

PERAC PENSION NEWSFLASH

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Governor Baker Signs PERAC Bill

Chapter 77 of the Acts of 2016 addresses pension inequity



Governor Charles D. Baker

On April 13, 2016 Governor Charles D. Baker signed H. 3791: *An Act further regulating survivors' pension benefits and qualified domestic relations orders* as Chapter 77 of the Acts of 2016. It will become effective for benefits first granted on or after July 1, 2016.

This Act was approved for filing by the Public Employee Retirement Administration Commission in early 2015 as a late-file bill and was filed by Representative James J. O'Day, Chairman of the legislature's Joint Committee on Municipalities and Regional Government, on May 13, 2015

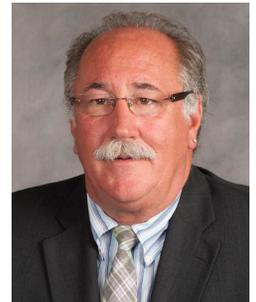
Background of the Act

This new Act will impact the limited circumstances where a member retired for disability, divorced and a Domestic Relations Order (DRO) was in place naming the former spouse as the Option C beneficiary and the member remarries and subsequently dies as a result of the injury which led to his/her disability.

Under current law, as imposed under the August 2013 *Larsson* case heard before the Massachusetts Division of Administrative Law Appeals (and not appealed), if a member remarries and then dies of the cause for which he retired, his current spouse would be eligible for a Section 9 accidental death benefit and the first wife's Option C benefit would be extinguished even though she had a valid DRO on file entitling her to this benefit. A DRO providing for a former spouse to get a retirement allowance under Option C will generally arise only in situations in which there has been a lengthy marriage. In the *Larsson* case, Ms. Larsson was married for 32 years prior to her divorce and pursuant to a DRO was to be named as the Option C beneficiary for her ex-husband's pension. Two days prior to his death, while in the hospital, the member remarried, his new spouse received the section 9 benefit and Ms. Larsson was excluded from all benefits. This Act now protects former spouses who have DROs in place.

Summary

Chapter 77 of the Acts of 2016 protect the rights of ex-spouses who were named the Option C beneficiary in a DRO and yet would still provide a current spouse with a partial benefit under section 9. Only the amount of the Section 9 benefit will be paid out by the retirement system, but it will be allocated between the Section 9 and Section 12(2)(c) beneficiaries. Again, this would only occur in the limited circumstances where a member retired for accidental disability, a DRO was in place, the member remarried and subsequently died as a result of the injury which led to his/her disability. This could also occur if a firefighter



Rep. James J. O'Day



Sen. Michael J. Rodrigues

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retires for superannuation, or regular retirement, and then dies of cancer which was discovered within 5 years of his retirement. In such a situation, accidental death benefits would be available to the surviving spouse under Section 9. Approximately 75 accidental death benefits are approved in a given year and very few of those would trigger the benefit calculation proposed in this legislation.

The Act will mandate the payment of the Option C benefit to the former spouse in situations only where the former spouse has been designated as the Option C beneficiary pursuant to a DRO. The current spouse would be paid a benefit which would be equal to the difference between the Chapter 32, Section 9 accidental death benefit and the Option C benefit. If the former spouse predeceases the current spouse, the entire Section 9 accidental death benefit would then be payable to the current spouse.

PERAC's Chairman Philip Y. Brown commented on the new Act:

First, on behalf of the Commission, I want thank Governor Baker for signing H. 3971. Our special thanks go to Representative Jim O'Day, Chairman of the Joint Committee on Municipalities and Regional Government, who agreed not only to sponsor this late-filed bill but also quickly spearheaded it through the House of Representatives. In addition, we were fortunate to have Senate Assistant Majority Whip Michael Rodrigues guide the bill through the Senate in lightning fashion. Seeing a bill through to law in a single legislative session is unusual, to do so in a mere 11 months is a very rare occurrence. We cannot thank Representative O'Day and Senator Rodrigues enough for shepherding this limited in scope, but important in objective, proposal through to law.

I also would be remiss if I did not thank House Speaker Robert DeLeo and Senate President Stanley Rosenberg for their support and approval of our bill. The support of Chairman Brian Dempsey of the House Ways and Means Committee and Chair Karen Spilka of the Senate Committee on Ways and Means was also an indispensable component of this legislative success.

PERAC's Executive Director Joseph E. Connarton also noted:

Governor Baker and the General Court have honored our agency with quick consideration, passage and signing of what is now Chapter 77 of the Acts of 2016. On behalf of our staff which worked diligently to bring this issue of fairness and equity to the Commission's attention, I would like to thank them.

A major presentation to the Commission by Deputy General Counsel Judith Corrigan brought full attention to the issue. Then after due consideration and deliberation, the Commission not only voted to approve a legislative filing but also to file a late-filed bill, an unusual occurrence. PERAC Associate Counsel Patrick Charles provided technical assistance to both the legislature and Governor's Office and our bill has now become law.

The objective of the Act - ensuring fairness and equity in such situations as the *Larsson* case - has now been met. PERAC will issue a future Memorandum providing guidance to the retirement boards on Chapter 77 of the Acts of 2016.

Please contact PERAC's Legal Unit with any questions related to this new law.

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