



## **OCERS Administrative Procedure (OAP)**

# **Effective Date of Disability Retirement Allowance**

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### **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;

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- 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.

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### 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.



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### **Request for an Earlier Effective Date**

Pursuant to Section 31724<sup>1</sup>, 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.

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<sup>1</sup> The 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.