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GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980] (Title 2 enacted by Stats. 1943, Ch. 134.)

DIVISION 5. PERSONNEL [18000 - 22980] (Division 5 added by Stats. 1945, Ch. 123.)

PART 3. PUBLIC EMPLOYEES' RETIREMENT SYSTEM [20000 - 21716] (Part 3 repealed and added by Stats. 1995, Ch. 379, Sec. 2.)

CHAPTER 12. Retirement from Employment [21060 - 21233] (Chapter 12 added by Stats. 1995, Ch. 379, Sec. 2.)

ARTICLE 6. Disability Retirement [21150 - 21176] (Article 6 added by Stats. 1995, Ch. 379, Sec. 2.)

21150. (a) A member incapacitated for the performance of duty shall be retired for disability pursuant to this chapter if he or she is credited with five years of state service, regardless of age, unless the person has elected to become subject to Section 21076, 21076.5, or 21077.

(b) A member subject to Section 21076, 21076.5, or 21077 who becomes incapacitated for the performance of duty shall be retired for disability pursuant to this chapter if he or she is credited with 10 years of state service, regardless of age, except that a member may retire for disability if he or she had five years of state service prior to January 1, 1985.

(c) For purposes of this section, "state service" includes service to the state for which the member, pursuant to Section 20281.5, did not receive credit.

(Amended by Stats. 2013, Ch. 526, Sec. 23. (SB 220) Effective January 1, 2014.)

21151. (a) Any patrol, state safety, state industrial, state peace officer/firefighter, or local safety member incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability, pursuant to this chapter, regardless of age or amount of service.

(b) This section also applies to local miscellaneous members if the contracting agency employing those members elects to be subject to this section by amendment to its contract.

(c) This section also applies to all of the following:

(1) State miscellaneous members employed by the Department of Justice who perform the duties now performed in positions with the class title of Criminalist (Class Code 8466), or Senior Criminalist (Class Code 8478), or Criminalist Supervisor (Class Code 8477), or Criminalist Manager (Class Code 8467), Latent Print Analyst I (Class Code 8460), Latent Print Analyst II (Class Code 8472), or Latent Print Supervisor (Class Code 8473).

(2) State miscellaneous members employed by the Department of the California Highway Patrol who perform the duties now performed in positions with the class title of Communications Operator I, California Highway Patrol (Class Code 1663), Communications Operator II, California Highway Patrol (Class Code 1664), Communications Supervisor I, California Highway Patrol (Class Code 1662), or Communications Supervisor II, California Highway Patrol (Class Code 1665).

(3) State miscellaneous members whose disability resulted under the conditions specified in Sections 20046.5 and 20047.

(4) State miscellaneous members in State Bargaining Unit 12 employed by the Department of Transportation, if a memorandum of understanding has been agreed to by the state employer and the recognized employee organization making this paragraph applicable to those members.

(d) This section does not apply to local safety members described in Section 20423.6, unless this section has been made applicable to local miscellaneous members pursuant to subdivision (b).

(e) This section does not apply to state safety members described in Section 20401.5.

(Amended by Stats. 2005, Ch. 328, Sec. 7. Effective January 1, 2006.)

21152. Application to the board for retirement of a member for disability may be made by:

- (a) The head of the office or department in which the member is or was last employed, if the member is a state member other than a university member.
- (b) The university if the member is an employee of the university.
- (c) The governing body, or an official designated by the governing body, of the contracting agency, if the member is an employee of a contracting agency.
- (d) The member or any person in his or her behalf.

(Repealed and added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21153. Notwithstanding any other provision of law, an employer may not separate because of disability a member otherwise eligible to retire for disability but shall apply for disability retirement of any member believed to be disabled, unless the member waives the right to retire for disability and elects to withdraw contributions or to permit contributions to remain in the fund with rights to service retirement as provided in Section 20731.

(Repealed and added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21154. The application shall be made only (a) while the member is in state service, or (b) while the member for whom contributions will be made under Section 20997, is absent on military service, or (c) within four months after the discontinuance of the state service of the member, or while on an approved leave of absence, or (d) while the member is physically or mentally incapacitated to perform duties from the date of discontinuance of state service to the time of application or motion. On receipt of an application for disability retirement of a member, other than a local safety member with the exception of a school safety member, the board shall, or of its own motion it may, order a medical examination of a member who is otherwise eligible to retire for disability to determine whether the member is incapacitated for the performance of duty. On receipt of the application with respect to a local safety member other than a school safety member, the board shall request the governing body of the contracting agency employing the member to make the determination.

(Repealed and added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21155. If the board requests a person to submit to a medical examination, he or she shall be entitled to reimbursement for expenses of transportation, and meals and lodging incident to the examination if he or she is required to travel more than 50 miles one way. Standard per diem rates in effect for state employees as authorized by current law shall be used for the reimbursement; provided, that higher costs of lodging may be paid if supported by receipt and determined necessary by the board. "Expenses of transportation" with respect to the use of private transportation includes mileage fees from the person's home to the place of examination and back to a maximum of 300 miles round trip or within the state at the appropriate current rate per mile authorized to state employees for use of private vehicles in accordance with current law plus bridge tolls. The per diem and mileage may be paid to the person by this system at the time he or she is given notification of the time and place of examination.

(Amended by Stats. 1996, Ch. 907, Sec. 8. Effective January 1, 1997.)

21156. (a) (1) If the medical examination and other available information show to the satisfaction of the board, or in case of a local safety member, other than a school safety member, the governing body of the contracting agency employing the member, that the member in the state service is incapacitated physically or mentally for the performance of his or her duties and is eligible to retire for disability, the board shall immediately retire him or her for disability, unless the member is qualified to be retired for service and applies therefor prior to the effective date of his or her retirement for disability or within 30 days after the member is notified of his or her eligibility for retirement on account of disability, in which event the board shall retire the member for service.

(2) In determining whether a member is eligible to retire for disability, the board or governing body of the contracting agency shall make a determination on the basis of competent medical opinion and shall not use disability retirement as a substitute for the disciplinary process.

(b) (1) The governing body of a contracting agency upon receipt of the request of the board pursuant to Section 21154 shall certify to the board its determination under this section that the member is or is not incapacitated.

(2) The local safety member may appeal the determination of the governing body. Appeal hearings shall be conducted by an administrative law judge of the Office of Administrative Hearings pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of this title.

(Amended by Stats. 2008, Ch. 370, Sec. 3. Effective January 1, 2009.)

21157. The governing body of a contracting agency shall make its determination within six months of the date of the receipt by the contracting agency of the request by the board pursuant to Section 21154 for a determination with respect to a local safety member.

A local safety member may waive the requirements of this section.

(Repealed and added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21158. Upon the receipt by the board of an application for disability retirement with respect to a state peace officer/firefighter member, state patrol member, or a state safety member, the board shall inform both the employer and the member of all information required for the board to make its determination. The board shall make its determination within three months of the receipt by the board of all information required to make a determination for disability retirement on an application submitted by a state peace officer/firefighter member, state patrol member, or a state safety member for disability retirement pursuant to this article.

(Repealed and added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21159. (a) Notwithstanding any other provision of law, a state member shall not be retired for industrial disability for an illness or injury that occurs on or after January 1, 1993, unless the member is incapacitated for the performance of duty in any employment with the state employer and the disability is of permanent or extended and uncertain duration, as determined by the Department of Human Resources. This section shall only apply to state safety, state industrial, and state miscellaneous members employed in any state bargaining units for which a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to this section. The Director of Human Resources may adopt rules regarding job placement and other related activities necessary for the administration of this section and Section 21195.

(b) A state member who, because of the enactment of this section is no longer eligible to retire for industrial disability and accepts alternate employment with the state in which the compensation is less than that received in the position held at the time of the illness or injury, shall, upon certification of the Department of Human Resources to the board, become entitled to benefits under the partial disability retirement program set forth in Section 21160.

(c) The employee shall have the right of appeal to the Department of Human Resources regarding: (1) the requirement to participate or (2) the exclusion from participating in the program described in this section and Section 21160.

(d) For all other disputes relative to this section and Section 21160, the employee shall seek administrative remedy from his or her appointing power through the departmental complaint process.

(e) The appointing power of the affected employee shall reimburse the Department of Human Resources for any costs associated with the administration of this provision.

(f) This section shall not apply to any job-related or job-incurred illness or injury that occurs on or after January 1, 2000.

(Amended by Stats. 2012, Ch. 665, Sec. 128. (SB 1308) Effective January 1, 2013.)

21160. (a) Any state member who is subject to Section 21159 and does not qualify for industrial disability retirement under this part, or is reinstated from industrial disability retirement pursuant to Section 21195, and accepts another job in state service, shall be paid a partial disability retirement program benefit payment from this system in an amount, to be calculated by the Department of Human Resources and certified to the board, that, when added to the salary earned by the employee in the current state position, would be equal to the state salary earned by the member at the time of becoming unable to perform the duties of his or her previous position. This supplemental payment shall not result in the member being deemed to be retired.

(b) The partial disability retirement program benefit payments made under this section shall be paid for by the state employer in the same manner as all other state retirement benefits are funded.

(c) This section shall not apply to any job-related or job-incurred illness or injury that occurs on or after January 1, 2000.

(Amended by Stats. 2012, Ch. 665, Sec. 129. (SB 1308) Effective January 1, 2013.)

21161. (a) A partial disability retirement program is established by Section 21160 for state employees subject to Section 21159. The benefits paid under this program shall be paid pursuant to Sections 21159 and 21160 and shall not be considered compensation for purposes of Section 20630.

(b) This section shall not apply to any job-related or job-incurred illness or injury that occurs on or after January 1, 2000.

(Amended by Stats. 2000, Ch. 402, Sec. 17. Effective September 11, 2000. Applicable from January 1, 2000, by Sec. 22 of Ch. 402.)

21162. A member whose membership continues under Section 20731 shall be retired for disability and receive a retirement allowance based on the service credited to him or her at the time of retirement during any period in which he or she receives a disability retirement allowance under a county retirement system, subject to the following conditions:

(a) That the allowance shall not be paid if entry into employment resulting in membership of the county system occurred prior to October 1, 1957, or after more than 90 days of discontinuance of state service.

(b) That the allowance shall not exceed an amount that, when added to the allowance paid under the other system, equals the allowance that would be paid if the member's state service were credited under the other system where retirement is for disability not arising out of or in the course of employment subject to the other system. However, the allowance shall in any event be no less than an annuity that is the actuarial equivalent of member's contributions.

(c) That the allowance shall be an annuity that is the actuarial equivalent of accumulated contributions where retirement under the other system is for disability arising out of and in the course of employment subject to the other system.

(Amended by Stats. 1996, Ch. 906, Sec. 139. Effective January 1, 1997.)

21163. Notwithstanding any other provision of this article, the retirement of a member who has been granted or is entitled to sick leave or who is entitled to compensating time off for overtime, shall not become effective until the expiration of the sick leave with compensation and the expiration of the compensating time off with compensation, unless the member applies for or consents to his or her retirement as of an earlier date, or unless, with respect to sick leave, the provisions of a local ordinance or resolution or the rules or regulations of the employer provide to the contrary. This section shall also be applicable to a state member who participates in the annual leave program and who has been granted annual leave for the reasons applicable to sick leave.

(Added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21164. Notwithstanding any other provision of this article, the retirement for disability of a local safety member, other than a school safety member, shall not be effective without the member's consent earlier than the date upon which leave of absence without loss of salary under Section 4850 of the Labor Code because of the disability terminates, or the earlier date during the leave as of which the disability is permanent and stationary as found by the Workers' Compensation Appeals Board.

(Added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21165. Notwithstanding any other provision of this article, the retirement for disability of a member, other than a local safety member, with the exception of a school safety member, who has been granted or is entitled to a leave of absence with compensation, which shall include nonindustrial disability insurance benefits payable pursuant to Article 5 (commencing with Section 19878) of Chapter 2.5 of Part 2.6, shall not become effective prior to the expiration of the leave of absence with compensation, unless the member applies for or consents to his or her retirement as of an earlier date.

(Added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21166. If a member is entitled to a different disability retirement allowance according to whether the disability is industrial or nonindustrial and the member claims that the disability as found by the board, or in the case of a local safety member by the governing body of his or her employer, is industrial and the claim is disputed by the board, or in case of a local safety member by the governing body, the Workers' Compensation Appeals Board, using the same procedure as in workers' compensation hearings, shall determine whether the disability is industrial.

The jurisdiction of the Workers' Compensation Appeals Board shall be limited solely to the issue of industrial causation, and this section shall not be construed to authorize the Workers' Compensation Appeals Board to award costs against this system pursuant to Section 4600, 5811, or any other provision of the Labor Code.

(Added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21167. At any time within 20 days after the service of any findings of fact by the Workers' Compensation Appeals Board under this part, any party aggrieved thereby, or the board, may petition for a rehearing upon one or more of the following grounds, and no other:

(a) That the Workers' Compensation Appeals Board acted without or in excess of its powers.

(b) That the findings of fact were procured by fraud.

(c) That the evidence does not justify the findings of fact.

(d) That the petitioner has discovered new evidence material to him or her, that he or she could not, with reasonable diligence, have discovered and produced at the hearing.

(Added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21168. Within 30 days after the petition for rehearing is denied, or, if the petition is granted, within 30 days after the rendition of amended findings of fact on rehearing, any person affected thereby, including this system, may apply to the Supreme Court or to the

court of appeal of the appellate district in which he or she resides, for a writ of review, for the purpose of inquiring into and determining the lawfulness of the findings of the Workers' Compensation Appeals Board.

(Added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21169. The writ of review shall be made returnable not later than 30 days after the date of issuance thereof, and shall direct the Workers' Compensation Appeals Board to certify its record in the case to the court. On the return day the cause shall be heard in the court unless continued for good cause. No new or additional evidence shall be introduced in the court, but the cause shall be heard on the record of the appeals board, as certified to by it.

(Added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21170. The review by the court shall not be extended further than to determine whether the Workers' Compensation Appeals Board acted without or in excess of its powers, or unreasonably, or whether its act was procured by fraud.

(Added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21171. The Workers' Compensation Appeals Board shall have continuing jurisdiction over its determinations made under Section 21166 and may at any time within five years of the date of injury, upon notice and after an opportunity to be heard is given to the parties in interest, rescind, alter, or amend the determination, good cause appearing therefor.

(Added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21172. If the retirement allowance of any person retired for disability is canceled for any cause other than reentrance into state service, and if he or she does not reenter state service, an amount that is the actuarial equivalent of his or her annuity at cancellation, based on a disabled life, but not exceeding the amount of his or her accumulated contributions at the time of his or her retirement for disability, shall be credited to his or her individual account, and shall be refunded to him or her unless he or she elects, under Section 20731, to allow his or her accumulated contributions to remain in the retirement fund.

The actuarial equivalent under this section shall be adjusted by the board every 10 years, or more frequently, to agree with the interest rate and mortality tables in effect at the commencement of each such 10-year or succeeding interval.

(Amended by Stats. 1996, Ch. 906, Sec. 140. Effective January 1, 1997.)

21173. The governing body of a contracting agency may delegate any authority or duty conferred or imposed under this article to a subordinate officer subject to conditions it may impose.

(Added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21174. If it is not claimed that the disability is industrial or if the claim is made and the member so requests, the board shall proceed with retirement and with the payment of the benefits as are payable when disability is not industrial. If the Workers' Compensation Appeals Board subsequently determines that disability is industrial, an amount equal to the benefits paid shall be deducted from the benefits payable under this system because of the determination. No additional benefits shall be payable, however, because disability is determined to be industrial unless the application for that determination is filed with the Workers' Compensation Appeals Board or in the office of this system in Sacramento, for transmission to the Workers' Compensation Appeals Board within two years after the effective date of the member's retirement.

(Added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21175. If any recipient of a disability retirement allowance under the minimum age for voluntary retirement for service applicable to members of his or her class refuses to submit to medical examination the pension portions of his or her allowance may be discontinued until his or her withdrawal of the refusal. If the refusal continues for one year his or her disability retirement allowance may be canceled.

(Added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)

21176. If a recipient of a disability retirement allowance reenters state service and is eligible for membership in this system, his or her allowance shall be canceled and he or she shall immediately become a member of this system. His or her individual account shall be credited with an amount that is the actuarial equivalent of his or her annuity at that time, as based on a disabled life, but not exceeding the amount of his or her accumulated contributions at the time of his or her retirement for disability. He or she shall receive credit for prior service in the same manner as though he or she had never been retired for disability.

(Added by Stats. 1995, Ch. 379, Sec. 2. Effective January 1, 1996.)