

State of California

**M E M O R A N D U M**

**TO: PERSONNEL MANAGEMENT LIAISONS**

**DATE: 2/28/94**  
**Reference Code: 94-15**

**THIS MEMORANDUM SHOULD BE DISTRIBUTED TO:**

**AGENCY RULE COORDINATORS**  
**WORKERS' COMPENSATION & RETURN TO WORK COORDINATORS**

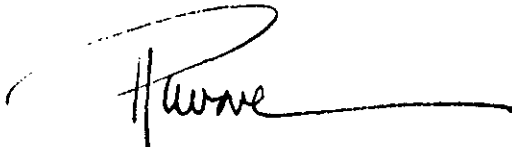
**FROM: DEPARTMENT OF PERSONNEL ADMINISTRATION**

**SUBJECT: INDUSTRIAL DISABILITY RETIREMENT RULES**

Attached to this memorandum is a copy of the Department of Personnel Administration (DPA) Proposed Rules for Industrial Disability Retirement for employees in Bargaining Units 1, 4, 15, 18, and 20 who suffer a qualifying industrial illness or injury. These rules are being promulgated in accordance with the provisions of Government Code sections 19876.5, 21020.5, 21020.6, 21100.55, 21292.4 and Labor Code section 139.5(g).

Written comments on the rules must be received by April 29, 1994.  
Comments should be sent to:

Department of Personnel Administration  
Attention: Sondra A. Cooper  
1515 S Street, North Building, Suite 400  
Sacramento, CA 95814  
(916) 327-1839



Patricia Pavone, Chief  
Benefits and Training Division

**cc: Exclusive Representatives**  
**Rule Notification List**

**CALIFORNIA CODE OF REGULATIONS  
TITLE 2. ADMINISTRATION  
CHAPTER 3. DEPARTMENT OF PERSONNEL ADMINISTRATION**

**NOTICE OF PROPOSED REGULATORY ACTION**

The Department of Personnel Administration (DPA) proposes to adopt the regulatory action described below after considering all comments, objections, or recommendations regarding the proposed action.

**PROPOSED REGULATORY ACTION**

Notice is hereby given that DPA intends to add Article 12.5 to Chapter 3 of Title 2 of the California Administrative Code pursuant to Government Code sections 19876.5, 21020.5, 21020.6, 2100.55, 21292.4 and Labor Code section 139.5(g). Article 12.5, Sections 599.779 through 599.779.7 will implement new procedures related to Industrial Disability Retirement (IDR) for State employees in Collective Bargaining Units 1, 4, 15, 18, and 20.

Copies of the proposed Article 12.5 may be obtained from:

Department of Personnel Administration  
Attention: Linda C. McCarthy  
1515 S Street, North Building, Suite 400  
Sacramento, CA 95814  
(916) 327-4021

Any interested person may present written comments concerning the proposed code addition to:

Department of Personnel Administration  
Attention: Sondra A. Cooper  
1515 S Street, North Building, Suite 400  
Sacramento, CA 95814  
(916) 327-1839

Comments must be received no later than 5:00 p.m., Friday, April 29, 1994 to be considered by DPA before it adopts Article 12.5.

Any inquiries concerning the proposed amendments should be directed to Sondra Cooper (916) 327-1839.

DPA has prepared a written explanation of the reasons for adopting Article 12.5 and has available the text and all of the information upon which the adoption is based.

No public hearing on this matter will be held unless any interested person or his/her representative requests, no later than 15 days prior to the close of the written comment period, that a public hearing be held.

The adoption of the proposed amendment will not: impose a cost on any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 or the government Code; result in any nondiscretionary cost or savings to local agencies; result in any cost or savings in federal funding to the state; impose a mandate on local agencies or school districts; or have any potential cost impact on private persons or businesses, including small businesses. There is no significant adverse economic impact on business, including the ability of California businesses to compete with businesses in other states. The addition of Article 12.5 may result in some undetermined cost to state agencies when employees must be relocated or specially trained in order to be placed after a disabling injury. However, these costs should be offset by savings in industrial disability retirement benefits when qualified injured workers are retained in State employment.

DPA must determine that no alternative considered by the Department would be more effective in carrying out the purposes for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

If the text of the proposed regulations is changed during or after the comment period or hearing (if any) the full text of the revised regulations will be made available for public review at least 15 days before adoption.

#### **AUTHORITY AND REFERENCE**

Government Code section 19876.5 specifies which bargaining units are affected; requires that injured State employees who become eligible for vocational rehabilitation on or after January 1, 1993 be evaluated to determine what type of State employment they can perform and limits benefits to be provided to only those employees who participate and cooperate in the program.

Government Code section 21020.5 specifies that State members in affected bargaining units shall not be retired for industrial disability on or after January 1, 1993 unless the member is incapacitated for performance of duty in any employment with State employer; gives DPA the authority to determine Industrial Disability Retirement under this program; and gives DPA the authority to be reimbursed for all costs associated with the program.

Government Code section 21021.6 describes when the supplemental payments will be made, how much the payments will be, and the limitations of the payments.

Government Code section 21292.4 increases the maximum amount of retirement allowance for IDR to 60% of the member's final compensation, except as limited by Government Code section 21292.6.

Labor Code section 139.5(g) specifies that an offer of a job to an industrially injured employee in Bargaining Units 1, 4, 15, 18 or 20 is a prima facie offer of vocational rehabilitation if the job has the same or similar salary and is in the same or similar geographic location.

### **ASSESSMENT**

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

INFORMATIVE DIGEST  
ADDITION OF ARTICLE 12.5

SB 465 (1992), AB 1061 (1992) and SB 793 (1993) added provision to the Government and Labor Codes establishing a new Industrial Disability Retirement (IDR) Program for certain State employees. In summary, these laws require:

- o Development of a new IDR program for rank and file employees in Bargaining Units 1, 4, 15, 18, and 20 who suffer a qualifying industrial illness or injury on or after January 1, 1993. If the employee is a State Miscellaneous Member or a State Industrial Member, the injury or illness must occur as a result of a violent act by a patient or inmate while performing duties at (1) Patton State Hospital, Atascadero State Hospital, the psychiatric program at the California Medical Facility at Vacaville, or other forensic facility; (2) a State prison or facility of the Department of corrections, or correctional school or facility of the Youth Authority; or (3) elsewhere while acting in the scope of employment which regularly and substantially involves contact with patients and clients of a forensic facility or inmates or parolees. For State Safety Retirement Members, the injury or illness may occur as the result of any employment activity.
- o A new definition of industrial disability which means "disabled from any job in State service" instead of "disabled from the current position."
- o Increased benefits for industrially disabled employees by (1) putting stronger emphasis on the continuing employment of disabled employees, (2) giving supplemental disability pay to employees who are placed in lower salaried positions, and (3) increasing the maximum IDR benefit from 50% to 60%.
- o An industrially disabled employee in the new program will only be eligible for IDR if he/she cannot perform any job in State service as determined by DPA. In making this determination, the employee will no longer be limited to jobs within his/her current classification and department. The employee may be offered any job in State service as long as the employee (1) has the job skills, knowledges and abilities for the new position, and (2) is not medically precluded from performing the duties of the new position.
- o An offer of a job in State service at the same or similar salary and the same or similar location will be considered a valid vocational rehabilitation plan and the employee will no longer be eligible for an alternate vocational rehabilitation training program. If the employee declines the offer, he/she would not be eligible for IDR, vocational rehabilitation or other disability benefits.

- o DPA will make the disability determinations for employees impacted by this program and be reimbursed by the departments for the administration of this program.

Article 12.5 proposes to interpret, implement and make specific the new laws by:

- o Providing definitions of key terms of art used in the implementation of the IDR program.
- o Outlining policies to be used in selecting an appropriate position for the injured employee and placing the employee in that position.
- o Establishing employee participation responsibilities and appeal rights.

INITIAL STATEMENT OF REASONS  
TITLE 2, CHAPTER 3, ARTICLE 12.5

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR  
CIRCUMSTANCE THAT THE REGULATION IS INTENDED TO ADDRESS

Addition of Title 2, Section 3, Chapter 12.5

This proposal interprets, implements, and makes specific the provisions of SB 425 (Stats. 1992, ch. 103), AB 1061 (Stats. 1992, ch. 1039) and SB 793 (Stats. 1993, ch. 513) by prescribing policies, procedures and definitions for the State's new Industrial Disability Retirement program.

Chapters 103 and 1039 effective January 1, 1993 and Chapter 513 effective January 1, 1994 amend the Government Code and the Labor Code to:

- o Develop of a new Industrial Disability Retirement (IDR) program for rank and file employees in Bargaining Units 1, 4, 15, 18, and 20 who suffer a qualifying industrial illness or injury after January 1, 1993. If the employee is a State Miscellaneous Retirement Members and State Industrial Retirement Members, the injury or illness must occur as a result of a violent act by a patient or inmate while performing duties at (1) Patton State Hospital, Atascadero State Hospital, the psychiatric program at the California Medical Facility at Vacaville, or other forensic facility; (2) a State prison or facility of the Department of corrections, or correctional school or facility of the Youth Authority; or (3) elsewhere while acting in the scope of employment which involves contact with inmates or parolees. For State Safety Retirement Members, the injury or illness may occur as the result of any employment activity.
- o Broaden the definition of industrial disability to mean "disabled from any job in State service" instead of "disabled from the current position."
- o Increase the benefits that industrially disabled employees will receive by (1) putting stronger emphasis on the continuing employment of disabled employees, (2) giving supplemental disability pay to employees who are placed in lower salaried positions, and (3) increasing the maximum Industrial Disability Retirement (DIR) benefit from 50% to 60% of final compensation.
- o Give the Department of Personnel Administration (DPA) the authority to make the disability determinations and to be reimbursed by departments for the administration of this program.

## SPECIFIC PURPOSE OF THE REGULATION

### Article 12.5

#### Section 599.779 Scope

Since there are numerous, nonsequential sections of the Government Code and one section of the Labor Code that have been modified to provide the overall statutory authority for the new IDR Program, DPA believes that it is necessary to preface the rules with a statement of authority that specifies all of the code sections that are relevant to the program.

#### Section 599.779.1 Definitions

Many of the terms used in the rules are common "terms of art" within the Labor Code and other general statutory references related to Workers' Compensation. However, these terms are generally not used in the Government code, or may be defined differently in the Government Code. These terms are used throughout the proposed rules and definitions are important to ensure a clear understanding of the policies and procedures outlined.

#### Section 599.779.2 Selection of an Appropriate Position

The statutes do not specify a protocol or time frame for selecting a new position for the employee who has been industrially injured and cannot perform the duties of his/her current job. This rule is intended to direct departments that they must demonstrate efforts to place the employee within the originating department, first, before seeking placement opportunities in another agency. It also specifies a 90 day time frame for the placement search and delineates that the employee must accept an offer of alternate employment, which meets the statutory requirements, or forfeit certain retirement and rehabilitation benefits.

#### Section 599.779.3 Injured State Worker Placement

The statutes provide no mechanism to assist in the placement of injured employees outside of the originating department. This rule allows the State Restrictions of Appointments Process to be used to facilitate employee placement efforts.

#### Section 599.779.4 Employment Costs for the Injured Employees

One of the major problems encountered in placing an injured employee in a department, other than the originating department is that the receiving department may incur significant costs to accommodate and train the employee to prepare him/her for successful performance in a new job. Additionally, DPA Rule

599.724(c) requires the receiving department (new appointing power) to pay all relocation expenses, unless the originating department (former appointing power) agrees to pay all or part of the expenses. For the purposes of this article, the former appointing power will be responsible for any relocation expenses incurred by the employee in order to mitigate against the cost burden on the new appointing power.

#### **599.779.5 Denial of Benefits for Failure to Participate**

While the law states that an injured worker must cooperate with the employer's efforts to find him/her suitable employment, the statutes do not specify the scope of placement efforts, nor the consequence of failure to participate. This rule will clarify this requirement by specifying 1) what a vocational rehabilitation plan may include and 2) the benefits that may be withdrawn for failure to participate.

#### **Section 599.779.6 Post Retirement Job Opportunities**

This rule restates the intent of the law to mandatorily reinstate injured employees, if a position becomes available within a twelve month period after retirement. In accordance with other laws and rules, an employee may permissively reinstate after the twelve month period if he/she wishes to return to State service, a suitable position is available, and the Public Employees' Retirement System determines that the employee is able to perform the duties of the new job.

#### **Section 599.779.7 Appeal Rights**

DPA has used this rule to specify the appeal rights of employees who feel that they have been inappropriately included or excluded from this program.

**California Code of Regulations**  
**Title 2. Administration**  
**Chapter 3. Department of Personnel Administration**

**Article 12.5. Industrial Disability Retirement**

**599.779 Scope**

Pursuant to Government Code Sections 19876.5, 21021.5, 21020.6, 21292.4 and Labor Code Section 139.5(g), an employee in Bargaining Units 1, 4, 15, 18, and 20 who suffers a qualifying industrial injury or illness and who is permanently unable to perform the duties of his/her current position is eligible to participate in this program.

*Note: Authority Cited: Section 21021.5, Government Code. Reference: Sections 19876.5, 21020.6, 21292.4, Government Code; Section 139.5, Labor Code.*

**599.779.1 Definitions**

For the purposes of this Article, the following definitions will apply:

(a) **Industrially Disabled.** Disabled from performing any job in State service as a result of a work related illness or injury.

(b) **Permanent and Stationary.** A disability is considered permanent after the employee has reached maximum improvement or his/her condition has been stationary for a reasonable period of time. A physician determines the date that a medical condition becomes permanent and stationary.

(c) **Qualified Injured Worker.** An employee who (1) has an injury which permanently precludes, or is likely to preclude, him or her from engaging in his or her usual occupation or the position in which he or she was engaged, and (2) can reasonably be expected to return to gainful employment through vocational rehabilitation services.

(d) **Same or Similar Salary.** The maximum salary of a classification that is at least 85% of the maximum salary of the job classification the employee was in at the time of the qualifying injury. It is further defined to include classifications with higher salaries to which the employee may transfer according to State Personnel Board rules.

(e) **Same or Similar Location.** Any work location to which the employee could be reassigned which would not require the employee to relocate according to the standards defined in a memoranda of understanding, or the Department of Personnel Administration rules, whichever is controlling for the purpose of relocation.

(f) **Originating Department.** The department where the employee was working when the injury occurred.

(g) Receiving Department. A department, other than the originating department, that hires an employee covered by the provisions of this Article.

*Note: Authority Cited: Section 211021.5, Government Code. Reference: Section 19876; Section 139.5, Labor Code.*

#### **599.779.2 Selection of an Appropriate Position**

When an employee is medically incapable of performing the essential functions of his/her current job, or any other position in his/her current classification, the originating department must make every reasonable effort to place the injured employee in a vacant position in another classification within the department or find the employee suitable employment with another State department. Efforts to accommodate the employee within the department should include, but not be limited to, altering the employee's work environment, providing specialized equipment, restructuring job duties, and training and development assignments. The originating department's efforts to find the employee a suitable position in another department should include, but not be limited to, identifying vacant positions in other departments within the same or similar location and at the same or similar salary, contacting the hiring departments to arrange interviews and assisting the employee to prepare for the employment interview.

The originating department should begin the placement process as soon as the employee is determined to be a qualified injured worker, but no later than the date the employee is determined to be permanent and stationary. Such placement efforts must continue for a minimum of 90 calendar days from the date that the employee is permanent and stationary. While the department is encouraged to work with the employee to provide the best job match, especially when there is more than one vacant position, the department retains the right to select any vacant position that meets the criteria of "same or similar" salary and location. Factors such as the nature of the employee's disability and the cost of retraining the employee for the new job should be taken into consideration when making this decision. If the employee refuses the job offer proposed by any department, the employee forfeits his/her rights to Industrial Disability Leave, Enhance Industrial Disability Leave, Industrial Disability Retirement and Vocational Rehabilitation.

*Note: Authority Cited: Section 21021.5, Government Code. Reference: Section 19876.5, Government Code, Section 139.5, Labor Code.*

#### **599.779.3 Injured State Worker Placement**

If the appointing power is unable to place the industrially injured employee within 90 days from the date the employee is medically certified as permanent and stationary and able to return to work, the Department of Personnel Administration shall take measures to place these employees in an appropriate position in another State agency by restricting other methods of appointment, including appointments

under the State Restriction of Appointments Process (SROA). An employee's name may remain on one or more SROA lists for up to one year. When the Department of Personnel Administration determines that placement on a reemployment list would provide significant, additional opportunity to place the employee, it shall request that the State Personnel Board place the employee's name on an appropriate general reemployment list.

*Note: Authority Cited: SEction 21020.5, Government Code. Reference: Sections 19876.5, 19998.1, Government Code.*

#### **599.779.4 Employment Costs for the Injured Employees**

It is the intent of this Article that injured employees will be accommodated, whenever possible, in the department where the employee worked at the time of the injury. However, it is possible that some employees will be placed in other departments. If an eligible industrially injured employee receives an appointment to a new position in a department other than his/her originating department, the originating department is responsible for the following costs:

(a) all necessary and reasonable expenses for the cost of training the employee in the required job duties of the new classification.

(b) all relocations costs, in accordance with the Department of Personnel Administration rules, for any employee who relocates in order to accept a position which is not in the same or similar location.

(c) any overtime, holiday credit, excess hours, or personal leave credits that are due to the employee on the date of transfer.

(d) any special equipment that may be required because of the employee's disability.

*Note: Authority Cited: Section 21020.5, Government Code. Reference: Sections 19876.5, Government Code; 139.5 Labor Code.*

#### **599.779.5 Denial of Benefits for Failure to Participate**

Employee benefits will be denied to an industrially injured employee who does not participate in a reasonable and appropriate vocational rehabilitation plan necessary to continue State employment. Participation in a rehabilitation plan may include some or all of the following activities: skill assessment, vocational counseling, job interviews and training. Benefits include, but are not limited to Industrial Disability Leave, Enhanced Industrial Disability Leave, Industrial Disability Retirement, and other Vocational Rehabilitation Training.

*Note: Authority Cited: Section 21020.5. Reference: 19876.5, Government Code.*

**599.779.6 Post Retirement Job Opportunities**

In the event that a suitable position can not be found for an employee who is capable of working, the employee may be offered an alternate vocational rehabilitation plan or he/she may be placed on Industrial Disability Retirement. However, if the employee is retired under these circumstances and a job subsequently becomes available, within twelve months of the effective date of retirement, that meets the tests of "same or similar salary" and "same or similar location," then the employee will be required to reinstate into State service and the IDR benefits will be terminated effective on the date the job offer is made.

*Note: Authority Cited: Section 21100.55, Government Code. Reference: Sections 21020.5, 21292.4, Government Code.*

**599.779.7 Appeal Rights**

Employees may appeal to the Director of the Department of Personnel Administration only if they believe either (1) that they should not be required to participate in the program, or (2) that they should not be excluded from this program. An employee must submit the appeal in writing stating the grounds for the protest. The appeal shall be filed within thirty (30) days of the date the originating department notifies the employee in writing that he/she either must participate in, or is excluded from, this program.

*Note: Authority Cited. Section 21020.5, Government Code. Reference: Section 21020.5, Government Code.*