

## **AGENDA**

### **THE MEETING OF THE**

### **DISABILITY PROCEDURES AND SERVICES COMMITTEE**

**and**

### **BOARD OF RETIREMENT\***

### **LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION**

**300 NORTH LAKE AVENUE, SUITE 810  
PASADENA, CA 91101**

**9:00 A.M., WEDNESDAY, FEBRUARY 3, 2016 \*\***

#### **COMMITTEE MEMBERS:**

Vivian H. Gray, Chair  
William de la Garza, Vice Chair  
Yves Chery  
Les Robbins  
David Muir, Alternate

#### **I. APPROVAL OF THE MINUTES**

A. Approval of the minutes of the regular meeting of January 6, 2016.

#### **II. PUBLIC COMMENT**

#### **III. ACTION ITEMS**

#### **IV. FOR INFORMATION**

A. Presentation by Ricki Contreras, Division Manager and Frank Boyd, Senior Staff Counsel – Accommodations as it Relates to Disability Retirement.

B. Discussion on the content of the Disability Retirement Evaluation Report as requested by David Muir.

#### **V. GOOD OF THE ORDER**

(For information purposes only)

#### **VI. ADJOURNMENT**

**\*The Board of Retirement has adopted a policy permitting any member of the Board to attend a standing committee meeting open to the public. In the event five (5) or more members of the Board of Retirement (including members appointed to the Committee) are in attendance, the meeting shall constitute a joint meeting of the Committee and the Board of Retirement. Members of the Board of Retirement who are not members of the Committee may attend and participate in a meeting of a Board Committee but may not vote on any matter discussed at the meeting. The only action the Committee may take at the meeting is approval of a recommendation to take further action at a subsequent meeting of the Board.**

**\*\*Although the meeting is scheduled for 9:00 a.m., it can start anytime thereafter, depending on the length of the Board of Retirement meeting. Please be on call.**

**Assistive Listening Devices are available upon request. American Sign Language (ASL) Interpreters are available with at least three (3) business days notice before the meeting date.**

**Any documents subject to public disclosure that relate to an agenda item for an open session of the Committee, that are distributed to members of the Committee less than 72 hours prior to the meeting, will be available for public inspection at the time they are distributed to a majority of the Committee, at LACERA's offices at 300 North Lake Avenue, suite 820, Pasadena, California during normal business hours from 9:00 a.m. to 5:00 p.m. Monday through Friday.**

**Persons requiring an alternative format of this agenda pursuant to Section 202 of the Americans with Disabilities Act of 1990 may request one by calling the Disability Retirement Services Division at 626-564-2419 from 7:30 a.m. to 5:00 p.m. Monday through Friday, but no later than 48 hours prior to the time the meeting is to commence.**

MINUTES OF THE MEETING OF THE  
DISABILITY PROCEDURES AND SERVICES COMMITTEE  
and  
Board of Retirement\*\*

LOS ANGELES COUNTY EMPLOYEES RETIREMENT ASSOCIATION  
GATEWAY PLAZA - 300 N. LAKE AVENUE, SUITE 810, PASADENA, CA 91101

Wednesday, January 6, 2016, 10:18 A.M. – 10:36 A.M.

**COMMITTEE MEMBERS**

PRESENT: Vivian H. Gray, Chair  
William de la Garza, Vice Chair  
William R. Pryor  
Les Robbins  
Yves Chery, Alternate

ABSENT: None

**ALSO ATTENDING:**

BOARD MEMBERS AT LARGE

David L. Muir  
Ronald A. Okum  
Anthony Bravo  
Shawn R. Kehoe  
Alan Bernstein  
Joseph Kelly  
Vito M. Campese, M.D.

STAFF, ADVISORS, PARTICIPANTS

Gregg Rademacher  
JJ Popowich  
Steven Rice  
Vincent Lim  
Eugenia Der  
Allison E. Barrett  
Frank Boyd  
Sandra Cortez  
Angie Guererro  
Maria Muro  
Maisha Coulter

Ricki Contreras  
Tamara Caldwell  
Vickie Neely  
Kerri Wilson  
Anna Kwan  
Debbie Semnanian  
Mario Garrido  
Debra Martin  
Marco Legaspi  
Justin Stewart  
Karla Sarni

Darren Huey  
Shamila Freeman  
Hernan Barrientos  
Ricardo Salinas  
Ruby Minjares  
Nichelle Porter  
Danny Hang  
Barbara Tuncay

ATTORNEYS

Thomas J. Wicke  
Michael Treger

GUEST SPEAKER

None

The meeting was called to order by Chair Gray at 10:18 a.m.

I. APPROVAL OF THE MINUTES

A. Approval of minutes of the regular meeting of November 4, 2015

At the request of the chair the minutes of November 4, 2015, were corrected to reflect no members absent.

Mr. de la Garza made a motion, Ms. Gray seconded, to approve the minutes of the regular meeting of November 4, 2015. The motion passed unanimously.

II. PUBLIC COMMENT

III. ACTION ITEMS

A. Consider Application of Jason J. Chiu, M.D.

Mr. Robbins made a motion, Ms. Gray seconded, to approve to accept staff's recommendation and submit the application of Jason J. Chiu, M.D. to the Board of Retirement for approval to the LACERA Panel of Examining Physicians. The motion passed unanimously.

#### IV. FOR INFORMATION

##### A. Transcript request for Disability Retirement Appeals

Committee members discussed alternatives for the delivery of transcripts.

Ms. Gray indicated a summary of the relevant medical evidence should be included.

Mr. Muir requested tabs or bate stamping of documents be considered. Ms. Contreras indicated bate stamping or tabbing are options to be considered.

Mr. Bernstein suggested a short memo specifying the relevant portions of the transcripts be attached. Each party would submit the section to be highlighted.

Ms. Contreras clarified that a memo is currently included which indicates the exhibits and portions of the transcripts to be highlighted.

Mr. Boyd suggested that the Board review the objections when filed as they outline the arguments and most salient facts each party would like the Trier of Fact to consider. Mr. Chery agreed the objections are helpful.

Staff noted the suggestions and request made by several of the Committee members.

#### V. GOOD OF THE ORDER

The committee thanked Mr. Boyd for the information he provided related to request for transcripts and wished everyone a Happy New Year.

#### VI. ADJOURNMENT

With no further business to come before the Disability Procedures and Services Committee, the meeting was adjourned at 10:36 a.m.

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# ACCOMMODATION AS IT RELATES TO DISABILITY RETIREMENT



**Applicable Laws**



**Roles**



**The Process**

# **SPEAKERS**

Ricki Contreras, Manager  
Disability Retirement Services Division

Frank Boyd, Senior Staff Counsel  
Legal Division

# TODAY'S OBJECTIVES

- Review applicable laws related to Accommodation
- Gain a clear understanding of the role of LACERA and the Employer during the Process
- Review and discuss the Process



# ACCOMMODATION CASE LAW

Where there are permanent light-duty assignments available, applicants who are incapacitated from their usual duties should not be retired if they can perform duties in a given light-duty assignment within the department.

*Barber v. Retirement Board* (1971) 18 Cal.App.3d 273, 278;

*Craver v. City of Los Angeles* (1974) 42 Cal.App.3d 76, 79-80;

*Harmon v. Board of Retirement* (1976) 62 Cal.App.3d 689, 79-80;

*Schrier v. San Mateo County Employees' Retirement Assn.*, (1983) 142 Cal.App.3d 957, 961-962.

# ACCOMMODATION CASE LAW (CONT.)

## **However,**

the courts have held that it is not enough to deny a disability retirement by showing that an applicant is able to do some other kind of job. The duties of the accommodated position must be the kind of duties performed by others within the same job classification.

*Schrier v. San Mateo County Employees' Retirement Assn.*, *supra*, 142 Cal.App.3d 957, 961-962;  
*Curtis v. Board of Retirement* (1986) 177 Cal.App.3d 293, 297-298.

# ACCOMMODATION CASE LAW (CONT.)

In the recent *Meyers* decision, the court confirmed that a retirement board can make a post-retirement determination that an applicant was capable of performing an accommodated position and deny the benefit, so long as it bases its finding on evidence establishing the employer could have and would have accommodated the applicant.

*Meyers v. Bd. of Admin. for the Federated City Employees Ret. Fund* (2014) 224 Cal.App.4<sup>th</sup> 250, 260.

# ADA/FEHA

- Americans with Disabilities Act (ADA) - Federal law which states that no employer shall discriminate against a qualified individual on the basis of disability in regard to terms, conditions, and privileges of employment
- Fair Employment and Housing Act (FEHA) - California law which states that it is unlawful to discriminate against a person because of physical disability, mental disability, or medical condition.

# LABOR CODE

The California Workers' Compensation System was established by state law to provide industrially injured employees with medical treatment and a variety of other benefits including temporary, permanent, and death benefits.

- In addition, it is intended to ensure that an employer does not discriminate against an employee who sustains an industrial injury and files a claim for benefits **LC 132(a)**.
- The process is predicated on a **no-fault system** that ensures liberally construed laws by the courts with the purpose of extending benefits for the protection of persons injured in the course of their employment **LC 3202**.

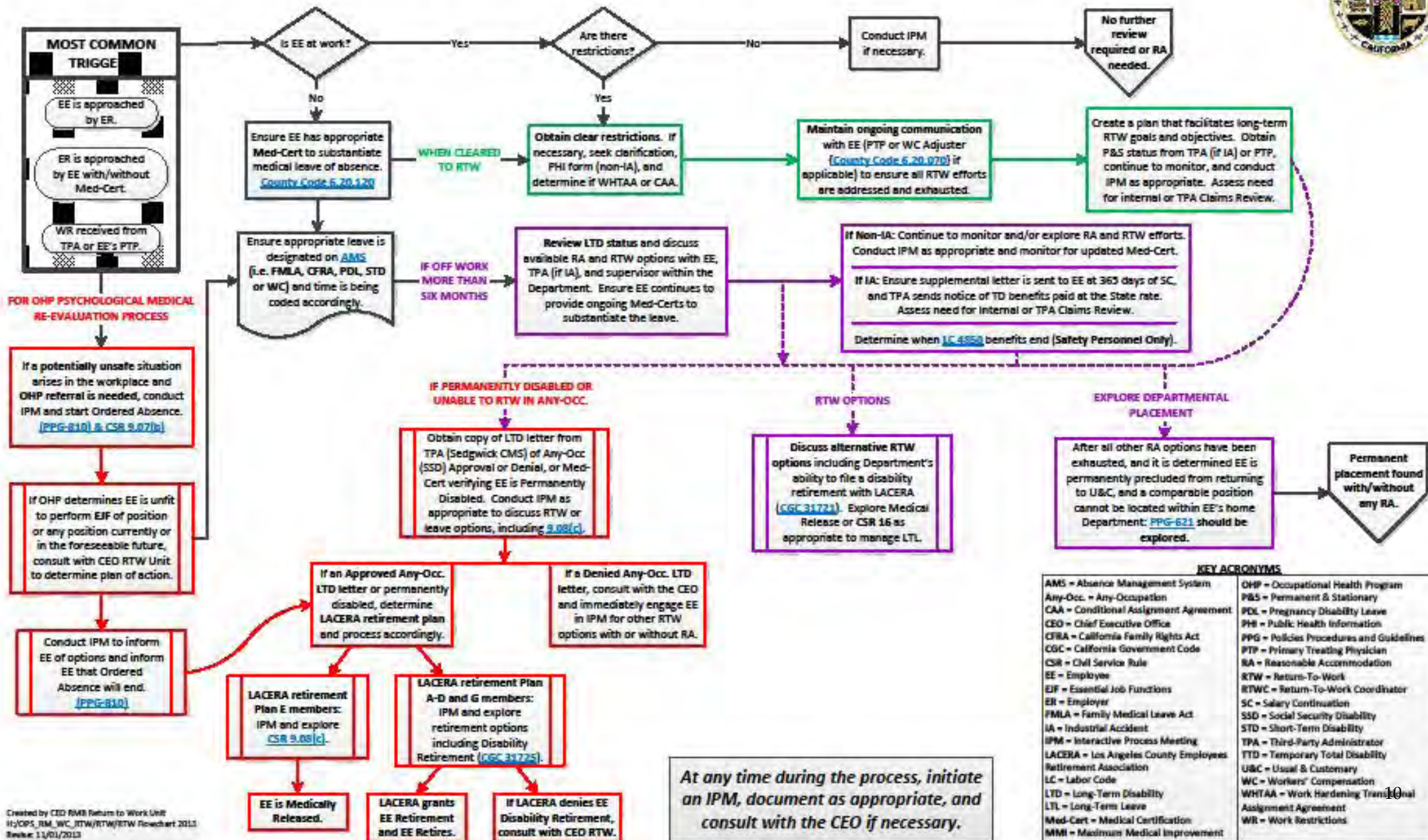
# COUNTY OF LOS ANGELES EMPLOYER ROLE

- Establish medical standards for County employment
- Manage employee's medical leave
- Engage in the Interactive Process





# County of Los Angeles RTW Flow-Chart



# INTERACTIVE PROCESS

Under the ADA and FEHA, employers **must** engage in a timely, good-faith interactive process with an employee or job applicant in order to explore **reasonable accommodation** for a known physical or mental disability or medical condition.

Both the employer or other covered entity and the applicant, employee or the individual's representative **shall exchange essential information instrumental to the meeting without delay or obstruction of the process.**



# INTERACTIVE PROCESS (CONT.)

## Determining the Availability of Accommodation

- An employee requests and can provide appropriate documentation to support a change in the manner in which a task should be performed.
- Employer receives work restrictions from the third-party administrator or employee's treating physician.

## Exploring Disability Benefit Options

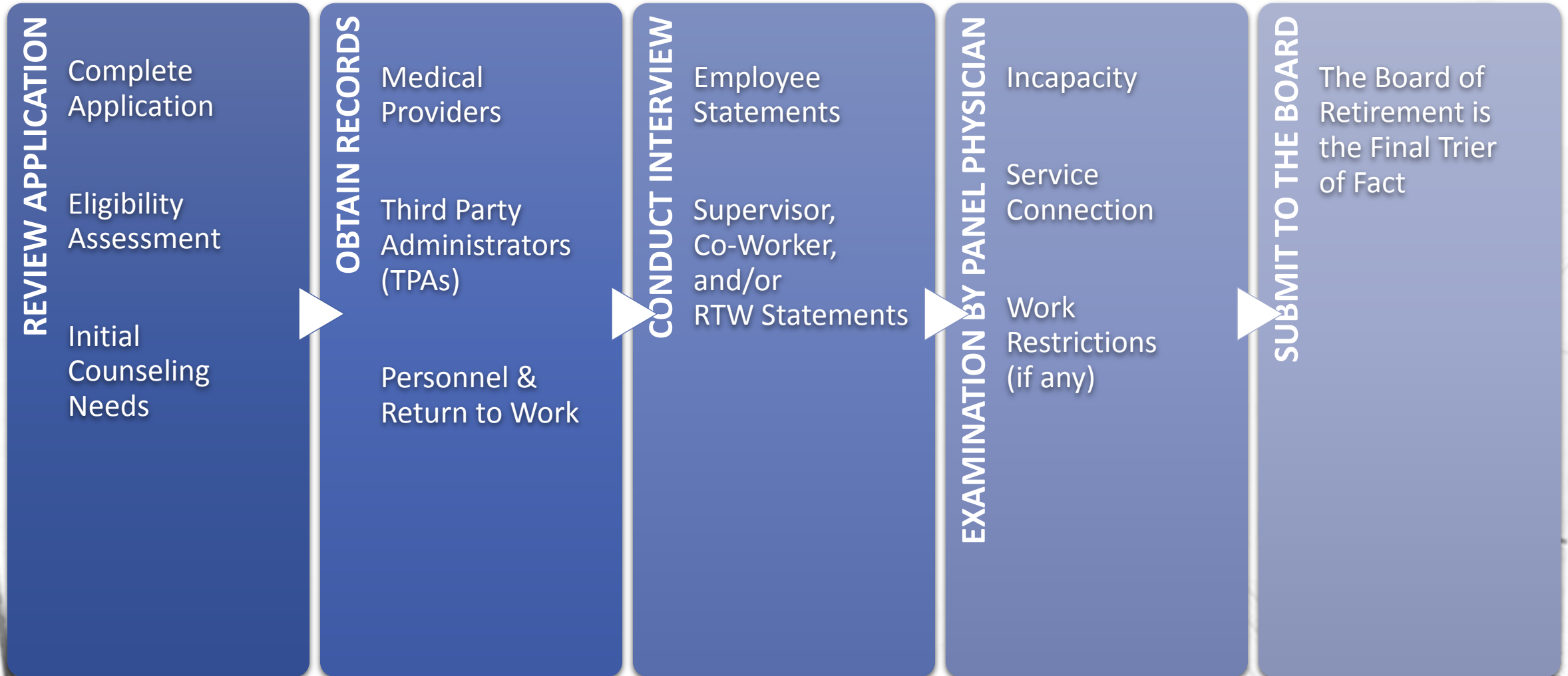
- LACERA may actively participate in the Interactive Process at the request of the department or member.

# LACERA ROLE

- Educate members and departments on the disability retirement process
- Investigate and adjudicate applications for disability retirement



# DISABILITY RETIREMENT PROCESS



# DISCOVERY: OBTAINING RECORDS

After application has been received, records are obtained prior to interviewing:

- Medical/Psychiatric Records
- Personnel Records
  - Time Cards/Payroll Records
  - **Accommodation Documents**
  - Performance Evaluations
  - Grievance Filings, Internal Investigations, and/or Civil Service Commission Records
- Worker's Compensation Files
  - Benefit Awards
  - **Notice of Work Restrictions**
  - List of All Claims Filed



# DISCOVERY: APPLICANT INTERVIEW

The interview is conducted to obtain the following information:

- Nature of Disability
- Summary of Workers' Compensation Claims
- Occupational History/Physical Requirements
- **Light Duty/Accommodated Assignments**
- Past Medical History
- History of Injury/Illness and Treatment
- Current Symptoms/Complaints
- Non-Industrial Factors
- Delays in Filing the Application
- Witness Statements





# DOCUMENTING JOB DUTIES

## OCCUPATIONAL HISTORY/PHYSICAL REQUIREMENTS:

### **JOB DUTIES:** Carpenter — LAC/USC Carpenter Unit

- Performed construction carpentry, such as partitioning walls, erecting framing, and setting up suspension and hard ceilings
- Performed general building maintenance and repairs
- Maintained materials, tools, and equipment
- Fitted and installed doors, windows, and screens

**Physical Demands:** Worked a 9/40 work schedule, used power and manual tools all throughout the day; pushed a 300 pound tool cart during every assignment; frequent lifting up to 40 pounds, reaching and lifting overhead, pushing, pulling, grasping, and climbing ladders; and intermittent squatting and kneeling

### **TEMPORARY MODIFIED JOB DUTIES** October 6, 2014 to Present

- Panel physician (orthopedist) restricted applicant from pushing, pulling, and lifting anything greater than 10 pounds
- At the applicant's discretion, accepts assignments that are within his restrictions
- Any assignment he was not able to perform is given to someone else

# DISCOVERY: WITNESS STATEMENTS

## **Investigator contacts supervisor and/or co-workers:**

- Statements to verify the witnessing of injury/illness
- “Actual job duties”
- Physical requirements
- Frequency of movements
- Ability to perform duties

## **Investigator contacts Return to Work Coordinator:**

- **Statements regarding accommodation**



# DOCUMENTING WITNESS STATEMENTS

## WITNESS STATEMENTS:

**Jane Doe**, Facilities Management  
Statement Obtained: April 23, 2015

- Ms. Doe has supervised the member since 2007, while he performed modified and regular duties.
- Witness confirmed applicant's usual and customary as well as his temporary modified duties as related to staff by applicant. Ms. Doe advised applicant's jobs and related tasks are reported to Human Resources to ensure applicant is working within his restrictions.

**Peppermint Patty**, Return to Work Coordinator  
Statement Obtained: April 23, 2015

- Applicant is working modified duty pending the outcome of his disability retirement application.



# PANEL MEDICAL EXAMINATION

Board Panel Physicians are provided with Guidelines for their report

- The mechanism of injury
- Show history and track treatment rendered
- General medical history

When the panel physician's report arrives, the investigator will see if any **work restrictions** were imposed by the panel physician.

The **investigator will contact the applicant's department to see if the work restrictions can be accommodated.**



# BOARD PANEL PHYSICIAN: RESTRICTIONS POST EXAMINATION

- Board Panel Physician states member can perform their usual and customary duties of their position with reasonable accommodation of restrictions x, y, and z.
- LACERA Disability Investigator contacts RTW and asks if restrictions can be accommodated.
- If restrictions can be accommodated, RTW provides a detailed written response on how the department will accommodate.



# SHARING OF MEDICAL INFORMATION PROHIBITED

- Only Work Restrictions are provided to the employer.
- Privacy Laws restrict sharing of diagnosis or other information related to applicant's medical condition.

California Civil Code § 56.20  
(Confidentiality of Medical Records Act)



***Your right. Our responsibility.***

# REASONABLE ACCOMMODATION

- Member remains in same job item at same salary, performing the duties performed by others in the same job classification.
- Employee does not have to consent.

## EXAMPLES:

- **Delegating** problem tasks to others
- Changing the **work location**
- Providing **ergonomic furniture**, tools and technology
- **Reducing time** devoted to certain job tasks
- Reporting to a **new supervisor**
- **Switching assignments** with a co-worker

# ACCOMMODATION FORM: ACTIVE

## EMPLOYEE'S CURRENT STATUS

- States whether the employee is on leave or working
- If working in a modified assignment, requests the duties performed by the employee

## ABILITY TO ACCOMMODATE

- Outlines permanent work restrictions issued by the Board Panel Physician
- Requests ability to accommodate
- Requests a description of the permanent accommodation and job duties

## INABILITY TO ACCOMMODATE

- Explains why the department cannot accommodate

## CERTIFICATION OF AUTHORITY

- Verifies that the signatory has the authority to make determinations on accommodation

# ACCOMMODATION FORM: INACTIVE

## EMPLOYEE'S CURRENT STATUS

- Out of Service date
- Reason for terminating service

## ABILITY TO ACCOMMODATE

- Outlines permanent work restrictions issued by the Board Panel Physician
- Requests ability to accommodate had the employee not terminated service
- Outlines a description of the permanent accommodation
- Asks whether the permanent accommodation was offered prior to the employee terminating service

## INABILITY TO ACCOMMODATE

- Explains why the department cannot accommodate

## CERTIFICATION OF AUTHORITY

- Verifies that the signatory has the authority to make determinations on accommodation



# DOCUMENTING ACCOMMODATION

## ACCOMMODATION:

- On April 15, 2015, staff forwarded the permanent work restrictions indicated by the panel physician to Peppermint Patty, Return to Work Coordinator, Health Services, and asked if the department could accommodate these restrictions on a permanent basis. On July 16, 2015, staff received the completed accommodation form from Jane Doe, Manager II, indicating the department is able to accommodate the permanent work restrictions.

# PERMANENT ACCOMMODATION

If the department is able to permanently accommodate the restrictions, and the accommodation is found to be reasonable by the Board of Retirement, the disability retirement will be denied.

- Both the employee and employer are notified by Disability Retirement Services that the employee has been denied due to the availability of a permanent accommodation.
- The employer is required to re-engage the employee in the interactive process.



**QUESTIONS?**

