§ 362. Ordinary disability retirement. a. Application for an ordinary disability retirement allowance for a member may be made by:

1. Such member, or

2. The head of the department in which such member is employed, or

3. Some person acting on behalf of and authorized by such member.

aa. At the time of the filing of an application pursuant to this section, the member must:

1. Have at least ten years of total service credit, and

2. Actually be in service upon which his membership is based, or, have been discontinued from service, either voluntarily or involuntarily, for not more than ninety days, providing the member was disabled prior to such discontinuance.

After the filing of such an application, such member shall be given one or more medical examinations. If the comptroller determines that the member is physically or mentally incapacitated for the performance of duty and ought to be retired for ordinary disability, he shall be so retired. Such retirement shall be effective as of a date approved by the comptroller.

b. Upon retirement for ordinary disability one of the following retirement allowances shall be payable:

1. If a member has attained age sixty when such retirement becomes effective, his or her retirement allowance shall be equal to that which he or she would receive in the case of superannuation retirement, unless the member is enrolled in a plan provided under section three hundred seventy-a, three hundred seventy-one-a or three hundred seventy-five of this article, in which case the benefit shall be calculated in the manner described in clause two of subparagraph (c) of paragraph two of this subdivision.

2. If the member has not attained age sixty when such retirement becomes effective, his retirement allowance shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement, plus

(b) A pension which is the actuarial equivalent of the reserve-for-increased-take-home-pay to which he may then be entitled, if any, plus

(c) A pension computed in accordance with whichever of the following provides the greater benefit:

(1) A pension which, together with the member's annuity and the pension-providing-for-increased-take-home-pay, if any, shall equal ninety per centum of one-seventieth of his final average salary multiplied by the number of years of his total service credit, which formula shall be used only if the retirement allowance so computed exceeds one-quarter of his final average salary.

If the retirement allowance so computed shall amount to one-quarter or less of the member's final average salary, his pension shall be computed upon the basis of the total service which he would have rendered if he continued in service until he attained age sixty so far as the resulting retirement allowance computed by resort to this formula shall not exceed one-quarter of the member's final average salary.

(2) A pension which together with the member's annuity and the pension-providing-for-increased-take-home-pay, if any, shall equal one-sixtieth of his final average salary multiplied by the number of years of his total service credit, which formula shall be used only if the retirement allowance so computed exceeds one-third of his final average salary. If the retirement allowance so computed shall amount to one-third or less of the member's final average salary, his pension shall be computed upon the basis of the total service which he would have rendered if he continued in service until he attained age sixty so far as the resulting retirement allowance computed by resort to this formula shall not exceed one-third of the member's final average salary. In the case of persons who last became members on or after July first, nineteen hundred seventy-three, the provisions of this item (2) shall apply only to those who file an application for ordinary disability retirement with the comptroller prior to July first, nineteen hundred

seventy-four.
For the purpose only of determining the amount of a pension pursuant to any of the above formulae, the annuity shall be computed as it would be:

(aa) If not reduced by the actuarial equivalent of any outstanding loan, and

(bb) If not increased by the actuarial equivalent of any additional contributions, and

(cc) If not reduced by reason of the member's election to decrease his or her annuity contributions to the police and fire retirement system in order to apply the amount of such reduction in payment of his or her contributions for old-age and survivors insurance coverage.

c. If the member, at the time of the filing of an application under the provisions of subdivision a hereof, is eligible for a service retirement benefit, then and in that event, he may simultaneously file an application for service retirement in accordance with the provisions of section three hundred seventy of this chapter, provided that the member indicates on the application for service retirement that such application is filed without prejudice to the application for ordinary disability retirement.

d. An application for an ordinary disability retirement allowance may be filed, as otherwise provided herein, simultaneously with or after the filing of an application for an accidental disability retirement allowance, providing a member meets the requirements of this section. If the comptroller shall grant the application for an accidental disability retirement allowance and the application for an ordinary disability retirement allowance, the accidental disability retirement allowance shall become payable unless the applicant files a timely written request with the comptroller to receive the ordinary disability retirement allowance in lieu of the accidental disability retirement allowance, in which case the ordinary disability retirement allowance shall become payable. To become effective, such written request must be filed with the comptroller within thirty days following notification that the applications for ordinary disability retirement and accidental disability retirement have both been granted.