

# MCCERA



## **MERCED COUNTY EMPLOYEES' RETIREMENT ASSOCIATION**

**Disability Retirement Handbook**

## MISSION STATEMENT

MCERA's mission is to provide benefits to its members, to manage assets prudently in accordance with plan provisions and to provide competent and efficient services to our members.

## DISABILITY RETIREMENT HANDBOOK

This handbook is intended to give you a general idea of the benefits available through the Merced County Employees' Retirement Association (MCERA). Every effort has been made to ensure the timeliness and accuracy of the information offered. However, you should not rely solely on the information contained herein. Your eligibility for benefits will depend on the particulars of your situation. Your actual benefits will be determined according to the applicable provisions of the County Employees' Retirement Law of 1937 (Government Code Sections 31450 et. Seq.), the California Constitution, MCERA's by-Laws and MCERA's policies and procedures. Therefore, your benefits may, in some cases, be different from those presented in this manual.

The California legislature periodically makes revisions and additions to retirement law. MCERA will make every effort to keep you informed of future changes that affect your Retirement Plan. However, benefits are subject to change with or without notice.

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NOTE: In the event of any discrepancy between the information contained in this manual and the Code provisions and By-Laws and Policies referenced above, the Code provisions and By-Laws and Policies will govern.

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The By-Laws may be accessed via the Internet at [www.mcera.merced.ca.us](http://www.mcera.merced.ca.us).

## CONTACT INFORMATION

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**DISABILITY RETIREMENT**  

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*Disability Retirement Handbook*



## DISABILITY RETIREMENT

If you become disabled during employment, you may be eligible for a disability retirement. For purposes of MCERA, “disabled” means that there is an inability to substantially perform the usual duties of a position. 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. A person’s incapacity is permanent if change for the better or worse is not to be reasonably anticipated under usual standards.

### **Types of Disability Retirements:**

#### **Service-Connected Disability, (SCD)**

The incapacity is a result of injury or disease arising out of and in the course of employment, the employment causation is “real and measurable” and the employment contributed substantially to the incapacity. For a service-connected disability, the monthly allowance is 50% of your final compensation earnable or, the amount of your service retirement allowance, whichever is greater. For questions regarding taxation, you should consult with your tax advisor.

A Service Connected Disability application may default to a non-service connected disability if evidence of service connectedness is not met and your service credit total is five (5) years or more.

#### **Nonservice-Connected Disability, (NSCD)**

The incapacity is not related to your job. You must have at least five (5) years of service credit (10,800 retirement service credit hours) to be considered for a non-service connected disability retirement. (NOTE: Approved reciprocal service in a system with reciprocity counts toward these required five years). The benefit for non-service connected disability is based upon a formula not to exceed one-third of your final compensation or the amount of your service retirement allowance, whichever is greater.

Disability benefits are not necessarily lifetime benefits. The Board may require any disability benefit recipient under age 55 to undergo a medical examination. Upon the basis of the examination, the Board determines whether the disabled member is still incapacitated for service in the position of the MCERA-covered employer where the member was employed. If you are found no longer disabled, you may be placed on a re-employment list. If you are reemployed by the County or participating employer your disability retirement allowance will be discontinued. After age 55, disability retirement becomes a lifetime benefit.

Contact MCERA staff to request a disability retirement packet. This packet will contain copies of procedures, rules, and forms, some of which you will need to complete. Generally, your application must be submitted while you are still in service or within four months after you cease to be in service. An application may be filed on your behalf by your department head or by another person. In addition, the Board of Retirement may require that you undergo a medical examination at MCERA’s expense. This examination will be conducted by an independent medical examiner selected by the Board.

If more than four months have elapsed from the last day in service a delayed disability application affidavit must be completed by the member and the treating physician. The treating physician must state that the member has been physically or mentally disabled from performing his/her usual and customary duties of their job since the date they discontinued service.

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MCERA disability benefits are **not the same as worker's compensation benefits**. Disability is based on permanent incapacity to perform your usual and customary job duties, not a percentage rating.

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### **Service Retirement Pending a Disability Retirement**

If you are eligible for a regular service retirement you may file an application regardless of whether you are disabled or not. Pending your disability retirement you will receive a service retirement. If you are found disabled by the Board your retirement will be adjusted retroactive to the effective date of the disability retirement. If your disability application is denied and you were receiving a service retirement you may not return to your job. If it is not approved, you will remain a retiree—you may not cancel your service retirement.

If you are interested in applying for a service retirement pending a disability retirement you will need to submit a regular service retirement packet. Please contact MCERA for a copy of the packet.

### **Supporting Documentation**

The burden of proving a disability falls on the member. It is your responsibility to provide MCERA with any supporting documentation that will support your claim. All medical documentation supporting your disability claim must be submitted at the time you file your application or 30 days from the date of the application. The documentation must prove that you are permanently disabled from substantially performing your usual job duties. For a Service Connected Disability, the documentation must demonstrate that the employment contributed substantially to the disability.

If there is a change in the claim or the application you must notify the retirement office in writing.

At anytime during the process the Board of Retirement, MCERA Staff or Counsel may require by written notice that the applicant serve within 30 days any of the following items:

- Copies of records, reports, notes, statements, documents, photographs, or other writings within the definition of Evidence Code Section 250.
- A narrative report of member's current medical condition from any or all of the health care professionals that have provided treatment (at applicant's expense).
- Sworn written responses.

### **Disability Retirement Counseling Session**

MCERA offers disability counseling sessions. It is strongly recommended that you contact an

MCERA staff member to discuss the disability retirement application process. During the counseling session you will be provided with information pertaining to a disability retirement. You will also have the opportunity to ask questions and request retirement estimates. If you are not able to physically attend a disability counseling session you may request a counseling session over the phone. Please contact MCERA for an appointment at 209-725-3636.

### **Legal Representation**

Any party is entitled, at their own expense, to be represented by legal counsel at any and all stages of the disability proceedings.

### **Confidentiality of Records**

MCERA is required to protect the confidentiality of member records. Most information about your account cannot be provided to anyone else without your written consent, unless it is under a court-ordered action.

### **Action by the Board of Retirement**

Your disability retirement hearings will be held in closed session unless you request public hearing. The Board will determine whether you are permanently incapacitated for performance of your assigned duties and whether your disability is service-connected or nonservice-connected. You will be notified in writing of the Board's decision.

If you disagree with the initial decision, you will have 15 calendar days from the date of notice to request in writing a Formal Hearing (see section 7b of the Disability Regulations). You may submit additional medical records, statements from co-workers or any other proof supporting your claimed disability. If your case is denied after a formal hearing, MCERA will notify you within 60 days with the decision and Facts and Finding of the case. You have 90 calendar days from the date of the decision to file for judicial review in Superior Court (refer to Section #12 of the Disability Regulations).

### **The Disability Process Timeline**

The Board of Retirement generally will hold a hearing on your disability retirement application four to eight months after the application has been filed. You can expedite matters by submitting copies of all medical records, forms, letters, chart notes and/or test results from any medical facility that has treated or examined you. If the Board approves your application, your disability retirement allowance will be paid from the later of two dates: the date you filed your application or the last date for which you received compensation (including sick leave, vacation, and, for Safety members, 4850 compensation).

### **Lump-Sum Payment**

If the Board determines that your incapacity is the result of alcohol or drug abuse, willful misconduct, or a violation of law and your contributions would have provided a retirement allowance of less than \$240 a year, the Board has the option of paying you a lump-sum of your contributions plus interest, rather than a monthly disability payment.

## **Social Security Benefits**

Social Security benefits are separate from MCERA benefits. You will need to contact the Social Security Office to see how retiring on a disability with MCERA will affect your social security benefits. You may contact social security at 1(800) 722-1213 or [www.ssa.gov](http://www.ssa.gov).

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Note: Disability members CANNOT return to work for Merced County under any conditions except as a juror.

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## **DISABILITY APPLICIATON GRANTED**

Upon granting of a disability benefit by the Retirement Board, it may take up to eight (8) weeks following termination, to process your final retirement calculations depending on your pay status and processing of documentation with your department. Final retirement options forms will be processed once the final calculations are completed. You will begin receiving your monthly benefit when MCERA receives your signed retirement options form at the end of that month if payroll has not been submitted. If payroll has already been submitted for that month you will not receive your monthly benefit until the following month including any retroactive payments.

## **Current Pay Status/Accruals**

MCERA uses the day after your last day in pay status as your effective date. Staff reviews all payments made to you by payroll, including accrual payments, regardless of how minimal to determine, this date. Unless the retirement application date is later in which case MCERA will use the later date to determine your retirement date.

At retirement your sick leave balance will be converted into years of service for retirement purposes only (you also have the option to convert 100% of your sick leave time into retirement years of service credit). You are only eligible to convert your sick leave balance into retirement service credit if you retire directly from Merced County (deferred members are not eligible to convert sick leave hours into retirement service credit). Sick leave balances converted into retirement service credit are not used to determine eligibility for retirement.

MCERA will apply up to 160 hours of the vacation payoff amount towards your final compensation per the Merced Ventura Settlement.

## **Reciprocity**

If you have established reciprocity with MCERA and another retirement system you must retire on the same date and contact both systems. Government Code section 31838.5 requires each system 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 from more than one reciprocal system for more than what they would have received had all the service been earned in one retirement system. If your disability allowance exceeds this amount it will be adjusted appropriately.

## **Retirement Options**

You can select the retirement option that best meets your needs for providing for a spouse, domestic partner, or other beneficiary. Some of the options require that your monthly allowance be reduced in order to provide a lifetime monthly continuance for your beneficiary.

You will designate a beneficiary when you apply for retirement. This will supersede any previous beneficiary designation. When you retire, you will choose an option that determines how this beneficiary is paid after your death. This is an important decision, as it can affect the amount of the allowance you receive.

### **Unmodified Option**

This offers you the maximum benefit for your lifetime. If you designate your eligible spouse or domestic partner, he/she will receive a lifetime monthly continuance of 100% of the amount you were receiving for the rest of his/her life if you are granted a service connected disability. He/she will receive a lifetime monthly continuance of 60% if you are granted a non service connected disability. For your spouse to be considered eligible, he/she must have been married to you one year prior to retirement. A domestic partner is eligible if he/she was lawfully registered with you in a domestic partnership one year prior to your retirement. If you designate your unmarried minor children, they will receive a monthly continuance of 100% (service connected disability) or 60% (non service connected disability) of the amount you were receiving until they marry or reach age 18, whichever comes first. Children are also considered eligible up to the age of 22 if they remain unmarried and are enrolled as full-time students in an accredited school. If more than one child is designated as your beneficiary, then the benefit will be divided among them.

If you are not married, registered or have any unmarried minor children your beneficiary will NOT receive a continuance. Your beneficiary will only receive any unused contributions that remain on deposit after reducing the entire retirement benefit amount that was given to you throughout your lifetime from your contributions (if any remain). Usually members deplete their contributions within two years of retiring with this option.

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Note: Married members and domestic partners generally consider the unmodified allowance the best payment option because the other options reduce the benefit payable to you in exchange for allowing the designation of someone other than your spouse or domestic partner as beneficiary.

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### **Option 1**

This offers you a reduced allowance for your lifetime. Your beneficiary does not have to be a spouse or domestic partner, but he/she must have an insurable interest in your life. Please note that under California community property law, retiree's spouse or state registered domestic partner may have certain rights over any designated beneficiary.

Your beneficiary will receive a lump-sum of your unused contributions (if any remain in your account). With this option your contributions are usually exhausted during the first seven years of retirement. Your contributions deplete at a slower rate than the

unmodified option. This is the ONLY option that allows you to change your beneficiary after retirement.

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Note: A member who wants a beneficiary to receive a lump-sum benefit generally prefers this option, or a member who requires flexibility in the selection of a beneficiary. Also, members who are in poor health might want to ensure that their beneficiary receives as much benefit as possible because they will not be drawing on the benefit for long and anticipate receiving undistributed contributions.

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### **Option 2**

This offers you a reduced allowance for your lifetime. This particular reduction depends on your age and the age of the beneficiary you designate. Your beneficiary does not have to be a spouse or domestic partner. Please note that under California community property law, retiree's spouse or state registered domestic partner may have certain rights over any designated beneficiary.

You may not change your beneficiary after you retire. Your beneficiary will receive a lifetime continuance of 100% of the (reduced) amount you were receiving. When your beneficiary dies, payments stop and no further benefits will be paid. If your beneficiary predeceases you there will be no continuance to your new survivor nor will your monthly allowance increase.

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Note: A member who wants to leave a beneficiary the greatest possible amount of money might prefer this option.

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### **Option 3**

This offers you a reduced benefit for your lifetime. The reduction depends on your age and the age of the beneficiary you designate. Your beneficiary does not have to be a spouse or domestic partner, but he/she must have an insurable interest in your life. Please note that under California community property law, retiree's spouse or state registered domestic partner may have certain rights over any designated beneficiary.

You may not change your beneficiary after you retire. Your beneficiary will receive a lifetime continuance of 50% of the (reduced) amount you were receiving. When your beneficiary dies, payments stop and no further benefits will be paid. If your beneficiary predeceases you there will be no continuance to your new survivor nor will your monthly allowance increase.

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Note: A member who wants to minimize the reduction of his or her benefit but still wants to provide a lifetime benefit to a beneficiary might find this option preferable.

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### **Option 4**

This offers you a reduced benefit for your lifetime. The reduction depends on your age and the age of your beneficiary (ies). This is the ONLY option that allows for multiple beneficiaries. Your beneficiary does not have to be a spouse or domestic partner, but

he/she must have an insurable interest in your life. Please note that under California community property law, retiree's spouse or state registered domestic partner may have certain rights over any designated beneficiary.

You may not change your beneficiary after you retire. This option allows member to assign the percent of continuance to each beneficiary. This option cannot be calculated by MCERA staff therefore this option and any estimates for this option will need to be calculated by the actuary. The costs for this calculation will need to be paid by the member. Please contact our office for current cost of calculating option 4. When your beneficiary (ies) dies, payments stop and no further benefits will be paid. If your beneficiary (ies) predeceases you there will be no continuance to your new survivor nor will your monthly allowance increase.

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Note: A member who has a current spouse and an ex-spouse and per court order must nominate an ex-spouse as one of the beneficiaries or provide the ex-spouse with a lifetime benefit must choose this option. If a member wishes to nominate more than one beneficiary for a lifetime benefit, the member must choose this option as well.

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You may change your selected option prior to the time your first retirement benefit is added to the retiree payroll. After that time, your option selection is irrevocable. Please be advised that if you make a change and do not allow sufficient time for recalculation of your payments, your first payment may be delayed. If you have selected Options No. 2, 3, or 4 you may not change your beneficiary at anytime. For those options, the amount of your retirement allowance is set according to both your age and the age of the beneficiary you select at retirement.

Options are usually mailed to your home address 2-4 weeks after your payoff amounts have been paid in your final paycheck. If you have established reciprocity it usually takes longer because your wage verification information needs to be submitted to MCERA from the other system before we can complete your options.

### **Temporary Annuity for Retirees under Age 62**

The Temporary Annuity option is a way for members integrated with Social Security to level their income after retirement. If you retire for years of service before reaching age 62 and are fully insured under Social Security, you may elect to have your County retirement allowances increased prior to age 62 and decreased after age 62 by amounts that have equivalent actuarial values.

Under this optional plan, you would receive more than your normal monthly retirement benefit until you reach age 62. When you reach age 62, your monthly benefits would be reduced below the normal amount for the remainder of your lifetime. After age 62, Social Security benefits should make up the difference in your monthly benefit, however this is not guaranteed since the benefit is based on the estimate provided to you by Social Security and the actual amount you receive from Social Security may be different. It is the member's responsibility to apply for Social Security benefits at age 62 and to provide MCERA with the proper (estimate form) from Social Security.

After you have determined the effective date of your retirement and received an estimate from

Social Security, if you so request, MCERA office will calculate an estimate of the benefits payable under the temporary annuity option to assist you in your decision.

### **Cost-of-Living Adjustment (COLA)**

The Retirement Plan provides for a cost-of-living adjustment (COLA) for Tier I members only. Cost-of-living adjustments go into effect on April 1st each year. To be eligible for the COLA enacted in any particular year, you must retire on or before April 1st of that year and be a Tier 1 member. The maximum cost of living increase is 3%.

### **Medical/Dental and Life Insurance Availability**

Retiree health and dental insurance for you and your dependents may be available through the County of Merced Risk Management Department. For more information on County retiree health and dental insurance, contact Risk Management at 209-385-7356.

### **Vision Insurance Availability**

The vision insurance carrier is VSP. An enrollment form will be given to you once your disability has been granted for you to complete and return to VSP. VSP Vision Care Attn: Client Administrative P. O. Box 997100, Sacramento, CA 95899, via website [vsp.com/go/sacrs](http://vsp.com/go/sacrs), contact VSP at 800 400 4569.

### **Taxes**

Fifty percent (50%) of final average salary is considered non-taxable for a service connected disability. Service retirement pending Service Connected Disability taxability is reported as "Not Determined", while a disability application is pending (1099-R). If service connected disability benefits is granted or denied the 1099(R) will report income appropriately as taxable or non-taxable the first full year following the granting or denial of the benefit. This is done so that the IRS does not tax a Service Connected Disability benefit that may be granted retroactive to the service retirement date. **Consult a tax expert for advice on withholding.**

### **Employment after a Disability retirement is granted**

If you retire on a disability you **CANNOT** return to work for Merced County or any of its participating employers under any circumstances other than a juror (unless section 31725.65 or 31730 apply; refer to an MCERA staff member for more information). You can work any where outside of Merced County or it's participating employers, but remember that if you are under the age of 55 the Board of Retirement can request for you to undergo a medical examination. Upon the basis of the examination, the Board determines whether the disabled member is still incapacitated for service in the position of the MCERA-covered employer where the member was employed. If you are found no longer disabled, you may be placed on a re-employment list. If you are reemployed by the County or participating employer your disability retirement allowance will be discontinued

### **Garnishments**

In general, your contributions on deposit with MCERA and your retirement benefits are not subject to garnishment or other attachment except as follows:

- A court may order MCERA to pay a portion of your retirement benefit to cover a judgment for spousal or child support.
- Your retirement benefits are subject to levy by the Internal Revenue Service for payment of delinquent federal income taxes.

In either case, this would not take place until after you had terminated employment or retired.

## **Power of Attorney**

A power of attorney may include the designation of a representative to conduct your retirement affairs. Because all power of attorney forms are not the same, it is recommended that you consult with an attorney before signing any document of this type. A General or a Durable General Power of Attorney will usually enable your attorney-in-fact to perform duties such as address changes, federal and/or state tax withholding elections, endorsing checks and filing affidavits for lost retirement checks. Only a specialized type of power of attorney will allow the attorney-in-fact to select a retirement option or designate a beneficiary. You should give careful consideration to the powers you are granting.

## **Living Trusts and Beneficiary Changes**

Under the existing Government Code, a living trust instrument cannot be designated as a “beneficiary” to receive a continuance. In the event of your death, if there are retirement funds existing, they will be distributed to your named beneficiary or to your estate only.

It is very important that you update your beneficiary status when and if any changes in your life occur (for example, divorce, death of a spouse, or a new marriage). You can get a “Request for Change of Beneficiary” form from the MCERA website at [www.mcera.merced.ca.us](http://www.mcera.merced.ca.us) or you may contact the MCERA office to have a form sent to you.

## **Dissolution of Marriage**

California is a community property state. Retirement plan benefits earned during marriage are community property, subject to division on dissolution of marriage. If you have not retired at the time of dissolution, the division of community property is delayed until the time benefits become payable at your retirement or termination.

If you divorce after you retire, you will have already selected a retirement payment option. The court can only order division of the monthly payments you receive. At your death, all payments will terminate. A former spouse (not married to you at the time of death) does not qualify as a surviving spouse eligible to receive a monthly continuance benefit. If you become involved in marriage dissolution, contact MCERA staff for detailed information.

## **Joinder**

Family Code Section 2060(b) states that an order or judgment in a dissolution or other family law proceeding is not enforceable against a pension plan unless the plan has

been joined as a party to the proceeding. Therefore, MCERA will need to be joined as a party to divorce proceedings.

MCERA will also need an executed court judgment or a settlement agreement signed by the court judge dividing and awarding the pension interest of the non-member spouse. This court order is required to be received by the Retirement Office before we can begin to pay the non-member's community property interest in the retiree's pension.

Further, please be advised the Merced County Employees' Retirement Association is not legally responsible for any pension payments or amounts ordered to the non-member spouse until actual receipt of such officially entered court order or judgment.

## **BOARD OF RETIREMENT REGULATIONS FOR DISABILITY RETIREMENT CLAIMS**

### **1. Definitions**

Unless the context otherwise requires, the definitions in this section shall govern the construction of these rules.

- a) "Applicant" means:
  - 1. Any member of the County Employees' Retirement Association claiming benefits under the County Employees' Retirement Law of 1937, or
  - 2. Any person claiming such benefits through a member.
- b) "Interested party" means the subject member, the Board, the Retirement Association, Counsel for the Retirement System, or the plan sponsors. A department or agency of the County shall not act as an interested party unless expressly authorized by the Board of Supervisors to represent the County in the particular matter.
- c) "Retirement Office" means the Merced County Employees' Retirement Association staff.
- d) "Association" means the Merced County Employees' Retirement Association.
- e) "Board" means the Board of Trustees of the Merced County Employees' Retirement Association.
- f) "Day" means calendar day.
- g) "Medical Officer" means medical doctor who advises the Board relating to Disability Retirements.
- h) "Application Package" means completed application and medical examination reports and other information required by these Regulations that is submitted to the Board.
- i) "Counsel" means the attorney who represents the Association fund.

### **2. Representation by Counsel**

- a) Any interested party, at that party's expense may, hire and be represented by an attorney subject to the provisions of this section. No applicant is required to have an attorney at any time.
- b) If any interested party becomes represented by an attorney, either such party or such attorney shall promptly file with the Retirement Office, and serve upon all other interested parties written notice of such representation, including the attorney's name, address and telephone number. Unless appearing with an interested party at a hearing, 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 in the California Code of Civil Procedure.
- c) Once an application is submitted, the failure to retain Counsel or to provide written notice of representation by such Counsel shall in no event be considered good cause, in and of itself, to delay any proceeding under this Regulation.

### 3. Applications

- a) A claim for disability retirement shall be made by lodging with the Retirement office a complete application packet. The application shall not be deemed complete until Applicant has filed with the Retirement Office all of the following:
  - 1. An application on a form approved by the Retirement Office for that purpose complete with all requested information therein.
  - 2. A signed authorization for release of medical and other information deemed by Retirement Office relevant to a full and complete evaluation of the application.
  - 3. Copies of all medical reports and records supporting the application,
- b) The application for disability retirement shall not be deemed effective or filed within the meaning of Section 31721 through 31724, inclusive, of the California Government Code, or otherwise, until the date upon which it is complete as described in Paragraph 3(a) above.
- c) If, at any time during the pendency of an application, the applicant changes, in any material way, the facts or claims set forth in the application, the applicant shall immediately file with the Retirement Office and serve on all interested parties written notice of such change. The failure to do so, may, in the discretion of the Board, preclude Applicant from asserting the facts so alleged or introducing evidence with respect thereto. Notice of any such amendment shall be given, in writing, to Retirement Office within ten days of the date thereof, and in no event later than 30 days prior to any formal or informal proceeding before the Board.

### 4. Further Information Required from Applicant

- a) At any time during the pendency of an application, the Board, Retirement Office or Counsel may, by written notice to the Applicant, require that the Applicant serve within thirty (30) days any or all of the following items:
  - 1. Copies of records, reports, notes, statements, documents, photographs, or other writings within the definition of Evidence Code Section 250.
  - 2. A narrative report of the subject member's current medical condition from any or all of the health care professionals that have provided treatment, to be obtained at the Applicant's expense.
  - 3. Sworn written responses to written inquiries concerning any matter of the case or any matter that is reasonably calculated to lead to the discovery of evidence that would be admissible at a hearing.
- b) If the Applicant fails or refuses to comply with any demand made pursuant to subsection (a) of this section, Counsel or Retirement Office may do the following:
  - 1. Suspend action on the application until such time as Applicant complies in full with all such reasonable requests. During the period of suspension none of the applicable time limits with respect to the processing of the application shall apply.
  - 2. Seek to compel compliance with the request by making a motion to the Board pursuant to section 15 of the regulations, which such motion may include a request for sanctions pursuant to section 16 of these

regulations.

3. If the Applicant is the subject member, and fails, after the passage of one hundred and twenty (120) days, from the date of suspension as set forth in Section 4 (b) (1) above, or in the event that Applicant refuses to comply with an order issued pursuant to subparagraph (2) within thirty (30) days thereafter, and further provided that there is an absence of good cause for either failure specified herein, the Board may declare that the application is dismissed with prejudice.

## 5. Medical Examinations

- a) MCERA, acting through its Retirement Office or medical advisor may, on one or more occasions, as deemed necessary, require the subject member to submit to examination (s) by a physician or psychologist with expertise relative to the medical condition designated by the requesting party. The party requiring the examination shall, at least fifteen (15) days before the appointment date, serve the subject member with written notice of the date, time and place of examination, unless the subject member agrees to accept notice that is by other mode. If the member is unable to keep the examination appointment, the member or their attorney shall notify the Retirement Office in writing of such fact at least ten (10) days before the scheduled examination. If the place of examination is neither in Merced County, nor the County in which the subject member currently resides, the subject member may apply to the Board for reimbursement of travel expenses, in amounts paid at prevailing rates by the County of Merced for meals and mileage, and which the Board, in its discretion, may grant. The records and reports of the examining physician shall be confidential, privileged, and not subject to discovery except in accordance with these Regulations.
- b) If the subject member fails or refuses to comply with any demand made pursuant to section (a) of this section, fails or refuses to cooperate fully with the examiner or to submit to all reasonable tests required by such examiner, or fails to notify the Retirement Office of their inability to attend the appointment, the member shall pay all of the expenses incurred by the Retirement office as a result of the failure to comply and the demanding party may do any of the following:
  1. Suspend all action on the application until Applicant complies with the request to submit to an examination. During the period of suspension, none of the applicable time limits, with respect to the processing of the application, shall apply.
  2. Counsel for the association fund may seek to compel compliance by making a motion pursuant to section 15 of these regulations directed to the Board hereof, which such motion may include a request for sanctions pursuant to section 16 of these regulations.
  3. If the Applicant is the subject member, and fails, after the passage of one hundred and twenty (120) days from the date of the suspension, as set forth in Paragraph (1) above, or in the event that applicant refuses to comply with an order issued pursuant to Paragraph (2) within thirty (30) days thereafter, and further provided that there is an absence of good

cause for either failure specified herein, the Board may declare that the application is dismissed with prejudice.

6. Preparation of Application Package for Submittal to Board

Upon receiving a completed application, Retirement Office shall:

- a) Within ten (10) days of receipt of the initial application make a determination of whether the applicant is entitled to be considered for a disability retirement and whether the application has been timely filed. This determination shall be made in consultation with Counsel.
- b) Submit one copy of the application to Counsel for review for legal sufficiency.
- c) Submit one copy of the application and all medical records to the Medical Officer for a review of the medical records for medical sufficiency.
  1. The Medical Officer shall prepare a report for the Retirement Board within 90 days of receiving a completed disability application. The report will be submitted to the Retirement Office.
  2. Prior to submitting the medical report, the Medical Officer, Counsel or the Retirement office may request additional information, request an independent examination or take other action to obtain information relating to the application.
  3. The medical officer, Counsel or the Retirement Office may request additional time for the completion of its actions pursuant to this article, in the discretion of the Board.
  4. The Retirement office will provide the Medical Officer's report to Counsel for review before the final report is issued. The Retirement Office will provide the final medical report to the Board of Retirement for review at a regular scheduled Board meeting. The time periods referred to herein above shall be tolled in the event of non-cooperation by the Applicant, subject member or Applicant's physicians or attorneys.

7. Action upon Application by the Board

Upon receiving the medical report pursuant to section 6 of these regulations, the members of the Board may, in addition to the medical report review the entire application file and medical records. The Board may confer in closed session at a duly noticed Board meeting with the Medical Officer, Counsel or Retirement staff, and may take any of the following actions:

- a) Order that the application be granted if the medical report discloses that the Applicant has met the burden of proof with respect thereto and is entitled to a disability retirement, whether service or non-service connected. If the subject member is not the Applicant, then he/she shall have fifteen (15) days from the date of the notice granting the application for disability retirement, in which to file with the Board a request for a formal hearing on the application. If such a request for a formal hearing is filed the Board shall schedule such hearing in conformance with its rules as set forth in section 8

herein.

- b) Order that the application be denied, unless within the fifteen (15) days immediately following notice of denial, an interested party files with the Retirement office a request for a formal hearing. If such a request is timely filed, at its next regular meeting, the Board shall cause the matter to be set for hearing in accordance with section 8 of these regulations. If no such request is timely filed, the application shall be deemed denied, and the Board shall issue its decision denying the application. Upon denial of a formal hearing, an applicant may request a good cause hearing on the issue of whether the failure to request a timely formal hearing occurred for good cause. A request for such a good cause hearing must be made in writing within 15 calendar days of the denial notice.
- c) The Board may refer the matter back to the Medical Officer and Retirement office with instructions to conduct a further medical investigation, medical evaluation, or other action as deemed appropriate.
- d) The written notice as described herein shall comply with Regulation 17 set forth herein.

#### 8. Setting for Hearing

- a) When a request for formal hearing has been received or is otherwise ordered by the Board, a hearing shall take place within one hundred and twenty (120) days thereafter. The Retirement Office shall serve upon the Applicant and his/her attorney, notice of such formal hearing, not less than sixty (60) days prior to the date set therefore.
- b) Continuances: Notwithstanding the provisions contained elsewhere herein, upon written request, and for good cause shown, the Retirement Office may continue, to a date certain, any hearing scheduled before it. Any request for continuances shall be made not later than ten (10) days in advance of the scheduled date for the hearing except when the basis for the continuance is not known ten (10) days in advance. The desire to await the outcome of an application for workers' compensation shall not constitute "good cause" for a continuance. Nor shall the need to permit a condition to stabilize in order to determine whether the disability is permanent constitute "good cause" for a continuance. Under such circumstances, the application shall be subject to denial on the basis of insufficiency of evidence to establish permanency, without prejudice to the filing of a new application if it should later become apparent that the disability is permanent.

#### 9. Pre-Hearing Regulations

- a) Any interested party shall be entitled to notice and take depositions in the manner prescribed by the California Code of Civil Procedure, except that there shall be no distinction between the depositions of expert and non-expert witnesses, and the provisions of the California Code of Civil Procedure limited to the depositions of expert witnesses shall not apply. The party noticing a deposition shall pay any and all costs of depositions and fees to which the witness is entitled.

- b) All requests for subpoenas or subpoena duces tecums shall be made pursuant to Government Code Section 31535. In order to request the issuance of a subpoena or subpoena duces tecum, an interested party shall complete and submit to the Retirement Office a form approved by the Board for that purpose, and shall do so at least five (5) working days before the date the subpoena or subpoena duces tecum is to be issued. No subpoena or subpoena duces tecum shall be issued until the requesting party has posted with the Retirement Office any fees to which the subpoenaed witness is likely to be entitled. The party requesting a subpoena or subpoena duces tecum shall be responsible for serving and enforcing it. Fees and costs associated with the issuance or service of any subpoena or subpoena duces tecum as described herein shall be the same as those made applicable by law to witnesses in the Superior Courts of this State.
- c) Formal discovery shall be limited to written interrogatories and depositions as set forth in the California Code of Civil Procedure, except as may be stipulated between the parties.

#### 10. Hearing Regulations

- a) Closed Session: All formal hearing shall be conducted in closed session unless the subject member requests that the hearing be held in open session. Such request shall be made on the record.
- b) Burden of Proof:
  1. The burden of proof by a preponderance of the evidence shall rest upon the party who files an application for a disability retirement.
  2. When a member files an application for a service connected disability based on a heart presumption under CERL section 31720.5 which MCERA recognizes as a rebuttable presumption as decided by *Pellerin v. Kern County Employees Retirement Association* (December 18, 2006) 145 Cal. App. 4<sup>th</sup> 1099, the MCERA Board will consider all evidence for and against a finding of service connection if staff determines there is a reasonable basis to challenge the conclusion that the heart trouble is service connected. The burden of proof in any hearing will shift to the MCERA to prove the disability is not service connected.
- c) Reporting: Every hearing shall be reported by a Certified Shorthand Reporter. The Retirement Office shall arrange for a reporter to be present whenever one is required. The reporter's notes shall be transcribed only if requested by an interested party, in which case the requesting party shall pay the costs of such transcription. The per diem cost of the reporter shall be borne solely by the Association.
- d) Documentary Record: At the commencement of the hearing on each application for disability retirement, the Chairman of the Retirement Board shall identify each document which 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.
- e) Control over Hearing: The Board Chairman, or acting Chairman, shall exercise

such control over the hearing as is reasonable, necessary and consistent with these regulations, prescribing the order of proof, ruling upon the admissibility of evidence, questioning witnesses, and determining whether the matter shall proceed or be adjourned subject to continuation.

- f) Objections: All objections to the introduction or admissibility of evidence shall be determined by the Chairman of the Board, subject to the re-determination by the Board through motion duly made, seconded and adopted by a majority of the members. The advice of the Board Counsel shall be sought on all objections to the admissibility of evidence, in advance of ruling.
- g) Prerogatives of the Board: The Board reserves the right to reject any recommendation that an application be granted or denied, and to interrupt any hearing for the purpose of seeking independent medical advice or receiving other testimony or evidence not presented by the parties.
- h) Absent Board Members: No member of the Board 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 member 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.
- i) Rules of Evidence: Except as otherwise provided in these regulations, any relevant evidence shall be admitted if it is the sort of evidence on which reasonable and 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. Hearsay evidence may be used for the purpose of augmenting or explaining any direct evidence, but shall not be sufficient in and of itself to support a finding unless admitted pursuant to subsection (n), (o), or (p) of this section, or unless it would be admissible over objection in civil actions. Upon proper objection, evidence that is irrelevant or unduly repetitious shall be excluded.
- j) Oral Evidence: Oral evidence shall be taken only on oath or affirmation.
- k) Witnesses: On any relevant matter, each interested party shall have the right to call and examine witnesses, introduce documentary and other physical evidence, and cross-examine opposing witnesses. Any interested party who does not testify on his own behalf may be called and examined as a witness as if under cross-examination.
- l) Witness Fees: The party calling a witness shall be responsible for paying any fees or other expenses of that witness.
- m) Refusal to Testify: A refusal by an interested party to testify when called, or to answer proper questions in the course of testifying, shall be grounds for deeming such testimony, or the answers to such questions, to have been given and to have been adverse to the refusing party.
- n) Medical Evidence: The production of medical evidence in the form of written reports is favored, provided that they have been served in the manner and within the time set forth in subsection (o) of this section.
- o) Medical Records or Reports: Any interested party may offer, and the Board shall receive into evidence, any medical records or reports that are relevant and that constitute substantial evidence, if copies of the said documents have been delivered to all interested parties at least twenty (20) days prior to the hearing, along with written notice of intention to offer the same into evidence. Any

interested party may, at their own expense, subpoena the author of such a medical report or record as a witness, and examine the author as if under cross-examination. Any party calling such an expert witness or an expert witness who has not provided a report must give notice of at least fifty (50) days prior to the date of the formal hearing to all interested parties. The Board in its discretion may waive the lack of a fifty day notice for good cause as determined by the Board. Notice of Medical reports prepared for purposes of Worker's Compensation proceedings are not made inadmissible by that fact alone; however, no opinion therein shall constitute substantial evidence to support a finding of permanent incapacity if that opinion is based upon any criterion that is peculiar to Worker's Compensation, or is otherwise not germane to the issue of permanent incapacity under the Retirement Law (e.g., opinions in terms of "permanent disability" under the laws of Worker's Compensation, the WCAB "Guidelines for Work Capacity, "prophylactic work restrictions," etc.).

- p) Non-Medical Written Statements: Any interested party may offer, and the Board shall receive into evidence, any relevant written statement by a non-medical witness, if;
1. It is made by affidavit or by declaration upon penalty of perjury;
  2. A copy has been delivered to all interested parties at least twenty (20) days prior to the hearing, along with written notice of intention to offer the same into evidence; and
  3. No interested party has, at least ten (10) days prior to the hearing, delivered to the proponent a written demand that the witness be produced in person to testify at the hearing. The board shall disregard any portion of a statement received pursuant to this subsection that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matters shall not render the entire statement inadmissible.
- q) Deposition Transcripts: Any interested party may offer, and the Board shall receive into evidence, any relevant deposition transcript if;
1. The deposition was taken in the manner provided by law or by stipulation of the parties, and
  2. At least twenty (20) days prior to the hearing the offering party delivered to all interested parties notice of intention to offer the same into evidence. Nothing herein shall require or permit receiving into evidence any deposition testimony to which objection is properly raised if such testimony would be inadmissible were the witness present and testifying at the hearing. Nothing herein shall prevent receiving into evidence any deposition testimony that would be inadmissible under the Code of Civil Procedure in a Superior Court civil action.
    - a) For the purposes of this section, "delivery" of a document or a notice may be accomplished by personal service in accordance with the Code of Civil Regulations, or by mail in accordance with Section 17 of these regulations except that if delivery is by mail the time prescribed in this section for the delivery of documents and notices shall be increased by five (5) days.
    - b) A duly noticed hearing may proceed in the absence of any interested party.

- a) Five (5) members of the Board shall constitute a quorum for a hearing held before the Board pursuant to the provisions of this Article. With respect to any such hearing, no findings of fact or decision by the Board shall be valid or effective without the votes of the greater of the following:
  - 1. A majority of all members present; or
  - 2. Four (4) members.
- b) The Board shall decide and provide a decision to the applicant on all material issues no later than sixty (60) days following the meeting at which the matter is submitted unless there is a delay in obtaining additional information pursuant to Section 10 (g).

## 12. Board Decisions

- a) All of the following provisions apply to any decision of the Board that is subject to judicial review pursuant to Code of Civil Procedure section 1094.5:
  - 1. The decision shall be in writing;
  - 2. The decision shall include or be accompanied by notice that the time in which judicial review must be sought is governed by Code of Civil Procedure section 1094.6, and shall include or be accompanied by the text of section 1094.6;
  - 3. The decision shall be accompanied by a copy of an affidavit or certificate of mailing;
  - 4. The foregoing shall be served upon all interested parties by first class mail, with postage prepaid.
- b) For purposes of judicial review, a decision of the Board is final on the date that the written decision is mailed pursuant to subsection 11.
- c) Neither Code of Civil Procedure section 1013 (a) nor any provision of these regulations shall apply to extend the time within which judicial review must be sought.
- d) The Board shall not entertain any petition for reconsideration of any decision after a formal hearing.

## 13. Judicial Review of Board Decisions

- a) Any request for the preparation of the administrative record pursuant to Code of Civil Procedure section 1094.6 shall be made in writing and filed with the Retirement Office. The Retirement Office shall, within ten (10) days of receiving such a request, notify the requesting party of the estimated cost of preparing the record.
- b) Any requesting party other than the County or the Retirement System shall within ten (10) days of receiving such notification, deposit with the Retirement Office an amount sufficient to cover the estimated cost. If during the preparation of the record it becomes apparent that the costs will exceed the amount of the deposit, the requesting party shall, be notified and shall deposit the additional amounts before the record will be completed. If the cost of preparing the record exceeds the amount deposited, the party requesting the record shall pay the excess. If the amount deposited exceeds the cost, the difference shall be returned to the party requesting such record. Upon receiving the required deposit, the Retirement Office promptly shall prepare the record,

and shall include the transcript of the proceedings, all pleadings, all notices rejected exhibits in the possession of the Board of Retirement, its officers, or agent, all written evidence, and any other papers in the case.

14. Disability Beneficiaries Under 55 Years of Age

The Retirement Board may request information from any disability beneficiary under fifty-five (55) years of age in the manner prescribed in section 4 of these regulations, 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 beneficiary may no longer be incapacitated, then the Retirement Board may order, a hearing on the issue of incapacity, in which case the procedure shall be the same as those provided in these regulations for applications for disability retirement.

15. Motions

Any interested party claiming that another interested party has not complied with any requirement of these regulations or the Retirement Law shall first attempt to resolve the issue with the other party. Thereafter the said interested party may make written notice for an order compelling compliance. The motion shall include the following:

- a) A verified statement of all relevant facts, including a description of efforts made to resolve the dispute informally, and the reasons given by the respondent party for non-compliance;
- b) A statement of the relief sought;
- c) A memorandum of supporting points and authorities; and,
- d) A copy of an affidavit or certificate of service upon all interested parties. The motion shall be made to the Board. The respondent party shall have five (5) Days from the date the motion is served to submit written opposition. Such opposition shall include the following:
  - e) A verified statement of all relevant facts;
  - f) A memorandum of supporting points and authorities; and,
  - g) A copy of an affidavit or certificate of service upon all interested parties. Upon the expiration of the time allowed for opposition, the Board shall either grant or deny the motion without a hearing, or set a hearing on the motion.

16. Sanctions

Upon a motion pursuant to section 15 of these regulations, the Board may impose against any interested party any of the sanctions available under the Code of Civil Procedure, on any grounds that would support the imposition of those sanctions in a superior court civil matter. The Board may suspend an Applicant's right to proceed until the Applicant has satisfied the terms of an order imposing sanctions.

17. Service

- a) When a provision of this Article requires that "interested parties" be served,

service shall be made upon the Retirement Office, Counsel and all interested parties who have appeared in the subject proceedings and all interested parties who have filed a request to be served.

- b) If the party to be served has an attorney of record in accordance with section 2 of these provisions, service shall be made upon the attorney of record.
- c) Unless otherwise provided in these Regulations, when a provision of this Article requires service, service shall be made either personally in a manner permitted under the Code of Civil Procedure for the service of a summons, or by mail in accordance with subsection (d) of this section.
- d) Service by mail shall be affected by sealing the item to be served in an envelope properly addressed to the party to be served and depositing the envelope in the United States mail, with first class postage fully prepaid. Service by mail shall extend applicable time limitations in the manner prescribed in Code of Civil Procedure section 1013. For purposes of determining the effectiveness of service upon a subject member, a mailing shall be deemed "properly addressed" if it bears the address specified on the application, or, if the application has been amended, the address specified on the most recently-filed amended application.

#### 18. Amendments

These regulations may be amended at any regular or special meeting of the Retirement Board by a majority vote of the Board, subject to approval by the Board.

The foregoing regulations are hereby adopted and made effective for the Merced County Employees' Retirement System this 11<sup>th</sup> day of July, 1996.

The foregoing regulations are hereby amended and made effective for the Merced County Employees' Retirement System this 10<sup>th</sup> day of July, 2008.

The foregoing regulations are hereby amended and made effective for the Merced County Employees' Retirement System this 11<sup>th</sup> day of February, 2010.

The foregoing regulations are hereby amended and made effective for the Merced County Employees' Retirement System this 09<sup>th</sup> day of September, 2010.

The foregoing regulations are hereby amended and made effective for the Merced County Employees' Retirement System this 08<sup>th</sup> day of September, 2011.

The foregoing regulations are hereby amended and made effective for the Merced County Employees' Retirement System this 09<sup>th</sup> day of May, 2013.

Last updated 7/23/2012