

DISABILITY RETIREMENT OR INDUSTRIAL DISABILITY RETIREMENT

LOCAL AGENCY DETERMINATION

PROCEDURES – Before the Retirement System can act on any local safety member's application for disability retirement, the following questions must be resolved by the agency and the information transmitted to CalPERS in the form of a Resolution:

Is the member substantially incapacitated from performing the usual duties for his/her current position *and* is the member substantially incapacitated from performing the usual duties of the position for other California public agencies in CalPERS?

If the member is found not to be substantially incapacitated for other California public agencies in CalPERS, indicate whether similar positions with reasonably comparable pay, benefits and promotional opportunities are or are not available to the member.

If incapacitated, will the incapacity exist for a permanent or extended and uncertain duration of six months or longer? It is the agency's responsibility to order a medical examination and obtain such evidence as is necessary to make a determination.

1. Such evidence may be obtained from the Workers' Compensation insurer. On the basis of its accumulated evidence, the agency must determine whether the member is disabled within the meaning of the Public Employees' Retirement Law.

This determination must be made within 6 months from the date of the CalPERS request for such determination. Also, the agency must bear the responsibility for any investigation of retired members for possible reinstatement action.

2. If a determination is made that the member is disabled, is the disability considered "industrial"? Industrial means disability as a result of injury or disease arising out of and in the course of employment as a local safety member (Government Code Section 20046). If there is no application filed with the Workers' Compensation Appeals Board for a determination pursuant to Government Code Section 21166, the agency is required to provide the determination of industrial causation.

If either the member or agency applies to Workers' Compensation Appeals Board for a determination, only that Board can decide the "industrial" question (Government Code Section 21166). A copy of this decision must be sent to CalPERS. CalPERS will assume that the findings are not disputed, and will proceed accordingly, unless the agency notifies CalPERS that a Petition for Reconsideration has been filed.

3. What is the last day of compensation? What is the effective date of retirement? The retirement effective date is established in accordance with Government Code Sections 21163 and 21164. These sections state that the member's retirement, without the member's consent, cannot be effective until:
 - a. The expiration of accrued sick leave or compensating time off, unless, with respect to such leave, the provisions of local ordinances or rules of the employer provide to the contrary; and/or
 - b. The termination of the employee's fully compensated leave of absence under Labor Code Section 4850; and/or
 - c. An earlier date during the leave when the disability is found to be permanent and stationary by the Workers' Compensation Appeals Board.

CalPERS will require the agency determining the member's disability to provide information necessary for CalPERS to determine the effective date. The member should not be kept on payroll to exhaust accrued vacation once a disability determination has been made. Government Code Sections 21252 and 21253 may also apply.

NOTE: Under Labor Code Section 4850, the leave cannot end earlier than one year unless the employee is determined to be permanent and stationary by the Workers' Compensation Appeals Board and the member will be receiving advanced disability pension payments – paid by the employer. See "Advanced Disability Pension Payments" on the next page.

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Is there any third party liability related to the injury which caused the disability? CalPERS requires that the agency file an accident report along with its decision as to the possibility of any third party liability. The reason for this information is that CalPERS will retain its rights of subrogation in disability cases.

4. If the member is found to be disabled due to a mental disorder, is the member competent to act on his own behalf in legally binding retirement matters? The agency must certify this information to CalPERS before a warrant can be issued to the member.
5. If a determination is made that the member is not disabled, the agency must notify the member and CalPERS. Notification to the member of their right to appeal the agency's decision and request a hearing within a designated number of days from the date of the notice, shall be by certified mail, return receipt requested, or by personal service.
6. If the member appeals the determination, the agency is required to comply with the Administrative Procedures Act (APA) in the disability retirement determination process.

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RESOLUTION NO. 1 DETERMINATION OF A MEMBER'S DISABILITY BY THE GOVERNING BOARD

Instructions:

- 1A. If the finding is that the member is not substantially incapacitated, use only this resolved clause.
- 1B. If the finding in 1A is that the member is substantially incapacitated, use this clause to also state whether or not the member is substantially incapacitated for the usual duties of the position with other California public agencies in CalPERS. If the member is found not to be substantially incapacitated for other California public agencies in CalPERS, indicate whether similar positions with reasonably comparable pay, benefits and promotional opportunities are or are not available to the member.
2. If the finding is that the member is disabled, use this clause to state whether or not the disability was a result of injury or disease arising out of and in the course of employment.
- 3A. If the finding is that the member is disabled, use this clause if neither the member nor the agency seeks a determination by the Workers' Compensation Appeals Board, pursuant to Government Code Section 21026.
- 3B. Use this clause if a petition has been or will be filed by either party.
- 4A. In the determination of the retirement effective date, use this clause if no dispute exists.
- 4B. In the determination of the retirement effective date, use this clause if the Workers' Compensation Appeals Board has disputed the retirement effective date.
 1. Use this clause to state that there is, or is not, a possibility of third party liability; i.e., whether or not the member's disability was caused by negligence or an intentional act of a party other than the employer.
 2. Use this clause to state whether or not the member will be paid Advanced Disability Pension Payments, and if so, how much.
 3. Use this clause to state the member's primary disabling condition. For psychiatric conditions, a clause stating whether or not the member is competent to act of his/her own behalf in legally binding retirement matters must be included.

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RESOLUTION NO. 1

RESOLUTION OF _____
(governing body)

(agency)

(Section 21156, Government Code)

WHEREAS, the _____ (hereinafter
(name of agency)

referred to as Agency) is a contracting agency of the Public Employee's Retirement System;

WHEREAS, the Public Employee's Retirement Law requires that a contracting agency determine whether an employee of such agency in employment in which he/she is classified as a local safety member is disabled for purposes of the Public Employee's Retirement Law and whether such disability is "industrial" within the meaning of such Law;

WHEREAS, an application for _____
(disability/industrial disability retirement)/(reinstatement from disability retirement)

of _____
(member's name)

employed by the Agency in the position of _____
(job title)

has been filed with the Public Employees' Retirement System; and

WHEREAS, the _____ has reviewed
(name of governing body)

the medical and other evidence relevant to such alleged disability;

(1A) NOW, THEREFORE, BE IT RESOLVED:

That the _____
(name of government body)

find and determine and it does hereby find and determine that

_____ incapacitated
(member's name) (is)/(is not)

within the meaning of the Public Employees' Retirement Law for performance of his/her usual duties in the position of _____; and

(job title)

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RESOLUTION NO. 1 (continued)

(1B) hereby find and determine that _____
(member's name) _____ (is)/(is not)

incapacitated for performance of the usual duties of the position for other California public agencies in CalPERS.

Similar Positions with reasonably comparable pay, benefits and promotional opportunities with other California public agencies _____ available.

(are)/(are not)

(2) BE IT FURTHER RESOLVED THAT THE _____
(name of governing body)

find and determine and it does hereby find and determine that such disability _____ a result of injury or
(is) / (is not)
disease arising out of and in the course of employment.

(3A) Neither said _____ nor the agency _____ has
(member's name) (name of agency)

applied to the Workers' Compensation Appeals Board for a determination pursuant to Section 21166 whether such disability is industrial.

OR

(3B) BE IT FURTHER RESOLVED THAT A PETITION _____
(will be filed) / (has been filed)

with the Workers' Compensation Appeals Board for a determination pursuant to Section 21166, Government Code; and a copy of such determination _____; and
(is attached) / (will be provided when rendered)

(4A) BE IT FURTHER RESOLVED that the member was, or will be, separated from his/her employment in the position of _____
(job title)

after expiration of his/her rights under Section 21164, Government Code, effective _____
(date)

and that no dispute as to the expiration of such leave rights is pending. His/Her last day on pay status is
_____.
(date)

OR

(4B) BE IT FURTHER RESOLVED that the member was separated from his employment in the position of _____
(job title) effective _____ the date
(date)

upon which the condition causing his/her disability became permanent and stationary as determined by the Workers' Compensation Appeals Board in the attached finding. His/Her last day on pay status is
_____.
(date)

(5) There _____ a possibility of third party liability.
(is) / (is not)

(6) Advanced Disability Pension payments _____ be made. (If payments will be made, provide
(will) / (will not)
amount and frequency.) The payments will be made _____ in the amount of \$ _____
(bi-weekly, monthly, etc.) (amount)
beginning _____.
(date)

(7) The primary disabling condition is _____. (If condition is psychological,
(condition)
add the following: The member _____ competent to act on his/her own behalf in legally binding
(is)/(is not)
retirement matters.)

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RESOLUTION NO. 2 DETERMINATION OF DISABILITY BY THE OFFICIAL DELEGATE

This Resolution is made by an Official Delegate appointed by the Governing Body. The Governing Body delegates the authority to determine the disability with a written "Delegation of Authority" (Resolution No. 3). A copy of the "Delegation of Authority" (Resolution No. 3) should be attached to the Determination of Disability (Resolution No. 2).

Instructions:

- 1A. If the finding is that the member is not substantially incapacitated, use only this resolved clause.
- 1B. If the finding in 1A is that the member is substantially incapacitated, use this clause to also state whether or not the member is substantially incapacitated for the usual duties of the position with other California public agencies in CalPERS. If the member is found not to be substantially incapacitated for other California public agencies in CalPERS, indicate whether similar positions with reasonably comparable pay, benefits and promotional opportunities are or are not available to the member.
- 2A. If the finding is that the member is disabled, use this clause if neither the member nor the agency seeks a determination by the Workers' Compensation Appeals Board, pursuant to Government Code Section 21026.
- 2B. If the finding is that the member is disabled, use this clause if a petition has been or will be filed by either party.
- 3A. In the determination of the retirement effective date, use this clause if no dispute exists.
- 3B. In the determination of the retirement effective date, use this clause if the Workers' Compensation Appeals Board has disputed the retirement effective date.
4. Use this clause to state that there is, or is not, a possibility of third party liability; i.e., whether or not the member's disability was caused by negligence or an intentional act of a party other than the employer.
5. Use this clause to state whether or not the member will be paid Advanced Disability Pension Payments, and if so, how much.
6. Use this clause to state the member's primary disabling condition. For psychiatric conditions, a clause stating whether or not the member is competent to act on his/her own behalf in legally binding retirement matters must be included.

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RESOLUTION NO. 2

(1) Pursuant to the authority delegated to me by action of _____
(governing body)

of _____ (hereinafter referred to as Agency)
(name of agency)

dated _____, under Section 21173, Government Code, and after review of
medical and other evidence relevant thereto, I hereby determine that _____
(member's name)

a local safety member of the Public Employees' Retirement System, employed by the Agency
_____ incapacitated within the meaning of the Public Employees' Retirement Law
(is)/(is not)

for performance of his/her duties in the position of _____ and
(job title)

(1B) hereby find and determine that _____
(member's name) (is)/(is not)

incapacitated for performance of the usual duties of the position for other California public agencies in
CalPERS.

Similar Positions with reasonably comparable pay, benefits and promotional opportunities with other California
public agencies _____ available.

(are)/(are not)

(2A) Pursuant to such authority I also determine that such incapacity _____ a result of injury or
(is)/(is not)

disease arising out of and in the course of his/her employment as a local safety member. I certify that
neither the Agency nor the member has filed a petition for determination under Government Code
Section 21166, to be made by the Workers' Compensation Appeals Board.

OR

(2B) A petition for determination under Government Code Section 21166 whether such disability is the
result of injury or disease arising out of and in the course of his/her employment by the Agency, in
which he/she was a local safety member, has been filed with the Workers' Compensation Appeals
Board. A certified copy of such a determination _____.

(is attached)/(will be provided when rendered)

(3A) I hereby certify that the member was separated from his/her employment in the position
_____ after expiration of his/her leave rights under
(job title)

Section 21164, Government Code, effective _____ and that no dispute as to the
(date)

expiration of such leave rights is pending. His/Her last day on pay status is _____
(date)

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RESOLUTION NO. 2 (continued)

(3B) I hereby certify that the member was separated from his/her employment in the position of _____ effective _____ the day _____
(job title) (date)

upon which the condition causing his/her disability became permanent and stationary as determined by the Workers' Compensation Appeals Board in the attached finding. His/Her last day on pay status is _____.

(4) There _____ a possibility of third party liability.

(is)/(is not)

(5) Advanced Disability Pension payments _____ be made. The payments will be
(will)/(will not)

made _____ in the amount of \$_____ beginning _____.
(bi-weekly, monthly, etc.) (amount) (date)

(6) The primary disabling condition is _____. (If condition is psychological,
(See Local Agency Determination No. 5)

add the following: The member _____ competent to act on his/her own behalf in legally binding
(is)/(is not)

retirement matters.)

**DISABILITY RETIREMENT OR
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RESOLUTION NO. 3

RESOLUTION OF _____
(name of governing body)

(name of agency)

WHEREAS, the _____ (herein referred to as Agency)
(name of agency)

is a contracting agency of the Public Employees' Retirement System;

WHEREAS, the Public Employees' Retirement Law requires that a contracting agency determine whether an employee of such agency in employment in which he/she is classified as a local safety member is disabled for purposes of the Public Employees' Retirement Law and whether such disability is "industrial" within the meaning of such Law:

WHEREAS, _____ has determined upon legal
(name of governing body)

advice that it may delegate authority under Section 21173 of the Government Code to make such determinations to the incumbent of the office/position of _____
(title)

NOW, THEREFORE, BE IT RESOLVED:

That the _____ delegate and it does hereby delegate
(name of governing body)

to the incumbent of the office/position of _____ authority to make
(title)

determinations under Section 21152(c), Government Code, on behalf of the Agency, of disability and whether such disability is industrial and to certify such determinations and all other necessary information to the Public Employees' Retirement System; and

BE IT FURTHER RESOLVED that such incumbent be and he/she is authorized to make applications on behalf of the Agency for disability retirement of all employees and to initiate requests for reinstatement of such employees who are retired for disability.