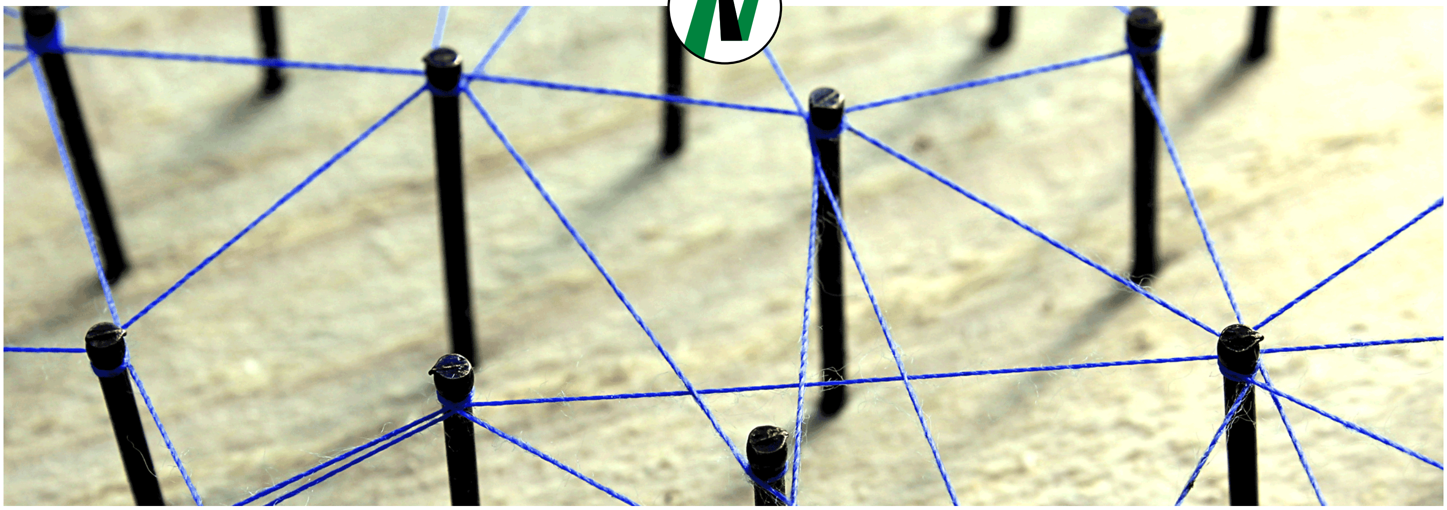

Untangling the Web of County Employees Retirement Law Rules on Disability Retirement and Reciprocity

02.03.2023 | By Ashley K. Dunning, Alexander Westerfield

On January 30, 2023, the Fourth District Court of Appeal clarified which sorts of retirement benefit payments do and do not count as a "disability allowance" within the context of the reciprocity rules of the County Employees Retirement Law of 1937 (CERL). Specifically, the court in *Casson v. Orange County Employees Retirement System* (2023 Cal. App. LEXIS 67) held that a service retirement benefit payment from one retirement plan does not count against the disability benefit payment a member may receive from a CERL plan if the member has *not* elected reciprocity between the plans. If, however, the member *has* elected reciprocity between the two plans, the CERL plan's disability benefit *must* be offset by the service-based benefit payment.

The facts of *Casson* are straightforward. Nicholas Casson served as a city firefighter with a CalPERS participating employer for 27 years. In 2012, Casson retired from CalPERS for service, and immediately began a second career working in fire safety with the Orange County Fire Authority, thus becoming eligible for a second pension under the Orange County Employees Retirement System (OCERS), a CERL system. Casson did not elect reciprocity between CalPERS and OCERS. Instead, he immediately started collecting his CalPERS pension upon retirement from the city, and started over in OCERS when he began his second career as a county employee.

After five years of working for the county, Casson was injured on the job, and applied to OCERS for a disability retirement benefit. OCERS granted the application but reduced Casson's disability benefit based on the pension he was already receiving from CalPERS. OCERS based this decision on Government Code section 31838.5, which provides:

> *No provision of this chapter shall be construed to authorize any member, credited with service in more than one entity and who is eligible for a disability allowance, whether service or nonservice connected, to receive an amount from one county that, when combined with any amount from other counties or the Public Employees' Retirement System, results in a disability allowance greater than the amount the member would have received had all the member's service been only with one entity.*

Casson filed suit to prevent OCERS from offsetting his disability benefit. Although the trial court agreed with OCERS, the Court of Appeal reversed. The court reasoned that, as a matter of statutory interpretation, the phrase "disability allowance" in Section 31838.5 *cannot* include a service retirement payment received from another system if the member has not elected reciprocity between that system and the CERL system. This is because the term "disability allowance" implicitly references Government Code 31727.4, which determines the amount of a member's service-connected disability retirement. Casson, however, had not elected reciprocity, and had started receiving his service retirement payment from CalPERS for years before becoming disabled and retiring from OCERS. The court thus concluded that there was no way, as a textual matter or a logical one, to characterize Casson's CalPERS service retirement benefit payment as a "disability allowance."

The court contrasted Casson's case with its earlier holding in *Block v. Orange County Employees' Retirement System* (2008) 161 Cal.App.4th 1297. In *Block*, a CalPERS-enrolled firefighter retired from CalPERS after twenty-seven years before starting a second career with an OCERS employer. Unlike Casson, however, Block elected reciprocity between CalPERS and OCERS, and thus he did not begin to receive his CalPERS pension payments immediately upon retirement from CalPERS. Several years into his second career, Block suffered a service-connected injury and applied for disability retirement from OCERS. The court in *Block* held that OCERS correctly counted Block's CalPERS service retirement benefit against his OCERS disability retirement benefit as provided in Government Code section 31838.5 because Block, having elected reciprocity, only began receiving his CalPERS pension in connection with his disability retirement from OCERS.

Explaining the distinctions between *Casson* and *Block*, the court noted that members who elect reciprocity enjoy several benefits:

- members enter the second system with the same amount of service credit as was accrued in the first plan,
- are deemed to have entered the second plan at the same age they entered the first, and
- have pension benefits computed based on the highest salary earned at either job.

In exchange for those benefits, however, members incur some costs. Most notably, a member electing reciprocity cannot immediately begin receiving retirement benefit payments from the first system until retiring from the second, and, under *Block*, a member electing reciprocity will have a service retirement benefit counted against a subsequent disability retirement benefit.

The court in *Casson* held that Block had enjoyed the benefits of reciprocity and must also bear its costs, whereas Casson, having not enjoyed any of reciprocity's benefits, could not be forced to bear those costs.