

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

**DISABILITY COMMITTEE MEETING
August 17, 2020
8:30 a.m.**

Members of the Committee

Jeremy Vallone
Adele Tagaloa
Arthur Hidalgo

Pursuant to Executive Order N-29-20, certain provisions of the Brown Act are suspended due to a State of Emergency in response to the COVID-19 pandemic. Consistent with the Executive Order, this meeting will be conducted by video/teleconference only. None of the locations from which the Board members will participate will be open to the public.

Members of the public who wish to observe and/or participate in the meeting may do so via the Zoom app or via telephone. 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.

OCERS Zoom Video/Teleconference information	
Topic: Disability Committee Meeting Time: Aug 17, 2020 08:30 AM Pacific Time (US and Canada) Join Zoom Meeting https://ocers.zoom.us/j/92552088271 Meeting ID: 925 5208 8271 Passcode: 571992 One tap mobile +16699006833,,92552088271#,0#,571992# US (San Jose) +13462487799,,92552088271#,0#,571992# US (Houston)	Dial by your location +1 669 900 6833 US (San Jose) +1 346 248 7799 US (Houston) +1 253 215 8782 US (Tacoma) +1 929 436 2866 US (New York) +1 301 715 8592 US (Germantown) +1 312 626 6799 US (Chicago) Meeting ID: 925 5208 8271 Passcode: 571992 Find your local number: https://ocers.zoom.us/j/adbQgbHK64

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

CALL MEETING TO ORDER AND ROLL CALL

PUBLIC COMMENT

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 Board; and (2) any matter appearing on the Consent Agenda. Members of the public who wish to provide comment at this time may do so by “raising your hand” in the Zoom app, or if joining by telephone, by pressing * 9 on your telephone keypad. When addressing the Board, please state your name for the record prior to providing your comments. Speakers will be limited to three (3) minutes.

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

CONSENT ITEMS

DC-1: JENNIFER COLE

Deputy Sheriff I, Orange County Sheriff’s Department

Recommendation: Staff recommends that the Disability Committee grant service connected disability retirement with an effective date of the day after the last day of regular compensation. (Safety Member)

DC-2: GINA EDWARDS

Information Processing Technician, Orange County Probation Department

Recommendation: Staff recommends that the Disability Committee deny service and non-service connected disability retirement due to the member’s failure to cooperate. (General Member)

DC-3: RONALD ROSAS

Plumber, Orange County Sheriff’s Department

Recommendation: Staff recommends that the Disability Committee grant service connected disability retirement with an effective date of October 11, 2019. (General Member)

DC-4: JUDY TORRES

Office Assistant, Orange County Department of Child Support Services

Recommendation: Staff recommends that the Disability Committee deny service and non-service connected disability retirement due to the member’s failure to cooperate. (General Member)

DC-5: CALINH VU

Employment and Eligibility Specialist, Orange County Social Services Agency

Recommendation: Staff recommends that the Disability Committee grant service connected disability retirement with an effective date of September 27, 2019. (General Member)

CLOSED SESSION

Government Code section 54957

Adjourn to Closed Session under Government Code section 54957 to consider member disability applications and to discuss member medical records submitted in connection therewith. The applicant may waive confidentiality and request his or her disability application to be considered in Open Session.

ACTION ITEMS:

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

DA-2: CHARLES JOHNSON

Deputy Sheriff II, Orange County Sheriff's Department

Recommendation: Staff recommends that the Disability Committee deny service connected disability retirement due to insufficient evidence of permanent incapacity. (Safety Member)

OPEN SESSION

NOTE: Public comment on matters listed in this agenda will be taken at the time the item is addressed, prior to the Board'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.**

A. REPORT OF ACTIONS TAKEN IN CLOSED SESSION

B. MINUTES FROM THE JULY 20, 2020 DISABILITY COMMITTEE MEETING

Recommendation: Approve the Minutes.

C. NEW OCERS ADMINISTRATIVE PROCEDURE FOR DISABILITY RETIREMENT EFFECTIVE DATE DETERMINATIONS

Presentation by Suzanne Jenike, Assistant CEO, External Operations

Recommendation: Approve, and recommend that the Board adopt, a new OCERS Administrative Procedure for Determining Disability Retirement Effective Dates.

COMMITTEE MEMBER COMMENTS

CHIEF EXECUTIVE OFFICER/STAFF

COMMENTS COUNSEL COMMENTS

NOTICE OF NEXT MEETINGS

REGULAR BOARD MEETING

August 17, 2020

9:30 A.M.

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

2223 E. WELLINGTON AVENUE, SUITE 100

SANTA ANA, CA 92701

INVESTMENT COMMITTEE MEETING

August 26, 2020

9:30 A.M.

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

2223 E. WELLINGTON AVENUE, SUITE 100

SANTA ANA, CA 92701

DISABILITY COMMITTEE MEETING

September 21, 2020

8:30 A.M.

ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

2223 E. WELLINGTON AVENUE, SUITE 100

SANTA ANA, CA 92701

All supporting documentation is available for public review in the retirement office during regular business hours, 8:00 a.m. – 5:00 p.m., Monday through Thursday and 8:00 a.m. – 4:30 p.m. on Friday.

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. Please also advise us if you plan to attend meetings on a regular basis.

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

**DISABILITY COMMITTEE MEETING
July 20, 2020
8:30 a.m.**

MINUTES

OPEN SESSION

The Chair called the meeting to order at 8:30 a.m.

Attendance was as follows:

Present via Zoom Video conference pursuant to Executive Order N-29-20 issued by Governor Newsom on March 17, 2020:

Adele Tagaloa, Chair; Jeremy Vallone; Arthur Hidalgo

Also Present via Zoom:

Steve Delaney, Chief Executive Officer; Gina Ratto, General Counsel; Suzanne Jenike, Assistant CEO, External Operations; Megan Cortez, Disability Manager; Sonal Sharma, Recording Secretary; Anthony Beltran, Audio Visual Technician

PUBLIC COMMENT

None.

CONSENT ITEMS

MOTION by Tagaloa, **seconded** by Hidalgo, to approve staff's recommendation on all of the following items on the Consent Agenda:

The motion passed **unanimously**.

DC-1: STACY ANDROUS

Deputy Juvenile Correctional Officer II, Orange County Probation Department

Recommendation: Staff recommends that the Disability Committee grant service connected disability retirement with an effective date of May 10, 2019. (Safety Member)

DC-2: ROBERT BARNARD

Fire Apparatus Engineer, Orange County Fire Authority

Recommendation: Staff recommends that the Disability Committee grant service connected disability retirement with an effective date of August 2, 2019. (Safety Member)

DC-3: ANTHONY BOMMARITO

Fire Captain, Orange County Fire Authority

Recommendation: Staff recommends that the Disability Committee grant service connected disability retirement with an effective date of February 28, 2020. (Safety Member)

DC-4: RUSSELL CARINGER

Fire Apparatus Engineer, Orange County Fire Authority

Recommendation: Staff recommends that the Disability grant service connected disability retirement with an effective date of March 30, 2018. (Safety Member)

DC-5: BRIAN HOPP

Firefighter, Orange County Fire Authority

Recommendation: Staff recommends that the Disability Committee deny service and non-service connected disability retirement without prejudice due to the member's failure to cooperate. (Safety Member)

DC-6: DOUGLAS LEONARD

Deputy Sheriff II, Orange County Sheriff's Department

Recommendation: Staff recommends that the Disability Committee grant service connected disability retirement with an effective date of March 15, 2019. (Safety Member)

DC-7: WILLIAM LOCKHART

Battalion Chief, Orange County Fire Authority

Recommendation: Staff recommends that the Disability Committee grant service connected disability retirement with an effective date of March 29, 2019. (Safety Member)

DC-8: UYEN L. LUU – PULLED PER MEMBER'S REQUEST

DC-9: CHRISTOPHER SHERWOOD

Firefighter, Orange County Fire Authority

Recommendation: Staff recommends that the Disability Committee grant service connected disability retirement with an effective date of June 7, 2019. (Safety Member)

DC-10: JAMES THURMAN

Coach Operator, Orange County Transportation Authority

Recommendation: Staff recommends that the Disability Committee grant service connected disability retirement with an effective date of September 30, 2018. (General Member)

The Committee recessed into Closed Session at 8:05am.

The Committee resumed Open Session at 8:20am.

ACTION ITEMS:

A. REPORT OF ACTIONS TAKEN IN CLOSED SESSION

DA-2: BAO VINH

Senior Social Worker, Orange County Social Services Agency

Recommendation: Staff recommends that the Disability Committee deny service connected disability retirement due to insufficient evidence of job causation. (General Member)

MOTION by Hidalgo, **seconded** by Tagaloa to deny service connected disability retirement due to insufficient evidence of permanent incapacity and job causation. (General Member)

The motion passed **unanimously.**

B. MINUTES FROM THE JUNE 15, 2020 DISABILITY COMMITTEE MEETING

Recommendation: Approve the Minutes.

MOTION by Tagaloa, **seconded** by Hidalgo to approve the Minutes.

The motion passed **unanimously.**

COMMITTEE MEMBER COMMENTS

None.

CHIEF EXECUTIVE OFFICER/STAFF COMMENTS

None.

COUNSEL COMMENTS

None.

ADJOURNMENT

The meeting adjourned at 8:24 am.

Submitted by:

Approved by:

Steve Delaney
Secretary to the Board

Jeremy Vallone
Chair



Memorandum

DATE: August 17, 2020
TO: Members of the Disability Committee
FROM: Suzanne Jenike, Assistant CEO, External Operations
SUBJECT: **NEW OCERS ADMINISTRATIVE PROCEDURE (OAP) FOR DISABILITY RETIREMENT EFFECTIVE DATE DETERMINATIONS**

Recommendation

Approve, and recommend that the Board adopt, a new OCERS Administrative Procedure for Disability Retirement Effective Date determinations.

Background/Discussion

When disability retirement applications are approved the benefit effective date of the retirement allowance is typically the later of: 1) the date the completed application is filed with OCERS; or 2) the day following the last day for which the member received regular compensation. The statute also contemplates the situation when a member may request an earlier effective date, which if approved concludes that the date of the application is "deemed filed" earlier than the date actually received by OCERS. In order to qualify for their application to be deemed filed at an earlier date the member must show that their disability retirement application was delayed due to administrative oversight or their inability to ascertain the permanency of their incapacity.

There are also complicated definitions of regular compensation which must be considered when evaluating a members disability retirement effective date. OCERS Team created this administrative procedure to help clarify the laws that govern disability retirement effective date determinations as well as the process that is used to compress regular compensation hours that have been paid intermittently into full pay periods.

Staff recommends that the Disability Committee approve the OAP and forward it to the Board with a recommendation that the Board adopt the OAP.

Submitted by:



SJ-Approved

Suzanne Jenike
Assistant Chief Executive Officer, External
Operations



OCERS Administrative Procedure (OAP) Effective Date of Disability Retirement Allowance

I. Purpose

This OCERS Administrative Procedure (“OAP”) describes the applicable legal standards and processes for determining the effective date of a member’s disability retirement.

II. Authority

This OAP is established by OCERS’ Chief Executive Officer (“CEO”) pursuant to the CEO Charter, in conformance with applicable Board policies and in compliance with the provisions of the County Employees Retirement Law (Title 3, Division 4, Part 3, Chapter 3 & 3.9 of the California Government Code, sections 31450, et seq.) (“CERL”). The primary legal authority governing the effective date of a disability retirement is Government Code Section 31724 (“Section 31724”), which provides that if the Board approves a disability retirement application, the Effective Date of disability retirement will generally be **the later of**:

- a) The Application Date (as defined in Section III below); or
- b) The day following the last day for which the member received Regular Compensation (as defined by the CERL and Sections III and IV below).

III. Definitions

The terms used in this OAP are defined below.

- **4850 Pay** means any compensation paid to a member for a leave of absence pursuant to California Labor Code section 4850. 4850 Pay is usually paid only to safety members.
- **Application Date** means the date a completed application for disability retirement is filed with OCERS.
- **Earlier Effective Date** means the date an application for disability retirement is "deemed filed" under the second paragraph of Section 31724 due to delay in the filing of the application by reason of administrative oversight on the part of OCERS or the inability of the member to ascertain the permanency of their incapacity until after the date following the day for which the member last received Regular Compensation.
- **Effective Date** means the date on which a disability retirement becomes effective and the date from which a disability retirement allowance is first payable.
- **Regular Compensation -- Types of Pay Considered to be Regular Compensation**
In addition to the member’s Regular Pay, Regular Compensation also includes the following types of pay received while the member is on leave:
 - a) 4850 Pay;
 - b) annual leave/sick leave/vacation pay when received for time taken off;

Adopted Date _____
Last Revised Date _____



OCERS Administrative Procedure (OAP)

Effective Date of Disability Retirement Allowance

- c) holiday pay, comp time, or other paid time off;
 - d) catastrophic leave pay donated by co-workers, provided contributions are withheld; and
 - e) supplemental Workers' Compensation pay in excess of Temporary Total Disability payable pursuant to Workers' Compensation (TTD), provided contributions are withheld.
- **Regular Compensation -- Types of Pay Not Considered to be Regular Compensation**
 The types of pay that are NOT considered Regular Compensation include:
 - a) TTD payments;
 - b) accrued time paid in a lump sum (e.g., terminal pay, OCTA hardship pay); and
 - c) any other pay for which no contributions are withheld and/or work for which service credit is not earned.
 - **Regular Pay** is a type of Regular Compensation and means compensation of any kind or amount that the employer pays to the member:
 - a) at the member's regular rate of pay;
 - b) for employment in the member's regular position;
 - c) for actually working or for an absence from work; and
 - d) for which contributions are withheld and service credit is earned.

IV. Determining Disability Effective Date

General Rule -- Application Date is the Effective Date

In most cases, the Effective Date will be the Application Date.

EXAMPLE 1

- a) Member receives Regular Compensation for regular pay periods through December 1, 2017.
- b) Member submits application for disability retirement on February 1, 2018.
- c) Member was granted a disability retirement (and the allowance will be payable) with an Effective Date of February 1, 2018 (unless granted an earlier effective date as detailed below).

Exception – Day After Final Date of Regular Compensation is the Effective Date

If, after the Application Date, the member continues to receive Regular Compensation (as defined in Section III above), then the Effective Date will be the day after the last day of Regular Compensation.

EXAMPLE 2

- a) Member submits application for disability retirement on February 1, 2018.
- b) Member continues to receive Regular Compensation through June 1, 2018.
- c) Member will be granted a disability retirement with an Effective Date of June 2, 2018.

Adopted Date _____ OAP
 Last Revised Date _____

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OCERS Administrative Procedure (OAP) Effective Date of Disability Retirement Allowance

Compression of Hours – Delay in Final Date of Regular Compensation

When a member is away from work due to illness or injury for an extended period of time and receives Regular Compensation intermittently or in amounts less than the full amount of the member's Regular Pay for a single pay period (usually 80 hours), the intermittent nature of the Regular Compensation may unreasonably extend the Effective Date of the disability retirement allowance under a strict interpretation of the language of Section 31724.

OCERS has determined that such intermittent Regular Compensation should be "compressed" by aggregating the hours for which intermittent Regular Compensation was received into full Regular Pay periods, typically 80 hours a pay period. This form of aggregation or compression provides a fair and accurate Effective Date without resulting in an unfair advantage or overstating a member's disability allowance.

EXAMPLE 3 – Effective Date as the day after the last day of Regular Compensation *without compression*:

- a) Member submits application for disability retirement on February 1, 2020.
- b) Member received last full Regular Pay for the 80-hour pay period ending on February 13, 2020.
- c) Member continues to receive Regular Compensation in the form of intermittent payments of annual leave and catastrophic leave payments equal to 160 hours through the pay period ending on June 4, 2020.
- d) Effective Date would be June 5, 2020.

EXAMPLE 4 – Effective Date the day after last day of Regular Compensation *with compression*:

- a) Member submits application for disability retirement on February 1, 2020.
- b) Member received last full Regular Pay for the 80-hour pay period ending on February 13, 2020.
- c) Member continues to receive Regular Compensation in the form of intermittent payments of annual leave and catastrophic leave totaling 160 hours through the pay period ending on June 4, 2020.
- d) The 160 hours of intermittent payments are compressed into two full 80 hour pay periods and added to the period ending March 12, 2020.
- e) The Effective Date becomes March 13, 2020, eighty three days earlier than without compression.

Compressing the hours associated with intermittent payments of Regular Compensation into full 80 hour pay periods results in an earlier last Regular Compensation date and thus an earlier Effective Date; and disability benefits start sooner. This compression process protects a member from the adverse impact intermittent Regular Compensation would otherwise have on their Effective Date.



OCERS Administrative Procedure (OAP) Effective Date of Disability Retirement Allowance

Request for an Earlier Effective Date

Pursuant to Section 31724¹, a member may request the Board approve an earlier Effective Date if the member can establish that the delay in filing the member's application was due to 1) an administrative oversight on the part of OCERS; or 2) an inability on the part of the member to ascertain the permanency of their incapacity until after the date following the day for which the member last received Regular Compensation.

Delay due to administrative oversight. If a member is able to demonstrate that the timely filing of their disability retirement application was delayed or not recognized due to administrative error on the part of OCERS or the member's employer, an earlier Effective Date will be granted, and the Effective Date will be the day after the last day of Regular Compensation.

Inability to ascertain permanent incapacity. If a member is able to demonstrate that the member was not able to ascertain the permanency of their incapacity until **after** the date the member last received Regular Compensation, an earlier Effective Date will be granted; and the Effective Date will be the day after the last day of Regular Compensation. However, if the Board determines that the member unreasonably delayed in filing the disability retirement application until after the member knew or should have known of the permanency of their incapacity, the Board may conclude that entitlement to an earlier Effective Date has not been established.

¹The second paragraph of Section 31724 states:

When it has been demonstrated to the satisfaction of the board that the filing of the member's application was delayed by administrative oversight or by inability to ascertain the permanency of the member's incapacity until after the date following the day for which the member last received regular compensation, such date will be deemed to be the date the application was filed.

Adopted Date _____
Last Revised Date _____

OAP

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