

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CALIFORNIA 92701**

**DISABILITY COMMITTEE MEETING
Monday, May 20, 2024
8:30 A.M.**

Members of the Committee

Richard Oates, Chair
Chuck Packard, Vice Chair
Roger Hilton
Jeremy Vallone

Members of the public who wish to observe and/or participate in the meeting may do so (1) from the OCERS Boardroom or (2) via the Zoom app or telephone (information below) from any location.

OCERS Zoom Video/Teleconference information	
<p>Join Zoom Meeting</p> <p>https://ocers.zoom.us/j/89210936572</p> <p>Meeting ID: 892 1093 6572 Passcode: 843111</p> <p>Go to https://www.zoom.us/download to download Zoom app before meeting Go to https://zoom.us to connect online using any browser.</p>	<p>Join by Telephone (Audio Only)</p> <p>Dial by your location</p> <p>+1 669 900 6833 US (San Jose) +1 346 248 7799 US (Houston) +1 253 215 8782 US +1 301 715 8592 US +1 312 626 6799 US (Chicago) +1 929 436 2866 US (New York)</p> <p>Meeting ID: 892 1093 6572 Passcode: 843111</p>
<p>A Zoom Meeting Participant Guide is available on OCERS website Board & Committee meetings page</p>	

AGENDA

This agenda contains a brief general description of each item to be considered. The Committee may take action on any item listed on this Agenda; however, except as otherwise provided by law, no action shall be taken on any item not appearing on the Agenda. The Committee may consider matters included on the agenda in any order, and not necessarily in the order listed.

OPEN SESSION

1. **CALL MEETING TO ORDER AND ROLL CALL**
2. **BOARD MEMBER STATEMENT REGARDING PARTICIPATION VIA ZOOM (IF NECESSARY)
(Government Code section 54953(f))**

3. PUBLIC COMMENTS

Members of the public who wish to provide comment during the meeting may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing * 9 on your telephone keypad. Members of the public who participate in the meeting from the OCERS Boardroom and who wish to provide comment during the meeting may do so from the podium located in the OCERS Boardroom. When addressing the Committee, please state your name for the record prior to providing your comments. Speakers will be limited to three (3) minutes.

At this time, members of the public may comment on (1) matters not included on the agenda, provided that the matter is within the subject matter jurisdiction of the Committee; and (2) any matter appearing on the Consent Agenda.

In addition, public comment on matters listed on this agenda will be taken at the time the item is addressed.

CLOSED SESSION

Government Code section 54957

Adjourn to Closed Session under Government Code section 54957 to consider disability applications and to discuss member medical records submitted in connection therewith. The member may waive confidentiality and request his or her disability application to be considered in Open Session. As per the OCERS Bylaws, for disability matters before the Board, the applicant or their attorney is allowed to present for a maximum of ten (10) minutes. The opposing counsel is allowed a time limit of seven (7) minutes for argument, followed by a three (3) minute rebuttal from the applicant or their attorney.

DA-1: THERESA WHITNEY

Eligibility Technician, Orange County Social Services Agency (General)

Recommendation: Staff recommends that the Disability Committee forward to the Board of Retirement a recommendation to:

- Deny service-connected disability retirement due to insufficient evidence of permanent incapacity.

OPEN SESSION

REPORT OF ACTIONS TAKEN IN CLOSED SESSION

CONSENT ITEMS

All matters on the Consent Agenda are to be approved by one action unless a Committee Member requests separate action on a specific item.

C-1 MINUTES FROM THE JANUARY 17, 2024, DISABILITY COMMITTEE MEETING

Recommendation: Approve the Minutes.

ACTION ITEMS

NOTE: Public comment on matters listed in this agenda will be taken at the time the item is addressed, prior to the Committee’s discussion of the item. **Members of the public who wish to provide comment in connection with any matter listed in this agenda may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing * 9, at the time the item is called. Persons attending the meeting in person and wishing to provide comment on a matter listed on the agenda should fill out a speaker card located at the back of the Boardroom and deposit it in the Recording Secretary’s box located near the back counter.**

A-1 INDIVIDUAL ACTION ON ANY ITEM TRAILED FROM THE CONSENT AGENDA

A-2 TRIENNIAL REVIEW OF THE DISABILITY RETIREMENT REASSIGNMENT POLICY

Presented by Nicole McIntosh, Director of Disabilities

Recommendation: Review, approve, and recommend that the Board approve the non-substantive revisions to the Disability Retirement Reassignment Policy, as presented. Staff also recommends that the Committee review, approve and recommend that the Board approve the modified title of the policy. “Supplemental Disability Retirement Policy (Reassignment)”.

A-3 TRIENNIAL REVIEW OF THE HEARING OFFICER SELECTION AND RETENTION POLICY

Presented by Nicole McIntosh, Director of Disabilities

Recommendation: Review, approve, and recommend that the Board approve the Hearing Officer Selection and Retention Policy, as presented.

A-4 REVISIONS TO THE DISABILITY PRESUMPTIONS OAP

Presented by Nicole McIntosh, Director of Disabilities

Recommendation: Review, and recommend that the Board approve the Disability Retirement Presumptions OAP, as presented.

COMMITTEE MEMBER COMMENTS

CHIEF EXECUTIVE OFFICER/STAFF/COUNSEL COMMENTS

ADJOURNMENT

NOTICE OF NEXT MEETINGS

Orange County Employees Retirement System
May 20, 2024
Disability Committee Meeting– Agenda

Page 4

REGULAR BOARD MEETING

**May 20, 2024
9:30 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CA 92701**

GOVERNANCE COMMITTEE MEETING

**May 23, 2024
9:30 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CA 92701**

INVESTMENT COMMITTEE MEETING

**May 29, 2024
9:00 A.M.**

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CA 92701**

AVAILABILITY OF AGENDA MATERIALS - Documents and other materials that are non-exempt public records distributed to all or a majority of the members of the OCERS Board or Committee of the Board in connection with a matter subject to discussion or consideration at an open meeting of the Board or Committee of the Board are available at the OCERS' website: <https://www.ocers.org/board-committee-meetings>. If such materials are distributed to members of the Board or Committee of the Board less than 72 hours prior to the meeting, they will be made available on the OCERS' website at the same time as they are distributed to the Board or Committee members. Non-exempt materials distributed during an open meeting of the Board or Committee of the Board will be made available on the OCERS' website as soon as practicable and will be available promptly upon request.

It is OCERS' intention to comply with the Americans with Disabilities Act ("ADA") in all respects. If, as an attendee or participant at this meeting, you will need any special assistance beyond that normally provided, OCERS will attempt to accommodate your needs in a reasonable manner. Please contact OCERS via email at adminsupport@ocers.org or call 714-558-6200 as soon as possible prior to the meeting to tell us about your needs and to determine if accommodation is feasible. We would appreciate at least 48 hours' notice, if possible.

**ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
2223 E. WELLINGTON AVENUE, SUITE 100
SANTA ANA, CALIFORNIA 92701**

**DISABILITY COMMITTEE MEETING
Wednesday, January 17, 2024
8:30 A.M.
MINUTES**

OPEN SESSION

Chair Oates called the meeting to order at 8:35 a.m.

Recording Secretary administered roll call.

Attendance was as follows: Richard Oates, Chair; Charles Packard, Vice Chair; Roger Hilton, Board Member; Jeremy Vallone, Board Member

Also in Attendance: Steve Delaney, CEO, Suzanne Jenike, Assistant CEO, External Operations; Manuel Serpa, General Counsel; Nicole McIntosh, Director of Disability; Brittany Brayboy, Disability Retirement Investigator; Cesar Rodriguez, Disability Retirement Investigator; Anthony Beltran, Audio Visual Technician; Marielle Horst, Recording Secretary

PUBLIC COMMENT

None.

CLOSED SESSION

The Committee adjourned to closed session at 8:39 a.m.

DISABILITY CONSENT ITEMS

DA-1: WILLIAM GROVER
Deputy Sheriff II, Orange County Sheriff's Department (Safety)

Recommendation: Staff recommends that the Disability Committee forward to the Board of Retirement a recommendation to:

- Deny service connected disability retirement due to the application being untimely.

OPEN SESSION

Orange County Employees Retirement System
January 17, 2024
Disability Committee Meeting Minutes

The Committee reconvened into open session at 9:22 a.m.

Mr. Serpa reported there was no reportable action taken.

CONSENT ITEMS

C-1 MINUTES FROM THE DECEMBER 11, 2023, DISABILITY COMMITTEE MEETING

Recommendation: Approve the Minutes.

MOTION by Mr. Packard, **seconded** by Mr. Hilton to approve the Disability Committee meeting minutes.
The motion passed **unanimously**.

COMMITTEE MEMBER COMMENTS

None.

CHIEF EXECUTIVE OFFICER/STAFF/COUNSEL COMMENTS

None.

ADJOURNMENT

The meeting adjourned at 9:24 a.m.

Submitted by:

Submitted by:

Approved by:

Suzanne Jenike
Staff Liaison

Steve Delaney
Secretary to the Board

Richard Oates
Chair



Memorandum

DATE: May 20, 2024
TO: Members of the Disability Committee
FROM: Nicole McIntosh, Director of Disabilities
SUBJECT: TRIENNIAL REVIEW OF THE DISABILITY RETIREMENT REASSIGNMENT POLICY

Recommendation

Review, approve, and recommend that the Board approve the non-substantive revisions to the Disability Retirement Reassignment Policy, as presented. Staff also recommends that the Committee review, approve and recommend that the Board approve the modified title of the policy. "Supplemental Disability Retirement Policy (Reassignment)".

Background

Disability Retirement Reassignment Policy was adopted in 2006 and has been reviewed and revised as needed by the Board and/or Governance or Disability Committee every three (3) years. We present the Policy to the Disability Committee as part of the required triennial review. Staff recommends the modified title of the policy because the current title lacks clarity and does not accurately reflect the policy's content. Staff recommends updating it to a more descriptive title that effectively communicates the purpose and scope of the policy.

Submitted by:



NM-Approved

Nicole McIntosh
Director of Disabilities



OCERS Board Policy

Supplemental Disability Retirement Allowance Policy (Reassignment) Policy

Purpose and Background

1. The purpose of this policy is to encourage the reassignment of disability retirement recipients in alternate positions under Sections 31725.5, 31725.6 and 31725.65 of the California Government Code, to provide staff with a method for delivering benefits and related services to those members and their beneficiaries and to manage the assets of the system in a prudent manner.

Policy Objectives

2. The objectives of this policy are to:
 - a. Provide a method by which the Board of Retirement (Board) can establish that a member who is permanently incapacitated from performing the duties of their position may be medically qualified to perform the duties required of an alternate position with an OCERS' employer;
 - b. Facilitate communication between OCERS, permanently incapacitated members, and employers to identify those members who will engage in a reassignment plan and to identify available positions meeting the member's medical criteria;
 - c. Provide guidance to OCERS' staff and the employer to ensure appropriate treatment during the reassignment period and upon subsequent retirement.

Policy Guidelines

3. The Board adopts the following approach for all disability retirement recipients who are reassigned under Sections 31725.5, 31725.6 or 31725.65 of the California Government Code:
 - a. Reassigned members will be considered active members of the retirement system for all purposes except death benefit entitlement;
 - b. Reassigned members will not be entitled to a second disability retirement;
 - c. Reassigned members will receive a supplemental disability retirement allowance, which will be the difference between the job salary for the position that the member is ~~permanently~~ permanently incapacitated from performing and the job salary for the alternate position. The supplemental disability allowance will not exceed the amount of the member's original disability retirement allowance, as adjusted by Cost of Living increases;
 - d. Reassigned members will pay contributions to OCERS and earn service credit;
 - e. Reassigned members will have their disability retirement allowances recalculated at the time of retirement from the alternate position.



OCERS Board Policy

Supplemental Disability Retirement Allowance Policy (Reassignment) Policy

Policy Review

- 4. The Board will review this policy at least every three years to ensure that it remains relevant and appropriate. In the event of legislative changes to the pertinent sections addressed in this policy, the Board will review the policy as appropriate.

Policy History

- 5. The Board adopted this policy on April 17, 2006. The Board reviewed this policy on August 24, 2009, November 19, 2012, July 17, 2017, and April [19, 2021](#).

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.

[04/19/21](#)

Steve Delaney
Secretary of the Board

Date



OCERS Board Policy

Supplemental Disability Allowance Policy (Reassignment)

Purpose and Background

1. The purpose of this policy is to encourage the reassignment of disability retirement recipients in alternate positions under Sections 31725.5, 31725.6 and 31725.65 of the California Government Code, to provide staff with a method for delivering benefits and related services to those members and their beneficiaries and to manage the assets of the system in a prudent manner.

Policy Objectives

2. The objectives of this policy are to:
 - a. Provide a method by which the Board of Retirement (Board) can establish that a member who is permanently incapacitated from performing the duties of their position may be medically qualified to perform the duties required of an alternate position with an OCERS' employer;
 - b. Facilitate communication between OCERS, permanently incapacitated members, and employers to identify those members who will engage in a reassignment plan and to identify available positions meeting the member's medical criteria;
 - c. Provide guidance to OCERS' staff and the employer to ensure appropriate treatment during the reassignment period and upon subsequent retirement.

Policy Guidelines

3. The Board adopts the following approach for all disability retirement recipients who are reassigned under Sections 31725.5, 31725.6 or 31725.65 of the California Government Code:
 - a. Reassigned members will be considered active members of the retirement system for all purposes except death benefit entitlement;
 - b. Reassigned members will not be entitled to a second disability retirement;
 - c. Reassigned members will receive a supplemental disability retirement allowance, which will be the difference between the job salary for the position that the member is permanently incapacitated from performing and the job salary for the alternate position. The supplemental disability allowance will not exceed the amount of the member's original disability retirement allowance, as adjusted by Cost of Living increases;
 - d. Reassigned members will pay contributions to OCERS and earn service credit;
 - e. Reassigned members will have their disability retirement allowances recalculated at the time of retirement from the alternate position.

Policy Review

4. The Board will review this policy at least every three years to ensure that it remains relevant and appropriate. In the event of legislative changes to the pertinent sections addressed in this policy, the Board will review the policy as appropriate.



OCERS Board Policy Supplemental Disability Allowance Policy (Reassignment)

Policy History

- 5. The Board adopted this policy on April 17, 2006. The Board reviewed this policy on August 24, 2009, November 19, 2012, July 17, 2017, April 19, 2021, and [date].

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.

Steve Delaney
Secretary of the Board

_____ Date



Memorandum

DATE: May 20, 2024
TO: Members of the Disability Committee
FROM: Nicole McIntosh, Director of Disabilities
SUBJECT: TRIENNIAL REVIEW OF THE HEARING OFFICER SELECTION AND RETENTION POLICY

Recommendation

Review, approve, and recommend that the Board approve the Hearing Officer Selection and Retention Policy, as presented.

Background

The Hearing Officer Selection and Retention Policy was adopted in 2000 and has been reviewed and revised as needed by the Board and/or Governance or Disability Committee every three (3) years. We present the Policy to the Disability Committee as part of the required triennial review.

Submitted by:



NM-Approved

Nicole McIntosh
 Director of Disabilities



OCERS Board Policy
Hearing Officer Selection and Retention Policy

Purpose and Background

1. The purpose of the Hearing Officer Selection and Retention Policy (Policy) is to provide OCERS with procedures for the selection and retention of Hearing Officers who will conduct administrative hearings. The Board of Retirement (Board) is charged with the responsibility of administering the System in a manner to assure prompt delivery of benefits to plan participants and their beneficiaries. Selection of competent Hearing Officers must be made in a manner that ensures the due process rights of plan participants and their beneficiaries are met.
2. Pursuant to Government Code Section 31533, the Board may appoint either a member of the Board or a member of the State Bar of California to serve as a Hearing Officer in an administrative hearing. This Policy applyapplies only to the appointment of members of the State Bar of California as Hearing Officers.

Policy Objectives

3. The objectives of the Hearing Officer Selection and Retention Policy are to:
 - a. Establish a procedureprocess for the selection and retention of Hearing Officers that complies with the due process rights of plan participants and their beneficiaries;
 - b. Establish a procedureprocess for the selection and retention of Hearing Officers that ensures only qualified, competent, and impartial Hearing Officers are appointed;
 - c. Establish a procedureprocess for monitoring and evaluating Hearing Officers’ performance so only qualified and competent Hearing Officers are retained after they have been appointed; and
 - d. Establish a procedureprocess for the assignment of Hearing Officers to individual cases that ensures the due process rights of plan participants and their beneficiaries.

Roles and Responsibilities

4. The role of the Board of Retirement with respect to the selection of Hearing Officers is to:
 - a. Establish appropriate policies with respect to the selection and evaluation of Hearing Officers; and
 - b. Approve, upon the recommendation of the Hearing Officer Selection Panel (Panel), the appointment of qualified Hearing Officers.
5. The role of the Disability Committee General Counsel with respect to the selection of Hearing Officers is to:
 - a. 5. Monitor monitor compliance with this Policypolicy.
6. AThe Panel will consist of (i) the Chief Executive Officer, (ii) the General Counsel (iii) either; the Assistant CEO forof External Operations or; the Director of Member Services; and (iv) either the Chair or Vice Chair of the Disability Committee and will beis responsible for:
 - a. Interviewing and recommending to the Board for its approval competent and qualified Hearing Officers in conformity with the Selection Process set forth in this Policy;



OCERS Board Policy Hearing Officer Selection and Retention Policy

- ~~b. Evaluating the performance of Hearing Officers in accordance with the process for conducting performance evaluations of Hearing Officers set forth in this Policy;~~
- ~~c. Maintaining a list of Hearing Officers sufficient in number to meet OCERS' needs as set forth in this Policy.~~

Qualifications

A Hearing Officer Qualifications

- 7. A Hearing Officers must be a member of the State Bar of California ~~(Government Code Section 31533).~~
- 8. Factors for consideration when selecting Hearing Officers will include the following:
 - a. ~~Past past~~ experience as an adjudicator (e.g., judge pro tem, arbitrator etc.); and
 - b. ~~Past past~~ experience in disability retirement, workers' compensation law, and all relevant provisions of the County Employees Retirement Law, as amended.

Hearing Officer Selection and Retention Procedure

The Selection Process

9.8. Request for ~~Proposals~~ Proposal (RFP)

- a. ~~Whenever~~When the General Counsel determines that it is necessary ~~in order~~ to maintain a sufficient ~~number~~panel of Hearing Officers, ~~the Panel~~they will initiate a Request for ~~Proposals (RFP)~~ Proposal.
- b. ~~At the discretion of the Chief Executive Officer, the~~The RFP may be published in major legal periodicals, journals, and ~~or~~ bar association magazines. The RFP ~~may~~will also be posted ~~at on~~ OCERS' ~~web site~~website, social media platforms, law schools, and ~~at other job related web sites~~websites. In addition, the RFP ~~may~~will be sent to potential candidates that are brought to the attention of the General Counsel ~~or have previously served as a Hearing Officer for OCERS.~~

10.9. Selection Process

- a. The General Counsel or their designee will collect and review ~~the~~ responses to the RFP and ~~select~~refer the ~~most~~ qualified candidates ~~for formal interviews to the Panel.~~
- b. The Panel will conduct ~~formal~~ interviews of the ~~selected~~ candidates ~~selected by the General Counsel~~. ~~The interviews may.~~ Interviews will be conducted in person or virtually. ~~The Panel will review writing~~ Writing samples, references, ~~and~~ other materials that would reflect ~~upon~~ the candidate's ability to ~~competently~~ perform the duties of a Hearing Officer. ~~will be evaluated.~~ Based on the interviews ~~and review of materials,~~ the Panel will select ~~the~~ candidates to recommend to the Board for appointment as Hearing Officers.
 - c. ~~Prior to submitting the A~~ list of ~~recommended~~ candidates ~~to the Board,~~ the list will be submitted to ~~OCERS~~ employers ~~of OCERS~~ and employee ~~representation units.~~ ~~Those entities~~labor



OCERS Board Policy Hearing Officer Selection and Retention Policy

~~groups who will be provided~~ given a brief ~~outline~~ summary of the qualifications of the candidates ~~and be given~~. They will have fifteen (15) days to comment ~~on the list of proposed Hearing Officers~~.

- ~~d. Employers, employee representation units may provide additional comments in writing or in person with respect to the proposed list of candidates at the time that the Board is to vote on the list of proposed Hearing Officers.~~

Hearing Officer Contracts Agreement

11. Term of Appointment

- ~~a.10. Subsequent to appointment by the Board, each~~ Each Hearing Officer will execute an Agreement for Hearing Officer Services ~~agreement (Agreement). Among other terms, the~~ (Agreement). The term of that Agreement will be for six (6) years and will allow for the termination of the Agreement by either party with cause.

1. Expiration of Agreement for Hearing Officer Services

The Agreement ~~shall~~ will terminate at the end of ~~its seven~~ the six-year (6) term, provided however, that the term may be extended ~~by the Chief Executive Officer and General Counsel in order~~ for the Hearing Officer to complete any appeals that are not yet final (as defined by the OCERS Administrative Review and Hearing Policy) ~~as of the end of the seven year term.~~ Upon expiration of the Agreement, the Hearing Officer is prohibited from reapplying to serve as a Hearing Officer for a period of two (2) years after the expiration of the previous Agreement, ~~and must participate in the Hearing Officer Selection Process again as a condition to being awarded a new contract.~~

12. Compliance with OCERS Administrative Review and Hearing Policy

- ~~a. Each agreement~~ The Agreement will contain a provision ~~whereby~~ stating the Hearing Officer agrees ~~that they will be bound by the OCERS OCERS' Administrative Review and Hearing Policy and Hearing Policy, which may be amended by OCERS from time to time, and that his or her~~ their duties ~~shall~~ will be performed in a timely and efficient manner, including within the time frames set forth in the OCERS Administrative Review and Hearing Policy ~~policy.~~

13. Code of Judicial Ethics

- ~~a. Each Agreement will contain a provision~~ whereby ~~stating~~ the Hearing Officer agrees ~~that~~ they are subject to and bound by the provisions of subdivision D of Canon 6 of the Code of Judicial Ethics.

Hearing Officer Performance Evaluations

14. Evaluation Criteria

- ~~a. Quality~~ The Proposed Findings of opinions
 - ~~i. A record shall be maintained of the number of times that a Hearing Officer's recommendation is overturned~~ Fact and Recommended Decisions issued by the Superior Court on a writ.
 - ~~ii. Recommendations of the Hearing Officer shall~~ will be reviewed by the General Counsel or their designee to determine whether they are well-reasoned and logically apply the law to the facts of a given case.



OCERS Board Policy

Hearing Officer Selection and Retention Policy

- b. ~~Timeliness of opinions~~
 - i. ~~A record will be maintained of the number of times that a Hearing Officer’s recommendation is tardy.~~
 - ii. ~~The record shall also include the number of recommendations issued by the General Counsel or their designee may evaluate any Hearing Officer during the contract term.~~

15. Evaluation Process

- a. ~~The Panel will evaluate each Hearing Officer based on the criteria listed in Section 15, above, within four (4) years of their appointment.~~
- b. ~~In addition, the General Counsel will at any time during the term of the Agreement evaluate a particular Hearing Officer to determine whetherif cause exists to terminate the Agreement with that Hearing Officer. Cause for termination includes, but is not limited to, may include a finding by the General Counsel that the Hearing Officer has repeatedly failed to file their Proposed Findings of Fact and Recommended Decision in a timely manner, engaged in fraudulent billing practices, or or has been publicly disciplineddisciplined by the State Bar of California.~~
- c. ~~Based on the above referenced evaluations with respect to a particular Hearing Officer, the Chief Executive Officer, failing to maintain an active status with the State Bar of California, or General Counsel will recommend to the Board that it terminate for any other material breach of the Agreement prior to its normal expiration date or take other appropriate action as necessary.~~

Miscellaneous

Assignment of Cases

~~16. Pursuant to the OCERS Administrative Review and Hearing Policy, the OCERS Legal Division will review, maintain, and formalize a system that ensures that Hearing Officers are assigned cases on a rotational basis, while ensuring that, to the extent possible, each Hearing Officer is assigned an equal number of cases. The General Counsel or their designee shall oversee this process.~~

Number of Hearing Officers

- ~~17. At all times, the General Counsel will make reasonable efforts to maintain a list of Hearing Officers sufficient in number to meet the needs of OCERS, and if the General Counsel concludes that the number of Hearing Officers is insufficient, recommend to the Panel that additional Hearing Officers are necessary. The General Counsel will determine the number of Hearing Officers necessary to meet those needs based upon the following factors:~~
 - a. ~~The average number of hearings per month;~~
 - b. ~~The number of hearings per month assigned to each Hearing Officer;~~

Remuneration

~~11. To attract and retain the most qualified Hearing Officers, The General Counsel will maintain a panel of Hearing Officers sufficient to meet OCERS’ needs.~~



OCERS Board Policy Hearing Officer Selection and Retention Policy

Compensation

~~18.12.~~ Before the issuance of any RFP the General Counsel will review, ~~from time to time and before the issuance of any RFP,~~ the contracted rate of pay for OCERS' Hearing Officers. ~~The purpose of the review will be to~~ and determine ~~whether OCERS' if that~~ rate of pay is competitive with ~~current market~~ rates paid for Hearing Officer services by other public retirement systems ~~similarly situated to OCERS.~~

~~19.13.~~ Based on this review, the General Counsel may recommend that the Board of Retirement consider modifications to the Hearing Officers' rate of pay.

Document Terms

~~20.14.~~ For purposes of this policy, the term Hearing Officer shall have the same meaning as the term referee, as that term is used in the relevant sections of the California Government Code.-

Policy Review

~~21.15.~~ The Board will review this Policy at least every three (3) years to ensure that it remains relevant and appropriate.

Policy History

~~22.16.~~ This Policy was adopted by the Board on April 17, 2000. It was amended on February 22, 2005 and May 16, 2005; reviewed on June 18, 2007 with no changes; and amended on August 23, 2010, January 21, 2014, December 19, 2016, January 16, 2018, ~~and~~ April 19, 2021-, and [date].

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.

Steve Delaney, Secretary of the Board	Date
---------------------------------------	------



OCERS Board Policy Hearing Officer Selection and Retention Policy

Purpose and Background

1. The purpose of the Hearing Officer Selection and Retention Policy (Policy) is to provide OCERS with procedures for the selection and retention of Hearing Officers who will conduct administrative hearings. The Board of Retirement (Board) is charged with the responsibility of administering the System in a manner to assure prompt delivery of benefits to plan participants and their beneficiaries. Selection of competent Hearing Officers must be made in a manner that ensures the due process rights of plan participants and their beneficiaries are met.
2. Pursuant to Government Code Section 31533, the Board may appoint either a member of the Board or a member of the State Bar of California to serve as a Hearing Officer in an administrative hearing. This Policy applies only to the appointment of members of the State Bar of California as Hearing Officers.

Policy Objectives

3. The objectives of the Hearing Officer Selection and Retention Policy are to:
 - a. Establish a process for the selection and retention of Hearing Officers that complies with the due process rights of plan participants and their beneficiaries;
 - b. Establish a process for the selection and retention of Hearing Officers that ensures only qualified, competent, and impartial Hearing Officers are appointed;
 - c. Establish a process for monitoring and evaluating Hearing Officers' performance so only qualified and competent Hearing Officers are retained after they have been appointed; and
 - d. Establish a process for the assignment of Hearing Officers to individual cases that ensures the due process rights of plan participants and their beneficiaries.

Roles and Responsibilities

4. The role of the Board of Retirement with respect to the selection of Hearing Officers is to:
 - a. Establish appropriate policies with respect to the selection and evaluation of Hearing Officers; and
 - b. Approve, upon the recommendation of the Hearing Officer Selection Panel (Panel), the appointment of qualified Hearing Officers.
5. The role of the General Counsel with respect to the selection of Hearing Officers is to monitor compliance with this policy.
6. The Panel will consist of the Chief Executive Officer; the General Counsel; the Assistant CEO of External Operations; the Director of Member Services; and the Chair or Vice Chair of the Disability Committee and is responsible for:
 - a. Interviewing and recommending to the Board for its approval qualified Hearing Officers in conformity with the Selection Process set forth in this Policy.



OCERS Board Policy Hearing Officer Selection and Retention Policy

Qualifications

7. A Hearing Officer must be a member of the State Bar of California.
 - a. Factors for consideration when selecting Hearing Officers will include the following: past experience as an adjudicator (e.g., judge, judge pro tem, arbitrator etc.); and past experience in disability retirement, workers' compensation law, and all relevant provisions of the County Employees Retirement Law, as amended.

Selection Process

8. Request for Proposal (RFP)
 - a. When the General Counsel determines that it is necessary to maintain a sufficient panel of Hearing Officers, they will initiate a Request for Proposal.
 - b. The RFP may be published in major legal periodicals, journals, and bar association magazines. The RFP will also be posted on OCERS' website, social media platforms, law schools, and other related websites. In addition, the RFP will be sent to potential candidates that are brought to the attention of the General Counsel or have previously served as a Hearing Officer for OCERS.
9. Selection Process
 - a. The General Counsel or their designee will collect and review responses to the RFP and refer the most qualified candidates to the Panel.
 - b. The Panel will conduct interviews of the selected candidates. Interviews will be conducted in person or virtually. Writing samples, references, and other materials that would reflect the candidate's ability to perform the duties of a Hearing Officer will be evaluated. Based on the interviews the Panel will select candidates to recommend to the Board for appointment as Hearing Officers.

A list of candidates will be submitted to OCERS employers and employee labor groups who will be given a brief summary of the qualifications of the candidates. They will have fifteen (15) days to comment.

Hearing Officer Agreement

10. Each Hearing Officer will execute an Agreement for Hearing Officer Services (Agreement). The term of that Agreement will be for six (6) years and will allow for the termination of the Agreement by either party with cause.
11. The Agreement will terminate at the end of the six-year (6) term, however, the term may be extended for the Hearing Officer to complete any appeals that are not yet final (as defined by the OCERS Administrative Review and Hearing Policy). Upon expiration of the Agreement, the Hearing Officer is prohibited from reapplying to serve as a Hearing Officer for a period of two (2) years after the expiration of the previous Agreement.



OCERS Board Policy Hearing Officer Selection and Retention Policy

12. The Agreement will contain a provision stating the Hearing Officer agrees they will be bound by OCERS' Administrative Review and Hearing Policy and their duties will be performed within the time frames set forth in the policy.
13. Each Agreement will contain a provision stating the Hearing Officer agrees they are subject to and bound by the provisions of subdivision D of Canon 6 of the Code of Judicial Ethics.
14. The Proposed Findings of Fact and Recommended Decisions issued by the Hearing Officer will be reviewed by the General Counsel or their designee to determine whether they are well-reasoned and logically apply the law to the facts of a given case.
15. The General Counsel or their designee may evaluate any Hearing Officer during the term of the Agreement to determine if cause exists to terminate the Agreement. Cause for termination may include a finding by the General Counsel that the Hearing Officer has engaged in fraudulent billing practices, or disciplined by the State Bar of California, failing to maintain an active status with the State Bar of California, or for any other material breach of the Agreement.

Number of Hearing Officers

16. The General Counsel will maintain a panel of Hearing Officers sufficient to meet OCERS' needs.

Compensation

17. Before the issuance of any RFP the General Counsel will review the contracted rate of pay for OCERS' Hearing Officers and determine if that rate is competitive with rates paid for Hearing Officer services by other public retirement systems.
18. Based on this review, the General Counsel may recommend that the Board of Retirement consider modifications to the Hearing Officers' rate of pay.

Document Terms

19. For purposes of this policy, the term Hearing Officer shall have the same meaning as the term referee, as that term is used in the relevant sections of the California Government Code.

Policy Review

20. The Board will review this Policy at least every three (3) years to ensure that it remains relevant and appropriate.

Policy History

21. This Policy was adopted by the Board on April 17, 2000. It was amended on February 22, 2005, and May 16, 2005; reviewed on June 18, 2007 with no changes; and amended on August 23, 2010, January 21, 2014, December 19, 2016, January 16, 2018, April 19, 2021, and [date].



OCERS Board Policy Hearing Officer Selection and Retention Policy

Secretary's Certificate

I, the undersigned, the duly appointed Secretary of the Orange County Employees Retirement System, hereby certify the adoption of this policy.

A handwritten signature in black ink that reads "Steve Delaney".

Steve Delaney, Secretary of the Board

Date



Memorandum

DATE: May 20, 2024
TO: Members of the Disability Committee
FROM: Nicole McIntosh, Director of Disabilities
SUBJECT: REVISIONS TO THE DISABILITY PRESUMPTIONS OAP

Recommendation

Review and recommend that the Board approve the Disability Retirement Presumptions OAP, as presented.

Summary

The purpose of this OAP is to document the criteria governing each of the disability retirement presumptions and to reflect recent legislative changes. The revised OAP includes a time extension for the existing heart trouble presumption and adds presumptions relating to post-traumatic stress disorder, tuberculosis, meningitis, lower back impairment, and hernia or pneumonia.

Revisions

The OAP has been revised to include the following legislative changes.

Heart Trouble Presumption

The heart trouble presumption now includes a time limit provision, pursuant to Government Code section 31720.5(e). The presumption is now extended to a member following termination of service for a period of 3 calendar months for each full year of the requisite service, but shall not exceed 60 months regardless of the member's length of service, commencing with the last date the member actually worked as a firefighter member or member in active law enforcement. The member is permitted to demonstrate incapacity within the period that the presumption applies, even if the incapacity manifests after termination of service ("time limit provision").

The presumption has also been revised to clarify that heart trouble must develop or manifest during a period while the member is in the service of the specified department, office, or unit.

Post-Traumatic Stress Disorder ("PTSD") Presumption

The PTSD presumption states that if a member of a classification listed under Labor Code section 3212.15 (which includes active firefighting members and peace officers primarily engaged in active law enforcement, including members of a sheriff's office, district attorney investigators, and probation officers) becomes permanently incapacitated due to PTSD, it will be presumed that the disorder arose out of and in the course of employment. (Gov. Code, § 31720.91.) The presumption is rebuttable by evidence to the contrary.

The PTSD presumption contains the same time limit provision set forth above.

The PTSD presumption will expire on January 1, 2025.

Tuberculosis Presumption

The tuberculosis presumption states that is a member in classification listed under Labor Code section 3212.6 (which includes members of the sheriff's department, fire department, district attorney investigators, prison or jail guards, or correctional officers whose principal duties clearly fall within the scope of active law enforcement, firefighting, or emergency first-aid responders) becomes permanently incapacitated due to tuberculosis, it will be presumed that the disorder arose out of and in the course of employment. (Gov. Code, § 31720.92.) The presumption is rebuttable by evidence to the contrary.

The tuberculosis presumption contains the same time limit provision set forth above.

Meningitis Presumption

The meningitis presumption states that is a member in a classification listed under Labor Code section 3212.9 (which includes members of the sheriff's office, fire department, probation officers, and district attorney investigator whose principal duties clearly fall within the scope of active law enforcement or firefighting) becomes permanently incapacitated due to meningitis, it will be presumed that the disorder arose out of and in the course of employment. (Gov. Code, § 31720.93.) The presumption is rebuttable by evidence to the contrary.

The meningitis presumption contains the same time limit provision set forth above.

Lower Back Impairment Presumption

The lower back impairment presumption states that is a member in classification listed under Labor Code section 3213.2 (which includes members of a sheriff's office) becomes permanently incapacitated due to lower back impairments, it will be presumed that the disorder arose out of and in the course of employment. (Gov. Code, § 31720.96.) The presumption is rebuttable by evidence to the contrary.

The lower back impairment presumption contains the same time limit provision set forth above.

Hernia or Pneumonia Presumption

The hernia or pneumonia presumption states that is a member in a classification listed under Labor Code section 3213.2 (which includes members of a sheriff's office and district attorney investigators whose principal duties clearly fall within the scope of active law enforcement, and members of a firefighting department, except those whose principal duties are clerical) becomes permanently incapacitated due to hernia or pneumonia, it will be presumed that the disorder arose out of and in the course of employment. (Gov. Code, § 31720.93.) The presumption is rebuttable by evidence to the contrary.

The hernia or pneumonia presumption contains the same time limit provision set forth above.

A copy of the OAP is attached.

Submitted by:



NM-Approved

Nicole McIntosh
Director of Disabilities



OCERS Administrative Procedure (OAP)

Disability Presumptions

I. Purpose

The purpose of this OCERS administrative procedure (OAP) is to describe how the OCERS¹ Board of Retirement (Board), the Board's Disability Committee, and the OCERS Chief Executive Officer (CEO) apply the rules governing disability presumptions under Government Code sections 31720.5, 31720.6, 31720.7, 31720.9, 31720.91, 31720.92, 31720.93, 31720.96, and 31720.97, 7523.1, and 7523.2.

II. Authority

This OAP is established pursuant to the CEO Charter, which directs the CEO to develop staff policies and procedures to ensure the effective and efficient administration of member benefits. The OAP is in conformance with Board policy, the County Employees Retirement Law (California Government Code section 31450, *et seq.*) (CERL), and the Public Employees' Pension Reform Act (Government Code, sections 7522 - 7522.74) (PEPRA).

III. Introduction

A member of OCERS is eligible for a service-connected disability retirement allowance if:

1. The Board finds the member permanently incapacitated, physically or mentally, from performing the usual duties of any a permanent assignment within their job classification;ⁱ and
2. The incapacity arose out of and in the course of their employment, and such employment contributed substantially to their being incapacitated.ⁱⁱ

This "arose out of and in the course of employment" element (sometimes referred to as AOE/COE or industrial causation) is necessary for service-connection. The member must establish that the incapacitating injury or disease arose out of and in the course of employment by offering evidence of a real and measurable connection between the employment and the injury or illness that causes the permanent incapacity.ⁱⁱⁱ Normally, the member has the burden to prove this connection by a preponderance of the evidence.

Ultimately, the Board determines from the evidence whether there is or is not a sufficient causal connection between the employment and the incapacity for the disability to be service-connected.

The disability presumptions ("heart trouble" at Gov. Code, § 31720.5, cancer at § 31720.6, blood-borne infectious disease or MRSA skin infection at § 31720.7, and exposure to biochemical substances at § 31720.9, post-traumatic stress disorder at § 31720.91, tuberculosis at § 31720.92, meningitis at § 31720.93, skin cancer at § 31720.94, Lyme disease at § 31720.95, lower back



OCERS Administrative Procedure (OAP)

Disability Presumptions

impairments at § 31720.96, and hernia or pneumonia at § 31720.97) relieve the member of their burden to prove ~~provide a means of establishing the service-connection.~~^{iv}ed

element for disability retirement when the member is unable to prove directly that their employment substantially contributed to their incapacity. In addition, there is a COVID-19 presumption that is effective until January 1, 2024. Each presumption statute specifies prerequisites that a member must satisfy in order for the presumption to apply. It is the member's burden to establish these prerequisites by a preponderance of the evidence. **Upon doing so, the presumption applies, and the member does not have to prove industrial causation; instead, OCERS must disprove it.**

These presumption statutes do not create a presumption that the member is incapacitated for duty. **The member must still bears the burden of proving that they are permanently incapacitated. Then, if a preponderance of the evidence establishes the other prerequisites for triggering the presumption, the incapacity is presumed to be service-connected.**

When the criteria of a disability presumption are met, the member is relieved of the burden of proving that the incapacitating injury or illness arose out of and in the course of employment, and industrial causation is presumed to exist. Accordingly, the member's burden is only to prove the existence of the prerequisites specified in the Government Code section that give rise to the presumption of service-connection.

By establishing the criteria of one of the disability presumptions, the member does not have to prove industrial causation; instead, OCERS must disprove it.

The presumptions are rebuttable, i.e., they may be overcome by contrary evidence. A rebuttable presumption establishes the existence of a fact unless evidence is introduced which would support a finding that the presumed fact does not exist.^v For example, the heart trouble presumption (Gov. Code, § 31720.5) shifts the burden of proof on the issue of service-connection from the public safety worker member, who would otherwise have to prove that their heart trouble arose out of and in the course of employment and that the employment contributed substantially to the disability, to the employer retirement system, which ~~must~~ prove that the heart trouble did not arise out of and or occur in the course of employment.

IV. Heart Trouble Presumption

If a member in one of the designated occupations has at least five years of service credit and becomes permanently incapacitated due to heart trouble, it will be presumed that the heart trouble developed out of and in the course and scope of their employment, unless there is evidence of a contemporaneous non-industrial cause. Unless rebutted, the member's resulting disability retirement will be ~~deemed~~ service-connected.



OCERS Administrative Procedure (OAP)

Disability Presumptions

Prerequisites for application of the heart trouble presumption under Gov. Code, § 31720.5

1. **The member must be a safety member,^{vi} a fireman member, or a member in active law enforcement**
 - "Fireman member" and "member in active law enforcement" includes a member engaged in active fire suppression or active law enforcement *regardless* of whether they are a safety member.
 - "Active law enforcement" includes positions with principal duties which pertain to the active investigation and suppression of crime, the arrest and detention of criminals, and the administrative control of such duties in the offices of the sheriff and district attorney, including Sheriff's Special Officers (SSOs).^{vii}
2. **The member must have at least five years of service**
 - The member must have completed five years or more of service with OCERS, another retirement system established under the CERL or the Public Employees Retirement System (CalPERS), or a pension system established by the County Peace Officers' Retirement Law (Gov. Code, §§ 31900, *et seq.*), or the County Fire Service Retirement Law (Gov. Code, §§ 32200, *et seq.*). The "five years or more of service" does not have to be entirely with the county from which the member is retiring.
3. **The member must develop heart trouble**
 - "Heart trouble" is any disease or malfunction of the heart.
 - The heart trouble must begin develop or manifest prior to the termination of service or the last day on which the member worked in the specified occupation during a period while the member is in the service of the specified department, office, or unit.
4. **Time limit**
 - The presumption is extended to a member following termination of service for a period of 3 calendar months for each full year of the requisite service, but shall not exceed 60 months regardless of the member's length of service, commencing with the last date the member actually worked as a firefighter member or member in active law enforcement. The member is permitted to demonstrate incapacity within the period that the presumption applies, even if the incapacity manifests after termination of service. ~~three (3) calendar months for each full year of requisite service, but shall not exceed 60 months, and commencing with the last date the member actually worked in the classification.~~



OCERS Administrative Procedure (OAP)

Disability Presumptions

Once the member establishes ~~that they are in one of the designated occupations, have sufficient years of service, and developed heart trouble that is permanently incapacitating these prerequisites,~~ the presumption of service connection will apply unless OCERS rebuts it.

The presumption is rebuttable by evidence to the contrary. OCERS may also prove the member did not meet one or more prerequisites.

The presumption includes a **non-attribution provision** stating that the heart trouble will not be attributed to any disease existing before the development or manifestation of the heart trouble. However, the presumption may be rebutted by, for example, proof that a contemporaneous nonwork-related event was the cause of the heart trouble.

V. Cancer Presumption

If a member in one of the designated occupations has at least five years of service credit and becomes permanently incapacitated due to cancer ~~If a specified safety member with at least five years of service credit becomes permanently incapacitated due to a *non-skin* cancer~~ and establishes they were exposed to a known carcinogen as a result of the performance of their job duties, it will be presumed that the cancer developed out of and in the course of employment. Unless rebutted, the resulting disability retirement allowance will be service-connected.

Prerequisites for application of the cancer presumption under Gov. Code, § 31720.6

1. Occupation

- The member must be, or must have been, a safety member,^{viii} a firefighter, or a member in active law enforcement.^{ix}
- "Firefighter" and "member in active law enforcement" includes a member engaged in active fire suppression or active law enforcement *regardless* of whether they are a safety member.
- "Member in active law enforcement " includes Sheriff's Special Officers (SSOs).

2. At least five years of service



OCERS Administrative Procedure (OAP)

Disability Presumptions

- The member must have completed five years or more of service with OCERS, another retirement system established under the CERL or the Public Employees Retirement System (CalPERS), or a pension system established by the County Peace Officers' Retirement Law (Gov. Code, §§ 31900, *et seq.*), or the County Fire Service Retirement Law (Gov. Code, §§ 32200, *et seq.*). The "five years or more of service" does not have to be entirely with the county from which the member is retiring.

3. The member develops a non-skin cancer

- The cancer must develop during a period while the member is in the service of the specified department or unit.

3.4. Permanent Incapacity P

- The member must be permanently incapacitated for the performance of duty because of the cancer to be entitled to the presumption.

4.5. Exposure to carcinogen E

- The member must demonstrate that they were exposed to a "known carcinogen" due to the performance of job duties.
- "Known carcinogen" is defined as a carcinogenic agent recognized by the International Agency for Research on Cancer (IARC) or the Director of the Division of Industrial Accidents.^x
- There must be substantial evidence of a real and measurable exposure to a known carcinogen, albeit not necessarily a carcinogen that causes the cancer from which the member suffers.

5.6. Time limit Ti

- The presumption is extended to a member following termination of service for a period of 3 calendar months for each full year of the requisite service, but shall not exceed 60 months in any circumstance, commencing with the last date the member actually worked in the specified capacity. The member is permitted to demonstrate incapacity within the period that the presumption applies, even if the incapacity manifests after termination of service. ~~The presumption is extended to a member three (3) calendar months for each full year of requisite service, but shall not exceed sixty (60) months, and commencing with the last date the member actually worked in the classification. The time limitation in Section 31720.6, subdivision (c), must not~~



OCERS Administrative Procedure (OAP) Disability Presumptions

~~have been exceeded. This presumption is extended to a member following termination of service for a period of three calendar months for each full year of the requisite service. The extension is from termination, but not to exceed sixty months commencing with the last day actually worked in the specified capacity, not from the date that service is discontinued. Therefore, if the member last worked in the specified occupation sixty months or more before the termination of service, the presumption does not apply.~~

~~Once the member establishes these prerequisites, the presumption of service connection will apply unless OCERS rebuts it. Once the member establishes the six prerequisites above, the presumption of service connection will apply unless it is rebutted by OCERS.~~

The presumption is rebuttable by OCERS and may be controverted by evidence that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer, *provided* that the primary site of the cancer has been established. Therefore, to rebut the presumption of service-connection, evidence must be provided that (1) the primary site of the cancer is established and (2) that exposure to the identified carcinogen is not reasonably linked to the member's disabling cancer.

The presumption includes a non-attribution provision stating that the cancer will not be attributed to any disease existing prior to the development or manifestation of the cancer. Therefore, OCERS may not rebut the presumption by attributing the cancer to disease the member had previously.

Skin Cancer Presumption

~~If a specified safety member with at least five years of service credit becomes permanently incapacitated due to a *skin* cancer and establishes they were exposed to a known carcinogen as a result of the performance of their job duties, it will be presumed that the cancer developed out of and in the course of employment. The resulting disability retirement allowance will be service-connected.~~

~~Prerequisites for application of the skin cancer presumption under Gov. Code, § 31720.94~~

Occupation

~~The member must be, or must have been, an active lifeguard.^{vi}~~

~~At least three months of service~~



OCERS Administrative Procedure (OAP) Disability Presumptions

~~The member must have completed three consecutive months or more of service as an active lifeguard.~~

~~**The member develops a skin cancer**~~

~~The skin cancer must develop or manifest while the member is in service.~~

~~**Permanent Incapacity**~~

~~The member must be permanently incapacitated for the performance of duty because of the cancer to be entitled to the presumption.~~

~~**Time limit**~~

~~The presumption is extended to a member three (3) calendar months for each full year of requisite service, but shall not exceed sixty (60) months, and commencing with the last date the member actually worked in the classification.~~

~~The presumption is rebuttable by evidence to the contrary. To rebut the presumption, OCERS must prove the member did not meet one or more prerequisites.~~

VI. Blood-borne Infectious Disease Presumption

If a member in one of the designated occupations ~~and~~ becomes permanently incapacitated due to ~~exposure to~~ a blood-borne infectious disease or methicillin-resistant Staphylococcus aureus skin infection (MRSA), it will be presumed that the disease developed out of and in the course of their employment, ~~unless rebutted by contrary evidence. Unless rebutted, T~~the resulting disability retirement will ~~thus~~ be ~~considered~~ service-connected.

Prerequisites for application of the blood-borne infectious disease presumption under Gov. Code, § 31720.7

1. Occupation

- ~~• The member must be, or must have been, a safety member,^{xii} a firefighter, a county probation officer, or a member in active law enforcement. A "member in active law enforcement" is expressly defined for purposes of Section 31720.7^{xiii} and encompasses Sheriff's Special Officers.^{xiv}~~
- ~~• A "member in active law enforcement" includes those who are not classified as a safety member and Sheriff's Special Officers (SSOs).~~



OCERS Administrative Procedure (OAP)

Disability Presumptions

- *Absent from the blood-borne infectious disease presumption is the requirement that the member have five years of service.*
- 2. Member develops blood borne disease or MRSA**
- "Blood borne infectious disease" is defined as "a disease caused by exposure to pathogenic microorganisms that are present in human blood that can cause disease in humans, including, but not limited to, those pathogenic microorganisms defined as blood-borne pathogens by the Department of Industrial Relations." (Gov. Code, § 31720.7, subsection (d))^{xv}
 - The Department of Industrial Relations has defined the following as blood borne pathogens: hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV).^{xvi}
 - Proof of on-the-job exposure to a blood borne infectious disease or MRSA is *not* required for the presumption to arise.
 - The blood-borne infectious disease or MRSA must develop or manifest during a period while the member is in the service of the specified office, staff, division, department, or unit.
- 3. Member becomes incapacitated for duty**
- The permanent incapacity must result from blood borne infectious disease or MRSA skin infection.
- 4. Time ~~limit~~ limitation to develop disease not exceeded**
- In the case of a blood-borne disease, the presumption is extended to a member following termination of service for a period of 3 calendar months for each full year of the requisite service, but shall not exceed 60 months in any circumstance, commencing with the last date the member actually worked in the specified capacity. In the case of a blood-borne infectious disease, this presumption is extended to a member following termination of service for a period of three (3) calendar months for each full year of the requisite service, but not to exceed shall not exceed sixty (60) months, commencing with the last date actually worked in the specified capacity. For example, a firefighter with three years of service would be eligible for the presumption if the disease developed within nine months of the date they stopped working.
 - In the case of a MRSA skin infection, the presumption is extended to a member following termination of service for a period of ninety days, commencing with the last day actually worked in the specified capacity.



OCERS Administrative Procedure (OAP) Disability Presumptions

- The member is permitted to demonstrate incapacity within the period that the presumption applies, even if the incapacity manifests after termination of service.

Once the member establishes these prerequisites, the presumption of service connection will apply unless OCERS rebuts it.

The presumption is rebuttable by other evidence evidence to the contrary. To rebut the presumption, OCERS must may also prove the member did not meet one or more prerequisites.

The presumption includes a non-attribution provision stating that the blood-borne infectious disease or MRSA will in no case be attributed to any disease or skin infection existing prior to its development or manifestation.

VII. Exposure to Biochemical Substances Presumption

If a member in one of the designated occupations becomes ill or dies due to exposure to a biochemical substance, it will be presumed that the illness or injury resulting from exposure to a biochemical substance developed out of and in the course of employment. ~~u~~Unless rebutted by contrary evidence, ~~Thus,~~ the resulting disability will be considered service-connected.

Prerequisites for application of the biochemical substance exposure presumption under Gov. Code, § 31720.9

1. Occupation

- The member must be a "pPeace oOfficer" (as defined in Penal Code sections 830.1 to 830.5,) or a fFirefighter. Peace officers include a sheriff, undersheriff, deputy sheriff, district attorney investigator, and probation officers.
- Section 31720.9 does not expressly include those who are engaged in active law enforcement or active firefighting who are not safety members but does exclude a member whose principal duties are clerical or otherwise do not fall within the scope of active law enforcement services or active firefighting services, such as stenographers, telephone operators, and other office workers (Gov. Code, § 31720.9, subsection (d)).
- *Absent from the biochemical substance presumption is the requirement that the member have five years of service.*



OCERS Administrative Procedure (OAP)

Disability Presumptions

2. Exposure to a biochemical substance

- The member must identify the actual exposure to a weaponized biological or chemical agent, or nuclear or radiological agent, as defined in Penal Code § 11417.^{xvii}

3. Member must be permanently incapacitated from exposure to a biochemical substance

- The member must become ill (or die) due to exposure to a biochemical substance, and the illness must render them permanently incapacitated for the performance of duty.

4. The illness (or death) must develop or manifest during a period in which the member is in the service of the department or unit resulting from the exposure must manifest while in service or within the extended period.

4.5.

ii

Time Limit

- This The presumption is extended to a member following termination of service for a period of three (3) calendar months for each full year of the requisite service, but ~~not~~ shall not exceed sixty (60) months in any circumstance, commencing with ~~from~~ the last date actually worked in the specified capacity. The member is permitted to demonstrate incapacity within the period that the presumption applies, even if the incapacity manifests after termination of service.

Once the member establishes these prerequisites, the presumption of service connection will apply unless OCERS rebuts it.

The presumption may be rebutted by other evidence evidence to the contrary. OCERS may also prove the member did not meet one or more prerequisites. The presumption includes a non-attribution provision, stating that the illness that develops or manifests due to the exposure will not be attributed to any illness existing prior to that development or manifestation. However, OCERS may rebut the presumption by, for example, evidence that there was no exposure, that the member is not incapacitated by the resulting illness, or by scientific evidence that there is no reasonable link between the specific exposure and the incapacitating illness.

VIII. Post-Traumatic Stress Disorder Presumption

(effective until January 1, 2025)

If a member in one of the designated occupations becomes permanently incapacitated due to post-traumatic stress disorder ("PTSD"), it will be presumed that the disorder arose out of and in the course of employment. Unless rebutted, the resulting disability retirement allowance will be service-connected.



OCERS Administrative Procedure (OAP)

Disability Presumptions

Prerequisites for application of the PTSD presumption under Gov. Code, § 31720.91

1. Occupation

- The member must be, or must have been, in a classification listed under Labor Code section 3212.15, which includes ~~an active firefighting members or and~~ peace officers primarily engaged in active law enforcement, including members of a sheriff's office, district attorney investigators, and probation officers.^{xviii}

"Peace officer" includes a member engaged in active law enforcement.

2. The Member develops PTSD

- The PTSD must develop or manifest itself while the member is in the service of a specified department, office, or unit.
- The PTSD is defined as "a must be diagnosed is based on the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association.^{xix}" (Gov. Code, § 31720.91, subsection (c)(1)).

3. Permanent Incapacity

- The member must be permanently incapacitated for the performance of duty because of the PTSD to be entitled to the presumption.

4. Time limit

- The presumption is extended to a member following termination of service for a period of 3 calendar months for each full year of the requisite service, but shall not exceed 60 months regardless of the member's length of service, commencing with the last date the member actually worked in the classification specified. The member is permitted to demonstrate incapacity within the period that the presumption applies, even if the incapacity manifests after termination of service. ~~The presumption is extended to a member three (3) calendar months for each full year of requisite service, but shall not exceed 60 months, and commencing with the last date the member actually worked in the classification.~~

5. The presumption expires January 1, 2025

Once the member establishes these prerequisites, the presumption of service connection will apply unless OCERS rebuts it.

The presumption is rebuttable by evidence to the contrary. OCERS may also prove the member did not meet one or more prerequisites. ~~To rebut the presumption, OCERS must prove the member did not meet one or more prerequisites.~~



OCERS Administrative Procedure (OAP)

Disability Presumptions

IX. Tuberculosis Presumption

If a member in one of the designated occupations becomes permanently incapacitated due to tuberculosis, it will be presumed that the disorder arose out of and in the course of employment. Unless rebutted, the resulting disability retirement allowance will be service-connected.

Prerequisites for application of the tuberculosis presumption under Gov. Code, § 31720.92

1. Occupation

- The member must be, or must have been, in a classification listed under Labor Code section 3212.6, which includes members of a sheriff's department, fire department, district attorney investigators, prison or jail guards, or correctional officers whose principal duties clearly fall within the scope of active law enforcement, firefighting, or emergency first-aid response ~~an active member of the Sheriff's office or Fire Department, a District Attorney Investigator, or a Correctional Officer.~~^{xx}

~~The presumption does not apply to members whose principal duties are clerical or do not clearly fall within the scope of active law enforcement, firefighting, or emergency first-aid response.~~

2. The member develops tuberculosis

- The tuberculosis must develop or manifest during a period while the member is in the service of a specified department, office, or unit.

3. Permanent Incapacity

- The member must be permanently incapacitated for the performance of duty because of the tuberculosis to be entitled to the presumption.

4. Time limit

- The presumption is extended to a member following termination of service for a period of 3 calendar months for each full year of the requisite service, but shall not exceed 60 months regardless of the member's length of service, commencing with the last date the member actually worked in the classification specified. The member is permitted to demonstrate incapacity within the period that the presumption applies, even if the incapacity manifests after termination of service. ~~The presumption is extended to a member three (3) calendar months for each full year of requisite service, but shall not exceed 60 months, and commencing with the last date the member actually worked in the classification.~~

Once the member establishes these prerequisites, the presumption of service connection will apply unless OCERS rebuts it.



OCERS Administrative Procedure (OAP)

Disability Presumptions

The presumption is rebuttable by evidence to the contrary. To rebut the presumption, OCERS must prove the member did not meet one or more prerequisites.

X. Meningitis Presumption

If a member in one of the designated occupations becomes permanently incapacitated due to meningitis, it will be presumed that the disorder arose out of and in the course of employment. Unless rebutted, the resulting disability retirement allowance will be service-connected.

Prerequisites for application of the meningitis presumption under Gov. Code, § 31720.93

1. Occupation

- The member must be, or must have been, in a classification listed under Labor Code Section 3212.9, which includes members of the sheriff's office, fire department, probation officers, and district attorney investigator whose principal duties clearly fall within the scope of active law enforcement or firefighting.
an active member of the Sheriff's office or Fire Department, a District Attorney Investigator, or a Probation Officer.^{xxi}

The presumption does not apply to members whose principal duties are clerical or do not clearly fall within the scope of active law enforcement or firefighting.

2. The member develops meningitis

- The meningitis must develop or manifest while the member is in service.

3. Permanent Incapacity

- The member must be permanently incapacitated for the performance of duty because of the meningitis to be entitled to the presumption.

4. Time limit

- The presumption is extended to a member following termination of service for a period of 3 calendar months for each full year of the requisite service, but shall not exceed 60 months regardless of the member's length of service, commencing with the last date the member actually worked in the classification specified. The member is permitted to demonstrate incapacity within the period that the presumption applies, even if the incapacity manifests after termination of service.
The presumption is extended to a member three (3) calendar months for each full year of requisite service, but shall not exceed 60 months, and commencing with the last date the member actually worked in the classification.



OCERS Administrative Procedure (OAP) Disability Presumptions

Once the member establishes these prerequisites, the presumption of service connection will apply unless OCERS rebuts it.

The presumption is rebuttable by evidence to the contrary. To rebut the presumption, OCERS must also prove the member did not meet one or more prerequisites.

Lyme Disease Presumption

If a member in one of the designated occupations becomes permanently incapacitated due to Lyme disease, it will be presumed that the disorder arose out of and in the course of employment. The resulting disability retirement allowance will be service-connected.

Prerequisites for application of the meningitis presumption under Gov. Code, § 31720.95

Occupation

The member must be, or must have been, a qualifying employee of the Attorney General, Department of Justice, Fish & Game, Parks & Recreation, or Forestry & Fire Protection.^{xxii}

The member develops Lyme disease

The Lyme disease must develop or manifest while the member is in service.

Permanent Incapacity

The member must be permanently incapacitated for the performance of duty because of the Lyme disease to be entitled to the presumption.

Time limit

The presumption is extended to a member three (3) calendar months for each full year of requisite service, but shall not exceed 60 months, and commencing with the last date the member actually worked in the classification.

The presumption is rebuttable by evidence to the contrary. To rebut the presumption, OCERS must prove the member did not meet one or more prerequisites.

XI. Lower Back Impairment Presumption

If a member in one of the designated occupations becomes permanently incapacitated due to lower back impairments, it will be presumed that the disorder arose out of and in the course of



OCERS Administrative Procedure (OAP)

Disability Presumptions

employment. Unless rebutted, ~~the resulting disability retirement allowance will be service-connected.~~

Prerequisites for application of the lower back impairment presumption under Gov. Code, § 31720.96

1. Occupation

- The member must be, or must have been, in a classification listed under Labor Code Section 3213.2, which includes members of a sheriff's office, a member of a police department, sheriff's office, peace officer employed by the Department of the California Highway Patrol or by the University of California.^{xxiii}

2. At least five years of service Employed full-time for at least five years

- The member must have been employed for at least five years on a full-time basis in a specified classification. The five years may include full-time employment while a member of OCERS or completed five years or more of service with OCERS, another retirement system established under the CERL, or the Public Employees Retirement System (CalPERS), or a pension system established by the County Peace Officers' Retirement Law (Gov. Code, §§ 31900, et seq.), or the County Fire Service Retirement Law (Gov. Code, §§ 32200, et seq.) The "five years or more of full-time employment service" does not have to be entirely with the county from which the member is retiring.

3. Required to wear a duty belt

- The member must have been required to wear a duty belt as a condition of employment. "Duty belt" is defined as "a belt used for the purpose of holding a gun, handcuffs, baton, and other items related to law enforcement."^{xxiv}

4. The Member develops lower back impairment

- The lower back impairment must develop or manifest while the member is in the service of the specified department, office, or unit.

5. Permanent Incapacity

- The member must be permanently incapacitated for the performance of duty because of the lower back impairment. s to be entitled to the presumption.

6. Time limit

- The presumption is extended to a member following termination of service for a period of 3 calendar months for each full year of the requisite service, but shall not exceed 60 months regardless of the member's length of service, commencing with the last date



OCERS Administrative Procedure (OAP)

Disability Presumptions

the member actually worked in the classification specified. The member is permitted to demonstrate incapacity within the period that the presumption applies, even if the incapacity manifests after termination of service. ~~three (3) calendar months for each full year of requisite service, but shall not exceed 60 months, and commencing with the last date the member actually worked in the classification.~~

Once the member establishes these prerequisites, the presumption of service connection will apply unless OCERS rebuts it.

The presumption is rebuttable by evidence to the contrary. To rebut the presumption, OCERS must also prove the member did not meet one or more prerequisites.

XII. Hernia or Pneumonia Presumption

If a member in one of the designated occupations becomes permanently incapacitated due to hernia or pneumonia, it will be presumed that the disorder arose out of and in the course of employment. Unless rebutted, the resulting disability retirement allowance will be service-connected.

Prerequisites for application of the hernia or pneumonia presumption under Gov. Code, § 31720.97

1. Occupation

- The member must be, or must have been, in a classification listed under Labor Code Section 3213.2, which includes members of a sheriff's office and district attorney investigators whose principal duties clearly fall within the scope of active law enforcement, and members of a firefighting department, except those whose principal duties are clerical. ~~a safety member, ^{xxv} a firefighter, or a member in active law enforcement.~~^{xxvi}
- The presumption applies to a member whose principal duties are within the scope of "Firefighter" and "member in active law enforcement" ~~includes a member engaged in or active fire suppression or active law enforcement.~~ regardless of whether they are a safety member.
- "Member in active law enforcement-" includes Sheriff's Special Officers (SSOs).

2. The member develops a hernia or pneumonia



OCERS Administrative Procedure (OAP) Disability Presumptions

- The hernia or pneumonia must develop or manifest during a period while the member is in the service of the specified office, staff, division, department, or unit.

3. Permanent Incapacity

- The member must be permanently incapacitated for the performance of duty because of the hernia or pneumonia to be entitled to the presumption.

4. Time limit

- The presumption is extended to a member following termination of service for a period of 3 calendar months for each full year of the requisite service, but shall not exceed 60 months regardless of the member’s length of service, commencing with the last date the member actually worked in the classification specified. The member is permitted to demonstrate incapacity within the period that the presumption applies, even if the incapacity manifests after termination of service. ~~The presumption is extended to a member three (3) calendar months for each full year of requisite service, but shall not exceed 60 months, and commencing with the last date the member actually worked in the classification.~~

Once the member establishes these prerequisites, the presumption of service connection will apply unless OCERS rebuts it.

The presumption is rebuttable by evidence to the contrary. To rebut the presumption, OCERS must also prove the member did not meet one or more prerequisites.

VIII. COVID-19 Presumption *(effective only until January 1, 2024)*

~~If a member retires for disability due, in whole or in part, to a COVID-19-related illness, it will be presumed that the disability arose out of, or in the course of, the member’s employment.^{xxvii} Thus, the resulting disability retirement will be service-connected unless the presumption is rebutted by contrary evidence.~~

~~Note that this presumption is not restricted to safety members and there is no requirement of at least five years of service.~~

~~This COVID-19 disability retirement presumption will remain in effect until January 1, 2024.^{xxviii}~~



OCERS Administrative Procedure (OAP) Disability Presumptions

ⁱ See OCERS Administrative Procedure: Disability – Performance of Duty

ⁱⁱ Gov. Code, § 31720

ⁱⁱⁱ *Bowen v. Board of Retirement* (1986) 42 Cal.3d 572, 577-579

^{iv} Government Code section 31720.95 provides a presumption for Lyme disease. This presumption, however, does not apply to OCERS membership. The express language limits application to employees of various State of California agencies. In addition, Government Code section 31720.94 provides a presumption for skin cancer that applies only to active lifeguards. However, there are no active lifeguards within OCERS membership as of the effective date of this OCERS Administrative Procedure (OAP) Disability Presumptions.

^v Evid. Code, §§ 604 and 606

^{vi} "Safety member" is defined by Government Code sections 31469.3 and 31469.4. § 31469.4. "Safety members" defined

"Safety member" means persons employed as probation officers, juvenile hall or juvenile home group counselors, and group supervisors who are primarily engaged in the control and custody of delinquent youths who must be detained under physical security in order not to be harmful to themselves or others.

The provisions of this section shall not be applicable in any county until the board of supervisors by resolution make the provisions applicable.

Gov. Code, § 31469.4

^{vii} 22 Ops.Cal.Atty.Gen. 227 (1953) at p. 229

^{viii} "Safety member" is defined by Government Code sections 31469.3 and 31469.4. as defined by Gov. Code, § 31469.4

^{ix} "Active law enforcement" includes positions with principal duties which pertain to the active investigation and suppression of crime, the arrest and detention of criminals, and the administrative control of such duties in the offices of the sheriff and district attorney, including Sheriff's Special Officers (SSOs).

^x For the IARC list of carcinogens go to the IARC web site at www.iarc.fr/. For the list of carcinogens recognized by the Director of the Division of Industrial Accidents, see Cal. Code Regs., tit. 8, § 330.

^{xi} Labor Code § 3212.11



OCERS Administrative Procedure (OAP) Disability Presumptions

~~xii "Safety member" is defined by Government Code sections 31469.3 and 31469.4. "Safety member" as defined by Gov. Code, § 31469.4~~

~~xiii "Member in active law enforcement" for purposes of Section 31720.7 is expressly defined as "members employed by a sheriff's office, by a police or fire department...or who are employed by any county forestry or firefighting department or unit, except any of those members whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement services or active firefighting services, such as stenographers, telephone operators, and other office workers, and includes a member engaged in active law enforcement who is not classified as a safety member." (Gov. Code, § 31720.7, subd. (e).)~~

~~xiv "Member in active law enforcement" for purposes of Section 31720.7 is expressly defined as "members employed by a sheriff's office, by a police or fire department...or who are employed by any county forestry or firefighting department to unit, except any of those members whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement services or active firefighting services, such as stenographers, telephone operators, and other office workers, and includes a member engaged in active law enforcement who is not classified as a safety member " (Gov. Code, § 31720.7, subd. (e).) means members employed by a sheriff's office, including Sheriff's Special Officers (SSOs), by a police or fire department of a city, county, city and county, or district or another public or municipal corporation or political subdivision, or who are described in Chapter 4.5 of the Penal Code, or members who are employed by a county forestry or firefighting department or unit, except any of those members whose principle duties are clerical or otherwise do not clearly fall within the scope of active law enforcement services or active firefighting services, such as stenographers, telephone operators, and other office workers, and includes a member engaged in active law enforcement who is not classified as a safety member.~~

~~xv Gov. Code, § 31720.7, subd. (d).~~

~~xvi Cal. Code Regs., tit. 8, § 5193~~

~~xvii § 11417. Definitions~~

~~(a) For the purposes of this article, the following terms have the following meanings:~~

~~(1) "Weapon of mass destruction" includes chemical warfare agents, weaponized biological or biologic warfare agents, restricted biological agents, nuclear agents, radiological agents, or the intentional release of industrial agents as a weapon, or an aircraft, vessel, or vehicle, as described in Section 34500 of the Vehicle Code, which is used as a destructive weapon.~~

~~(2) "Chemical Warfare Agents" includes, but is not limited to, the following weaponized agents, or any analog of these agents:~~



OCERS Administrative Procedure (OAP)

Disability Presumptions

- (A) Nerve agents, including Tabun (GA), Sarin (GB), Soman (GD), GF, and VX.
- (B) Choking agents, including Phosgene (CG) and Diphosgene (DP).
- (C) Blood agents, including Hydrogen Cyanide (AC), Cyanogen Chloride (CK), and Arsine (SA).
- (D) Blister agents, including mustards (H, HD [sulfur mustard], HN-1, HN-2, HN-3 [nitrogen mustard]), arsenicals, such as Lewisite (L), urticants, such as CX; and incapacitating agents, such as BZ.
- (3) "Weaponized biological or biologic warfare agents" include weaponized pathogens, such as bacteria, viruses, rickettsia, yeasts, fungi, or genetically engineered pathogens, toxins, vectors, and endogenous biological regulators (EBRs).
- (4) "Nuclear or radiological agents" includes any improvised nuclear device (IND) which is any explosive device designed to cause a nuclear yield; any radiological dispersal device (RDD) which is any explosive device utilized to spread radioactive material; or a simple radiological dispersal device (SRDD) which is any act or container designed to release radiological material as a weapon without an explosion.
- (5) "Vector" means a living organism or a molecule, including a recombinant molecule, or a biological product that may be engineered as a result of biotechnology, that is capable of carrying a biological agent or toxin to a host.
- (6) "Weaponization" is the deliberate processing, preparation, packaging, or synthesis of any substance for use as a weapon or munition. "Weaponized agents" are those agents or substances prepared for dissemination through any explosive, thermal, pneumatic, or mechanical means.
- (7) For purposes of this section, "used as a destructive weapon" means to use with the intent of causing widespread great bodily injury or death by causing a fire or explosion or the release of a chemical, biological, or radioactive agent.
- (b) The intentional release of a dangerous chemical or hazardous material generally utilized in an industrial or commercial process shall be considered use of a weapon of mass destruction when a person knowingly utilizes those agents with the intent to cause harm and the use places persons or animals at risk of serious injury, illness, or death, or endangers the environment.
- (c) The lawful use of chemicals for legitimate mineral extraction, industrial, agricultural, or commercial purposes is not proscribed by this article.
- (d) No university, research institution, private company, individual, or hospital engaged in scientific or public health research and, as required, registered with the Centers for Disease Control and Prevention (CDC) pursuant to Part 113 (commencing with Section 113.1) of Subchapter E of Chapter 1 of Title 9 or



OCERS Administrative Procedure (OAP) Disability Presumptions

pursuant to Part 72 (commencing with Section 72.1) of Subchapter E of Chapter 1 of Title 42 of the Code of Federal Regulations, or any successor provisions, shall be subject to this article.

Pen. Code, § 11417

~~^{xviii} Labor Code § 3212.15~~

~~^{xix} The DSM V-TR is the most recent edition as of the effective date of this OCERS Administrative Procedure (OAP) Disability Presumptions.~~

~~^{xx} Labor Code § 3212.6.~~

~~^{xxi} Labor Code § 3212.9.~~

~~^{xxii} Labor Code § 3212.12.~~

~~^{xxiii} Labor Code § 3213.2.~~

~~^{xxiv} Labor Code § 3213.2.~~

~~^{xxv} "Safety member" as defined by Gov. Code, § 31469.4.~~

~~^{xxvi} "Active law enforcement" includes positions with principal duties which pertain to the active investigation and suppression of crime, the arrest and detention of criminals, and the administrative control of such duties in the offices of the sheriff and district attorney, including Sheriff's Special Officers (SSOs).~~

~~^{xxvii} Gov. Code, § 7523.1~~

~~^{xxviii} Gov. Code, § 7523.2~~



OCERS Administrative Procedure (OAP)

Disability Presumptions

I. Purpose

The purpose of this OCERS administrative procedure (OAP) is to describe how the OCERS Board of Retirement (Board), the Board's Disability Committee, and the OCERS Chief Executive Officer (CEO) apply the rules governing disability presumptions under Government Code sections 31720.5, 31720.6, 31720.7, 31720.9, 31720.91, 31720.92, 31720.93, 31720.96, and 31720.97.

II. Authority

This OAP is established pursuant to the CEO Charter, which directs the CEO to develop staff policies and procedures to ensure the effective and efficient administration of member benefits. The OAP is in conformance with Board policy, the County Employees Retirement Law (California Government Code section 31450, *et seq.*) (CERL), and the Public Employees' Pension Reform Act (Government Code, sections 7522 - 7522.74) (PEPRA).

III. Introduction

A member of OCERS is eligible for a service-connected disability retirement allowance if:

1. The Board finds the member permanently incapacitated, physically or mentally, from performing the usual duties of a permanent assignment within their job classification;ⁱ and
2. The incapacity arose out of and in the course of their employment, and such employment contributed substantially to their being incapacitated.ⁱⁱ

This "arose out of and in the course of employment" element (sometimes referred to as AOE/COE or industrial causation) is necessary for service-connection. The member must establish that the incapacitating injury or disease arose out of and in the course of employment by offering evidence of a real and measurable connection between the employment and the injury or illness that causes the permanent incapacity.ⁱⁱⁱ Normally, the member has the burden to prove this connection by a preponderance of the evidence.

Ultimately, the Board determines from the evidence whether there is or is not a sufficient causal connection between the employment and the incapacity for the disability to be service-connected.

The disability presumptions ("heart trouble" at Gov. Code, § 31720.5, cancer at § 31720.6, blood-borne infectious disease or MRSA skin infection at § 31720.7, exposure to biochemical substances at § 31720.9, post-traumatic stress disorder at § 31720.91, tuberculosis at § 31720.92, meningitis at § 31720.93, lower back impairments at § 31720.96, and hernia or pneumonia at § 31720.97) relieve the member of their burden to prove service-connection.^{iv}



OCERS Administrative Procedure (OAP)

Disability Presumptions

Each presumption statute specifies prerequisites that a member must satisfy in order for the presumption to apply. It is the member's burden to establish these prerequisites by a preponderance of the evidence. **Upon doing so, the presumption applies, and the member does not have to prove industrial causation; instead, OCERS must disprove it.**

The presumption statutes do not create a presumption that the member is incapacitated for duty. **The member still bears the burden of proving that they are permanently incapacitated.**

The presumptions are rebuttable, i.e., they may be overcome by contrary evidence. A rebuttable presumption establishes the existence of a fact unless evidence is introduced which would support a finding that the presumed fact does not exist.^v For example, the heart trouble presumption (Gov. Code, § 31720.5) shifts the burden of proof on the issue of service-connection from the member to the retirement system, which must prove that the heart trouble did not arise out of or occur in the course of employment.

IV. Heart Trouble Presumption

If a member in one of the designated occupations has at least five years of service credit and becomes permanently incapacitated due to heart trouble, it will be presumed that the heart trouble developed out of and in the course and scope of their employment. Unless rebutted, the member's disability retirement will be service-connected.

Prerequisites for application of the heart trouble presumption under Gov. Code, § 31720.5

1. **The member must be a safety member,^{vi} a fireman member, or a member in active law enforcement**
 - "Fireman member" and "member in active law enforcement" include a member engaged in active fire suppression or active law enforcement *regardless* of whether they are a safety member.
 - "Active law enforcement" includes positions with principal duties which pertain to the active investigation and suppression of crime, the arrest and detention of criminals, and the administrative control of such duties in the offices of the sheriff and district attorney, including Sheriff's Special Officers (SSOs).^{vii}
2. **The member must have at least five years of service**
 - The member must have completed five years or more of service with OCERS, another retirement system established under the CERL or the Public Employees Retirement System (CalPERS), or a pension system established by the County Peace Officers' Retirement Law (Gov. Code, §§ 31900, *et seq.*), or the County Fire Service



OCERS Administrative Procedure (OAP)

Disability Presumptions

Retirement Law (Gov. Code, §§ 32200, *et seq.*). The "five years or more of service" does not have to be entirely with the county from which the member is retiring.

3. The member must develop heart trouble

- "Heart trouble" is any disease or malfunction of the heart.
- The heart trouble must develop or manifest during a period while the member is in the service of the specified department, office, or unit.

4. Time limit

- The presumption is extended to a member following termination of service for a period of 3 calendar months for each full year of the requisite service, but shall not exceed 60 months regardless of the member's length of service, commencing with the last date the member actually worked as a firefighter member or member in active law enforcement. The member is permitted to demonstrate incapacity within the period that the presumption applies, even if the incapacity manifests after termination of service.

Once the member establishes these prerequisites, the presumption of service connection will apply unless OCERS rebuts it.

The presumption is rebuttable by evidence to the contrary. OCERS may also prove the member did not meet one or more prerequisites.

The presumption includes a **non-attribution provision** stating that the heart trouble will not be attributed to any disease existing before the development or manifestation of the heart trouble. However, the presumption may be rebutted by, for example, proof that a contemporaneous nonwork-related event was the cause of the heart trouble.

V. Cancer Presumption

If a member in one of the designated occupations has at least five years of service credit and becomes permanently incapacitated due to cancer and establishes they were exposed to a known carcinogen as a result of the performance of their job duties, it will be presumed that the cancer developed out of and in the course of employment. Unless rebutted, the resulting disability retirement will be service-connected.

Prerequisites for application of the cancer presumption under Gov. Code, § 31720.6

1. Occupation

- The member must be, or must have been, a safety member,^{viii} a firefighter, or a member in active law enforcement.^{ix}



OCERS Administrative Procedure (OAP)

Disability Presumptions

- "Firefighter" and "member in active law enforcement" include a member engaged in active fire suppression or active law enforcement *regardless* of whether they are a safety member.
 - "Member in active law enforcement " includes Sheriff's Special Officers (SSOs).
- 2. At least five years of service**
- The member must have completed five years or more of service with OCERS, another retirement system established under the CERL or the Public Employees Retirement System (CalPERS), or a pension system established by the County Peace Officers' Retirement Law (Gov. Code, §§ 31900, *et seq.*), or the County Fire Service Retirement Law (Gov. Code, §§ 32200, *et seq.*). The "five years or more of service" does not have to be entirely with the county from which the member is retiring.
- 3. The member develops cancer**
- The cancer must develop during a period while the member is in the service of the specified department or unit.
- 4. Permanent Incapacity**
- The member must be permanently incapacitated for the performance of duty because of the cancer.
- 5. Exposure to carcinogen**
- The member must demonstrate that they were exposed to a "known carcinogen" due to the performance of job duties.
 - "Known carcinogen" is defined as a carcinogenic agent recognized by the International Agency for Research on Cancer (IARC) or the Director of the Division of Industrial Accidents.^x
 - There must be substantial evidence of a real and measurable exposure to a known carcinogen, albeit not necessarily a carcinogen that causes the cancer from which the member suffers.
- 6. Time limit**
- The presumption is extended to a member following termination of service for a period of 3 calendar months for each full year of the requisite service, but shall not exceed 60 months in any circumstance, commencing with the last date the member actually worked in the specified capacity. The member is permitted to demonstrate incapacity within the period that the presumption applies, even if the incapacity manifests after termination of service.



OCERS Administrative Procedure (OAP)

Disability Presumptions

Once the member establishes these prerequisites, the presumption of service connection will apply unless OCERS rebuts it.

The presumption is rebuttable by OCERS and may be controverted by evidence that the carcinogen to which the member has demonstrated exposure is not reasonably linked to the disabling cancer, *provided* that the primary site of the cancer has been established. Therefore, to rebut the presumption of service-connection, evidence must be provided that (1) the primary site of the cancer is established and (2) that exposure to the identified carcinogen is not reasonably linked to the member's disabling cancer.

The presumption includes a non-attribution provision stating that the cancer will not be attributed to any disease existing prior to the development or manifestation of the cancer. Therefore, OCERS may not rebut the presumption by attributing the cancer to disease the member had previously.

VI. Blood-borne Infectious Disease Presumption

If a member in one of the designated occupations becomes permanently incapacitated due to a blood-borne infectious disease or methicillin-resistant *Staphylococcus aureus* skin infection (MRSA), it will be presumed that the disease developed out of and in the course of their employment. Unless rebutted, the resulting disability retirement will be service-connected.

Prerequisites for application of the blood-borne infectious disease presumption under Gov. Code, § 31720.7

1. Occupation

- The member must be, or must have been, a safety member,^{xi} a firefighter, a county probation officer, or a member in active law enforcement. A "member in active law enforcement" is expressly defined for purposes of Section 31720.7^{xii} and encompasses Sheriff's Special Officers.
- *Absent from the blood-borne infectious disease presumption is the requirement that the member have five years of service.*

2. Member develops blood borne disease or MRSA

- "Blood borne infectious disease" is defined as "a disease caused by exposure to pathogenic microorganisms that are present in human blood that can cause disease in humans, including, but not limited to, those pathogenic microorganisms defined as blood-borne pathogens by the Department of Industrial Relations."^{xiii}



OCERS Administrative Procedure (OAP)

Disability Presumptions

- The Department of Industrial Relations has defined the following as blood borne pathogens: hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV).^{xiv}
 - Proof of on-the-job exposure to a blood borne infectious disease or MRSA is *not* required for the presumption to arise.
 - The blood-borne infectious disease or MRSA must develop or manifest during a period while the member is in the service of the specified office, staff, division, department, or unit.
- 3. Member becomes incapacitated for duty**
- The permanent incapacity must result from blood borne infectious disease or MRSA skin infection.
- 4. Time limit**
- In the case of a blood-borne disease, the presumption is extended to a member following termination of service for a period of 3 calendar months for each full year of the requisite service, but shall not exceed 60 months in any circumstance, commencing with the last date the member actually worked in the specified capacity.
 - In the case of a MRSA skin infection, the presumption is extended to a member following termination of service for a period of ninety days, commencing with the last day actually worked in the specified capacity.
 - The member is permitted to demonstrate incapacity within the period that the presumption applies, even if the incapacity manifests after termination of service.

Once the member establishes these prerequisites, the presumption of service connection will apply unless OCERS rebuts it.

The presumption is rebuttable by evidence to the contrary. OCERS may also prove the member did not meet one or more prerequisites. The presumption includes a non-attribution provision stating that the blood-borne infectious disease or MRSA will in no case be attributed to any disease or skin infection existing prior to its development or manifestation.

VII. Exposure to Biochemical Substances Presumption

If a member in one of the designated occupations becomes ill or dies due to exposure to a biochemical substance, it will be presumed that the illness or injury resulting from exposure to a biochemical substance developed out of and in the course of employment. Unless rebutted by contrary evidence, the resulting disability will be considered service-connected.



OCERS Administrative Procedure (OAP)

Disability Presumptions

Prerequisites for application of the biochemical substance exposure presumption under Gov. Code, § 31720.9

1. Occupation

- The member must be a “peace officer” as defined in Penal Code sections 830.1 to 830.5, or a firefighter. Peace officers include a sheriff, undersheriff, deputy sheriff, district attorney investigator, and probation officers.
- Section 31720.9 does not expressly include those who are engaged in active law enforcement or active firefighting who are not safety members but does exclude a member whose principal duties are clerical or otherwise do not fall within the scope of active law enforcement services or active firefighting services, such as stenographers, telephone operators, and other office workers (Gov. Code, § 31720.9, subsection (d)).
- *Absent from the biochemical substance presumption is the requirement that the member have five years of service.*

2. Exposure to a biochemical substance

- The member must identify the actual exposure to a weaponized biological or chemical agent, or nuclear or radiological agent, as defined in Penal Code § 11417.^{xv}

3. Member must be permanently incapacitated from exposure to a biochemical substance

- The member must become ill (or die) due to exposure to a biochemical substance, and the illness must render them permanently incapacitated for the performance of duty.

4. The illness must develop or manifest during a period in which the member is in the service of the department or unit

5. Time Limit

- The presumption is extended to a member following termination of service for a period of three (3) calendar months for each full year of the requisite service, but shall not exceed sixty (60) months in any circumstance, commencing with the last date actually worked in the specified capacity. The member is permitted to demonstrate incapacity within the period that the presumption applies, even if the incapacity manifests after termination of service.

Once the member establishes these prerequisites, the presumption of service connection will apply unless OCERS rebuts it.

The presumption may be rebutted by evidence to the contrary. OCERS may also prove the member did not meet one or more prerequisites. The presumption includes a non-attribution provision, stating that the illness that develops or manifests due to the exposure will not be



OCERS Administrative Procedure (OAP)

Disability Presumptions

attributed to any illness existing prior to that development or manifestation. However, OCERS may rebut the presumption by, for example, evidence that there was no exposure, that the member is not incapacitated by the resulting illness, or by scientific evidence that there is no reasonable link between the specific exposure and the incapacitating illness.

VIII. Post-Traumatic Stress Disorder Presumption

(effective until January 1, 2025)

If a member in one of the designated occupations becomes permanently incapacitated due to post-traumatic stress disorder ("PTSD"), it will be presumed that the disorder arose out of and in the course of employment. Unless rebutted, the resulting disability retirement will be service-connected.

Prerequisites for application of the PTSD presumption under Gov. Code, § 31720.91

1. Occupation

- The member must be, or must have been, in a classification listed under Labor Code section 3212.15, which includes active firefighting members and peace officers primarily engaged in active law enforcement, including members of a sheriff's office, district attorney investigators, and probation officers.^{xvi}

2. The Member develops PTSD

- The PTSD must develop or manifest itself while the member is in the service of a specified department, office, or unit.
- The PTSD must be diagnosed based on the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association.^{xvii}

3. Permanent Incapacity

- The member must be permanently incapacitated because of the PTSD.

4. Time limit

- The presumption is extended to a member following termination of service for a period of 3 calendar months for each full year of the requisite service, but shall not exceed 60 months regardless of the member's length of service, commencing with the last date the member actually worked in the classification specified. The member is permitted to demonstrate incapacity within the period that the presumption applies, even if the incapacity manifests after termination of service.



OCERS Administrative Procedure (OAP)

Disability Presumptions

5. The presumption expires January 1, 2025

Once the member establishes these prerequisites, the presumption of service connection will apply unless OCERS rebuts it.

The presumption is rebuttable by evidence to the contrary. OCERS may also prove the member did not meet one or more prerequisites.

IX. Tuberculosis Presumption

If a member in one of the designated occupations becomes permanently incapacitated due to tuberculosis, it will be presumed that the disorder arose out of and in the course of employment. Unless rebutted, the resulting disability retirement will be service-connected.

Prerequisites for application of the tuberculosis presumption under Gov. Code, § 31720.92

1. Occupation

- The member must be, or must have been, in a classification listed under Labor Code section 3212.6, which includes members of a sheriff's department, fire department, district attorney investigators, prison or jail guards, or correctional officers whose principal duties clearly fall within the scope of active law enforcement, firefighting, or emergency first-aid response. ^{xviii}

2. The member develops tuberculosis

- The tuberculosis must develop or manifest during a period while the member is in the service of a specified department, office, or unit.

3. Permanent Incapacity

- The member must be permanently incapacitated because of the tuberculosis.

4. Time limit

- The presumption is extended to a member following termination of service for a period of 3 calendar months for each full year of the requisite service, but shall not exceed 60 months regardless of the member's length of service, commencing with the last date the member actually worked in the classification specified. The member is permitted to demonstrate incapacity within the period that the presumption applies, even if the incapacity manifests after termination of service.

Once the member establishes these prerequisites, the presumption of service connection will apply unless OCERS rebuts it.

The presumption is rebuttable by evidence to the contrary. To rebut the presumption, OCERS must prove the member did not meet one or more prerequisites.



OCERS Administrative Procedure (OAP)

Disability Presumptions

X. Meningitis Presumption

If a member in one of the designated occupations becomes permanently incapacitated due to meningitis, it will be presumed that the disorder arose out of and in the course of employment. Unless rebutted, the resulting disability retirement allowance will be service-connected.

Prerequisites for application of the meningitis presumption under Gov. Code, § 31720.93

1. Occupation

- The member must be, or must have been, in a classification listed under Labor Code Section 3212.9, which includes members of the sheriff's office, fire department, probation officers, and district attorney investigator whose principal duties clearly fall within the scope of active law enforcement or firefighting.^{xix}

2. The member develops meningitis

- The meningitis must develop or manifest while the member is in service.

3. Permanent Incapacity

- The member must be permanently incapacitated for the performance of duty because of the meningitis.

4. Time limit

- The presumption is extended to a member following termination of service for a period of 3 calendar months for each full year of the requisite service, but shall not exceed 60 months regardless of the member's length of service, commencing with the last date the member actually worked in the classification specified. The member is permitted to demonstrate incapacity within the period that the presumption applies, even if the incapacity manifests after termination of service.

Once the member establishes these prerequisites, the presumption of service connection will apply unless OCERS rebuts it.

The presumption is rebuttable by evidence to the contrary. OCERS may also prove the member did not meet one or more prerequisites.

XI. Lower Back Impairment Presumption



OCERS Administrative Procedure (OAP)

Disability Presumptions

If a member in one of the designated occupations becomes permanently incapacitated due to lower back impairments, it will be presumed that the disorder arose out of and in the course of employment. Unless rebutted, the resulting disability retirement will be service-connected.

Prerequisites for application of the lower back impairment presumption under Gov. Code, § 31720.96

1. Occupation

- The member must be, or must have been, in a classification listed under Labor Code Section 3213.2, which includes members of a sheriff's office.^{xx}

2. Employed full-time for at least five years

- The member must have been employed for at least five years on a full-time basis in a specified classification. The five years may include full-time employment while a member of OCERS or another retirement system established under the CERL, the Public Employees Retirement System (CalPERS), a pension system established by the County Peace Officers' Retirement Law (Gov. Code, §§ 31900, et seq.), or the County Fire Service Retirement Law (Gov. Code, §§ 32200, et seq.) The five years or more of full-time employment do not have to be entirely with the county from which the member is retiring.

3. Required to wear a duty belt

- The member must have been required to wear a duty belt as a condition of employment. "Duty belt" is defined as "a belt used for the purpose of holding a gun, handcuffs, baton, and other items related to law enforcement."^{xxi}

4. The Member develops lower back impairment

- The lower back impairment must develop or manifest while the member is in the service of the specified department, office, or unit.

5. Permanent Incapacity

- The member must be permanently incapacitated because of the lower back impairment.

6. Time limit

- The presumption is extended to a member following termination of service for a period of 3 calendar months for each full year of the requisite service, but shall not exceed 60 months regardless of the member's length of service, commencing with the last date the member actually worked in the classification specified. The member is permitted to



OCERS Administrative Procedure (OAP)

Disability Presumptions

demonstrate incapacity within the period that the presumption applies, even if the incapacity manifests after termination of service.

Once the member establishes these prerequisites, the presumption of service connection will apply unless OCERS rebuts it.

The presumption is rebuttable by evidence to the contrary. OCERS may also prove the member did not meet one or more prerequisites.

XII. Hernia or Pneumonia Presumption

If a member in one of the designated occupations becomes permanently incapacitated due to hernia or pneumonia, it will be presumed that the disorder arose out of and in the course of employment. Unless rebutted, the resulting disability retirement will be service-connected.

Prerequisites for application of the hernia or pneumonia presumption under Gov. Code, § 31720.97

1. Occupation

- The member must be, or must have been, in a classification listed under Labor Code Section 3213.2, which includes members of a sheriff's office and district attorney investigators whose principal duties clearly fall within the scope of active law enforcement, and members of a firefighting department, except those whose principal duties are clerical.^{xxii}
- The presumption applies to a member whose principal duties are within the scope of active law enforcement or active fire suppression *regardless* of whether they are a safety member.
- "Member in active law enforcement" includes Sheriff's Special Officers (SSOs).

2. The member develops a hernia or pneumonia

- The hernia or pneumonia must develop or manifest during a period while the member is in the service of the specified office, staff, division, department, or unit.

3. Permanent Incapacity

- The member must be permanently incapacitated because of the hernia or pneumonia.

4. Time limit

- The presumption is extended to a member following termination of service for a period of 3 calendar months for each full year of the requisite service, but shall not exceed 60 months regardless of the member's length of service, commencing with the last date



OCERS Administrative Procedure (OAP)

Disability Presumptions

the member actually worked in the classification specified. The member is permitted to demonstrate incapacity within the period that the presumption applies, even if the incapacity manifests after termination of service.

Once the member establishes these prerequisites, the presumption of service connection will apply unless OCERS rebuts it.

The presumption is rebuttable by evidence to the contrary. OCERS may also prove the member did not meet one or more prerequisites.

ⁱ See OCERS Administrative Procedure: Disability – Performance of Duty

ⁱⁱ Gov. Code, § 31720

ⁱⁱⁱ *Bowen v. Board of Retirement* (1986) 42 Cal.3d 572, 577-579

^{iv} Government Code section 31720.95 provides a presumption for Lyme disease. This presumption, however, does not apply to OCERS membership. The express language limits application to employees of various State of California agencies. In addition, Government Code section 31720.94 provides a presumption for skin cancer that applies only to active lifeguards. However, there are no active lifeguards within OCERS membership as of the effective date of this OCERS Administrative Procedure (OAP) Disability Presumptions.

^v Evid. Code, §§ 604 and 606

^{vi} "Safety member" is defined by Government Code sections 31469.3 and 31469.4.

^{vii} 22 Ops.Cal.Atty.Gen. 227 (1953) at p. 229

^{viii} "Safety member" is defined by Government Code sections 31469.3 and 31469.4.

^{ix} "Active law enforcement" includes positions with principal duties which pertain to the active investigation and suppression of crime, the arrest and detention of criminals, and the administrative control of such duties in the offices of the sheriff and district attorney, including Sheriff's Special Officers (SSOs).

^x For the IARC list of carcinogens go to the IARC web site at www.iarc.fr/. For the list of carcinogens recognized by the Director of the Division of Industrial Accidents, see Cal. Code Regs., tit. 8, § 330.



OCERS Administrative Procedure (OAP)

Disability Presumptions

^{xi} "Safety member" is defined by Government Code sections 31469.3 and 31469.4.

^{xii} "Member in active law enforcement" for purposes of Section 31720.7 is expressly defined as "members employed by a sheriff's office, by a police or fire department...or who are employed by any county forestry or firefighting department or unit, except any of those members whose principal duties are clerical or otherwise do not clearly fall within the scope of active law enforcement services or active firefighting services, such as stenographers, telephone operators, and other office workers, and includes a member engaged in active law enforcement who is not classified as a safety member." (Gov. Code, § 31720.7, subd. (e).)

^{xiii} Gov. Code, § 31720.7, subd. (d).

^{xiv} Cal. Code Regs., tit. 8, § 5193

^{xv} § 11417. Definitions

(a) For the purposes of this article, the following terms have the following meanings:

(1) "Weapon of mass destruction" includes chemical warfare agents, weaponized biological or biologic warfare agents, restricted biological agents, nuclear agents, radiological agents, or the intentional release of industrial agents as a weapon, or an aircraft, vessel, or vehicle, as described in Section 34500 of the Vehicle Code, which is used as a destructive weapon.

(2) "Chemical Warfare Agents" includes, but is not limited to, the following weaponized agents, or any analog of these agents:

(A) Nerve agents, including Tabun (GA), Sarin (GB), Soman (GD), GF, and VX.

(B) Choking agents, including Phosgene (CG) and Diphosgene (DP).

(C) Blood agents, including Hydrogen Cyanide (AC), Cyanogen Chloride (CK), and Arsine (SA).

(D) Blister agents, including mustards (H, HD [sulfur mustard], HN-1, HN-2, HN-3 [nitrogen mustard]), arsenicals, such as Lewisite (L), urticants, such as CX; and incapacitating agents, such as BZ.

(3) "Weaponized biological or biologic warfare agents" include weaponized pathogens, such as bacteria, viruses, rickettsia, yeasts, fungi, or genetically engineered pathogens, toxins, vectors, and endogenous biological regulators (EBRs).

(4) "Nuclear or radiological agents" includes any improvised nuclear device (IND) which is any explosive device designed to cause a nuclear yield; any radiological dispersal device (RDD) which is any explosive



OCERS Administrative Procedure (OAP)

Disability Presumptions

device utilized to spread radioactive material; or a simple radiological dispersal device (SRDD) which is any act or container designed to release radiological material as a weapon without an explosion.

(5) "Vector" means a living organism or a molecule, including a recombinant molecule, or a biological product that may be engineered as a result of biotechnology, that is capable of carrying a biological agent or toxin to a host.

(6) "Weaponization" is the deliberate processing, preparation, packaging, or synthesis of any substance for use as a weapon or munition. "Weaponized agents" are those agents or substances prepared for dissemination through any explosive, thermal, pneumatic, or mechanical means.

(7) For purposes of this section, "used as a destructive weapon" means to use with the intent of causing widespread great bodily injury or death by causing a fire or explosion or the release of a chemical, biological, or radioactive agent.

(b) The intentional release of a dangerous chemical or hazardous material generally utilized in an industrial or commercial process shall be considered use of a weapon of mass destruction when a person knowingly utilizes those agents with the intent to cause harm and the use places persons or animals at risk of serious injury, illness, or death, or endangers the environment.

(c) The lawful use of chemicals for legitimate mineral extraction, industrial, agricultural, or commercial purposes is not proscribed by this article.

(d) No university, research institution, private company, individual, or hospital engaged in scientific or public health research and, as required, registered with the Centers for Disease Control and Prevention (CDC) pursuant to Part 113 (commencing with Section 113.1) of Subchapter E of Chapter 1 of Title 9 or pursuant to Part 72 (commencing with Section 72.1) of Subchapter E of Chapter 1 of Title 42 of the Code of Federal Regulations, or any successor provisions, shall be subject to this article.

Pen. Code, § 11417

^{xvi} Labor Code § 3212.15

^{xvii} The DSM V-TR is the most recent edition as of the effective date of this OCERS Administrative Procedure (OAP) Disability Presumptions.

^{xviii} Labor Code § 3212.6.

^{xix} Labor Code § 3212.9.

^{xx} Labor Code § 3213.2.



OCERS Administrative Procedure (OAP) Disability Presumptions

^{xxi} Labor Code § 3213.2.

^{xxii} "Active law enforcement" includes positions with principal duties which pertain to the active investigation and suppression of crime, the arrest and detention of criminals, and the administrative control of such duties in the offices of the sheriff and district attorney, including Sheriff's Special Officers (SSOs).