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Retirement Administrator



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MENDOCINO COUNTY
EMPLOYEES' RETIREMENT ASSOCIATION
625-B KINGS COURT
UKIAH, CALIFORNIA 95482-5027

Date: July 17, 2013
To: Board of Retirement
From: Richard White, Retirement Administrator *now*
Subject: Disability Procedure Revision

Discussion:

The MCERA Board of Retirement adopted a strategic plan objective to "refine the disability determination policy and processes" which are presented to the Board for consideration and adoption. The determination of disability retirements is placed upon the Board of Retirement by the County Employees' Retirement Law (CERL) in Article 10 (Government Code sections 31720-31755).

The changes to the processes under consideration by the Board are the result of the review of the current disability practices at MCERA and other 1937 Act county retirement systems. It appears that the last formal action on the disability process was taken ten years ago by the MCERA Board of Retirement.

For the most part, the processes presented to the Board represent changes to ensure that members of MCERA are able to make application for a disability retirement that assure them appropriate processes and practices which are consistent with current legal standards and other public retirement systems.

Recommended action:

- A. Adopt MCERA By-law revision to disability retirement procedures
- B. Adopt procedures for disability retirement applications and formal hearings
- C. Accept disability retirement application handbook

The revised disability process is comprised of three components for consideration by the Board at this meeting. Overall the process has been significantly revised to allow the Board to provide better transparency with the process, to increase the confidence level that the applications are being thoroughly examined, and to ensure that members are treated with respect and due process throughout the application procedure.

The components of the revised disability process are discussed below and in the attached power point presentation.

1. **By-laws.**

The current disability policy is contained primarily within the MCERA By-laws. The review of the current process found that they could be enhanced to provide more or better information to the applicants, staff and the Board about the processes at MCERA. Also, having the procedures inside the By-laws makes them a bit more inflexible and inaccessible than if the procedures were adopted outside the By-laws.

It is recommended that the Board of Retirement adopt By-laws revisions that refer to the MCERA policy and processes that will be adopted by the Board but stop short of incorporating specific practices into By-laws themselves. By adopting a broad policy statement in the By-laws, the Board will be able to address future policy and procedural changes in a more direct and efficient way through the procedures and disability application handbook.

2. **Procedures for disability retirement applications and formal hearings.**

The proposed disability procedure is essentially a new addition to the MCERA governance line-up and covers the administrative processing of disability applications, the procedures and actions of the Board of Retirement and appeal processes after the Board has taken action on the initial disability application. The procedure was prepared so that the Board will have the ability to continuously monitor the efficiency of the disability application process and have the flexibility to make changes as necessary based upon court rulings or legislative changes.

The procedures provide detailed descriptions of the roles of the Board of Retirement, MCERA staff and the disability applicant. Additionally, the procedures place the responsibility to complete an application upon the disability applicant and they clarify the role of MCERA staff as one which assists the member in an administrative capacity to ensure that the Board of Retirement receives an application with complete information. While the MCERA staff is not an 'advocate' for a disability applicant, the procedures ensure that staff will present to the Board of Retirement an application that has all of the necessary information so that the Board can make an informed decision and ensures that the member is treated fairly and consistently throughout the process.

The procedures help transition the current process into one where the staff and the Board have more of a role in the processing of a disability application through a more detailed and transparent administrative procedure. This process differs from the past process which tended to have minimal administrative processing, delegated more authority and responsibility outside MCERA control and was an overly legalistically driven process. The revised disability process conforms to the MCERA mission statement.

The procedure, though quite extensive, is written with sufficient detail so that it can be completed by a MCERA member with or without the use of legal counsel.

3. **Disability retirement application handbook**

The member handbook is a new document for MCERA staff and our disability applicants which includes general information and 'frequently asked questions' about the disability process that are designed to both inform and provide them with the necessary information to complete the application process.

The application itself has been made more robust and asks for much more information from the applicant regarding the nature of the applicant's illness/injury, employment history and information concerning the permanent incapacity and service-connection of their illness/injury.

The disability application contains numerous detailed requests for the member to sign which will be used by MCERA staff to gather information from the medical professionals, employers and worker's compensation providers.

One of the more significant changes to the current process has been the development of a detailed report that the applicant's physician will be required to complete. The requested information requires a medical provider to provide detailed answers to a series of relevant questions about the disability application, as well as, requiring that the medical provider include supporting documentation, such as medical reports, during the completion of the physician's report. Additionally, MCERA has developed enhanced guidelines for physicians to refer to while completing the reports.

The Board of Retirement is not being asked to formally adopt the member handbook as it is a procedural vehicle that will be used by an applicant to complete the disability application process and is based upon the policies and procedures which are being approved by the Board.

Conclusion:

The Board of Retirement directed that the policies and procedures used to process disability applications be reviewed and revised as necessary. MCERA staff submits to the Board three documents which, in our view, follows the Board direction and which make significant changes in the approach and the process to be used by MCERA in handling the disability applications of our members. The suggested process also ensures that the policy and procedures will be transparent and consistent but also flexible enough to allow the Board to make changes in an efficient way.

Attachments:

- Power Point Presentation
- Existing MCERA By-laws
- Existing disability application
- Proposed disability documents
 - Revised By-law provisions
 - Revised procedures for disability retirement applications and formal hearings
 - New disability retirement application handbook

Disability Retirement

Process and Procedures

July 17, 2013

Documents to be considered

- By-laws
- Policy and Procedures for disability retirement applications
- Disability retirement application handbook

The process

- Disability application is filed and accepted when complete
- Staff investigation and processing of application
- Independent medical examination
- Staff recommendation to the Board
- Board of Retirement decision
- Formal hearing process

Initial disability application

- The application consist of the following documents:
 - Application completion checklist
 - Employees statement of injury/illness
 - Information releases and waivers to gather information
 - Physician's statement of disability
- The application will not be accepted without a completed physician's statement of disability or medical report supporting the claim.

Filing the application

- All forms must be completed properly.
- An employee's statement is taken.
 - Benefit counseling is done by staff.
- Employer filed applications require member notification and involvement.
- Processing time for the application can extend to 12 months from the time a completed application is received to Board decision.

Why does it take so long?

- Evidence gathering.
 - Requests for information are sent to medical practitioners
 - Additional medical records are requested directly from the applicants personal physician(s), as necessary.
 - Obtain information from the employer and employing department.
 - Department personnel file
 - County human resources file
 - Worker's compensation file
 - Employer and Supervisor's statements

Why does it take so long?

- Staff investigation
 - Evaluation of the evidence consisting of the applicant's statements, employer records and medical records to see if they are complete and all conditions are supported by a Physician's statement of disability.
 - Seek clarification or supplemental explanations of discrepancies.
 - Determination whether multiple conditions will be evaluated based upon the medical records.
 - Coordinate with applicants and their attorneys regarding additional medical evidence.

Why does it take so long?

- Administrative review phase
 - A chronological index of all the evidence is created and sent to the applicant for review.
 - The applicant is given the opportunity to add medical records.
- Independent medical examination and review.
 - Independent medical examination to be scheduled and completed.
 - Applicant's file is reviewed by MCERA independent medical examiner.

Why does it take so long?

- Final preparation
 - Review of the entire file and last minute questions are addressed.
 - Staff recommendation is finalized and reviewed by staff and legal counsel.
 - The application is placed onto the next available Board agenda.

Board initial determination

- Board materials consist of:
 - Staff analysis and recommendation
 - Disability application
 - Medical reports
 - Employer and employee statement
- Applicant receives written notification with the details of the staff recommendation and the date/time of the Board meeting.

Formal hearings

- Applicants may request hearing to review the Board's initial determination to deny application.
- Procedures to be followed are detailed in Policy and Procedure document.
- Action by the Board of Retirement on Hearing Officer's proposed findings of fact and recommended decision.
- Judicial review of final retirement decisions.

Next steps

- Training of staff and Board on disability retirement legal standards
- Implementation of revised policies and procedures
- Evaluation of formal hearing process
- Reports to BOR as necessary

ARTICLE VII. ALLOWANCE FOR PUBLIC SERVICE

Section 1. RESOLUTION 3108 PASSED BY THE BOARD OF SUPERVISORS MAY 6, 1958 PROVIDED that the Sections of the County Employees' Retirement Laws of 1937 allowing Retirement credit for prior public service in other public agencies shall be applicable in Mendocino County.

Section 2. EXCEPTION TO RESOLUTION NO. 3108: By Memorandum of Understanding for Fiscal Year 1979-80, the purchase of Public Service or Military Service shall not be allowed for employees entering the service of Mendocino County after the date of July 3, 1979. (Board of Supervisors Resolution No. 79-216)

ARTICLE VIII. PROCEDURES FOR HEARINGS ON DISABILITY RETIREMENT

Purpose

The purpose of this section is to provide a procedure for acting upon applications for disability retirement under the County Employees' Retirement Law of 1937, so that applications can be expeditiously processed, and when a hearing is required by law, the applicant will have notice of the hearing and an opportunity to appear before the Board and present his/her case.

Section 1. DEFINITIONS:

In this section, unless the context or subject matter indicates otherwise, the following terms as used in this chapter shall be ascribed the following definitions:

- a. "Applicant" – a member of the Mendocino County Employees' Retirement Association (MCERA) claiming disability retirement benefits, rights or privileges under the County Employees' Retirement Law (CERL) of 1937, or any person claiming such benefits for any member.
- b. "Application" – the written claim by or on behalf of the member filed by the member, the head of the office or department in which he/she is or was last employed, the board or its agents.
- c. "Association" – shall mean the Mendocino County Employees' Retirement Association established pursuant to the provisions of the CERL of 1937.
- d. "Board" – shall mean the Mendocino County Employee's Retirement Association Board of Directors.
- e. "Department Head" – shall mean the head of a department or office of the County of Mendocino, or contracted Special District, who files an application claiming disability benefits under the CERL of 1937 for a member of the Association who is assigned to that department or office.
- f. "Member" means any person included in the membership of the retirement association pursuant to Article 4 of the CERL of 1937.
- g. "Party" – any person disclosed by the records of the retirement system or by the application to have an interest or possible interest in the subject matter of the Application.

- h. "Retirement Administrator" – the Retirement Administrator of the Mendocino County Employees' Retirement Association (MCERA) or a person authorized by him/her to perform such function hereunder.

Section 2. REPRESENTATION BY COUNSEL

- a. Subject to the provisions of this section, any Party may, at that Party's expense, hire and be represented by an attorney, but no Applicant or member is required to have an attorney at any time. In no case shall a Party's unreasonable delay in retaining an attorney be considered good cause to delay any proceeding.
- b. When any Party is represented by an attorney, that attorney shall promptly file with the Association and serve upon all other Parties written notice of representation, including the attorney's name, address and telephone number. Unless appearing with a Party at a hearing, conference, or Board meeting, an attorney shall not be deemed counsel of record until such notice of representation is duly filed and served. The substitution, withdrawal, or dismissal of an attorney of record shall be in the manner prescribed by the Code of Civil Procedure.

Section 3. APPLICATION

Application for Disability Retirement shall be made pursuant to the CERL of 1937, Government Codes Section 31450 through 31899.

- a. The Application shall be made on a form provided by the Retirement Administrator and shall be submitted to the Retirement Administrator; the application must be COMPLETE and CONTAIN ALL INFORMATION REQUIRED.
- b. The Retirement Administrator shall schedule the Application for consideration at the next Board meeting, but may continue the consideration of the Application if such Application or supporting documents are submitted less than ten (10) working days prior to the next scheduled meeting.

Section 4. MEDICAL RECORDS:

- a. Applicant shall submit at the time of application copies of all medical reports in the possession of the Applicant, upon which the Applicant intends to rely in support of his/her Application indicating:
1. The nature of the injury or disease
 2. The degree to which Applicant is incapacitated thereby
 3. His/her fitness for performing other duties, and
 4. The causal relationship, if any, of the disease or injury to County/District employment
- b. To support the Application for disability retirement, the detailed medical report must also state the member is permanently incapacitated to perform the duties essential to his/her position.
- c. All physician, medical and other costs incurred in preparation of the Application for disability retirement and costs incurred for any and all examinations and medical reports undertaken or prepared at the request of the Applicant, shall be borne solely by the Applicant.
- d. When requested by the Board an Applicant or member for whom a Department Head or the Board has filed an Application, shall make him/herself available for

and submit to examination by any physician or other expert identified by the Board, and shall submit copies of any and all medical reports within his/her possession or the possession of his/her physician requested by the Board.

- e. All costs for examinations and reports incurred pursuant to directions from the Board shall be chargeable to and be borne by the System. Refusal by a member to comply with the provisions of Section 4d shall constitute grounds for denial of the Application for disability retirement. If examinations occur further than 75 miles from the home of the Applicant, Applicant can request reimbursement of reasonable travel expenses, as determined and approved by the Board

Section 5. BOARD ACTION

- a. Upon receipt of a complete Application with all necessary supporting documents the Board shall:
1. "Grant service-connected disability retirement"; where there is no substantial question that the member is permanently incapacitated for the performance of duty, that the incapacity is a result of injury or disease arising out of and in the course of employment, and that such employment contributes substantially to such incapacity;
 2. (a.) "Grant non-service-connected disability retirement"; where the Applicant has elected to have the Application considered for a non-service-connected disability retirement, and where there is no substantial question that the member is permanently incapacitated for the performance of duty, and that the said incapacity is not a result of injury or disease arising out of and in the course of employment, or that such employment does not contribute substantially to such incapacity;
 (b.) If a medical report indicates that a member who has applied for a non-service connected disability retirement or for whom an application for non-service connected disability retirement has been made pursuant to Government Code Section 31721 is capable of performing duties for the Employer other than those for which he/she is allegedly incapacitated, the Board may require the Human Resources Director to submit a report within fifteen (15) days on what positions are, or in the future would be available to the member. (Government Code Section 31725.5)
 3. (a.) "Deny, subject to hearing"; where there is no substantial question that the member is not permanently incapacitated for the performance of duty; or, where the recommendation would be to grant a non-service-connected disability retirement, but the Applicant has not elected to have the Application considered for such. Written notice will be given to the Applicant that if the Applicant fails to file a written request for a hearing within two (2) weeks from the date of such notice, the Applicant will be deemed to have waived his/her right to a hearing. In the event of such waiver, there shall be no further consideration of the Application and the preliminary determination shall be final.
 (b.) "Refer to hearing"; where none of the foregoing recommendations is deemed appropriate.

4. Require member to submit to a medical examination by a medical examiner(s), designated by the Board. Failure to appear for a medical appointment requested by the Board may be grounds for denial of the Application. Member shall be responsible for any cancellation fee charged due to failure to appear for an appointment.
5. Permanent incapacity for the performance of duty shall in all cases be determined by the Board. If the medical examination and other available information do not show to the satisfaction of the Board that the member is incapacitated physically or mentally for the performance of his/her duties in the service and the member's Application is denied on this ground the Board shall give notice of such denial to the employer. The Applicant/employer may obtain judicial review of such action of the Board by filing for writ of mandate in accordance with the Code of Civil Procedure or by joining or intervening in such action filed by the Applicant within 30 days of the mailing of such notice. If such petition is not filed or the court enters judgment denying the writ, whether on the petition of the Applicant, the employer, or the member, and the employer has dismissed the member for disability the employer shall reinstate the member to his/her employment effective as of the day following the effective date of dismissal.

Section 6. CONDUCT OF HEARING

- a. When the Board sets a matter for hearing, it shall appoint at the same time pursuant to Government Code Section 31533, either one of its own Directors or a member of the State Bar of California to serve as a referee who shall hold the hearing and shall transmit, in writing, to the Board, his/her proposed findings of fact and recommended decision.
- b. The Board, or its authorized representative shall deliver or mail a notice of hearing to the Applicant or his/her attorney, at least fifteen (15) days prior to the date set for the hearing. A notice of hearing shall be by certified mail to the Applicant at the address shown by the Applicant on his/her Application or at the last known address of the Applicant, as disclosed by the records of the Board. The notice shall specify the time, date, and the place of the hearing.
- c. A court reporter shall be retained for each hearing, and the cost of per diem services for the reporter shall be borne solely by the Association.
- d. The referee shall preside over all hearings under this section. He/she shall exercise such control over the proceedings as is reasonable and necessary. In addition to other duties, he/she shall rule on the admissibility of evidence and shall order a Party to yield the floor when his/her allotted time has been consumed.
- e. Any Member, Applicant or Party is entitled, at his/her expense, to be represented by legal counsel at any hearing before the referee.
- f. Rules of Evidence
 1. At the commencement of the hearing the referee shall identify each document that is being made a part of the record of the hearing. Any and all objections to the admissibility of any document so identified shall be made and ruled upon at the time of identification. Objections not made at that time shall be deemed waived.

- 2. The hearing need not be conducted according to the technical rules of evidence relating to evidence and witnesses. Any relevant evidence is admissible if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs.
- 3. Oral evidence shall be taken only on oath or affirmation.
- 4. Each Party shall have the right to call and examine witnesses, to introduce exhibits, and to cross-examine opposing witnesses on any matter relevant to the issues. If the applicant or any other party does not testify in his own behalf, he may be called as if under cross-examination.
- 5. Refusal of any Applicant or Party to answer relevant questions on grounds other than the Fifth Amendment to the United States Constitution or some similar privilege against self-incrimination authorized by law, where applicable, or the refusal of any Applicant or Party to submit to medical examination shall be sufficient reason for considering such questions or such refusal to submit to medical examination in a way unfavorable to the refusing party, and such refusal may result in dismissing the Application of the Applicant or Party seeking affirmative relief.
- 6. The Parties shall furnish to the referee, upon his/her request at any time during the course of the hearing, such additional evidence, including additional medical reports, at the Applicant's own expense, which the referee in his/her opinion deems necessary to deciding the factual issues and making his/her recommendation to the Board. Refusal to furnish such additional evidence shall be grounds for terminating the hearing and recommending to the Board that the Application for disability retirement be rejected.
- g. Within thirty days after a matter is submitted to a referee for a recommended decision, the referee shall file with the Board and serve upon all Parties a written report that includes the referee's summary of the evidence, proposed findings of fact, recommended decision, and proof of service on all Parties.
- h. The Parties shall have ten days from the date of receipt of the referee's report by the Parties to file written objections with the Retirement Association, along with proof of service upon all other Parties. Any timely filed objections shall be incorporated in the record to be considered by the Board. The Board shall not consider untimely written objections, or oral objections or arguments from any Party that has not filed timely written objections.

Section 7. POWERS OF BOARD

- a. When a referee's report is filed with the Retirement Association pursuant to Section 6, the Retirement Association shall cause the matter to be placed on the agenda of the next regular Board meeting to take place after the expiration of the period in which the Parties may file written objections. The Board may, but is not required to, hear oral arguments from any Party that has filed timely written objections, subject to the same limitations as apply to public comments during Board meetings. The Board may confer in closed session with the attorney representing the Retirement Association in the matter. The Board shall take one of the following actions:
 - 1. Approve and adopt the proposed findings and the recommendations of the referee; or

2. Require a transcript or summary of all testimony, plus all other evidence received by the referee. Upon the receipt thereof the Board shall take such action as in its opinion is indicated by such evidence; or
3. Refer the matter back with or without instructions to the referee for further proceedings; or
4. Set the matter for hearing before itself. At such hearing the Board shall hear and decide the matter as if it had not been referred to the referee. Any hearing conducted by the Board shall comply with the provisions contained herein relating to hearings, except that the Chair of the Board shall perform the functions of the referee in the hearing conducted by the Board.

Section 8. HEARING BEFORE THE BOARD

- a. If a hearing is held before the Board, the Board shall decide all material issues no later than the second regular meeting following the meeting at which the matter is submitted or as soon as is practical considering the complexity of the issue.
- b. No Director who has not been in attendance during any portion of a hearing on an Application for disability retirement shall participate in the determination by the Board of the Application, unless the Director has read a transcript of that portion of the hearing in which he/she was not in attendance, and has stated on the record that such review has been undertaken and completed.

Section 9. DECISION OF THE BOARD

- a. Five members of the Board shall constitute a quorum for a hearing held before the Board pursuant to the provision of these by-laws. With respect to any such hearing, no findings of fact or decision by the Board shall be valid or effective without a majority vote of the quorum present. A tie vote results in a failure to find in favor of the Applicant and constitutes a denial of the Application or that portion of the Application on which the vote is taken.
- b. For Applications submitted to a referee, the Board shall render its decision by the first regular meeting following the meeting at which the matter is submitted to the Board, or the meeting at which all material issues were resolved.
- c. Written notice of the decision of the Board shall be delivered or mailed to the Applicant and each Party at their last known address within ten (10) days following the date the decision is rendered.

Section 10. JUDICIAL REVIEW

- a. Judicial review of any decision by the Board shall be filed within the time limits specified in Code of Civil Procedure section 1094.6(b). Notice of the time limitation for filing for judicial review shall be given by the Board in substantially the following form:

NOTICE IS HEREBY GIVEN that the time in which judicial review must be sought in the above, (date of decision) entitled matter, by the

Mendocino County Employees Retirement Association Board of Directors is governed by Code of Civil Procedure Section 1094.6.

- b. Any request for preparation of the administrative record pursuant to Code of Civil Procedure section 1094.6 shall be made in writing and filed with the Retirement Association. The Retirement Association shall, within ten days of receiving such a request, notify the requesting Party of the estimated cost of preparing the record. Any requesting party other than the Employer or the Retirement Association shall, within ten days of receiving such notification, deposit with the Retirement Association an amount sufficient to cover the estimated cost. If the cost of preparing the record exceeds the amount deposited, the Party requesting the record shall pay the excess.

Section 11 DISABILITY BENEFICIARIES UNDER 55 YEARS OF AGE

The Retirement Association may request information from any disability beneficiary under fifty five years of age in the manner prescribed in Section 4, and may require any such beneficiary to undergo medical examination pursuant to Government Code Section 31729. If from such information and medical examination it appears that the disability retirement beneficiary may no longer be incapacitated, the Retirement Association shall so report in writing to the Board. The Board may order a hearing on the issue of incapacity, in which case the procedures shall be the same as those provided in this Article for Applications for disability retirement.

ARTICLE IX. HEALTH INSURANCE

Effective September 1, 1998 Retiree Health Insurance coverage became the responsibility of the County, please refer to County Resolution 98-147.

ARTICLE X. BOARD OF RETIREMENT ELIGIBILITY AND ELECTION.

Section 1. SUBJECT TO THE PROVISIONS OF ARTICLE 3, Section 31520.1 of the Government Code, County Employees' Retirement Laws of 1937, any active member of the Mendocino County Employees' Retirement Association shall be eligible to serve on the Board of Retirement of said Association unless prohibited by law, and providing the required probationary employment period has been served and the employee has been certified as a permanent employee.

Section 2. On or prior to September 1, of each year, the Retirement Administrator shall notify the Board of Supervisors of the County of Mendocino and the County Clerk of said County of the name or names of the Retirement Board Members for whom successors must be appointed or elected. The Retirement Administrator shall provide a list of the members of this Association as of the First Pay Period in October of said year who shall be entitled to vote in said election.

- (a) As provided in Section 31520.1 of the Government Code, County

Section 10. Whenever a deadline for a procedure associated with a Retirement Board election falls on a holiday or weekend, the final day for completion of the procedure affected by the deadline shall be the last business day preceding such deadline.

ARTICLE XI AMENDMENTS

Section 1. These By-Laws may be amended from time to time by Six-ninths (6/9) vote of the Retirement Board.

THE FOREGOING BY LAWS revise and amend those By Laws which were adopted by the Board of Retirement on the 9th day of February, 1973;
FIRST AMENDMENT adopted the 11th day of October, 1974;
SECOND AMENDMENT adopted the 10th day of June, 1977;
THIRD AMENDMENT adopted the 14th day of September, 1979;
FOURTH AMENDMENT adopted the 11th day of May, 1983;
FIFTH AMENDMENT adopted the 13th day of March, 1985;
SIXTH AMENDMENT adopted the 12th day of March, 1986;
SEVENTH AMENDMENT adopted the 9th day of April, 1986;
EIGHTH AMENDMENT adopted the 10th day of June, 1987;
NINTH AMENDMENT adopted the 9th day of March, 1988;
TENTH AMENDMENT adopted the 17th day of November, 1999
ELEVENTH AMENDMENT adopted the 11th day of April 2003 for Disability application change and the 11th day of June 2003 for meeting day change, by the following vote:
AYES: Duman, Grothe, Rosetti, Fisher, Cliburn, Pearce, Knudsen,
ABSENT: Mirata, Shoemaker

ALL OF WHICH have been included in and have become a part of the MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION By Laws of the BOARD OF RETIREMENT, approved and adopted by the Board of Supervisors the ____ day of _____, 2003

Chairman,
Board of Retirement
Mendocino County ERA

June 20, 2003

TO: Mendocino County Board of Supervisors
FROM: Tim Knudsen, Retirement Administrator
SUBJECT: 11th Amendment to Retirement System Bylaws

The Mendocino County Employees' Retirement Association Board of Directors has voted to amend the retirement system bylaws with the following two revisions:

ARTICLE II. Meetings:

Section 1. REGULAR MEETINGS: Regular meetings shall be held on the third Wednesday in each month at the hour of 8:30 a.m. in the conference room of the retirement system offices or such other place and time as the Retirement Administrator may designate.

The amendment changes the day of the regular retirement board meeting from the second Wednesday of each month to the third Wednesday of each month. The change is necessary in order to provide more current financial and investment information to the retirement board. Financial and investment information is not typically available until after the second Wednesday of each month so the retirement board has been receiving this information over one month after the close of any month. Changing the regular meeting date to the third Wednesday will insure that the financial and investment information for the close of each month will be available within three weeks after the close of the month rather than as much as six weeks.

ARTICLE VIII. PROCEDURES FOR HEARINGS ON DISABILITY RETIREMENT

Extensive changes to Article VIII in order to establish better procedures for receipt and processing of Applications for Disability Retirement and for procedures to be followed in the event an application is referred to an outside hearing officer. Article VIII will be given to every person filing an application for disability retirement in order to familiarize the applicant with these procedures.

The procedures have been reviewed and amended by County Counsel and adopted by the retirement system board of directors.

In accordance with Government Code Section 31525 this amendment to the Mendocino County Employees Retirement Association Bylaws is submitted for your approval.

Respectfully,

Timothy J. Knudsen,
Retirement Administrator

RETIREMENT BOARD MEMBERS: Tim Pearce, Chair
Vice Chair Eloise Grothe, Secretary Steve Duman
William Fisher Richard Shoemaker Bob Mirata,

Charles Cliburn,
Larry Rosetti,
Tim Knudsen



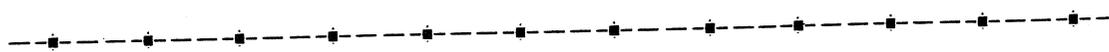
Mendocino County Employees' Retirement Association
625-B Kings Court, Ukiah, CA 95482 ♦ (707) 463-4328 ♦ Fax (707) 467-6472

APPLICATION FOR DISABILITY RETIREMENT

(PLEASE TYPE OR PRINT)

NON-SERVICE CONNECTED _____ SERVICE CONNECTED _____

A disability retirement is a retirement benefit which may be granted to those employees found by the Board of Retirement to be permanently incapacitated from performing the duties essential to his/her position. If the Board of Retirement finds that you are so disabled, you will be retired immediately. The **BURDEN** of proving that you are permanently disabled is **YOUR** responsibility.



To the Board of Retirement
County of Mendocino
Ukiah, California

I hereby make application to the Mendocino County Employees' Retirement Association for disability retirement because I am permanently incapacitated from the performance of the duties essential to my position. I make this application in accordance with the provisions of the "County Employees' Retirement Law of 1937" and the bylaws and regulations governing the Retirement System.

Name _____ Social Security # _____
Address _____
Date of Birth _____ Phone _____ Cell _____
Email Address _____
Signature _____ Date _____

A. GENERAL INFORMATION

- 1. Date of original County employment _____
- 2. Department from which disabled _____
- 3. Last job classification _____
- 4. Last day worked in job classification _____
- 5. Last day of paid leave _____
 - a. () Still employed in above job classification.
 - b. () On paid Leave.
 - c. () Resigned from service.
 - d. () Work restrictions cannot be accommodated.
 - e. () Other (Explain)
- 6. Please submit a copy of your job classification (job description) with this application.

B. WORKER'S COMPENSATION BENEFITS

- 1. Have you requested Worker's Compensation benefits?
Yes () No ()
- 2. If yes, when did you begin receiving Worker's Compensation benefits?

(Month) (Day) (Year)
- 3. Has final determination been made on your application for benefits?
Yes () No ()
- 4. If no, what is the status of your case?

- 5. If yes, what determination was made in your case?

C. NATURE OF INJURY OR DISEASE

The following information **must be provided** to the Board of Retirement to assist them in determining the nature and extent of your disability:

- 1. In your own words, describe the medical nature of your injury or illness.

2. Attach a **detailed current medical report** signed by your physician describing the nature and extent of your illness or injury. This report should include medical opinion regarding the nature of your injury or illness, the degree to which you are incapacitated, whether the injury or illness permanently disables you from the performance of duties essential to your position, and whether your injury or illness is service related. You should provide your physician with a copy of your job description.

3. Attach all other medical reports or results of examinations that you have had in connection with this injury or illness on which you rely to support your application.

4. List your attending physician _____

Address _____

5. List all other physicians who have examined or treated you in connection with this injury or illness; and if none, so state.

D. CAUSE OF INJURY OR ILLNESS

If your injury or illness **was not** caused by your employment, **do not** fill out this section. Go to Section F.

The **BURDEN** of proving that your injury or illness was caused by your employment is **YOUR** responsibility. To assist the Board of Retirement in determining the cause of your injury or illness, please answer the following questions:

1. When did the incident occur or the injury/illness first manifest itself?

2. Where did the incident occur or injury/illness first manifest itself?

3. Explain exactly how your injury or illness was incurred and indicate why you believe it was a result of employment.

E. INCIDENT REPORT

1. Attach copies of any Incident Report(s) and Worker's Compensation Claim Form(s) associated with the injury or illness.
2. If there were witnesses, attach a copy of their notarized statement.
3. Attach copies of any correspondence from your employer regarding your employment status, medical leave, and/or accommodations.

F. BENEFICIARY INFORMATION

Name _____ Relationship _____

Date of Birth _____ Social Security # _____

Address _____

Phone _____ Cell Phone _____

Email Address _____

If Spouse or Registered Domestic Partner, date of marriage or RDP _____

G. DECLARATION

I understand the **BURDEN** of proving disability is my responsibility. I have submitted all medical reports for which I rely in support of my completed application. I have read and understand the attached copy of the "Procedures for Hearings on Disability Retirement" contained in the Mendocino County Employees' Retirement Association Bylaws, Article VIII. (Procedures for Hearings on Disability Retirement to be retained by applicant.)

I authorize the Board of Retirement to make such investigation of my injury or illness, as it deems necessary to establish my disability. I hereby authorize my physicians or any other person having knowledge of pertinent facts pertaining to my application to release any information relative to my disability to the Mendocino County Employees' Retirement Association or its agents for the purpose of establishing the extent, nature and/or cause of my injury or illness.

I further acknowledge, if my application is approved, and if I decide to seek other employment, I will contact the retirement office to determine whether this potential employment will affect my retirement benefit.

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Signature

Date and Place

Signature of Witness

Date and Place

A photocopy of application was provided to applicant.

Signed _____

Date _____

MENDOCINO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION
BY-LAWS OF THE BOARD OF RETIREMENT

REVISION TO DISABILITY RETIREMENT PROCEDURES
AUGUST 2013

ARTICLE VIII. DISABILITY RETIREMENT

The Board of Retirement of the Mendocino County Employees' Retirement Association (MCERA or Association) may promulgate disability retirement procedures for the purpose of handling applications for disability retirement benefits submitted to the Association by a member of MCERA or by any other person, including the head of the department or office employing the member.

The purpose of the disability retirement procedures is to process these applications expeditiously, and when a hearing is held, the applicant will have notice of the hearing and an opportunity to present his/her case.

The Association will periodically review the procedures so that the members are treated fairly and with due process of law.

The Association will ensure that the disability procedures and a disability retirement application handbook are readily available to members of MCERA and any member of the public.

**MENDOCINO COUNTY
EMPLOYEES' RETIREMENT ASSOCIATION**

**PROCEDURES FOR
DISABILITY RETIREMENT APPLICATIONS
AND FORMAL HEARINGS**



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PROCEDURES
for
Disability Retirement Applications
and
Formal Hearings

The purpose of these procedures are to expeditiously process applications for disability retirement benefits under the County Employees' Retirement Law of 1937 (CERL) and when a hearing is to be held, the APPLICANT will have notice of the hearing and an opportunity to appear and present his or her case.

Rule 1. Definitions

In these Rules, unless the context or subject matter otherwise requires:

(a) "APPLICANT" means a member of the Mendocino County Employees' Retirement Association claiming disability retirement benefits under the County Employees' Retirement Law of 1937, or any person or persons entitled to claim such benefits as a result of the death of a member.

(b) "Board" means the Board of Retirement of the Mendocino County Employees' Retirement Association.

(c) Deny or dismiss the application "with prejudice" means the application is denied and the member will not be allowed to refile a disability application as to that injury or impairment.

(d) "Disability" or "disabled", whether used singly or in combination with other words, means permanent incapacity for performance of duty.

(e) "Medical Advisor" to the Board shall mean the County Health Officer, his or her designee, or a third party medical professional designated by the Association.

(f) "Permanent incapacity for the performance of duty" means an impairment of the member's body and/or mind, which causes the member to be unable to perform those duties essential to the performance of the job classification last held by the member, or the duties of a permanent light duty position within the member's abilities and within the member's department or a successor department, when it is determined by competent medical evidence that the impairment is permanent or of such prolonged and uncertain duration as to be considered permanent. A member need not be able to perform each and every duty of the member's position, but if the member is permanently unable to perform any essential duty of the former classification, the member shall be deemed to be incapacitated. A member is not considered to be permanently incapacitated when the member unreasonably refuses medical treatment (including surgery) or other remedial treatment available in California if the probabilities are great that such treatment will restore the member to capacity within a reasonable period of time and the risk of harm from such treatment would not deter a reasonable person from submitting to the same.

(g) "Retirement Administrator" means the person designated by the Board as its Retirement Administrator or his/her designee.

(h) "Retirement Association" or "Association" means the Mendocino County Employees' Retirement Association.

(i) "Duties" means the essential functions of the job that are functions which the individual who holds the position must be able to perform, with or without reasonable accommodations.

Rule 2. Forms

All forms to be used in proceedings under these Rules shall be first approved by the Retirement Administrator. Whenever forms are available for use, they shall, insofar as possible, be used by all interested parties. Most of the forms used in the disability process can be found in the MCERA Disability Retirement Application Handbook. .

Rule 3. Filing Of Application

The Retirement Administrator shall furnish a copy of these Rules and a copy of the Disability Retirement Application Handbook to any person upon request. An application will not be accepted for filing until all forms, as described in these Rules and the disability retirement APPLICANT handbook have been completely filled out in accordance with these Rules and the instructions stated in the application forms; verified under oath or penalty of perjury by the person making the application in the presence of the Retirement Administrator or the Retirement Administrator's designated staff member or verified by a notary public; and submitted to the Retirement Administrator. Any attempt to file an application or document in support of the application that is incomplete or illegible shall not be accepted by the Retirement Administrator. An application must include the member's home address and telephone number, an attorney's address and telephone number is not

sufficient. It is the responsibility of the APPLICANT and Applicant's attorney to notify the Board of Retirement of any change of address and/or telephone number. The Retirement Administrator will also not accept an application for filing unless it is accompanied by the Attending or Forensic Physician's Report pursuant to Rule 5.

The Board is interested in receiving and reviewing all competent and relevant evidence including medical reports filed by physicians in Workers' Compensation proceedings, but it is emphasized that in light of the different considerations involved in retirement proceedings as distinguished from Workers' Compensation proceedings, the Board of Retirement and its hearing officer are not bound or precluded in any way by Workers' Compensation evidence, admissions, stipulations, findings or conclusions.

Any application filed more than four months after a member's discontinuance of service must include a statement by the member's attending physician on the Attending or Forensic Physician's Report that indicates the member has been continuously physically or mentally incapacitated to perform his or her duties since the date of the member's discontinuance of service to the time of the application.

Rule 4. Administrative Processing

At the time of furnishing the application forms, the Retirement Administrator shall notify the APPLICANT of the following requirements:

(a) The APPLICANT is required to obtain and to file with the Retirement Administrator, in the form prescribed in Rule 5 and an "Attending Physician's Report", which states that in the physician's opinion the APPLICANT is permanently incapacitated from doing those duties which are essential to the performance of the position last held by the APPLICANT, together with any and all other relevant evidence in the form of written

medical reports, certificates or other documents which the APPLICANT wishes the Board to consider in support of the application. Processing the application will not commence until the application is both complete and timely as determined by the Retirement Administrator, and has been properly filed as described in Rule 3 above.

(b) The APPLICANT is required to report at times and places specified by the Retirement Administrator for one (1) or more medical examination(s) by a physician or physicians selected by the Board or the Retirement Administrator.

(c) If the application contends that the permanent incapacity for the performance of duties is the result of injury or disease arising out of and in the course of employment, the APPLICANT may be required by the Retirement Administrator or his/her designee, to be interviewed relative to the factual circumstances of the cause of such injury or disease.

The APPLICANT shall authorize the release of all medical records, personnel records and Workers' Compensation files.

The Retirement Administrator shall: (1) Forward a "Department Statement of Facts and Circumstances" to the APPLICANT's employer for completion. The Department Statement of Facts and Circumstances shall include a detailed statement of all action and efforts undertaken to find alternative employment for the employee within the department within the capacity of the employee to perform, and the results of such action and efforts, or a detailed explanation as to why such efforts were not undertaken; and;

(2) Request, from County Human Resources copies of all claims and medical reports filed by the APPLICANT for Workers' Compensation benefits; and

(3) Forward an "Immediate Supervisor Statement" to the APPLICANT's last known supervisor.

The Retirement Administrator will, if appropriate, notify the APPLICANT at the address given in the application of the date, time and place the APPLICANT shall report for medical examination and advise the APPLICANT of the name of the person who will arrange to interview the APPLICANT.

The failure of an APPLICANT to diligently pursue or prosecute an application may result in the dismissal of the application. Diligently pursuing or prosecuting an application includes, but is not limited to: timely submission of any and all written documentation requested by the Board; compliance with lawful instructions of the Board; and cooperation with the staff in obtaining information pertinent to the application. Prior to dismissal of an application for failure to diligently pursue or prosecute, APPLICANT shall be given notice and an opportunity to respond.

Rule 5. Attending Physician's Report

The APPLICANT, at his own expense, shall obtain a medical examination by a duly licensed physician of APPLICANT's choice. When the Retirement Association notifies the APPLICANT of the requirements in Rule 4, it shall also provide the APPLICANT with the following documents which are to be delivered by the APPLICANT to his/her physician as follows:

- (a) "Attending Physician's Report";
- (b) Letter of instruction to physicians for APPLICANT and physician guidelines;
- (c) Job Class specification and/or job description and essential functions list

from the APPLICANT's employer for the position held by APPLICANT.

Rule 6. Medical Evaluation By Board Physician and/or Medical Advisor

The Retirement Administrator may arrange an appointment(s) with the physician or physicians so selected by the Board of Retirement for an examination of the APPLICANT and notify the APPLICANT as specified in Rule 4(b).

The Medical Advisor shall advise the Board on medical matter; as requested.

Rule 7. Application Filed On Behalf Of A Member

Pursuant to the authority provided in Government Code section 31721(a), an application may be filed on behalf of a member of the Mendocino County Employees' Retirement Association by any other person, including the head of the department or office employing the member. For purposes of this section, 'APPLICANT' shall mean the person or entity filing the application claiming disability benefits on behalf of a member of MCERA.

The application must be accompanied by other medical documentation identifying the nature and extent of the disability (including physical limitations, if the disability is a result of physical limitation); evidencing the existence of a permanent incapacity which incapacitates the member on whose behalf the application is filed from the performance of the normal job duties of his/her classification; and describing the professional capacity of the author of the documentation in rendering the opinions (e.g., treating physician, fitness for duty evaluator, Agreed Medical Examiner, Qualified Medical Examiner, etc.), together with any and all other relevant evidence in the form of written medical reports, certificates, or other documents which the APPLICANT wishes the Board to consider in support of the application.

As provided in Government Code section 31721(b), the APPLICANT (the person filing on behalf of the member) has the burden of proving that the member is permanently incapacitated for the performance of his or her job duties. Thereafter, the member has the burden of proving job causation

(a) Upon receipt of an application filed on behalf of a member by any person other than the member, the Retirement Administrator shall, within five (5) calendar days, mail a copy of the application to the member at the member's home address on file with the Retirement Administrator and a statement advising the member of the procedures that will be followed in processing the application and further advising the member of his or her rights, including:

- 1) The right to provide medical and other evidence contesting the assertion that the member is permanently incapacitated for the performance of his or her job duties; and

2) The right to provide medical and other evidence showing that, if the Board determines that the member is permanently incapacitated, the disability arose out of and in the course of his or her job duties. The member specifically shall be advised that it is his or her burden to prove job causation.

The Retirement Administrator may require the member to be examined by an independent medical examiner appointed by the Board of Retirement. However, if the member refuses or fails to be examined, the Board may make its determination based on those medical reports provided by the APPLICANT and the member, notwithstanding the provisions of Rule 6, herein; or the Board may deny the application.

(b) It shall be the responsibility of the person filing the application to provide to the Board medical reports supporting its application. At the request of the person filing the application, the Retirement Administrator shall issue subpoenas or subpoenas duces tecum pursuant to Government Code section 31535 and Rule 12.

(c) The member on whose behalf benefits are claimed shall be advised of the time and place of the Board's initial determination review on the application. Hearings on applications filed pursuant to this Rule 6 shall be held in closed session.

(d) Within five (5) calendar days after the Board action on the application, the Retirement Administrator shall notify the person filing the application and the member on whose behalf disability retirement benefits are claimed of the Board action. Both the APPLICANT and the member shall have the right to request a hearing as provided in Rule 11.

Rule 8. Investigation Of Facts

When it is contended by the APPLICANT that a permanent incapacity for the performance of the APPLICANT's duties resulted from an injury or disease arising out of and in the course of employment, the Retirement Administrator may arrange for an appointment with a staff member or an investigator to interview the APPLICANT and notify the APPLICANT as required in Rule 4(c). The investigator shall be employed to make a factual investigation of the factual circumstances surrounding the cause of the injury or disease. Any APPLICANT has the right to have a representative present during any interview of the APPLICANT by the investigator retained by the Board of Retirement. The investigation shall not necessarily be limited to the interview with the APPLICANT and records of employment. The investigator shall make a report to the Retirement Administrator of the result of that investigation.

Rule 9. Administrative Reports

After receipt of all requested documents, the Retirement Administrator shall make a written report to the Board as follows:

(a) Whether or not the file is sufficient to support a finding by the Board as to whether or not the APPLICANT is permanently incapacitated for the performance of his/her duties.

(b) In the case of an application for a service connected disability, that the file is sufficient to support a finding by the Board as to whether or not the incapacity was the result of an injury or disease arising out of and in the course of employment.

(c) In the case of an application for non-service connected disability retirement, the Retirement Administrator shall report to the Board whether or not the APPLICANT has served the required period of time that entitles the APPLICANT to a non-service

connected disability benefit and, if so, that the disability is not due to: intemperate use of alcoholic liquor or drugs, willful misconduct or violation of law; and for APPLICANTS who become members of the system on or after January 1, 1988, that this disability is not due to conviction of a felony or criminal activity which caused or resulted in APPLICANT's disability. See Government Code sections 31726, 31726.5.

The report of the Retirement Administrator shall be in writing and shall include a summary of the medical evidence in support of the application as evaluated by the Board's Medical Advisor. When the medical records and other documents submitted in support of the application are insufficient or in conflict or if the Retirement Administrator is not satisfied with the investigative report and other pertinent documents, he/she shall report to the Board in what respects the application is deemed to be insufficient.

Rule 10. Board Initial Determination

(a) Disability retirement applications shall be considered by the Board in a four-step process, based on the evidence presented.

1) Determination of whether the member is permanently incapacitated for the performance of assigned duties, and, if so, the injury or disease that constitutes the permanent incapacity. If permanent incapacity is not found, the application shall be denied.

2) Determination of whether the incapacity is a result of injury or disease arising out of and in the course of the member's employment for the County or district.

3) Determination of whether a medical examination following retirement shall be required. This determination shall be made for members under age 55. See Government Code section 31729.

4) Determination of the effective date of disability retirement, see

Government Code section 31724.

Within three (3) calendar days after the initial Board action on the application, the Retirement Administrator shall notify the APPLICANT at the address shown in the application of the Board action and, if the action of the Board denies in whole or part any of the benefits sought in the application, the notice shall advise the APPLICANT of his/her right to request a hearing.

Upon request, an applicant may address the Board at the initial determination review regarding his/her disability retirement application either personally or through counsel.

Rule 11. Hearings

When requested by an APPLICANT, hearings shall be scheduled and conducted in the following manner:

(a) Request by APPLICANT. An APPLICANT may request a hearing of an initial determination by filing a request for a hearing with the Board of Retirement not later than the thirtieth (30th) day following the determination of the Board. Such request must be in writing and contain a statement indicating the retirement benefit(s) which the APPLICANT or the member is seeking to obtain through the administrative review process.

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(b) Selection of Hearing Officer. The Board may designate a panel of hearing officers at the beginning of each calendar year. . New cases will be assigned to the hearing officer on a rotational basis.. When a timely request for a hearing is filed by an APPLICANT and the case is ready for formal hearing as determined by the Board's counsel, written notice of the hearing officer assignment, from the predetermined panel, shall be sent by the Board, to the Board's counsel and to the APPLICANT's attorney, or the APPLICANT if not represented by counsel. The APPLICANT and the Board's counsel shall have ten (10) calendar days from the date of mailing of the notice of the hearing officer assignment to exercise, in writing, a peremptory challenge. If either party exercises its challenge, the hearing officer's card is placed in the back of the card file and the hearing officer whose card is next in the file shall be assigned the case. The other party will then have ten (10) calendar days from the date of mailing of the notice of the new assignment to exercise, in writing, a peremptory challenge. Only one peremptory challenge may be exercised by a party. When the hearing officer selection is finally made the hearing officer will be notified of his/her selection. The hearing officer's card will then be placed in the back of the card file.

(c) Setting of Hearing Date. The hearing officer has 180 calendar days from the date of notification of selection as hearing officer to hold and complete the formal hearing. The hearing officer will coordinate the hearing date with all parties and set the dates when the prehearing statements are due, consistent with Rules 12 and 13, and set the cut-off date for requests to subpoena witnesses, consistent with Rule 14.

(d) Continuances. Once a hearing date has been set by the hearing officer, any request for a continuance must be in writing to the hearing officer.

(e) Reporter. The proceedings of all hearings for disability retirement shall be reported by a stenographic reporter unless waived in writing by all interested parties. The stenographic report of the proceedings shall be transcribed only if requested by a party and, if so, the party requesting the same shall pay for the cost. In addition to stenographic reporting, any party may video tape all or part of the proceedings, and, if so, that party shall pay the cost thereof.

(f) Representation by Counsel. An APPLICANT may be represented by legal counsel at any hearing. Before an attorney appears on behalf of an APPLICANT, a written authorization from the APPLICANT shall be filed with the Retirement Administrator. After an attorney appears on behalf of an APPLICANT pursuant to the written authorization of representation, all notices and evidence shall thereafter be served upon such counsel.

Rule 12. Board of Retirement's Prehearing Statement

The Board's counsel shall serve upon the hearing officer and the APPLICANT a prehearing statement no later than sixty (60) calendar days before the date of the hearing.

The prehearing statement shall contain the following:

- (a) A statement of the contested issues;
- (b) A list and copies of all documentary evidence that respondent will offer into evidence;
- (c) The names, business addresses and telephone numbers of any lay witnesses whose testimony the Board's counsel intends to present at the hearing, and a synopsis of the expected testimony of each witness;

(d) The names of any medical witnesses the Board's counsel intends to call for oral testimony at a hearing or hearings for that purpose and a synopsis of the expected testimony;

If APPLICANT's prehearing statement, as described below in Rule 13, raises issues or identifies witnesses not in the Board's counsel's prehearing statement, the Board's counsel, in that event shall then serve upon the hearing officer and the APPLICANT a supplemental prehearing statement no later than fifteen (15) calendar days from the date of mailing of APPLICANT's prehearing statement (no later than thirty (30) days before the hearing) in the format prescribed above.

A request for an extension of time to submit a prehearing statement or a supplemental prehearing statement should only be granted upon a showing of good cause and should be granted for no more than five (5) calendar days. A request for an extension of time should be served on the hearing officer and opposing counsel, or, if no counsel, then served on the opposing party.

Rule 13. APPLICANT's Prehearing Statement

The APPLICANT shall serve upon the hearing officer and the Board's counsel a prehearing statement no later than fifteen (15) calendar days from the date of mailing of respondent's prehearing statement (no later than forty-five (45) days before the hearing).

The prehearing statement shall contain the following:

- (a) A statement of the contested issues;
- (b) A list and copies of all documentary evidence that APPLICANT will offer into evidence;



(c) The names, business addresses and telephone numbers of any lay witnesses whose testimony the APPLICANT intends to present at the hearing, and a synopsis of the expected testimony of each witness;

(d) The names of any medical witnesses the APPLICANT intends to call for oral testimony at a hearing or hearings set for that purpose and a synopsis of the expected testimony;

(e) The names of any medical witnesses the APPLICANT intends to depose, consistent with Rule 18.

If the APPLICANT alleges in the prehearing statement or at any time during the administrative appeal process that the incapacity is the result of an injury or disease not listed on the application submitted to the Board, or if listed, upon which the APPLICANT submitted no medical evidence for the Board's review when it considered the application, the administrative appeal shall be suspended, the allegation shall be treated as an amendment to the application and the matter shall be referred back to the Board for its original determination on the application. In all other respects an application returned to the Board of Retirement shall be processed in accordance with these rules, as if it were a new application consistent with the scheduling and prehearing statement requirements of Rules 11, 12, 13 and 14.

A request for an extension of time to submit a prehearing statement should only be granted upon a showing of good cause and should be granted for no more than five (5) calendar days. A request for an extension of time shall be served on the hearing officer and opposing counsel, or, if no counsel, then served on the opposing party.\

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Rule 14. Subpoena Cut-Off Date

Any party may request that the Board issue a subpoena for a witness, but such requests must be made in writing, consistent with Rule 24. Written requests for subpoenas must be received by the Board no less than thirty (30) calendar days before the date of the hearing. No subpoena will issue upon a request received after this date. All subpoenas shall be served upon the prospective witness no later than fifteen (15) calendar days before the hearing.

Rule 15. Time And Place Of Hearings

Unless the parties and the hearing officer agree otherwise, a hearing shall be deemed set for one full day (i.e., a morning session and an afternoon session). Morning sessions shall begin at 9:30 A.M. and end at 12:00 noon, and afternoon sessions shall begin at 1:30 P.M. and end at 5:00 P.M. Hearings which are not concluded within either the full day (i.e. a morning and an afternoon) session, or whatever other time period to which there has been a stipulation, shall be continued to the next agreeable hearing date. When the hearing date and time have been selected, the Board of Retirement staff shall arrange for a reporter and use of a hearing room and shall in writing notify the parties and the hearing officer of the time and place of the hearing.

Rule 16. Penalties For Failure To Comply With Requirements Of The Rules

(a) Failure of the APPLICANT to submit to medical examinations by a physician or physicians selected by the Board of Retirement, as prescribed in Rule 4 above, shall be treated as noncooperation may result in dismissal of the application.

(b) Failure of a party to raise an issue in the prehearing statement as prescribed in Rules 12 and 13 shall be treated as a waiver of that issue for further consideration by the hearing officer and the Board.

(c) Failure of the APPLICANT to cooperate in completing the formal hearing record, consistent with Rule 11, including, but not limited to: submitting all testimonial and documentary evidence and closing the record within 180 days of the selection of the hearing officer, will result in the case being returned to the Board. If the Board subsequently determines that the APPLICANT did not cooperate in completing the formal hearing record, as described above, the Board may dismiss the application. (d) Failure of a party to make a written request to subpoena a witness no less than thirty (30) calendar days before the hearing date, consistent with Rule 14, shall be treated as a waiver of the right to compel the attendance of that witness to the hearing.

(e) Failure of a party to serve a subpoena on a witness no later than fifteen (15) calendar days before the hearing may be treated by the hearing officer and Board as a waiver of the right to compel the attendance of that witness to the hearing.

(f) Failure of a party to advance the expert witness fee, consistent with Rule 18, shall be treated by the hearing officer and the Board as a waiver of the right to compel the attendance of that expert witness to the hearing.

(g) Failure of a party to serve a subpoena on a witness no less than fifteen (15) calendar days before the hearing, consistent with Rule 14, shall be treated by the hearing officer and the Board as a waiver of the right to compel attendance of that witness at the hearing.

(h) Failure of the APPLICANT, after appeal from the Board's initial decision, to comply with the requirements set forth in these rules as to time and discovery, shall be treated as non-cooperation. In that event, no formal hearing shall be scheduled or conducted and the application will be returned to the Board. If the Board subsequently determines that the APPLICANT did not cooperate in the appeal process, as described above, the Board may dismiss the application.

(i) No testimony of a witness or documentary evidence not identified in a prehearing statement shall be allowed into evidence at the formal hearing, except as prescribed in Rules 12, 17 or 19.

(j) Failure of the APPLICANT to submit to an interview by the Board's investigator, as prescribed in Rule 8 above, shall be treated as non-cooperation and the application shall be sent to the Board. If the Board subsequently determines that the APPLICANT did not cooperate with the Board of Retirement's Investigator in completing the interview, as prescribed in Rule 8, the Board may dismiss the application.

(k) If the Board determines that an APPLICANT has offered an incomplete application and has failed to complete the application pursuant to these Rules, within 12 months of offering an incomplete application to Retirement Administrator or the Retirement Administrator's designee, the Board shall dismiss the application..

(l) Any dismissal of an application with prejudice by the Board pursuant to Rule 16 is a final administrative decision and subject to judicial review as proscribed in Rule 35.

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Rule 17. Written Medical Reports As Evidence

(a) Statement of Policy: It is policy of the Board that production of medical evidence shall be in the form of written medical reports attached to the parties' prehearing statements. A written medical report bearing the signature of the medical witness shall be admissible in evidence as the author's direct testimony and shall support findings made by the Board or the hearing officer. Such medical reports shall not be inadmissible on the basis that they constitute hearsay, but each party shall have the right to cross-examine the authors of medical reports. In addition, such medical reports when offered as expert opinions shall not be inadmissible on the basis that the author of the medical report was called as a percipient witness and not as an expert witness and did not attend the hearing.

(b) "Medical Witness" Defined: A medical witness is a person who by profession is a physician, surgeon, holding an M.D. or D.O. degree, psychologist, optometrist, dentist, podiatrist, or chiropractic practitioner, licensed by the State of California.

(c) Late Submission Of Medical Reports: Submission of a medical report subsequent to the filing of the party's prehearing statement shall be allowed only upon a showing of good cause. The party requesting submission of such a medical report shall address the request to the hearing officer assigned the case and send a copy of the request to opposing counsel, or, if no counsel, then to the opposing party. The request shall state the reason the medical report was not timely produced. The hearing officer shall have the power to rule on such a request.

"Good Cause" shall include an opportunity to have a medical witness comment in a written report on testimony produced at a hearing.

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However, if the medical report is allowed to be submitted into evidence, the other party shall have the right to a continuance to engage in further discovery, obtain rebuttal medical evidence and/ or to cross-examine the medical witness.

Rule 18. Oral Testimony Of Medical Witnesses

(a) Hearings: Oral testimony of a medical witness on direct or cross-examination, for purpose of the hearing, may be taken at a hearing set at a reasonable time as requested by the medical witness in the office of the medical witness, or such other reasonable place requested by the medical witness. If the parties and the hearing officer so agree, the hearing officer need not attend such a hearing and the hearing officer shall consider the transcript of the testimony of a medical witness as evidence in reaching the recommended decision. Hearings for oral testimony of medical witnesses for any purpose shall take place before the first day of the formal hearing.

(b) Depositions: The deposition of a medical witness may be taken before the hearing officer. The deposition shall be scheduled at a reasonable time as requested by the medical witness. The deposition shall take place in the office of the medical witness, or such other reasonable place as requested by the medical witness. Depositions of medical witnesses for any purpose shall be taken before the first day of the formal hearing.

(c) Subpoenas and Fees: (1) Issuance of a subpoena for a medical witness's attendance at a hearing or deposition shall be contingent on the party accepting the obligation to pay the medical witness.

The party requesting the oral testimony shall contact the office of the medical witness and determine the witness's reasonable and customary hourly fee and shall advise the office of the medical witness of the anticipated length of the deposition or

hearing as to hours in duration. An agreement on the medical witness's fee, based on the witness's reasonable customary rate and anticipated length of the testimony, shall be entered into with the medical witness at least ten (10) days in advance of the deposition or hearing. If a balance is due following the testimony, the party requesting the oral testimony shall pay the balance upon receipt of an itemized statement. Disputes as to fees between the medical witness and the party requesting the oral testimony shall be resolved by the hearing officer.

2) Failure to serve a subpoena and/or pay the prescribed witness fee in advance may be treated by the hearing officer and Board as a waiver of the right to question such witness. Failure to enter into an advance agreement to pay to an expert witness fee may be deemed a waiver of the right to question the expert witness or to require the expert witness's appearance at the deposition or hearing and any subpoena which may have been issued to compel the expert witness's attendance shall be canceled and shall be of no further force or effect. Service of the subpoena and payment of the fee may be made by mail if the witness so agrees.

Rule 19. Testimony of Witnesses Without Notice

Upon written request made to the hearing officer with a copy sent to opposing counsel, or, if no counsel, then to the opposing party, a witness not listed in the prehearing statement may be called to testify provided the party making the request presents a synopsis of the expected testimony and a showing that this witness will testify to matters the party did not know about or could not have reasonably known about at the time the prehearing statement was due.

The hearing officer shall have the power to rule on the request. If the witness is allowed to testify, the adverse party shall have the right to a continuance to obtain rebuttal evidence and/or to cross examine the witness. The party originally calling the witness to testify shall bear the responsibility of insuring the witness's attendance at a further hearing set for the witness's cross-examination. But even if a continuance is granted, the hearing officer's jurisdiction to hear and complete the case will not extend past 180 days from the notification of selection as hearing officer.

Rule 20. Depositions Of Lay Witnesses

Any party to the proceeding may cause the depositions of lay witnesses to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state. Attendance of lay witnesses and the production of records in regard to depositions may be required and appropriate subpoenas will be issued by the Board. The parties shall bear their own costs for such depositions. Depositions of lay witnesses must be scheduled and taken before the formal hearing. Depositions of medical witnesses shall be governed by Rule 18.

Rule 21. Resolution Of Disputes In Regard To Discovery And Hearing Procedure

Disputes in regard to depositions and other discovery and hearing procedure shall be resolved by the hearing officer. If not made at a hearing, a request for resolution of a dispute shall be made in writing and may be supported by declarations, a copy of the deposition transcript if appropriate, a memorandum of points and authorities and a proposed resolution. The other party and the witness involved shall have ten (10) calendar days from the date of the mailing of such a request in which to respond. The

response may be accompanied by declarations, a copy of the deposition transcript if appropriate, a memorandum of points and authorities and a proposed resolution.

The hearing officer shall notify the parties and the witness involved of the hearing officer's resolution of the dispute within twenty (20) calendar days from the date of mailing of the request for resolution of the dispute.

Rule 22. Enforcement Of Right Of Discovery And Compelling Testimony

If a deponent or witness refuses to appear at a deposition or hearing, refuses to answer questions or otherwise obstructs discovery contrary to the resolution made by the hearing officer, upon the request of either party supported by a declaration as to the facts with proof of service on the adverse parties and the deponent or witness, and upon the hearing officer's determination that good cause has been shown therefore, the hearing officer shall refer the matter to the Board with a recommendation that the deponent or witness be held in contempt and that a report of the fact be made by the chairman to a judge of the superior court under the provisions of California Government Code sections 31535 and 25170 - 25175. The hearing officer shall serve his/her recommendation on the parties and the deponent or witness. The deponent or witness shall be personally served with a subpoena to attend the hearing before the Board in regard to contempt, a copy of the request of the moving party, the hearing officer's recommendation, and a notice that the Board will consider the hearing officer's recommendation following the deponent or witness being given an opportunity to be heard.

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Rule 23. Prehearing Conferences; Unrepresented APPLICANTS

If either the Board's counsel, the APPLICANT, or the hearing officer so desires, there may be a prehearing conference by telephone for the purpose of conducting a general discussion of the formal hearing procedures, and attempting a reconciliation of any dispute to include attempting to agree or to obtain the hearing officer's ruling on a dispute as to the admissibility or inadmissibility of evidence.

Rule 24. Subpoenas

The chair of the Board or the Retirement Administrator are authorized to issue and sign subpoenas for attendance at Board hearings on disability retirement applications, upon request of the APPLICANT or member, the APPLICANT's or member's attorney, the person filing on behalf of the member pursuant to Rule 7, and the Board's counsel.

Rule 25. Further Medical And Lay Evidence On Behalf Of Respondent

At the request of the Board's counsel and with concurrence of the Retirement Administrator, the Board of Retirement 's disability retirement staff may obtain independent medical examinations and/or investigations. The fees for these medical examinations and/or investigations shall be paid by the Board.

The APPLICANT shall submit to examinations by physicians appointed by the Board's disability retirement staff. Such examinations shall be scheduled with due consideration to the APPLICANT's convenience and ability to attend.

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Rule 26. Evidence

(a) An APPLICANT has the burden of going forward and the burden of proving, by a preponderance of the evidence, that the APPLICANT is entitled to the requested benefit.

(b) Oral evidence shall be taken only on oath or affirmation.

(c) Each party shall have these rights: to call and examine witnesses; to introduce exhibits, to include reports and depositions of medical witnesses; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness to testify; and to rebut adverse evidence. If the APPLICANT does not testify, the APPLICANT may be called and examined as if under cross-examination. Refusal of any APPLICANT to submit to examination for the purpose of answering relevant questions shall be grounds for dismissing the application with prejudice.

(d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. This section shall not be applicable to written medical reports received into evidence pursuant to Rule 17.

(e) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be

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recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

(f) Affidavits. A party may include as part of the party's prehearing statement a copy of any affidavit which the party proposes to introduce in evidence. The affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after timely subpoena is requested and served as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

(g) Official Notice. In reaching a decision, the hearing officer shall take official notice of those matters which must be judicially noticed pursuant to section 451 of the California Evidence Code, may take official notice of those matters which may be judicially noticed pursuant to section 452 of the California Evidence Code, and shall take official notice of any matter specified in said section 452 if the provisions of section 453 of the California Evidence Code are complied with by a party.

Rule 27. Order Of Business For Hearings

Unless the hearing officer rules that it is unnecessary, all hearings shall proceed as follows:

(a) The hearing officer shall call the case and ask for appearances by or for all parties, which shall be recorded. After all of the appearances are made, the parties may make opening statements, orally or in writing, except the respondent may delay its opening statement until after APPLICANT's presentation of evidence.

(b) If the parties are ready to proceed, the hearing officer will describe the documentary file before the hearing and ensure that all parties have identical document

sets.

(c) APPLICANT's full presentation, including any witness testimony, is given. During this presentation, the hearing officer and the Board's counsel have the right to ask questions.

(d) Board's full presentation, including any witness testimony, is given. During this presentation, the hearing officer and the APPLICANT have the right to ask questions.

(e) Rebuttal evidence may then be presented in the same order.

(f) APPLICANT's summary and closing statements are made followed by Board's summary and closing statements. Upon the request of either party, the summary and closing statements may be made in writing and submitted by all parties to the hearing officer, no later than fifteen (15) calendar days after the close of the hearing or as otherwise agreed to by the parties and the hearing officer.

Rule 28. Service Of Proposed Findings Of Fact And Recommended Decision

At the conclusion of the hearing, proposed findings of fact and recommendations of the hearing officer shall be sent to the Board by the hearing officer who presided at the hearing, no later than sixty (60) calendar days after the submission of the summary and closing statements. The Board will serve the findings and recommendations on the parties.

Rule 29. Objections To Proposed Findings Of Fact And Recommended**Decision**

Any party objecting to the proposed findings of fact and recommended decision has ten (10) calendar days from the date of mailing of the proposed finding of fact and recommended decision to submit written objections to the hearing officer and the other party. Within thirty (30) calendar days from the date of mailing the objections to the hearing officer, or the time for filing objections expires, whichever is earlier, the hearing officer shall:

(a) Adopt the proposed findings and recommended decision originally submitted, or

(b) Make such changes in the proposed findings and recommended decision as the hearing officer deems appropriate in light of the evidence, the objections submitted by the unsuccessful party, and any response, or

(c) Serve notice of the final proposed findings and recommended decision of the Board, together with a summary of the evidence, the pleadings of the parties, and their attachments.

Rule 30. Action By The Board

(a) The Hearing Officer's Proposed Findings of Fact and Recommended Decision on an application for disability retirement benefits will be placed on the Board's Closed Session Agenda for determination.

(b) Upon receipt of the Proposed Findings of Fact and Recommended Decision, the Board may:

(1) Approve and adopt the proposed findings and the recommendations of the hearing officer, or

(2) Require a transcript or summary of all the testimony, plus all other evidence received by the hearing officer. Upon the receipt thereof, the Board shall take such action as in its opinion is indicated by such evidence, or

(3) Refer the matter back with or without instructions to the hearing officer for further proceedings.

(4) Set the matter for hearing before itself. At such hearing the Board shall hear and decide the matter as if it had not been referred to the hearing officer.

Rule 31. Board's Decision After Review Of the Record

In any case where the Board makes a decision based upon a transcript or summary of all the testimony, plus all other evidence received by the hearing officer, the Board may approve and adopt proposed findings and recommended decision or, the Board shall direct the prevailing party to prepare proposed findings of fact and conclusions of law consistent with its tentative decision. The proposed findings of fact and conclusions of law shall be served on the unsuccessful party who shall have ten (10) calendar days from the date of mailing of the proposed findings to serve and file written objections thereto. Thereafter, the Board shall consider such written objections, if any, and shall adopt such findings of fact and conclusions of law as it deems appropriate.

Rule 32. Alteration Of Time Requirements

Nothing in these procedures is to be construed as preventing the parties from stipulating to lesser intervals than those prescribed above. The hearing officer may for good cause shown, after giving both parties an opportunity to be heard, shorten or

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lengthen the times specified above, except that the hearing officer may not lengthen the one hundred eighty (180) days to close the record, the sixty (60) days to submit a recommended decision, or the thirty (30) days for reconsideration.

Rule 33. Dismissal For Lack Of Prosecution

If, as a result of the APPLICANT's failure to comply with the procedures specified above, the matter is not heard within two (2) years after a request for hearing is granted by the Board, the case may be dismissed with prejudice, except that where these procedural rules have been served on APPLICANT or APPLICANT's counsel, and APPLICANT continues to fail to follow the rules, the case shall be dismissed in accordance with Rule 16, above.

Rule 34. Service Of Documents

Unless otherwise provided, service of documents provided for in these rules may be made by mail or by personal service. The time requirements of California Code of Civil Procedure section 1013 shall govern all service by mail.

Rule 35. Judicial Review

Judicial review of final retirement decisions shall be subject to Code of Civil Procedure section 1094.6. Following each final decision, the Retirement Administrator shall send to the APPLICANT and the APPLICANT's attorney written notice as follows:

A judicial review of this decision is governed by the provisions of section 1094.6 of the Code of Civil Procedure of the State of California. You are advised that any such petition must be filed not later than the ninetieth (90th) day following the date a decision becomes final.

Rule 36. Access to Board Records

(a) Prior to the Board's administrative action in Rule 10, the APPLICANT is given, at no cost to the APPLICANT, a copy of all the material, including administrative reports and medical records, which is presented by the Retirement Administrator to the Board for its consideration of the application.

(b) Pursuant to Rule 12, the APPLICANT is given, at no cost to the APPLICANT, a copy of all the Board's exhibits which are presented to the hearing officer.

(c) Prior to the Board's final decision on the application under Rule 30, or Rule 31, the APPLICANT is given, at no cost to the APPLICANT, a copy of all documents which are presented by the Retirement Administrator to the Board for its final consideration of the application.

(d) Due to the sensitive nature of psychiatric or psychological records, these records will only be given to APPLICANT's attorney. If APPLICANT is in pro per, that is not represented by counsel, the Retirement Administrator will send copies of the APPLICANT's psychiatric or psychological records to APPLICANT's treating physician.

(e) In addition to (a)-(c) above, the APPLICANT may, in writing, at any time request a copy of all the material in his or her retirement file at the Board of Retirement. The APPLICANT will be charged for copying the file. All copying charges must be paid before the records are released. In the alternative, APPLICANT may hire a copy service to make copies of part or all of his or her file.

**Mendocino County Employees'
Retirement Association**

Disability Retirement Application Handbook

Mendocino County Employees' Retirement Association
625-B Kings Court, Ukiah CA 95482
Ph: 707-463-4328 Fax: 707467-6472

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Mendocino County Employees' Retirement Association

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The Mendocino County Employees' Retirement Association (MCERA) is governed by the County Employees' Retirement Law (CERL) of 1937 (Government Code Section 31450 et. seq.).

Disability and retirement laws are complex.

No statement in this handbook is a legally binding interpretation, enlargement or amendment of the provisions in the CERL or MCERA's policies. If conflict arises between these procedures and the CERL, the decision will be based on the CERL and other governing law.

The information presented in this handbook should not be construed as legal advice or as a legal opinion on specific facts. For legal advice regarding specific facts, consult an attorney knowledgeable in disability retirement law matters.

Please note: You can expect it to take up to 12 months to process a disability retirement application.

General Information

This handbook is designed to provide general information about disability retirement. It is *not* a complete summary of all the rules and procedures relating to the disability retirement process. For a more thorough discussion, please refer to the Procedures for Disability Retirement and Applications, which are found in this handbook.

Permanent Disability

In order to be eligible for disability retirement benefits, you must be permanently incapacitated. Permanent incapacity means the substantial and permanent inability to perform the usual duties of your job class specification. If your department is able to accommodate your restrictions, you are not considered to be permanently incapacitated.

Service-Connected Disability Retirement

If you are permanently incapacitated, physically or mentally, from performing your job duties, and your incapacity is the result of a job-related injury, illness or disease, you may be eligible for a service-connected disability retirement benefit, regardless of your age or length of service. Your incapacity must arise out of and in the course of your employment. To prove service connection, there must be substantial evidence of a real and measurable connection between your disability and the activities associated with your job.

Nonservice-Connected Disability Retirement

If your permanent incapacity is not job-related, you may be eligible for a nonservice-connected disability retirement benefit. To receive this benefit, you must have at least five years of retirement service credit, which may include reciprocal retirement service credit.

Application for Disability Retirement

An application for disability retirement must be filed by you, by the head of your department or by any person on your behalf. An application for either service-connected or nonservice-connected disability must be filed:

- While you are in service; or
- Within four months after discontinuance of service; or
- At any time if, from the date of discontinuance of service to the time the application is filed, you demonstrate you have been continuously physically or mentally incapacitated to perform your job duties; or
- Within four months after the expiration of the period during which any of the following presumptions, if applicable, are extended beyond your discontinuance of service.

Presumptions Applicable to Safety Members

If you are a Safety member or a member in active law enforcement (or a County probation officer in the case of the blood-borne infectious disease presumption) and you have completed a combined five years or more of service as a member of MCERA or a reciprocal retirement system, one of the following presumptions may apply, provided that you otherwise satisfy the requirements of the presumption, including permanent incapacitation:

- Blood-borne infectious disease
- Heart trouble
- Cancer
- Exposure to biochemical substances

If you feel there is a possibility that one of these presumptions may apply to you, a MCERA service representative can provide you with additional information.

Burden of Proof

The burden of proof on issues of permanent incapacity and service connection is placed on the applicant by law. The amount and nature of the medical evidence you submit to the Board of Retirement to substantiate your claim is at your discretion. If you are filing your own application, you must prove by a preponderance of the evidence that you are permanently incapacitated. If your department or some other person is filing on your behalf, it is their obligation to prove by a preponderance of the evidence that you are permanently incapacitated.

General Information

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“Proof by a preponderance of the evidence” means proof which leads the trier of fact to become persuaded that, considering all of the evidence in the case, it is more probable than not that you are permanently incapacitated. If your application is for a service-connected disability retirement, you must also prove by a preponderance of the evidence that your incapacity is due to a job-related injury, illness or disease. If the application is filed by your department or someone else for you (see Gov. Code §31721), it is still your obligation to prove that your incapacity is service-connected.

Please be aware that even though workers’ compensation or Social Security may have found you disabled, this decision is not binding on MCERA. Although workers’ compensation and disability retirement laws may be similar, they are not the same, and it is not unusual for the Board of Retirement to find that a person is not permanently incapacitated even after they have been granted an award by workers’ compensation or Social Security.

Please note: Awards for disability from Workers’ Compensation and/or Social Security are not applied to any benefit received from MCERA.

Issues the Board Will Consider in Deciding Permanent Incapacitation

The Board will review all pertinent medical reports and records, including those submitted by you and any additional medical reports that may be obtained by MCERA staff. Other documents that may be considered include personnel records, department head statements, documents relating to

any workers’ compensation claims and any investigator’s reports.

The Board will look at what employment, if any, you were engaged in after you left service to see if you were performing activities you claimed you were unable to perform because of a disability.

In addition, if you are granted a disability retirement benefit and you are under age 55, MCERA can require you to submit to a medical re-evaluation. If the Board determines you are no longer permanently incapacitated, your disability retirement can be canceled, but only if the your employer agrees to reinstate you to your former position that was evaluated in the disability process.

Disability Application Process

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Step 1. Application for Disability Retirement

To apply for a disability retirement, a Disability Retirement Application must be submitted to MCERA. An application can be obtained by contacting MCERA. The application packet includes the following documents:

- Application for Disability Retirement Checklist
- Application for Disability Retirement
- Authorization for Release of Medical Records and Information
- Attending Physician Report (APR)
- Disability Retirement Benefit Options & Beneficiary Designation
- Frequently Asked Questions

The member must submit their job description to their physician to use when filling out the Attending Physician Report. Both the Application for Disability Retirement and the Attending Physician Report must be completed, signed and submitted together for the application to be accepted.

An incomplete or altered application will be returned to the member in its entirety. This will delay the processing of the application and may delay the effective date for benefits. It is the applicant's responsibility to supply any medical records to substantiate a disability. Costs associated with copying such records are the responsibility of the member. MCERA may request copies of medical records directly from physicians.

Step 2. Discovery and Obtaining Records

MCERA staff may obtain all or some of the following records:

1. Records from Risk Management
2. Personnel records
 - a. Performance evaluations
 - b. Grievance filings
 - c. Internal investigations
 - d. Accommodations records
 - e. Payroll records

3. Workers' compensation
 - a. Benefits awards
 - b. Notice of work restrictions
 - c. All claims filed
4. Report from department head
 - a. Includes information regarding accommodation or alternative employment
 - b. Description of actual job duties/ job analysis

Step 3. Disability Application Review Process

MCERA staff will review the file for completeness and will certify that the application meets the requirements to file for disability retirement. Incomplete applications that do not meet requirements may be returned to member.

MCERA may obtain additional evidence, where necessary including medical and personnel records (see Step 2), or it may request an additional medical evaluation or investigation. Upon receipt of the additional information, MCERA may refer the application to an independent medical advisor to summarize the medical evidence and provide an opinion on permanent incapacitation and, where appropriate, service connection.

Step 4. Board Meeting

Once the member's application has been deemed complete, it will be placed on the Board of Retirement's Closed Session agenda.

The member will be advised in writing of the date and time that the Board will consider the application.

Oral testimony is not taken at the Board meeting.

The member does not need to be present at the meeting.

The member will be notified by mail of the Board's decision.

Disability Application Process

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Step 5. Board Denial and Administrative Hearing

If an applicant is denied a disability retirement based on lack of permanent incapacitation or failure to prove service connection, a letter will be sent no later than three working days after the decision, advising the applicant of his/her right to an administrative hearing.

This administrative hearing is held before a hearing officer. After the hearing is held, the hearing officer will make a recommendation on the disability retirement application to the Board.

The matter will then be placed on the Retirement Board's agenda for a final determination.

Step 6. Judicial Review

If the Board's final determination following Administrative Hearing is to deny application for disability, a letter will be sent no later than three working days after the decision advising the applicant of his/her right to Judicial review. This letter will include notice of the time limitation for filing for Judicial review by writ of mandate.

Judicial review of final retirement decisions shall be subject to Code of Civil Procedure section 1094.6, which means that if you want to challenge the Board's decision, you must file an action in Superior Court in 90 days..

Mendocino County Employees' Retirement Association

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Application for Disability Retirement Checklist

Disability Application Requirements. In order for MCERA to accept and deem your application for disability retirement complete, you must submit the following required documents.

- Application for disability retirement** – Incomplete applications will not be accepted. All questions on the application must be answered, and responses must be legible. Reports and documentation submitted as attachments must also be legible.
- Authorization for release of medical records and information and Attending Physician Report**
- A Delayed Disability Application Affidavit (Included in the Attending Physician Report)** -- Must be completed by the member and the treating physician if more than four (4) months have elapsed from the member's last day of service to the filing of the disability application. The treating physician must state that the member has been physically or mentally disabled from performing his/her usual job duties since the date he/she discontinued service.
- A copy of the member's job class specification** must be submitted with the application. Notify a MCERA service representative if you cannot obtain this information.
- All supporting medical records and reports** – The applicant must demonstrate that he/she is permanently disabled from substantially performing the usual duties of his/her job. For a service-connected disability, the documentation must demonstrate that the employment contributed substantially to the disability. The applicant must submit all medical records to support his/her disability case at the time the disability application is filed.
- A disability retirement benefit options & beneficiary designation** should be submitted so that MCERA knows how to pay the member's disability retirement allowance and to whom to pay any eligible benefit continuance following the member's death.
- Current copy of U.S. driver's license or state-issued photo identification card, birth certificate, marriage certificate or Domestic Partnership Agreement (DPA), birth certificate for spouse or partner.**

IMPORTANT NOTE

Failure to submit the above documents will deem your Application for Disability Retirement incomplete and unacceptable.

Mendocino County Employees' Retirement Association

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Application for Disability Retirement

FOR MCERA USE ONLY
Years of Service: _____

Member Name: _____

I am applying for disability retirement because I believe I am permanently disabled from performing the usual duties of my assigned job.

Applicant Name: _____ Applicant Signature: _____

Section 1: General Information. If address changes during disability process, you must notify MCERA in writing.			
Street Address		Social Security Number — — —	
City	State	Zip	Birth Date (mm/dd/yyyy)
Home Phone Number ()	Work Phone Number ()		Cell Phone Number ()
Email Address (optional)			

Section 2: Application Type. Please indicate type(s) of disability retirement you are applying for.	
<p><u>Nonservice-Connected Disability Retirement</u></p> <p><input type="checkbox"/> • Injury/Illness that was not incurred at work. <input type="checkbox"/> • Five (5) years of service required, per California Government Code §31720(b).</p> <p>Do you have five (5) years of service?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unsure</p>	<p><u>Service-Connected Disability Retirement</u></p> <p><input type="checkbox"/> • Injury/Illness that was incurred at work. <input type="checkbox"/> • No minimum years of service required.</p> <p>If the Board of Retirement finds you to be permanently incapacitated, but <u>not</u> on a service-connected basis, you will be granted a nonservice-connected disability retirement if you have at least five years of service <u>and</u> have applied for the Nonservice Connected Disability Retirement.</p>

Section 3: Current employment. Please provide the following information about your current employment.	
Permanent Position Disabled From: _____	
Department: _____	Immediate Supervisor: _____
Membership Status: <input type="checkbox"/> General <input type="checkbox"/> Safety	
Original Date of Employment: _____	Date Assigned to Most Recent Position: _____
Since your original date of employment, was there a time when you were not employed by this employer <u>or</u> you were on an extended leave of absence? <i>Please check one box:</i>	
<input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please explain: _____	

***** PLEASE COMPLETE APPLICATION IN INK *****

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Application for Disability Retirement

Section 4: Reciprocity. When a member who has established reciprocity with MCERA and another retirement system retires on disability, under California Government Code §31838.5, each system is required to pay only its proportional share of the disability payment, based on the portion of the overall combined service that was earned in each system. The member may not receive a total benefit amount for more than what they would have received had all service been earned in one retirement system.

Please check and complete all that apply:

- I am currently an active member of MCERA and have a deferred retirement with _____.
- I am currently a deferred member of MCERA and an active member of: _____
- Reciprocity does not apply.

If you are an active member of MCERA, please continue to complete the rest of the application. If you are a deferred member of MCERA, you may stop filling out the application. MCERA requires verification from the reciprocal agency of your disability benefit, including the type (service- or nonservice-connected), effective date, final average salary used, years of service credited in the agency, and monthly benefit amount.

Section 5: Current status. Please check any of the following that applies to you, and answer the questions:

- Currently receiving retirement benefits.** Are you currently receiving any retirement benefits? If yes, please specify the company (or employer) and the type of retirement.

- Terminal illness.** Check if you are currently suffering from a terminal illness and have medical documentation regarding your status.

Section 6: Effective Date. If you are ultimately granted a disability retirement, your disability retirement allowance shall be effective as of the date your application is filed with MCERA or the date following your last day of compensation. You may request an earlier effective date when that date is earlier than the date your application is accepted. However, you must demonstrate that the filing of your application was delayed by administrative oversight or by an inability to ascertain the permanency of your incapacity.

If you are requesting an earlier effective date, you must provide the information requested:

- I request an earlier effective date.** I have attached the following information:
 - Medical report or documentation stating when my injury or illness became permanent, or
 - No such documentation exists. I have attached documentation showing my injury is not yet permanent, or
 - Documentation demonstrating that filing delay was caused by administrative oversight, and
 - Documentation regarding my last day of compensation, which was: _____
- I am not requesting an earlier effective date.**

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Application for Disability Retirement

Section 7: Purchase of Service. Eligibility for nonservice-connected disability requires five (5) years of credited service with MCERA. If you have previously withdrawn or received money accumulated during prior service years, you may be able to purchase those years of service. If you must purchase service years to achieve eligibility and have service years available to buy, you must do so prior to completing this application in order to receive credit for those previously withdrawn service years. [See Gov. Code §31652(a).]

Important notice: Read carefully: Failure to purchase service years prior to completing this disability retirement application will constitute a waiver of your rights to redeposit those contributions.

- I understand that I may purchase contributions previously withdrawn from MCERA prior to completing my disability retirement application in order to receive credit for those additional service years.
- I do want to purchase contributions previously withdrawn from MCERA.

Section 8: Notice of right to legal representation. You are not required to have an attorney at any time to apply for a disability retirement. However, you are entitled, at your own expense, to be represented by legal counsel at any and all stages of the disability proceedings. Should you choose to be represented by legal counsel, you must file a written notice with MCERA regarding the hiring, changing or dismissal of counsel. Once written notification is received by MCERA that you have legal counsel, all notices, correspondence and documents shall be sent to that attorney. Absent such written designation, MCERA is not obligated to recognize any attorney claiming to represent you. If you decide to change attorneys or no longer wish to be represented by a specific attorney, you must notify MCERA in writing.

I understand that I have the right to be represented by legal counsel at any and all stages of the disability proceedings. I understand that my attorney will receive all notices, correspondence and documents relevant to my disability application. However, MCERA may contact me directly on some occasions.

Please choose one:

- I am not represented by legal counsel at this time. I understand that should I later choose to be represented by counsel, I must file a written notice of the hiring of counsel with MCERA.
- I am represented by legal counsel for my disability retirement process. His/Her contact information is listed below:

Name: _____

Firm: _____

Address: _____

Telephone: (_____) _____

City, State, Zip: _____

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Application for Disability Retirement

Section 9: Current Work status with MCERA employer. Please check the appropriate section(s), and provide the information requested.

Are you still receiving a paycheck, including sick leave and vacation time? Yes No

If no, when did you receive your last paycheck? _____

When was the last day you actually worked? _____

Please complete the following if you are currently working.

I am currently working _____ hours per week, as follows:

Usual and customary work, or

Modified work. Effective date of modified duty: _____

The modified duty is: Temporary Permanent

Please complete the following if you are currently not working.

I am currently not working, although I am still an employee in the following status:

Regular sick leave. Approximate date your leave will end: _____

Leave without pay. Date your paid compensation ended: _____

Leave with pay/administrative leave. Reason: _____

Labor Code Section 4850 (leave with compensation).

Effective date: _____ Approximate date your leave ends: _____

Temporary disability (workers' compensation)

Effective date: _____ Approximate date your leave ends: _____

Permanent disability (workers' compensation)

Date deemed permanent and stationary: _____ *(please submit copy of doctor's report)*

State disability

Other (please specify): _____

(Section 9 continues on next page)

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Application for Disability Retirement

Section 9: Current Work status with MCERA employer (continued)

Please complete the following if you are no longer employed with the County or other MCERA special district.

I resigned from my employment. If so, please specify effective date of termination and reason for leaving:

I was terminated from my employment for cause or I am in the process of being terminated.

Effective date of termination: _____

I took a regular service retirement.

Effective date of service retirement: _____

Section 10: Present Non-MCERA Employment. If you are presently working for an employer other than the County of Mendocino or a MCERA special district (including self-employment, non-compensated work or any other circumstances in which you may perform services for money or other compensation), please provide the following information: employer name, address and telephone number; dates of employment; and type of work.

<u>Name of Employer</u>	<u>Address of Employer</u>	<u>Phone # of Employer</u>	<u>Dates of Employment</u>	<u>Type of Work</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Section 11: Injury / Illness. A permanent disability may be the result of an injury, illness or disease. The cause may or may not be work-related. Please complete the following section for each and every injury, illness or disease that forms the basis of your disability application. If additional pages are required, please check the box below and provide the requested information on a separate page.

Each injury/illness must be listed separately on pages 10-14. Use additional pages as needed.

Indicate the number of additional pages you are attaching: _____.

11.1 Injury / Illness #1

Injury / Illness type: _____

Description of injury / illness: _____

When did you first experience symptoms? _____

Date you first became disabled: _____

(Section 11 continues on next page)

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Application for Disability Retirement

Section 11: Injury / Illness (continued)

<u>Physician(s) Treating Injury / Illness</u>	<u>Phone Number</u>	<u>Treatment Date(s)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

If you are receiving ongoing medical or therapeutic treatment pertaining to the injury, illness or disease for which you are applying, please provide the information requested below:

<u>Type of Treatment / Therapy</u>	<u>Name of Health Care Provider</u>	<u>Phone Number</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Is your disability the result of a disease? Yes No

If yes, please provide the following information:

- (a) Description of the disease: _____

- (b) When did you first experience symptoms of the disease? _____

- (c) The date the disease was first diagnosed and the name of the diagnosing physician: _____

(Section 11 continues on next page)

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Application for Disability Retirement

Section 11: Injury / Illness (continued)

Is your disability the result of an injury or injuries? Yes No

If yes, please provide the following information:

(a) The date, time of day and location the injury occurred: _____

(b) How and why the injury occurred: _____

(c) The name, address and telephone number of all witnesses to the injury: _____

Do you feel your employment caused or contributed to your injury / illness? Yes No

If yes, please describe how: _____

Have you ever had a similar injury, disease, symptom, complaint, disability or other condition? Yes No

If yes, for each such prior injury or condition, please describe: _____

(Section 11 continues on next page)

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Application for Disability Retirement

Section 11: Injury / Illness (continued)

11.2 Injury / Illness #2

Injury / Illness type: _____

Description of injury / illness: _____

When did you first experience symptoms? _____

Date you first became disabled: _____

<u>Physician(s) Treating Injury / Illness</u>	<u>Phone Number</u>	<u>Treatment Date(s)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

If you are receiving ongoing medical or therapeutic treatment pertaining to the injury, illness or disease for which you are applying, please provide the information requested below:

<u>Type of Treatment / Therapy</u>	<u>Name of Health Care Provider</u>	<u>Phone Number</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Is your disability the result of a disease? Yes No

If yes, please provide the following information:

(a) Description of the disease: _____

(b) When did you first experience symptoms of the disease? _____

(c) The date the disease was first diagnosed and the name of the diagnosing physician: _____

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Application for Disability Retirement

Section 11: Injury / Illness (continued)

Is your disability the result of an injury or injuries? Yes No

If yes, please provide the following information:

(a) The date, time of day and location the injury occurred: _____

(b) How and why the injury occurred: _____

(c) The name, address and telephone number of all witnesses to the injury: _____

Do you feel your employment caused or contributed to your injury / illness? Yes No

If yes, please describe how: _____

Have you ever had a similar injury, disease, symptom, complaint, disability or other condition? Yes No

If yes, for each such prior injury or condition, please describe: _____

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Application for Disability Retirement

Section 12: Permanent incapacity from performing Job Duties. To be eligible for a disability retirement, applicant must demonstrate that he/she is permanently disabled from substantially performing the essential duties of his/her job. Please answer the questions below concerning the permanency of your claimed injury/illness.

Please describe all of the usual duties of your employment at the time you became disabled (include only those activities that you were actually required to perform and those you actually did perform). *Do not substitute a job description for this answer. You may include a Job Analysis, if available.*

Do you believe that you are permanently disabled from performing one or more of the duties described in response to the previous question? Yes No

You must have documentation (a letter or other documentation from a medical provider) containing an opinion on the permanency of your condition and that you are unable to perform your essential job duties. If you are applying for a service-connected disability retirement, documentation should also include the manner in which your condition is job-related.

Are you scheduled for surgery for the injury/illness claimed or has any medical provider recommended surgery for your condition? Yes No

In your own words, please state which duties you cannot perform as a result of your injury/illness. _____

What accommodation(s) do you feel could be made that would allow you to return to work? _____

Have these accommodations been discussed with your department? Yes No

If yes, when? What were the results? _____

At any time since you first became disabled, has your condition improved enough so that you would have been capable of performing your usual duties? Yes No

If yes, when? _____

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Application for Disability Retirement

Section 13: Medical treatment other than listed Injury/Illness Within last five (5) years

Were you examined or treated by any health care provider for any reason within the five years immediately before the injury or illness that is the basis for your application for disability retirement? Yes No

If yes, for each such provider, please state the following: name; address; date (or date range) of examination or treatment; and a description of each symptom, complaint or other condition for which you were examined or treated.

<u>Health Care Provider Name</u>	<u>Address</u>	<u>Date(s) of Examination or Treatment</u>	<u>Description of Complaint, Symptom, Condition</u>

Provide the following information for each health care provider you have seen for any reason other than routine medical services since the onset of the injury or illness that is the basis for your disability retirement application. Please state the following: name; address; date (or date range) of examination or treatment; and a description of each symptom, complaint or other condition for which you were examined or treated.

<u>Health Care Provider Name</u>	<u>Address</u>	<u>Date(s) of Examination or Treatment</u>	<u>Description of Complaint, Symptom, Condition</u>

***** Do not complete Section 14 if you are a General Member. *****

Section 14: Safety Member's Injury / Illness. If you are a safety member who has completed five (5) or more years of service in MCERA or another California public pension plan, please answer the questions below.

Section 14.1 Is this application based on heart trouble? Yes No

Section 14.2 Is this application based on a disability related to any cancer? Yes No

Section 14.3 Is this application based on a blood-borne infectious disease? Yes No

Section 14.4 Is this application based on an exposure to a biochemical substance? Yes No

Section 14.5 I am an eligible safety member applying for a service-connected disability based on one of the above presumptions. Yes No

Initial _____

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Application for Disability Retirement

Section 15: Other Claims Filed

Please check any claim(s) you have filed related to the injury, illness or disease that is the basis for your application for disability retirement, and indicate the date it was filed:

	<u>Date Filed</u>		<u>Date Filed</u>
<input type="checkbox"/> Workers' compensation	_____	<input type="checkbox"/> Social Security	_____
<input type="checkbox"/> Long-term disability	_____	<input type="checkbox"/> Unemployment	_____
<input type="checkbox"/> State disability	_____	<input type="checkbox"/> Other pending claim or legal action against employer	_____

For each such claim or action, please give the following information:

(a) The nature of the claim or action: _____

(b) The name and address of the court, company or agency where the claim or action was filed: _____

For multiple claims, please continue on a separate page.

Section 16: Miscellaneous

Do you have any hobbies? If yes, please list: _____

Do you play sports? If yes, please list: _____

Do you engage in any physical activities? If yes, please list: _____

In the past 15 years, have you engaged in any hobbies, sports and/or physical activities? If yes, please list all: _____

Did you have any other job(s) or engage in any non-County work while employed by the County? If yes, please describe the type of work and its duration: _____

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Application for Disability Retirement

Section 17: Additional Information

Please include any further information that might aid the Board of Retirement in making a determination on your application for disability retirement:

Section 18: Declaration

I declare under penalty of perjury that the foregoing responses contained in this application for disability retirement are true and correct, and that this declaration was signed on _____, in _____, California. (Month Day, Year)
(City)

PROCESSING OF THIS DISABILITY APPLICATION IS CONTINGENT UPON RECEIPT OF A COMPLETED DISABILITY APPLICATION, ATTENDING PHYSICIAN REPORT(S) AND SUPPORTING MEDICAL DOCUMENTATION.

Applicant Signature

Applicant Name (please print)

Date

FOR RETIREMENT BOARD USE ONLY

Certification by Retirement Association

The official retirement records of this applicant have been reviewed, and the application meets the requirements to file for disability retirement.

Yes _____ No _____ (reviewer's initials)

Date Reviewed: _____

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AUTHORIZATION FOR USE OR DISCLOSURE OF PERSONNEL INFORMATION

I, _____, hereby authorize disclosure of any and all information or records relating to my employment with the _____ to the Mendocino County Employees' Retirement Association for the purposes of processing my disability retirement application and to assist the Board of Retirement in making a determination regarding my eligibility for disability retirement.

These records include but are not limited to: Personnel files, performance evaluations, fit for duty evaluations, information in connection with job applications, attendance records, disciplinary actions, letters of counseling or reprimand, eligibility for rehire, letters or memoranda to the employee, letters or memoranda to the employer, information regarding complaints or claims, statements of supervisors or co-workers, or administrative records.

I understand and agree that this authorization shall remain in force until a final determination is made regarding my disability retirement application. However, in no event shall this consent be valid for a period in excess of five (5) years from the date of its execution. I further understand that I have a right to receive a copy of this authorization upon my request.

PLEASE NOTE: SIGNATURE MUST BE WITNESSED ON SAME DATE

Applicant Name (Please Print)

Applicant Signature

Date Signed

Witness (Must be at least 18 years of age and not beneficiary)

Date Signed

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AUTHORIZATION FOR USE OR DISCLOSURE OF INFORMATION

I, _____, hereby authorize disclosure of any and all information or records relating to my Worker's Compensation Case held by _____ (Workers Compensation Carrier) to the Mendocino County Employees' Retirement Association for the purposes of processing my disability retirement application and to assist the Board of Retirement in making a determination regarding my eligibility for disability retirement.

I understand and agree that this authorization shall remain in force until a final determination is made regarding my disability retirement application. However, in no event shall this consent be valid for a period in excess of five (5) years from the date of its execution. I further understand that I have a right to receive a copy of this authorization upon my request.

PLEASE NOTE: SIGNATURE MUST BE WITNESSED ON SAME DATE

Applicant Name (Please Print)

Applicant Signature

Date Signed

Witness (Must be at least 18 years of age and not beneficiary)

Date Signed

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AUTHORIZATION FOR USE OR DISCLOSURE OF INFORMATION

I, _____, hereby authorize disclosure of any and all information or records held by The County of Mendocino Human Resources or its Risk Management Division to the Mendocino County Employees' Retirement Association for the purposes of processing my disability retirement application and to assist the Board of Retirement in making a determination regarding my eligibility for disability retirement.

I understand and agree that this authorization shall remain in force until a final determination is made regarding my disability retirement application. However, in no event shall this consent be valid for a period in excess of five (5) years from the date of its execution. I further understand that I have a right to receive a copy of this authorization upon my request.

PLEASE NOTE: SIGNATURE MUST BE WITNESSED ON SAME DATE

Applicant Name (Please Print)

Applicant Signature

Date Signed

Witness (Must be at least 18 years of age and not beneficiary)

Date Signed

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AUTHORIZATION FOR USE OR DISCLOSURE OF MEDICAL INFORMATION

Explanation:

This authorization for use or disclosure of medical information is being requested of you to comply with the terms of the Confidentiality of Medical Information Act of 1981, Civil Code section 56 *et seq.*

I, _____, hereby authorize disclosure of any and all medical records and information pertaining to my medical history, any disability or medical condition, mental or physical conditions, services rendered or treatment of myself to the Mendocino County Employees' Retirement Association for the purposes of processing my disability retirement application and to assist the Board of Retirement in making a determination regarding my eligibility for disability retirement.

I understand and agree that this authorization shall remain in force until a final determination is made regarding my disability retirement application. However, in no event shall this consent be valid for a period in excess of five (5) years from the date of its execution. I further understand that I have a right to receive a copy of this authorization upon my request.

PLEASE NOTE: SIGNATURE MUST BE WITNESSED ON SAME DATE

Applicant Name (Please Print)

Applicant Signature

Date Signed

Witness (Must be at least 18 years of age and not beneficiary)

Date Signed

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Attending Physician Report

To qualify for a disability retirement, the MCERA member must be substantially incapacitated from the performance of the usual duties of his/her position. A person's incapacity is permanent if change for the better or worse is not to be reasonably anticipated under usual standards. It is not necessary that the person be physically or mentally incapable of performing each and every duty or task that might arise within the job classification.

Part 1: Applicant to Complete

Member's authorization for the release of medical information in connection with submission of attending physician report.	
Member Name: _____	Date of Birth: _____
To: _____	(Name of physician completing report)
You are hereby authorized to release directly to the Mendocino County Employees' Retirement Association (MCERA) this completed Attending Physician Report (APR). I understand that this questionnaire and the information you provide therein will be used to determine my eligibility for disability retirement and that the medical information and APR may be disclosed to the following: MCERA staff, counsel, hearing officers, physicians, other consultants and the Board of Retirement.	
Member Signature: _____	Date: _____
Printed Member Name: _____	Phone: _____

*** This report must be typed or printed legibly and signed by a duly licensed medical doctor. ***

Part 2: Physician to Complete

Physician acknowledgement.
Full Name of Patient: _____
Please identify the claimed disability (i.e., injury, illness and/or disease) for which you are evaluating this patient. Please be specific as to any body part that forms the basis of this application: _____

Date of last visit: _____
Been treating patient since: _____
Name of all persons completing this form: _____
<input type="checkbox"/> Please check this box to confirm that you have reviewed the member's application for disability retirement.

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Attending physician report (continued)

Member information. (Section must be completed. Reports can be submitted to support information below.)

1. Describe the patient's current complaints: _____

2. List other medical conditions that may have contributed to the claimed disability: _____

3. Provide the patient's employment history and identify the duties/activities being performed by the patient at the onset of the claimed disability: _____

4. Describe the work duties the patient last performed or is currently performing in service: _____

Member history. (Section must be completed. Reports can be submitted to support information below.)

1. Provide a detailed description of your history following the claimed disability: _____

2. Identify all medical records upon which you are relying in forming your opinions: _____

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Attending physician report (continued)

Physical examination.

Did you perform a physical examination? Yes No Date: _____

Explain the examination performed and your findings: _____

Diagnoses.

Identify the diagnoses related to the claimed disability (i.e., illness, injury or disease): _____

Permanent incapacity.

1. Is the applicant permanently incapacitated from performing his/her usual duties? Yes No

2. Do you expect a change in the patient's claimed disability?

No

Yes, for the better. Please explain and include anticipated timeframe for change: _____

Yes, for the worse. Please explain and include anticipated timeframe for change: _____

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Attending physician report (continued)

Permanent incapacity (continued).

3. Is there any treatment that might permit the patient to return to full duty?

No

Yes, please describe the treatment, its availability and acceptance in the medical community. Also, please estimate the time and requirements for a recovery and advise whether the benefits of treatment clearly outweigh the risks of treatment:

4. Please discuss in detail if any reasonable accommodations or reasonable medical treatment, including surgery, can be made that would allow the patient to accomplish the job duties listed in Section 12 of the disability application. Your discussion should identify precisely what the recommended treatment consists of and the probability that the applicant can return to his/her former job.

5. Based on the review of the patient's job description, please list the permanent restrictions/limitations (prophylactic or otherwise) required by the patient as a result of the claimed disability. If this application is based on more than one condition, please match the required restriction/limitation with the corresponding claimed disability. Please be specific.

Examples: "Patient cannot lift more than 20 pounds due to lower back pain" or "Patient is unable to type more than four hours in an eight-hour workday due to condition of the upper extremities."

6. If the patient is unable to perform any of the essential job functions described in the patient's job description, is the patient able to perform any other kind of work? No Yes, please explain below:

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Attending physician report (continued)

Causation. Please complete ONLY for service-connected disability retirement claims.

1. What, if any, is the connection between the patients's claimed disability and his/her employment? _____

Please explain the basis for your finding: _____

Please describe any/all contributing factors: _____

2. Is the patient's claimed disability due to intemperate use of alcohol or drugs? Yes No

3. Is the patient's claimed disability due to willful misconduct? Yes No

***** Do not complete "Delayed disability" section below if applicant is still actively employed. *****

Delayed disability application affidavit. This section must be completed by the member's physician if the application is not filed within four (4) months of discontinuation of service.

Was the applicant continuously physically or mentally incapacitated from performing his/her duties from the date of discontinuance of service to the current date? Yes No

Did the incapacitation exist at the time of the discontinuance? Yes No

Please provide a copy of all documentation relied upon to conclude that the patient has been continuously incapacitated.

Review of medical records.

Did you review the applicant's medical records? Yes No

Penalty of perjury statement.

I declare under penalty of perjury that the information contained in this questionnaire and its attachments, if any, are true and correct to the best of my knowledge and belief, except as to information I have indicated that I received from others. As to that information, I declare under penalty of perjury that the information accurately describes the information provided to me and, except as noted herein, that I believe it to be true.

Printed Name: _____

Date: _____

Signature: _____

Medical ID Number: _____

Mailing Address: _____

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Disability Retirement Benefit Options & Beneficiary Designation

MEMBER INFORMATION				
Name (Last, First MI)	Social Security Number	Birth Date	Retirement Effective Date	
Street Address	City	State	Zip	
Department	Membership Type: <input type="checkbox"/> General <input type="checkbox"/> Safety	Home Phone	Work Phone	
Email address (optional)			Cell Phone (optional)	

RETIREMENT OPTIONS (Please complete the attached benefit payment options form.)				
Choose your retirement option:	<input type="checkbox"/> Unmodified	<input type="checkbox"/> Option 1	<input type="checkbox"/> Option 2	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>		

Unmodified: Highest monthly benefit. Only an eligible surviving spouse, registered domestic partner or eligible children, if there is no surviving spouse or partner, receive a 60% continuance of your monthly benefit upon your death. For service-connected disability, the surviving spouse, registered domestic partner or eligible children (if there is no surviving spouse or partner) receives a 100% continuance.

Option 1: Reduced monthly benefit. Surviving beneficiary receives a lump sum payment equal to accumulated contributions less the sum of annuity portion of benefits already received.

Option 2: Reduced monthly benefit. Surviving beneficiary receives a 100% continuance of your monthly benefit upon your death.

ADDITIONAL INFORMATION (Please answer the following questions by checking the appropriate box.)	
Do you have any leaves of absence without pay?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Was your entire service as a member of MCERA rendered on a full-time basis?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Do you have any leaves of absence due to medical reasons?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you ever withdrawn contributions?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you purchased credit for prior part time/extra help service?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Have you purchased credit for public service prior to MCERA membership?	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>NOTE: You must notify your department/district of your pending retirement date. I understand that my retirement will not be effective until I notify my department/district and separate from employment. I hereby authorize MCERA to speak with my department/district regarding my date of retirement.</p>	
	<input type="checkbox"/> Yes <input type="checkbox"/> No

I hereby certify under penalty of perjury that the information submitted is true and correct, and I affirm my consent to release information as provided above.

Member's Signature

Date Signed

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Your monthly retirement allowance will be based upon your choice of a retirement option. Your choice cannot be changed after retirement. Regardless of which option you select, you will receive a monthly allowance for the rest of your life. Below are the retirement options from which to choose. Contact MCERA for additional information.

Unmodified Option

In general, the unmodified allowance provides for the highest possible monthly retirement benefit during your life. This option provides, upon your death, a lifetime benefit equal to 60% of the benefit you received during retirement to your eligible beneficiary. This survivor benefit is restricted to your eligible spouse, qualified domestic partner or eligible child only. Your spouse or qualified domestic partner are considered eligible if you have been married for at least one year at the time of your retirement and you are married to that spouse at the time of your death. If you do not have an eligible spouse or qualified domestic partner, the 60% benefit may be paid to your eligible child upon your death. An eligible child is an unmarried child under the age of 18, or an unmarried full-time student under the age of 22. If you do not have an eligible spouse, qualified domestic partner or eligible child at the time of your death, your designated beneficiary will receive a lump-sum refund of any of your remaining contributions and interest. Under the Unmodified Option, you may change your designated beneficiary for the death benefit at any time without affect to the 60% benefit payable to an eligible spouse, qualified domestic partner or eligible child.

Option 1

This option does not provide a continuance. Upon your death, a lump-sum payment of any remaining contributions becomes payable to your named beneficiary. Each month the annuity portion of your benefit is deducted from your contributions until the balance of your contributions is zero. You will continue to receive your benefit, but there would no longer be a lump-sum benefit payable to your beneficiary. You may change your named beneficiary at any time.

Option 2

At the time of your death, your designated beneficiary will receive the same monthly allowance you were receiving at the time of your death for the remainder of his or her lifetime. An Actuary calculation may be required if the named beneficiary is not your spouse and/or they are more than 10 years younger than you. In order to provide this continuance, your benefit is reduced during your retirement based on your life expectancy and the life expectancy of your beneficiary. Should your beneficiary pre- deace you, you will continue to receive the same reduced amount and you will not be allowed to designate a new beneficiary.

If your designated beneficiary is someone other than a spouse and you are older by an "adjusted age difference" of more than 10 years, the maximum survivor benefit percentage will be reduced based on a table in IRS Regulation 1.401(a)(9)-6. For more information, please contact the Internal Revenue Service at (800) 829-1040, [visit www.irs.gov](http://www.irs.gov), or consult a tax professional.

Mendocino County Employees' Retirement Association

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Beneficiary Designation Form

This form is used to designate or change your beneficiary(ies). It is important to keep your beneficiary designation current. In the event of your death, it will simplify the payment process for your beneficiaries. Be sure to update your beneficiary information in response to changes such as birth, death, marriage or divorce, domestic partnership registration or termination, or if your beneficiary moves. If you are divorced or have terminated a registered domestic partnership, be certain your beneficiary designation complies with the terms of your marital/partnership settlement agreement. Your beneficiary designation may be revoked automatically if you marry or dissolve/annul your marriage after this form has been executed and submitted.

Section 1 – Member Information: Complete all applicable information in the section below.

MEMBER INFORMATION: <i>Please check one:</i>	ACTIVE	DEFERRED	RETIRED
Name (Last, First MI)			
Street Address			
City	State	Zip Code	
Social Security Number	Birth Date (mm/dd/yyyy)	Telephone Number	

Section 2 – Beneficiary Information: Indicate who you want to make the primary or contingent beneficiary(ies) by marking the appropriate box next to each person's name. If you name more than one person in either category, you must indicate what percentage of the benefit each individual is to receive. The total percentage for each category must be 100%. If you do not indicate a percentage, the benefit will be divided into equal parts.

- A **Primary Beneficiary** is the person(s) who will receive a benefit from MCERA upon your death.
 - A **Contingent Beneficiary** is the person(s) who will receive a benefit from MCERA if you have no living primary beneficiaries on the date of your death.
1. Provide each beneficiary's name, current address, Social Security #, birth date, relationship to you, and phone #.
 2. Submit your certificate of marriage or domestic partnership registration, if applicable to your primary beneficiary.
 3. You cannot name a trust as your primary or contingent beneficiary.
 4. If you are deleting a spouse, provide a copy of the Certificate of Death.

BENEFICIARY INFORMATION:	PRIMARY	PERCENTAGE:	%
Name (Last, First MI)			
Street Address			
City	State	Zip Code	
Social Security Number	Birth Date (mm/dd/yyyy)	Relationship	Telephone Number

REQUIRED SIGNATURE: *Beneficiary information will not be accepted without your signature.*

Member Signature: _____ Date: _____

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Section 2 – Beneficiary Information (continued): To designate additional beneficiaries, complete sections below.

BENEFICIARY INFORMATION:		<input type="checkbox"/> PRIMARY	<input type="checkbox"/> CONTINGENT	PERCENTAGE:	%
Name (Last, First MI)					
Street Address					
City		State		Zip Code	
Social Security Number	Birth Date (mm/dd/yyyy)	Relationship		Telephone Number	

BENEFICIARY INFORMATION:		<input type="checkbox"/> PRIMARY	<input type="checkbox"/> CONTINGENT	PERCENTAGE:	%
Name (Last, First MI)					
Street Address					
City		State		Zip Code	
Social Security Number	Birth Date (mm/dd/yyyy)	Relationship		Telephone Number	

BENEFICIARY INFORMATION:		<input type="checkbox"/> PRIMARY	<input type="checkbox"/> CONTINGENT	PERCENTAGE:	%
Name (Last, First MI)					
Street Address					
City		State		Zip Code	
Social Security Number	Birth Date (mm/dd/yyyy)	Relationship		Telephone Number	

BENEFICIARY INFORMATION:		<input type="checkbox"/> PRIMARY	<input type="checkbox"/> CONTINGENT	PERCENTAGE:	%
Name (Last, First MI)					
Street Address					
City		State		Zip Code	
Social Security Number	Birth Date (mm/dd/yyyy)	Relationship		Telephone Number	

REQUIRED SIGNATURE: <i>Beneficiary information will not be accepted without your signature.</i>	
Member Signature	Date

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Section 3 – Lump Sum Death Benefit: If you are retired and your last active duty was with the County of Mendocino or a participating Special District, the beneficiary you name in Section 3 will receive a one-time \$1,000 Lump Sum Death Benefit. This person may be the primary beneficiary you list in Section 2, or it may be someone else. If this section is left blank, your primary beneficiary named in Section 2 will receive this payment.

PRIMARY BENEFICIARY INFORMATION:			PERCENTAGE: %
Name (Last, First MI)			
Street Address			
City	State	Zip Code	
Social Security Number	Birth Date (mm/dd/yyyy)	Relationship	Telephone Number

BENEFICIARY INFORMATION:	PRIMARY	CONTINGENT	PERCENTAGE: %
Name (Last, First MI)			
Street Address			
City	State	Zip Code	
Social Security Number	Birth Date (mm/dd/yyyy)	Relationship	Telephone Number

Section 4 – Minor or Special-Needs Adult: Complete this section only if you are naming a minor or special-needs adult as your primary beneficiary. If you are naming a minor and want to designate an adult to manage payments for the minor without court appointment or supervision until an age you specify, use the following format:

[Name of adult] as custodian for [Name of minor] until age [choose a number between 18 and 25]. Use the adult's address and telephone number and the minor's date of birth, Social Security number and relationship. Or, you may simply name the minor as beneficiary without naming a custodian, in which case court appointment and supervision of a guardian will be required, and all funds will be distributed to the beneficiary at age 18. (Court documents must include the guardian's name, address and telephone number.)

GUARDIAN / CONSERVATOR INFORMATION:			
Name (Last, First MI)			
Street Address			
City	State	Zip Code	
Social Security Number	Birth Date (mm/dd/yyyy)	Relationship	Telephone Number

Note: Beneficiary information will not be accepted without the required signature at the bottom of each page.

REQUIRED SIGNATURE: <i>Beneficiary information will not be accepted without your signature.</i>	
Member Signature	Date

Frequently Asked Questions

1. When should I file a disability application?

As soon as you are reasonably certain that your medical condition permanently prevents you from performing your usual job duties, you should file a disability application. You may apply while you are still employed or within four months following your separation from employment. You also may apply at any time from the date of discontinuance of service if you demonstrate, through medical evidence, that you have been continuously physically or mentally incapacitated from performing your job duties. You may not apply if you have withdrawn your retirement contributions.

2. May another person file a disability application for me?

Yes. Your department head or anyone else may file on your behalf, with or without your permission.

3. How is my eligibility to receive a disability retirement determined?

The Board will review pertinent medical reports and records to determine if you are permanently incapacitated. The medical reports are initially provided by you and additional medical reports may be obtained by MCERA.

4. Is workers' compensation the same thing as disability retirement?

No. MCERA and the County of Mendocino or Special Districts, which are responsible for administering workers' compensation, are separate legal entities whose actions and decisions are not binding on each other. In addition, any information provided to workers' compensation does not automatically go to MCERA. Any information pertaining to your disability retirement application/process should be sent to MCERA by you or someone on your behalf.

5. How long does this process take?

Usually 6 to 12 months from the date your application is filed. If the Retirement Board's

decision is appealed, it may take longer. Each case is different, so processing times will vary.

6. Do I need an attorney to help me?

An application may be filed with or without the assistance of an attorney. If your matter goes to hearing, you may wish to obtain the services of an attorney. MCERA will be represented by an attorney. You may, however, represent yourself in any hearing or court proceeding. No other person, besides an attorney or yourself, may represent you.

7. May I receive a service retirement benefit while waiting for the Board of Retirement to decide on my application?

Yes. Whether or not you are disabled, if you are eligible to receive a regular service retirement benefit, you may file for a service retirement while you are awaiting determination of your disability application. Your retirement benefit would be adjusted, if necessary, if you are found to be permanently incapacitated by the Board.

8. Could there be any consequences if I take a service retirement benefit pending the Board's decision?

Yes. In order to receive a service retirement benefit, you must terminate your employment. If it is determined that you are not eligible for a disability retirement, you may not return to your job.

If you do not take a service retirement benefit pending the Board's decision on your disability retirement application, and it is determined that you are not permanently incapacitated, you have the right to be reinstated by your employer.

9. If my application is approved, when will my disability retirement become effective?

Your disability retirement will be effective on the date you filed your application with the Board of Retirement or the date following the last day for which you received regular compensation,

Frequently Asked Questions

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If it is determined by the Board of Retirement that you delayed in filing your application because you could not determine the permanency of your disability, or if an administrative oversight caused the delay, the effective date of your disability retirement benefit will be the date following the last day for which you received regular compensation.

You and your department payroll/personnel representative should determine if you are eligible to use your paid sick leave before receiving your disability retirement benefit.

10. When will I receive my first check?

Usually within four to six weeks after the Board approves your application.

11. How much will my disability retirement benefit be?

The amount of money you receive for a service-connected disability retirement is usually 50% of your final compensation, which is based on the average of your highest consecutive 12/36 months of salary. A service connected disability retirement is not subject to federal and state income taxes up to the 50% of final compensation. Any amount above the 50% is considered taxable.

The amount of money you receive for a nonservice-connected disability retirement is based on your years of service and a percentage of your final compensation.

The minimum benefit is 20% of your final compensation. This benefit will go up 2% for each additional year of service, not to exceed 40%. MCERA will furnish an estimate of benefit upon request. A nonservice-connected disability retirement benefit is subject to federal and state income taxes.

If you are eligible to receive a service retirement benefit that is greater than the service-connected or nonservice-connected disability retirement amount, you will receive the greater service retirement benefit.

12. Will my disability retirement benefit ever change?

Yes. Annual cost-of-living adjustments (COLAs) are effective April 1 each year and paid beginning on April 30. The COLA is based on the Consumer Price Index (CPI) for the Los Angeles area and is determined annually by the Board of Retirement. The current annual maximum COLA is 3.0%. Any changes in the CPI over the maximum are held in a COLA bank and are applied to your benefit in a future year when the CPI change is less than the maximum.

13. Will I still be eligible for medical insurance benefits?

Please contact a Human Resources Health Benefits Specialist regarding your options.

14. May I continue to work for the County/Special District if I am found to be permanently incapacitated?

Yes. If you are capable of performing other duties, you may accept a new position with the employer. However, if the salary of your new job is less than what you earned when you became permanently incapacitated, you will receive a supplemental disability benefit instead of your full disability retirement benefit. The supplemental disability benefit you receive will generally increase your salary up to the compensation you were receiving in your old position. But, it may not be greater than the disability benefit you would have received if you had accepted a disability retirement.

If you left service due to a disability, you may be able to return to service in a different position. Contact MCERA for more information.

If a Safety member is found to be permanently incapacitated due to job-connection and works in a General member position, the member's Safety status will be maintained.

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