§ 558. 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 five hundred fifty-six 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 or she 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 retirement system, and

2. Actually in service upon which his or her membership is based. However, in a case where a member is discontinued from service, and provided that the member meets the requirements of paragraph one of this subdivision, application may be made, either (a) by a vested member incapacitated as the result of a qualifying World Trade Center condition as defined in section two of this chapter at any time, or (b) 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.

An application for disability retirement shall not be disapproved on the basis of a deputy sheriff having failed to engage directly in criminal law enforcement activities that aggregate fifty per centum of a deputy sheriff's service during a period preceding the filing of the application provided the failure to do so was the result of the disability alleged in the application and further provided the deputy sheriff was certified as so engaged in criminal law enforcement activities by the county sheriff at the time the physical or mental

incapacitation for the performance of duty is alleged to have occurred.

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 or she shall be so retired. Such retirement shall be effective as of a date approved by the comptroller.

e. 1. No such application shall be approved, however, unless the member or some other person on his or her 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:

(a) The time, date and place of such occurrence, and

(b) The particulars thereof, and

(c) The nature and extent of the member's injuries, and

(d) The alleged disability.

2. The notice herein required need not be given:

(a) 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

(b) 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

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

3. 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 or her 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 or she 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. Any benefit provided pursuant to this section shall not be considered as an accidental disability benefit within the meaning of section five hundred fifty-six 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.

i. 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-c of the general municipal law.

j. 1. (a) Notwithstanding any provisions of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, if any condition or impairment of health is caused by a qualifying World Trade Center condition as defined in

section two of this chapter, it shall be presumptive evidence that it was incurred in the performance and discharge of duty and the natural and proximate result of an accident not caused by such member's own willful negligence, unless the contrary be proved by competent evidence.

(b) The comptroller is hereby authorized to promulgate rules and regulations to implement the provisions of this paragraph.

2. (a) Notwithstanding the provisions of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, if a member who participated in World Trade Center rescue, recovery or cleanup operations, as defined in section two of this chapter, and subsequently retired on a service retirement, an ordinary disability retirement or a performance of duty disability retirement and subsequent to such retirement is determined by the comptroller to have a qualifying World Trade Center condition, as defined in section two of this chapter, upon such determination by the comptroller it shall be presumed that such disability was incurred in the performance and discharge of duty as the natural and proximate result of an accident not caused by such member's own willful negligence, and that the member would have been physically or mentally incapacitated for the performance and discharge of duty of the position from which he or she retired had the condition been known and fully developed at the time of the member's retirement, unless the contrary is proven by competent evidence.

(b) The comptroller shall consider a reclassification of the member's retirement as an accidental disability retirement effective as of the date of such reclassification.

(c) Such member's retirement option shall not be changed as a result of such reclassification.

(d) The member's former employer at the time of the member's retirement shall have an opportunity to be heard on the member's application for reclassification by the comptroller according to procedures developed by the comptroller.

(e) The comptroller is hereby authorized to promulgate rules and regulations to implement the provisions of this paragraph.

k. Notwithstanding any other provision of this chapter or of any

general, special or local law, charter, administrative code or rule or regulation to the contrary, if a retiree who:

(1) has met the criteria of subdivision j of this section and retired on a service or disability retirement, or would have met the criteria if not already retired on an accidental disability; and

(2) has not been retired for more than thirty-five years; and

(3) dies from a qualifying World Trade Center condition, as defined in section two of this chapter, as determined by the applicable head of the retirement system or applicable medical board, then unless the contrary be proven by competent evidence, such retiree shall be deemed to have died as a natural and proximate result of an accident sustained in the performance of duty and not as a result of willful negligence on such retiree's part. Such retiree's eligible beneficiary, as set forth in section five hundred one of this chapter, shall be entitled to an accidental death benefit as provided by section five hundred nine of this chapter, however, for the purposes of determining the salary base upon which the accidental death benefit is calculated, the retiree shall be deemed to have died on the date of such retiree's retirement. Upon the retiree's death, the eligible beneficiary shall make a written application to the head of the retirement system within the time for filing an application for an accidental death benefit as set forth in section five hundred nine of this chapter requesting conversion of such retiree's service or disability retirement benefit to an accidental death benefit. At the time of such conversion, the eligible beneficiary shall relinquish all rights to the respective benefits payable under the service or disability retirement benefit, including any post-retirement death benefits, since the retiree's death. If the eligible beneficiary is not the only beneficiary receiving or entitled to receive a benefit under this service or disability retirement benefit (including, but not limited to, post-retirement death benefits or benefits paid or payable pursuant to the retiree's option selection), the accidental death benefit payments to the eligible beneficiary will be reduced by any amounts paid or payable to any other beneficiary.

l. Notwithstanding any other provision of this chapter or of any general, special or local law, charter, administrative code or rule or regulation to the contrary, if a member who:

(1) has met the criteria of subdivision j of this section; and

(2) dies in active service from a qualifying World Trade Center condition as defined in section two of this chapter, as determined by the applicable head of the retirement system or applicable medical board, then unless the contrary be proven by competent evidence, such member shall be deemed to have died as a natural and proximate result of an accident sustained in the performance of duty and not as a result of willful negligence on his or her part.

Such member's eligible beneficiary, as set forth in section five hundred one of this article, shall be entitled to an accidental death benefit provided he or she makes written application to the head of the retirement system within the time for filing an application for an accidental death benefit as set forth in section five hundred nine of this article.