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TIME LIMITS TO OBTAIN A DISABILITY RETIREMENT

BY: SCOTT A. O'MARA

There are four major retirement systems that can provide benefits for a disability retirement that are job-related. The systems are similar, but each has a unique template that must be established within a particular timeline. The determination in regards to eligibility is also based upon different thresholds each system may have.

1. California PERS (State)
2. California PERS (Local)
3. County Retirement Act of 1937
4. City/County Retirement System (Not PERS or County Retirement Act 1937)

STATE PERS AND LOCAL PERS

(*State PERS*' members work for the **State of California**)

(*Local PERS*' members work for **smaller municipalities** and other employers that contract with PERS)

EXAMPLES OF STATE PERS:

- ❖ CHP
- ❖ Department Of Corrections
- ❖ California Department Of Forestry (CDF)
- ❖ Cal Trans
- ❖ EDD
- ❖ DMV

EXAMPLES OF LOCAL PERS:

- ❖ City of El Cajon
- ❖ City of Chula Vista
- ❖ City of National City
- ❖ Santee
- ❖ Lakeside
- ❖ La Mesa
- ❖ City of El Centro
- ❖ City of Oceanside
- ❖ City of Escondido
- ❖ City of Riverside
- ❖ County of Riverside

THE FOLLOWING EMPLOYERS DO NOT BELONG TO PERS:

- County of San Diego (SDCERA)
- City of San Diego (SDCERS)
- County of San Bernardino
- Imperial County
- Orange County
- City of San Diego Port District
- And other ones.

STATE PERS:

(CHP, Department of Corrections, CDF, Cal Trans, EDD, DMV, or any state of California Employees)

State PERS is a retirement system within CalPERS Umbrella. A general rule is that the member should apply no later than 4 months from the last day in a paid status. The sooner the application is done the easier to move forward. The member must be permanently incapacitated from performing their duties during the entire period between last day in a paid status until the application is submitted. No personal appearance is needed to apply, applications can be made through the mail. The member must apply before termination, otherwise no application can be made. A final determination on the merits of an Industrial Disability Retirement application will not be made by PERS until resolution of labor dispute. The Effective date of retirement is: **NO EARLIER THAN THE DATE OF APPLICATION & NO LATER THAN THE LAST DAY IN A PAID STATUS.** Members are put on a fast track once any piece of the application is received by CalPERS. Once PERS receives any part of an application the member has **21 days** to complete the rest of the application. If we are waiting on doctor's statements or Work Comp info, a confirmation letter must be sent to PERS asking for a time extension. The two documents that are responsible for a delay are usually – **Doctor Statement of Incapacity** (Physician must fill out) and **Carrier Request Form** (Workers' Comp info filled out by Employer Insurance).

FACTS:

- Safety Members within the PERS system can apply for Industrial Disability Retirement (IDR). General members can apply for disability retirements but they are not entitled to the 50% tax free retirement as Safety members are.
- The **determination of incapacity** is made by **PERS** from medical findings from the treating physician or IME if deemed necessary;
- The **determination of AOE/COE** (causation) is made by the **WCAB** (Workers' Compensation Appeals Board). If there is no AOE/COE (causation) finding at time of application, PERS allows 2 years from date of application to get AOE/COE finding from WCAB;
- State PERS has the right to send member to IME if they choose;
- **WCAB Presumptions** apply to safety members;
- Can collect TTD while collecting retirement;
- Can take a service retirement pending IDR (assuming they qualify with age and years of service);
- Do not need to be P&S to apply, minimum of 12 months continued incapacity;
- Need actual work restrictions (as opposed to prophylactic WR) that preclude you from doing substantial duties;
- Determination for IDR not made until pending disciplinary action resolved in favor of employee.

LOCAL PERS:

(Not State Employees, smaller municipalities such as: City of El Cajon, City of Chula Vista, City of National City, Santee, Lakeside, La Mesa, City of El Centro, Oceanside, City/County of Riverside, and others)

Local PERS has no fast track system; the member is essentially applying with the employer. As soon as PERS receives an application they give notice to the employer to make a decision as to the permanent incapacity of the member within **6 months**. CalPERS adopts the recommendation of the employer as to whether the member is permanently incapacitated. A general rule is that the member should apply no more than 4 months from the last day in a paid status. The sooner the application is done the easier to move forward. The member must be permanently incapacitated from performing their duties during the entire period between last day in a paid status until the application is submitted. No personal appearance is needed to apply; applications can be made through the mail. The member must apply before termination; otherwise no application can be made. The Effective date of retirement is: **NO EARLIER THAN THE DATE OF APPLICATION & NO LATER THAN THE LAST DAY IN A PAID STATUS**. Please note that not all safety members under the Local PERS system are 3% at 50. The details of the retirement benefits may differ based upon the contract with PERS.

FACTS:

- The **determination of incapacity** is made by the Employer;
- The **determination if AOE/COE** (job-related) is made by the **WCAB** (Workers' Compensation Appeals Board). If there is no AOE/COE (causation) finding at time of application, PERS allows 2 years from date of application to get AOE/COE finding from WCAB;
- Under Local PERS, the employer has the right to send member to IME if they choose;
- **Cannot** get TTD with retirement;
- Can take a service retirement pending IDR (assuming they qualify with age and years of service);
- **WCAB Presumptions** apply to safety members;
- Do not need to be P&S to apply, minimum of 12 months of continued incapacity;
- Need actual work restrictions (as opposed to prophylactic WR) that preclude you from doing substantial duties;
- Determination for IDR not made until pending disciplinary action resolved in favor of employee.

County Retirement Act of 1937

SDCERA is an independent retirement system for employees of San Diego County. SDCERA has a longer statute of limitations in which a member can apply for a service related disability retirement. The member must be permanently incapacitated from performing his/her duties from the time of last day of paid status until application date. Members are required to **apply in person** at the SDCERA office and must have a doctor's statement of incapacity at the time of application. Safety members are allowed to service retire if they have 20 years of service regardless of age.

FACTS:

- **SDCERA** board determines if the injury is work related (AOE/COE);
- An **Independent Medical Evaluator (IME)** determines if the injury renders a disability retirement is necessary;
- All applicants are sent to an **IME**;
- SDCERA **does not** recognize the gun belt presumption;
- SDCERA **does** recognize other presumptions for safety members (cancer, heart);

- Members **must** be P&S to apply.

SAN DIEGO CITY RETIREMENT SYSTEM (SDCERS)

(City of San Diego, Port District, Airport)

SDCERS is an independent retirement system for employees of the City of San Diego, Port District, and Airport Employees. The City of San Diego allows safety members to participate in the DROP program. The DROP program allows members to fix their years of service and age for retirement purposes. The member is technically service retired, but he/she is still working. The retirement funds are invested for members while they collect their full salary. The maximum time allowed in DROP is five years. Members can receive IDL, LTD, 4850 and TTD while in DROP. If the member becomes QIW (Qualified Injured Worker) while in DROP, the member can apply for disability retirement. If the DROP program is completed while the member is injured or on modified duty, the member cannot apply for IDR. The effective date is the date the member entered DROP.

FACTS:

- **SDCERS** determines if the injury is work related;
- **IME** (Independent Medical Evaluator) determines if the injury renders the member permanently incapacitated;
- **SDCERS does not** recognize WCAB presumptions;
- **Member** must apply in person;
- **Member** must apply within 4 months of last paid status or 2 years from termination if there is a continuing disability during the 2 years;
- Must be **P&S**;
- **No** psychiatric or mental disorder applications allowed unless a concurrent physical trauma to brain TBI/ traumatic event;
- If hired after **09/03/1982** **cannot** have preexisting condition;
- Member can collect TD during retirement;
- Time to process application by SDCERS is 12-18 months;
- SD Port District has a presumption for COVID;
- **Industrial Death Benefit**
This is a lifetime monthly benefit equal to ½ of the Member's Final Compensation. This death benefit is only granted if:
 - The Workers' Compensation Appeals Board determines the Active Member's death was work-related;
 - The Member has not retired or entered DROP; **and**
 - There is:
 - A surviving spouse who is also named as the Member's sole beneficiary, *or*
 - A child who is under the age of 18 (or under 21 for Port and Airport Members).

Calculation of an Industrial Disability Retirement Allowance

Government Code §21413 provides:

Upon retirement of a local safety member for industrial disability he or she shall receive a disability retirement allowance of 50 percent of his or her final compensation plus an annuity purchased with his or her accumulated additional contributions, if any, or, if qualified for service retirement, he or she shall receive his or her service retirement allowance if the allowance, after deducting the annuity is greater.

Under provisions of the Internal Revenue Code, the disability retirement allowance of 50% of final compensation is excluded from gross income for Federal income tax purposes - - i.e., non-taxed.

26 U.S. Code §104(a), states:

In general, except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include amounts received under workmen’s compensation acts as compensation for personal injuries or sickness . . .

The disability retirement allowance of 50% of final compensation has been interpreted to be in the nature of Workers’ Compensation benefits and thus is under the IRS Code exclusions.

The U.S. Tax Code which limits taxation on the first 50% of final compensation is viewed relative to the unique education experience which law enforcement officers have. This education and experience limits the transferable skills these officers have with respect to other employment opportunities and becomes very problematic for safety officers who have a job-related injury which precludes them from performing their substantial duties in law enforcement. That means that the skills, education and knowledge they have acquired in law enforcement are not going to be of assistance in obtaining post-law officer employment with another employer. Therefore, the 50% allowance constitutes recognition of the dedication that safety people have to their careers which limits their access to other employment.

(For more information on retirement, see www.LAW1199.com *Newsletter 2017 Issue #1* regarding the distinction between actual and prophylactic restrictions; and *Newsletter 2015 Issue #3* regarding retirement considerations.) *2022 Issue #13 Tax Trap*: <https://law1199.com/wp-content/uploads/2022/11/2022-ISSUE-13.pdf>



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NOTICE: Making a false or fraudulent Workers’ Compensation claim is a felony subject to up to 5 years in prison or a fine of up to \$50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.

