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San Bernardino County Employees'
Retirement Association

Origination: N/A
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 Next Review: 3 years after approval
 Area: Benefits
 References:
 Applicability: SBCERA Internal

Disability Retirement COVID 19 Presumption

POLICY NO. 034

~~Background:~~ Background:

Assembly Bill 845, signed by the Governor on July 23, 2021 establishes a service connection presumption for members who are permanently incapacitated from the performance of their usual job duties due to COVID-19 disease or the aftereffects of the COVID-19 disease. The law goes into effect on January 1, 2022 and is repealed on January 1, 2023.

The bill defines an "outbreak" as existing if within 14 calendar days one of the following occurs at a specific place of employment:

1. If the employer has 100 employees or fewer at a specific place of employment, 4 employees test positive for COVID-19.
2. If the employer has more than 100 employees at a specific place of employment, 4 percent of the number of employees who reported to the specific place of employment, test positive for COVID-19.
3. A specific place of employment is ordered to close by a local public health department, the State Department of Public Health, the Division of Occupational Safety and Health, or a school superintendent due to a risk of infection with COVID-19.

A "specific place of employment" is defined as "the building, store, facility, or agricultural field where an employee performs work at the employer's direction. A 'specific place of employment' does not include the employee's home or residence, unless the employee provides home health care services to another individual at the employee's home or residence."

~~Disability Application Procedure:~~ Disability Application Procedure:

Any SBCERA member who is claiming permanent incapacity due to COVID-19 is required to complete a Disability Application including the Applicant's Statement of Facts Regarding COVID-19 Presumption (Statement), which will be provided by staff. The Statement is part of the Disability Retirement Application, and the application of a member claiming disability due to COVID-19 shall be incomplete under Rule 33 (j) of the SBCERA Procedures for Disability Applications and Formal Hearings if the Statement is not completed and signed.

In addition, failure to provide supporting documentation as requested by the Statement may result in a denial

of the presumption because the member has not provided facts sufficient to show the presumption applies to the member.

SBCERA may rebut the presumption by providing evidence that the member was not a member of a specified job classification, the member was not present in a specific place of employment during an outbreak, or other evidence showing the member could not have contracted COVID-19 at the member's specific place of employment.

~~Timing:~~ Timing:

~~Assembly Bill 845 does not provide guidance regarding the applicability of the law to members who apply for disability retirement prior to the January 1, 2022 effective date or whose applications are not decided by the SBCERA Board of Retirement prior to the repeal of the statute on January 1, 2023. Therefore, the Board establishes the following:~~

The Board establishes the following:

1. For applications filed prior to January 1, 2022 and initially decided by the Board after January 1, 2022, the presumption shall apply.
2. For applications filed after January 1, 2022 and initially decided by the Board before January 1, 2023, the presumption shall apply.

~~For applications filed before January 1, 2023 but not initially decided by the Board before January 1, 2023 as long as the Board makes its initial decision prior to June 30, 2023, the presumption shall apply.~~

3. For applications filed after January 1, 2023, the presumption shall not apply unless the presumption statutes are extended by the Legislature prior to the repeal date. In such case, the presumption shall be extended to applications filed with SBCERA prior to the new repeal date.

Attachments

No Attachments

Approval Signatures

Step Description	Approver	Date
Administrative Committee	Barbara Hannah: Chief Counsel	pending
Administrative Committee	Christa James: Executive Assistant	9/10/2021
Chief Executive Officer Review	Debby Cherney: Chief Executive Officer	9/9/2021
Chief Counsel Review	Barbara Hannah: Chief Counsel	9/9/2021
	Barbara Hannah: Chief Counsel	9/9/2021

Older Version Approval Signatures

Applicability

SBCERA Internal

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