

TITLE 1: GOVERNMENT
DIVISION 8: PUBLIC EMPLOYMENT

§ 8347. Disability: Administrative Provisions.

(a) A member shall be considered totally and permanently disabled after the board receives written certification by at least two licensed and practicing physicians selected by the board, at least one of whom is a specialist in the area of the disability being evaluated, that the member is totally and permanently disabled for the further performance of the duties of any assigned position in the service of the government. If, upon consideration of the reports of the physicians and any other evidence presented to the board by the member or others interested therein, the board finds the member to be totally and permanently disabled, it shall grant the member a disability retirement annuity upon written certification that the member has been separated from the service of the employer because of total disability of such nature as to reasonably prevent further service for the employer, and as a consequence is not entitled to compensation from the government.

(b) At least once each year during the first five years following the allowance of a disability annuity to any member, and at least once in every three-year period thereafter, the board shall require any disability annuitant to undergo a medical examination to be made at the place of residence of the annuitant, or at any other place mutually agreed upon, by a physician or physicians engaged by the board. If any examination indicates that the annuitant is no longer physically or mentally incapacitated for service, or that the annuitant is engaged or is able to engage in a gainful occupation, payments of the disability annuity by the fund shall be discontinued.

(c) Notwithstanding the foregoing section, if the annuitant becomes able to resume a gainful occupation but the earnings therefrom are less than the salary at the date of retirement or the salary currently paid for similar positions, whichever is lower, the board shall continue the disability allowance in an amount which when added to the annuitant's earnings from a gainful occupation, shall not exceed his or her salary at the date of retirement.

(d) If any disability annuitant refuses to submit to the examinations as herein provided, payments by the fund shall be discontinued until the member submits to such examinations. If the refusal continues for one year, all rights of the member in any disability annuity shall be permanently revoked by the board.

(e) Any disability annuitant restored to active service shall have deductions taken for the fund and upon subsequent retirement have his retirement allowance based upon all allowable service, including that upon which the disability allowance is based.

(f) An occupational disability is a disability which is the natural and proximate result of an accident occurring while in the performance of duty at some definite time or place, or as the cumulative result of some occupational hazard, through no willful negligence on the part of the employee.

(g) If any member who receives any payment when a disability has been sustained under circumstances creating in some person or entity a legal liability to pay damages for loss of income, and the disabled member elects to claim a disability annuity, the fund shall be subrogated to the rights of the disabled member insofar as any claim for loss of wages exist. In the event of such subro-

TITLE 1: GOVERNMENT
DIVISION 8: PUBLIC EMPLOYMENT

gation, the board in its sole discretion may decide what action to take, if any, to enforce such rights as it has attained by the subrogation. Such subrogation shall not limit or effect rights to other claims, including but not limited to claims for pain and suffering, mental anguish, loss of consortium that the member may have against the person or entity causing the disability. Any recovery by way of such subrogation in excess of the actuarially calculated present value of the disability annuity shall be returned to the member.

(h) Any annuity received by a class I or class II member as a result of any disability shall be reduced by an amount equal to any sum the member is entitled to from U.S. Social Security, any workers' compensation insurance or any other insurance covering such disability.

Source: PL 6-17, ch. 3, § 8337, modified; (a), (b), (d), and (h) amended by PL 13-60, § 6(c) and (i), respectively; (a) and (b) amended by PL 16-19 § 2.

Commission Comment: PL 13-60 was enacted on December 5, 2003 and contained, in addition to other enactments, a short title, findings and purpose, severability, and savings clause provisions. See the comment to 1 CMC § 8253 regarding PL 13-60. PL 16-19 took effect on November 7, 2008 and included severability and savings clause provisions as well as the following:

Section 1. Findings and Purpose. The Commonwealth Legislature finds that Public Law 13-60 amended, among other provisions, Title 1 CMC § 8347, to require that potential disabled retirees be evaluated by two physicians and a vocational rehabilitation counselor. The Legislature finds that this requirement has created a hardship for some retirees and for the Retirement Fund because a pool of qualified vocational rehabilitation counselors is not always readily available.

The Legislature further finds that requiring two physicians, one of whom is a specialist in the area of the disability being evaluated, to certify the disability is adequate protection for the N.M.I. Retirement Fund and its members.