
- “Continuous” means medical substantiation from last day of work to present, with no gaps in medical tx more than 6 months
- WC Presumptions do NOT Apply
- **Competent Medical Opinion**



## CalPERS 3/30/2017 Circular Letter – Medical Qualifications for IDR

- Difference in law b/w Impairment and Impairment sufficient for IDR
- Substantial Inability to Perform U&C Duties
- Difficulty in performing certain tasks is not enough
- Inability to perform essential functions of job
- Actual & Present (not prospective) inability
- Prophylactic restrictions are NOT basis for IDR
- Disability must be Currently Present – i.e., not just *May* occur in the *future*



# CalPERS 3/30/2017 Circular Letter – Medical Qualifications for IDR

## Mansperger v. PERS (1970)

- “Incapacitated” means the applicant for a disability retirement has a substantial inability to perform his or her “usual” duties.

6 Cal.App.3d 873 (1970)

## Harmon v. Board of Retirement (1976)

- When an applicant can perform his customary duties, even though doing so may sometimes be difficult or painful, the applicant does not qualify for a disability retirement.



# CalPERS 3/30/2017 Circular Letter – Medical Qualifications for IDR

## Hosford v. Bd. Of Admin. (1978)

- Employee can be unable to perform some of his/her duties without being substantially incapacitated
- Fear of sustaining further injury (or aggravation) does not substantially incapacitate an employee
- Disability must be existing, and not prospective in nature
- Light duty position not necessary when partially disabled public employee can perform the usual duties, even when difficult or painful.

*77 Cal.App.3d 854 (1978)*



# CalPERS 3/30/2017 Circular Letter RESOLUTION/DETERMINATION DOCUMENT

Certify under penalty of perjury that the determination was:

- 1. based on Competent Medical Opinion
- 2. NOT used as a substitute for a disciplinary process
  - preliminary opinion of eligibility from CalPERS, based on review of documents, if EE under investigation or terminated
- 3. a finding of substantially incapacitated
- 4. Filed a WC claim & whether it was accepted



# CaIPERS 3/30/2017 Circular Letter RESOLUTION/DETERMINATION DOCUMENT

- 5. a finding of Industrial Causation of Disability
- 6. EE's last day on payroll ( or date became P&S)
- 7. IS there 3<sup>rd</sup> Party liability?
- 8. identify the disabling condition AND body parts  
i.e., orthopedic, psychological, cardiovascular, internal, neurological, etc.
- 9. If ADPP has been/will be paid to the EE



## CalPERS 3/30/2017 Circular Letter – Disability Re-Evaluation Procedures

- ER should conduct “regular” re-evaluations of determination for IDR retirees under voluntary service retirement age (i.e., 50yo) \*\*

--GC § 21192





## CalPERS 3/30/2017 Circular Letter – Disability Re-Evaluation Procedures

The board, or in the case of a local safety member,..., may require any recipient of a disability retirement allowance under the minimum age of voluntary retirement service applicable to members of his or her class to under go medical examination...

--GC § 21192



# CalPERS 3/30/2017 Circular Letter – Disability Re-Evaluation Procedures

- Purpose?
  - Whether EE remains physically or mentally disabled
  - NOT to discover NEW conditions



## CalPERS 3/30/2017 Circular Letter – Disability Re-Evaluation Procedures

- What information should be obtained during re-eval?
  - Is retiree currently employed?
    - If so, what is he/she doing?
  - Is the retiree currently being treated for his/her disability?
    - If so, obtain list of treating doctors
      - no gaps in medical treatment in medical treatment more than 6 mos.
    - If not, the retiree should be evaluated by an SME



## CalPERS 3/30/2017 Circular Letter – Disability Re-Evaluation Procedures

Failure to cooperate with any stage of the re-evaluation process will be considered a refusal to submit to medical examination pursuant to GC § 21175

- Suspend disability allowance until withdrawal of refusal
- If refusal lasts for 1 year, disability retirement allowance may be cancelled
- The agency shall inform CalPERS to take appropriate actions if the retiree is uncooperative with the process.



## CalPERS Audit Results (Jan 2018)

- CalPERS audited 60 public agencies re the following:
  - IDR policies and procedures?
  - Pre-retirement disciplinary actions reported?
  - Accepted WC claims required?
  - Competent medical opinions independent of WC process?
  - IDR re-evaluations for members under 50 yo?



# CalPERS Audit Results (Jan 2018)

## IDR POLICIES & PROCEDURES ?

- 52% no policies and procedures
- 30% policies and procedures board approved
- 18% policies and procedures not board approved



# CalPERS Audit Results (Jan 2018)

## PRE-RETIREMENT DISCIPLINE REPORTED?

- 50% no disciplinary action
- 18% disciplinary action – CalPERS not notified
- 32% agency didn't provide all requested records



# CalPERS Audit Results (Jan 2018)

## ACCEPTED WC CLAIM REQUIRED?

- 63% accepted WC claim required
- 20% no accepted WC claim
- 17% agency didn't provide all requested records





# CalPERS Audit Results (Jan 2018)

## COMPETED MEDICAL OPINION INDEPENDENT OF WORKERS' COMPENSATION

- 90% inside WC
- 2% specialist outside WC (i.e., IDR special medical exam)
- 8% agency didn't provide all requested records



# CalPERS Audit Results (Jan 2018)

## IDR RE-EVALUATIONS CONDUCTED?

- 100% no re-evaluations performed



# CalPERS Audit Questionnaire



# CalPERS Audit Questionnaire

1. Pre-Retirement Process
  - a. Written Policy/Procedure re IDR determinations
  - b. Info provided to EEs eligible for IDR
  - c. Do you inform CalPERS of EE's disciplinary actions *prior* to making IDR determination



# CalPERS Audit Questionnaire (cont'd)

## 2. Competent Medical Opinion Process

- a. Do you base approval or specialist or non-specialist medical opinion?
- b. Process if doctor certifies disability, but injury is outside of doctor's medical specialty
- c. Panel of IDR IMEs? Certified?
- d. How current are medical records used?
- e. Process if there is no evidence of disabling condition, but doctor certifies disability
- f. What if conflict in medical opinion?
- g. How ensure EE was disabled when stopped working?



# CalPERS Audit Questionnaire (cont'd)

## 3. IDR Authorization Process

- a. Procedures for approving/denying an IDR
- b. Who reviews and analyzes the medical records?
- c. Who has final authorization to approve/deny?
- d. Quality Review (QR) process
- e. Do you offer permanent modified duties?
- f. Do you compare medical reports to job duties to validate work restrictions?
- g. How long does your agency take to approve/deny?
- h. How long must EE be disabled before approval?
- i. If you deny IDR, what is appeal process?



# CalPERS Audit Questionnaire (cont'd)

- 4. Workers Compensation (WC) Process
  - a. What is role of WC in your IDR determination process?
  - b. Do you confirm there's an accepted WC claim file and if disabling condition was work-related?
  - c. What are the differences b/w WC and CalPERS IDR criteria?
  - d. Do you use WC criteria to approve IDR Application?



# CalPERS Audit Questionnaire (cont'd)

## 5. Re-Evaluation Process

- a. Do you have a re-eval process to determine if member continues to be disabled?
- b. What are your re-evaluation criteria?
- c. How many re-evaluation cases have you completed in the past 3 years?
- d. If, during re-eval process, they're determined to no longer be permanently disabled, is there a RTW process?
- e. If CalPERS offered to make the IDR determination for the Agency, would this be of interest to your Agency?





# Thank You For Joining Us!

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