



P.O. Box 942709
Sacramento, CA 94229-2709
888 CalPERS (or **888-225-7377**)
Telecommunications Device for the Deaf
No Voice (916) 795-3240
www.calpers.ca.gov

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Circular Letter

TO: ALL CALPERS EMPLOYERS, EMPLOYEE REPRESENTATIVES

SUBJECT: DISABILITY RETIREMENT CRITERIA AND UPDATED DISABILITY
RETIREMENT APPLICATION PUBLICATION

As of January 1, 2007, amendments made by AB 2244 to Government Code Section 21156 apply to all new and pending disability retirement applications as well as those pending appeal. AB 2244 returned CalPERS disability retirement criteria to standards in place prior to the California Supreme Court's decision in *Nolan v. City of Anaheim* (2004) 33 Cal.4th 335.

In *Nolan*, the Supreme Court determined that Government Code Section 21156 required disability retirement applicants to demonstrate substantial incapacity from the usual duties of their current position and substantial incapacity from performing the usual duties of the position for other California public agencies in CalPERS. Also, CalPERS, or in the case of Local Safety members, the employer, was then required to demonstrate that the applicant was capable of performing the usual duties of the position for other California public agencies in CalPERS *and* that similar positions with reasonably comparable pay, benefits, and promotional opportunities were available to the applicant.

Effective January 1, 2007, a CalPERS member qualifies for disability retirement if he or she has a disabling injury or illness that substantially incapacitates the member from performing the usual duties of his or her current position.

The Disability Retirement application booklet, *A Guide to Completing Your CalPERS Disability Retirement Election Application* (PERS-PUB-35), was revised in December 2006 to include information on the above criteria for disability retirement. Additionally, the Physician's Report on Disability form within the application booklet was revised to reflect the return to pre-*Nolan* disability retirement criteria. Due to these changes, please begin using this revised publication.

The PERS-PUB-35 is available for viewing and printing on the CalPERS Web site at www.calpers.ca.gov. You can place a bulk order for forms and publications by sending an e-mail order to Public_Agency_Requests@calpers.ca.gov, faxing your request to (916) 795-3281, or by contacting our Central Supply at (916) 795-1493.

If you have any questions or need assistance regarding the return to pre-*Nolan* disability retirement criteria, please call the CalPERS Employer Contact Center toll free at **888 CalPERS** (or **888-225-7377**).

Lori McGartland, Chief
Employer Services Division