§ 363-c. Retirement for disability incurred in performance of duty. a. After January first, nineteen hundred eighty-five, a member who becomes physically or mentally incapacitated for the performance of duty shall be covered by the provisions of this section in lieu of the provisions of section three hundred sixty-three of this article; except, however, any such member who last entered or re-entered service prior to that date shall be entitled to apply for disability retirement pursuant to such section and to receive the benefit so payable in lieu of the benefit payable pursuant to this section.

b. Eligibility. A member shall be entitled to retirement for disability incurred in the performance of duty if, at the time application therefor is filed, he is:

1. 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 police and fire retirement system, and

2. Actually in service upon which his membership is based. However, in a case where a member is discontinued from service, either voluntarily or involuntarily, subsequent to sustaining a disability in such service, application may be made not later than two years after the member is discontinued from service and provided that the member meets the requirements of subdivision a of this section and this subdivision.

c. Application. Application for retirement for disability incurred in performance of duty may be made by:

1. Such member, or

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

d. Verification of disability. 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

pursuant to subdivision b of this section and ought to be retired, he shall be so retired. Such retirement shall be effective as of a date approved by the comptroller.

e. (a) No such application shall be approved, however, unless the member or some other person on his behalf shall have filed written notice in the office of the comptroller within ninety days after the occurrence which is the basis for the disability incurred in the performance of duty, setting forth:

1. The time, date and place of such occurrence, and

2. The particulars thereof, and

3. The nature and extent of the member's injuries, and

4. The alleged disability.

(b) The notice herein required need not be given:

1. If notice of such occurrence shall be filed in accordance with the provisions of the workers' compensation law of any state within which a participating employer shall have its employees located or performing functions and duties within the normal scope of their employment, or

2. If the application for retirement for disability incurred in the performance of duty is filed within one year after the date of the occurrence which forms the basis for the application, or

3. If a failure to file notice has been excused for good cause shown as provided by rules and regulations promulgated by the comptroller.

(c) Notwithstanding any other provision of law to the contrary, the provisions of this subdivision shall apply to all occurrences before or after the effective date of this section.

f. The retirement allowance payable upon retirement for disability incurred in the performance of duty shall consist of a pension of one-half of his final average salary plus an annuity which shall be the

actuarial equivalent of the member's accumulated contributions, if any.

g. If the member, at the time of the filing of an application under the provisions of subdivision c of this section, is eligible for a service retirement benefit, then and in that event, he may simultaneously file an application for service retirement provided that the member indicates on the application for service retirement that such application is filed without prejudice to the application for the retirement for disability incurred in performance of duty.

h. The provisions of this section and the benefits provided for therein shall not be applicable to members who are subject to the provisions of section three hundred sixty-three-b of this article.

i. Any benefit provided pursuant to this section shall not be considered as an accidental disability benefit within the meaning of section three hundred sixty-four of this article. Any benefit payable pursuant to the workers' compensation law to a member receiving a disability allowance pursuant to this section shall be in addition to such retirement for disability incurred in performance of duty allowance.

j. A final determination of the comptroller that the member is not entitled to retirement benefits pursuant to this section shall not in any respect be, or constitute, a determination with regard to benefits payable pursuant to section two hundred seven-a or section two hundred seven-c of the general municipal law.