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Medical pensions: Is the state's system sick?

By Dorothy Korber and John Hill -- Bee Staff Writers

Published 2:15 am PDT Monday, May 10, 2004

Half pay, untaxed, for life. That's the California pension formula for public-safety personnel so badly injured at work they no longer can do their jobs.

No one questions a special disability retirement for a young Sacramento County deputy left debilitated when his spine - and his career - were shattered during an arrest.

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But what about a state nurse who suffers anxiety about sick people? Or a prison guard who hurt his knee schlepping a big coffeepot upstairs? Or the investigator who racked up two consecutive disability pensions, both for the same heart condition?



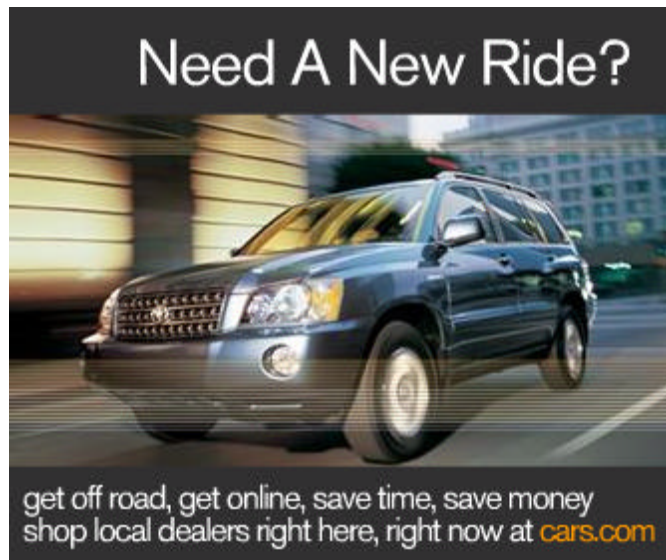
Jim Mortensen, 73, took an industrial-disability retirement two decades ago, after nearly 30 years with the California Highway Patrol. He injured his back during an undercover assignment.

• [See additional images.](#)

Sacramento Bee/Brian Baer

Under state law, all three retired with the same special medical pension as the disabled deputy. They joined legions of other safety workers who claimed a permanent "industrial disability" to gain this popular perk.

Two out of three retirees in the California Highway Patrol are on these medical pensions. Among local police and fire retirees in the state pension system, it's nearly one out of two.



Such retirement benefits are a growing expense for cash-strapped California. Even so, they've escaped scrutiny as a new governor and Legislature wrestle with the record deficit.

Over a five-year period, the California Public Employees' Retirement System estimates that new safety disability pensions cost the state \$493 million. On an annual basis, the cost increased 65 percent between 1997-98 and 2001-02.

That increase coincides with the tenure of Democratic Gov. Gray Davis and a labor-friendly Legislature. Prodded by public-sector unions, the politicians passed a series of bills that expanded eligibility for these medical pensions - and made it easier to get them.

The rationale for disability retirement benefits for safety workers is reasonable enough: protect those who risk their lives to protect us. But, in practice, the system is enormously complicated and ripe for abuse, yet also often sadly

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inadequate for those severely disabled.

"This benefit was designed to provide for the young firefighter or police officer who is seriously hurt on the job," said Bob Palmer, president of the California Association of Public Retirement Systems. "What it has become is an entitlement, just another retirement option for people near the end of their careers."

On top of the state's bill for this special disability pension come added costs to California counties and cities, where safety workers' benefits - by law or binding union contracts - generally match the state's. On top of that comes a loss in income tax revenue.

The costs are rising, too, as more public employees come under the public-safety category and more of their disabilities are declared job-related. John Descamp, chief of the Sacramento County Employees' Retirement System, blames politicians who will not say no to powerful interest groups.

"It's driven by greed and political posturing," Descamp said. "Once the formula is established for one group, then every group wants it. It's piecemeal."

Yet this is not news to state officials. A decade ago, concern about the large number of industrial-disability retirements in California triggered a host of reform proposals. There were calls for rigorous physical fitness tests for safety workers, for keeping disabled employees on the job in "light-duty" assignments, and for clamping down on fraudulent claims.

In October 1994, the state auditor recommended that pension benefits be reduced for "disabled" retirees who earn outside income that exceeds their pre-retirement salaries. In July 1998, the Department of Personnel Administration recommended pulling managers out of the public-safety category.

In the mid-1990s, both the California Highway Patrol and CalPERS set up special units to investigate disability fraud.

Ten years later, most of those reforms are in limbo and the system seems looser than ever.

Since 1999, intense lobbying by public-employee unions has significantly expanded the kinds of disabilities automatically presumed to be job-related for public-safety workers. The list grew with every session of the Legislature: heart trouble, cancer, blood-borne diseases including HIV, hernias, tuberculosis.

Employers complain that the "heart trouble" presumption, in particular, is too vague and ignores the role that diet and tobacco play in cardiac disease. It's also problematic to presume that all cancers are job-related, said Palmer, who also is the administrator of San Joaquin County's retirement system.

"The law just says cancer," Palmer said. "On one hand, maybe lung cancer for a firefighter makes sense. But colon cancer for a firefighter? You have to question the relevance."

Yet union lobbyists argue that it is sometimes impossible to determine the original site of a cancer or to pinpoint a specific carcinogen that triggered it.

In general, the unions say, the presumptions allow their members to get treatment under workers' compensation without having to spend time and money fighting for it. But a workers' comp claim also is used to set the stage

for retirement with a lifelong disability pension.

"What these presumptions do is shift the burden of proof to the employer to show the problem is not job-related," said Steve Keil, legislative coordinator for the California State Association of Counties. "As a practical matter, that's often impossible to prove."

But Sacramento lawyer David E. Mastagni, who represents safety employees in their disability claims, counters that employers do challenge the presumptions regularly.

"If they never won, then the employers wouldn't challenge them," said Mastagni. "These presumptions are valid. Think about it: This is someone who is supposed to raid a drug lab or go into a burning building without thought for his own safety."

Not every presumption involves heroics, however.

Lower-back pain, a presumption created by the Legislature in 2001, applies to peace officers who wear the wide woven gun belts known as "Sam Browne belts." The measure, SB 424 by Sen. John Burton of San Francisco, provoked howls of protest from cities and counties who foot the bills for workers' compensation and disability pensions.

"We jokingly called it the Doughnut Disability," Keil recalled. "The duty belt is presumed responsible, even if the officer is 50 pounds overweight. And who doesn't have some lower-back pain as they get older?"

Indeed, medical research finds that 80 percent of all adults suffer from occasional lower-back pain, and between 5 and 10 percent have a chronic problem.

SB 424 had supporters with political muscle: the California Association of Highway Patrolmen and the Peace Officers Research Association of California - which together in 2000 and 2001 gave more than \$1.4 million to California politicians and political causes - along with big police unions in Los Angeles and Riverside.

The bill passed the Senate on a 24-10 vote, the Assembly by 75-2. Assemblyman Ray Haynes, then a Republican state senator from Riverside, was a lonely voice of opposition in the Legislature.

"This absolutely removes the possibility that the individual hurt their back shoveling rocks, lifting weights, or any other activity pursued on their personal time," Haynes wrote to Gov. Gray Davis, urging a veto.

When SB 424 reached the governor's desk, Tim Gage, Davis' own finance director, recommended a veto, arguing that the presumption "would make it almost impossible for state and local agencies to reject claims that completely lack merit."

But Davis signed SB 424 on Oct. 12, 2001, thereby casting aside another restriction on industrial-disability pensions. (Davis declined to be interviewed for this story.)

Last year, one of the few remaining limits was eliminated in a \$250 million court settlement.

Based on a 1980 law, this rule reined in benefits paid to older workers who had put in only a few years on the job before claiming the half-pay retirement benefit. The idea was to cap their disability pension at whatever their regular pension would have been if they'd worked until retirement age.

So Lana Hoffman, the anxiety-prone nurse, was initially granted just 11 percent of her pay as her disability pension. Her lawyer, Fresno attorney Thomas J. Tusan, said Hoffman deserved her full disability pension, even though she'd been on the job at Corcoran State Prison for only four years.

Tusan sees no irony in the notion of a nurse made anxious by caring for the sick. She worked in the prison's AIDS ward, he noted. "The standard for a disability pension is: Can you work at your usual and customary duties?" he said. "She could not."

Likewise, John Haggard, who hurt his knee carrying the coffeepot, received a reduced pension, based on his eight years with the Department of Corrections. At his hearing, Haggard said he and another officer were carrying the 50-pound container upstairs to prisoners who were "locked down" and so had to be fed in their cells.

The U.S. Equal Employment Opportunity Commission challenged the 1980 law as discriminatory toward older workers. In early 2003 - after a prolonged court battle - CalPERS agreed to settle. Hoffman and Haggard, along with 1,700 other public-safety workers, were awarded the half-pay pensions, retroactively.

Another beneficiary of this settlement was Michael D. Hunter, who actually was granted two safety disability retirements - one an untaxed half-pay pension from the San Diego County Sheriff's Department and another from the state, after working 18 months as an investigator for the Department of Motor Vehicles.

Both were for the same heart arrhythmia.

Such double-dipping for industrial disabilities is not uncommon and is perfectly legal in California, if two separate pension systems are involved - in this case, CalPERS for the DMV and San Diego County's own retirement system.

Half pay, untaxed, for life. Understandably, it's a sought-after benefit for the state's safety workers - among them the prison's correctional officers, psychiatric technicians and, starting this July, even milk inspectors - as well as for local deputies, firefighters and cops.

But, on a percentage basis, no employee group logs more industrial-disability retirements than the California Highway Patrol.

Nearly 70 percent of CHP retirees leave work on an industrial-disability pension. Their average age is 53 - they're eligible for regular retirement at 50 - and their average monthly benefit is \$5,458. That's \$600 more than CHP officers who take straight retirement, and it's quadruple the monthly pension of non-safety state workers.

If they've reached retirement age and take a disability pension, safety workers get either half pay or their regular retirement benefit - whichever is higher. Either way, the first 50 percent is untaxed, which means that many Highway Patrol retirees actually net more each month in retirement than they received when they were working.

The end-of-career timing raises suspicions, even for CHP Commissioner D.O. "Spike" Helmick, who is among those eligible.

"It's amazing that they can do the job till the day when the magical wand is waved and they're at the top of their retirement benefit," Helmick said. "It's not that people are lying - the law allows them to get these retirements. But they're using the law."

Although Helmick himself is entitled to an industrial-disability retirement - "I've had an injured back for years from car wrecks" - he plans to go out with a regular service pension instead.

"But that decision is difficult if you take the calculator and add it all up," he said. "You begin to wonder who's stupid and who's smart. If, without breaking the law, you could increase your retirement 20 percent every month, would you do it?"

Helmick said the Legislature should revisit the disability presumptions as well as the rule against giving injured CHP officers light-duty assignments, a prohibition spelled out in the vehicle code.

Within the CHP, all officers - even those with sedentary desk jobs - are expected to be able to carry out 14 "critical tasks" involving physical skills. That includes proving they can extract a 200-pound victim from a vehicle.

Disabled officers sometimes are forced to retire against their will.

"I know a lot of personal friends who were hurt - I've wished we didn't have to dump them into disability," said Jon Hamm, executive director of the California Association of Highway Patrolmen. "I'm not saying we have no abuses, but I've talked to many others who say: 'I don't want to retire, but they're going to make me. I'm excess baggage.'"

That sentiment was a mantra at a gathering of CHP retirees at a Laughlin, Nev., resort in March. The former officers, most of them appearing tan and fit, talked about their pride in serving in the patrol - and the physical rigors of a job that kept them on the road, whether desolate highway or crowded freeway, rain or shine.

Many of them went out on disability pensions.

"I did a job I loved for nearly 30 years," said Jim Mortensen, 73, who retired two decades ago. "When I joined the CHP in 1957, there were no disability presumptions and no (retiree) health benefits. I know the fight we went through to win those improvements. My firm belief is that CHP officers deserve those things."

Mortensen, who lives in Vacaville, took an industrial-disability retirement after he injured his back during an undercover assignment in 1981.

"I hung on for two years after the injury," he said. "I planned to work till the bloody end. But the doctor told me I could no longer be a highway patrolman. It broke my heart."

It was patrolman Conrad Schneider's heart that went. He had a massive coronary at age 42 and his career was finished. Schneider, who at 68 is the security chief for the Riverside Casino in Laughlin, is a quiet man. He headed outside to have a smoke while his wife told his story.

"I don't know if you understand the stress these officers are under," Louise Schneider confided. "They experience the most gruesome and heartbreaking situations and are told 'just suck it up.'"

"After his coronary, the doctor gave Connie only a 50-50 chance of recovering. And the first thing Connie said when he finally came to was 'They're going to make me retire! I don't want to retire!' "

A heart attack also drove Virgil Hartz into retirement; he was 55.

"I was done," he said. "My doctor told me no way was I going back to work." He blames job stress for his heart trouble.

"You go through 25 or 30 years on patrol, and there's constant turmoil," said Hartz, now 62. "The public is mad at you, and your supervisors aren't all that happy, either. You're stressed just at the thought of a pursuit. Or you go to a fatal accident and have to tell parents that their 2-year-old is dead."

But fatalities and deadly pursuits aren't the only source of stress, said his wife, Diane Hartz. A CHP officer herself in Needles, she will take a regular service retirement this summer - not a disability retirement - after 30 years with the patrol.

"Working in the city," she observed, "you can have 700 accidents in the rain in a 24-hour period. You're trying to juggle and prioritize all those competing demands, and everyone is angry at you."

The Hartzes believe that most CHP disability retirements are well-deserved. If there are phony claims, Diane Hartz said, they should be weeded out and prosecuted.

"Excuse me? This is a job where people are supposed to have high integrity," she said. "If they lie about being disabled, the investigators need to nail them."

Half pay, untaxed, for life. After five years with the Riverside County Sheriff's Department, that's what Deputy Linda Morelli was banking on. Her case seemed open-and-shut.

Who would deny a disability pension to a helicopter pilot whose spine was fractured when her police chopper suddenly died and spiraled to the ground?

Ron Komers, for one. He sent Morelli back to work.

Komers, Riverside County's human resources director, embraces a tough attitude toward industrial-disability pensions, turning down many claims and fighting energetically when an employee files an appeal.

"Riverside County is a lightning rod for this issue in California," said Steve Keil of the state counties association.

While CHP brass say that most safety medical retirements are simply not disputable - and many local agencies throw up their hands at the idea of challenging a disability presumption - Riverside County is tackling the situation head-on.

There, any disability retirement based on a presumption is automatically disputed. Any request for disability retirement filed after the employee has taken a regular retirement is automatically turned down. Those who claim they

can no longer perform their regular duties had better be ready to prove it.

"It's true that different agencies have vastly different standards of applying the policy," Komers said. "It makes me angry when some agencies ... grant everything that comes along."

Riverside County errs in the other direction, said lawyer Jim Cunningham, who has represented safety employees for 17 years. He's also the new executive director of the deputies' union.

"To say that our people have this culture of entitlement is outrageous," Cunningham said. "The culture, if anything, is not to report an injury - they don't want to be forced into retirement.

"I'm seeing more valid claims being challenged now than I've ever seen before. If Riverside County is the lead in anything, they're the lead in considering economic considerations over the validity of the injury."

Four years ago, Komers hired an assistant, Jennifer Cooper, to pursue questionable claims for industrial-disability retirements, designating her as a kind of fraud-buster. She's zealous about her mission, an admittedly confrontational one.

"Over and over, we hear the same angry response when we reject someone's claim," Cooper said. "They say, 'I've earned this! I deserve this!' I tell them: Your regular service retirement is what you deserve. It's extremely generous. If you're not disabled, you don't get the industrial-disability retirement too."

Some of the cases she undertakes may seem extreme: The respected sheriff's lieutenant whose sense of duty kept him on the job for years, despite his disabilities. ("We didn't want to set a precedent," Cooper said.) Or the young deputy who was shot in the wrist - by another officer - while he was wrestling with an armed suspect. ("It was just a graze.")

Of Riverside County's last 149 applications for safety disability pensions, 67 were denied. So far, the county has lost just one case - that dutiful lieutenant's.

"But my biggest success is not the cases we win in front of a judge," Cooper said. "The biggest wins are those people who decide not to file - the deterrent effect."

Riverside's combative attitude troubles Descamp of the Sacramento County retirement system.

"The problem I have with that is, if you take a damn-the-torpedoes approach, you can throw up hurdles for the employee unnecessarily," Descamp said.

Descamp contends that a more deliberate approach builds employee trust - and still provides adequate checks.

"We do our investigation and challenging on the front end. We take our time and do it right," he said. "We're rigorous but fair, and our members know it, so they're less likely to file untenable claims."

The statistics tend to bear him out. Of the 994 safety retirees in Sacramento County, just 169 (17 percent) are on industrial-disability pensions.

In Riverside County, with 993 safety retirees overall, 430 (43 percent) are on

industrial-disability pensions. That's still less than the statewide average of 49 percent, but it was high enough to propel Komers into his aggressive mode.

Now Komers is looking beyond enforcement to the physical roots of the problem. In December, he persuaded Riverside County supervisors to adopt a program aimed at preventing workers' disabilities and injuries in the first place.

Komers' strategy is to push wellness by monitoring absenteeism, requiring physicals and drug testing, and making every new deputy sheriff sign a no-smoking pledge.

Riverside County is not alone in deciding to reward wellness as a pre-emptive strike against disability retirements. In March, San Mateo County adopted its own no-smoking policy for sheriff's deputies. Other places offer incentives for fitness, and some are talking about mandatory physical testing.

In the final analysis, Komers suggests, there are things more important than a half-pay pension - even an untaxed one.

"When you look at it, you see that most of these people are in their 40s and 50s when they develop these job-related disabilities," Komers said. "We'd like to help them avoid developing the disabilities. Nobody wants to have heart trouble or cancer - or die young.

"All things considered, would you rather have spinal surgery plus a lifetime income, or not have spinal surgery at all?"

From the pension case files

Here are six actual cases, drawn from court and hearing records, of California safety workers who applied for industrial disability pensions. Some of the claims may seem bizarre, but the stakes are high - such pensions promise a lifetime benefit at half pay, untaxed, regardless of age or work experience. All six workers argued that work-related injuries prevented them from doing their jobs. Here are the results.

Case 1: Denied

Facts: Gary L. Burnett, an Orange County-based traffic officer with the California Highway Patrol, was fired in 2000 for "inexcusable neglect of duty and dishonesty." The reason: Burnett intentionally shot himself in the foot, then fabricated a story about being attacked by assailants. He pleaded guilty to a misdemeanor charge of lying to investigators.

Less than a year later, Burnett filed for an industrial disability retirement from the CHP, citing the self-inflicted gunshot wound and post-traumatic stress stemming from the incident. CalPERS turned him down, arguing that his dismissal precluded him from a disability retirement. Burnett appealed.

Result: Pension denied.

Case 2: Denied

Facts: After 18 years on the job, Firefighter Anthony Haywood was dismissed by the American River Fire Protection District in 1993 for "inexcusable neglect of duty." The district had compiled a long list of instances of Haywood's insubordination - including his refusal to park the fire truck where his

supervisors directed him to. A year after his firing, Haywood filed for an industrial disability retirement. His injury? Psychic damage that resulted from being dismissed.

Result: Pension granted by a Sacramento Superior Court judge. But the state appeals court overturned that decision in 1999, saying an employee fired for good cause is ineligible for disability retirement.

Case 3: Granted

Facts: Registered Nurse Lana J. Hoffman went to work in the hospital ward at Corcoran State Prison in 1995. Four years later, she applied for an industrial disability pension, claiming a psychological condition.

Twice, she said, she accidentally stuck herself with contaminated needles. She also worried about defective tubing that leaked blood and body fluids. Anxiety over her exposure to HIV and hepatitis contributed to a general depression, her doctor found, a disability that precluded her from working at the prison.

CalPERS demurred, saying that the normal duties of a nurse include treating infectious patients.

Result: Pension granted.

Case 4: Granted

Facts: After five years as a sheriff's deputy for San Diego County, Michael D. Hunter took an industrial disability retirement due to a cardiac arrhythmia condition following a chest injury. That was in 1990.

In 1995, Hunter went to work as an investigator for the state Department of Motor Vehicles. Less than two years later, he applied for a separate industrial disability retirement from DMV - also for the arrhythmia.

Result: Pension granted.

Case 5: Granted

Facts: Stacey M. Wyke, a correctional officer at California State Prison, Sacramento, hurt her back while wrestling a 150-pound food cart up a flight of stairs. Pain and disability from the injury made it impossible for her to work at the prison, according to her doctor, and Wyke applied for an industrial disability pension.

CalPERS questioned this, surreptitiously videotaping Wyke carrying groceries, jogging, walking her "well-mannered dog" and hugging her children. Wyke responded that she was on pain medication during those activities - and that a physically disabled correctional officer is a danger to her colleagues and the prison.

Result: Pension granted.

Case 6: Denied

Facts: Former professional baseball player Steven A. Barnard began working for the CHP in 1988. A decade later, Barnard injured his right shoulder during a scuffle with a drunk driver near Victorville. An orthopedic surgeon examined Barnard on Oct. 20, 1999, and concluded that the injury prevented the officer from being able to carry out his duties.

Ten days later, Barnard was out on the baseball diamond, playing catcher in a six-game tournament in Peoria, Arizona. He hurled the ball, swung the bat forcefully both right- and left-handed, and restrained a teammate from slugging the umpire. All of this was captured on five hours of surveillance videotape, which became evidence against him. The orthopedic surgeon saw the videotape and changed his opinion.

Result: Pension denied.

Source: Court and hearing records

Burden of proof shifts to state

* Any California firefighter or police officer who comes down with syphilis can claim an industrial disability retirement. The same goes for HIV - or mad cow disease.

* Since 2001, such blood-borne diseases are among the disabilities presumed to be work-related for various safety employees in California. Under the Labor Code, these workers needn't prove they were exposed to tainted blood on the job - the presumption is enough.

* Once a presumption is in play, the burden of proof shifts from the employee to the employer, who must prove that the injury or illness was not caused by the job.

* The number of presumptions has multiplied since 1999 as public employee unions pushed the labor-friendly Legislature to add more diseases. With each addition, cities and counties raised vocal - and unsuccessful - opposition.

* In a letter urging Gov. Gray Davis to veto the blood-borne disease presumption, the city of Garden Grove noted that many of these infections "are primarily transmitted through intimate sexual contact, which is not in the job description of any public safety officer." Davis signed the bill anyway.

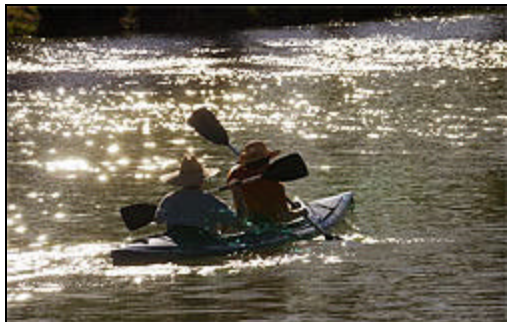
The presumptions

- * Blood -borne disease
- * Cancer
- * Lower-back injury (for duty-belt wearers)
- * Heart trouble
- * Hernia
- * Meningitis
- * Pneumonia
- * Tuberculosis

Source: Archives of Gov. Gray Davis papers

About the Writer

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Virgil and Diane Hartz paddle their kayak...

Sacramento Bee/Brian Baer



... and get ready for a bike ride near their Needles home. He retired on disability from the California Highway Patrol after a heart attack; his wife, still a CHP officer, plans to retire in July after 30 years of service.

Sacramento Bee/Brian Baer

Industrial disability retirements

"Safety" employees in the state of California who are permanently disabled on the job can qualify for an industrial disability retirement: half pay, untaxed, for life. If they're past regular retirement age, they're entitled to their full pension as well as the tax-free benefit.

Who takes industrial disability retirements?

The California Highway Patrol leads the pack.

CalPERS retirees (as of 6/30/03)

Category	Industrial Disability	Standard Disability	Regular Retirement
California Highway Patrol	3,348 (67%)	33 (<1%)	1,620 (32%)
Local safety agencies (police and fire departments in CalPERS)	13,490 (49%)	393 (1%)	13,662 (50%)
State safety (state workers defined as "safety" by the Legislature)	7,291 (42%)	510 (3%)	9,581 (55%)
State peace officer/firefighters (including correctional officers)	691 (37%)	111 (6%)	1,083 (57%)

When are they taking them?

The trend is to take industrial disability retirements at career's end.

Average age at retirement (2002-03)

Category	Industrial Disability	Standard Disability	Regular Retirement
California Highway Patrol	53	*	55
Local safety agencies	49	46	55
State safety	47	54	57
State peace officer/firefighters	47	54	59

How much are they getting?

CHP industrial disability retirees get the highest average monthly benefit in CalPERS.

Monthly benefit (2002-03 retirees)

Category	Industrial Disability	Standard Disability	Regular Retirement
California Highway Patrol	\$5,458	*	\$4,844
Local safety agencies	\$4,464	\$1,778	\$5,086
State safety	\$2,525	\$1,718	\$3,418
State peace officer/firefighters	\$2,081	\$1,676	\$2,461

*No CHP members took an ordinary disability retirement in 2002-03.
Source: California Public Employees Retirement System

Sacramento Bee/Mitchell Brooks

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