



# PERS AND 4850 TIME A BASIC PRIMER

Presented

By

David H. Parker

Parker, Kern, Nard & Wenzel

Presented For

Fresno Industrial Claims Association

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# First, I Will Answer The Two Most Recently Asked Burning Questions.

1. Where have you been Parker?
2. Where did you get that barely perceptible tan?



Before



After







**Best Babe**

Maui, 2012



## Best Boat

Maui, 2012





## Best Walk

Maui, 2012



## Best Beach

Maui, 2012





## Best Bar

Maui, 2012



It absolutely can wait! YOU'RE ON VACATION!!! Enjoy!! No worries.  
I'll ask Mary for some dates & times & we can at least get it on the calendar. Mary?  
Thanks.  
Client

**From:** David Parker [mailto:DParker@pknwlaw.com]  
**Sent:** Thursday, May 03, 2012 6:35 PM  
**To:** Client  
**Cc:** Mary Olvera  
**Subject:** Re: Doe Case v Anonymous County

Hi Ms. Client:

I am out of the office until May 16th. Can it wait that long or is it super urgent?  
Let my secretary Mary know at [mary@pknwlaw.com](mailto:mary@pknwlaw.com) and she can schedule.  
Thanks.  
Dp

David H. Parker  
Parker, Kern, Nard & Wenzel  
All communications with PKNW clients are privileged. If you are not the intended recipient of this communication please forward it back to the sender and permanently delete it from your electronic devices and operating systems.  
Sent from my iPhone

On May 3, 2012, at 6:00 Client wrote:

Hi Dave,  
Our excess carrier, DOE INSURANCE has requested a telephonic conference with you, myself and DOE VENDOR, a structured settlement broker.  
Can you please offer some dates & times that would be convenient for you next week?  
Thanks so much.  
*MS. DOE CLEMENT*  
*Senior Claims Specialist*

A photograph of a sunset over the ocean. The sun is a bright, glowing orb on the horizon, casting a shimmering path of light across the dark water. The sky is a gradient of dark blue and black, with a few wispy clouds on the right side.

Okay.

Back to work.



# The Key to Understanding Labor Code Section 4850 Is:

Read It!

4850. (a) Whenever any person listed in subdivision (b), who is ***employed on a regular, full-time basis, and is disabled, whether temporarily or permanently***, by injury or illness arising out of and in the course of his or her duties, he or she shall become entitled, regardless of his or her period of service with the city, county, or district, to a leave of absence while so disabled without loss of salary in lieu of temporary disability payments or maintenance allowance payments under Section 139.5, if any, that would be payable under this chapter, ***for the period of the disability, but not exceeding one year, or until that earlier date as he or she is retired on permanent disability pension, and is actually receiving disability pension payments, or advanced disability pension payments pursuant to Section 4850.3.***

# The Key to Understanding Labor Code Section 4850 Is:

Read It!

4850. (b) The persons eligible under subdivision (a) include all of the following: (1) City police officers. (2) City, county, or district firefighters. (3) Sheriffs. (4) Officers or employees of any sheriff's offices. (5) Inspectors, investigators, detectives, or personnel with comparable titles in any district attorney's office. (6) County probation officers, group counselors, or juvenile services officers. (7) Officers or employees of a probation office. (8) Peace officers under **Section 830.31** of the Penal Code employed on a regular, full-time basis by a county of the first class. (9) Lifeguards employed year round on a regular, full-time basis by a county of the first class. (10) Airport law enforcement officers under subdivision (d) of Section 830.33 of the Penal Code. (11) Harbor or port police officers, wardens, or special officers of a harbor or port district or city or county harbor department under subdivision (a) of Section 830.1 or subdivision (b) of Section 830.33 of the Penal Code. (12) Police officers of the Los Angeles Unified School District.



# The Key to Understanding Labor Code Section 4850 Is:

Read It!

4850. (c) This section shall apply only to persons listed in subdivision (b) who meet the requirements of subdivision (a), and shall not include any of the following: (1) Employees of a police department whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active law enforcement service. (2) Employees of a county sheriff's office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service. (3) Employees of a county probation office whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly come within the scope of active law enforcement service. (4) Employees of a city fire department, county fire department, or fire district whose principal duties are those of a telephone operator, clerk, stenographer, machinist, mechanic, or otherwise, and whose functions do not clearly fall within the scope of active firefighting and prevention service.

# The Key to Understanding Labor Code Section 4850 Is:

Read It!

4850. (d) If the employer is insured, the payments that, except for this section, the insurer would be obligated to make as disability indemnity to the injured, the insurer may pay to the insured.

(e) No leave of absence taken pursuant to this section by a peace officer, as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or by a city, county, or district firefighter, shall be deemed to constitute family care and medical leave, as defined in Section 12945.2 of the Government Code, or to reduce the time authorized for family care and medical leave by Section 12945.2 of the Government Code.

(f) This section shall not apply to any persons described in paragraph (1) or (2) of subdivision (b) who are employees of the City and County of San Francisco.

(g) Amendments to subdivision (f) made by the act adding this subdivision shall be applied retroactively to January 1, 2010.



# See Labor Code 4850.3 and Penal Code 830.31-33 Handouts.

Read Them!

In summary, they define when PERS retirement benefits may be advanced (4850.3) and who *may be* correctional officers also entitled to 4850 time because they qualify as “safety officers” as opposed to simply “custodial employees” (830.31-33).

# Some “Quick And Dirty” General Questions and Answers.

## Who Is Generally Covered?

- Deputy Sheriffs
- District Attorney Investigators
- Firefighters
- Police Officers
- Probation Officers
- Juvenile Hall Counselors
- Counselors With Peace Officer Powers
- Year-Round Lifeguards
- Those Involved In “Active law Enforcement”

## Who Is Generally Not Covered?

- Welfare Fraud Investigators
- Family Support Officers
- Part-Time, Reserve or Parking Enforcement Officers



# What Is It?

Full Salary tax free for up to 52 weeks. It need not be continuous. There is no waiting period. Some agencies allow partial days and hours. Differential but not holiday pay should be included.

# Some “Quick And Dirty” General Questions and Answers.

## When Does It End?

- Return To Work
- When 365 Days Is Exhausted
  - Note: TTD May Then Begin
  - Note: There is no TTD if retired on PERS Disability But There Is If There Is Retirement A “1937 Act” Retirement.
- Upon Award Of Disability Retirement And/Or Receipt Of Disability Retirement Benefits

## PERS, County And “1937 Act” Retirements.

- Not Every Peace Officer Retirement Is A PERS Retirement.
- Typically There Are PERS and “1937” Retirements.



# Retirement Systems Summarized.

## SCERS WEBSITE HANDBOOK CALIFORNIA COUNTIES' RETIREMENT SYSTEMS

### Existing Law

Under existing State law a county may provide retirement benefits to its employees in three ways. It may:

- (1) establish an independent system,
- (2) contract with the California Public Employees' Retirement System ("CalPERS"), or
- (3) establish a system under the County Employees' Retirement Law of 1937 (California Government Code Section 31450 et seq), commonly referred to as the "1937 Act."

## Independent Systems

Article XI, Section 1 of the State Constitution authorizes general law counties to provide for the number, compensation, tenure and appointment of employees. In addition, Article XI, Sections 4 and 6, authorizes charter counties and charter cities and counties to establish independent retirement systems if their charters so provide. San Luis Obispo County and San Francisco City and County have established such systems.



## CalPERS System

In 1939 the Legislature authorized employees of counties (and other public agencies) to join CalPERS at the individual county's option. Currently 37 counties contract with CalPERS. They are Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Inyo, Kings, Lake, Lassen, Madera, Mariposa, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Riverside, San Benito, San Francisco (Limited), Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sutter, Tehama, Trinity, Tuolumne, Yolo and Yuba.

## The 1937 Act Systems

The Legislature initially authorized a retirement system for county employees with the enactment of the County Employees' Retirement Law of 1919. This law was replaced by the 1937 Act, and was eventually repealed in 1947. The 1937 Act provides for retirement systems for county and district employees in those counties adopting its provisions pursuant to Section 31500. Twenty California counties operate retirement systems under the provisions of the 1937 Act. These are separate entities, separate and apart from each other and CalPERS.

The 20 counties are: Alameda, Contra Costa, Fresno, Imperial, Kern, Los Angeles, Marin, Mendocino, Merced, Orange, Sacramento, San Bernardino, San Diego, San Joaquin, San Mateo, Santa Barbara, Sonoma, Stanislaus, Tulare and Ventura. Los Angeles, in 1938, was the first county to adopt the 1937 Act provisions. Imperial was the last, establishing its system in 1951. Most of the member counties created their systems in the middle 1940's. The 1937 Act was enacted to recognize a public obligation to county and district employees who become incapacitated by age or long service in public employment and its accompanying physical disabilities by making provision for retirement compensation and death benefits as additional elements of compensation for future services and to provide a means by which public employees who become incapacitated may be replaced by more capable employees to the betterment of the public service without prejudice and without inflicting a hardship upon the employees removed.



The 1937 Act provides two methods by which a county may establish a 1937 Act retirement system: (1) an affirmative vote by a majority of the electors voting on the proposition at a general or special election, or (2) by a four-fifths vote of the board of supervisors. Once a county elects to come under the 1937 Act, the Act's provisions become operative on either the following January 1, or July 1, but not sooner than 60 days after the appropriate election. A system established pursuant to the 1937 Act supersedes any previously established county retirement system.

# Okay, So That Was More Than You Ever Wanted To Know About PERS

# Some, (And I Mean *Some*) Case Law.\*

## Who Is Entitled?

- Firefighters and Paramedics
  - Charles v. WCAB 53 CCC 304
- Bailiffs
  - Biggers v. WCAB 64 CCC 19

## Who Is Not Entitled?\*

- Fire Recruits
  - City of Sacramento v. WCAB 67 CCC 6
- Correctional Officers
  - Pulido v. WCAB 61 CCC 30

\*THESE ARE NOT BLACK AND WHITE CASES! THERE ARE VARIED CASES, OPINIONS AND ARGUMENTS. HOWEVER, THIS IS CITABLE LEGAL AUTHORITY FOR THE DEFENSE.



# Some, (And I Mean *Some*) Case Law.\*

## Is Holiday Pay Included?

- No
  - Mannater v. County of Marin  
41 CCC 1060
  - Even if scheduled to work.

## Is Overtime Included?\*

- Arguably No.
  - Fenn v. WCAB 68 CCC 560

\*THESE ARE NOT BLACK AND WHITE CASES! THERE ARE VARIED CASES, OPINIONS AND ARGUMENTS.

HOWEVER, THIS IS CITABLE LEGAL AUTHORITY FOR THE DEFENSE.

# Some, (And I Mean *Some*) Case Law.\*

## Does It End At P&S Status?

- No\*\*
  - County of San Bernadino v. WCAB  
70 CCC 1151
- What?
  - It Arguably Does Not End With P&S Status.
  - See Statutory Language.
  - See COSB V. WCAB

\*\*Hypocrite alert: I Have Argued Contrary to This On Behalf Of Some Of My Clients Who Have Ceased Benefits On P&S Status And I Believe There Are Some Good-Faith Arguments Left.

## Does It End With Termination of Employment?\*

- Arguably Yes.
  - County of San Mateo v. WCAB  
(assuming it was not disability-related) 47 CCC 739

\*THESE ARE NOT BLACK AND WHITE CASES! THERE ARE VARIED CASES, OPINIONS AND ARGUMENTS.  
HOWEVER, THIS IS CITABLE LEGAL AUTHORITY FOR THE DEFENSE.

# What About the 104 Week Cap?

In *City of Oakland, et. al. v. W.C.A.B. (Watson)* (2007) 72 Cal.Comp.Cases 249 (Writ Denied), the Board held that salary continuation benefits paid under Section 4850 are not subject to the two-year limitation period for temporary disability indemnity, under Labor Code section 4656.





If We Have More Time...

**A FEW MORE CASES OF INTEREST  
OR...**



If We Have More Time...

**A FEW QUESTIONS AND ANSWERS.**

# Did We Miss Anything?

Feel Free To Stalk Us At:

[pknwlaw.com](http://pknwlaw.com)

1111 E. Herndon Ave. Ste. 202

559.449.2558

[dp@pknwlaw.com](mailto:dp@pknwlaw.com)\*\*\*

\*\*\*Email any PKNW attorney if you would like copies of the cited cases.





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