

Attachment A

To Potentially Eligible Individuals:

Notice of Potential Eligibility to Apply for Accidental Disability Retirement Benefits

This notice is being sent to you as part of a Settlement Agreement in the case of EEOC v. Commonwealth of Massachusetts, et al., Civil Action Number 99 CV 11233 RGS. In that case, Judge Richard J. Stearns of the United States District Court for the District of Massachusetts has held that the age caps that limit an individual's eligibility for an accidental disability retirement allowance under Massachusetts General Law c. 32, §7(1) discriminated on the basis of age in violation of the federal Age Discrimination in Employment Act. Judge Stearns has issued a permanent injunction prohibiting the Commonwealth from enforcing age limitations for accidental disability retirement (G.L. c. 32, § 7) for most, but not all, public employees.

Purpose of the Settlement Agreement

G.L. c. 32, § 7(1) provides an accidental disability allowance to an otherwise eligible member who, by reason of a personal injury sustained or a hazard undergone as a result of, and while in the performance of, his duties at some definite place and at some definite time on or after the date of his becoming a member, is unable to perform the essential duties of his job, where such inability is likely to be permanent. For pension purposes, the Commonwealth of Massachusetts classified employees in one of four groups. The "maximum age" for Group 1 employees was defined as age 70; for Groups 2 and 4, age 65; and for Group 3 employees, age 55.

The Settlement Agreement is designed to give all those who, on or after October 16, 1992, either were denied or did not apply for an accidental disability retirement allowance because of the age limitations in G.L. c. 32, §7(1) an opportunity to apply for an accidental disability retirement allowance and have the applications considered without regard to their age.

Eligibility Criteria

You may be eligible for relief under the Settlement Agreement that has been negotiated between the EEOC and the Commonwealth, and approved by the Court, if you otherwise meet the eligibility criteria of G.L. c. 32, § 7(1) and fall into one of these three groups:

A. You applied for but were denied, on or after October 16, 1992, an accidental disability retirement allowance because you had exceeded the maximum age for your group under Mass. G.L. c. 32, § 7(1). Individuals in this group are referred to as Eligible Members of Class A.

B. Your employment as a member in service terminated on or after October 16, 1992, after you had exceeded the maximum age for your group, and you can provide a statement under penalty of perjury which states both that you would have applied for an accidental disability retirement allowance but for the age limitations of G.L. c. 32, § 7(1), and how you knew or learned that such age limitations existed and made you ineligible at the time. Individuals in this group are referred to as Eligible Members of Class B.

C. You were denied, on or after October 16, 1992, an accidental disability retirement allowance or the opportunity to have an application for such an allowance processed because of the following language in G.L. c. 32, § 7(1): "No such retirement shall be allowed within any period of two years prior to attaining the maximum age on account of any accident or hazard undergone except for an accident or hazard undergone within three years of attaining such maximum age." If you never applied for an accidental disability allowance, you must provide a statement under penalty of perjury that you would have applied for an accidental disability retirement allowance but for these age limitations, and you must be willing to state how you knew or learned that such age limitations existed and made you ineligible at the time. Individuals in this group are referred to as Eligible Members of Class C.

Exclusions from Eligibility

You are not eligible for relief under the Settlement Agreement if, on or after October 16, 1992, you fell within one of the following groups:

- (1) You began receiving a superannuation retirement allowance, or received a refund of your accumulated total deductions two years or more before you reached maximum age;
- (2) You already are receiving an accidental disability retirement allowance;
- (3) You applied for an accidental disability retirement allowance and it was processed and denied on grounds other than your age;
- (4) You were a state court judge, an elected official, or an elected official's appointee who is not an "employee" within the meaning of the ADEA, 29 U.S.C. § 630(f), at the time you became disabled;
- (5) You are a law enforcement officer or firefighter as to whom there is currently a valid maximum retirement age pursuant to 29 U.S.C. § 623(j), unless you were denied benefits under, or discouraged from applying by, the "3/2 rule" of the fourth sentence of G.L. c. 32, § 7(1). (The "3/2 rule" provides: "No such retirement shall be allowed within any period of two years prior to attaining the maximum age on account of any accident or hazard undergone except for an accident or hazard undergone within three years of attaining such maximum age.")

Application Procedure

If you believe you meet the eligibility requirements as spelled out in this letter, you should immediately contact the retirement board which covers the employer for whom you currently or formerly were employed. The retirement board will supply you with an application packet to fill out and file with that retirement board. If you believe you are eligible for relief, you have 180 days from the receipt of this letter to submit an application for an accidental disability allowance to your retirement board, along with, applicable, a statement under penalty of perjury that you would have applied for an accidental disability retirement allowance but for the age limitations. (Failure to apply within 180 days will result in the denial of your application.)

Your retirement board will advise you extensively on the process and effects of applying and will be able to answer all your questions. If you apply, your application will be processed in the same manner

as your Retirement Board ordinarily processes applications for accidental disability retirement allowances. This means that you will need to complete the regular application and prove that you were eligible for benefits at the time you were still a member in service. Like all other applicants who are otherwise eligible, you will also be examined by a three-member medical panel.

If you are ultimately awarded an accidental disability retirement, you will receive back benefits plus an equal amount as liquidated damages, and eligibility for health insurance under G.L. c. 32A or c. 32B on the same terms and conditions as other retirees in your position.

You should also be aware that if you apply and ultimately receive an accidental disability retirement allowance, certain other requirements of state law would apply to you, as they do for any other applicant for an accidental disability retirement allowance. You would need to repay any refund of accumulated deductions you received from your retirement system, with regular interest. Amounts received under some sections of the Workers' Compensation law or as a settlement of a civil law suit which are related to your accidental disability might also be offset against your allowance. You would also be subject to G.L. c. 32, § 91A, which limits the amount of the retirement allowance when your earned income exceeds a certain level, and requires the repayment of that portion of your allowance for those past years in which your earned income exceeded the limits in G.L. c. 32, § 91A. However, under the Settlement Agreement, some or all of these amounts which you might owe could be reduced by the past and future benefits which you will be owed by the retirement system and the Commonwealth. Lastly, you should be aware that, like all other recipients of accidental retirement allowances, you would need to file a 91A Annual Statement of Earned Income and copies of certain tax documents for prior and all future years with the Public Employee Retirement Administration Commission.

Again, if you believe you are eligible and wish to apply for accidental disability retirement or believe you were otherwise harmed by the age limits in G.L. c. 32, § 7(1), you should contact your retirement board immediately. If you have further questions or if believe that you are being discriminated against during the process established by the Settlement Agreement, you may contact Markus Penzel at the EEOC (617-565-3193).

HEALTH INSURANCE NOTIFICATION

[for members of the state retirement system:]

Any member of the state retirement system who had previously received a refund of accumulated total deductions under G.L. c. 32, §§ 10 or 11, and who is found eligible for accidental disability retirement benefits as a result of the application now being submitted, shall be eligible for and may apply to Paul Murphy, Director of Operations, Group Insurance Commission, P.O. Box 8747, Boston MA 02114 (tel # 617-727-2310 ext. 3062), pursuant to 805 C.M.R. 9.20 to obtain, prospective health insurance coverage pursuant to G.L. c. 32A, § 10, on the same terms and conditions applicable to other system members who retired on the effective date of his or her accidental disability retirement.

[for members of the state teachers' retirement system:]

Any member of the teachers retirement system who had previously received a refund of accumulated total deductions under G.L. c. 32, §§ 10 or 11, and who is found eligible for accidental disability retirement benefits as a result of the application now being submitted, shall, if he or she was a municipal teacher and was covered by a health insurance plan offered by his or her municipal employer as of midnight on the day before he or she left service as a municipal teacher, be eligible for and may apply to the teacher's school district and Paul Murphy, Director of Operations, Group Insurance Commission, P.O. Box 8747, Boston MA 02114, (tel # 617-727-2310 ext. 3062) pursuant to 805 C.M.R. 7.01 and 7.02 to obtain, prospective health insurance coverage pursuant to G.L. c. 32A, § 12, if such statute was accepted by the relevant political subdivision, on the same terms and conditions applicable to other system members who retired on the effective date of his or her accidental disability retirement.

[for members of other retirement systems:]

Any person not whose most recent public employment was as an "employee" as defined in G.L. c. 32A, § 2(b), who had previously received a refund of accumulated total deductions under G.L. c. 32, §§ 10 or 11, and who is found eligible for accidental disability retirement benefits as a result of the application now being submitted, shall be eligible for and may apply to Paul Murphy, Director of Operations, Group Insurance Commission, P.O. Box 8747, Boston MA 02114, (tel # 617-727-2310 ext. 3062) to obtain, prospective health insurance coverage pursuant to G.L. c. 32A, § 10, on the same terms and conditions applicable to other members of the relevant retirement system who retired on the effective date of his or her accidental disability retirement.

Any person whose most recent public employment was as an employee of a "political subdivision" as the term is defined in G.L. c. 32B, § 2(g), who had previously received a refund of accumulated total deductions under G.L. c. 32, §§ 10 or 11, and who is found eligible for accidental disability retirement benefits as a result of the application now being submitted may apply to the treasurer of that political subdivision, or such person as is designated by the treasurer, to obtain prospective health insurance coverage pursuant to the section, if any, of G.L. c. 32B accepted by that political subdivision, on the same terms and conditions applicable to other members of the retirement system who retired on the effective date of his or her accidental disability retirement.

If a person applies for such health insurance coverage and is denied, he or she may contact the EEOC at EEOC, JFK Federal Bldg., Rm 475, Government Center, Boston, MA 02203, or at 617-565-3193.