



IMPERIAL COUNTY EMPLOYEES' RETIREMENT SYSTEM

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## INFORMATION ABOUT DISABILITY RETIREMENT

Members who become permanently incapacitated for the performance of their regular job duties due to illness or injury may apply for either of the following types of disability retirement.

**Service connected (SCD):** Permanent disability resulting from an illness or injury directly related to your County of Imperial, Superior Court, ICTC or LAFCO employment.

**Non-Service connected (NSCD):** Permanent disability resulting from an illness or injury **not** related to your County of Imperial, Superior Court, ICTC or LAFCO employment.

### 1. WHO IS ELIGIBLE TO APPLY FOR A DISABILITY RETIREMENT?

- You are eligible to apply for a service connected disability retirement at any age regardless of number of years of ICERS or reciprocal retirement system service credit.
- You are eligible to apply for a non-service connected disability retirement at any age with five years of ICERS, or ICERS and reciprocal retirement system, service credit.
- You are not eligible for a disability retirement if you have withdrawn your retirement contributions.

### 2. HOW IS THE DISABILITY BENEFIT CALCULATED?

If you are granted an SCD retirement you will receive the greatest of:

- One-half of your final compensation, or
- Your service retirement allowance.

If you are granted an NSCD retirement you will receive the greater of:

- Up to 40% of your final compensation (depending on your length of service, per Government Code Section 31727.7), or
- Your service retirement allowance (if eligible).

If you are eligible for a service retirement, whether or not you applied for it, and the amount of that allowance is greater than the amount of your disability retirement allowance, you will receive the service retirement allowance.

### **3. WHEN SHOULD AN APPLICATION BE FILED?**

An application for either type of disability retirement must be submitted:

- While you are still employed, or
- Within four months after you have terminated employment, or
- Any time after terminating employment, provided
  - You are physically or mentally unable to perform your regular job duties and that condition has been ongoing from the date of separation, or
  - A delay in filing your application has not impaired ICERS' ability to investigate your case.

If you are terminally ill and wish to provide a continuing allowance to your survivor, you or your authorized representative should contact ICERS immediately. ICERS will expedite the processing of your disability retirement application.

### **4. MAY ANOTHER PERSON FILE AN APPLICATION FOR ME?**

Yes. The head of your Department, a member of the Board of Retirement (BOR), a spouse, domestic partner, or any other person may file on your behalf.

### **5. HOW DO I APPLY FOR DISABILITY?**

You may use the forms enclosed with this brochure or request a disability retirement application packet by calling ICERS' Disability Retirement department.

### **6. WHAT IS THE DISABILITY RETIREMENT PROCESS?**

After you have submitted your application and *all* other requested documentation, a Disability Retirement Specialist will be assigned to your case. After sufficient information has been obtained and your medical reports reviewed, the retirement specialist will schedule you to be evaluated by one of ICERS' physicians. (You may be required to see more than one physician.)

After reviewing the recommendation of the Disability Retirement Specialist, the BOR will make its determination regarding your application for a Disability Retirement.

### **7. HOW LONG DOES THIS PROCESS TAKE?**

Generally, the length of time to process your application will depend on how quickly your records can be obtained and on the number of medical appointments required to document your disability. Average time is six to twelve months.

## **8. DO I NEED AN ATTORNEY TO HELP ME?**

An application may be filed without the assistance of an attorney; ICERS staff is available to help you with the process.

## **9. WHAT IF MY REQUEST FOR A DISABILITY RETIREMENT IS DENIED?**

If you are dissatisfied with the BOR's decision, you have 45 days to file an appeal through the administrative hearing process. Although ICERS strongly encourages you to retain an attorney during this process, you may represent yourself in any hearing or court proceeding. ICERS' staff cannot provide legal advice.

## **10. IF ELIGIBLE, MAY I APPLY FOR A SERVICE RETIREMENT WHILE MY DISABILITY CASE IS PENDING?**

Yes. You may apply for a *service retirement* at any time after filing your disability application.

**If you have applied for a NSCD disability retirement** and you are eligible for a service retirement and the amount of that service retirement allowance is greater than the amount of the disability retirement allowance, you may prefer to elect a service retirement rather than applying for a NSCD retirement. The benefit amount would be the same and since it would not be subject to the lengthy disability review process.

## **11. WHAT ARE THE CONSEQUENCES IF I TAKE A SERVICE RETIREMENT WHILE MY DISABILITY CASE IS PENDING?**

If you have taken a service retirement, you may not return to your former position whether or not the BOR grants you a disability retirement. However, if you do not apply for a service retirement pending the BOR's decision and are determined *not* disabled, you have the right to be reinstated to your former position, as long as you have not terminated service.

## **12. IF I TAKE A SERVICE RETIREMENT WHILE MY DISABILITY APPLICATION IS PENDING, MAY I CHANGE MY RETIREMENT OPTION ONCE MY DISABILITY IS APPROVED?**

You (or your surviving spouse or domestic partner) may change your Retirement Option if your disability retirement is granted. The change is retroactive to your service retirement date and benefits previously paid will be adjusted. If you chose an Option 2, 3, or 4 service retirement allowance, your (or your beneficiary's) allowance may be adjusted if you are granted a disability retirement.

### **13.MAY I RECEIVE ADVANCED DISABILITY PENSION PAYMENTS WHILE MY DISABILITY CASE IS PENDING?**

Yes, *only* if you are a Safety member. If you are a Safety member you may apply with the Imperial County Human Resources Department to receive advanced payments under the County's Advanced Disability Pension Payment Program under Labor Code Section 4850.4, if you meet certain conditions. These payments would continue until your case is decided by the BOR. If your disability retirement application is granted, an adjustment would be made to your retroactive disability allowance and the County would be reimbursed for the advanced disability pension payments. If your disability retirement application is denied, a Letter Agreement regarding the repayment schedule would be entered into with the County to return the funds per Government Code Section 21419.

### **14.IF APPROVED, WHEN WILL MY DISABILITY RETIREMENT BECOME EFFECTIVE?**

Section 31724 of the County Employees Retirement Law of 1937 governs the establishment of the effective date of a disability retirement. Generally, the disability retirement allowance becomes effective as of the date the application is filed with ICERS, but not earlier than the day following the last day of regular compensation. (Regular compensation includes sick leave, vacation pay and compensatory time *when taken by an employee as time off.*)

### **15.CAN I REQUEST AN EARLIER DISABILITY RETIREMENT DATE AFTER MY APPLICATION IS FILED?**

An earlier effective date cannot be granted unless it is shown to the satisfaction of the BOR either:

- The filing of the application was delayed by administrative oversight, or
- The permanency of the incapacity could not be determined until after the date following the last day of regular compensation.

If the request is granted, the application is deemed to have been filed on the date following the last day of regular compensation.

The member will be notified in writing of the date the request will be placed on the BOR agenda.

### **16.WHEN WILL I RECEIVE MY FIRST ALLOWANCE?**

You should receive your first allowance payment within 60 days after the BOR grants your disability retirement.

## **17.WILL MY RETIREMENT ALLOWANCE EVER CHANGE?**

According to the law, every April 1 your retirement allowance may be adjusted (up or down) for changes in the cost of living (COLA), as reflected in the Bureau of Labor Statistics Consumer Price Index (CPI) for All Urban Consumers in the West Region. The maximum allowable annual adjustment is 2.0 percent for members.

**Note:** In the event a COLA decrease is ever required, it may not reduce your allowance to an amount less than the allowance received at the time of retirement. Only past COLA increases could ever be subject to a decrease.

## **18.MAY I CONTINUE TO WORK FOR THE COUNTY IF THE BOARD DETERMINES I AM DISABLED?**

If you are found by the BOR to be permanently incapacitated for the performance of your regular job duties, but are capable of performing the duties of another County of Imperial, Superior Court, ICTC or LAFCO position, you may be eligible for a SCD or NSCD Salary Supplement under County Employees Retirement Law of 1937, Article 10, Sections 31725.5, 31725.6, and 31725.65. In such case, should you be offered and opt to accept a lower-paying County of Imperial, Superior Court, ICTC or LAFCO position, ICERS will supplement the difference in compensation between the two positions.

You may be promoted within your new position's career chain. Any pay increases you receive will be reviewed against the salary of your original position; the salary supplement will be adjusted or stopped, accordingly. Your supplemental salary allowance cannot exceed the amount you would have received had you accepted a disability retirement.

If you are a disabled safety member and you accept a non-safety position, you will retain your safety status.

## **19.MAY I OBTAIN EMPLOYMENT WITH AN EMPLOYER OTHER THAN THE COUNTY IF THE BOARD DETERMINES I AM DISABLED?**

Yes. You may obtain full or part-time employment outside the County, provided the duties of the new job are different than those of your former position.

## **20.CAN ICERS CANCEL MY DISABILITY RETIREMENT AT A LATER DATE?**

Yes. If you are under age 55, ICERS can request a medical re-evaluation. If the BOR determines you are no longer disabled, your disability retirement can be canceled; however, the County must agree to reinstate you to your former position.

If you do not return to work after being reinstated to your former position, your disability retirement will cease.

## **21.MAY I RECEIVE RETIREMENT SERVICE CREDIT FOR AN UNCOMPENSATED LEAVE OF ABSENCE DUE TO A TERMINAL ILLNESS?**

Under Government Code Section 31646.5, you may, to the extent necessary to qualify for a NSCD allowance, receive service credit for a period of continuous, uncompensated leave immediately preceding the filing of the application upon satisfaction of all of the following:

- You have exhausted all compensated leave, including any catastrophic leave to which you may be eligible.
- The leave of absence was due to your medical condition that has been determined by the BOR to be a terminal illness.
- Payment by you of the contributions you would have paid during the leave of absence, together with interest those contributions would have earned had they been on deposit if you were not absent. The contributions may be paid in a lump sum, or may be paid on a monthly basis for a period of not more than the length of the period for which service credit is claimed; provided, however, that payment shall be completed prior to the effective date of your retirement, or in accordance with Section 31485.7 or 31485.8 if either section has been adopted by the Board of Supervisors.

Credit may not be received pursuant to this section for a period in excess of 12 consecutive months.

## **22.WHAT ARE THE ADVANTAGES OF PURCHASING MY PRIOR SERVICE CREDIT?**

Purchasing service credit adds to your total years of retirement service credit and may increase your NSCD allowance. If you have less than five years of County of Imperial, Superior Court, ICTC or LAFCO employment, purchasing your prior County of Imperial, Superior Court, ICTC or LAFCO service credit may make you eligible to apply for a NSCD retirement.

## **23.IS MY DISABILITY RETIREMENT ALLOWANCE REPORTED TO THE IRS?**

All disability retirement payments are reported annually to the Internal Revenue Service and the California Franchise Tax Board. Unless you direct ICERS otherwise, federal and California state taxes are withheld from your retirement allowance as if you are married with three exemptions.

If you retire and move to another state, you are not required to pay California state tax, but you may owe taxes to the state where you reside. Be sure to contact that state's tax agency for additional information.

The IRS grants special tax exclusions for certain SCD retirement benefits. Check with a professional advisor regarding tax matters; ICERS does not offer tax advice.

## **24. WHAT BENEFITS WILL MY SURVIVING SPOUSE OR DOMESTIC PARTNER RECEIVE WHEN I DIE?**

Survivor benefits for disability retirement vary according to the type of disability retirement granted:

### **SCD benefit for a surviving spouse or domestic partner**

- If the Unmodified Option was elected:
  - 100 percent of member's monthly allowance for life for the spouse, or a percent based upon IRS restrictions for the domestic partner.
  - Marriage or registration of domestic partnership must have occurred prior to member's retirement; one year requirement does not apply.
- If one of the numbered Retirement Options was elected:
  - Benefit paid to beneficiaries will be based upon the Option chosen.

### **NSCD benefit for a surviving spouse or domestic partner**

- If the Unmodified Option was elected:
  - 60 percent of member's monthly allowance for life.
  - Marriage or registration of domestic partnership must have occurred one year prior to member's retirement.
- If one of the numbered Retirement Options was elected:
  - Benefit paid to beneficiaries will be based upon the Option chosen.

## **25. CAN I WITHDRAW MY APPLICATION FOR DISABILITY RETIREMENT?**

You may withdraw your application at any time before the BOR approves your disability retirement.

## **26. MAY I CANCEL MY DISABILITY RETIREMENT AND RETURN TO WORK AT ANY TIME AFTER I AM FOUND TO BE DISABLED?**

If the BOR has determined you are disabled, you are disabled, you must provide medical evidence stating you can return to fully unrestricted duties before the BOR can consider

your cancellation request. In addition, your employer must agree to offer you the opportunity to return to work.

## **27.WILL I NEED TO PAY TAXES ON MY DISABILITY RETIREMENT PENSION?**

### **SCD Retirement Pension:**

With the exception of benefits received as the result of a presumption, based on Internal Revenue Code (IRC) Section 104(a)(1), ICERS reports benefits received due to a service connected disability retirement that are not more than 50% of a member's final average monthly compensation as nontaxable. Benefit amounts above 50% of final average monthly compensation are considered taxable income.

### **SCD Retirement Pension Based on a Presumption:**

When a service connected disability retirement is based on a presumption, ICERS reports the benefits as *not* excludable under IRC Section 104(a)(1) and accordingly, ICERS reports the benefits as taxable and withholds tax accordingly. For a service connected disability retirement based on a biochemical substances presumption and the exposure to the biochemical substance was a direct result of a terrorist or military action against the United States or its allies, benefits will be treated as excludable from income tax. Please see Internal Revenue Service publication 3920 for more information.

### **NSCD Retirement Pension:**

ICERS reports benefits received from a non-service connected disability retirement as taxable income and withholds tax accordingly. The portion of the benefit that includes after-tax contributions (if any) is not taxable. Contact ICERS for information if this situation affects you. Prior to January 1, 1997, member contributions were made on an after-tax basis.

You will receive a 1099-R form annually from ICERS, which records the taxable and nontaxable portions of benefits. The earning statements you will receive monthly also show these amounts.

You are encouraged to seek advice from a professional tax advisor concerning ICERS retirement benefit payments. ICERS does not give tax advice and does not have the expertise to discuss tax implications of a member's individual circumstance or benefit from ICERS. You may also contact the IRS at 800.TAX.FORM and request IRS Publications 505 and 575 for more information.

ICERS withholds taxes from monthly benefit payments based on each member's election. You make an initial election on ICERS' Income Tax Withholding Form at the time of your retirement. Your election to withhold (or not to withhold) will remain in effect until you revoke it. If changes are necessary, you may submit additional withholding forms at any time. Changes become effective with the next available payroll process.

## **28.WHAT OTHER BENEFIT PROGRAMS SHOULD I CONSIDER?**

Your personnel office can provide information regarding the County's Health Insurance Plan, Survivor Benefit Plan, Workers' Compensation, or any other benefits that may be available to you.

For additional questions or information please contact the Disability Retirement section at:

### **IMPERIAL COUNTY EMPLOYEES' RETIREMENT SYSTEM**

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