



# WORLD TRADE CENTER (WTC) DISABILITY LAW

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**Note to Reader:** This Fact Sheet contains questions and answers (Q&A) about the WTC Disability Law. This law is quite expansive and utilizes various key terms. Each italicized term in the Q&A is defined in the Glossary of Terms on pages 3 and 4. Reference to the Glossary of Terms is strongly recommended.

## **What is the World Trade Center (WTC) Disability Law?**

This law provides that NYCERS' members/vested members/retirees (retired after 9/11/01) who *Participated in WTC Rescue, Recovery or Clean-up Operations* during a *Qualifying Period* may be entitled to a presumption that any current or future disability caused by a *Qualifying Condition or Impairment of Health* arose from participation in such operations, unless the contrary is proven.

## **Does this law create an enhanced disability benefit? No.**

The law provides a presumption of accidental disability for members/vested members/retirees who meet certain pre-qualifying criteria in the law and become disabled from a *Qualifying Condition or Impairment of Health*. Benefits are paid according to the provisions that cover accidental disability for your tier and title.

## **What is a Notice of Participation (Form #622)?**

The law requires that members file a statement with NYCERS indicating the dates and locations of participation. This statement is known as a Notice of Participation. A Notice of Participation is not a disability application. If you develop a disability, you must file a disability application. A Notice of Participation must be filed no later than September 11, 2010.

## **Who should file a Notice of Participation?**

All active members, vested members and retirees (retired after 9/11/01) who *Participated in WTC Rescue, Recovery or Clean-up Operations* during a *Qualifying Period*. Also, *Eligible Beneficiaries* of members who participated and subsequently died without having filed a Notice of Participation may file. Remember, the deadline to file is September 11, 2010.

## **I am not experiencing any health issues. Do I still need to file a Notice of Participation?**

Yes. Although you may not be experiencing any health issues at this time, filing a Notice of Participation preserves your right to apply for disability retirement under this law. You cannot predict if you

will develop a *Qualifying Condition or Impairment of Health* in the future so it is urged that you file the Notice.

## **What information must be provided when I file the Notice of Participation?**

The law requires that you meet certain pre-qualifying criteria to be eligible for the presumption. In general, a member/vested member/retiree is deemed to have met the pre-qualifying criteria upon verification of his or her *Participation in WTC Rescue, Recovery or Clean-up Operations* during a *Qualifying Period*. The Notice is a sworn statement in which you indicate how you meet the pre-qualifying criteria.

## **Is there any supporting documentation required?**

One pre-qualifying criterion specifies that a member must have either successfully passed a physical examination upon entry into public service or, if he or she did not undergo such examination, authorize the release of all relevant medical records. If you did not undergo a physical examination, we urge you to gather, maintain and/or submit relevant medical records as early as possible. Doing so may help facilitate a disability application you may file in the future.

## **Why am I required to authorize the release of all relevant medical records?**

The law requires your authorization because if you claim a WTC-related disability, the relevant medical records must not show evidence of the *Qualifying Condition or Impairment of Health* prior to 9/11/01.

## **I filed a Notice of Participation – now what?**

NYCERS will send you an acknowledgment letter upon receipt of your Notice. We will then contact your agency to verify that you meet the pre-qualifying criteria. When we receive your agency's response, we will advise you of the outcome in writing. It is recommended that you pay close attention to any correspondence we send to you. If your agency cannot verify that you meet the pre-qualifying criteria, you may be able to refute the agency's findings by submitting documentation to support your case.

**I filed a Notice and received a letter stating I do not meet the pre-qualifying criteria. Can changes to the law affect my status?** Maybe. The law was originally enacted in 2005 and was amended a few times, most recently in 2008. Changes were made in 2008 which may affect your status. NYCERS will review all Notices with your agency and notify you in writing of the outcome.

**If I receive a letter stating that I am pre-qualified, am I automatically entitled to WTC accidental disability retirement?** No. If you apply for disability under this law, you must first be examined by NYCERS' Medical Board. The Medical Board must determine that you are disabled and cannot continue to perform your job duties. If you are deemed to be disabled, the cause of that disability is then considered. Since you have met the pre-qualifying criteria you may benefit from the presumption that the disability is WTC-related, unless the contrary is proven.

**What recourse do I have if the Medical Board finds that I am disabled, but that the disability was not WTC-related?** You may appeal to NYCERS' Board of Trustees under existing appeals procedures.

**I am not in City service, but am a vested member awaiting payability of a Vested Retirement Benefit. Can I apply for disability under this law?** It depends on the disability law applicable to your tier and title. Vested members in the following titles may not apply under the disability laws which provide a "three-quarters benefit" to such titles:

- Tier 3 Uniformed Corrections (\*RSSL §507-c)
- Tier 4 Uniformed Sanitation (\*RSSL §605-b)
- Tier 4 Emergency Medical Technicians (\*RSSL §607-b)
- Tier 4 NYC Deputy Sheriffs (\*RSSL §605-c)

\*Retirement and Social Security Law

**What if I met the pre-qualifying criteria, retire under non-WTC retirement and then develop an illness?** If you have met the pre-qualifying criteria and subsequently retired for service, ordinary disability, performance-of-duty disability or non-WTC accidental disability you may apply to reclassify your pension benefit to a WTC accidental disability benefit. Upon application, the process to evaluate your disability will commence. Remember, the law did not create a new benefit so if you successfully reclassify, the benefit is paid according to the provisions that cover accidental disability for your tier and title.

**NOTE:** The following retirees who retired on non-WTC accidental disability retirement are NOT eligible to reclassify to a WTC accidental disability retirement:

- Tier 3 General Members (\*RSSL §507)
- Tier 4 Uniformed Sanitation (\*RSSL §605-b)

- Tier 4 NYC Deputy Sheriffs (\*RSSL §605-c)

\*Retirement and Social Security Law

**If I am denied reclassification, how soon can I apply again?** If you are denied reclassification based on a finding by the Medical Board that you are not disabled under this law, then you may reapply no earlier than 12 months from the date of denial. However, you may reapply sooner if you are diagnosed with a terminal illness that is a *Qualifying Condition or Impairment of Health*.

**If I successfully reclassify, is it retroactive?** No. Your reclassification along with any possible change in benefits would be effective upon your approval by the Board of Trustees. **Note:** the retirement option you chose at the time of retirement cannot be changed as a result of reclassification.

**Were any other benefits provided under the WTC Disability Law?** Yes. A member/vested member/retiree who meets the pre-qualifying criteria and subsequently dies from a *Qualifying Condition or Impairment of Health* may be entitled to a presumption that his or her death was related to *Participation in WTC Rescue, Recovery or Clean-up Operations*. The *Eligible Beneficiary(ies)* of such members would be able to apply for an accidental death benefit, subject to applicable filing requirements.

**Did the law create an enhanced accidental death benefit?** No. Just like WTC disability cases, the accidental death benefit would be paid according to the accidental death benefit provisions for your tier and title.

**If I retire and subsequently die, what is the impact on my beneficiary's benefit?** If your *Eligible Beneficiary(ies)* is entitled to a non-WTC benefit after your death (including any post-retirement death benefit) and subsequently applies for the WTC accidental death benefit and is approved, he or she is required to relinquish the right to non-WTC benefits paid or payable to him or her since your death.

**What if the *Eligible Beneficiary* is different from the person entitled to a non-WTC benefit?** In this case, any person(s) entitled to a non-WTC benefit (including any post-retirement death benefit) shall continue to receive such benefit. However, the WTC benefit would be reduced by the amount of the non-WTC benefit.

**Is there a limit on the period of time between retirement and date of death to qualify for the accidental death benefit?** Yes. You cannot be retired for more than 25 years. In other words, if you die within 25 years from the date of retirement you may qualify.

## GLOSSARY OF TERMS

### *Eligible Beneficiary*

A person(s) eligible to receive an accidental death benefit in the following priority order:

- A surviving spouse who has not remarried (no remarriage penalty for Uniformed Sanitation in Tiers 1 & 2 only)
- Surviving children up to age 25
- Dependent parents
- Any person(s) up to age 21 who qualifies as a dependent on the member's Federal tax return (except Tiers 1 & 2)
- Any person(s) designated as beneficiaries for an Ordinary Death Benefit

### *Qualifying Condition or Impairment of Health*

A Qualifying Physical Condition or a Qualifying Psychological Condition as defined below. For the communication/dispatcher titles specified in the chart on the next page who participated at one of the locations specified in the chart on the next page, it shall only mean Qualifying Psychological Condition.

#### *Qualifying Physical Condition*

- Diseases of the upper respiratory tract and mucosae, including conditions such as rhinitis, sinusitis, pharyngitis, laryngitis, vocal cord disease, and upper airway hyper-reactivity, or a combination of such conditions; or
- Diseases of the lower respiratory tract, including but not limited to tracheo-bronchitis, bronchitis, chronic obstructive pulmonary disease, asthma, reactive airway dysfunction syndrome, and different types of pneumonitis, such as hypersensitivity, granulomatous, or eosinophilic; or
- Diseases of the gastroesophageal tract, including esophagitis and reflux disease, either acute or chronic, caused by exposure or aggravated by exposure; or
- Diseases of the skin such as conjunctivitis, contact dermatitis or burns, either acute or chronic in nature, infectious, irritant, allergic, idiopathic or exposure; or
- New onset diseases resulting from exposure as such diseases occur in the future including cancer, asbestos-related disease, heavy metal poisoning, and musculoskeletal disease.

#### *Qualifying Psychological Condition*

- Diseases of the psychological axis, including post-traumatic stress disorder, anxiety, depression, or any combination of such conditions; or
- New onset diseases resulting from exposure as such diseases occur in the future including chronic psychological disease.

### *Qualifying Period*

**For all titles EXCEPT communication and dispatcher titles specified in the chart on the next page:** Any period of time within the 48 hours after the first airplane hit the towers or a total of 40 hours accumulated any time between September 11, 2001 and September 12, 2002.

**For communication and dispatcher titles (see chart on the next page):** Any period of time within the 24 hours after the first airplane hit the towers.

### *Participated in World Trade Center Rescue, Recovery or Clean-up Operations*

Any member/vested member/retiree (retired after 9/11/01) who:

1. Participated in the rescue, recovery or clean-up operations at the WTC site; or
2. Worked at the Fresh Kills Land Fill; or
3. Worked at the New York City morgue or the temporary morgue on pier locations on the west side of Manhattan; or

4. Manned the barges between the west side of Manhattan and the Fresh Kills Land Fill; or
5. Repaired, cleaned or rehabilitated vehicles or equipment, including emergency vehicle radio equipment, owned by the city of New York that were contaminated by debris in the WTC site regardless of where the work was performed, provided it was prior to the decontamination of such vehicles; or
6. Worked in the following communication/dispatcher titles at the locations listed in the chart below.

Department	Locations	Titles
<b>New York City Police Department</b>	11 MetroTech Center (Brooklyn) or 1 Police Plaza (Manhattan)	Police Communication Technician (PCT), Supervisor Police Communication Technician (SPCT), Principal Police Communication Technician I, Principal Police Communication Technician II, Principal Police Communication Technician III, Administrative Manager-Communications, or in the Police Administrative Aide title series
<b>New York City Fire Department – Dispatcher titles</b>	35 Empire Boulevard (Brooklyn), 79th Street Transverse (Manhattan), 83-98 Woodhaven Boulevard (Queens), 1129 East 180 Street (Bronx), 65 Slosson Avenue (S.I.), 9 MetroTech Center (Brooklyn) or 25 Rockaway Avenue (Brooklyn)	Fire Alarm Dispatchers (FAD), Supervising Fire Alarm Dispatchers I (SFAD), Supervising Fire Alarm Dispatchers II (Borough Supervisor), Deputy Director and Director of Fire Dispatch Operations or Assistant Commissioner for Communications
<b>New York City Fire Department – EMS titles</b>	1 MetroTech Center (Brooklyn), 9 MetroTech Center (Brooklyn) or 55-30 58th Street (Queens)	Emergency Medical Specialist-Level I (EMT), Emergency Medical Specialist-Level II (Paramedic), Supervising Emergency Medical Specialist-Level I (Lieutenant), Supervising Emergency Medical Specialist-Level II (Captain), Deputy Chief EMS Communications or Division Commander EMS Communications

**World Trade Center Site**

The World Trade Center Site is defined as anywhere below a line starting from the Hudson River and Canal Street; east on Canal Street to Pike Street; south on Pike Street to the East River; and extending to the lower tip of Manhattan.

