

Local Safety
Disability
Retirement
Resource Guide



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The Local Safety Resource Guide for Disability Retirement is designed for public agency employers who make disability determinations for local safety members under Government Code 21154. The guide covers requirements and responsibilities for both employers and employees regarding disability retirement and reinstatement. For additional information, view our other [Reference Guides](#).

If you have comments or suggestions for future editions of this guide, [contact us](#).

Overview of Disability Retirement

CalPERS is a defined benefit plan. We provide monthly benefits based upon a member's years of service, age, and highest compensation.

Disability retirement is a monthly retirement allowance payable to the member for life, or until recovery from the disabling injury or illness.

The disability does not have to be permanent, however, it must last at least 12 consecutive months. A member can reinstate or return to employment at a later date, if a doctor certifies they have recovered from the disabling illness or injury.

Types of Disability Retirement

The type of benefit a member receives depends upon their category of membership and how the employer has contracted for benefits.

Disability Retirement (also referred to as DR) is the inability to perform the usual job duties, due to an injury or illness regardless of how the disability originated.

Industrial Disability Retirement (also referred to as IDR) is the inability to perform the usual job duties due to a work-related injury or illness. This classification is for safety members and agencies that specifically contract for this benefit.

Eligibility to Apply for DR/IDR

Disability Retirement

Membership Category	Vesting Requirements	Age Requirement
State Miscellaneous	Tier 1: Must have 5 years credited service Tier 2: Must have 10 years credited service, unless the member has 5 years of credited service under Tier 1 prior to 1/1/85	None
School Employees	Must have 5 years credited service	None
Local Miscellaneous	Must have 5 years credited service	None
Local Safety	Must have 5 years credited service	None

Industrial Disability Retirement

Membership Category	Vesting Requirements	Age Requirement
State Safety	None	None
State Industrial ¹	None	None
State Miscellaneous ²	None	None
School Safety	None	None
Local Safety	None	None
Local Miscellaneous (if contracted for this benefit)	None	None

¹ Injury must be caused by a violent attack from an inmate

² Injury must be caused by a violent attack from a patient or client

Basis to Grant DR/IDR

CalPERS is governed by specific laws and regulations contained in the California Public Employees' Retirement Law.

Government Code section 20026 defines "disability" and "incapacity for the performance of duty".

"Disability" and "incapacity for performance of duty" as a basis of retirement, mean disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board, or in the case of a local safety member by the governing body of the contracting agency employing the member, on the basis of competent medical opinion.

Government Codes Related to Local Safety

Government Code 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.

Government Code section 21156(b)(1) provides that the governing body of a contracting agency upon receipt of request of the board pursuant to Government Code section 21154 shall certify to the board its determination under this section that the member is or is not incapacitated.

Local Safety agencies will make a medical determination for both disability retirement and industrial disability retirement.

When to Apply for Disability Retirement

The member should immediately apply for disability retirement if they are unable to perform the usual duties of their position, due to a physical or mental condition, and if their condition is expected to be permanent or last longer than 12 months.

If a workers' compensation claim has been filed, the condition does not have to be permanent and stationary.

In any case, the member should apply as soon as they know they cannot perform the essential functions of their job and the incapacity is expected to be permanent or last longer than 12 months.

If a member has a severe or life-threatening medical condition, the member or the member's family should be advised to contact CalPERS to request **Emergency Retirement Counseling**. Even if the member is not ready to submit a retirement application, the member should contact CalPERS for important information regarding the member's retirement and survivor benefits.

Application Requirements

Under Government Code section 21154, an application for disability retirement must be made (a) While the member is in active service; (b) While the member, for whom contributions will be made under Section 20997, is absent on military service; (c) Within four months after the discontinuance of the service, or while on an approved leave of absence (this is the most common scenario under which a member applies); or (d) While the member is physically or mentally incapacitated to perform duties from the date of discontinuance of service to the time of application.

If a member applies for disability greater than four months following last day on pay, then the medical records must reflect "continuous disability." This means the member's medical records must reflect documented evidence of continuous disability from last day on pay through the date of the application and ongoing.

If a member waits too long to apply, it may be outside of our guidelines covered by the law. It's best to apply immediately.

Who Can Apply

In most cases it will be the member who applies for disability retirement; however, an employer, or someone other than the employer, can also apply on the member's behalf. For example, a spouse or relative, Conservator, or Power of Attorney can apply for the member.

A spouse or relative can apply on the member's behalf, but cannot choose an option or beneficiary unless they have a Power of Attorney.

Service Pending DR/IDR Applications

If a member meets the vesting and age requirements for service retirement, then they can apply for Service pending DR/IDR.

This will allow them to receive a service retirement allowance while the disability retirement is being determined.

The minimum age for Service Retirement is 50 for classic employees (hired prior to 1/1/13) and 52 for Public Employees' Pension Reform Act (PEPRA) miscellaneous employees (hired on or after 1/1/13). The minimum age for PEPRA safety members is age 50. For state Tier II employees, the minimum age is 55.

A Service pending DR/IDR application cannot be submitted more than 120 days before the requested retirement date.

If the date the application is submitted is more than 120 days from the requested retirement date, then the Service Retirement portion of the application will be rejected.

If this occurs, we will proceed with the DR/IDR portion of the application. The member can resubmit the service retirement application at a later date when the retirement date is within 120 days.

Member Originated Application

The first thing that should be either provided to the member or requested by the member is our booklet titled **[A Guide to Completing Your CalPERS Disability Retirement Application \(PDF\)](#)**.

We highly suggest the member complete the CalPERS **[Retirement Allowance Estimate Request Form \(PDF\)](#)** before submitting their DR application. This will determine if disability retirement is beneficial.

In some cases, depending on age, years of service and final compensation, service retirement will be more beneficial.

Estimates take approximately 45-days to complete.

Additional information regarding submitting a disability retirement application can be found in our [Circular Letter #200-018-17 \(PDF\)](#).

Required Forms for Local Safety

To apply for disability or industrial disability retirement, the required forms for a Local Safety member are a completed Disability Retirement Election Application and the Authorization to Disclose Protected Health Information form signed and dated by the member.

The Employer Information for Disability Retirement form is also required from the member. The member should sign and date the form and send it directly to their employer.

Required Forms for Local Safety	Forms Not Required for Local Safety
Disability Retirement Election Application (PDF)	Physical Requirements of the Position (PDF)
Employer Information for Disability Retirement (PDF)	Physician's Report on Disability Form (PDF)
Authorization to Disclose Protected Health Information (PDF)	Workers' Compensation Carrier Request Form (PDF)

Completing the Disability Retirement Election Application ^(PDF)

It is very important for a member to be as thorough as possible when completing the application. If the application is incomplete, this will delay the process.

Local Safety members are required to complete all sections in the disability retirement application.

In **Section 2** the member does not need to designate a retirement date to begin the process unless they are requesting service pending disability retirement.

In **Sections 3-4** the member provides information regarding their disability.

In **Section 5** the member must select a retirement payment option.

In **Section 6** the member must name a beneficiary.

In **Sections 7-8** the member provides information regarding the lump sum death beneficiary and survivors.

Section 9 should be completed if the member has filed a workers' compensation claim.

Section 13 must be completed if the member is married or in a registered domestic partnership and names someone other than their spouse or domestic partner as a beneficiary.

In **Section 14** the member's signature must be witnessed by a CalPERS representative or public notary.

Employer Information for Disability Retirement Form ^(PDF)

This form is the member's authorization for the employer to release medical or personnel information to CalPERS.

The member should sign and date the form and submit it to their employer. This form allows you to provide CalPERS with required medical and employment information necessary to determine the member's eligibility to apply for DR/IDR.

This form should be used as a cover sheet when you submit information to CalPERS.

Authorization to Disclose Protected Health Information Form ^(PDF)

This form is the member's authorization to release their medical or personnel information to CalPERS.

The member should sign and date the form and submit it to CalPERS. This form allows CalPERS to obtain the member's medical and/or personnel records to determine the member's eligibility to apply for DR/IDR.

Disability Review Process: Member Originated Application

For Local Safety members, once a complete application is received, we will determine if the member is eligible to apply for disability retirement. Some situations may render the member ineligible to apply, such as if they have been terminated for cause or resigned in lieu of termination.

If the member submits a late application, we must determine if we can accept the application. An application is considered late when a member submits a Disability Retirement application after they are already on Service Retirement and they are requesting to have their Service converted to a DR/IDR. For more information, go to the [Corrections of Errors and Omissions](#) section.

The employer must wait for CalPERS to determine the member's eligibility to apply for disability retirement before making a medical determination.

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

For CalPERS to determine whether the member is eligible to apply for disability retirement you must forward all relevant personnel documents and medical records to CalPERS 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

You must obtain CalPERS' determination that the member is eligible to apply for disability retirement before you start the process of a disability determination.

Employer Originated Application

Government Code section 21153 obligates the employer to file on behalf of the member if you have reason to believe they may be disabled and the member has not applied on their own behalf.

You cannot separate the employee without first filing on their behalf.

It takes only a few forms to get the process started. CalPERS will then contact and follow up with the member.

Prior to applying for disability retirement on a member's behalf, issues of modified work and reasonable accommodations should have been considered and exhausted.

We like to remind employers that disability retirement is not a means of handling personnel issues.

Who is Authorized to Apply

Government Code section 21152 states an Employer Originated application for a member who is an employee of a contracting agency can be submitted by the governing body, or an official designated by the governing body of the contracting agency.

Government Code section 21173 states the governing body of a contracting agency may delegate any authority or duty conferred or imposed under this article to a subordinate officer subject to conditions it may impose.

If you are unsure of who is authorized to apply and sign for your agency, contact CalPERS. CalPERS staff will verify that the appropriate person has signed the application.

Completing the Employer-Originated Disability Retirement Application ^(PDF)

Under **Application Type**, check the box indicating whether this is a disability retirement or industrial disability retirement application.

Section 1 asks for information about the member.

Section 2 asks for information about the member's spouse or registered domestic partner.

Section 3 asks for information regarding the member's employment.

Section 4 asks for information about the member's disability.

Section 5 asks for information about any workers' compensation claims the member has filed.

Section 6 must be completed and signed by the authorized employer representative.

Additional Information to Submit to CalPERS

In addition to the required application, you must submit personnel records, including any Adverse Actions and/or investigative reports.

Medical information, such as Fitness for Duty reports, doctor's notes, and accident reports should also be included.

CalPERS will review this information to determine if the member is eligible to apply for disability retirement. Do not begin the medical determination process until you receive CalPERS' notification that the member's application has been accepted.

Disability Review Process: Employer Originated Application

Once the employer's application is received for a Local Safety member, we will notify the member and send them an application.

The member should complete the application and send it to CalPERS; however, if the member is not in agreement with the filing of the application, they are not required to sign the form. As a result, the application will be cancelled and the member and employer will be notified.

If the member completes and returns the application, CalPERS will determine the member's eligibility to apply for disability retirement. The employer will be notified by CalPERS that a determination must be made within six months of the notice, unless the local safety member waives the requirements of this provision under Government Code section 21157. The member will also be notified by CalPERS that the employer will provide a determination of their disability within six months of the notice, unless these requirements are waived by the member.

Haywood, Vandergoot, and Smith Cases

Case law impacts a member's eligibility to apply for and qualify for disability retirement. The Haywood, Vandergoot, and Smith cases provide clarification regarding the member's eligibility for disability retirement.

Haywood v. American River Fire Protection District (1998) 67 Cal.App.4th 1292, 79 Cal. Rptr.2d 749 holds that when an employee is terminated for cause and the discharge is not the ultimate result of a disabling medical condition, the termination renders the employee ineligible for disability retirement.

In the **Matter of the Application for Industrial Disability Retirement of Robert Vandergoot and California Dept. of Forestry and Fire Protection, Respondents, dated February 19, 2013 (PDF)** holds that when an employee resigns in lieu of termination and the employment relationship is severed as a result of the pending disciplinary action, then the resignation renders the employee ineligible for disability retirement.

Smith v. City of Napa (2004) 120 Cal. App. 4th 194 holds that if a member's disability matured before the member was terminated, or under principles of equity, the claims was delayed through no fault of the terminated employee, then the member is eligible to apply for disability retirement.

Corrections of Errors and Omissions

There are times when the member will ask CalPERS to accept a DR/IDR application outside of the time requirements defined by law or request a retirement date outside the guidelines set by law.

These may be considered mistakes or omissions made by the member, employer, or CalPERS.

Under certain circumstances, a “correction of an error or omission” can be remedied.

Criteria for Correction

To determine if a correctable mistake has been made, CalPERS will send a letter to the member and employer requesting information to determine if the member meets the criteria for correction under Government Code section 20160.

We will look to see if the member made a request to correct the error or omission within a reasonable time frame (six months) after the discovery of the right to make the correction.

The error or omission must be the result of mistake, inadvertence, surprise, or excusable neglect.

How the Employer Can Help

The employer can help minimize errors and omissions made by the member. If the employer is aware of medical conditions or workers’ compensation claim(s) at the time of an employee’s separation, they should counsel their employee and provide information on disability retirement.

The employer should discuss with the member all their options, including disability retirement and provide the member with a [Disability Retirement Application Publication \(PDF\)](#).

It is important for the employer to document conversations and materials provided to the member and respond to CalPERS correspondence with documentation, so CalPERS can determine if the member made a correctable mistake.

Do not start the determination process until the member’s eligibility to apply for disability retirement has been determined.

Local Safety Process

Once CalPERS has determined the member is eligible to apply for disability retirement, the governing body of the contracting agency may start the process of making a disability determination.

Government Code section 21156 states if the medical evidence shows to the local governing body that the member is substantially incapacitated then the board shall immediately retire them for disability.

The governing body must certify to CalPERS that the member is or is not incapacitated through a determination document, also known as a “resolution.”

The determination must meet CalPERS criteria for substantial incapacity and be based on a competent medical opinion, as well as medical records and other available information to support the medical opinion.

Government Code section 21156 (a)(2) states disability retirement shall not be used as a substitute for the disciplinary process.

Understanding CalPERS Criteria

Government Code section 20026 defines “disability” and “incapacity for the performance of duty” as a basis of retirement.

It is defined as disability of permanent or extended duration, which is expected to last at least 12 consecutive months or will result in death, as determined by the board, or in the case of a local safety member by the governing body of the contracting agency employing the member, on the basis of competent medical opinion.

Continuous Disability Requirement

Government Code section 21154(d) states if the member does not apply for DR/IDR within four months after discontinuance of service, or while on an approved leave of absence, then continuous disability must be established.

The member must provide medical records of his or her physical or mental incapacity to perform the duties of his or her position from one year before their last day of physical work to the present.

To establish continuous disability, there must be medical substantiation in file from the last day of physical work to the present, with no gaps in medical treatment records more than six months during this period.

If continuous disability is not established, the application is canceled.

Medical Qualifications for Disability Retirement

To qualify for a disability retirement, a CalPERS member must be currently substantially incapacitated for the performance of their usual duties.

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 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 they are disabled for CalPERS retirement purposes; otherwise, the member is not disabled.

Note: Usual duties are not exclusively determined by the official job description.

For example, if the employer has lighter duties available on a permanent basis, then the lighter duties should be used in evaluating disability.

Additional information regarding medical qualifications for disability retirement can be found in our [Circular Letter #200-018-17 \(PDF\)](#).

Prophylactic Restrictions are Not a Basis for a Disability Retirement

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. If a disability is not currently present but just may occur in the future, the member is presently ineligible for a CalPERS disability retirement. Furthermore, prophylactic restrictions are not a basis for a disability retirement.

Rules of Presumption Do Not Apply

The Workers' Compensation Appeals Board does not have the authority to grant CalPERS disability benefits to a member. (Government Code section 21166). If the Workers' Compensation Appeals Board awards industrial disability benefits to a member under the Labor Code, the judgment does not bind CalPERS, which is governed by a different body of law.

Independent Medical Examination (IME)

In order to make a medical determination, the employer must review all medical, employer, and workers' compensation information. To resolve any conflicting information, an Independent Medical Examination (IME) may be necessary.

An IME can be used to resolve medical conflicts or provide clarifying information. It is also used when the medical evidence does support the condition is disabling.

The local safety agency is responsible for scheduling and paying for the IME to assist them in making the medical determination.

Requirements of IME Examiner

If you use a third party medical examiner for an IME, the examiner should be medically qualified to perform the exam, able to schedule examinations, and provide written reports in a timely manner, and remain neutral and objective.

Local Safety Determination

If the member is found to be substantially incapacitated, the employer will inform CalPERS via a determination document, also known as a **resolution or a determination letter**, and CalPERS will immediately retire the member on disability.

If the member is found to not be substantially incapacitated, the local safety member may appeal the determination to their governing body.

If the member appeals, the member and/or employer needs to inform CalPERS in writing within 30 days of the determination letter from CalPERS.

Determination by Governing Body of Contracting Agency

Under Government Code section 21157, the governing body of a contracting agency shall make a determination within six months of notice from CalPERS that an application has been filed.

An exception to this six-month timeframe would be only if the member has waived this requirement in writing. The waiver should be submitted to CalPERS.

If the resolution for determination is not received within 12 months, CalPERS will cancel the application.

Authority to Make the Disability Determination

Each contracting agency should adopt a formal resolution or ordinance which describes their disability determination procedure and incorporates the Administrative Procedures Act (APA) requirements.

The resolution should state which body or officer of the agency will make the disability determination.

A determination is rendered by a “resolution” (decision made by employer’s board) or a “letter of determination” which is signed by their delegated authority.

The resolution that is submitted to CalPERS must be signed by the governing body or its lawful delegate (i.e., City Manager, Chief Administrative Officer, County Executive).

The governing body may choose to delegate the responsibility of making a determination.

A certified copy of the delegation order of this authority should be on file with CalPERS or it should accompany the finding.

Resolution/Determination Document for Disability Retirement

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

1. A statement certifying under penalty of perjury that the determination was not used as a substitute for the disciplinary process.
If the member was terminated for cause or resigned in lieu of termination, 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.
2. A statement certifying under penalty of perjury that the determination was made based on competent medical opinion.
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.
4. A statement from the employer that there is competent medical opinion certifying the disability is expected to a) be permanent; b) last at least twelve consecutive months from the date of an application for benefits; or c) will result in death.
5. 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).
6. 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.
7. A finding by the employer as to whether or not the causation of the disability was industrial.
 - a. In the 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.

8. 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 (Government Code section 21164).
9. 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 (Government Code 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.
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.

Sample resolutions are available to view in the Appendix section of the [Public Agency & Schools Reference Guide \(PDF\)](#).

Injury Caused by a Third Party (Subrogation)

Under Government Code section 20250, if someone other than the employer caused an injury that results in CalPERS' disability retirement benefits being paid, CalPERS has the right to recover up to one-half of the total retirement benefit costs from the responsible party. This is known as the "right of subrogation."

Subrogation exists when the member's injury is caused by a third party. For example, the member becomes disabled after being hit by a car. The driver of the car is the third party who caused the member's injury.

If the member is injured by a third party, this should be indicated in Section 3 of the Disability Retirement Application.

If the member is at retirement formula age at the time we receive the application, CalPERS will not pursue subrogation.

Inform CalPERS

The member must inform CalPERS if they pursue a claim against any person for the same injuries that also entitle them to a disability retirement, other than a workers' compensation claim or an uninsured motorist claim.

The member must inform CalPERS even if the claim has not yet resulted in a court action.

CalPERS has the right to participate in the claim by filing its own action against the responsible party, intervening in the member's claim and filing a lien against any judgment the member may recover.

If the member settles such a claim without notifying CalPERS, we may also be entitled to file a lawsuit against the member for recovery under our right of subrogation.

When CalPERS has knowledge of a possible third-party liability, CalPERS must notify the member prior to settlement of our right to subrogation.

An Accident Report form will be sent to the member for completion.

Advanced Disability Pension Payments (ADPP)

Employers must make Advanced Disability Pension Payments (ADPP) to safety members who have qualified for benefits under Labor Code section 4850.

Per Labor Code section 4850, 4850.3 and 4850.4(d), a member is eligible to receive ADPP only if **ALL** of the following requirements are met:

- 1) Has qualified for benefits under Section 4850
- 2) Has submitted an application for industrial disability retirement
- 3) Fully cooperates in providing the employer with medical information and in attending all statutorily required medical examinations and evaluations set by the employer
- 4) Fully cooperates with the evaluation process established by the retirement plan.

Note: ADPP cannot be paid to members who are receiving a service retirement allowance.

When to Begin Paying ADPP

ADPP must be paid **prior** to the disability determination and payments must begin within a specific period of time.

You must begin ADPP no later than 30 days from the date of the last payment of:

1. Salary or wages;
2. Benefits under Labor Code section 4850; or
3. Sick leave.

You must continue to pay ADPP until the member is approved or denied disability retirement.

Computing ADPP

It is recommended that when you compute the amount of ADPP that you only pay 50% of the employee's salary, no special compensation, or other benefits.

If CalPERS has notified you or you are aware of any community property issues, we recommend only paying 25%.

This is important so that there will not be a significant overpayment to the member.

Employee's Responsibility

It is the employee's responsibility to file an application for disability retirement at least 60 days prior to receiving ADPP.

The employee must cooperate in providing the employer with medical information and attending the medical evaluations that are set up by the employer.

If the employee fails to cooperate, this could result in time delays that will have a direct impact on when ADPP will begin. Any time delay will extend the starting date beyond the employer's 30-day requirement.

ADPP Repayment Process

If the disability retirement application is approved, CalPERS will reimburse the employer the amount of ADPP that was paid to the member from the retroactive portion of the retirement allowance - only if the employer reported the amount of ADPP paid in the resolution. Otherwise, the agency and the member shall arrange for repayment.

If the amount of ADPP exceeds the retroactive amount, the balance due to the employer will be reimbursed from the member's monthly retirement allowance at a rate of 10% until the reimbursement is satisfied.

If the disability retirement application is denied, the employee is responsible for reimbursing the employer the amount of ADPP received and any repayment plan is decided between the employer and employee. CalPERS is not a party in this matter.

Reevaluations

Under Government Code section 21192, the governing body of the employer has the authority to reevaluate a disability retiree under voluntary service retirement age to ensure they continue to be substantially incapacitated from the position which they disability retired from and eligible to receive disability benefits.

If it is determined the retiree is no longer disabled, they may be reinstated to employment, unless the retiree has signed a waiver.

Under Government Code section 21175, if the disability retiree refuses to submit to a medical examination, the pension portion of their allowance may be discontinued until their withdrawal of refusal. If the refusal continues for one year, the disability retirement allowance may be cancelled.

Reevaluation Process

In order to conduct a reevaluation, the process should include, but is not limited to, gathering the following information:

1. Is the retiree currently employed?
 - a. What type of work is the retiree doing? Is the retiree working which their work restrictions?
 - b. Obtain a job duty statement and physical requirements of the job for comparison.
2. Is the retiree currently being treated for their disability?
 - a. If yes, obtain a list of their treating physician(s) and contact information, and request their medical records since retirement.

- b. If no, or the medical records received from the treating physician do not substantiate a continuous disability, the retiree should be evaluated by an Independent Medical Examiner.
3. If indicated, consider surveillance.

Failure to cooperate with any stage of the reevaluation process will be considered a refusal to submit to a medical examination under Government Code section 21175.

The agency should inform CalPERS to take appropriate actions if a retiree is uncooperative with the process.

In accordance with Government Code sections 20128, 20221, and 21192, the agency is requested to submit their determination on the reevaluation 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.

Local Safety Appeals

Local safety members who wish to appeal their determination must submit their appeal in writing to the governing body of the contracting agency within 30 days of notice of the determination.

Any additional evidence should be provided with the appeal for consideration by the governing body.

If there is a change in the decision, the local safety agency must submit a new resolution for determination to CalPERS. CalPERS will then notify the appropriate parties and the member will be placed on roll.

If there is no change in the decision, the local safety agency must inform CalPERS and no additional actions will be taken by CalPERS.

Administrative Procedures Act Process

If the hearing is conducted by the Administrative Law Judge (ALJ) as the presiding officer, the decision and Finding of Fact are made by the City Manager, City Council, Personnel Board, or other designated fact finder.

If the hearing is before the ALJ alone, the ALJ will issue their proposed decision to the employer. The proposed decision is reviewed by the City Manager, City Council, Personnel Board, or other designated fact finder. The employer can then adopt the ALJ's decision as their decision or the employer can reject the decision without hearing additional evidence.

The decision and findings are served on the member by certified mail and CalPERS is notified. The member is given a specified period of time to seek judicial review. This is done by filing a Petition for Writ of Mandate in the Superior Court. CalPERS is notified after 30 days if the Petition for Writ of Mandate was filed or not.

Disability Retirement Fraud

CalPERS is responsible for ensuring no fraudulent applications are processed for disability retirement benefits.

To prevent fraud, CalPERS has a Disability Validation Team and a fraud tip line.

The Disability Validation Team consists of disability retirement analysts and our Legal Office.

If you need to report possible disability fraud, we have a tip line. You can call 1-888CalPERS (1-888-225-7377) and follow the prompts.

If CalPERS receives any information on a Local Safety employee/retiree from our fraud tip line, we will refer the information to the employer to investigate.

Employment After Disability Retirement

Disability retirees may receive their disability retirement allowance and work at the same time if they meet specific criteria under the law. Both a disability retiree and an employer share equal responsibility to ensure the employment complies with the retirement law when hired and during the entire course of the employment.

For more information, refer to our [CalPERS Public Agency & Schools Reference Guide \(PDF\)](#).

Screen for Retirees When Hiring

When interviewing potential employees, the employer should ensure they lawfully hire CalPERS retirees with the following actions:

- Ask if the candidate is a CalPERS retiree and if so, to specify the type of retirement: service, disability, or industrial disability.
- If the candidate is a CalPERS service retiree and the position is not a retired annuitant position, inform the candidate that reinstatement from retirement (i.e., termination of the CalPERS retirement and enrollment as an active employee) is required to be hired into the position.
- If the candidate is a CalPERS disability/industrial disability retiree and the position is a retired annuitant position, ensure the position is not the same position from which the candidate retired or a position which includes duties or activities they were restricted from performing at the time of their disability retirement. If the position is not a retired annuitant position, inform the candidate that CalPERS' pre-approval must be obtained before being hired.

Retired Annuitant Employment

Disability retirees may be employed in a retired annuitant position with a CalPERS-covered employer without reinstatement from disability retirement. However, disability retirees cannot be employed in the same position from which they retired or in a position which includes duties or activities they were restricted from performing at the time of their disability retirement.

If an employer needs help to determine if the employment is legal, they can send the duty statements and physical requirements to CalPERS for review.

CalPERS-covered employers are required to report all retired annuitant appointments, earnings, and hours to CalPERS.

There are two types of retired annuitant employment: **Extra Help Positions** and **Interim Vacant Positions**.

Extra Help Positions

The retired annuitant employment restrictions for extra help positions are authorized by Government Code sections 7522.56, 21224, 21227, and 21229. The retiree must meet the following restrictions:

1. **Limited duration work** | The retiree has the skills needed to perform work of limited duration or your employment is needed during an emergency to prevent stoppage of public business
2. **Compensation** | The hourly pay rate the retiree receives cannot be less than the minimum or exceed the maximum paid to other employees performing comparable duties
3. **960-hour limit** | The hours the retiree works cannot exceed 960 hours in a fiscal year with all CalPERS employers combined
4. **Unemployment insurance payments** | The retiree cannot be appointed as a retired annuitant if they received unemployment insurance payments for prior retired annuitant work for any CalPERS employer within 12 months prior to their appointment date

Interim Vacant Positions

To be appointed to an interim position by the governing body of an employer, as authorized by Government Code sections 7522.56 and 21221(h), the retiree must meet all the requirements for an extra help position, as well as:

1. **Active recruitment** | Before the retiree is hired, the employer must have in place an active recruitment for a permanent replacement for the vacant position
2. **Limited duration work** | The retiree can be hired only as an interim or acting appointment during the period of recruitment; they cannot work in a permanent capacity or for an indefinite period of time

3. **Single appointment** | The retiree can be appointed only once to the vacant position
4. **Compensation** | The retiree's hourly pay rate cannot be less than the minimum or exceed the maximum for the vacant position.

Eligibility Requirements for Retired Annuitants

In addition to the requirements for an Extra Help or Interim Vacant position, all retirees must meet both of the following two requirements:

1. Bona fide separation in service requirement
2. 180-day wait period requirement

The retiree cannot be employed as a retired annuitant if they are younger than the "normal retirement age" on their retirement date, unless there was no verbal or written agreement to return to work as a retired annuitant between the retiree and any CalPERS employer before they retired and there is a termination of employment (separation in service) for 60 days between their retirement date and the date their limited duration employment as a retired annuitant will begin.

There must be a 180-day break from employment before returning to work as a retired annuitant. The 180-day wait period begins on the retiree's retirement date. However, the 180-day waiting period may be waived for the following:

1. To fill a critically needed position sooner than 180 days
2. Retiree will participate in the California State University's Faculty Early Retirement Program (FERP)
3. Retiree is a CalSTRS retiree who is subject to sections 24212, 24214.5, or 26812 of the Education Code. For more information, contact CalSTRS

Key Points for Retired Annuitant Employment

CalPERS approval is not required for a Retired Annuitant position.

Retiree is not brought back into CalPERS active service, retirement contributions are not being made, and service credit is not being earned.

An earnings limit does not apply and payroll is reported to CalPERS.

The position must be a temporary or limited term position.

The appointment is limited to 960 hours per fiscal year. If the 960 hours limit is exceeded, this is considered unlawful employment, and the retiree is subject to reinstatement from retirement into the position in which the unlawful employment occurred.

Retiree must have State Employer Civil Service Eligibility for employment with a state agency employer.

Retiree cannot receive unemployment benefits for the 12 months preceding their appointment date.

Disability retirees cannot be employed in the same position from which they retired or in a position which includes duties or activities they were restricted from performing at the time of their disability retirement.

Permanent Full-time or Permanent Part-time Employment

Disability retirees may be employed in a permanent position with a CalPERS-covered employer without reinstatement from disability retirement under Government Code section 21232.

The permanent full-time or permanent part-time position must be significantly different from the position from which the retiree retired. The position should not include duties or activities the retiree was previously restricted from performing at the time of their disability retirement.

If an employer needs help to determine if the employment is legal, they can send the duty statements and physical requirements to CalPERS for review.

Eligibility Requirements for Permanent Positions

To be eligible for employment, the retiree must meet the following requirements:

1. 60-day bona fide separation between their retirement date and the date their employment will begin, if the retiree is under the normal retirement age
2. 180-day wait period from their retirement date or an allowable exception
3. No receipt of unemployment insurance payments for previous retired annuitant employment for 12 months before the appointment
4. State Employer Civil Service Eligibility for employment with a state agency employer
5. The position must not be the same position or classification from which the retiree retired or in the same member classification, and the position should not include duties or activities the retiree was previously restricted from performing at the time of their disability retirement

Applying to Work Under Government Code section 21232

The retiree must have CalPERS' written approval before beginning employment.

The retiree is required to submit the following required documents to CalPERS:

- **Request to Work While Receiving Disability / Industrial Disability Retirement Benefits Form (PDF)**
- **Physical Requirements of the Position Form (PDF)**
- Position duty statement
- Current medical report(s)
 - o The retiree must schedule an appointment with a specialist for the disabling condition(s) that precluded them from working and provide CalPERS a current medical report from that specialist. If they had more than one disabling condition at the time of retirement, they must provide a medical report from each medical specialist. The specialist must include the following information in their report:

- Retiree’s name and the date of the most recent examination.
 - Confirmation that the specialist reviewed and discussed the position duty statement (by title) and the Physical Requirements of Position/Occupational Title form.
 - Whether the retiree has any limitations or restrictions to performing all tasks involved.
 - Specific details explaining the restrictions, if any.
 - Specialist’s signature, printed name, medical specialty, and contact information.
- Additional documents
 - o The retiree must also submit the medical documentation used at the time their retirement identifying the restrictions placed on them. They must also submit a position duty statement describing the position they held when they became disabled.

Key Points for Working Under Government Code section 21232

Retiree is not brought back into active membership, no member or employer contributions are made, and no service credit is earned.

Retiree is subject to an earnings limit and payroll is reported to CalPERS.

Without prior approval, the retiree is subject to reinstatement into the position they were illegally hired in and their retirement allowance will stop.

Termination of Retirement Due to Unlawful Employment

Employers and retirees have equal responsibility to ensure any post-retirement employment is lawful. CalPERS service retirees can only be lawfully employed in retired annuitant compliant positions. CalPERS disability retirees can be lawfully employed in retired annuitant positions or upon CalPERS’ pre-approval be employed in permanent positions with certain restrictions.

Employment that violates any of the retired annuitant requirements or the Government Code section 21232 requirements for disability/industrial disability retirees is unlawful employment. Unlawful employment results in reinstatement from retirement for the retiree, i.e., termination of the retiree’s monthly retirement allowance and any other post-retirement benefit.

When reinstated for unlawful employment, the retiree is required to reimburse CalPERS for the retirement allowance received during the period of unlawful employment. Upon enrollment into active membership, the employee will pay member contributions plus interest to the employer for the period of unlawful employment. The employer will pay retroactive employer contributions plus interest and submit the member contributions thereby crediting the employee with service credit for the period of unlawful employment.

Reinstatement from Disability Retirement

Reinstatement from disability retirement means coming out of retirement to work for a CalPERS employer as a permanent employee into active service.

Voluntary reinstatement is the retiree's choice. Mandatory reinstatement can happen when the retiree violates the rules for working after retirement.

Local safety members have permissive, not mandatory, reinstatement rights to their former position. Permissive reinstatement means the employer can decide whether to rehire their former employee.

For more information, refer to our [CalPERS Reinstatement from Retirement Publication \(PDF\)](#).

Required Forms and Documents

For CalPERS to begin the reinstatement process, the retiree must submit the following forms and documents:

- [Reinstatement from Disability/Industrial Disability Retirement Application Form \(PDF\)](#)
- [Authorization to Disclose Protected Health Information Form \(PDF\)](#)
- [Physical Requirements of Position/Occupational Title Form \(PDF\)](#)
- Position Duty Statement
- Medical Clearance Report
- Additional Documents

Reinstatement from Disability/Industrial Disability Retirement Application Form ^(PDF)

If the retiree wants to reinstate to any local safety position, they must complete this form and submit it to their former employer. They determine whether the retiree is eligible to return to work and must inform CalPERS whether the reinstatement was approved.

If the retiree wants to reinstate to a miscellaneous position with a CalPERS-covered employer, they need to submit this form to CalPERS. CalPERS will process the reinstatement application and determine the retiree's eligibility for reinstatement.

They need to complete **Sections 1-2**. The employer completes **Section 3**.

The retiree may request a specific reinstatement date, but the effective date of employment cannot be prior to the date of CalPERS' approval.

Medical Clearance Report

If the retiree wants to reinstate to a miscellaneous position with a CalPERS-covered employer, they must obtain a current medical report from their specialist and submit it to CalPERS.

If they had more than one disabling condition at the time of retirement, they must provide a medical report from each medical specialist. For example, if the member's disabling condition was orthopedic, the specialist's report should be completed by an orthopedist; a heart condition would require a report from a cardiologist; and a psychological condition would require a report from a psychiatrist.

The specialist(s) must include in the medical report the following information:

- Retiree's name and the date of the most recent examination
- Retiree's current diagnosis
- Confirmation that the specialist reviewed and discussed the position duty statement(s) (by title) and the Physical Requirements of Position/Occupational Title form(s)
- A statement as to whether the retiree is presently capable of performing all tasks involved in their new position with or without restrictions or limitations
- If there are restrictions or limitations, include specific details about the restrictions for the new position
- The specialist's signature, printed name, medical specialty, and contact information
- Additional documents
 - If the retiree wants to return to work in a miscellaneous position with a CalPERS-covered employer, they must also submit a position duty statement describing the position they held when they became disabled and the medical documentation used at the time of their retirement identifying the restrictions placed on them.

Reinstatement Process

The reinstatement process can take three to six months depending on how complete the reinstatement application packet is and whether the retiree will be sent to an independent medical examination (IME).

If the retiree is receiving an industrial disability retirement, CalPERS will request a copy of workers' compensation medical records. We want to ensure there are no conflicting medical opinions regarding the retiree's ability to return to work.

CalPERS may need to order an IME, if the treating doctor's report is inconclusive or there is a conflict between the workers' compensation records and the treating doctor's report.

If the retiree is found no longer disabled, then we will approve the request for reinstatement. The employer then provides CalPERS with a return to work date.

If the retiree is found still disabled, then we will continue them on the retirement roll and both the member and employer will be notified of the decision.

Industrial Disability to Miscellaneous Position

Government Code section 21197 provides an industrial disability retiree the right to reinstate into a miscellaneous position and then re-retire on an industrial disability with no additional medical documentation.

When the member retires again, we will take into consideration their membership type (classic or PEPRA), additional earned service credit, contributions made to CalPERS, and salaries when calculating their future industrial disability retirement.

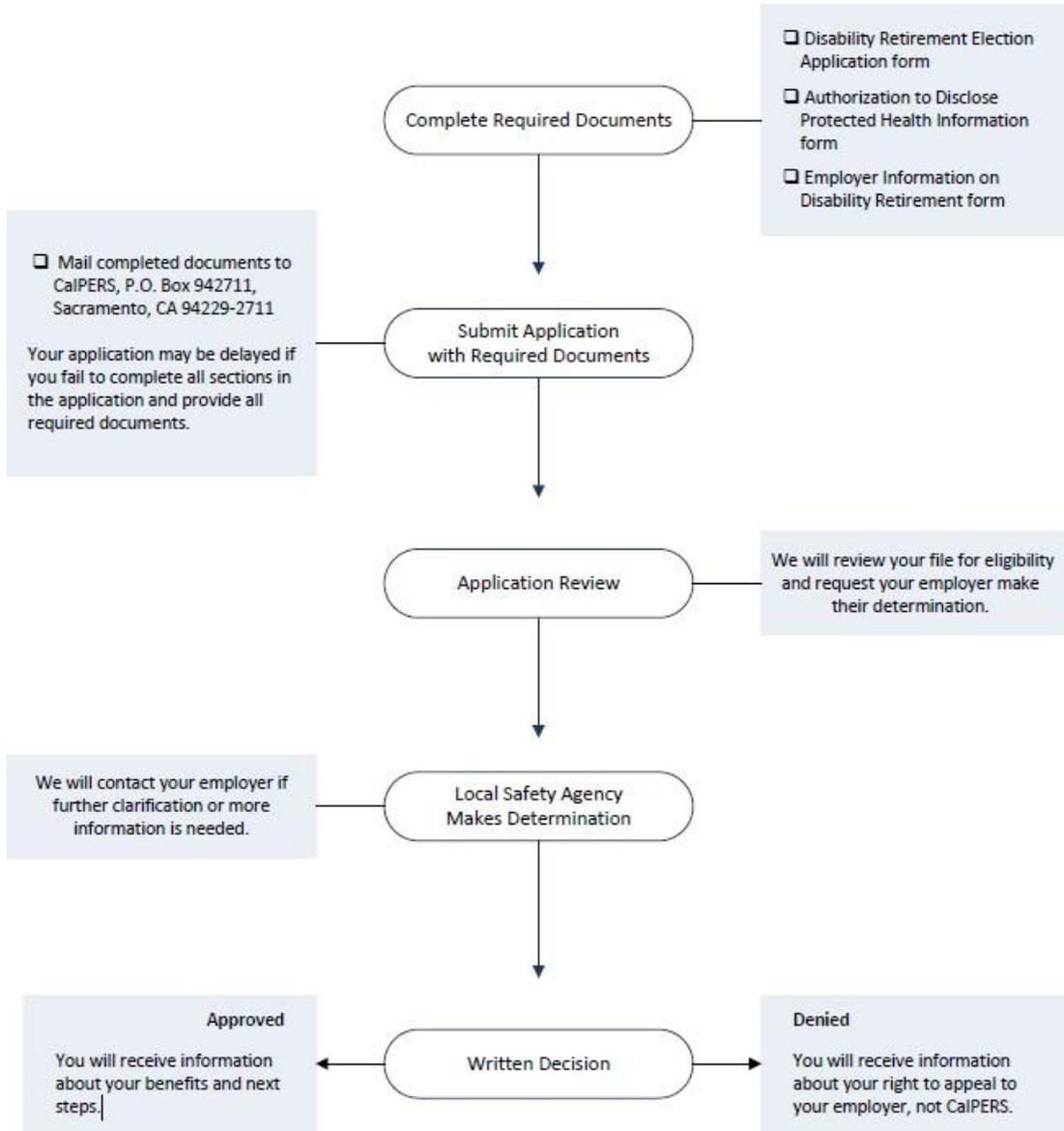
If the retiree is requesting reinstatement from an industrial disability retirement into a miscellaneous position under Government Code section 21197, they must submit the forms and documents as stated in the Required Forms and Documents section above.

Key Points for Reinstatement from Disability Retirement

- Retiree must have approval from CalPERS before returning to active employment.
- Local safety retirees who want to return to any public agency local safety position must submit their reinstatement application to their former employer.
- Local safety retirees who want to return to work in a miscellaneous position with a CalPERS-covered employer, must submit their reinstatement application to CalPERS.
- Upon approval, the retiree will receive regular paychecks, earn service credit, and make contributions to CalPERS. Their retirement checks stop until they decide to retire again.

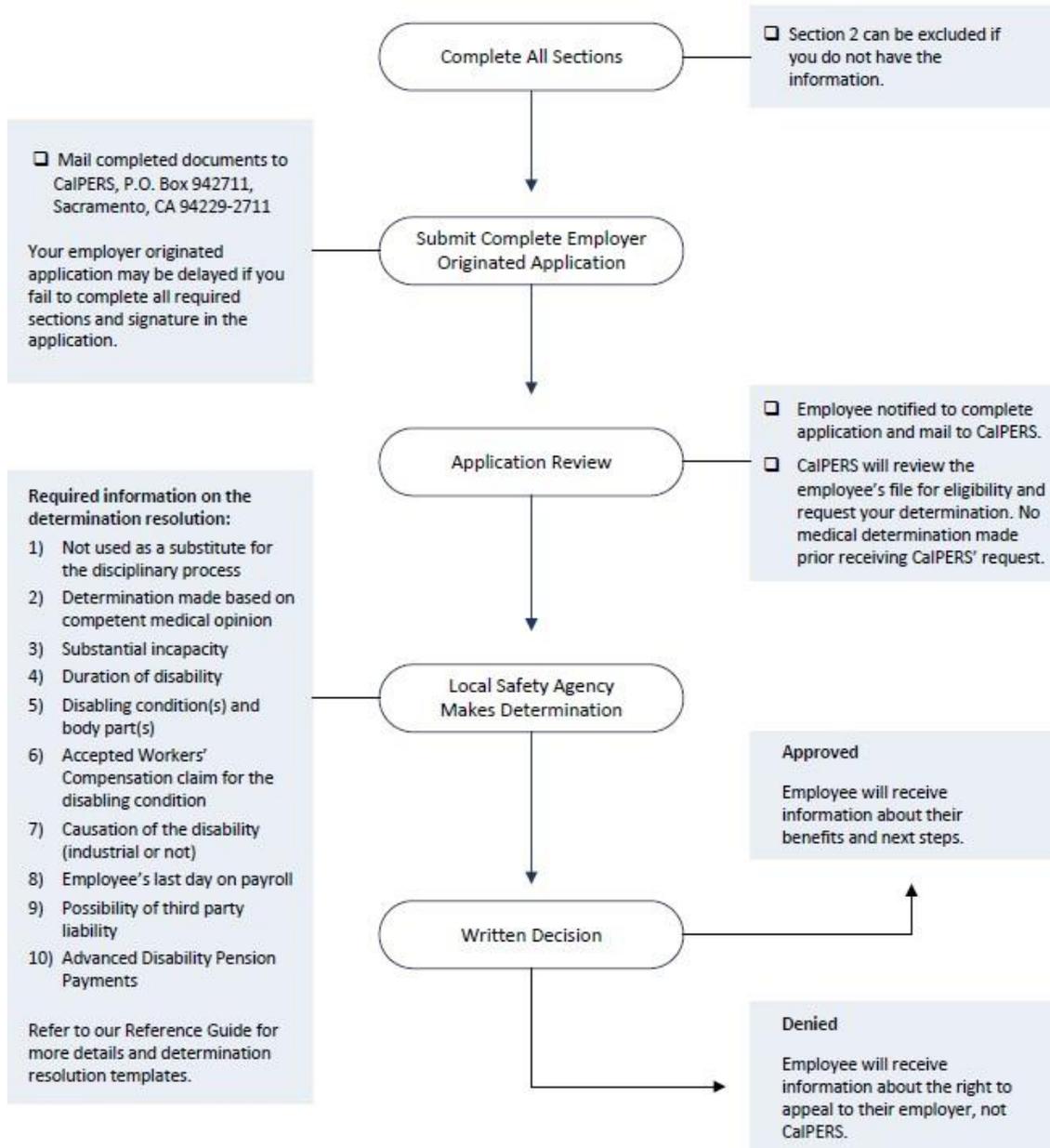
Flowchart: Member Originated Application Process

CalPERS Local Safety Member Originated Disability Retirement Application



Flowchart: Employer Originated Application Process

CalPERS Local Safety Employer Originated Disability Retirement Application



Contact and Resource Information

There are several ways you can reach us, through our **Customer Contact Center**, by mail, or by fax.

Reach Us by Phone

Call us toll free

888 CalPERS (or **888-225-7377**)

Monday through Friday

8:00 a.m. to 5:00 p.m.

TTY: (877) 249-7442

Reach Us by Mail or Fax

California Public Employees' Retirement System (CalPERS)

Disability & Survivor Benefits Division

P.O. Box 2796

Sacramento, CA 95812

Fax: (916) 795-1280

Resources

[CalPERS State Reference Guide \(PDF\)](#)

[CalPERS Public Agency & Schools Reference Guide \(PDF\)](#)

Local Safety Disability Retirement Resource Guide

California Public Employees' Retirement System (CalPERS)

February 2020

