

LIVE VIRTUAL BOARD MEETING



TO VIEW VIA WEB



TO PROVIDE PUBLIC COMMENT

You may submit a request to speak during Public Comment or provide a written comment by emailing PublicComment@lacera.com. If you would like to remain anonymous at the meeting without stating your name, please let us know.

Attention: Public comment requests must be submitted via email to PublicComment@lacera.com.

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION
300 N. LAKE AVENUE, SUITE 650, PASADENA, CA

AGENDA

A REGULAR MEETING OF THE BOARD OF RETIREMENT

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

300 N. LAKE AVENUE, SUITE 810, PASADENA, CA

9:00 A.M., THURSDAY, AUGUST 12, 2021

This meeting will be conducted by the Board of Retirement by teleconference under the Governor's Executive Order No. N-29-20.

Any person may view the meeting online at
https://members.lacera.com/lmpublic/live_stream.xhtml

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

- I. CALL TO ORDER
- II. APPROVAL OF MINUTES
 - A. Approval of the Minutes of the Regular Meeting of July 15, 2021
- III. PUBLIC COMMENT

(Written Public Comment - You may submit written public comments by email to PublicComment@lacera.com. Correspondence will be made part of the official record of the meeting. Please submit your written public comments or documentation as soon as possible and up to the close of the meeting.

Verbal Public Comment - You may also request to address the Committee. A request to speak must be submitted via email to PublicComment@lacera.com. We will contact you with information and instructions as to how to access the meeting as a speaker. If you would like to remain anonymous at the meeting without stating your name, please let us know.)
- IV. CHIEF EXECUTIVE OFFICER UPDATE
(For Information Purposes Only)
- V. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

VI. CONSENT ITEMS

- A. Recommendation as submitted by Tamara L. Caldwell, Acting Division Manager, Disability Retirement Services: That the Board grant the appeals and request for an administrative hearing for applicants Max Madrid and Acelia Fonseca. (Memo dated July 28, 2021)
- B. Recommendation as submitted by Tamara L. Caldwell, Acting Division Manager, Disability Retirement Services: That the Board dismiss with prejudice Matthew J. Brady's appeal for a service-connected disability retirement. (Memo dated July 29, 2021)
- C. Recommendation as submitted by Tamara L. Caldwell, Acting Division Manager, Disability Retirement Services: That the Board dismiss with prejudice Russell W. Rodrigues' appeal for a service-connected disability retirement. (Memo dated July 29, 2021)

VII. ITEMS EXCLUDED FROM CONSENT ITEMS

VIII. REPORTS

- A. For Information Only as submitted Tamara L. Caldwell, Acting Division Manager, Disability Retirement Services, regarding the Application Processing Time Snapshot Reports. (Memo dated July 30, 2021)
- B. For Information Only as submitted by Francis J. Boyd, Senior Staff Counsel, regarding Government Code Sections 7523-7523.2: Disability Retirement Covid-19 Presumption. (Memo dated July 29, 2021)

IX. ITEMS FOR STAFF REVIEW

- X. GOOD OF THE ORDER
(For information purposes only)

XI. DISABILITY RETIREMENT CASES TO BE HELD IN CLOSED SESSION

- A. Applications for Disability
- B. Staff Recommendations
 - 1. For Information Only as submitted by Tamara L. Caldwell, Acting Division Manager, Disability Retirement Services, regarding the 2021 Quarterly Reports of Paid Invoices – 2nd Quarter.
(Memo dated July 16, 2021)

August 12, 2021

Page 3

XII. ADJOURNMENT

Documents subject to public disclosure that relate to an agenda item for an open session of the Board of Retirement that are distributed to members of the Board of Retirement less than 72 hours prior to the meeting will be available for public inspection at the time they are distributed to a majority of the Board of Retirement Members at LACERA's offices at 300 N. Lake Avenue, Suite 820, Pasadena, CA 91101, during normal business hours of 9:00 a.m. to 5:00 p.m. Monday through Friday.

**Requests for reasonable modification or accommodation of the telephone public access and Public Comments procedures stated in this agenda from individuals with disabilities, consistent with the Americans with Disabilities Act of 1990, may call the Board Offices at (626) 564-6000, Ext. 4401/4402 from 8:30 a.m. to 5:00 p.m. Monday through Friday or email PublicComment@lacera.com, but no later than 48 hours prior to the time the meeting is to commence.*

MINUTES OF THE REGULAR MEETING OF THE BOARD OF RETIREMENT
LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION

300 N. LAKE AVENUE, SUITE 810, PASADENA, CA

9:00 A.M., THURSDAY, JULY 15, 2021

This meeting was conducted by the Board of Retirement by teleconference under the Governor's Executive Order No. N-29-20.

PRESENT: Alan Bernstein, Chair (Participated at 10:19 a.m.)

Vivian H. Gray, Vice Chair

Shawn R. Kehoe

Keith Knox

Wayne Moore

Ronald Okum

William Pryor (Alternate Safety) (Left the meeting at 9:55 a.m.)

Les Robbins

ABSENT: Gina Zapanta, Secretary

JP Harris (Alternate Retired)

Herman Santos

STAFF ADVISORS AND PARTICIPANTS

Santos H. Kreimann, Chief Executive Officer

Luis A. Lugo, Deputy Chief Executive Officer

John Popowich, Assistant Executive Officer

Steven P. Rice, Chief Counsel

STAFF ADVISORS AND PARTICIPANTS (Continued)

Jonathan Grabel, Chief Investment Officer

Dr. Vito Campese, Medical Advisor

Johanna Fontenot, Senior Staff Counsel

Francis J. Boyd, Senior Staff Counsel

Tamara Caldwell, Disability Retirement Specialist Supervisor

Vickie Neely, Disability Retirement Specialist Supervisor

Kerri Wilson, Disability Retirement Specialist Supervisor

Hernan Barrientos, Disability Retirement Specialist Supervisor

Ricardo Salinas, Disability Retirement Specialist Supervisor

Vincent Lim, Disability Litigation Manager

Allison E. Barrett, Senior Staff Counsel

Eugenia W. Der, Senior Staff Counsel

Jason E. Waller, Senior Staff Counsel

I. CALL TO ORDER

The meeting was called to order virtually by Ms. Gray at 9:00 a.m.

II. APPROVAL OF MINUTES

A. Approval of the Minutes of the Regular Meeting of June 10, 2021

Mr. Okum made a motion, Mr. Pryor seconded, to approve the minutes of the regular meeting of June 10, 2021. The motion passed (roll call) with Messrs. Knox, Santos, Okum, Moore, Kehoe, Robbins, and Ms. Gray voting yes.

III. PUBLIC COMMENT

There were no requests from the public to speak.

IV. CHIEF EXECUTIVE OFFICER UPDATE

(For Information Purposes Only)

Mr. Kreimann updated the Board on the status of staff's return to work plan that is set to be planned for mid-September. In addition, the election for General Members of the Board of Retirement and Board of Investments is coming up

on August 5, 2021 and communication to members has been provided to share that the election will be conducted online and over the phone only. Lastly, Mr. Kreimann introduced new Deputy Chief Executive Officer, Luis A. Lugo.

V. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

Safety Law Enforcement
Service-Connected Disability Applications

On a motion by Mr. Kehoe, seconded by Mr. Okum, the Board of Retirement approved a service-connected disability retirement for the following named employees who were found to be disabled for the performance of their duties and have met the burden of proof. The motion passed (roll call) with Messrs. Knox, Santos, Okum, Moore, Kehoe, Robbins, and Ms. Gray voting yes.

<u>APPLICATION NO.</u>	<u>NAME</u>
487D	KYLE G. COX
488D	JOSEPH S. FREY
489D	MICHAEL A. GONZALES
490D	MICHAEL S. O'SHEA

V. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

Safety Law Enforcement (Continued)
Service-Connected Disability Applications

<u>APPLICATION NO.</u>	<u>NAME</u>
491D	REGINA E. GATHRIGHT
492D*	BRADY R. KLINE
493D	GERARDO A. PACHUCA
494D	WILLIAM H. DUNKIN
495D	AGUSTIN C. FLORES
496D	BRITTA M. KJELLSTAND
497D	DEMARKUS F. SMITH
498D	MARK P. WINN
499D	MICHAEL S. DEEGAN
500D*	TIMOTHY B. MILLIMAN
501D	BRIAN E. RICHARDSON
502D*	JOHN W. MCCLURE
503D**	DANIEL J. BUJER
504D**	STEVEN J. MILLS
505D**	MICHAEL I. ASCOLESE
506D**	CIPRIANO R. NAINGGOLAN

*Granted SCD – Employer Cannot Accommodate

**Granted SCD – Retroactive

V. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

Safety Fire, Lifeguards
Service-Connected Disability Applications

On a motion by Mr. Pryor, seconded by Mr. Okum, the Board of Retirement approved a service-connected disability retirement for the following named employees who were found to be disabled for the performance of their duties and have met the burden of proof. The motion passed (roll call) with Messrs. Knox, Santos, Okum, Moore, Kehoe, Robbins, and Ms. Gray voting yes.

<u>APPLICATION NO.</u>	<u>NAME</u>
1367B	MICHAEL C. FREEMAN
1368B	HERBERT E. JOHNSON, JR.
1369B	JENNIFER L. THEOBARON
1370B	ERIC W. STRATTON
1371B	WADE D. ELLIOTT
1372B	CHARLES R. MURRAY
1373B	RICHARD F. GARCIA
1374B	CASE NUMBERED INCORRECTLY
1375B	KELLY L. ABADIE
1376B	ROY D. RODRIGUEZ, JR.

V. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

General Members

Service-Connected Disability Applications

On a motion by Mr. Okum, seconded by Ms. Gray, the Board of Retirement made a motion to approve a service-connected disability retirement for the following named employees who were found to be disabled for the performance of their duties and have met the burden of proof. The motion passed (roll call) with Messrs. Knox, Santos, Okum, Moore, Kehoe, Robbins, and Ms. Gray voting yes.

<u>APPLICATION NO.</u>	<u>NAME</u>
2250C*	WARDELL M. TINSLEY
2251C**	ALBA MONTIEL
2252C**	LENA LUO
2253C**	CHENELL M. WOOTEN
2254C*	MARY RAPHAEL YBARRA
2255C	SHARON L. DUPREE
2256C	GERALD A. WASHINGTON
2257C***	ROSA DELA SERNA
2258C**	HARRY WONG

*Granted SCD – Employer Cannot Accommodate

**Granted SCD – Salary Supplemental

***Granted SCD – Retroactive Since Employer Cannot Accommodate

VI. CONSENT ITEMS

Mr. Robbins made a motion, Mr. Knox seconded, to approve Consent Items A-E. The motion passed (roll call) with Messrs. Knox, Santos, Okum, Moore, Kehoe, Robbins, and Ms. Gray voting yes.

- A. Recommendation as submitted by Tamara L. Caldwell, Acting Division Manager, Disability Retirement Services: That the Board grant the appeals and request for an administrative hearing for applicants Russell W. Rodrigues, Connie M. Pendleton, Andrea D. Howe, Andrea D. Howe, Frank D. Dominguez, and Linda S. Yu Chow. (Memo dated July 1, 2021)
- B. Recommendation as submitted by Tamara L. Caldwell, Acting Division Manager, Disability Retirement Services: That the Board dismiss with prejudice Daljit S. Arora's appeal for an earlier effective date. (Memo dated July 1, 2021)
- C. Recommendation as submitted by Tamara L. Caldwell, Acting Division Manager, Disability Retirement Services: That the Board dismiss with prejudice Robert E. Clarke's appeal for a service-connected disability retirement. (Memo dated July 1, 2021)
- D. Recommendation as submitted by Tamara L. Caldwell, Acting Division Manager, Disability Retirement Services: That the Board dismiss with prejudice Martha F. Delgado's application for correction appeal for an earlier effective date. (Memo dated July 1, 2021)
- E. Recommendation as submitted by Tamara L. Caldwell, Acting Division Manager, Disability Retirement Services: That the Board dismiss with prejudice Laura Perez-Vasquez's, surviving spouse of Richard Vasquez, appeal for a service-connected disability retirement. (Memo dated July 1, 2021)

VII. ITEMS EXCLUDED FROM CONSENT ITEMS

There were no items excluded from Consent Items.

VIII. REPORTS

- A. For Information Only as submitted by Francis J. Boyd, Senior Staff Counsel, regarding the retirement of the Board’s Medical Advisor, Vito Campese, M.D. (Memo dated July 1, 2021)

Mr. Boyd and Dr. Campese were present to answer questions from the Board.

- B. For Information Only as submitted Tamara L. Caldwell, Acting Division Manager, Disability Retirement Services, regarding the Application Processing Time Snapshot Reports. (Memo dated May 24, 2021)

Ms. Caldwell was present to answer questions from the Board.

IX. ITEMS FOR STAFF REVIEW

There were no items for staff review.

- X. GOOD OF THE ORDER
(For information purposes only)

The Board and staff thanked Dr. Campese for his service on the Board and wished him the best in retirement. Mr. Moore requested additional information regarding the Pre-Employment/Post Offer medical examination process.

XI. DISABILITY RETIREMENT CASES TO BE HELD IN CLOSED SESSION

- A. Applications for Disability

APPLICATION NO. & NAME

BOARD ACTION

5192B – CAMILLE PADILLA

Mr. Okum made a motion, Mr. Knox seconded, to grant a nonservice-connected disability retirement pursuant to Government Code Section 31720 since the employer cannot accommodate. The motion passed (roll call) with Mr. Knox, Santos, Okum, Kehoe, Robbins, and Ms. Gray voting yes.

VII. DISABILITY RETIREMENT CASES TO BE HELD IN CLOSED SESSION

A. Applications for Disability

APPLICATION NO. & NAME

BOARD ACTION

5193B – DREUSHON N. JONES

Pulled by staff for further development.

5194B – VARNETTE M. CONNORS

Mr. Santos made a motion, Mr. Kehoe seconded, to grant a nonservice-connected disability retirement pursuant to Government Code Sections 31720 and 31724. The motion passed (roll call) with Mr. Knox, Santos, Okum, Kehoe, Robbins, and Ms. Gray voting yes.

5095B – VIVIAN JASSO

Mr. Santos made a motion, Mr. Kehoe seconded, to grant a service connected disability retirement pursuant to Government Code Section 31720. The motion passed (roll call) with Mr. Knox, Santos, Okum, Kehoe, Robbins, and Ms. Gray voting yes.

B. Disability Retirement Appeals (Mr. Pryor left the meeting at 9:55 a.m.)

APPLICATION NO. & NAME

BOARD ACTION

KATHRYN S. NAVE-ELLIOTT - Thomas J. Wicke for the Applicant
Allison E. Barrett for the Respondent

Mr. Kehoe made a motion, Mr. Santos seconded, to grant a service connected disability retirement. The motion passed (roll call) with Mr. Knox, Santos, Okum, Kehoe, and Ms. Gray voting yes.

(Mr. Bernstein joined the meeting at 10:19 a.m.)

VII. DISABILITY RETIREMENT CASES TO BE HELD IN CLOSED SESSION

B. Disability Retirement Appeals

APPLICATION NO. & NAME

BOARD ACTION

ETTA M. COLLIER – In Pro Per

Eugenia W. Der for the respondent

Mr. Knox made a motion, Mr. Okum seconded, to deny a service-connected disability retirement and find the applicant not permanently incapacitated. The motion passed (roll call) with Mr. Knox, Santos, Robbins, Okum, Kehoe, Bernstein, and Ms. Gray voting yes.

XII. ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 10:29 a.m.

GINA ZAPANTA, SECRETARY

ALAN BERNSTEIN, CHAIR



Documents not attached are exempt from disclosure under the California Public Records Act and other legal authority.

**For further information, contact:
LACERA
Attention: Public Records Act Requests
300 N. Lake Ave., Suite 620
Pasadena, CA 91101**



July 28, 2021

TO: Each Trustee
Board of Retirement

FROM: Tamara L. Caldwell, Acting Division Manager 
Disability Retirement Services

SUBJECT: **APPEALS FOR THE BOARD OF RETIREMENT'S MEETING
OF AUGUST 12, 2021**

IT IS RECOMMENDED that the Board of Retirement grant the appeals and requests for administrative hearing received from the following applicants, and direct the Disability Retirement Services Manager to refer each case to a referee:

5115B Max Madrid In Pro Per Deny SCD – Grant NSCD

5184B Acelia Fonseca In Pro Per Deny SCD – Grant NSCD

TLC:kw

Memo_New
Appeals.docx



July 29, 2021

TO: Each Trustee
Board of Retirement

FROM: Tamara L. Caldwell, Acting Division Manager
Disability Retirement Services Division

FOR: August 12, 2021 Board of Retirement Meeting

SUBJECT: **DISMISS WITH PREJUDICE THE APPEAL OF MATTHEW J. BRADY**

Mr. Matthew J. Brady applied for a service-connected disability retirement on December 5, 2019. On January 14, 2021, the Board denied his application for service-connected disability retirement.

Mr. Brady's attorney filed a timely appeal regarding his application for a service-connected disability retirement. On July 6, 2021, the applicant's attorney advised LACERA that his client did not wish to proceed with his appeal.

IT IS THEREFORE RECOMMENDED THAT THE BOARD:

Dismiss with prejudice Matthew J. Brady's appeal for a service-connected disability retirement.

FJB: TLC: mb

Brady, Matthew J.docx

Attachment

NOTED AND REVIEWED:

Francis J. Boyd, Sr. Staff Counsel

Date: July 29, 2021



July 29, 2021

TO: Each Trustee
Board of Retirement

FROM: Tamara L. Caldwell, Acting Division Manager
Disability Retirement Services Division

FOR: August 12, 2021 Board of Retirement Meeting

SUBJECT: **DISMISS WITH PREJUDICE THE APPEAL OF RUSSELL W. RODRIGUES**

Mr. Russell W. Rodrigues applied for a service-connected disability retirement on April 26, 2019. On June 10, 2021, the Board denied his application for service-connected disability retirement.

Mr. Rodrigues' attorney filed a timely appeal regarding his application for a service-connected disability retirement. On July 16, 2021, the applicant's attorney advised LACERA that his client did not wish to proceed with his appeal.

IT IS THEREFORE RECOMMENDED THAT THE BOARD:

Dismiss with prejudice Russell W. Rodrigues' appeal for a service-connected disability retirement.

FJB: TLC: mb

Rodrigues, Russell W.docx

Attachment

NOTED AND REVIEWED:

Francis J. Boyd, Sr. Staff Counsel

Date: July 29, 2021

FOR INFORMATION ONLY

July 30, 2021

TO: Each Trustee
Board of Retirement

FROM: Tamara L. Caldwell, Acting Division Manager 
Disability Retirement Services

FOR: August 12, 2021, Board of Retirement Meeting

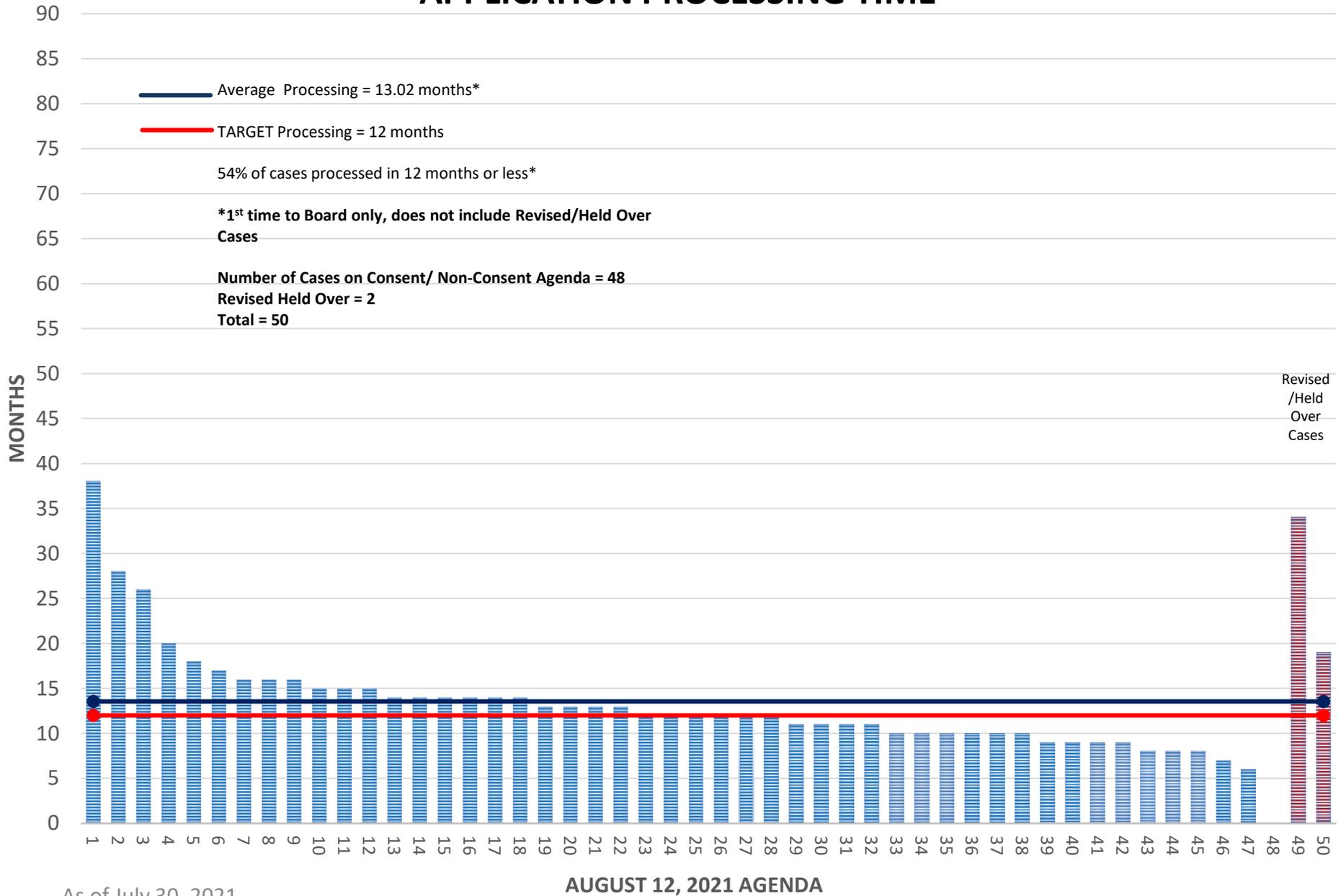
SUBJECT: **Application Processing Time Snapshot Reports**

The following chart shows the total processing time from receipt of the application to the first Board action for all cases on the August 12, 2021, Disability Retirement Applications Agenda.

Consent & Non-Consent Calendar		
Number of Applications	48	
Average Processing Time (in Months)	13.02	
Revised/Held Over Calendar		
Number of Applications	2	
Processing Time Per Case (in Months)	Case 1* 34	Case 2 19
Total Average Processing Time All <u>50</u> Cases on Agenda		
		13.56

*2-Year Review

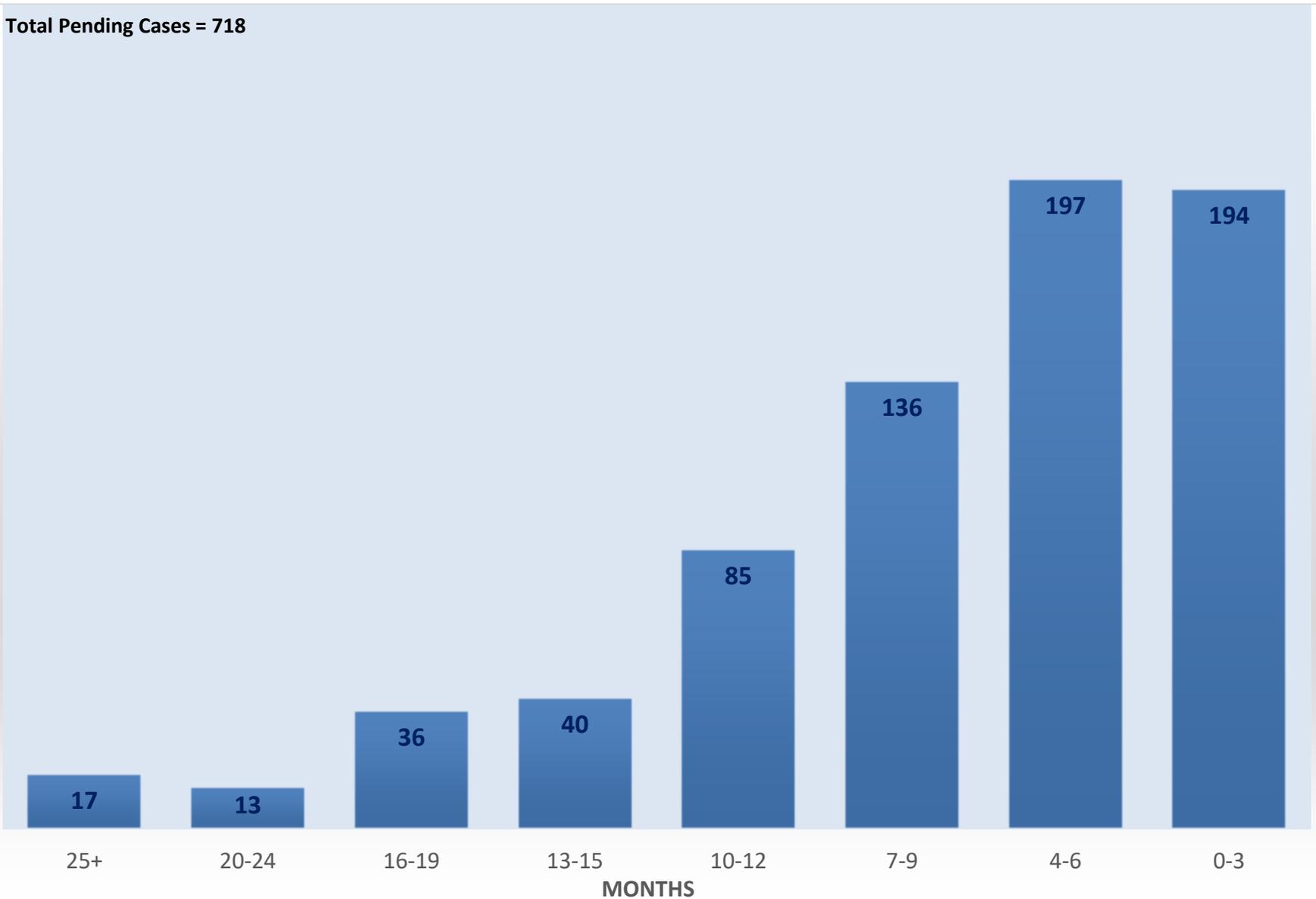
DISABILITY RETIREMENT SERVICES APPLICATION PROCESSING TIME



DISABILITY RETIREMENT SERVICES PENDING APPLICATIONS/TIME INTERVALS

Total Pending Cases = 718

NUMBER OF PENDING APPLICATIONS



As of July 30, 2021

**FOR INFORMATION ONLY**

July 29, 2021

TO: Each Trustee
Board of Retirement

FROM: Francis J. Boyd 
Senior Staff Counsel

FOR: August 12, 2021, Board of Retirement Meeting

**SUBJECT: GOVERNMENT CODE SECTIONS 7523-7523.2: DISABILITY
RETIREMENT COVID-19 PRESUMPTION**

On Friday, July 23, 2021, Government Code sections 7523-7523.2, a Disability Retirement COVID-19 Presumption, was signed into law by Governor Gavin Newsom. The law becomes **effective on January 1, 2022, and has a sunset clause of January 1, 2023**. This rebuttable presumption is applicable to select government employees who are members of a retirement system that is regulated by the California Public Employees' Pension Reform Act of 2013 (PEPRA). This would include LACERA members. A copy of the statute is attached.

The following is a summary of the COVID-19 presumption.

1. Government Code Section 7523.1:

Gov Code Sec. 7523.1 provides the following explanation of the COVID-19 presumption:

- (a) For purposes of a member who retires for disability on the basis, in whole or part, of a COVID-19-related illness, it shall be presumed that the disability arose out of, or in the course of, the member's employment.
- (b) The presumption described in subdivision (a) may be rebutted by evidence to the contrary, but unless controverted, the applicable governing board of a public retirement shall be bound to find in accordance with the presumption.

2. Members eligible for the presumption:

Government Code section 7523(b)(1) states that "*member*" means "a member of a public retirement system who meets either of the following criteria:

a. Job classifications contained in Labor Code section 3212.87(a).

Government Code section 7523 (b)(1)(A) provide that covered members include those in job classification described in Labor Code section 3212.87(a) or the functional equivalent. Section 3212.87(a) includes a number of job classifications for various state agencies. The following list only includes positions applicable to the County of Los Angeles.

1) Active Firefighting Members:

- “Active firefighting members, whether volunteers, partly paid, or fully paid, of a fire department of a city, county, city and county, district, or other public or municipal corporation or political subdivision.” (Labor Code section 3212.87 (a)(1)(A).)

2) Peace Officers

- **Peace Officers as defined in Penal Code section 830.1:** For the County of Los Angeles, this would include any sheriff, undersheriff, or deputy sheriff, and any inspector or investigator employed in the office of the district attorney.
- **Peace Officers as defined in Penal Code sections 830.37(a) and (b):** “Members of an arson-investigating unit, regularly paid and employed in that capacity, of a fire department or fire protection agency of a county, city, city and county, district, or the state, if the primary duty of these peace officers is the detection and apprehension of persons who have violated any fire law or committed insurance fraud. (b) Members other than members of an arson-investigating unit, regularly paid and employed in that capacity, of a fire department or fire protection agency of a county, city, city and county, district, or the state, if the primary duty of these peace officers, when acting in that capacity, is the enforcement of laws relating to fire prevention or fire suppression.”
- **Probation Officers as defined in Penal Code section 830.5(a):** “A parole officer of the Department of Corrections and Rehabilitation, or the Department of Corrections and Rehabilitation, Division of Juvenile Parole Operations, *probation officer, deputy probation officer*, or a board coordinating parole agent employed by the Juvenile Parole Board. . .” (Emphasis added.)

3) Medical Providers

- **Employees providing direct patient care as defined in Labor Code section 3212.87(a)(7):** “An employee who provides direct patient care, or a custodial employee in contact with COVID-19 patients, who works at a health facility. For the purposes of this subdivision, ‘health facility’ means a health facility as defined

in subdivision (a), (b), (c), (m), or (n) of Section 1250 of the Health and Safety Code.”

- **Registered nurses and medical technicians as defined in Labor Code section 3212.87(a)(8):** “An authorized registered nurse, emergency medical technician-I, emergency medical technician-II, emergency medical technician-paramedic, as described in Chapter 2 (commencing with Section 1797.50) of Division 2.5 of the Health and Safety Code.”
- **Home health care employees as described in Labor Code section 3212.87(a)(9):** “An employee who provides direct patient care for a home health agency, as defined under Section 1727 of the Health and Safety Code.”
- **As described in Labor Code section 3212.87(a)(10), employees of health facilities who do not provide direct patient care or do not come in contact with COVID-19 patients as described in Labor Code section 3212.87(a)(10):** “Employees of health facilities, other than those described in paragraph (7). [Paragraph (7) applies to employees who provide direct patient care or a custodial employee in contact with COVID-19 patients]. For these employees, the presumption shall not apply if the employer can establish that the employee did not have contact with a health facility patient within the last 14 days who tested positive for COVID-19. If it is determined that the presumption does not apply, the claim shall be evaluated pursuant to Sections 3202.5 and 3600. [Employee carries the evidentiary burden by a preponderance of the evidence.]
- **Provider of in-home supportive services as described in Labor Code section 3212.87(a)(11):** “A provider of in-home supportive services . . . [under the Welfare and Institutions Code] when they provide the in-home supportive services outside their own home or residence.”

b. Members who test positive during an outbreak at the place of employment.

Government Code section 7523(b)(1)(B) states the presumption also applies to members:

“Whose job classification is neither described in subdivision (a) of Section 3212.87 [of the Labor Code] nor is the functional equivalent for a job classification described in that subdivision, but who tests positive during an outbreak at the member’s specific place of employment.” The following definitions are provided:

- **“‘Specific place of employment’** means the building, store, facility, or agricultural field where an employee performs work at the employer’s direction. ‘A specific place of employment’ does not include the

employee's home or residence, unless the employee provides home health care services to another individual at the employee's home or residence." (Labor Code 3212.88(m)(3)(A).)

- **Multiple places of employment:** "In the case of an employee who performs work at the employer's direction in multiple places of employment within 14 days of the employee's positive test, the employee's positive test shall be counted for the purpose of determining the existence of an outbreak at each of those places of employment, and if an outbreak exists at any of those places of employment, that shall be the employee's 'specific place of employment.'" (Labor Code 3212.88(m)(3)(B).)
- **Outbreak:** An "outbreak" exists if within 14 calendar days one of the following occurs at a specific place of employment:
 - a. "If the employer has **100 employees or fewer** at a specific place of employment, 4 employees test positive for COVID-19." (Labor Code 3212.88(m)(4)(A).) (Emphasis added.)
 - b. "If the employer has **more than 100 employees** at a specific place of employment, 4 percent of the number of employees who reported to the specific place of employment, test positive for COVID-19." (Labor Code 3212.88(m)(4)(B).) (Emphasis added.)
 - c. A specific place of employment is ordered to close by a local public health department, the State Department of Public Health, the Division of Occupational Safety and Health, or a school superintendent due to risk of infection with COVID-19. (Labor Code 3212.88(m)(4)(C).)

3. Retroactivity

As noted above, this presumption will be effective from January 1, 2022, to January 1, 2023, when it will be repealed. The bill does not contain any language regarding retroactivity, and it was not passed as urgency legislation. In California, a statute is presumed to operate prospectively. In construing statutes, there is a presumption against retroactive application unless the Legislature plainly directed otherwise by means of express language of retroactivity or other source that provide a clear and unavoidable implication that the Legislature intended retroactive application of the statute.¹ In addition, by law, non-urgent statutes take effect on January 1 of the following year.²

¹ *Quarry v. Doe I* (2012) 53 Cal.4th 945, 955.

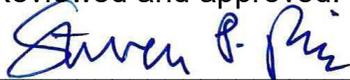
² Cal. Const., Art. IV § 8(c)(3).

However, a vested right matures when there is an unconditional right to immediate payment.³ In the course of deciding when the limitations period commenced in a mandate action against a pension board, the Supreme Court noted that a duty to grant the disability pension (i.e., the reciprocal obligation to a right to immediate payment) did not arise at the time of the injury itself but when the pension board determined that the employee was no longer capable of performing his duties.⁴ This conclusion is bolstered by a recent California Court of Appeal decision concluding that the law applicable to retirement applications is that which is in effect *on the date that the Board approves or denies the application*.⁵

Therefore, the Board will be able to apply the COVID-19 presumption under Government Code section 7523.2 on all relevant cases decided between January 1, 2022, through December 31, 2022, regardless of when the member contracted the COVID-19 virus.

I will keep the Board apprised of any further developments of the law, including any future amendments to the statute.

Reviewed and approved.



Steven P. Rice, Chief Counsel

Attachment

FJB: jm

³ *In re Marriage of Mueller* (1977) 70 Cal.App.3d 66, 71; see *In re Marriage of Brown* (1976) 15 Cal.3d 838, 842.

⁴ *Tyra v. Board of Police & Fire Pension Comm'rs.* (1948) 32 Cal.2d 666, 671-672.

⁵ *Wilmot v. CCCERA* (2021) 60 Cal.App.5th 631, 654.

2021 Cal AB 845

Chaptered, July 23, 2021

Reporter

2021 Cal ALS 122 | 2021 Cal AB 845 | 2021 Cal Stats. ch. 122

CALIFORNIA ADVANCE LEGISLATIVE SERVICE > 2021 Regular Session > CHAPTER 122 > Assembly Bill No. 845

Digest

LEGISLATIVE COUNSEL'S DIGEST

AB 845, Rodriguez. Disability retirement: COVID-19: presumption.

Existing law, until 2023, defines "injury" for purposes of workers' compensation insurance to include illness or death resulting from the 2019 novel coronavirus disease (COVID-19) under specified circumstances, and creates a disputable presumption, as specified, that the injury arose out of the course of employment and is compensable. This presumption is applicable to specified public safety, firefighter, and medical occupation, among others, as specified.

Existing law prescribes various requirements for the organization and administration of public retirement systems, which typically provide pension, disability, and death benefits to their members. These systems are governed by their boards of administration, to which the California Constitution grants the sole and exclusive responsibility to administer the system in a manner that will ensure prompt delivery of benefits and related services.

Existing law provides that participants in certain membership categories may be entitled to special benefits if death or disability arises in the course of employment. The California Public Employees' Pension Reform Act of 2013 (PEPRA) generally requires a public retirement system, as defined, to modify its plan or plans to comply with that act and establishes, among other things, limits on defined benefit formulas and caps on pensionable compensation.

This bill, until January 1, 2023, would create a presumption, applicable to the retirement systems that PEPRA regulates and to specified members in those systems, that would be applied to disability retirements on the basis, in whole or in part, of a COVID-19-related illness. In this circumstance, the bill would require that it be presumed the disability arose out of, or in the course of, the member's employment. The bill would authorize the presumption to be rebutted by evidence to the contrary, but unless

controverted, the applicable governing board of a public retirement system would be required to find in accordance with the presumption. The bill would apply this presumption to members employed in specified firefighter, public safety officer, and health care job classifications, or their functional equivalents, and to members in other job classifications who test positive for COVID-19 during an outbreak of the disease at their places of employment, as defined.

Synopsis

An act to add and repeal Article 5 (commencing with [Section 7523](#)) of Chapter 21 of Division 7 of Title 1 of the Government Code, relating to retirement.

[Approved by Governor July 23, 2021. Filed with Secretary of State July 23, 2021.]

Text

The people of the State of California do enact as follows:

SECTION 1. Article 5 (commencing with Section 7523) is added to Chapter 21 of Division 7 of Title 1 of the Government Code, to read:

- **Article 5. COVID-19 Disability Retirement Presumption**
 - **7523.**
 - For purposes of this article:
 - **(a)** “COVID-19” means the 2019 novel coronavirus disease.
 - **(b)**
 - **(1)** “Member” means a member of a public retirement system who meets either of the following:
 - **(A)** Whose job classification is either described in subdivision (a) of [Section 3212.87 of the Labor Code](#) or is the functional equivalent of a job classification described in that subdivision.
 - **(B)** Whose job classification is neither described in subdivision (a) of Section 3212.87 nor is the functional equivalent of a job classification described in that subdivision, but who tests positive during an outbreak at the member’s specific place of employment. The definitions set forth in subdivision (m) of [Section 3212.88 of the Labor Code](#) shall apply to this subparagraph.

- **(2)** Paragraph (1) shall only apply to a member of a public retirement system, as defined pursuant to subdivision (c).
 - **(c)** “Public retirement system” means any public employee retirement system that is subject to the California Public Employees’ Pension Reform Act of 2013 (Article 4 (commencing with Section 7522)).
- **7523.1.**
 - **(a)** For purposes of a member who retires for disability on the basis, in whole or in part, of a COVID-19-related illness, it shall be presumed that the disability arose out of, or in the course of, the member’s employment.
 - **(b)** The presumption described in subdivision (a) may be rebutted by evidence to the contrary, but unless controverted, the applicable governing board of a public retirement system shall be bound to find in accordance with the presumption.
- **7523.2.**
 - This article shall remain in effect only until January 1, 2023, and as of that date is repealed.

History

Filed with Secretary of State July 23, 2021

Approved by the Governor July 23, 2021

Effective date: January 1, 2022

Sponsor

Rodriguez



Documents not attached are exempt from disclosure under the California Public Records Act and other legal authority.

**For further information, contact:
LACERA
Attention: Public Records Act Requests
300 N. Lake Ave., Suite 620
Pasadena, CA 91101**



Documents not attached are exempt from disclosure under the California Public Records Act and other legal authority.

**For further information, contact:
LACERA
Attention: Public Records Act Requests
300 N. Lake Ave., Suite 620
Pasadena, CA 91101**