

COUNTY OF TULARE

OFFICE OF THE COUNTY ADMINISTRATOR

ADMINISTRATIVE REGULATION NO. 26

(Resolution No. 2001- 0382)

[Amended by Res. No. 2001-0495 Amended by Res. No. 2003-0087, Amended by No. 2012-0731]

SUBJECT: Compensation While a County Initiated or County Joined Disability Retirement Application is Pending or as required by Labor Code Section 4850.4

EFFECTIVE DATE: September 18, 2012 (or upon completion of Meet and Confer where required)

This Regulation provides for partial continued compensation while a County initiated or County joined retirement application is under review. This regulation also implements the provisions of Labor Code Section 4850.4. This regulation has been approved by the Board of Supervisors and applies to all unrepresented safety employees immediately upon adoption by the Board of Supervisors and to represented safety employees by bargaining unit upon completion of meet and confer for their unit where required.

I. Qualification

This Administrative Regulation only applies to employees who meet one of the following qualifications:

- A. Employees for whom the County or one of its departments has filed an application for disability retirement.
- B. Employees for whom the County or one of its departments has joined in an application for disability retirement.
- C. Employees who are covered by Labor Code 4850.4.

II. Compensation for employees for whom the County has filed or joined in an application for disability retirement.

- A. Application for compensation under this Regulation shall be made by the employee's Department Head by sending a letter or memo to the Human Resources Director requesting compensation under this Regulation. Qualification for this compensation shall be determined by the Human Resources Director.
- B. Compensation for a qualified employee shall be set at the lesser of the employee's regular base (i.e. salary schedule) bi-weekly salary or the amount calculated by the Retirement Association as the bi-weekly amount the employee would receive for a non-service connected disability retirement if the application were granted.
- C. The compensation shall not include any additional pay the employee might have received had the employee continued working. Additional pay types include but are not limited to, the Flexible Benefit Amount, shift differential, special assignment pay, special duty pay, pay increases, overtime, etc.
- D. The qualified employee will remain eligible for the County employee benefit plans with premiums paid by the employee through payroll deduction at the rates in effect at the

time the premium is paid. Benefit plan deductions previously authorized by the employee shall continue to be taken to the extent applicable.

- E. The compensation shall be treated as wages with the appropriate taxes deducted.

III. **Required Agreements**

No compensation will be paid under this program unless and until an agreement in a form acceptable to the Human Resources Director stating the biweekly amount of the compensation and setting forth the conditions upon which the compensation shall be paid has been signed by the employee's department, the Retirement Association and the employee. The Human Resources Director will provide sample agreements upon request.

IV. **Payment**

A. Upon certification by the Human Resources Director that the employee's application qualifies for compensation under this regulation, advance disability pension payments shall commence no later than 30 days from the date of the issuance of the last disbursement of the following:

1. The employee's last regular payment of wages of salary.
2. The employee's last payment of benefits under Labor Code Section 4850, if applicable.
3. The employee's last payment for sick leave.

B. Payments under this regulation shall only be made if the employee does all of the following:

1. Joins with the County/Department in the application for disability retirement at least 60 days prior to the payment of the benefits under this regulation.
2. Fully cooperates in providing the County with medical information and in attending all statutorily required medical examinations and evaluations set by the County.
3. Fully cooperates with the evaluation process established by the County retirement plan.

C. The 30-day period for the commencement of the payments authorized above shall be delayed by whatever period of time is directly related to the employee's failure to comply with the provisions of subdivision IV. B.

D. Should payments begin and the employee cease cooperating with the County and/or the Tulare County Employee Retirement Association payments shall immediately cease and reimbursement shall commence.

IV. **Reimbursement**

Upon final resolution of the disability retirement application the compensation which has been paid for the period covered by this regulation shall be adjusted as follows:

1. If the retirement application is granted:

- a. The Retirement Association will reimburse the County for the compensation advanced to the employee during the period by reducing future employer contributions which would otherwise be required to be paid by the amount advanced to the employee.
 - b. The Auditor's Office will assist the employee in obtaining and filing the forms for any refund of taxes not applicable to the granted retirement compensation.
2. If the retirement application is not granted and the employee is returned to employment status:
 - a. The Auditor's Office will calculate and pay the employee any back pay due for this period. Appropriate deductions will be taken.
3. Should the employee cease cooperating with the County and/or the Tulare County Employee Retirement Association as required above:
 - a. The Auditor's Office will calculate and obtain reimbursement from the employee for all payments provided the employee under this regulation.

VI. Compensation for safety employees who are covered by Labor Code 4850.4.

- A. Qualification for this compensation shall be determined by the Personnel Director
- B. Employees qualifying under Labor Code Section 4850.4 shall receive advance disability pension payments in accord with Labor Code Section 4850.3 unless one of the following is applicable:
 - a. After an examination of the employee by a physician, the physician determines that there is no discernable injury to, or illness of, the employee.
 - b. The employee was incontrovertibly outside the course of his or her employment duties when the injury occurred.
 - c. There is proof of fraud associated with the filing of the employee's claim.
- C. The advance disability pension payments shall commence no later than 30 days from the date of the issuance of the last disbursement of the following:
 - a. The employee's last regular payment of wages of salary.
 - b. The employee's last payment of benefits under Labor Code Section 4850.
 - c. The employee's last payment for sick leave.
- D. Disability pension payments shall only be made if the employee does all of the following:
 - a. Files an application for disability retirement at least 60 days prior to the payment of the benefits described above.
 - b. Fully cooperates in providing the County with medical information and

in attending all statutorily required medical examinations and evaluations set by the County.

- c. Fully cooperates with the evaluation process established by the County retirement plan.

- E. The 30-day period for the commencement of the payments authorized above shall be delayed by whatever period of time is directly related to the employee's failure to comply with the provisions of this regulation.

VII. **Other Considerations**

- A. Nothing in this regulation shall preclude the Department or the County from providing reasonable accommodation for any work restrictions and requiring any non-safety employee to work within their classification during the pendency of any disability retirement application filed by or joined in by the department. If such employee is accommodated during the pendency of the applicable disability retirement application, no payments shall be payable to that employee pursuant to this regulation. If such employee is accommodated in a manner which requires the employee to work less than full time, the sums due pursuant to this regulation shall be prorated accordingly.
- B. Any compensation payable pursuant to this regulation may be reduced by any worker's compensation benefits which were paid in excess of sums actually due. The determination that such overpayments were made and are thus subject to such offset, and the manner and timing of the offset(s) shall be determined by the Human Resources Director in consultation with the Auditor's Office.