

AGENDA

THE MEETING OF THE

DISABILITY PROCEDURES AND SERVICES COMMITTEE

and

BOARD OF RETIREMENT*

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

**300 NORTH LAKE AVENUE, SUITE 810
PASADENA, CA 91101**

9:00 A.M., WEDNESDAY, MAY 1, 2019 **

*The Committee may take action on any item on the agenda,
and agenda items may be taken out of order.*

COMMITTEE MEMBERS:

James P. Harris, Chair
Herman B. Santos, Vice Chair
Ronald A. Okum
Gina Zapanta-Murphy
William Pryor, Alternate

- I. CALL TO ORDER
- II. APPROVAL OF THE MINUTES
 - A. Approval of the minutes of the regular meeting of April 3, 2019
- III. PUBLIC COMMENT
- IV. FOR INFORMATION ONLY
 - A. Disability Retirees Returning to County Service – Presentation by Francis J. Boyd, Senior Staff Counsel
- V. ITEMS FOR STAFF REVIEW
- VI. GOOD OF THE ORDER
(For information purposes only)
- VII. ADJOURNMENT

***The Board of Retirement has adopted a policy permitting any member of the Board to attend a standing committee meeting open to the public. In the event five (5) or more members of the Board of Retirement (including members appointed to the Committee) are in attendance, the meeting shall constitute a joint meeting of the Committee and the Board of Retirement. Members of the Board of Retirement who are not members of the Committee may attend and participate in a meeting of a Board Committee but may not vote, make a motion, or second on any matter discussed at the meeting. The only action the Committee may take at the meeting is approval of a recommendation to take further action at a subsequent meeting of the Board.**

****Although the meeting is scheduled for 9:00 a.m., it can start anytime thereafter, depending on the length of the Board of Retirement meeting. Please be on call.**

Any documents subject to public disclosure that relate to an agenda item for an open session of the Committee, that are distributed to members of the Committee less than 72 hours prior to the meeting, will be available for public inspection at the time they are distributed to a majority of the Committee, at LACERA's offices at 300 North Lake Avenue, suite 820, Pasadena, California during normal business hours from 9:00 a.m. to 5:00 p.m. Monday through Friday.

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MINUTES OF THE MEETING OF THE
DISABILITY PROCEDURES AND SERVICES COMMITTEE
and
BOARD OF RETIREMENT

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION
GATEWAY PLAZA - 300 N. LAKE AVENUE, SUITE 810, PASADENA, CA 91101

WEDNESDAY, APRIL 3, 2019

COMMITTEE MEMBERS

PRESENT: James P. Harris, Chair
Herman B. Santos, Vice Chair
Gina Zapanta-Murphy
William Pryor, Alternate

ABSENT: Ronald Okum

ALSO ATTENDING:

BOARD MEMBERS AT LARGE

Thomas Walsh
Vivian Gray
Les Robbins
Alan Bernstein
Keith Knox

STAFF, ADVISORS, PARTICIPANTS

Tamara Caldwell, Disability Retirement Specialist Supervisor
Francis J. Boyd, Senior Staff Counsel
Hernan Barrientos, Disability Retirement Specialist Supervisor

The Meeting was called to order by Chair Harris at 9:15 a.m., in the Board Room of Gateway Plaza.

I. APPROVAL OF THE MINUTES

A. Approval of the minutes of the regular meeting of March 6, 2019.

Mr. Santos made a motion, Mr. Harris seconded, to approve the minutes of the regular meeting of March 6, 2019. The motion passed unanimously.

II. PUBLIC COMMENT

There were no requests from the public to speak.

III. REPORTS

- A. That the Committee discuss the process of disability retirement applications when the member has been terminated for cause by the County of Los Angeles (Memo dated March 20, 2019)

The Board of Retirement has requested a discussion regarding the processing of disability retirement applications where a member has been terminated for cause by the County of Los Angeles. The Board has expressed some concerns about the prejudicial effects of providing a history of the member's termination to the examining panel physician as well as to the Board itself during its adjudication process. Mr. Boyd provided an outline of the laws pertaining to disability applications filed after a member has been terminated, citing the Haywood/Smith cases. Mr. Boyd provided a discussion of eligibility to apply versus eligibility for benefit, burden of establishing that the member's right to a disability retirement matured before the event giving cause for the member's dismissal, and eliminating prejudicial information from the application as it pertains to the panel physician and Board of Retirement.

Mr. Boyd provided several suggested policy considerations for the purpose of processing applications when the member has been terminated for cause by the County of Los Angeles. Mr. Boyd requested direction from the Committee to aid in the development of a draft policy to help guide staff in processing these types of applications.

Mr. Boyd, Ms. Caldwell, and Mr. Barrientos were present to answer any questions from the Board or Committee members.

IV. ITEMS FOR STAFF REVIEW

The Disability Procedures and Services Committee recommends that staff bring back item IV. A. Applications when the Member has been Terminated for Cause by the County of Los Angeles to the Committee for additional suggestions of policy considerations.

V. GOOD OF THE ORDER

VI. ADJOURNMENT

With no further business to come before the Disability Procedures and Services Committee, the meeting was adjourned at 9:51 a.m.

Disability Retirees Returning to County Service

Presented by Frank Boyd, Senior Staff Counsel

Presentation Roadmap

- ▶ Returning to work as a temporary employee
 - ▶ Requirements
 - ▶ Bonafide Separation
 - ▶ No Service Credit
- ▶ Reinstatement of Disability-Retirement Retirees on a permanent basis
 - ▶ Processes for returning the member
 - ▶ Consequences of reentry into County service

Returning to Work as a Temporary Employee— Government Code section 7522.56 (PEPRA)

Section 7522.56 allows Retirees to return to work, without reinstatement or loss or interruption of retirement benefits, on a limited basis—120 days per calendar or fiscal year—provided they meet the following requirements:

Returning to Work as a Temporary Employee: Requirements

- ▶ Employment is during an emergency to prevent stoppage of public business; **or**
- ▶ Retiree has skills needed to perform work of a limited duration.
- ▶ Retiree did not receive any unemployment-insurance compensation within the 12-month period prior to returning to temporary work under this section.

Returning to Work as a Temporary Employee: Requirements—Bonafide Separation

180 Days Separation: Retiree is not eligible to return to work under Section 7522.56 following the first 180 days unless:

- ▶ The employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed position; **and**
- ▶ The appointment has been approved by the Board of Supervisors—the appointment may **not** be placed on the consent agenda.

Returning to Work as a Temporary Employee: Requirements—Bonafide Separation

Recipients of Retirement Incentive:

A retired person who accepted a retirement incentive upon retirement shall not be eligible to be employed under Section 7522.56 **until 180 days** following the date of retirement.

Returning to Work as a Temporary Employee: Requirements—Bonafide Separation When Retiree is Under Normal Retirement Age.

IRS In-Service Distribution Rules: Prevents in-service distribution of benefits (26 CFR 1.401-1(b)(1)(i)). There must be a bonafide separation if the Retiree is under normal retirement age.*

- ▶ Must be a break in service. LACERA normal retirement ages:
 - Plan A-D: Age 57
 - Safety A & B: Age 55
 - Plan E: Statutorily Age 65
 - Plan G: Statutorily Age 52

LACERA requires a 90-day break from retirement.

* *Barrus v. United States* (E.D.N.C. 1969) 69-1 U.S. Tax.Cas. (CCH P9281).

Returning to Work as a Temporary Employee— No Service Credit

Retirees who return to work under Section 7522.56 receive no service credit or retirement rights.

Returning to Work as a Temporary Employee— Disability-Retirement Retirees

Nothing in CERL prevents a Disability-Retirement Retirees from returning to work under Section 7522.56. **But . . .**

Returning to Work as a Temporary Employee— Disability-Retirement Retiree

. . . a Disability-Retirement Retiree and the County employer are bound by the Board of Retirement's finding that the Retiree is unable to perform his or her usual duties. (Gov. Code section 31725).

So the Disability-Retirement Retiree cannot perform duties similar to those from which the Board found the member incapacitated. The physical or mental requirements of the temporary position must comport with the work restrictions upon which the Board based its finding of incapacity.

Reinstatement of Disability-Retirement Retirees on a Permanent Basis—Process

Reinstatement at the Request of the Board of Retirement—Sections 31729, 31730, and 31731:

Section 31729 gives the Board authority to require any disability beneficiary under age 55 to undergo a medical evaluation. Upon the basis of the examination, the Board shall determine whether the disability beneficiary is still incapacitated for service.

Reinstatement of Disability-Retirement Retirees on a Permanent Basis—Process

Section 31730: Cancellation of benefits after medical examination, reinstatement in employment.

“If the board determines that the beneficiary is not incapacitated, and his or her employer offers to reinstate that beneficiary, his or her retirement allowance shall be canceled forthwith, and he or she shall be reinstated in the county service pursuant to the regulations of the county or district for reemployment of personnel.” [Emphasis added.]

Reinstatement of Disability-Retirement Retirees on a Permanent Basis—Process

If the Board finds a disabled Retiree no longer disabled but employer refuses to reinstate: The Board cannot stop or reduce the retiree's allowance. However, if the Board finds the member no longer disabled, nothing in the statute prevents the Board from taking away the member's disabled tax status.

Reinstatement of Disability-Retirement Retirees on a Permanent Basis—Process

Section 31731: Refusal to submit to an examination; effect

“If any disability beneficiary under age 55 refuses to submit to medical examination, his pension shall be discontinued until withdrawal of such refusal, and if his refusal continues for one year, his retirement allowance shall be canceled.”

Reinstatement of Disability-Retirement Retirees on a Permanent Basis—Process

Disability-Retirement Retirees, 55 and Older, Who Request to be Reinstated into County Service:

Section 31729 states that Board *may* require a disability beneficiary under age 55 to undergo a medical evaluation. This does not prevent the Board from having an older Retiree medically evaluated when the Retiree volunteers to be re-evaluated. Public policy supports the employment and utilization of the handicapped.*

**Craver v. City of Los Angeles* (1974) Cal.App.3d 76, 79-80; *Barber v. Retirement Board* (1971) 18 Cal.App.3d 273, 278-279.

Reinstatement of Disability-Retirement Retirees on a Permanent Basis—Process

Disability-Retirement Retirees, 55 and Older, Who Request to be Reinstated into County Service:

- ▶ Before entertaining a Disability-Retirement Retiree's request to be reinstated, the Retiree should present confirmation from the County that it has a position that it is willing to provide to the Retiree if the Board finds that he or she is no longer incapacitated.
- ▶ Also, the Disability-Retirement Retiree should be given proper counseling and notice of the consequences of being reinstated.

Consequences of Reentry into County Service

- ▶ Disability benefit shall immediately cease (Sec. 31733).
- ▶ Rate of contribution for future years is that established for age at the time of reentry into the system (Sec. 31733).
- ▶ The Retiree's individual account is credited with an amount which is the actuarial equivalent of his or her annuity at that time. This shall not exceed the amount of accumulative contributions at the time the retiree retired for disability.
- ▶ Retirees receive credit for their service as it existed at the time of his or her disability retirement (Sec. 31733).

Consequences of Reentry into County Service

Disability Plan at the Time of Reinstatement:

- ▶ **Nondisabled Retirees Reentering County Service Under Section 31680.4:**

For Retirees not granted a disability retirement who reenter County Service under Section 31680.4, their “rate of contributions and retirement allowance upon subsequent retirement shall be determined *as if the member were first entering the system.*” [Emphasis added.]

Consequences of Reentry into County Service

Reinstated Disabled Retirees Stay In The Same Plan:

- ▶ Section 31733 for Disability-Retirement Retirees reentering County Service does not contain the "*as if the members were first entering the system*" language.

Consequences of Reentry into County Service

Disability-Retirement Retirees Reentering County Service Under Section 31733:

Because Section 31733 does not contain language “as if the members were first entering the system,” Disability-Retirement Retirees should maintain their original retirement plan with contributions based on the age of reentry.

Rationale:

But for the member’s incapacitating medical condition and award of a disability retirement, he or she would have continued working under the original retirement plan.

The background features abstract, overlapping geometric shapes in various shades of blue, ranging from light to dark, creating a modern and dynamic visual effect. The shapes are primarily triangles and polygons, some of which are semi-transparent, allowing for layered colors.

QUESTIONS?