

Revision Date: November 2016 – Public Agency & Schools Reference Guide
Chapter: Benefits Procedures

Section: Retirement - General
Pages: 128, 129

Legend: Deleted/Replaced – Added/Revised

BEFORE RETIREMENT

To be Eligible for Retirement a Member Must Terminate All CalPERS Employment:

A member must terminate, i.e., “separate from”, all employment with all CalPERS employers to be eligible for retirement. This applies if the member works for more than one employer or works in more than one position for a single employer, if the member is employed full time for one employer and part time for a different employer, or holds any combination of full-time and part-time jobs with one or more than one employer. If the member does not terminate all CalPERS employment before the retirement date the retirement will either be cancelled or an automatic change of the retirement date will be processed when this violation is discovered.

FINAL COMPENSATION

The final compensation in the calculation of an employee’s retirement benefit is the highest average annual compensation earnable during any 12 or 36 consecutive months, depending on the employee’s membership date and employer’s contract.

If a member has a combination of classic and PEPRA service, we determine the final compensation for service credit accrued as a classic member separately from the final compensation for service accrued as a PEPRA member. We use both figures when calculating the retirement benefit. (CCR) 579.24 (b)

It is essential to pay particular attention to the date the employee was first hired to ensure contributions paid into this System are correct. Failure to properly report your employees impacts the timeliness and accuracy of benefits paid and could result in a financial hardship for your employees when errors are ultimately discovered and corrected as required by law. Refer to California Public Employees’ Retirement Law (PERL) (G.C. sections 20035.5, 7522.20-7522.34).

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Chapter: Benefits Procedures

Section: Disability Retirement or Industrial Disability Retirement
Pages: 135 - 138

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LOCAL SAFETY MEMBERS

Safety members submit applications for disability retirement on the [Disability Retirement Election Application](#) (PERS-BSD-369-D). ~~Local safety members are not required to complete Section 8 (Workers’ Compensation Information) and Section 4 (Disability Information) on the application.~~ It is required that section 8, items 1 through 11 be completed by members.

WHAT TO SUBMIT WITH 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 will send the Employer Information for Disability Retirement form to employers directly. Employers will use this form as a cover sheet for all the documents submitted to CalPERS. Local Safety members will send the Authorization to Disclose Protected Health Information form to CalPERS and provide a copy to the employer.

THE DETERMINATION

In accordance with G.C. § 21156, a local safety member shall be retired for disability only upon the employer's determination that the member is substantially incapacitated physically or mentally for the performance of the usual job duties with the current employer.

The disability decision is based upon competent medical opinion and all medical and vocational information provided by the member, employer and workers' compensation carrier. The determination is based on actual/present disability, not prospective inability to perform the job duties. (G.C. § 21156)

The employer shall not use disability retirement as a substitute for the disciplinary process. (G.C. § 21156 (a) (2)) Employers must forward all relevant personnel documents and medical records to CalPERS for any of the following circumstances and obtain CalPERS' determination of the member's eligibility for disability retirement before the employer begins the process of a disability determination:

- 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 Employer Reinstatement Waiver as part of a legal settlement
- The member has been convicted of or is being investigated for a work related felony

The determination must be made within six months of the CalPERS request for such determination in accordance with G.C. § 21157.

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 mailed to CalPERS in the form of a Resolution or determination letter:

1. Is the member substantially incapacitated from performing the usual duties of the position?
2. If incapacitated, will the incapacity exist for a permanent or extended and uncertain duration of six months or longer?

To qualify for a disability retirement, a CalPERS member must be substantially incapacitated for the performance of his or her duties. This "substantial incapacity" must be due to a medical condition of permanent or extended and uncertain duration. (G.C. § 20026)

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/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.

It is the agency's responsibility to order a medical examination and obtain such evidence as is necessary to make a determination.
(G.C. § 21156)

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 six 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.
(G.C. § 21157 and 21192)

3. **Has the member filed for a Workers' Compensation claim(s) for the disabling condition(s)? Was the claim accepted?**

4. If a determination is made that the member is disabled, is the disability considered "industrial"?

LOCAL AGENCY RE-EVALUATION PROCEDURES

The agency should undertake regular periodic reviews of determinations for disability retirees under voluntary service retirement age 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? 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. § 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 proper actions if a retiree is uncooperative with the process.**

In accordance with G. C. § 20127, 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.

TRANSMITTAL OF THE AGENCY'S DETERMINATION

There are sample resolutions located in the **Appendix** of this Guide that may be used by your agency in transmitting the required information to CalPERS. All resolutions should state whether or not the employer will be making advance disability pension payments to the member. All such documentation 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 the disability determination, a certified copy (approved and signed by the governing body) of the delegation order of the authority must accompany the finding by such delegate in every instance.

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Chapter: Benefits Procedures

Section: Reinstatement from Retirement

Pages: 151 - 154

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PUBLIC EMPLOYEES' PENSION REFORM ACT OF 2013 (PEPRA)

Employees who reinstate from retirement on or after January 1, 2013 with the same employer from which they retired would be entitled to the retirement formula that was in effect on December 31, 2012. (G.C. § 7522.02 and 7522.04)

NOTE:

All State agencies, including CSU, are treated as a single employer under PEPRA. Additionally, all school employers are treated as a single employer as well.

However, such employees who reinstate from retirement with an employer **the employee has not previously worked under** may be enrolled into one of the new retirement formulas depending on whether or not they are considered a "new member" under PEPRA.

NOTE:

Please see the Membership chapter of this Guide for the definition of a new PEPRA member.

If you wish to hire a service retired person in a permanent position, whether full-time or part-time, the service retired person must reinstate from retirement into active CalPERS membership. (G.C. § 21196) A person on service retirement does not need approval prior to beginning active employment. However, to avoid an overpayment of retirement benefits and prevent payroll reporting problems for the employer, it is important to submit the **Reinstatement From Service Retirement Application** (PERS-BSD-145) in a timely manner.

If a disability or industrial disability retiree wants to reinstate to a permanent position, whether full-time or part-time, the disability retiree must obtain CalPERS' pre-approval for reinstatement prior to being hired as a regular employee. (G.C. sections 21191, 21192 and 21193). Violation of this requirement will result in reinstatement from disability/industrial disability retirement, i.e., termination of retirement, and may impact the retiree's future re-retirement benefits, such as losing the benefit stated under G. C. section 21197.

NOTE:

A retired person on a disability or industrial disability must be approved for reinstatement prior to being hired as a regular employee.
(G.C. § 21191, 21192 and 21193)

The publication [Reinstatement From Retirement](#) (PUB 37) includes the reinstatement applications for retired members on service, disability, or industrial disability retirement as well as information about the voluntary reinstatement process in general. There is also information about mandatory reinstatement and the other consequences of unlawful or “illegal” employment. The publication is available on the [Forms & Publications](#) page on the CalPERS website.

Please be aware that reinstatement to an employer other than the one the member retired from could change the benefits the member was previously entitled to receive. The member should contact the employer’s personnel office and clarify any questions they have about health benefits, vision care, dental care and death benefits that they offer their employees and retirees. **A previous Golden Handshake is permanently lost upon reinstatement with any employer.**

Reinstatement from retirement affects the cost-of-living adjustment (COLA) benefits the member will be entitled to receive in the future. **The annual COLA increase will begin in the second calendar year after re-retirement.** COLAs are determined based upon the year in which the member retires. Reinstatement will change the base year of the future retirement, and will therefore, also change the date the member will be entitled to begin receiving future COLAs. (G.C. § 21310.5, 21311, and 21313)

DISABILITY/INDUSTRIAL DISABILITY RETIREMENT (G.C. § 21191, 21192, 21193, AND 21201)

A retiree retired for disability/industrial disability may request approval from CalPERS to reinstate to another CalPERS covered position.

1. The Board may require any retiree receiving a disability retirement allowance, under the minimum age for voluntary retirement for service, to undergo a medical examination **for the approved disabling condition(s).** If the Board determines that such recipient is not incapacitated for duty, the agency shall be notified that such person is eligible for reinstatement to duty. The fact that the retiree was retired for disability does not prejudice any right to reinstatement to duty, which the retiree may claim. The retiree’s disability retirement allowance will be canceled on the effective date of the employer’s job offer (G.C. sections 21192 and 21193).
2. Any retiree may request approval from CalPERS to reinstate, whereby the retirement allowance is canceled and the retiree resumes active member status, including earning additional service credit towards his/her subsequent retirement. **Upon a disability retiree’s application for reinstatement, the Board may require the retiree, who is at least six months less than the age of compulsory retirement for service applicable to members of the class or category in which the retiree is applying for, to undergo a medical examination for the approved disabling condition(s).** (G.C. sections 21192 and 21193)
3. **If a retiree retired from the CSU, he/she has reinstatement rights to the retired position. If he/she requests approval to reinstate in a different position or with a different employer other than the one he/she retired from, the retiree will be determined whether he/she can perform all the duties for either the retired position or the new position. If he/she is still disabled for the retired position and not disabled for the new position, he/she still has the reinstatement rights to the retired position. If he/she is not disabled for either of the positions, he/she has the right to reinstate to the retired position. However, if he/she decides to reinstate to the new position, he/she will lose the reinstatement rights to the retired position.** (G.C. sections 21193)

To request approval, the employer and retiree must:

- Complete Sections 1 and 2 (if applicable, see Additional Information for Industrial Disability section below) of the **Reinstatement from Disability/Industrial Disability Retirement** application (PERS01M0036DMC) found in the [Reinstatement From Retirement](#) publication (PUB 37);
- If the retiree is requesting reinstatement into a different position from which they retired, the prospective employer must complete section 3 stating their intent to hire the retiree upon CalPERS approval. (G.C. sections 21192 and 21193);
- The employer provides a current job duty statement for the position and a completed and signed [Physical Requirements of Position/Occupational Title](#) form (PERS01M0050DMC) to the retiree. If the retiree disability retired with the CSU and is requesting reinstatement into a different position from which they retired or reinstatement with a different employer, the retiree will need to obtain a current job duty statement and a completed and signed [Physical Requirements of Position/Occupational Title](#) form (PERS01M0050DMC) for the retired position from the former employer as well;
- The retiree must schedule an appointment with a specialist for the disabling condition(s) that precluded him/her from working and provide the specialist with a copy of the position duty statement and the completed **Physical Requirements of Position/Occupational Title** form;
- If the retiree wants to reinstate to the retired position, or the retiree did NOT disability retire with the CSU and wants to reinstate to a different position or with a different employer, the specialist(s) must include in the medical report the following pertinent information on appropriate letterhead:
 - The retiree's name and the date of the most recent examination
 - The retiree's current diagnosis
 - Confirmation that the specialist(s) reviewed and discussed with the retiree the position duty statement (by title) and the **Physical Requirement of Position/Occupational Title** form.
 - A statement as to whether the retiree is presently capable of performing all tasks involved for the position with or without restrictions or limitations.
 - If there are restrictions or limitations, include specific details about the restrictions for the former position.
 - The specialist's signature, printed name, medical specialty, and contact information
- If the retiree disability retired with the CSU and is requesting reinstatement to a different position or with a different employer, the specialist(s) must include in the medical report the following pertinent information on appropriate letterhead (G.C. sections 21192 and 21193):
 - The retiree's name and the date of the most recent examination
 - The retiree's current diagnosis
 - Confirmation that the specialist(s) reviewed and discussed with the retiree the position duty statements (by title) and the **Physical Requirement of Position/Occupational Title** forms for both the position he/she retired from and the new position he/she have applied for.
 - A statement as to whether the retiree is presently capable of performing all tasks involved for either of these positions with or without restrictions or limitations.
 - If there are restrictions or limitations, include specific details about the restrictions for both positions.
 - The specialist's signature, printed name, medical specialty, and contact information.
- CalPERS may require an independent medical evaluation to supplement the doctor's report. If so, CalPERS will select the physician, schedule the appointment, and pay for the examination. (G.C. § 20129)
- Provide a medical report from the retired person's physician who specializes in the member's disabling condition stating that he/she has recently examined the retired person, reviewed the job duty statement, and [Physical Requirements of the Position/Occupational Title](#) (myCalPERS 0700) form, and

~~finds the retired person is able to perform all tasks without restriction or limitation. CalPERS may require an independent medical evaluation to supplement the doctor's report. If so, CalPERS will select the physician, schedule the appointment, and pay for the examination.~~

~~If the member is requesting reinstatement into a different position from which they retired, the prospective employer must complete Section 3 stating their intent to hire the member upon CalPERS approval (G.C. sections 21192 and 21193).~~

If the retiree whose disability/industrial disability retirement has been canceled does not re-enter CalPERS covered employment, an amount which is the actuarial equivalent of the retiree's annuity at cancellation shall be credited to the individual account, and shall be refunded unless the retiree is eligible to elect, and does elect, to allow his/her accumulated contributions to remain in the retirement fund (G.C. § 21172).

ADDITIONAL INFORMATION FOR INDUSTRIAL DISABILITY

For reinstatement from Industrial Disability to a miscellaneous position with a CalPERS-covered employer only, the retiree must also:

- Check the box in Section 2

The prospective employer must:

- Complete Section 3 stating their intent to hire the retiree upon CalPERS approval (G.C. sections 21192 and 21193).

Upon subsequent retirement, the retiree's allowance will be recalculated based on the average of the highest pay rate and special compensation during any consecutive 12 or 36 months depending upon membership date using the same benefit formula for industrial disability and adding an annuity for the additional time worked after reinstatement. If the retiree is eligible for a service retirement after the miscellaneous employment, the retiree may receive whichever allowance is greater, but will retain the industrial disability retirement classification (G.C. § 21197 and 21201).

However, if the retiree disability retired with the CSU and is found no longer incapacitated from performance of the job duties of his/her retired position due to his/her approved disabling condition(s) at a later date; he/she has the right to reinstate to his/her retired position. If he/she chooses to continue working in the miscellaneous position, he/she will lose his/her mandatory reinstatement rights to the retired position. In addition, he/she will no longer be covered under Government Code section 21201 when he/she stops working. He/she will not be entitled to resume an industrial disability retirement allowance using the salaries earnable under the miscellaneous position. (G.C. § 21193)

Local Safety Members

If the retiree retired for disability or industrial disability from a public agency local safety position, and he/she is requesting reinstatement to any public agency local safety position, the retiree must submit the initial application for reinstatement to the agency from which he/she retired. That agency will determinate the retiree's eligibility for reinstatement.

If the retiree is reinstating into a CalPERS covered Miscellaneous position, in addition to the above requirements, the retiree must also submit the medical documentation used at the time of his/her retirement identifying the restrictions placed upon him/her, plus a position duty statement describing the position he/she held when he/she became disabled.

Note: If a retiring employee or retiree expresses an interest in working for a state agency employer after retirement, please advise the employee or retiree that civil service eligibility is required for a state agency. Refer them to CalHR for information on how to obtain civil service eligibility.

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~~Under the California Public Employees' Pension Reform Act of 2013, if an employee is convicted of a felony committed in connection with his or her job, the employee forfeits all retirement benefits earned or accrued after the commission of the felony, but not the benefits accrued prior to the commission of the felony.~~

~~The employee and prosecuting agency must notify the employer within 60 days of the conviction. The employer must notify CalPERS of the conviction and sentencing date within 90 days of the felony conviction. (G. C. sections 7522.72 and 7522.74)~~

An employer who employs a member who was convicted on or after January 1, 2013, by a state or federal trial court of any felony under the law for conduct arising out of or in the performance of his or her official duties, must notify CalPERS at (888) 225-7377 within 90 days of the conviction. It is the employer's responsibility to determine whether the felony offense was committed during the conduct or performance of the employee's job duties. If yes, the member must forfeit all accrued rights and benefits in CalPERS retroactive to the first commission date of the crime and he or she can no longer work for a CalPERS-covered employer (GC sections 7522.72 and 7522.74).

The government code further states that CalPERS may assess a public employer a reasonable amount to reimburse the cost of audit, adjustment, or correction, if it determines that the public employer failed to comply with this section.

If you have an employee or former employer subject to GC 7522.72 or 7522.74, we ask that you provide the following information:

- The earliest date (mm/dd/yyyy) of the commission of the felony
- The court(s) in which the case was heard
- The name and mailing address of the presiding judge

- The name and mailing address of the prosecuting attorney (state and/or federal)
- The description of the felony charges for which the employee was convicted
- Date of conviction/date of guilty plea
- In addition to providing the above information please submit a copy of the supporting court document(s) related to the employee's felony conviction/guilty plea

It's important to notify us as soon as possible if an employee pleads guilty to or is convicted of a felony even if you don't have all of the required information because CalPERS can take no action against the member until we are made aware there is a conviction/guilty plea. This is especially important if you are planning to seek restitution from the employee.
