

DISABILITY RETIREMENT CHANGES DUE TO THE NOLAN DECISION
FREQUENTLY ASKED QUESTIONS

The following questions and answers apply only to disability determinations made by CalPERS. Public agencies making local safety determinations should apply their own interpretation of the Nolan Decision to their existing procedures. CalPERS' procedures and forms referenced below are intended only as a guide.

1. What is the Nolan case about and why does it affect all disability cases?

As a result of the Nolan case (*Nolan vs. the City of Anaheim*), the State Supreme Court concluded that to qualify for a disability retirement a member must show substantial incapacity to perform the usual duties of their current position and also show a substantial incapacity to perform the usual duties of the position for other California public agencies in CalPERS¹. A member who is incapacitated from their current position but is able to perform the usual duties of their position for other California public agencies in CalPERS¹ will be denied disability retirement if there is a similar position available.

2. When was the Nolan decision effective?

September 1, 2004.

3. Will the Nolan case affect applications that were filed before the Supreme Court's decision?

Yes. All new and pending disability and industrial disability retirement applications awaiting a decision, and those under appeal, will be determined under the new criteria. By January 1, 2005, all members with pending applications will receive a letter explaining the new criteria. In addition, the letter will include the new required forms and FAQs.

4. How much longer will it take to process an application and reach a decision?

As a result of the Nolan Decision additional information will be required from both the member and employer. Consequently, additional time will be required to reach a decision. The time it takes to reach a decision will depend on the facts and circumstances of each case and how long it takes CalPERS to receive the additional requested information. Preliminary estimates indicate that an additional 3 – 5 months will be added to the current processing time.

¹ California public agencies in CalPERS include state, school and public employers.

5. What will members be expected to do differently under the Nolan Decision?

Members are expected to make every effort to obtain the additional information requested by CalPERS and seek their employer's and doctor's cooperation in providing all necessary information.

The following forms are required of the Member:

- Employer Information for Disability Retirement
This form replaces the previous form (Request for Employee Information, PERS-BSD-64). This is a request for the employer to provide personnel information pertinent to the disability retirement application. A job description/duty statement is required, or should be produced if one does not presently exist, that includes a detailed description of the employee's actual duties and the percentage of time spent performing each duty.
- Physical Requirements of Position/Occupational Title
This form should be completed jointly by both the member and employer. The member should attach a copy of this form to the Physician's Report on Disability prior to presenting to their physician.
- Physician's Report on Disability
This form replaces the previous form (Medical Report, PERS-BSD-1372). The member must provide this new medical report form to their physician for CalPERS to receive their doctor's opinion regarding the new criteria, regardless of whether or not other medical reports have been previously submitted. A copy of the member's job description and a copy of the Physical Requirements of the Position/Occupational Title must be attached when presenting the Physician's Report on Disability to the physician.

Note: The above forms will be available on the CalPERS' Web site by December 15, 2004, as well as provided directly to those members with pending applications.

6. Will employers be required to provide additional information beyond what they are currently providing?

Yes. Employers will be asked to provide more detailed information regarding a member's job duties and the physical requirements of the position. Employers also may be contacted by a job assessor to provide information regarding a member's pay, benefits, and promotional opportunities.

The following forms are required of the Employer:

- Physical Requirements of Position/Occupational Title
This form will be provided by the member and should be completed jointly by the member and employer. A copy of the completed form should be provided to the member and the original sent to CalPERS.
- Employer Information for Disability Retirement
This form replaces the previous form (Request for Employee Information, PERS-BSD-64). This is a request for the employer to provide personnel information pertinent to the disability retirement application. A job description/duty statement is required, or should be produced if one does not presently exist, that includes a detailed description of the employee's actual duties and the percentage of time spent performing each duty.

7. What if a job description/duty statement for the member's position does not exist?

As permitted by your agency's personnel rules and collective bargaining agreements, the member and employer (personnel officer & immediate supervisor) should draft a description of the duties performed by the member and the percentage of time spent performing each duty.

8. How will doctors be informed of the new requirements?

The medical report form, Physician's Report on Disability, and CalPERS' correspondence to doctors have been revised to obtain the additional information required by the Nolan decision.

9. Who would be responsible for determining if a member can perform the usual duties of the position for other California public agencies¹ in CalPERS?

CalPERS will determine if the member is capable of performing their usual duties for other California public agencies in CalPERS¹.

10. What is a similar position?

A similar position would be one with the same duties as the member's current position which provides reasonably comparable pay, benefits, and promotional opportunities.

¹ California public agencies in CalPERS include state, school and public employers.

11. Would the employer have to find the member a similar position?

No. Under the Nolan decision CalPERS is only required to determine if a similar position is available.

12. Who would determine if there is a similar position available?

CalPERS will utilize independent vocational experts to conduct job assessments to determine if there is a similar position available to the member.

13. What does an available position mean?

An available position would be a similar position that exists with a California public agency¹ in CalPERS. The position does not have to be offered to the member or be vacant.

14. Will the Nolan decision affect a member's eligibility for a disability retirement?

It may. Members may not qualify if they are substantially incapacitated for their current position but their disability is such that they could perform the same duties with other California public agencies in CalPERS¹.

15. If a member is disabled and cannot perform their job, how could he/she perform their job somewhere else?

Under certain circumstances it is possible that a member who cannot perform the usual duties of their current position may be able to perform the usual duties of the position for other California public agencies in CalPERS¹, and therefore would not be considered substantially incapacitated.

16. Will this have any effect on the Workers' Compensation system or requirements?

No. The Workers' Compensation system and requirements are separate from CalPERS and are governed by a different set of laws and regulations.

¹ California public agencies in CalPERS include state, school and public employers.