

The General Municipal Law Section 207-a/c Case Book is a handbook for administrators, union officials and attorneys involved with General Municipal Law Sections 207-a and 207-c benefits available to law enforcement personnel and firefighters suffering job related injuries or diseases

The General Municipal Law

Section 207-a

Section 207-c

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The General Municipal Law §§207-a/c Disability Benefits Handbook

A Guide to Disability Benefits for those involved in
Law Enforcement and Firefighting in New York State

2014 Edition

Summaries of selected court and administrative decisions

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The General Municipal Law §§207-a and 207-c Data Base

by

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Part I

INTRODUCTION

A general survey of §§207-a/c and related laws

Police and firefighters injured on the job have been provided with significant benefits to protect some or all of their income during any period when the injury prevents them from reporting for duty. This may be accomplished through a variety of means.

A number of laws such as Section 207-a and Section 207-c of the General Municipal Law of New York State, New York's the Retirement and Social Security Law, New York's Workers' Compensation Law and the federal Social Security Act provide for the replacement of income in such situations. Although the threshold requirement for eligibility for benefits, as well as the level of benefits provided, differ depending on the program involved, the key to an individual's receiving a benefit is a determination that his or her inability to work was the result of a job-related injury or disease.

Sections 207-a and 207-c require that local governments provide salary and medical benefits to firefighters and public safety personnel respectively suffering work-related injury or disease.

In addition, the Retirement and Social Security Law [RSSL] may provide retirement benefits allowances to firefighters and public safety personnel who must retire because of a work-related injury or disease. [Sections 363 and 363-c of the RSSL]

Providing such benefits has a significant fiscal impact on public employers. Together with the costs involved with replacing disabled officers with able-bodied personnel, there are costs associated with setting up an administrative structure to handle disability claims and litigating disputes involving disability benefits. Other elements that could impact financially on the individual and the employer include determining and implementing light duty arrangements as well as health insurance considerations such as the potential for Medicare benefits. Also, there are tax consequences associated with payments pursuant to Section 207-a and Section 207-c.

This book is divided into three main sections. The first section discusses the benefits available to injured firefighters and police officers. The second section deals with issues concerning "on-the-job" injury determinations. The final section concentrates on decisions by courts, administrative agencies and arbitrators involving disability benefit claims, including obtaining, and retaining, such benefits.

As noted in the materials distributed to participants at the several Section 207-a/207-c Seminars, we concentrate on specific cases for the same reason that law schools do: a specific case often illustrates the principles at work better than extensive narrative about the content of the law. Furthermore, legal essays tend to be technical and, perhaps, boring while case studies tend to be interesting. The authors hope readers find this e-book enjoyable as well as informative. We encourage readers to look in the index to see if there are any cases involving their own locality.

The reader should also remember that different courts may come to opposite conclusions in cases involving similar facts. For this reason, we have made an effort to include background information

that explains why a particular ruling was made. Simply put, a decision may not mean what one might think it means, despite its apparently plain language.

Readers may recall a decision by the Appellate Division in *Barnes v Council 82*, 261 AD2d 803. In that ruling the Court notes that “By placing the decision-making power in the hands of the governmental authority, the legislative intent expressed was clearly not to authorize an arbitrator to make the determination.”

This statement might lead the casual reader to the incorrect conclusion that there has been legislative action precluding arbitration concerning §207-a/c claims. However, that is not the case: Section 207-c claims may be arbitrated **where a collective bargaining agreement specifically indicates that the parties intended to arbitrate such claims** [*Barnes v Council 82*, 94 NY2d 719].

Although the Appellate Division stated that the legislative intent was to vest the power to issue a light duty order pursuant to General Municipal Law §207-c (3) exclusively “in the hands of the governmental authority,” the Court of Appeals said that in this instance arbitration was not available as “there was no agreement to submit the dispute in question directly to arbitration,” clearly signaling that arbitration would have been available to Council 82 were it so provided in the collective bargaining agreement and all of the procedural steps that were “conditions precedent” to demanding arbitration were satisfied.

Also included is the full text of selected court opinions of special significance, as well as the text of a number of the laws relevant to disability claims in New York State: Section 207-a and Section 207-c of the General Municipal Law; selected provisions of the

Retirement and Social Security Law and Sections 71, 72 and 73 of the Civil Service Law.

The reader is cautioned against assuming that any case summarized or reported in this book is an exact parallel of a situation confronting the reader. Decisions in individual cases may depend on the specific of the facts of the case and, often, the language in relevant collective bargaining agreements. Case examples presented here are intended to illustrate the legal principles that courts apply in resolving cases involving disability claims. An understanding of these principles should serve the reader well.

PART I

BENEFIT PROVISIONS

Benefit Review and Determination

The essential elements in considering and processing Section 207-a and Section 207-c applications are outlined below.

Key benefits provided: Payment of salary plus with medical and hospital expenses for duty-related injuries or illness.

This means that the full amount of the disabled officer's regular salary or wages is to be paid until the disability has ceased. In addition, if medical, hospitalization or remedial treatment is needed, the full costs are to be paid for such services by the responsible municipality.

After the date on which its physician certifies that the injured or sick individual has recovered and is physically able to perform his or her regular duties, the municipality is not liable for salary or wages or for the cost of medical or hospital care or treatment furnished.

Further, any individual who refuses accept the medical treatment or hospital care offered by the municipality or who refuses to permit medical inspections as authorized by law is deemed to have waived his or her statutory rights with respect to the payment of expenses incurred for medical treatment and/or hospital care, as well as his or her salary or wages.

The individual may be offered light duty (or "modified duty") assignments consistent with the duties of his or her full-service position, provided that the individual not eligible for (or is not granted) either (1) an accidental disability retirement allowance under Section 363 of the Retirement and Social Security Law [RSSL], (2) a performance of duty disability allowance retirement under Section 363-c of the RSSL, or (3) a similar accidental disability pension. Light duty is appropriate only if the municipality's physician has certified that the individual is unable to perform his or her regular duties as a result of such injury or sickness but is able, in the doctor's opinion, to perform specified types of light duty.

If the individual refuses to perform such light duty, the municipality is to discontinue the payment of the individual's regular salary or wages.

As the Appellate Division ruled in *Howell v County of Albany*, 105 AD3d 1122, GML §207-c benefits are to be discontinued if individual receiving such benefits refuses to accept a light duty assignment for which he or she is qualified if such a light duty assignment is offered

A petition submitted to Supreme Court a review of a determination by the Albany County Sheriff to suspend a correction officer's General Municipal Law §207-c benefits was transferred to the Appellate Division.¹

Petitioner was employed as a correction officer by Albany County Sheriff's Office and as a result of a work-connected incident, was receiving General Municipal Law §207-c benefits. Petitioner,

¹ Although the Appellate Division noted that the proceeding had been "improperly transferred" to it because the petition does not raise a question of substantial evidence; it, nonetheless, ruled that it would "retain jurisdiction in the interest of judicial economy."

however, subsequently rejected the Sheriff Department's offer of a light duty assignment and refused to return to work.

A hearing was conducted to determine the extent of Petitioner's disability. The Hearing Officer recommended that Petitioner be found capable of performing light duty and the Department adopted the recommendation and ordered Petitioner to report for a light duty assignment or face suspension of his GML §207-c benefits.² The Petitioner failed to report for light duty as directed and the Department suspended his GML §207-c benefits.

The Appellate Division affirmed the Department's determination, rejecting Petitioner's claim that the Sheriff's determination was made in violation of his due process rights because the Hearing Officer refused to consider proof that he suffered from posttraumatic stress disorder and, in addition, had considered evidence "outside the record."

The court explained that "The right of a disabled officer to receive section 207-c disability payments constitutes 'a property interest giving rise to procedural due process protection, under the Fourteenth Amendment, before those payments are terminated.'"

Noting that the GML §207-c does not provide a procedural framework for making such determinations, the Appellate Division said that municipalities are free to establish their own procedures, consistent with or exceeding what is required by due process, through collective bargaining.

² GML §207-c.3, in pertinent part, provides that an otherwise eligible individual "unable to perform his regular duties as a result of such injury or sickness but is able ... to perform specified types of light police duty, payment of the full amount of regular salary or wages, as provided by subdivision one of this section, shall be discontinued with respect to such policeman if he shall refuse to perform such light police duty if the same is available and offered to him"

The court also noted that "due process does not require a hearing . . . until the employee has raised a genuine dispute on [the] operative facts", citing *Davis v Westchester County*, 42 AD3 79 (appeal dismissed 9 NY3d 953)

The Appellate Division found the Petitioner had been provide with administrative due process in that when he objected to the Sheriff's light duty he was provided with a predetermination hearing in which he was able to present his own witnesses and cross-examine the Department's witnesses.

The court said that in its view the Hearing Officer did not violate Petitioner's procedural due process rights by refusing to consider evidence that he suffered from posttraumatic stress disorder as "there is no indication in the record before us that petitioner put that diagnosis in issue — i.e., he raised no genuine dispute with respect to that diagnosis, as opposed to his established claims — prior to offering his expert's testimony at the hearing"

The court also rejected Petitioner's claim that the Hearing Officer considered evidence "outside the record" by noting that, in the context of his assessment of the credibility of Petitioner's witnesses, "his observations of Petitioner's demeanor while leaving the hearings."

However, the municipality may have to continue paying his or her medical expenses attributed to the injury.

The law does not specifically indicate that the municipality can discontinue paying for the individual's medical expenses attributed to his or her disability on the basis of the individual's refusal to serve in a light duty assignment.

Key similarities and differences between §§207-a and 207-c

Section 207-a covers firefighters and Section 207-c covers police and sheriff's officers and other law enforcement personnel.

Under both Section 207-a and Section 207-c, if an individual does not file an application for accidental or line of duty disability retirement, the municipality may submit such an application on his or her behalf. If the disabled individual is not granted either (1) an accidental disability retirement allowance under Section 363 of the Retirement and Social Security Law (RSSL), (2) a performance of duty disability retirement allowance under 363-c of the RSSL, or (3) a similar accidental disability pension, the municipality must continue to pay him or her the full amount of his or her regular salary or wages until he or she reaches the mandatory service retirement age applicable or has performed the period of service specified by applicable law for the termination of his or her service.

Under both Section 207-a and 207-c, the municipal may transfer the disabled individual to another position in the same or another agency or department where it is able to do so pursuant to applicable civil service requirements and provided the individual consents to the transfer.

Under Sections 207-a and 207-c, if the individual is retired for disability, the municipality is still required to pay for any medical treatment and hospital care necessitated by reason of the disabling injury or illness.

Section 207-a provides disabled firefighters with an important benefit not provided law enforcement personnel under Section 207-c. If a firefighter retires on either accidental disability [RSSL

363] or line of duty disability [RSSL 363-c], the municipality must pay the individual the difference between his or her retirement allowance and his or her regular salary [including negotiated adjustments] until such time as he or she shall have attained the mandatory service retirement age applicable to him or her or shall have attained the age or performed the period of service specified by applicable law for the termination of his or her service. [Note: The "age" and, or "service" limitation with respect to the payment of a "salary differential" results from a 1977 amendment to Section 207-a.]

Any Section 207-a supplemental benefit paid in conjunction with a RSSL Section 363 or RSSL 363-c disability retirement benefit is to be reduced by the amount of the benefits that are finally determined payable under the workers' compensation law by reason of accidental disability [Section 207-a.4-a].

If anyone receiving payments or medical benefits pursuant Section 207-a engages in any employment other than that specifically authorized by law, he or she permanently forfeits his or her entitlement to any Section 207-a payments and benefits [Section 207-a.6].

Any such payment or benefit unlawfully received is to be refunded to the municipality. If this is not done voluntarily, the municipality may sue the individual in civil action.

Civil actions

What about suing the individual or organization that may have caused the injury to the firefighter or law enforcement officer in the first place? Sections 207-a and 207-c allow a municipality to

sue any third party against whom the disabled individual had a cause of action for the injuries he or she sustained.

In other words, the municipality may "stand in the shoes" of the injured individual insofar as efforts to hold a third party liable is concerned.

What may the municipality recover if it sues under such a provision? If the third party is held liable, presumably it could recover the amount the municipality is required to pay the injured individual as compensation while he or she was [or is] on Section 207-a or Section 207-c leave as well as the medical expenses it is required to pay as a result of the disabling injury or disease.

"Firefighter's Rule"

Disability payments required by Sections 207-a and Section 207-c have assumed additional significance since the State Legislature liberalized the so-called Firefighter's Rule in 1996 [Chapter 703, Laws of 1996].

The traditional interpretation of the so-called "firefighter's rule" generally barred negligence lawsuits by law enforcement personnel and fire fighters who were injured in the line of duty, thereby preventing many public safety officers and firefighters who had been injured -- and the estates of officers who had been killed -- from recovering damages from third parties who may have contributed to the injuries or deaths through negligence.

Chapter 703 added a new Section, Section 11-106, to the General Obligations Law "to restore the common-law right of recovery for police officers and firefighters injured in the course of their

duties." It also loosened restrictions regarding elements that must be present for these employees to have the right to sue.

This means that municipal employers have a similar enlarged basis upon which to sue a third party whose actions resulted in the municipality having to provide Section 207-a and Section 207-c benefits to disabled firefighters and law enforcement personnel.

Chapter 703 but is the latest in a series of legislative actions to modify the Firefighter's Rule. In 1935 the legislature carved a limited exception for firefighters [General Municipal Law Section 205-a]. It later adopted a similar law for police officers [Section 205-e]. Those sections permitted police and fire personnel to sue for damages in connection with injuries suffered in the line-of-duty where the injury was the result of the violation of a law, rule, code or regulation.

However, judges found it difficult to apply the provisions of Sections 205-a and 205-e to real life situations and interpretations varied. In an effort to "eradicate apparent confusion in the courts regarding the scope of General Municipal Law Sections 205-a and 205-e," Chapter 703 was enacted into law.

Chapter 703 amends Sections 205-a and 205-e to "resolve, once and for all, confusion regarding the scope of the remedy afforded by these remedial provisions..."

The bill was designed to provide firefighters and law enforcement officers with a right of action -- the right to pursue a lawsuit -- that is much closer to the right of an ordinary citizen.

To have their claim heard by a court, such individuals, or their estate, no longer have to allege that the injury or death stemmed

from a violation of a law or legal provision that prohibits certain activities or conditions that increase the dangers inherent in the work of public safety officers. Nor is it now necessary for officers or their estates to allege the injury or death was caused by the violation of a law or legal provision that codified a common law duty, such as maintaining safe conditions in an area of public accommodation.

An example of a claim filed by an injured police officer is set out in *Quintero v City of New York*, 2014 NY Slip Op 00077, Appellate Division, First Department.³ Here an injured police officer sued persons alleged to have caused the injury pursuant to General Municipal Law §205-e.

Janice Quintero, New York City police officer alleged she was injured in a motor vehicle accident while she was a passenger in an unmarked police car that was being driven by another New York City police officer. She sued under color of General Municipal Law §205-e.

Essentially §205-e of the General Municipal Law gives certain injured police officers the right to sue the person or persons alleged to be guilty of “causing any accident, causing injury, death or a disease which results in death, that occurs directly or indirectly as a result of any neglect, omission, willful or culpable negligence” because of the person’s or persons’ failing to comply with the relevant of any law, rule or regulation. The person or persons guilty of said neglect, omission, willful or culpable negligence at the time of such injury liable to pay the injured officer.

Supreme Court, New York County⁴ denied the defendant’s motion for summary judgment dismissing the General Municipal Law

³ The decision is posted on the Internet at:

http://www.nycourts.gov/reporter/3dseries/2014/2014_00077.htm

§205-e claims predicated upon their alleged violation of the Vehicle and Traffic Law. The Appellate Division affirmed the Supreme Court's ruling.

According to the Appellate Division's decision, the injured officer testified that the officer driving the unmarked vehicle had double-parked the vehicle in order to observe two suspects and that they were sitting at the accident location approximately 15 to 20 minutes before they were struck from behind by a codefendants' minivan.

In addition, said the court, the police officer driving the vehicle had testified that he had double-parked the police vehicle in order to investigate a suspect, which is not an "emergency operation" as defined by Vehicle and Traffic Law § 1104(a).

There is an exception, however. Municipalities are still subject to the pre-Chapter 703 criteria for liability. That is, any claim against a municipality must allege that the municipality violated a law, rule, code or regulation and that the violation led to the injury or death.

The Act took effect on October 9, 1996 and applies to all actions commenced or after that date.

As New York State Supreme Court Justice Polizzi explained in *Warta v City of New York*, decided April 1997, [not officially reported] the 1996 amendment to Section 11-106 of the General Obligations Law eliminates the firefighter's rule as a defense to an injured firefighter's common-law negligence claim.

⁴ The Supreme Court's decision, setting out the fact in this action, is posted on the Internet at http://www.nycourts.gov/reporter/pdfs/2012/2012_32185.pdf

Further, said Justice Polizzi, Chapter 703's contemporaneous amendment to General Municipal Law Section 205-a effectively overruled case law holdings and permits the maintenance of a cause of action thereunder without the limitation to violations pertaining to the safe maintenance and control of premises or to instances where the alleged tortfeasors (wrongdoers) owns or controls the premises where the violation occurred.

In addition to Sections 207-a and Section 207-c benefits, an individual may be eligible for workers' compensation benefits, Social Security disability benefits and a local Police and Fire Retirement System [PFRS] or State Police retirement allowance.

Retirement benefits

The benefits available under the Local Police and Fire Retirement System [PFRS] as summarized below:

PFRS BENEFITS: PFRS members may be eligible for an ordinary disability retirement allowance, a performance of duty disability retirement benefit or an accidental disability retirement benefit.

Sections 207-a and 207-c both refer to disability and line-of-duty disability retirement under the Retirement and Social Security Law. [RSSL] The basic PFRS disability benefits are as follows:

Ordinary Disability

To be eligible, the applicant must have had at least 10 years of service, be permanently disabled as the result an injury or disease unrelated to work and unable to perform the duties of his or her

own job. [There are different eligibility dates for State Police personnel: for DSP personnel, the applicant must have joined before April 1, 1971 if an officer or May 30, 1972 if below the rank of lieutenant.]

The benefit is 1/60th of final average salary multiplied by the individual's years of member service credit or 1/60th of final average salary times years of credited service project to age 60 [but not to exceed 1/3 of final average salary]; whichever is the greater benefit.

There are no offsets for other disability benefits such as Workers' Compensation.

Accidental Disability Benefits, Section 363, Retirement and Social Security Law:

There is no age or service requirement but the individual must have joined the System before January 1, 1985 to be eligible. The applicant must be permanently disabled and (1) unable to perform the duties of his or her own position, and (2) disabled as the direct result of an on-the-job accident. [There are different eligibility dates for State Police personnel: for DSP personnel, the applicant must have joined before April 1, 1971 if an officer or May 30, 1972 if below the rank of lieutenant.]

The benefit for a "Tier I" member is 75% of the applicant's final average salary plus an annuity provided by the individual's member contributions, if any.

The benefit for a "Tier II" member is a "service retirement benefit" based on the assumed completion of 30 years of service plus an annuity provided by the individual's member contributions, if any.

The Accidental Disability Retirement benefit will be offset (reduced) by Workers' Compensation benefits.

To be eligible for an accidental disability retirement benefit, the applicant must be "physically or mentally incapacitated for performance of duty as the natural and proximate result of an accident not caused by his [or her] own willful negligence sustained in such service and while actually a member of ... the system."

What constitutes an "accident" for the purposes of Section 363? It is usually defined as "a sudden, fortuitous mischance, unexpected, out of the ordinary and injurious in impact." Typically whether a particular event is an accident is determined by the courts on a case-by-case basis.

Performance of Duty Disability, Section 363-c, Retirement and Social Security Law:

There are no age or service requirements but the individual must be permanently disabled and unable to perform the duties of his or her own job and disabled as a direct result of the performance of his or her duties. State police personnel are not eligible for Performance of Duty Disability retirement benefits. The benefit is 50% of final average salary. There is no offset for other disability benefits.

What qualifies as a "performance-of-duty" disability? The statute provides that the individual must be "physically or mentally

incapacitated for performance of duty as the natural and proximate result of a disability not caused by his [or her] own willful negligence sustained in such service and while actually a member of ... the system." The significant difference here is that the disability need only be the result of an incident in contrast to an accident as is the case in a Section 363 situation. While the benefits are less generous than Section 363 benefits, the standard for allowing the benefit is less rigorous as the incident does not have to be "accidental in nature."

PFRS members who joined the System prior to 1985 are eligible for the more generous Section 363 disability benefit if the disability is the result of an "on-the-job" accident.

State police personnel are qualified for an accidental disability benefit are eligible for a State Police Disability benefit. There is no service requirement if the disability is work related; otherwise the applicant must have at least 5 years of service with the Division. The applicant must be permanently disabled and unable to perform the duties of his or her own job.

The benefit is 50% of final average salary. If the applicant has completed 20 years of service and is eligible for service retirement, the benefit will be calculated as though it was a service retirement benefit.

The combined benefit received from the Retirement System, Workers' Compensation and Social Security cannot exceed the individual's final salary.

Traditionally both Accidental and Performance-of-Duty retirement benefits have been considered as excluded from federal income tax on the grounds that they are paid in lieu of a Workers'

Compensation benefit. However, a question as to the accuracy of this position has recently surfaced and it may be necessary to obtain a Revenue Ruling from the Internal Revenue Service to settle the issue.

Essentially the procedure followed by the Retirement System in evaluating an application for disability retirement is as follows:

The individual or employer files an application for disability retirement.

Upon receipt of the application, it is processed and assigned to a examiner. If necessary, the employer will be contacted for additional data such as copies of any accident reports, copies of the individual's medical records, a description of the individual's actual duties at the time of the injury, lost time and overtime information and similar information.

This is followed by a review by the Disability Review Board, an independent medical evaluation and a review by a Medical Board, which rules on the disability application and advises the employer and the individual of its determination.

If the application is rejected, the applicant [the employer or the employer, as the case may be] can request a hearing. The request must be made within four months of the date of the mailing of the original decision and must be in writing.

A hearing officer selected by the Comptroller will consider the appeal in a hearing that is "adversarial" in nature. Both the applicant and the System may call and cross-examine witnesses in the course of the hearing. Briefs may be submitted by the parties.

If the hearing officer sustains the System's rejection of the application, the applicant may appeal that determination in an Article 78 [Article 78, Civil Practice Law and Rules]. Such appeals are typically decided by the Appellate Division, Third Department. If the Article 78 petition is rejected by the Appellate Division, the applicant can request that the matter be reviewed by the Court of Appeals.

Social Security benefits

An individual is eligible for disability income benefits under Social Security if he or she meets the following definition of disability:

"The inability to engage in any substantial gainful activity ... by reason of any medically determinable physical or mental impairment ... which can be expected to result in death or which has lasted, or can be expected to last, for a continuous period of not less than 12 months." Under this definition, a person must not only not be able to do his or her job but cannot, considering age, education and employment experience, engage in any other kind of substantial gainful employment [Section 207, Social Security Handbook].

Experience has shown that relatively few firefighters and police officers injured in the line of duty can meet this strict standard of disability for the purpose of claiming eligibility for Social Security disability benefits.

Workers' Compensation

The State provides its employees with Workers' Compensation protection through the State Insurance Fund. Although

municipalities are not required to provide its law enforcement personnel and firefighters with Workers' Compensation coverage, some have elected to do so voluntarily either through the State Insurance Fund or as a "self-insurer."

In contrast to the disability standard to be met in order to qualify for Social Security disability benefits, the Workers' Compensation Law is liberally construed when it comes to making determinations as to eligibility for benefits.

For example, if the employer asks individuals to participate in off-duty athletics, or sponsors such an activity, Workers' Compensation benefits would be provide if an individual is injured while engaged in such an activity. Only if the individual is injured solely because of his or her intoxication or in the course of his or her willful intent to injure another or his or her injury is willfully self-inflicted would benefits be denied.

Although "partial disability" is not recognized by Social Security for the purposes of awarding disability benefits, awards of Workers' Compensation benefits involve the consideration of whether the disability is permanent or temporary and whether it is "total" or "partial."

Insofar as municipal employers and employees are concerned, these different standards could result in an individual being found qualified for benefits by one State entity but ineligible for benefits by another State entity. Accordingly, there are opportunities for different conclusions regarding eligibility for benefits with respect to decisions by the employer as to Section 207-a and Section 207-c claims, PFRS disability retirement applications and, where available, Workers' Compensation claims.

The Courts have decided that an employer's Section 207-a or Section 207-c decisions are not binding on PFRS; PFRS' disability rulings are not binding on the employer's Section 207-a or Section 207-c rulings and that the Workers' Compensation Board's decisions are not binding on PFRS or vice versa.

Which controls if the Workers' Compensation Board says that the injury was work related and the municipality decides that the individual is not eligible for Section 207-a or Section 207-c benefits?

While most court rulings indicate that the Workers' Compensation Board's determination controls, at the time of this writing at least one Appellate Court decision indicates that a Workers' Compensation Board's decision is not binding on the municipality if the municipality determined prior to the Worker's Compensation Board's decision that the individual was not eligible for Section 207-a or Section 207-c benefits because his or her disability was not the result of an injury or disease incurred in the line of duty [Furch v Bucci, App Div, 666 NYS2d 300].

However the law remains unsettled until the Court of Appeals considers the issue and makes its determination. The Court of Appeals may have an opportunity to consider this aspect of which "State entity's" ruling will control - the Board's or the municipality's, when it comes to determining eligibility for Section 207-a and Section 207-c benefits.

There are some additional considerations that should be kept in mind in handling Section 207-a and Section 207-c matters. Foremost among these are such federal enactments as the Rehabilitation Act of 1973 and Americans With Disabilities Act.

Although these Acts do not provide "disability benefits" per se, an employer found to have violated provisions such as these could be held liable for back salary and, possibly, penalties.

Below is an alphabetical listing of some of the elements that should be considered in developing procedures for handling Section 207-a and Section 207-c applications for benefits and administrative procedures implementing and reviewing the processing of claims and benefits.

Ability to make forceful arrest.

A severely disabled police officer attempted to return to duty but was refused reinstatement because of his disability. The department claimed that he could not perform all the duties of a police officer, especially making a forceful arrest. He then sued under the Federal Rehabilitation Act. [Simons v St. Louis County, USDC, E.D. of Missouri, March 1983]

The Police Department did not dispute the fact that a significant portion of the department's commissioned officers did not make forceful arrests on a daily basis. Simons also proved that it was unlikely that some officers would ever have to effect a forceful arrest. The officer then argued that he should be assigned to a position where the need to make a forceful arrest was unlikely.

The Court, however, said that the department's "transferability policy" (an officer could be assigned from a position where forceful arrest was unlikely to a position where this contingency would be very likely) in terms of its "forceful arrest" requirement (every officer must be qualified to make a forceful arrest) is

reasonable, legitimate and necessary for all commissioned officers in the department.

After noting that Simons could perform the duties required in a number of different positions but for his inability to meet the "forceful arrest and transferability requirements" the Court held that only "unreasonable modification of the department's requirements would allow the hiring of (Simons)." Accordingly, it was ruled that Section 504 of the Rehabilitation Act had not been violated and the case was dismissed.

The decision suggests that it is a proper standard that an employee's ability to perform every aspect of the duties of the position if called upon to do so.

Ability to perform light duty.

If an injured police officer performs light duty is the officer eligible for accidental disability retirement benefits when he retires? No, according to the Leger case. To qualify for accidental disability, the officer must be incapable of performing the duties assigned to him. [Leger v NYS Comptroller, 212 AD2d 901, motion for leave to appeal denied, 86 N.Y.2d 707]

Richard Leger, a Nassau County police officer, was injured in the line of duty. He returned to duty but on "restricted assignment."

Leger was continued on restricted assignment until he retired. However, he also applied for accidental disability retirement benefits on the grounds that he was permanently incapacitated from performing the duties of a police officer. His application was rejected and he appealed.

The Appellate Division said that there was evidence to show that Leger was permanently incapacitated from performing "the patrol duties which he was performing at the time of his accident." However, he had been certified as fit for restrictive duties by the police surgeon.

This constituted evidence that he was not permanently incapacitated from performing the duties involved in a "restrictive assignment." When an injured police officer is certified for restrictive assignment involving a police function, such certification is sufficient to support the denial of the officer's application for accidental disability retirement.

The issue is not whether the police officer involved is physically incapacitated from performing the normal duties of a police officer; the issue is whether the officer is capable of performing the duties assigned to him or to her.

This view is consistent with the test used in disability discrimination cases -- is the applicant or employee able to perform the duties actually assigned, with or without a reasonable accommodation and not whether the disabled individual is able to perform all of the duties of the position involved as set out in a job description. Finding that Leger performed the duties assigned to him for about a year following his injury, the Appellate Division ruled that there was substantial evidence to support the rejection of an application for accidental disability retirement.

Abolishment of position and ADR application deadline.

An employee's position was abolished while she was absent on leave without pay following surgery. She was later offered

The General Municipal Law Section 207-a/c Case Book is a handbook for administrators, union officials and attorneys involved with General Municipal Law Sections 207-a and 207-c benefits available to law enforcement personnel and firefighters suffering job related injuries or diseases

The General Municipal Law

Section 207-a

Section 207-c

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