

78.5524 Disability retirement for person whose last date of employment was in hazardous position.

The disability retirement provisions contained in this section shall apply to a person whose last date of paid employment was in a hazardous position.

- (1) (a) For purposes of this section:
 1. "Total and permanent disability" means a disability which results in the member's incapacity to engage in any occupation for remuneration or profit. Loss by severance of both hands at or above the wrists, or both feet at or above the ankles, or one (1) hand above the wrist and one (1) foot above the ankle, or the complete, irrevocable loss of the sight of both eyes shall be considered as total and permanent; and
 2. "Hazardous disability" means a disability which results in an employee's total incapacity to continue as an employee in a hazardous position, but the employee is not necessarily deemed to be totally and permanently disabled to engage in other occupations for remuneration or profit.
 - (b) In determining whether the disability meets the requirement of this section, any reasonable accommodation provided by the employer as provided in 42 U.S.C. sec. 12111(9) and 29 C.F.R. pt. 1630 shall be considered.
 - (c) If the board determines that the total and permanent disability of a member receiving a retirement allowance under this section has ceased, then the board shall determine if the member has a hazardous disability as defined by KRS 78.510.
- (2) Any person may qualify to retire on disability, subject to the following:
- (a) The person shall have sixty (60) months of service, twelve (12) of which shall be current service credited under KRS 16.543(1), 61.543(1), or 78.615(1). The service requirement shall be waived if the disability is a total and permanent disability or a hazardous disability and is a direct result of an act in line of duty;
 - (b) For a person whose membership date is prior to August 1, 2004, the person shall not be eligible for an unreduced retirement allowance;
 - (c) The person's application shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment, as defined in KRS 78.510, in a regular full-time position that has been approved as a hazardous position in accordance with KRS 78.5520;
 - (d) The person shall receive a satisfactory determination pursuant to KRS 61.665; and
 - (e) A person's disability application based on the same claim of incapacity shall be accepted and reconsidered for disability if accompanied by new objective medical evidence. The application shall be on file in the retirement office no later than twenty-four (24) months after the person's last day of paid employment in a regular full-time hazardous position.

- (3) Upon the examination of the objective medical evidence by licensed physicians pursuant to KRS 61.665, it shall be determined that:
- (a) The incapacity results from bodily injury, mental illness, or disease. For purposes of this section, "injury" means any physical harm or damage to the human organism other than disease or mental illness;
 - (b) The incapacity is deemed to be permanent; and
 - (c) The incapacity does not result directly or indirectly from:
 - 1. Injury intentionally self-inflicted while sane or insane; or
 - 2. Bodily injury, mental illness, disease, or condition which pre-existed membership in the system or reemployment, whichever is most recent, unless:
 - a. The disability results from bodily injury, mental illness, disease, or a condition which has been substantially aggravated by an injury or accident arising out of or in the course of employment; or
 - b. The person has at least sixteen (16) years' current or prior service for employment with employers participating in the County Employees Retirement System or the Kentucky Retirement Systems.

For purposes of this subparagraph, "reemployment" shall not mean a change of employment between employers participating in the County Employees Retirement System or the Kentucky Retirement Systems with no loss of service credit.

- (4) (a) 1. An incapacity shall be deemed to be permanent for the purpose of hazardous disability if it is expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months from the person's last day of paid employment in a hazardous position.
2. The determination of a permanent incapacity for the purpose of hazardous disability shall be based on the medical evidence contained in the member's file and the member's residual functional capacity and physical exertion requirements.
3. The determination of a total and permanent incapacity shall be based on the medical evidence contained in the member's file and the member's residual functional capacity.
- (b) The person's residual functional capacity shall be the person's capacity for work activity on a regular and continuing basis. The person's physical ability shall be assessed in light of the severity of the person's physical, mental, and other impairments. The person's ability to walk, stand, carry, push, pull, reach, handle, and other physical functions shall be considered with regard to physical impairments. The person's ability to understand, remember, and carry out instructions and respond appropriately to supervision, coworkers, and work pressures in a work setting shall be considered with regard to mental impairments. Other impairments, including skin impairments, epilepsy, visual sensory impairments, postural and manipulative limitations, and environmental restrictions, shall be

considered in conjunction with the person's physical and mental impairments to determine residual functional capacity.

- (c) The person's physical exertion requirements shall be determined based on the following standards:
 - 1. Sedentary work shall be work that involves lifting no more than ten (10) pounds at a time and occasionally lifting or carrying articles such as large files, ledgers, and small tools. Although a sedentary job primarily involves sitting, occasional walking and standing may also be required in the performance of duties.
 - 2. Light work shall be work that involves lifting no more than twenty (20) pounds at a time with frequent lifting or carrying of objects weighing up to ten (10) pounds. A job shall be in this category if lifting is infrequently required but walking and standing are frequently required, or if the job primarily requires sitting with pushing and pulling of arm or leg controls. If the person has the ability to perform substantially all of these activities, the person shall be deemed capable of light work. A person deemed capable of light work shall be deemed capable of sedentary work unless the person has additional limitations such as the loss of fine dexterity or inability to sit for long periods.
 - 3. Medium work shall be work that involves lifting no more than fifty (50) pounds at a time with frequent lifting or carrying of objects weighing up to twenty-five (25) pounds. If the person is deemed capable of medium work, the person shall be deemed capable of light and sedentary work.
 - 4. Heavy work shall be work that involves lifting no more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing up to fifty (50) pounds. If the person is deemed capable of heavy work, the person shall also be deemed capable of medium, light, and sedentary work.
 - 5. Very heavy work shall be work that involves lifting objects weighing more than one hundred (100) pounds at a time with frequent lifting or carrying of objects weighing fifty (50) or more pounds. If the person is deemed capable of very heavy work, the person shall be deemed capable of heavy, medium, light, and sedentary work.
- (5) Upon disability retirement, an employee may receive a disability retirement allowance payable during his or her lifetime which shall be:
 - (a) For a member who began participating in the system prior to August 1, 2004, an annual retirement allowance payable monthly and determined in the same manner as for retirement at his or her normal retirement date with years of service and final compensation being determined as of the date of his or her disability, except that service shall be added beginning with his or her last date of paid employment and continuing to his or her fifty-fifth birthday. The maximum service credit added shall not exceed the total service the member had on his or her last day of paid employment, and the maximum service credit for calculating his or her retirement allowance, including his or her total service and service added under this

section, shall not exceed twenty (20) years;

- (b) For a member who begins participating on or after August 1, 2004, but prior to January 1, 2014, the higher of twenty-five percent (25%) of the member's monthly final rate of pay or the retirement allowance determined in the same manner as for retirement at his or her normal retirement date with years of service and final compensation being determined as of the date of his or her disability; or
 - (c) For a member who begins participating on or after January 1, 2014, in the hybrid cash balance plan as provided by KRS 78.5516, the disability retirement allowance shall be the higher of twenty-five percent (25%) of the member's monthly final rate of pay or the retirement allowance determined in the same manner as for retirement at his or her normal retirement date under KRS 78.5516.
- (6) If the member receives a satisfactory determination of hazardous disability pursuant to KRS 61.665 and the disability is the direct result of an act in line of duty as defined in KRS 78.510, the member's retirement allowance shall be calculated as follows:
- (a) For the disabled member, benefits as provided in subsection (5) of this section except that the monthly retirement allowance payable shall not be less than twenty-five percent (25%) of the member's monthly final rate of pay; and
 - (b) For each dependent child of the member on his or her disability retirement date, who is alive at the time any particular payment is due, a monthly payment equal to ten percent (10%) of the disabled member's monthly final rate of pay; however, total maximum dependent children's benefit shall not exceed forty percent (40%) of the member's monthly final rate of pay. The payments shall be payable to each dependent child, or to a legally appointed guardian or as directed by the system.
- (7) If the member receives a satisfactory determination of total and permanent disability pursuant to KRS 61.665 and the disability is the direct result of an act in line of duty as defined in KRS 78.510, the member's retirement allowance shall be calculated as follows:
- (a) For the disabled member, the benefits as provided in subsection (5) of this section, except that the monthly retirement allowance payable shall not be less than seventy-five percent (75%) of the member's monthly average pay; and
 - (b) For each dependent child of the member on his or her disability retirement date, who is alive at the time any particular payment is due, a monthly payment equal to ten percent (10%) of the disabled member's monthly average pay, except that:
 - 1. Member and dependent children payments under this subsection shall not exceed one hundred percent (100%) of the member's monthly average pay; and
 - 2. Total maximum dependent children's benefits shall not exceed twenty-five percent (25%) of the member's monthly average pay while the member is living and forty percent (40%) of the member's

monthly average pay after the member's death. The payments shall be payable to each dependent child, or to a legally appointed guardian or as directed by the system, and shall be divided equally among all dependent children.

- (8) No benefit provided in this section shall be reduced as a result of any change in the extent of disability of any retired member who is normal retirement age or older.
- (9) If a regular full-time member in a hazardous position has been approved for benefits under a hazardous disability, the board shall, upon request of the member, permit the member to receive the hazardous disability allowance while accruing benefits in a nonhazardous position, subject to proper medical review of the nonhazardous position's job description by the Authority's medical examiner.

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