

BILL NUMBER: [AB 845](#) (Rodriguez) as amended March 30, 2021

SUMMARY

AB 845 creates a rebuttable presumption for disability retirements due to a COVID-19-related illness that the disability arose out of the member's employment. The bill provisions sunset on January 1, 2023.

BOARD POSITION

Neutral, if amended to clarify that the bill's presumption only relates to public retirement systems that provide enhanced industrial disability benefits. It is the board's policy to take a neutral position on bills that do not significantly or adversely impact the benefits or services provided through the funds administered by CalSTRS or the administration of the retirement plans. Because CalSTRS does not provide enhanced disability benefits on the basis of industrial causation, it would be highly unlikely that member access to disability benefits would be affected by the presumption in the bill. As a result, staff recommends amending the bill to prevent unintended consequences that may add administrative and program costs to the system.

REASON FOR THE BILL

According to the author, the bill provides financial protection for front line workers who retire due to a COVID-19-related illness by creating a presumption that the illness was contracted on the job, making them eligible for an industrial disability retirement.

ANALYSIS

Existing Law:

The Defined Benefit (DB) Program permits a member to apply for a disability benefit if the member has five or more years of credited service, at least four of which involved actual performance of creditable service, and if certain other criteria are met. CalSTRS does not provide enhanced industrial disability benefits, and members are not required to be injured on the job to receive disability benefits. Members receive the same tax treatment for CalSTRS disability benefits regardless of whether they became ill or injured on the job or elsewhere.

Under one of two exceptions, a member may still be eligible for disability benefits if the member performed less than four years of actual service due to an on-the-job injury or disease while in employment subject to coverage by CalSTRS. The member must still have five years of service credit in order to be eligible for disability benefits, although service may be earned while the member is receiving workers' compensation benefits or through the purchase of permissive service credit or redeposit of previously refunded contributions. CalSTRS does not consider this an industrial disability benefit, but rather an exception to the minimum service requirement for regular disability benefits.

If a member is covered by workers' compensation for the same impairment that qualifies the member for a disability benefit, CalSTRS offsets the disability benefit by the amount paid or payable by workers' compensation benefits. Additionally, if a member's injury was caused by a third party other than their employer and a CalSTRS disability benefit is paid, CalSTRS has a right to subrogation and may recover the actuarial equivalent of the amount of CalSTRS benefits

payable to the member because of the injury, less any amounts CalSTRS may be obligated to pay without regard to the actions of the third party. The purpose of these provisions is to ensure members are not receiving two public benefits for the same disability and to recover costs to protect the stability of the Teachers' Retirement Fund.

Labor Code section 3212.88 provides a rebuttable presumption that COVID-19 was contracted on the job and any related disability is compensable for specified essential employees applying for workers' compensation. These provisions sunset as of January 1, 2023.

This Bill:

AB 845 creates a presumption for disability retirements that is applicable to specified members in all retirement systems that are subject to the Public Employees' Pension Reform Act of 2013 (PEPRA). Disability retirements, in whole or in part, on the basis of a COVID-19-related illness would be presumed to have arisen from the member's employment, and unless controverted by evidence, the retirement system board would be required to find in accordance with the presumption. The presumption does not relate to whether a member meets the criteria to be considered disabled. As a result, CalSTRS members that meet the minimum service requirements would experience no change in their access to disability benefits.

The bill, which only remains in effect until January 1, 2023, limits the individuals who may qualify for the presumption to firefighters and other health and safety employees, as well as employees who test positive for COVID-19 during an outbreak at their place of employment, as defined under the Labor Code. CalSTRS members would only qualify for the proposed presumption if they tested positive for COVID-19 during an outbreak at their specific place of employment and became unable to work due to the related illness.

CalSTRS members have been significantly impacted by COVID-19. As of March 18, 2021, CalSTRS witnessed 565 COVID-related member deaths, 43 of which were active member deaths. However, as of the same date, there are no known disability benefit applications for COVID-19 related illness, and disability benefit applications decreased overall in 2020. Given the numerous factors that contribute to COVID-19 infection rates and individual outcomes, it is difficult to estimate how many CalSTRS members would qualify for the presumption proposed by the bill. More importantly, because CalSTRS does not offer separate enhanced industrial disability benefits like other California public retirement systems, members meeting the minimum service credit requirements would not experience improved benefits due to the presumption.

Because of these reasons, it would be highly unlikely for AB 845 to have any effect on CalSTRS' membership and their ability to access disability benefits. However, the bill has the potential to complicate back end processes that follow disability benefits approval and increase administrative and program costs. CalSTRS could experience increased legal costs due to the lack of clarity around the adjudication process for issues relating to the presumption. Because the bill does not clarify that the forum for adjudication of presumption issues is the CalSTRS appeals process, the board could effectively lose its discretionary authority to adjudicate presumption issues and be bound to the decision of another authority. Moreover, in some potential circumstances, the presumption in the bill could prevent CalSTRS from recovering funds from a third party, other than the employer, that is responsible for a member's disability. This would create additional legal costs and limit CalSTRS' ability to protect the fund.

LEGISLATIVE HISTORY

SB 1159 (Hill, Chapter 85, Statutes of 2020) codified Executive Order N-62-20 and created a rebuttable presumption that essential employees who contracted COVID-19 were infected on the job and are, therefore, eligible for workers' compensation due to that illness.

SB 629 (Karnette, Chapter 386, Statutes of 1997) allowed members with less than four years of actual service due to an on-the-job injury or disease to meet the minimum service credit requirement for disability benefits by earning credit while receiving workers' compensation or through the purchase of permissive service credit or redeposit of previously refunded contributions.

SB 1885 (Green, Chapter 1166, Statutes of 1992) created the disability retirement benefit available to members hired on or after October 16, 1992, and allowed then current members to remain under the disability allowance benefit or elect to change to disability retirement.

AB 3409 (Frizzelle, Chapter 380, Statutes of 1988) permitted the board to initiate a program to recover benefits paid because of the death or injury to a member caused by a third party, other than the employer.

AB 543 (Barnes, Chapter 1305, Statutes of 1971) established the disability allowance benefit of 50% of final compensation determined based on actual earnings.

PROGRAM BACKGROUND

As a result of the COVID-19 pandemic, Governor Gavin Newsom declared a state of emergency in March 2020. Shortly thereafter, on May 6, 2020, Governor Newsom issued [Executive Order N-62-20](#), which created a rebuttable workers' compensation presumption for all employees in California. SB 1159 (Hill, Chapter 85, Statutes of 2020) codified the executive order and created a rebuttable presumption that essential employees who contracted COVID-19 were infected on the job and are, therefore, eligible for workers' compensation due to that illness.

When a member applies for a disability benefit through CalSTRS, they are required to provide employment, legal and medical documentation substantiating the impairment and qualification for disability benefits. CalSTRS staff then complete a thorough review to verify that the member qualifies and meets the service credit requirements. Approval for CalSTRS disability benefits is not contingent upon whether the member was injured or became ill on the job. While members who become impaired on the job have the option to meet the minimum service requirement by purchasing service credit, historically, this option has been used infrequently.

Members applying for disability benefits must also report any benefit they receive from workers' compensation if it is for the same impairment that qualifies them for a CalSTRS disability benefit. Though AB 845 creates a presumption for only disability benefits, the bill ties to the COVID-19 workers' compensation presumption in Labor Code sections 3212.87 and 3212.88 that was added by SB 1159. While CalSTRS disability benefits are separate from, and not contingent upon, workers' compensation benefits, the ability to offset disability benefits with workers' compensation helps to mitigate costs to the fund.

FISCAL IMPACT

Program Costs/Savings – Unknown potential costs for cases when the costs to the fund cannot be offset by workers’ compensation benefits or subrogation.

Administrative Costs/Savings – This bill would add complexity to the disability benefits review and appeals process, resulting in new ongoing workload for CalSTRS staff and minor upfront costs to develop new procedures, tracking and communications. Unknown potential costs would also be incurred when issues related to the presumption create additional work related to subrogation.

SUPPORT

Service Employees International Union (SEIU) (Sponsor)
California Teachers Association
Los Angeles County Sheriff’s Department
Professional Engineers in California Government

OPPOSITION

None known.

ARGUMENTS

Pro: May reduce obstacles to qualifying for industrial disability benefits for members who become disabled on the job due to a COVID-19 related illness, though CalSTRS does not provide enhanced disability benefits on the basis of industrial causation.

Con: Could cause confusion and costly administrative issues when the presumption would not actually affect benefits because CalSTRS does not offer what is traditionally considered to be enhanced industrial disability benefits.

May infringe upon the discretionary authority of the board to adjudicate issues relating to the presumption and bind the board to the decision of another authority.

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