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Special:

Circular Letter

TO: STATE AGENCIES, AGRICULTURAL DISTRICTS, PUBLIC AGENCIES, PERSONNEL AND HEALTH BENEFIT OFFICERS, EXECUTIVE ASSISTANTS AND DIVISION SECRETARIES, STATE COLLEGES AND UNIVERSITIES, COUNTY SUPERINTENDENT OF SCHOOLS, MANAGEMENT SUPERVISORY AND CONFIDENTIAL, INDIVIDUAL SCHOOL DISTRICTS, CalPERS FORMS LIAISONS, AND EMPLOYEE REPRESENTATIVES

SUBJECT: DISABILITY RETIREMENT REVISIONS:
STEVEN W. NOLAN v. CITY OF ANAHEIM

BACKGROUND

Under longstanding practice relying on statute and judicial interpretation, a California Public Employees Retirement System (CalPERS) member has been eligible for disability retirement if the worker can show substantial incapacity to perform the usual duties required of his or her current position.

On September 1, 2004, the California Supreme Court concluded in the case of *Steven W. Nolan v. City of Anaheim* (Nolan Decision), that a disability retirement applicant must be substantially incapacitated from performing the usual duties of the position for his/her current employer *and* from performing the usual duties of the position for other California public agencies in CalPERS (including public agencies, State agencies, and schools) to qualify for a disability retirement. If it is determined that a member, who is incapacitated from his/her current position, can still perform the usual duties of his/her position for other California public agencies in CalPERS *and* that similar positions with reasonably comparable pay, benefits, and promotional opportunities are available to the member, the member would not qualify for disability retirement.

IMPLEMENTATION OF THE COURT DECISION

CalPERS has undertaken modifications to the disability retirement determination process consistent with the Court's decision. Consequently, new disability/industrial

disability retirement applications along with those that are pending decision or under appeal, will be determined in accordance with the new criteria.

CalPERS now requires each employer to provide more specific information regarding a member's job duties, pay range, promotional opportunities, and benefits. A number of disability retirement forms and letters have been modified to elicit the appropriate information required by the Court's decision. The above forms are attached and will be available on the CalPERS Web site by December 15, 2004. It is anticipated that additional time will be required to process disability retirement applications. Employers are asked to submit any requested documents as expeditiously as possible.

As a resource to you and your employees, attached is a list of "Frequently Asked Questions" (FAQ's) that we are providing on the Nolan Decision to assist as questions arise.

Public agencies making local safety determinations should apply their own interpretation of the Nolan Decision to their existing procedures. The CalPERS FAQ's and forms attached are intended only as a guide.

Disability retirement workshops for employers are anticipated to resume in spring 2005. If you have any questions, please call the Employer Contact Center at **888 CalPERS** (or **888-225-7377**).

Lori McGartland, Acting Chief
Actuarial and Employer Services Division

Attachments (4)