§ 605. Disability retirement. a. Application for a 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.

b. 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. The application must be filed 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) within three months from the last date the member was being paid on the payroll or, (c) in the case of a member who was placed on a leave of absence for medical reasons without pay, either voluntarily or involuntarily, at the time he ceased being paid, application may be made not later than twelve months after the date the employee receives notice that his employment status has been terminated. In the case of a member of the New York state teachers' retirement system, the application must be filed not later than twelve months after the last date the member was being paid on the payroll or, where the member was placed on leave of absence for medical reasons without pay, either voluntarily or involuntarily at the time the member ceased being paid, not later than twelve months after the date the member receives notice that the member's employment status has been terminated.

3. Provided, however, if the retirement system determines that such member was physically or mentally incapacitated for performance of gainful employment as the natural and proximate result of an accident not caused by his own willful negligence sustained in the performance of his duties in active service while actually a member of the retirement system the requirement that the member should have ten years of credited service shall be inapplicable.

c. If the retirement system determines that the member is physically or mentally incapacitated for the performance of gainful employment, and that he was so incapacitated at the time he ceased his performance of duties and ought to be retired for disability, he shall be so retired. Each retirement system shall be entitled to adopt appropriate procedures for making the foregoing determination, including but not limited to the conducting of medical examinations, if any, for the purpose of determining initial entitlement of an applicant for disability retirement or to continued entitlement to a disability retirement allowance. Such retirement shall be effective as of a date approved by the head of the retirement system.

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

1. In the case of a member of a retirement system other than the New York city employees' retirement system, the New York city board of education retirement system or the New York city teachers' retirement system, if the member has attained age sixty when such retirement becomes effective, his retirement allowance shall be equal to that which he would receive in the case of service retirement at normal retirement age based on his credited service but in no event shall such retirement allowance exceed the amount he would receive pursuant to paragraph two of this subdivision.

2. In the case of a member of a retirement system other than the New York city employees' retirement system, the New York city board of education retirement system or the New York city teachers' retirement system, if the member has not attained age sixty when such retirement becomes effective, his retirement allowance shall consist of a retirement allowance which shall equal one-sixtieth of his final average salary multiplied by the number of years of his credited service, 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 retirement allowance 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 provided that the resulting retirement allowance computed by resort to this formula shall not exceed one-third of the member's final average salary.

3. In the case of a member of the New York city employees' retirement system, the New York city board of education retirement system or the New York city teachers' retirement system, his retirement allowance shall be equal to the greater of:

(i) one-third of his final average salary; or

(ii) one-sixtieth of his final average salary multiplied by the number of years of his credited service; provided, however, that where such member is otherwise eligible to retire for service, and the retirement allowance which he would receive in the case of service retirement is larger than the retirement allowance he would otherwise receive under this subparagraph or subparagraph (i) of this paragraph, his disability retirement allowance pursuant to this paragraph shall be equal to the retirement allowance he would receive if he had retired for service.

4. Notwithstanding any other law, rule or regulation to the contrary, any member who had an active membership in the New York state and local employees' retirement system or the New York state teachers' retirement system, when such member participated in World Trade Center rescue, recovery, or cleanup operations, as such participation is defined in section two of this chapter, who incurred a qualifying World Trade Center condition, as defined in section two of this chapter, that is determined to have been incurred in the performance and discharge of duty and is the natural and proximate result of an accident not caused by such member's own willful negligence, shall be paid a performance of duty disability retirement allowance equal to three-quarters of final average salary. The payment of such pension shall be subject to the provisions of section sixty-four of this chapter.

5. Notwithstanding the provisions of this subdivision, the minimum benefit payable to a member of the New York state and local employees' retirement system who has been determined to be physically or mentally incapacitated for performance of gainful employment as the natural and proximate result of an accident not caused by willful negligence

sustained in the performance of duties in active service while actually a member of the retirement system shall be a pension of one-third of such member's final average salary.

e. The board of trustees of the New York city employees' retirement system may, consistent with the provisions of this section, adopt rules and regulations establishing a procedure for the medical review of determinations made by such retirement system on applications for disability retirement filed pursuant to this section. Any medical review procedure adopted pursuant to this subdivision shall be substantially similar to the medical review procedure provided in section 13-169 of the administrative code of the city of New York, and shall provide that where a request for medical review is filed on behalf of an applicant for disability retirement, such request for medical review shall be void and of no effect unless such applicant for disability retirement, or a person acting on his or her behalf in accordance with such rules and regulations, executes a waiver providing that he or she waives any and all rights which he or she might otherwise have to seek or obtain any other disposition of such application for disability retirement by court or administrative proceedings or otherwise.

f. If the retirement system determines that such member was physically or mentally incapacitated for performance of gainful employment as the natural and proximate result of an accident not caused by his own willful negligence sustained in the performance of his duties in active service while actually a member of the retirement system, and the member is a teacher not within the coverage of section three of the workers' compensation law or an employee in group twenty of subdivision one of such section, the retirement allowance shall equal two-thirds of such member's final average salary.

g. Any payments made to a member who the retirement system has determined was physically or mentally incapacitated for performance of gainful employment as the natural and proximate result of an accident not caused by his own willful negligence sustained in the performance of his duties in active service while actually a member of the retirement system, and who is not eligible to receive workers' compensation

benefits by operation of group twenty or group twenty-two of section three of the workers' compensation law, shall be deemed to be a payment made in lieu of a workers' compensation benefit.

h. 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 head of each retirement system is hereby authorized to promulgate rules and regulations to implement the provisions of this paragraph.

2. (a)(1) 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 or a state police disability retirement pursuant to section three hundred sixty-three-b of this title and subsequent to such retirement is determined by the head of the retirement system to have a qualifying World Trade Center condition, as defined in section two of this chapter, upon such determination by the head of the retirement system 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.

(2) 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 for a minimum of forty hours, and subsequently retired on a service retirement, an ordinary disability retirement or a performance of duty disability retirement and subsequent to such retirement incurred a disability caused by any qualifying condition or impairment of the health which the applicable board of trustees determines, after a determination of disability by the applicable medical board, to have been caused by such member's having participated in World Trade Center rescue, recovery or cleanup operations for a minimum of forty hours, upon such determination by the applicable board of trustees, 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.

(3) A member shall be eligible for the presumption provided for under this paragraph notwithstanding the fact that the member did not participate in World Trade Center rescue, recovery or cleanup operations for a minimum of forty hours, provided that: (i) the member participated in the rescue, recovery, or cleanup operations at the World Trade Center site between September eleventh, two thousand one and September twelfth, two thousand one; (ii) the member sustained a documented physical injury at the World Trade Center site between September eleventh, two thousand one and September twelfth, two thousand one that is a qualifying condition or impairment of health resulting in disability to the member that prevented the member from continuing to participate in World Trade Center rescue, recovery or cleanup operations for a minimum of forty hours; and (iii) the documented physical injury that resulted in a disability to the member that prevented the member from continuing to participate in World Trade Center rescue, recovery or cleanup operations for a minimum of forty hours is the qualifying condition or impairment of health which the member seeks to be eligible for the presumption provided for under this paragraph.

(b) The reclassification provided for in subparagraph (a) of this

paragraph shall not be granted, unless:

(i) the member files either a written and sworn statement with the member's retirement system on a form provided by such system, or as allowed by the member's retirement system, electronically submits a statement on a form provided by such system through a secure online portal maintained by the member's retirement system that has duly validated the member's identity, indicating the dates and locations of employment within four years following the effective date of chapter one hundred four of the laws of two thousand five; and

(ii) the member must have successfully passed a physical examination for entry into public service which failed to disclose evidence of the qualifying condition or impairment of health that formed the basis for the disability.

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

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

(e) 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 head of the retirement system according to procedures developed by the head of the retirement system.

(f) The head of the retirement system is hereby authorized to promulgate rules and regulations for their respective retirement systems to implement the provisions of this paragraph.

i. 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 h 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 six hundred one of this article, shall be entitled to an accidental death benefit as provided by section six hundred seven of this article, 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 six hundred seven of this article 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 prospective 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 the 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.

j. 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 h 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 to have been caused by such member's participation in the World Trade Center rescue, recovery or cleanup operations, as defined in section two of this chapter, 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 six 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 six hundred seven of this article.