

QUESTION: WHAT IS THE EXPECTED DURATION OF THE APPLICATION PROCESS UNDER THE NEW 'HEART' BILL?

ANSWER: The application process can take up to two (2) years from the date of filing.

QUESTION: CAN AN APPLICATION BE FILED UNDER THE NEW 'HEART' BILL WHILE THE APPLICANT IS "ON LIGHT DUTY"?

ANSWER: Yes. However, the application must be filed within two (2) years of the effective date of the "light duty" assignment.

QUESTION: MAY AN APPLICANT REMAIN 'ON THE JOB' UPON FILING AN APPLICATION UNDER THE NEW 'HEART' BILL?

ANSWER: Yes.

QUESTION: IS IT POSSIBLE TO FILE MULTIPLE APPLICATIONS FOR RETIREMENT SIMULTANEOUSLY?

ANSWER: Yes. Applications for disability retirement may be simultaneously pending under the new 'heart' bill, World Trade Center exposure, an injury asserted to be the result of an accident, or the performance of duty. Of import to note, an application for *service retirement* must be designated "FWOP" — that is, "filed without prejudice." Upon grant of either all or multiple retirement applications, NYSLRS will inquire as to which type of benefits the applicant will select.

QUESTION: HOW IS THE BENEFIT AWARDED UPON A SUCCESSFUL APPLICATION UNDER THE NEW 'HEART' BILL CALCULATED?

ANSWER: The benefit is calculated to be three-quarters (3/4) of the applicant's final average salary ("FAS"). FAS is calculated as the average of the income of the applicant's three (3) best years.

THE 2023 'HEART' BILL:



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AND
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QUESTION: WHAT IS THE DIFFERENCE BETWEEN THE NEW ‘HEART’ BILL AND THE ‘HEART’ BILL PREVIOUSLY IN EFFECT?

ANSWER: The prior ‘heart’ bill was enacted because of the recognition of the lifestyle that became inherent to the performance of duty as a police officer. Unlike the prior ‘heart’ bill, the new bill allows any member of law enforcement within New York State, New York City Firefighters, Corrections Officers, and, Court Officers to apply for the retirement benefit it contemplates, whereas applicants under the prior ‘heart’ bill were limited only to New York City Police Officers, New York City Firefighters, and, Corrections Officers.

The effective date of the new ‘heart’ bill is May 3, 2023 (New York Retirement and Social Security Law § 363-a). The new ‘heart’ bill now provides for a claim for accidental disability retirement, that is, colloquially, “3/4 disability pension,” as opposed to a “performance of duty” retirement, that is, a 50% pension.

Pursuant to the current text of New York Retirement and Social Security Law § 363-a:

“any condition of impairment of health caused by diseases of the heart, resulting in disability or death...shall be presumptive evidence that it was incurred in the performance and discharge of duty and the natural and proximate result of an accident, unless the contrary be proved by competent evidence.”

The new ‘heart’ bill creates a presumption (that may be overcome by substantial evidence to the contrary), the condition/impairment is the result of an ‘accident,’ without having to prove a predicate accident was sustained. The bill does not guarantee a positive result upon application for accidental disability retirement. Although the text of the prior incarnation of the ‘heart’ bill did not contemplate whether an accident within the meaning of the law occurred to support the application thereunder, same was treated in that manner.

QUESTION: WHO IS AN ELIGIBLE APPLICANT UNDER THE NEW ‘HEART’ BILL?

ANSWER: Again, *any member of law enforcement within New York State*, New York City Firefighters, Corrections Officers, and, Court Officers are eligible to apply for the retirement benefit afforded by the new ‘heart’ bill if the requisite criteria are met.

QUESTION: WHAT ARE THE REQUIREMENTS TO QUALIFY FOR THE BENEFITS ASSOCIATED WITH THE NEW ‘HEART’ BILL?

ANSWER: Pursuant to the text of New York Retirement and Social Security Law § 363-a, the following criteria must be satisfied to submit a viable claim under the new ‘heart’ bill:

- (1) The applicant must be “presently employed” as a police officer;
- (2) the applicant “prior to entry into service” as a police officer, must have “successfully passed a physical examination which failed to disclose evidence of any disease or other impairment of the heart[;]”
- (3) the applicant must have sustained “any condition of impairment of health caused by diseases of the heart, resulting in disability or death[.]”

The benefits afforded by the new ‘heart’ bill are not available to retired police officers. Litigation will likely ensue to *precisely define what “disease or other impairment of the heart”* is, where such is not clearly identified, and so...

QUESTION: ARE THERE ANY RECOGNIZED PATHOLOGIES THAT CAN PREDICATE AN APPLICATION UNDER THE NEW ‘HEART’ BILL?

- (1) Myocardial Infarction (colloquially, “heart attack”) — such does not have to occur while actually performing the duties of police officer;
- (2) Coronary Heart Disease (“CHD”);
- (3) Coronary Stenosis;
- (4) Hypertensive Heart Disease

Any impairment of health caused by a disease of the heart must result in a disability in order to qualify for the benefit afforded by the new ‘heart’ bill.

QUESTION: WHAT IS THE APPLICATION PROCESS TO FILE A CLAIM PURSUANT TO THE NEW ‘HEART’ BILL?

ANSWER: The New York State and Local Retirement System (“NYSLRS”) has promulgated the application form for claims for accidental disability retirement under the new ‘heart’ bill. ITEM 1 of the **APPLICATION FOR ACCIDENTAL DISABILITY RETIREMENT (FORM RS-6047)** provides a ‘check box’ to indicate the claim proffered is ‘heart related.’ Our office can assist the applicant with the proper completion of the balance of **FORM RS-6047**.

Upon retainer of legal counsel, the application process proceeds as follows:

- (1) proper completion of **FORM RS-6047**;
- (2) procurement of medical evidence requisite to a successful claim;
- (3) submission of **FORM RS-6047** and medical evidence to NYSLRS (our office will hand-deliver the aforementioned materials to the local NYSLRS office to ensure timely receipt by same and to obtain a date-stamped copy of **FORM RS-6047** as evidence of such timely submission);
- (4) subsequently, NYSLRS will schedule an independent medical examination (“IME”) to procure its own opinion to either rebut the presumption now afforded by the new ‘heart’ bill and/or challenge whether an identified impairment caused by a disease of the heart resulted in disability or death (our office will prepare the applicant for the IME).