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**SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT****Senator Dave Cortese, Chair****2021 - 2022 Regular**

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<b>Bill No:</b>	AB 845	<b>Hearing Date:</b>	June 7, 2021
<b>Author:</b>	Rodriguez		
<b>Version:</b>	March 30, 2021		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Glenn Miles		

**SUBJECT:** Disability retirement: COVID-19: presumption

**KEY ISSUE**

Should the Legislature establish a rebuttable presumption, until January 1, 2023, that a COVID-19 related disability is employment-related for purposes of determining a disability retirement for public retirement system members?

**ANALYSIS**

**Existing law:**

1. Provides a non-service connected (i.e., non-industrial) disability retirement for members of the California Public Employees' Retirement System (CalPERS) who meet service requirements and are incapacitated for the performance of duty, as specified. (Government Code § 21150 et seq.).
2. Authorizes a service-connected (i.e., industrial) disability retirement benefit for specified CalPERS members (usually safety members but also certain miscellaneous members) greater than the non-service disability benefit that also carries certain potential federal tax advantages. (GC §21151 et seq.)
3. Allows 37 Act county retirement systems to offer a non-service connected disability retirement to their members who are permanently incapacitated for the performance of their duties but not because of injury or disease arising out of their employment. (GC § 31725.8 et seq.)
4. Authorizes 37 Act county retirement systems to provide a service-connected disability retirement to their members who are permanently incapacitated for the performance of duty resulting from employment and upon meeting service requirements. (GC § 31720 et seq.)
5. Provides members of the California State Teachers' Retirement System (CalSTRS) who meet service requirements one of two forms of non-industrial disability retirement depending on when they became members. (Education Code §24001 et seq.; EC §24100 et seq.)
6. Requires members (or employers on behalf of the member) generally to apply for a disability retirement and show that their injury, whether industrial or not, prevents them from performing their job duties. (see e.g., EC § 24102, § 24102 et seq.)

7. Creates various rebuttable presumptions whereby the pension system must presume that the member's specified condition or injury arose out of and in the course of employment. Such a presumption is significant in those systems that offer an industrial disability retirement benefit because it may qualify the member for the industrial retirement benefit (which may eliminate service requirements, provide a higher monthly pension benefit, and result in federal tax exemption treatment). However, the pension system can rebut the presumption with evidence that the injury did not arise from an employment-related event. (see e.g., GC § 31720.5 et seq.)

**This bill:**

- 1) Requires a public retirement system to presume that the disability of a member who retires for disability on the basis, in whole or in part, of a COVID-19-related illness arose out of, or in the course of, the member's employment.
- 2) Allows evidence to the contrary to rebut the presumption described above but unless controverted, the presumption shall bind the applicable retirement system governing board.
- 3) Defines "COVID-19" to mean "the 2019 novel coronavirus disease".
- 4) Defines "Member" to mean a member of a public retirement system who meets either of the following:
  - The member's job classification is either described in Labor Code (LC) § 3212.87 (a) or is the functional equivalent of a job classification described in that subdivision.<sup>1</sup>
  - The member's job classification is neither described in LC § 3212.87(a) nor is the functional equivalent of a job classification described in LC § 3212.87(a), but the member tests positive during an outbreak at the member's specific place of employment pursuant to definitions set forth in LC § 3212.88 (m).<sup>2</sup>
- 5) Restricts the definition of "member" for purposes of this bill only to a member of a public retirement system subject to the Public Employees' Pension Reform Act of 2013 (PEPRA).
- 6) Provides that this bill's provisions shall remain in effect only until January 1, 2023, and as of that date is repealed.

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<sup>1</sup> LC § 3212.87 lists a wide array of positions frequently described as "first responders" that qualify for Workers' Compensation benefits from injury caused, as specified, by COVID-19, including many employees that are not eligible for industrial disability retirement benefits from a California public retirement system, although some may qualify for non-industrial disability retirement benefits.

<sup>2</sup> LC § 3212.88 establishes the specified COVID-19 Workers Compensation presumption for general employees who are not "first responders". LC § 3212.88(m) defines the terms "COVID-19", "test" or "testing", "specific place of employment", and "outbreak", as specified.

## COMMENTS

**1. Need for this bill?****Background.**Workers Compensation COVID-19 Presumption

This bill is modeled after SB 1159 (Hill), Chapter 85, Statutes of 2020. That bill created a rebuttable presumption, until 2023, that illness or death related to COVID-19 is an occupational injury and therefore such an injury qualifies the employee for workers' compensation benefits. The SB 1159 presumption is applicable to specified public safety, firefighter and medical occupations, and certain statutorily specified miscellaneous classifications.

Distinction Between Workers Compensation and Disability Retirement Benefits

Workers compensation benefits arise out of *employment-related* injuries and provide qualified employees with medical, temporary compensation, permanent compensation, supplemental job displacement, and death benefits. Because receipt of workers compensation benefits hinges on the condition or injury arising from employment, a presumption that the condition or injury is job-related is very significant.

Although public pension systems generally have some form of *non-industrial* disability retirement benefit, not all public pension systems have *industrial disability* retirement benefits (i.e., for employment-related injury). For those that do, not all members are eligible for the industrial retirement benefits. Generally, industrial disability benefits are restricted to firefighters, peace officers, and other safety members although some related miscellaneous members are also statutorily eligible. For those members who *are* eligible, the presumption makes their application and eventual approval process easier. For those who are only eligible for *non-industrial* disability, a presumption that their condition or injury is employment-related is relatively irrelevant.

Disability benefits offered by public pension funds are generally not dependent on the injury being job-related. A member will receive a disability retirement benefit if the member meets specified service requirements (i.e., time in membership) and the injury prevents the member from performing the duties of the member's position. Thus, a presumption that the injury is employment-related is not determinative for receiving the disability benefit. *Some* members may be eligible for a better benefit or may not have to meet the service requirements if the injury is employment-related (i.e., an industrial disability). Statute specifies which member classifications are eligible for this industrial disability retirement benefit.

For members who are eligible, this bill's COVID-19 presumption would be beneficial because they would not have to prove their injury was job-related (unless the employer offered evidence that the injury was not COVID-19 related). For other members who are not eligible for industrial disability retirement benefits, the presumption cannot make them eligible.

**2. Proponent Arguments**

According to the bill's sponsor, Service Employees International Union, California State Council (SEIU CA),

[This bill] does not change eligibility for disability nor expand benefits under current law. This bill merely treats workers exactly the same as they are treated under workers compensation law. The presumption is rebuttable by the employer if there is evidence that the worker may have more likely contracted the virus outside the workplace.

According to the California Professional Firefighters,

While [the Workers Compensation COVID-19] presumption is critical to provide immediate care to those who contract COVID-19, it does not address the ongoing symptoms and lingering health issues created by "long-haul" COVID, which affects a certain percentage of those infected long past the typical time frame and which has presented baffling and devastating symptoms. Many of those suffering from longer-term COVID may be forced to retire early due to their illness.

**3. Opponent Arguments:**

None received.

**4. Prior Legislation:**

Chapter 85, Statutes of 2020 (Senate bill 1159, Hill) creates a rebuttable presumption that illness or death related to COVID-19 (novel coronavirus) is an occupational injury and therefore makes an affected employee eligible for workers' compensation benefits, as specified.

**SUPPORT**

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

**OPPOSITION**

None on file.

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