

AMENDED IN SENATE AUGUST 4, 2008

AMENDED IN SENATE JULY 7, 2008

AMENDED IN SENATE JUNE 18, 2008

AMENDED IN SENATE MAY 22, 2008

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2023

Introduced by Assembly Member Houston

February 15, 2008

An act to amend Sections 24003 and 24103 of the Education Code, and to amend Section 21156 of, and to add Sections 31720.3 and 53222.5 to, the Government Code, relating to public employee disability benefits.

LEGISLATIVE COUNSEL'S DIGEST

AB 2023, as amended, Houston. Public employee disability benefits.

The Public Employees' Retirement System provides for the granting of disability benefits to members in state service. Existing law generally provides that if a medical examination and other available information show to the satisfaction of the Board of Administration of the Public Employees' Retirement System that a member in state service is incapacitated physically or mentally for the performance of his or her duties and is eligible to retire for disability, the board shall immediately retire him or her for disability. The State Teachers' Retirement System permits the board of administration of the system to authorize payment of a disability allowance or disability retirement allowance, requires a

member to provide medical documentation to substantiate the claim qualifying the member for the disability allowance or disability retirement allowance, and permits the board to order a medical examination in this regard, as specified. The County Employees Retirement Law of 1937 permits a member permanently incapacitated for duty to retire for disability only if specified criteria are met. Existing law permits the legislative body of a local agency to establish a pension trust, as specified, for the benefit of its officers and employees and permits that legislative body to establish reciprocal retirement benefits with other specified retirement systems.

This bill would restrict the board or body administering a retirement system or a pension trust, as described above, with respect to the medical opinion or documentation used to determine whether a member is eligible to retire for disability, as specified, and would prohibit the use of disability retirement as a substitute for the disciplinary process.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 24003 of the Education Code is amended
2 to read:
3 24003. (a) The member shall provide medical documentation
4 to substantiate the impairment qualifying the member for the
5 disability allowance.
6 (b) On receipt of an application for disability allowance under
7 this part, the system may order a medical examination of a member
8 to determine whether the member is incapacitated for performance
9 of service. The medical examination shall be conducted by a
10 practicing physician, selected by the board, with expertise in the
11 member’s disability and the board shall pay all costs associated
12 with the examination. The board shall pay all other reasonable
13 costs related to travel and meals in accordance with the rates set
14 for state employees by the Department of Personnel
15 Administration. If the member refuses to submit to the required
16 medical examination, the application for disability allowance shall
17 be rejected. The member shall either remain in this state, or return
18 to this state at the member’s own expense, to undergo the initial
19 evaluations or examinations, or the application shall be rejected,
20 unless this requirement is waived by the board. If the member is

1 too ill to be examined, the system shall postpone the examination
2 until the member can be examined. The member or the member's
3 treating physician shall inform the system, in writing, when the
4 medical examination can be rescheduled.

5 (c) The system may reject the disability allowance application
6 under this part if the member fails to provide requested medical
7 documentation to substantiate a disability, as defined in Section
8 22126, within 45 days from the date of the request or within 30
9 days from the time that a legally designated representative is
10 empowered to act on behalf of a member who is mentally or
11 physically incapacitated.

12 (d) If the board determines that a member who has applied for
13 a disability allowance under this part may perform service in the
14 member's former position of employment or in a comparable level
15 position with the assistance of reasonable accommodation, the
16 board may require the member to request reasonable
17 accommodation from the employer. Failure of the member to
18 request reasonable accommodation, as directed by the board, may
19 be grounds for cancellation of the disability allowance application.

20 (e) If the employer fails or refuses to provide reasonable
21 accommodation, the board may require the member to pursue an
22 administrative appeal of the employer's denial as a condition for
23 receiving a disability allowance under this part.

24 (f) The system shall inform the member of the rejection or
25 cancellation of the member's disability allowance application under
26 this part within 30 days after that determination is made by the
27 system.

28 (g) In determining whether a member meets the definition of
29 disability pursuant to Section 22126, the board shall ~~consider only~~
30 *make a determination on the basis of* competent medical
31 documentation and shall not use the awarding of a disability
32 allowance as a substitute for the disciplinary process.

33 SEC. 2. Section 24103 of the Education Code is amended to
34 read:

35 24103. (a) The member shall provide medical documentation
36 substantiating the impairment qualifying the member for the
37 disability retirement under this part.

38 (b) On receipt of an application for disability retirement under
39 this part, the system may order a medical examination of a member
40 to determine whether the member is incapacitated for performance

1 of service. The medical examination shall be conducted by a
2 practicing physician, selected by the board, with expertise in the
3 member's disability, and the board shall pay all costs associated
4 with the examination. The board shall pay all other reasonable
5 costs related to travel and meals in accordance with the rates set
6 for state employees by the Department of Personnel
7 Administration. If the member refuses to submit to the required
8 medical examination, the application for disability retirement shall
9 be rejected. The member shall either remain in this state, or return
10 to this state at the member's own expense, to undergo the initial
11 evaluations or examinations or the application shall be rejected,
12 unless this requirement is waived by the board. If the member is
13 too ill to be examined, the system shall postpone the examination
14 until the member can be examined. The member or the member's
15 treating physician shall inform the system, in writing, when the
16 medical examination can be rescheduled.

17 (c) The system may reject the disability retirement application
18 under this part if the member fails to provide requested medical
19 documentation to substantiate a disability, as defined in Section
20 22126, within 45 days from the date of the request or within 30
21 days from the time that a legally designated representative is
22 empowered to act on behalf of a member who is mentally or
23 physically incapacitated.

24 (d) If the board determines that a member who has applied for
25 disability retirement under this part may perform service in the
26 member's former position of employment or in a comparable level
27 position with the assistance of reasonable accommodation, the
28 board may require the member to request reasonable
29 accommodation from the employer. Failure of the member to
30 request reasonable accommodation, as directed by the board, may
31 be grounds for cancellation of the disability retirement application
32 under this part.

33 (e) If the employer fails or refuses to provide reasonable
34 accommodation, the board may require the member to pursue an
35 administrative appeal of the employer's denial as a condition for
36 receiving a disability retirement allowance under this part.

37 (f) The system shall inform the member of the rejection or
38 cancellation of the member's disability retirement allowance
39 application under this part within 30 days after that determination
40 is made by the system.

1 (g) In determining whether a member meets the definition of
2 disability pursuant to Section 22126, the board shall ~~consider only~~
3 *make a determination on the basis of* competent medical
4 documentation and shall not use the awarding of a disability
5 retirement as a substitute for the disciplinary process.

6 SEC. 3. Section 21156 of the Government Code is amended
7 to read:

8 21156. (a) (1) If the medical examination and other available
9 information show to the satisfaction of the board, or in case of a
10 local safety member, other than a school safety member, the
11 governing body of the contracting agency employing the member,
12 that the member in the state service is incapacitated physically or
13 mentally for the performance of his or her duties and is eligible to
14 retire for disability, the board shall immediately retire him or her
15 for disability, unless the member is qualified to be retired for
16 service and applies therefor prior to the effective date of his or her
17 retirement for disability or within 30 days after the member is
18 notified of his or her eligibility for retirement on account of
19 disability, in which event the board shall retire the member for
20 service.

21 (2) In determining whether a member is eligible to retire for
22 disability, the board or governing body of the contracting agency
23 shall make a determination on the basis of competent medical
24 opinion and shall not use disability retirement as a substitute for
25 the disciplinary process.

26 (b) (1) The governing body of a contracting agency upon receipt
27 of the request of the board pursuant to Section 21154 shall certify
28 to the board its determination under this section that the member
29 is or is not incapacitated.

30 (2) The local safety member may appeal the determination of
31 the governing body. Appeal hearings shall be conducted by an
32 administrative law judge of the Office of Administrative Hearings
33 pursuant to Chapter 5 (commencing with Section 11500) of Part
34 1 of Division 3 of this title.

35 SEC. 4. Section 31720.3 is added to the Government Code, to
36 read:

37 31720.3. In determining whether a member is eligible to retire
38 for disability, the board shall not consider medical opinion unless
39 it is deemed competent and shall not use disability retirement as
40 a substitute for the employer's disciplinary process.

1 SEC. 5. Section 53222.5 is added to the Government Code, to
2 read:
3 53222.5. If a local legislative body establishes a pension trust
4 pursuant to this article that provides for disability retirement or
5 has established reciprocity with a retirement system that provides
6 for disability retirement, the legislative body of the local agency,
7 in determining whether a member is eligible to retire for disability,
8 shall ~~consider only~~ *make a determination on the basis of* competent
9 medical opinion and shall not use disability retirement as a
10 substitute for the disciplinary process.

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