

INDUSTRIAL DISABILITY RETIREMENT GUIDE



WORKERS' COMPENSATION

www.WellsWellsLaw.com

877-840-5353

W. HOWARD WELLS*, ATTORNEY AT LAW
JASON WELLS, ATTORNEY AT LAW

*CERTIFIED SPECIALIST IN WORKERS' COMPENSATION
BY CALIFORNIA STATE BAR

Making a false or fraudulent workers' compensation claim is a felony subject to up to 5 years in prison or a fine of up to \$50,000 or double the value of the fraud, whichever is greater, or by both imprisonment and fine.

INTRODUCTION

This pamphlet is designed to help you fill out an IDR Application. It's not meant to substitute for information provided by CalPERS. This is a supplement to their documentation.

You should request a guide from CalPERS which assists in your election of retirement. The CalPERS guide includes the forms you will need to request retirement. CalPERS can provide it to you by mailing it to you or you can download it at www.calpers.ca.gov.

This document does not contain everything you need to know. As said above, it's a supplement to assist you in filling out your Application.

The Basics of IDR

IDR is a retirement benefit for employees who work in safety (peace officers and non-officers working a correctional environment including electricians, school teachers, vocational instructors, doctors, nurses, etc.).

In addition, sheriff deputies, police officers, highway patrol officers, park rangers, fish and game officers, and firefighters are some of the main positions in the safety arena. Many city and county safety workers don't use the CalPERS system and have their own special retirement system; however, many areas (especially small towns and cities and rural areas) use the CalPERS system for retirement even though they are city and county versus state employers.

Our office is handling clients primarily who have CalPERS for retirement, because we deal with state workers and employees that work for small towns and cities, and rural areas which use CalPERS and don't have their own retirement system.

Service Retirement

Assuming you have reached the minimum age for your position, and you have the required number of years of service (normally five years), you may apply for Service Retirement.

Service retirement is available to all who have the required time; obviously, the amount of time put in increases your monthly retirement benefit.

Industrial Disability Retirement

The primary benefit of IDR is that the first 50% of your gross base income is not taxable. An example would be that if you're eligible for 75% through service retirement and found eligible for IDR, 50% of your benefit would be not be taxable and the other 25% would be taxable.

If you are less than the minimum retirement age (for example, 50 years old for correctional officers and CHP), then your retirement benefit would be 50%. If you work one year, it would be 50%. If you have 25 years of service, it would be 50%. Many officers who are less than 50 years of age try to keep

their job even though they are disabled; many officers with seniority will find a position that works with their disability.

Disability Retirement (DR)

If you are found to be “*substantially incapacitated from performing your usual duties*” and that disability is not caused by a work injury, then you might be eligible for Disability Retirement (DR).

Disability retirement is taxable. This is an important distinction in understanding the difference between IDR and DR.

Important Point #1

A disability not caused by work means a disability that was caused by something away from work. If you are deemed eligible for Disability Retirement for a disability that you feel was caused by work and you were approved for Disability Retirement, then call a CalPERS attorney immediately.

Important Point #2

Make sure you don't assume a disability isn't related to work; a perfect example is safety workers with heart problems who don't realize that work at the very least contributed to their disability. Since a heart problem is typically something that occurs over time, many safety workers don't realize work was a contributing factor to their heart condition.

Service Retirement Pending IDR

CalPERS has an option to those who are applying for IDR and who are separately eligible for Service Retirement.

The advantage of applying for Service Retirement Pending IDR is that Service Retirement can be approved in a very short time (usually a few weeks). This is important because an IDR application can take six (6) to twelve (12) months depending on the workload of the CalPERS department that handles IDR. You can collect Service Retirement while you are awaiting for the IDR application.

Service Retirement Pending IDR can be beneficial for people who have *denied workers' compensation claims, delayed workers' compensation claims, or are no longer receiving benefits from the workers' compensation company and need immediate funds*; Service Retirement can bridge that gap while the IDR issues are decided. If you fit into this scenario, please read the disadvantage of applying for Service Retirement Pending IDR very carefully.

The disadvantage of applying for Service Retirement Pending IDR is that normally when you request Service Retirement, you are giving up your job for retirement.

If you aren't approved for IDR, then you cannot automatically return to your job; reinstatement is required, and this does not happen in every situation.

Service Retirement Pending IDR is ideal for people who know they are not returning to their jobs, so those people are retiring whether or not they are eligible for IDR. Assuming IDR is approved, your IDR benefits are retroactive back to when you applied for IDR.

If eligible for this option, **you need to be sure retirement is the route you want to go**, because you could be “stuck” with the decision.

Eligible Employees

Industrial Disability Retirement is available to most safety workers who sustain one or more work injuries which render the employee *"substantially incapacitated from performing the usual duties of his or her position."*

Application Process

When you submit your application (by selecting Industrial Disability Retirement or Service Retirement Pending IDR), you'll be advised that you have 30 days to have several forms that must be completed and submitted to CalPERS within 30 days of filing of the application. If you don't comply with the 30 day rule, then your application will be cancelled.

As previously stated, the CalPERS booklet has a lot of great information and contains the necessary forms and instructions on how to complete the forms. You can request the assistance of CalPERS to fill out the forms and a Work Intervention Counselor may assist you with those forms.

Note: Return to Work Coordinators and/or HR often do not have CalPERS training, so be careful when you get their help. Always verify what you're told with CalPERS directly.

Problems Created By 30 Day Rule

A big problem with the 30 day rule is you do not have control over the agencies that are required to “do their part” and fill out the forms within 30 days.

Even if you are diligent with your paperwork, various agencies must fill out the forms and return them within 30 days.

The employer will need to fill out paperwork and send it into CalPERS.

The insurance company [SCIF (State Compensation Insurance Fund) for state workers and various companies for county and city government such as Corvel, York, Keenan & Associates, Sedgwick, etc.; your workers' compensation insurance company and adjuster] will have to fill out paperwork.

The problem is if your employer and/or the insurance company “drag their feet” because they are busy, then you can see how the process can be a problem (relying on other people to do their part.)

We recommend if it is a problem to contact CalPERS and explain the efforts you've made in getting the employer and/or the insurance company to be compliant and ask them to extend the time for you.

In addition, if you have a workers' compensation attorney, the insurance company *may* say they can't talk to you, so your attorney may have to follow-up for you even though it has nothing to do with your workers' compensation case.

Important Forms

- Disability Retirement Election Application
- Authorization to Disclose Protected Health Information
- Employer Information for Disability Retirement
- Physical Requirements / Occupation Title
- Report of Separation and Advance Payroll Information
- Physician's Report on Disability
- Workers' Compensation Carrier Request

Disability Retirement Election Application

Note: We'll include an example for you at the end of this guide, so you know how to fill out the Application. We are able to assist our clients with this, because we have their information, because we have handled their workers' compensation case.

Step 1: Get an "Up-To-Date" Application

Make sure the Application you have is up-to-date. CalPERS will change their forms without notice. If you submit an outdated Application, they'll reject it.

Unless you have downloaded a form recently from their website or they recently sent you an Application in the mail, then you want to make sure you get the latest Application.

If you have a booklet (downloaded from the internet or by mail), then call CalPERS and make sure it's "up-to-date" before you spend time filling it out.

Step 2: Do NOT Mark the Wrong Box!

Do NOT mark the box that you are applying for Disability Retirement (DR); you are applying for **Industrial Disability Retirement** (IDR), so mark Industrial Disability Retirement OR Service Retirement Pending IDR.

- If you don't know the difference between the DR and IDR, then go back read the sections above.

- If you do not know which box to check, then re-read the section above on the advantages and disadvantages of Service Retirement Pending IDR under the Service Retirement Pending IDR section above and/or contact your attorney.

Step 3: Complete the Self-Explanatory Questions

Most of the questions on the form are questions that you can answer better than anyone, because you know your situation better than anyone. Fill out that information.

Step 4: How to Answer: “When you do want to retire?”

When you fill out the Application, you may not know when you want to retire. If you do not know, you may want to put “when my IDL runs out,” “when my 4850 benefits run out,” or “when my 4800.5 time runs out.”

If you don’t know the answer, then contact your attorney if he/she knows the answer or ask CalPERS.

Some safety workers may be on regular temporary disability benefits and decide not to apply even though their IDL, 4850, or 4800 benefits have run out. Why? Because they may not know whether or not they want to retire. Just know that if you apply for IDR only (not Service Retirement Pending IDR), you can always cancel your Application and return to work.

We have some clients that just know they want to return to work, so they don’t want to get the retirement process started. As stated above, people who are under 50 years of age often use their seniority to “hide” in a job that protects them from their disability.

Step 5: Workers’ Compensation Claim Section

Put the insurance company’s address [for example SCIF (State Compensation Insurance Fund), Corvel, Keenan and Associates, York, etc.] Fill in the adjuster’s name, phone number, all dates of injury(s) that are work related in your history as a safety worker and the corresponding claim number(s) for each claim.

Step 6: Payment Options, Beneficiaries, Taxes, etc.

We recommend you discuss with CalPERS the various payment options, beneficiaries, taxes and other administrative issues; make sure you understand your options. We cannot advise people on these issues, because it involves issues outside of your injuries and benefits such as family law, divorce law, issues to discuss with your accountant on tax strategy, financial planner, and a host of all other issues. For instance, your age, your health, and how you want your family taken care of in the event of your death can play a role in how you answer questions in this section.

Our recommendation is to get the advantages and disadvantages of your choices and take them to your accountant, financial planner, and/or family attorney to understand how to best meet you and your family's goals in this area.

EXAMPLE ATTACHED: SAMPLE - A

Authorization to Disclose Protected Health Information

This is a one-page form that you must fill out, sign, and submit to CalPERS with your Application. This form allows CalPERS to obtain your medical records, employment records, personnel records, and any workers' compensation information from the workers' compensation insurance company.

EXAMPLE ATTACHED: SAMPLE - B

Employer Information on Disability Retirement

This is a one page form that you must fill out, sign, and submit to CalPERS with your Application.

This form allows CalPERS to get information from your employer.

EXAMPLE ATTACHED: SAMPLE - C

Physical Requirements of Position/Occupational Title

1. Fill out the Name of Member, Social Security Number or CalPERS ID, Position / Occupational Title and your employer's name, worksite address, city, state, and zip code in Section 1.
2. Complete the Physical Requirements Information in Section 2.
3. Complete the information in Section 3.
4. Take the completed form to your employer and get it signed.
5. It's critical you call your HR department a week after you provide the form to your employer to avoid problems with the **30 day rule** (discussed above).

EXAMPLE ATTACHED: SAMPLE - D

Report of Separation and Advance Payroll Information

This form must be filled out by your employer.

Make sure the Last Day on Pay Status and Separation Date is consistent with the day you are retiring or if you don't know, it would be the day when your IDL / 4850 benefits / 4800.5 benefits runs out.

EXAMPLE ATTACHED: SAMPLE - E

Physician's Report on Disability

1. Take this form and a copy of your Essential Job Functions / Critical Tasks / Job Description to your treating physician and ask them if they will support the position that you are substantially incapacitated from your essential job functions. If they'll support you, then ask them to fill it out.
2. Make a note on a copy of the Essential Job Functions / Critical Tasks / Job Description of what you cannot perform as a result of your work

injury before you provide it to your doctor (if you don't have one, obtain one from your HR department or supervisor.) It will make it easy for your doctor to understand what you do in your job duties; this is important in allowing the doctor to say you are substantially incapacitated from your essential job functions.

3. Your physician might find it easier to write a medical report addressing the questions and then indicate on the form "see attached medical report" on the Physician's Report on Disability. Whatever is easier for them is better.
4. You should speak with your workers' compensation attorney (if you have one) in advance of providing this form to your doctor about assisting the doctor with any questions they may have; your doctor may need some guidance on how to fill out this form.
5. Your workers' compensation attorney (if you have one) may also know whether or not the Qualified Medical Evaluator (if you have one) will support your IDR eligibility.

EXAMPLE ATTACHED: SAMPLE - F

Workers' Compensation Carrier Request

1. Fill out the Name of Member, Social Security Number or CalPERS ID, and your employer in Section 1.
2. Fill out your Claim Number that is assigned by the workers' compensation insurance company, date of injury, and body parts causing disability in Section 1.

Important Decision

If you have more than one workers' compensation claim is causing disability, then you may need to fill out more than one date of injury, because one injury may not incapacitate you from your essential job functions.

For example, you may have a knee injury and back injury that are separate claims. Each of those body parts alone (pretending the other doesn't exist) doesn't incapacitate you. However, when dealing with the pain and limitations of both together, you cannot perform your essential job functions.

You may be wondering why this decision matters? Why not just add all workers' compensation claims to maximize your eligibility? The answer is complicated and may not even apply to you. If you have more than one claim, our recommendation is to contact your attorney and verify that you are not eligible for the Subsequent Injuries Benefit Trust Fund. Without getting into what that is (one of the most complicated areas of workers' compensation law), you want to make sure you make an informed decision on how using your claims for IDR Application may impact other rights.

3. Sign and date the Authorization to Release Information in Section 2.
4. Section 3 and Section 4 must be filled out by the workers' compensation adjuster.
5. It's critical you call the adjuster a week after you send the form to the insurance company to avoid problems with the **30 day rule** (discussed above).

EXAMPLE ATTACHED: SAMPLE - G

Note on Samples

We provide samples, because most workers' compensation attorneys do not assist their clients with the Industrial Disability Retirement applications.

We assist our workers' compensation clients with the Industrial Disability Retirement application, therefore, if you are a Wells Law client, you may not need these samples. You should contact our office to determine what we recommend for your Application.