

THE EFFECT OF RETIREMENT ON YOUR DISCIPLINARY APPEAL

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A client recently asked, “**Can I still appeal my termination, if I retire after I was served a notice of termination?**”

The answer is “yes” - **an employee may continue with the disciplinary appeal, if they retire after receipt of a notice of termination.**

What legal effect does retirement have on a disciplinary appeal?

Recent Legislation

A member who is terminated (fired) on or after January 1, 2017, and is subsequently ordered reinstated (pursuant to an administrative or judicial proceeding), must be reinstated back into CalPERS, with all retirement benefits he would have otherwise accrued per Government Code §20969.3. Contributions to CalPERS, either by the member or on behalf of the member by the employer, must be made for any period salary is awarded, and the member will receive service credit for that period.

A complimentary statute, provides that if a CalPERS member retires after receiving a notice of termination and is subsequently reinstated to his former position, the member shall likewise, also be reinstated into CalPERS. (*Government Code §21198.*)

For State of California employees, if there is a State Personnel Board ruling to reinstate the employee after being fired, the employee must also be reinstated to all benefits, including retirement, for that period of time the SPB found the adverse action was improperly in effect (*Government Code §19584.*)

Recent Administrative & Judicial Decision

In a Precedential Decision, *In re Kareemah M. Bradford*, 17-01, CalPERS rejected the argument that an employee, who was wrongfully terminated **before** January 1, 2017, was not eligible to receive service credit for the time period she received backpay, because *Government Code §20969.3* only applied to employees terminated on or after January 2017. CalPERS reasoned that, while §20969.3 did not apply, neither did it prevent CalPERS from granting service credits to an employee who was wrongfully terminated before January 1, 2017. In sum, the period of **wrongful termination** should be treated the same regardless of when the employee was terminated. When it comes to retirement benefits, the date you were terminated is of no consequence.

In *Byrd v. State Personnel Bd.* (2019) 36 Cal.App.5th 899, the Court found that where an employee has been fired and later reinstated, *Government Code §21198* allows CalPERS to

return the parties to the status quo. The Court said CalPERS should generally attempt to accomplish this by reinstating employees to their prior job classifications and ensuring that “the pension benefits are applied in the same manner as if the employees had not been involuntarily terminated.”

Conclusion

Even if you decide to retire and have no interest in returning to work for an agency that has just fired you, it may still be beneficial to appeal. If you have administrative coverage through a pre-paid Plan, be sure to check how retirement will affect your coverage *before retiring*. If the appeal is successful, service credit will be awarded for the time period the appeal took to complete, and your subsequent monthly retirement income will be just that much more.

Stay Safe and Healthy!

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