

78.5522 Disability retirement for person whose last date of employment was in nonhazardous position.

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

- (1) Any person may qualify to retire on disability, subject to the following conditions:
 - (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);
 - (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 in a regular full-time position, as defined in KRS 78.510; and
 - (d) The person shall receive a satisfactory determination pursuant to KRS 61.665.
- (2) A person's disability reapplication based on the same claim of incapacity shall be accepted and reconsidered for disability if accompanied by new objective medical evidence. The reapplication 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 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 person, since his or her last day of paid employment, has been mentally or physically incapacitated to perform the job, or jobs of like duties, from which he or she received his or her last paid employment. In determining whether the person may return to a job of like duties, any reasonable accommodation by the employer as provided in 42 U.S.C. sec. 12111(9) and 29 C.F.R. pt. 1630 shall be considered;
 - (b) The incapacity is a result of 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;
 - (c) The incapacity is deemed to be permanent; and
 - (d) The incapacity does not result directly or indirectly from bodily injury, mental illness, disease, or condition which pre-existed membership in the system or reemployment, whichever is most recent. For purposes of this subsection, reemployment shall not mean a change of employment between employers participating in the Kentucky Retirement Systems or the County Employees Retirement System with no loss of service credit.
- (4) Subsection (3)(d) of this section shall not apply if:
 - (a) The incapacity is a result of bodily injury, mental illness, disease, or 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 Kentucky Retirement

Systems or the County Employees Retirement System.

- (5) (a)
 1. An incapacity shall be deemed to be permanent 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 regular full-time position.
 2. The determination of a permanent incapacity shall be based on the medical evidence contained in the member's file and the member's residual functional capacity and physical exertion requirements.
- (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.
- (6) Upon disability retirement, an employee may receive a disability retirement allowance during his or her lifetime which shall be:
 - (a) For a member who began participating 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 credit shall be added to the person's total service beginning with his or her last date of paid employment and continuing to his or her sixty-fifth birthday; however, the maximum service credit added shall not exceed the total service the person had upon his or her last day of paid employment, and the maximum combined service credit for calculating his or her disability retirement allowance, including total service and added service, shall not exceed twenty-five (25) years. If, however, a person covered by this paragraph has accumulated twenty-five (25) or more years of total service, he or she shall receive added service necessary to bring his or her combined service credit, including total and added service, to twenty-seven (27) years;
 - (b) For a member who began participating on or after August 1, 2004, but prior to January 1, 2014, the higher of twenty percent (20%) of the member's monthly final rate of pay or the monthly 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 78.5512, the higher of twenty percent (20%) 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 78.5512.
 - (7) 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.
 - (8) A person whose last day of paid employment was in a nonhazardous position who is totally and permanently disabled due to a duty-related injury may be eligible for benefits based upon the definitions, criteria, and requirements specified by KRS 61.621.

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