



2012-2013 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

THE STATE OF PUBLIC SAFETY DISABILITY RETIREMENT RATES IN THE COUNTY

Summary

Over the past five years, almost 300 public safety employees within Santa Clara County were granted a disability retirement because they were injured while performing their job.¹ Public safety employees (Public Safety) are identified as those law enforcement and firefighters whose job responsibilities place them at risk of physical danger.² The Santa Clara County Civil Grand Jury (Grand Jury) has reviewed the job-related disability retirement³ application and determination decision process for Public Safety within the county.

The Grand Jury investigation was prompted by a 2011 City of San Jose Auditor's report, which stated that a larger than expected portion of San Jose's sworn⁴ police and fire department employees retire with a job-related disability. The Grand Jury surveyed the extent to which job-related disability retirement (referred to as Industrial Disability Retirement, or "IDR") is occurring for all Public Safety agencies in the county, as well as the processes these agencies use to review IDR applications. From the data provided by these agencies, the Grand Jury found that over the past five years, approximately 27% of all Public Safety retirements in the county have been granted as retirements with a job-related disability.

The Grand Jury learned that, with the exception of San Jose which has developed its own pension system, all entities within the county that have Public Safety employees use the California Public Employees Retirement System (CalPERS) to administer their Public Safety retirement programs. Once the disability retirement determination decision is made by the entity, CalPERS administers the remainder of the application process using standardized procedures independent of the employing entity.

¹Based on questionnaire responses from entities listed in Appendix B.

² Law enforcement includes Police, Sheriff, Deputies, Correctional Officers/Deputies, District Attorney Investigators, County Park Rangers, and County Probation Department Deputy Officers/Counselors.

³ Job-related Disability Retirement is the generic term equivalent to CalPERS' Industrial Disability Retirement (IDR) and San Jose's Service-Connected Disability Retirement

⁴ The City of San Jose is the only entity in the county to refer to their Public Safety police and firefighters as sworn employees.

Background

In April 2011, after an in-depth investigation and analysis of San Jose's sworn employee disability retirement program, the City of San Jose Auditor issued a report titled "Disability Retirement: A Program in Need of Reform".⁵ The Grand Jury was concerned by the report's Conclusion:

"The sworn service-connected disability rates in particular (which by definition, mean employees are permanently disabled from doing their jobs) are higher than other jurisdictions..."

"The rate of disability retirements among San Jose's sworn employees is unacceptably high. Although improvement can be made, it does not appear that San Jose is an unsafe place to work. Other factors that contribute to the high rate of disability retirements need to be addressed—a more independent process for reviewing and approving disability retirements is essential, and eligibility requirements for disability retirement need reform."

The Auditor made six disability retirement recommendations for sworn employees that are beyond the scope of this report. Of those, recommendations 2-5 were directed toward changes to the City of San Jose's charter and municipal code specifying the disability retirement processes for San Jose's sworn employees. These recommendations were included in San Jose's Pension Reform Ballot Measure B passed by voters in June 2012.⁶

Because the City of San Jose brought to light their need for sworn employee disability retirement process reforms, the Grand Jury decided to look into disability retirement rates in general, focusing its investigation on those entities in the county with Public Safety employees.

Methodology

The City of San Jose Auditor found that the city's IDR rate for sworn employees was unacceptably high. The Grand Jury sought to understand and explore the Public Safety IDR rates in the county by surveying public agencies including the City of San Jose.

The Grand Jury investigation focused on Santa Clara County (County) and the cities and towns in the county, a total of 16 jurisdictions (hereafter referred to as **entities**).

⁵ Office of the City Auditor's Report to the City Council of the City of San Jose "Disability Retirement: A Program in Need of Reform", April 2011, Report 11-02 Pages i-ii, 33

⁶ <http://www.sanjoseca.gov/index.aspx?nid=309>

Only the 12 entities with Public Safety employees were surveyed⁷.

All entities and their respective Public Safety agencies are listed in **Table 1** below:

Entity:	Fire coverage:	Law Enforcement coverage:
Campbell	contract with SCC Central Fire Protection District	Campbell Police Department
Gilroy	Gilroy Fire Department	Gilroy Police Department
Los Altos	contract with SCC Central Fire Protection District	Los Altos Police Department
Los Gatos	contract with SCC Central Fire Protection District	Los Gatos-Monte Sereno Police Department
Milpitas	Milpitas Fire Department	Milpitas Police Department
Morgan Hill	contract with SCC Central Fire Protection District	Morgan Hill Police Department
Mountain View	Mountain View Fire Department	Mountain View Police Department
Palo Alto	Palo Alto Fire Department	Palo Alto Police Department
San Jose	San Jose Fire Department	San Jose Police Department
Santa Clara	Santa Clara Fire Department	Santa Clara Police Department
Santa Clara County ⁸	Central Fire Protection District	SCC Sheriff, Correctional Officers/Deputies; District Attorney Investigators; Park Rangers; Probation Department Deputies ⁹
Sunnyvale ¹⁰	Sunnyvale Department of Public Safety	Sunnyvale Department of Public Safety
Cupertino	contract with SCC Central Fire Protection District	contract with SCC Sheriff Department
Los Altos Hills	contract with SCC Central Fire Protection District	contract with SCC Sheriff Department
Monte Sereno	contract with SCC Central Fire Protection District	contract with Los Gatos–Monte Sereno Police Department
Saratoga	contract with SCC Central Fire Protection District	contract with SCC Sheriff Department

⁷Entities as defined in this report include: Santa Clara County; the cities of Campbell, Gilroy, Los Altos, Milpitas, Morgan Hill, Mountain View, Palo Alto, San Jose, Santa Clara, Sunnyvale; and the town of Los Gatos. These entities were neither surveyed nor discussed in this report: the cities of Cupertino, Monte Sereno, Saratoga; and the town of Los Altos Hills.

⁸ Santa Clara County has two fire protection districts. The Central Fire Protection District is managed by the County, while the South Santa Clara County Fire Protection District contracts its fire protection with CalFIRE. CalFIRE is a state agency outside the jurisdiction of the Grand Jury; therefore the South Santa Clara County Fire Protection District was not surveyed as part of this investigation.

⁹These positions are categorized as Public Safety. Those in the Probation Department include only Deputy Probation Officers, Deputy Group Counselors, and Deputy Probation Counselors.

¹⁰Sunnyvale has a combined police and fire department called the Department of Public Safety.

In the course of its investigation, the following resources were used by the Grand Jury to gather and evaluate data for this report:

- County, city/town, CalPERS, and Public Safety websites
- Results obtained from a questionnaire developed by the Grand Jury and distributed to the 12 entities¹¹. See Appendix A for the complete questionnaire. The numerical response data is in Appendix C.
- Direct communications with the entities when needed to resolve questions regarding the entities' website information or their questionnaire responses.
- Interviews conducted as necessary with one or more of the following persons from selected entities: Human Resources Director, City Auditor, Deputy County Executive, Employee Benefits Manager, or Employee Services Manager. Interviews were conducted following receipt and evaluation of the questionnaires, affording the opportunity to seek clarification and elaboration of entities' responses.
- Applicable legal authorities regarding Public Safety retirement.
- CalPERS documents listed in Appendix B.

Discussion

This discussion consists of four sections:

- **What is an Industrial Disability Retirement/IDR?** differentiates an Industrial Disability Retirement from other types of Public Safety retirement.
- **What is the entity's role in determining Public Safety IDRs?** explains the steps an entity must take in the determination of Industrial Disability Retirement.
- **What are the Financial Impacts of IDRs?** discusses the benefit and cost distinctions of Industrial Disability Retirement.
- **Key Questionnaire Results and Analyses** discusses the county-wide results found to be most relevant to the focus of the Grand Jury's investigation and conclusions.

¹¹ Entities contracting a Public Safety responsibility to another agency do not include that agency's data in their response.

What is an Industrial Disability Retirement/IDR?

Given the Grand Jury's focus on Public Safety retirement and IDR for those entities contracting with CalPERS, the City of San Jose's unique pension system will not be covered here. The City of San Jose's process for determining disability retirement is described separately and in detail by the City of San Jose Auditor Report.¹²

For the remaining entities in the county, CalPERS provides and administers all retirement and health benefits for employees and retirees, often including their families, and their contracting public agency employers. As such, CalPERS implements California laws, policies and procedures applicable to California public employee retirement.

“[CalPERS] benefits are determined by the member's employer (State, school, or local public agency); occupation (miscellaneous (general office and others), safety, industrial, or peace officer/firefighter); and the specific provisions in the contract between CalPERS and the employer.”¹³

IDR eligibility is based on an employee's Local Safety¹⁴ job classification as defined in California Government Code Section 20420. The eligible Local Safety member job categories in our county include local police officers, local deputy sheriffs, local firefighters, county correctional officers, district attorney investigators, county park rangers, and county probation officers.¹⁵ Table 1 identifies these job categories by entity.

IDR is available for Public Safety members whose job-related injuries or presumptive illnesses¹⁶ result in an employee being unable to perform the usual duties of their current position. As stated above, IDR is synonymous with job-related disability retirement or service-connected disability retirement. IDRs differ from service retirements which are based on an employee's years of service, and from regular disability retirements that may be granted when a Public Safety member's disability is not related to their employment.

¹² Office of the City Auditor's Report to the City Council of the City of San Jose "Disability Retirement: A Program in Need of Reform", April 2011, Report 11-02

¹³ CalPERS Facts At A Glance, March 2013

¹⁴ CalPERS documentation refers to these public safety employees as Local Safety to distinguish them from state-level Public Safety job classifications at such agencies as CalFire. This report will use this term for specific CalPERS references only.

¹⁵ CalPERS Public Agency & Schools Reference Guide – Membership Categories December 2012

¹⁶ A presumptive illness means an employee does not have to prove any connection between their job and their illness. California Labor Code specifies the list of presumptive illnesses.

CalPERS makes the service retirement determination decision for all member applicants and the disability retirement determination decision for all applicants *except* Public Safety member applicants.¹⁷ Thus, a key distinction for Public Safety member applicants is that CalPERS does *not* make their regular disability retirement or IDR determination decisions.¹⁸ The Public Safety disability retirement or IDR determination decision is made *only* by their contracting public agency employer.

What is the entity's role in determining Public Safety IDRs?

All CalPERS entities make the disability retirement or IDR determination decisions for their Public Safety applicants. CalPERS specifies the Local Safety *employer* responsibilities and instructions in their "CalPERS Public Agency & Schools Reference Guide"¹⁹ covering in detail their established retirement application processes for the contracting public agencies to follow. Similarly, the Local Safety retiree *applicant* responsibilities and instructions are specified in their "Guide to Completing Your CalPERS Disability Retirement Election Application".²⁰ The instructions provided by these CalPERS guides are clear, concise and synchronized between employer and employee responsibilities.

CalPERS requires that an entity's Local Governing Body (i.e., the City/Town Council or Board of Supervisors for the contracting agency) make the disability retirement or IDR determination decision for their Public Safety applicants. The Local Governing Body typically delegates its determination process to the County Executive, City/Town Manager, and/or Human Resources Director.

The Local Governing Body determination decision process is based on complete reviews of the duties and responsibilities of the applicant's current job, including the physical requirements of the position, competent medical opinion, and all medical and vocational information provided by the applicant, employer, and the agency's workers' compensation carrier.²¹ The Local Governing Body may request additional medical evidence to verify that the disability is permanent, job-related, job disabling, or caused by other relevant medical issues.

The CalPERS guides itemize the supporting disability determination decision documentation that must be submitted by the applicant and the employer before an application package is considered complete and ready to be processed by CalPERS. In particular, CalPERS requires that the Local Governing Body formally communicate and submit their disability retirement or IDR determination decision to CalPERS in the form of a Resolution or determination letter that also describes the employee's appeal options.

¹⁷ CalPERS Public Agency & Schools Reference Guide - Benefits Procedures Chapter, Dec 2012

¹⁸ CalPERS *does* make the determination decisions for their non-Local Safety job classification members who are also eligible for IDR.

¹⁹ <http://www.calpers.ca.gov/index.jsp?bc=/about/forms-pubs/er-pubs/manuals/pas-ref-guide.xml>

²⁰ A Guide to Completing Your CalPERS Disability Retirement Election Application, Dec 2012

²¹ CalPERS Public Agency & Schools Reference Guide, The Application Process – Employer Responsibility Sept 2012

What are the Financial Impacts of IDRs?

It is important to understand the financial impact of an Industrial Disability Retirement to the retiree and the employer.

Generally, the IDR allowance of a member will be 50% (or more by additional contract provisions) of their final compensation. A key financial impact for a Public Safety retiree is that their IDR allowance is not subject to federal and state income taxes. If the IDR retiree is also eligible for a service retirement, the additional service retirement allowance beyond the IDR allowance is taxable. The tax advantages continue for the rest of the IDR recipient's life.

The financial impact of IDRs to employers varies. To ensure that there will be enough funds in place to pay for the promised retirement benefits, CalPERS requires entities to contribute an actuarially determined amount to their employees' retirement accounts each year. Variables such as anticipated retirement age, life expectancy, employee compensation, credited service, benefit formula, and probability of disability are taken into account when the CalPERS actuaries²² perform the calculations.

The financial impact to the employer of an individual IDR can be zero. This is because an IDR retiree that is also eligible for a service retirement will receive an IDR benefit based upon the service retirement formula if that benefit is greater. However, IDRs cost more for the employer when a Public Safety employee is granted an IDR earlier in his/her career. In this case, the Public Safety employee retirement account has less contributions than are sufficient to fund his/her early IDR benefits. To make up for the shortfall in the retiree's retirement account balance, the employer's CalPERS annual contribution costs will go up (usually the following year) to pay for the early IDR benefits.

The cost of some IDRs to the employer is one of only many challenges faced by entities, as highlighted by the 2011-12 Civil Grand Jury Report "An Analysis of Pension and Other Post Employment Benefits."²³ That report discussed unfunded retirement pensions and benefits beyond the issues related to IDRs. The cumulative effect of the unfunded IDRs and other pension fund obligations presents a growing burden to entities, and therefore taxpayers.

²² An actuary is a trained professional who deals with the financial impact of risk and uncertainty, providing expert assessments to businesses.

²³ http://www.scsccourt.org/court_divisions/civil/cgj/grand_jury.shtml

In summary, any IDR granted before the normal Public Safety service retirement age can increase the employer's unfunded pension obligations. These obligations grow when early IDRs are granted by the entities' Local Governing Bodies. While the City of San Jose pension processes are different from the CalPERS processes, reducing IDRs is also crucial to San Jose's financial stability.

Key Questionnaire Results and Analyses

The Grand Jury developed and distributed a questionnaire (Appendix A) to the 12 entities to gather Public Safety retirement data and information about the entities' disability retirement processes. Of the 12 entities queried, only Morgan Hill did not provide the Grand Jury with requested Public Safety disability retirement data, stating that they did not maintain such records and had been unable to get them from CalPERS. The Grand Jury was therefore unable to analyze and compare Morgan Hill's Public Safety IDR rates with the other 11 surveyed entities in the county. Data received and analyzed is summarized in Appendix C.

The data received covered the past five fiscal years, through 6/30/2012. When averaged in order to minimize single-year variations, the percentage of all Public Safety retirements that were IDRs was 27% countywide.²⁴

For entities that employ both law enforcement and firefighter personnel, the average rate was 30%. Since Santa Clara County has many Public Safety positions (e.g., probation officers, DA investigators, correctional officers) that do not have comparable positions to the other 11 entities, the County data was restricted to only firefighters and Sheriff Department Law Enforcement personnel, thus enabling meaningful comparisons. For entities that employ only law enforcement personnel, the average rate was 14%.

Five-year rates²⁵ for individual entities, as well as their respective totals for IDRs, versus total Public Safety retirements are shown, by entity, in Figure 1 below. For example, over the most recent five years, Sunnyvale had 32 total Public Safety retirements, of which 9 (or 28%) were IDRs.

²⁴ Averages for each entity are based on their respective number of total IDRs divided by their respective number of Public Safety retirements. Cumulative averages are based on the total number of all entity's IDRs divided by the total number of all Public Safety retirements.

²⁵ The Grand Jury calculation of the City of San Jose's 30% Public Safety IDR rate was based on the 5-year survey data they provided, whereas the City of San Jose Auditor reported a much higher Public Safety disability retirement rate based on data covering a longer period of time.

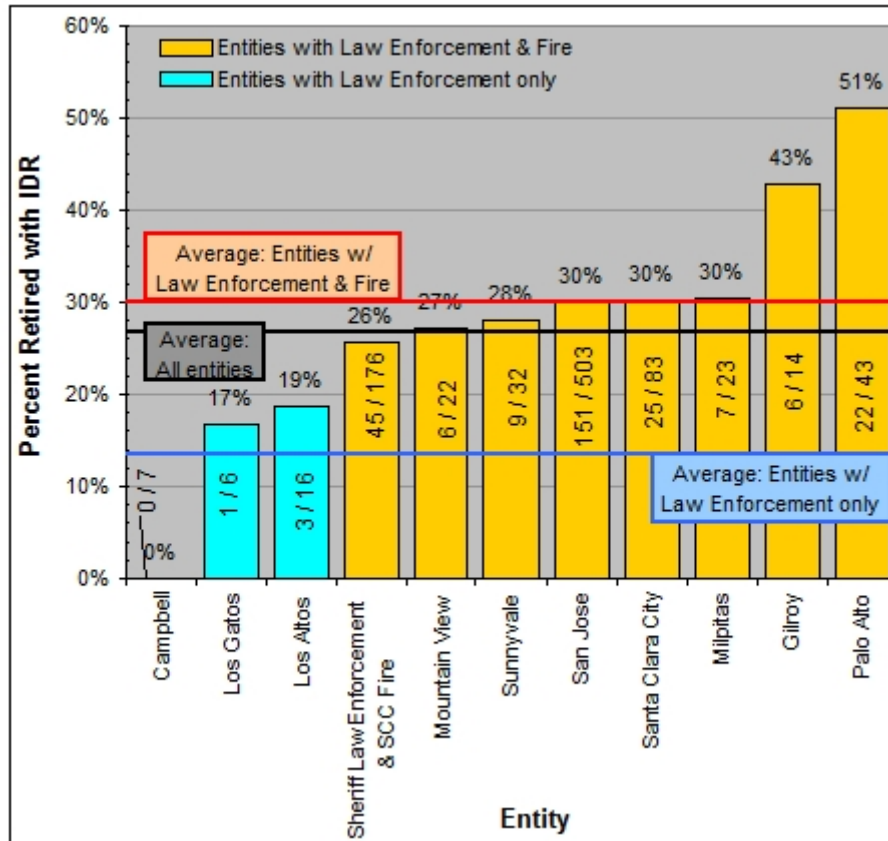


Figure 1

Industrial Disability Retirements as a Percentage of Total Public Safety Retirements

Noting the significantly higher IDR rates of Palo Alto and Gilroy compared to those of the other county entities employing law enforcement and fire personnel, one might reasonably ask if Palo Alto and Gilroy Public Safety personnel encounter a more dangerous workplace than other Public Safety personnel in the county. The Grand Jury could not explicitly answer this question with the information available. Even so, the significantly higher IDR rates of Palo Alto and Gilroy should invite further review by their respective city governing body.

One might posit that the size of an entity's Public Safety work force influences their IDR rate. However, the data suggests that the size of the Public Safety work force has little correlation to the IDR rate. This can be seen in Figure 2 below.

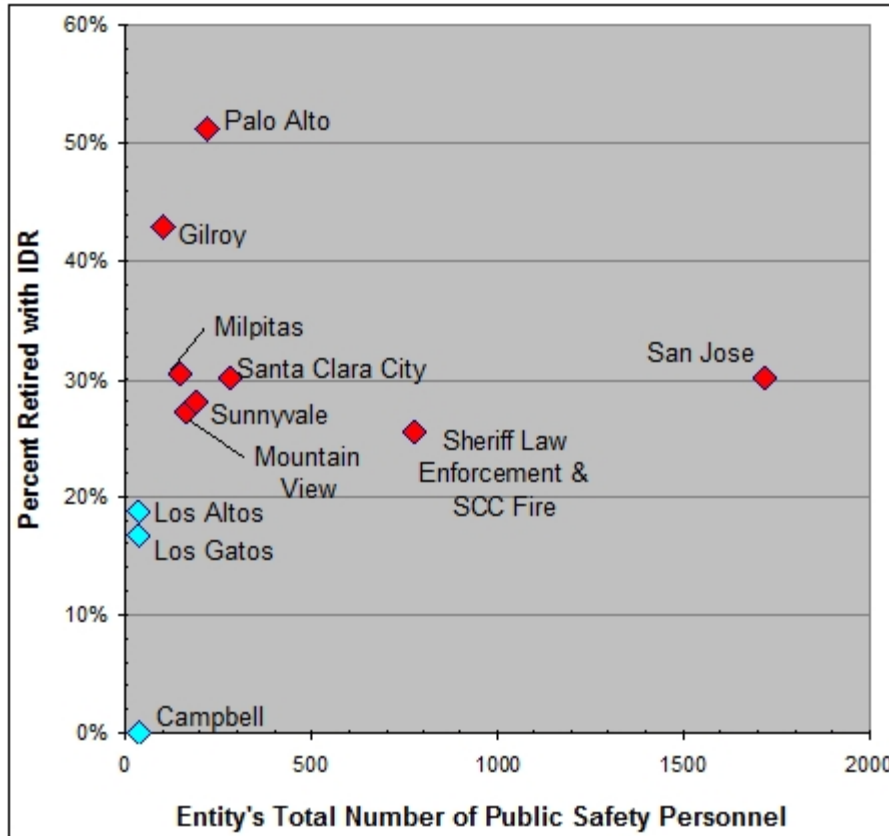


Figure 2

Relationship between Industrial Disability Retirement Percentage and the Entity's Total Number of Public Safety Personnel

What is apparent from the data provided to the Grand Jury is that those entities with a higher ratio of fire personnel to law enforcement personnel have higher IDR rates. This is evident when comparing the Average of Entities with Law Enforcement personnel only (14%) with the Average for Entities with Law Enforcement & Fire personnel (30%), both of which are labeled in Figure 1, above. This positive correlation between IDR rates and the percentage of Public Safety personnel who are firefighters is also shown in Figure 3 below. In other words, those entities with a higher percentage of firefighters have higher IDR rates.

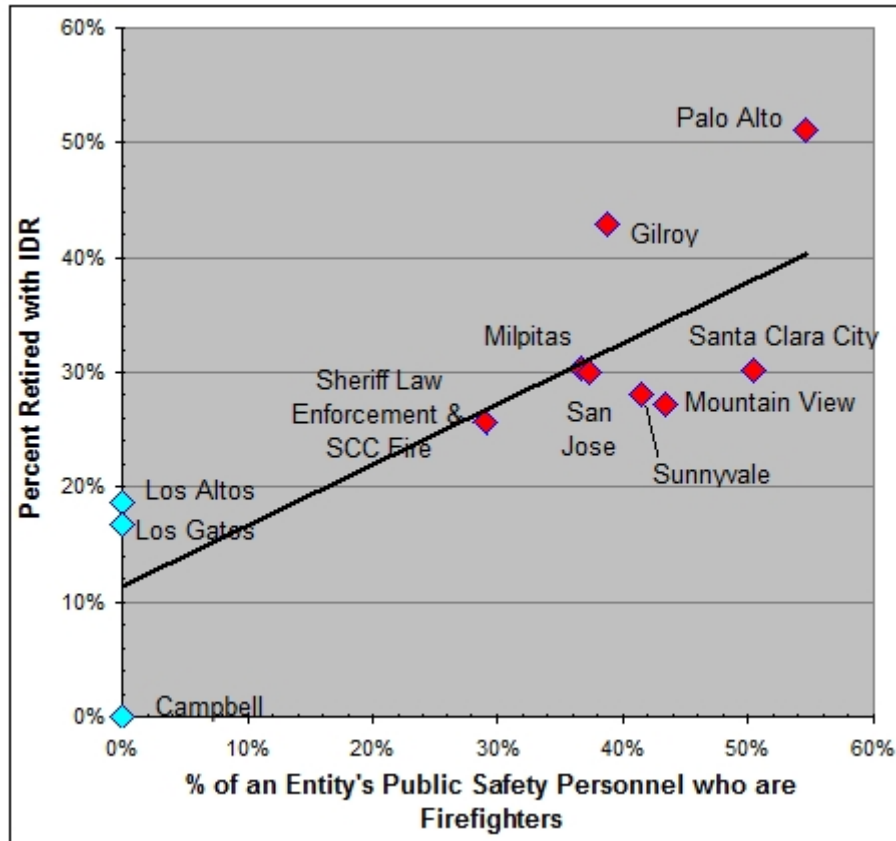


Figure 3

Positive Correlation between an Entity's Industrial Disability Retirement Percentage and the Percentage of their Public Safety Personnel who are Firefighters

The City of Palo Alto has both the highest IDR rate at 51% in the county and the highest percentage of firefighters at 55% in their Public Safety force relative to other entities in the county. Palo Alto should identify what factors, other than a high proportion of firefighters in their Public Safety force, account for their IDR rates. Palo Alto should develop a plan consistent with city objectives to lower its IDR rate.

In contrast, Santa Clara County has both the lowest IDR rate at 26% and the lowest percentage of firefighters at 29% among entities employing both firefighters and law enforcement personnel.

The City of Gilroy has the second highest IDR rate in the county at 43%. Gilroy should identify what factors influence its IDR rates. Gilroy should develop a plan consistent with city objectives to lower its IDR rate.

As law-enforcement-only entities, the City of Los Altos and the Town of Los Gatos have IDR rates of 19% and 17%, respectively. The City of Campbell should be commended for its police department's low IDR rate of 0%.

The Grand Jury acknowledges that several factors can account for an entity's IDR rate. The 2010 CalPERS actuarial report titled "Experience Study 1997-2007"²⁶ reviewed retirement rates by job categories. With respect to Public Safety IDRs, the report concluded that local public agency IDR rates are influenced as follows:

"...three of the groups (Public Agency police, Public Agency firefighter and California Highway Patrol) show a very substantial increase in the rates of industrial disability at or shortly after age 50. Three other groups (State safety, State POFF²⁷, and Public Agency county peace officers) do not display this effect. This difference is believed to be due to how strictly the disability criteria are enforced for the different groups."

The CalPERS report indicates that the age of the retiree and the agency's enforcement of the disability criteria factor into IDR rates. Also, as indicated above, the Grand Jury has found that there is a positive correlation between the percentage of firefighters and IDR rates. The Grand Jury acknowledges that the following factors may also influence IDR rates:

- The type, age, maintenance history, and availability of equipment and tools
- The minimum job requirements may be defined more rigorously for some entities than for others
- The quality of the wellness, safety, and injury prevention programs
- The availability of fitness programs tailored to firefighters and law enforcement personnel, with annual required assessments
- Adaptations to working conditions unique to a specific entity
- The willingness or ability of an entity to reassign employees to alternate job assignments within the department to accommodate injury-based job restrictions, thereby extending their years of service or eliminate an IDR
- The Local Governing Body's aggressiveness and/or savvy about the employer's options in deciding whether or not to grant an IDR
- Morale

²⁶ <http://www.calpers.ca.gov/eip-docs/employer/retiree-ben-trust/experience-study.pdf> page 18

²⁷ POFF refers to State-level Police Officers and FireFighters

The cities of Palo Alto and Gilroy have the highest IDR rates in the county for their composition of Public Safety.

The City of Campbell has the lowest IDR rate for their composition of Public Safety. The City of Los Altos and the Town of Los Gatos have IDR rates of 19% and 17% respectively for their composition of Public Safety.

The cities of Milpitas, Mountain View, San Jose, Santa Clara and Sunnyvale, and Santa Clara County all have rates between 26% and 30% for their composition of Public Safety. Nevertheless, these rates reflect that one quarter to one third of these entities' Public Safety employees are permanently injured doing their jobs.

Although the Grand Jury recognizes that no amount of mitigation measures can prevent certain IDRs, many factors within an entity's control can impact its overall IDR rate. Entities would be well-served to scrutinize the IDR factors within their control to lower their IDR rates.

Conclusions

The Grand Jury reviewed the disability retirement processes for Public Safety employees within Santa Clara County. Through a survey, interviews, and correspondence, the Grand Jury identified elements in the CalPERS structure, documentation, and disability retirement application procedures that enable process consistency across public agencies for both employers and retirees.

The City of San Jose is the only entity within Santa Clara County that does not use CalPERS to administer its sworn employee disability retirement process. The Grand Jury learned that the San Jose processes have many unique factors which the City of San Jose Auditor reports may be causing their high service-connected disability retirement rate. The Ballot Measure B Pension Reform and the City of San Jose Auditor are both driving the identified process reforms to mitigate many of these factors.

The Grand Jury found that the Public Safety IDR rates for entities within Santa Clara County have averaged 27% over the past five years. However, by analyzing survey data, the Grand Jury also determined that those entities having a higher proportion of firefighters in their Public Safety agencies also have higher IDR rates. Refer to Figure 3.

During the course of its investigation, the Grand Jury learned that managing an entity's IDR processes and rates is a complex challenge. Since IDRs are unique to Public Safety personnel, there are a variety of contributing factors that may influence an entity's IDR rate. Refer to the Key Questionnaire Results and Analyses section describing many of the IDR influence factors. Additional IDR influence factors are likely to emerge.

The cities of Palo Alto and Gilroy have the highest IDR rates in the county, at 51% and 43% respectively. The Grand Jury believes it is incumbent on them to reduce these IDR rates. A rigorous review of their IDR data is critical to their implementing plans to lower their IDR rates. All relevant IDR influence factors should also be investigated by these entities to facilitate this process.

The cities of Milpitas, Mountain View, San Jose, Santa Clara and Sunnyvale, and Santa Clara County all have Public Safety IDR rates between 26% and 30%.

The City of Morgan Hill is the only entity queried which did not provide the requested disability retirement data, stating that it did not maintain such records. The Grand Jury was therefore unable to analyze the Morgan Hill Police Department's IDR data. The City of Morgan Hill owes its constituents better records administration and management of its retirement processes by obtaining and retaining their police department retirement records. The City of Morgan Hill should determine its police department's IDR rates for the past 5 years and compare its average IDR rate to the average IDR rates of the other police department-only entities in the county, as provided in this report.

The City of Campbell should be commended for its police department's low IDR rate of 0%. The City of Los Altos and the Town of Los Gatos have IDR rates of 19% and 17% respectively.

A low IDR rate is beneficial for a number of reasons. An entity does not want its employees to be injured on the job. By definition, an entity wants its Public Safety IDR rate to be as low as possible. Although a high IDR rate does not necessarily correlate to high costs to the entity, a low IDR rate likely saves the entity money. The Grand Jury recognizes that the entities may have different views about what is an acceptable rate of IDRs. Low IDR rates are good and entities should be assessing whether factors within their control can reduce their rates to the lowest rate possible.

Findings and Recommendations

Finding 1

Averaged over the past five years, the City of Gilroy has the second highest IDR rate in the county at 43%.

Recommendation 1a

The City of Gilroy should identify what factors influence its IDR rate.

Recommendation 1b

The City of Gilroy should implement a plan to lower its IDR rate.

Finding 2

The City of Morgan Hill did not provide the Grand Jury the number of police department service and disability retirements for the past 5 years.

Recommendation 2a

The City of Morgan Hill should obtain its police department retirement records and determine its IDR rate for the past 5 years.

Recommendation 2b

The City of Morgan Hill should continue to retain its police department retirement records.

Recommendation 2c

The City of Morgan Hill should compare its IDR rate to the IDR rates of the other police department-only entities in the county, as provided in this report.

Finding 3

Averaged over the past five years, the City of Palo Alto has the highest IDR rate in the county at 51%.

Recommendation 3a

The City of Palo Alto should identify what factors other than its high percentage of firefighters influence its IDR rate.

Recommendation 3b

The City of Palo Alto should implement a plan to lower its IDR rate.

Appendix A: Grand Jury Questionnaire

City/County/District Government Name:

Person(s), with title(s), providing the responses:

NOTE: *In this questionnaire, we use the term “safety” to include both police and fire personnel. Some entities use the term “sworn” or “public safety” to identify these employees. For the purposes of this questionnaire, we consider these terms to be equivalent and interchangeable.*

- 1) Does CalPERS administer your pension funds for safety (police & fire) and non-safety employees? If not, please identify and describe how your pension plan is being administered.
- 2) Does CalPERS also administer your retirement-with-disability funds? If not, please identify and describe how your retirement-with-disability plan is being administered.
- 3) Does your city/county have final approval authority for retirement-with-disability status for your safety and non-safety employees?
- 4) Can an employee with a non-job-related disability be approved for retirement-with-disability? If so, out of the total number of retirements, how many non-job-related retirements-with-disability were approved for the each of the past five fiscal years?
 - a. For safety employees
 - b. For non-safety employees
- 5) Out of the total number of retirements, how many job-related retirements-with-disability were approved for each of the past five fiscal years?
 - a. For safety employees
 - b. For non-safety employees
- 6) What are the active employee (i.e., pre-retirement) Workers Compensation disability rates (claims per 100 employees) for each of the past five fiscal years?
 - a. For safety employees
 - b. For non-safety employees
- 7) Is there a process in place for providing modified-duty accommodations to active (i.e., pre-retirement) safety and non-safety employees who become disabled? If so, please describe that process and include the average number of such positions made available for each of the past five fiscal years.
- 8) Is there a time limit for applying for disability status post-retirement? If so, what are the time limits for safety and non-safety retirees?

Appendix A - continued

- 9) Describe in detail the retirement-with-disability application and review process for your safety and non-safety employees, highlighting any process differences between safety and non-safety employees.
 - a. If a retirement review board or forum is part of the process, please describe its composition (i.e., membership) and the member terms. If there are separate review boards for safety and non-safety employees, please describe the composition of each.
 - b. How many medical practitioners must approve a retirement-with-disability application?
 - i. How are the medical practitioners chosen and, if applicable, how long is their term of service?
 - ii. Are the medical practitioners specialists in the area of the disability that is claimed?
 - iii. Are the medical practitioners city/county employees or private medical practitioners?
 - c. Out of the total number of applications for retirement-with-disability reviewed by medical practitioners, how many safety and non-safety employee applications were approved by the medical practitioner for each of the past five fiscal years?
 - d. Out of the total number of applications for retirement-with-disability reviewed by the safety employee review board, how many were approved for safety employees for each of the past five fiscal years? Please provide the same numbers for the non-safety employees.
 - e. Is there an appeal process for those who disagree with the review board's decision?
 - i. If so, for each of the past five fiscal years, how many decisions were appealed and what were their outcomes?
- 10) If an employee retires with a disability, is his/her gross monthly retirement income different or the same as his/her non-disability retirement income? If different, how is the difference determined?
- 11) When your city/county makes changes to the retirement-with-disability process or criteria, are unions involved in negotiating and approving these changes? If so, describe the nature of that involvement.
- 12) How does your retirement with disability approval criteria compare with the Workers Compensation disability criteria?
- 13) Describe programs, both voluntary and mandatory, that your city/county uses to promote employee wellness and/or injury prevention for safety employees.

Appendix B: Referenced Documents and Websites

Report Name	Report Date	Document Source
"An Analysis of Pension and Other Post Employment Benefits" 2011-12 Grand Jury	June 2012	http://www.sccscourt.org/court_divisions/civil/cgj/grand_jury.shtml
Bartel & Associates Actuarial Consulting		http://www.bartel-associates.com/home
California Labor Code Section 4850		http://codes.lp.findlaw.com/cacode/LAB/1/d4/2/2/7/s4850
California A Public Pensions Annual Report - State Controller's Office	June 2010	http://www.californiapublicpolicycenter.org/wp-content/uploads/2013/02/CA-Public-Retirement-Systems-6-30-2010-released-03-03-2012.pdf
CalPERS main website		http://www.calpers.ca.gov/
CalPERS Disability & Industrial Disability Retirement for a Public Agency Employer	2012	http://www.calpers.ca.gov/index.jsp?bc=/employer/program-services/retirement/dis-ind-retire/home.xml
CalPERS Disability Retirement Guide	2012	https://www.calpers.ca.gov/index.jsp?bc=/about/benefits-overview/disability-industrial-disability.xml
CalPERS Guide to Completing Your Disability Retirement Election Application	December 2012	http://www.calpers.ca.gov/index.jsp?bc=/about/forms-pubs/mbr-pubs/calpers-member-pubs/planning-retirement.xml
CalPERS Experience Study 1997-2007	2010	http://www.calpers.ca.gov/eip-docs/employer/retiree-ben-trust/experience-study.pdf
CalPERS Facts at a Glance	April 2013	http://www.calpers.ca.gov/index.jsp?bc=/about/facts/home.xml
CalPERS Pension Primer	Oct 2009	www.calpersresponds.com/downloads/Pension_Primer.pdf
CalPERS Policies and Procedures for a Public Agency Employer Pub 35	May 2013	www.calpers.ca.gov/index.jsp?bc=/employer/policies-procedures/home.xml
CalPERS Public Agency & Schools Reference Guide	Feb 2013	http://www.calpers.ca.gov/index.jsp?bc=/about/forms-pubs/er-pubs/manuals/pas-ref-guide.xml
City Auditor's Report to the City Council of the City of San Jose "Disability Retirement: A Program in Need of Reform"	April 2011	http://www.sanjoseca.gov/index.aspx?NID=307
City Auditor's Report to the City Council of the City of San Jose "Fire Department Injuries – A More Coordinated Response and Better Follow-up Is Needed"	Sept 2012	http://www.sanjoseca.gov/index.aspx?NID=307
City Auditor's Report to the City Council of the City of San Jose "Outstanding Audit Recommendations Status"	Dec 2012	http://www.sanjoseca.gov/index.aspx?nid=309
San Jose City Council Public Safety Committee Agenda	Sept 2012	http://sanjoseca.gov/index.aspx?NID=425
San Jose Retirement Boards	Sept 2012	http://www.sanjoseca.gov/index.aspx?nid=3432
San Jose Measure B Pension Reform Comparison to Similar Reforms	June 2012	www.ballotpedia.org
San Jose Pension Reform Measure B Pamphlet Text	June 2012	www.sanjoseca.gov/documentcenter/view/3965
What is Workers Compensation?		http://www.usworkerscomp.com/workers-compensation

Appendix C: Questionnaire Response Data

	Campbell	Gilroy	Los Altos	Los Gatos	Milpitas	Mountain View	Palo Alto	San Jose	City of Santa Clara	Sheriff Law Enforcement+ SCC Fire	Sunnyvale
Current # of Public Safety employees (eligible for IDR)	40	103	36	38	150	166	222	1718	286	775	195
Current # of Firefighters	0	40	0	0	55	72	121	642	144	225	81
% of Public Safety employees who are Firefighters	0%	39%	0%	0%	37%	43%	55%	37%	50%	29%	42%
Total Public Safety retirements (over 5 yrs)	7	14	16	6	23	22	43	503	83	176	32
Industrial disability retirements (over 5 yrs)	0	6	3	1	7	6	22	151	25	45	9
% of Industrial disability retirements (over 5 yrs)	0%	43%	19%	17%	30%	27%	51%	30%	30%	26%	28%

This report was **PASSED** and **ADOPTED** with a concurrence of at least 12 grand jurors on this 11th day of June, 2013.

Steven P. McPherson
Foreperson

Lyn H. Johnson
Foreperson pro tem

Chester F. Hayes
Foreperson pro tem

Francis A. Stephens
Secretary