



# BOARD OF RETIREMENT

## Staff Report

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**File #:** 21-113.2

**Agenda Date:** 11/4/2021

**Agenda #:** 13.

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**FROM:** Barbara Hannah, Chief Counsel

**SUBJECT:** Benefits Policy No. 034 (Disability Retirement COVID 19 Presumption Guidelines)

**RECOMMENDATION:**

Approve Benefits Policy No. 034 (Disability Retirement COVID 19 Presumption Guidelines), as revised.

**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 The law goes into effect on January 1, 2022 and by statute, is repealed effective January 1, 2023.

[Proposed] Benefits Policy No. 34 provides guidance to the Board, staff, and members regarding the implementation of the COVID-19 disability presumption. The policy defines key terms, including guidelines for members who apply for disability retirement based on COVID-19 infection and aftereffects.

The Policy was initially presented to the Administrative Committee at its September 16, 2021 for discussion. The Committee approved the policy, including the portion that would permit the Board to apply the law to disability cases that are presented to the Board after the repeal date of the law. However, after further consideration and additional information received thereafter, staff returned this matter to the Committee for further discussion regarding the Board's authority to apply the law once repealed on the effective date of January 1, 2023.

Based on research, the Legislature set forth a repeal date, unless the statute contains a savings clause, it may not be applied after such repeal. In addition, the Board is bound to apply the law in effect at the time a member is retired. A member, who is eligible for a disability retirement, is not retired until the Board determines that the member is unable to perform her usual job duties. This determination is made on the date the application is presented to the Board for consideration and action is taken by the Board to find that the member is permanently incapacitated. Therefore, if on the date the Board takes action and the COVID 19 Presumption law is no longer in effect, then the Board may only apply the requirements of a standard service-connected disability retirement involving a COVID 19 related illness.

Based on the above, at the October 21, 2021 Committee meeting, staff recommended the deletion of the following language from the Policy:

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

The deletion of this provision from the Policy is the best approach in applying a statute where it is unambiguous that the law governing the COVID 19 Presumption with a repealed date January 1, 2023 is no longer in effect and such law would not apply to any case thereafter.

With the Committee approving the removal of the above language from the policy, staff recommends for the Board to approve the COVID 19 Presumption Policy as revised.

**COMMITTEE REVIEW:**

This item was reviewed by the Administrative Committee at its September 16, 2021 meeting, and recommended Board approval with a 4-0 vote.

This item was re-reviewed by the Administrative Committee and provided updated information at its October 21, 2021 meeting, and recommended Board approval with a 3-0 vote. Trustee Hatch was absent from the meeting.

**BUDGET IMPACT:**

None.

**STRATEGIC PLANNING GOAL/OBJECTIVE:**

Superior Service Experience

**STAFF CONTACT:**

Barbara Hannah  
David Lantzer

**ATTACHMENTS:**

- Exhibit A: [Proposed] Benefits Policy No. 034 (Disability Retirement COVID 19 Presumption Guidelines)
- Exhibit B: Confidential Memo re COVID 19 Presumption
- Exhibit C: Presentation - COVID 19 Presumption