

The following article appeared in the New Lawyers Section of the Massachusetts Bar Association's Section Review (Volume 3, Number 3), published in the summer of 2001. In it, Sandor Zapolin, Deputy General Counsel for PERAC, provides an excellent discussion of Chapter 32 of the Massachusetts General Laws. The discussion will be of assistance to all attorneys who handle public pension matters.

Massachusetts Retirement Law: A Primer

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The Commonwealth and its cities and towns are collectively the biggest employer in the state. As a result, any attorney who practices in employment law, employee benefits or has a general practice is sure to eventually be exposed to the Massachusetts public retirement law. Unfortunately, for the attorney who dabbles in this area, tackling the public retirement law can be a complex and confusing endeavor. As the Appeals Court recently noted "In the notoriously difficult, sometimes tortuous field of retirement rights and calculations, there is particular reason for giving deference to the agency's expertness." The public retirement law covers all full time and many part time Massachusetts government employees. Unlike many private retirement plans, it is not neatly spelled out in a small plan document. The body of retirement law is comprised of hundreds of pages of statute, hundreds of regulations and literally thousands of administrative and judicial decisions.

The basis of the Massachusetts public retirement law is General Laws Chapter 32. The origins of the present statute date back to the early 1900s. Since that time the law has been amended, added to and tinkered with, but never redrafted in a uniform manner. This article will provide the basis of the statute and a beginning attempt to understand what an attorney needs to know in order to effectively represent public employees.

The public retirement plan is an especially important benefit for government workers. Since Massachusetts government employees do not contribute to Social Security, the retirement plan represents a major asset in retirement. Therefore, when considering issues as diverse as divorce, estates and trusts, and family law, it is important to consider the impact of this plan.

The System

In reality there is not a public retirement system. Massachusetts has one hundred and six different retirement systems. Each system is its own mini fiefdom with considerable responsibilities and powers. A five-member board comprised of appointed and elected members runs each system. These board members are fiduciaries of the system responsible for making determinations on member's eligibility for benefits, investing the often-considerable board assets and the supervision of the board staff. The largest public retirement systems are the State Retirement System for state employees, the Teachers' Retirement System for most municipal teachers, the Boston Retirement System for Boston employees and the county retirement systems for county and smaller town employees. The sizes of the various systems also vary tremendously. The State Retirement System has over 85,000 active members and 43,000 retirees. The smallest system has less than 60 members and retirees. This multi system retirement plan is unique to Massachusetts, representing the early creation of the plan and the strong autonomy of the cities and towns in the state. The one hundred and six systems are overseen by a state agency, the Public Employee Retirement Administration Commission.

The Basics

The Massachusetts public retirement plan is a mandatory employer and employee funded defined benefit plan. A defined benefit plan is defined as “any plan that is not an individual account plan. Under a defined benefit plan, there is a definite formula by which the employee’s benefits will be measured.”² As a government plan, the Massachusetts retirement plan is exempt from the myriad of requirements of the Employee Retirement Income Security Act of 1974, commonly called ERISA. As a result of this exemption, the plan escapes some of the stringent requirements of ERISA.

The plan is an age and service based plan³. The retirement formula is comprised of three components. The first is a factor (or percentage) based on the member’s age at retirement. The age factors range from 1.5% to a maximum of 2.5%. Employees of the government are divided into four groups based on their job title or duties. Those employees whose jobs have been deemed more physically difficult or dangerous are eligible for the highest age factor at an earlier age. Public safety positions reach that factor at age 55 while administrative, professional and most technical employees reach the factor at age 65.

The second component is the number of years of creditable service earned. Generally, an employee earns a year of creditable service for each year they receive regular salary or compensation from a public employer. Members must contribute a portion of their regular salary to the retirement system⁴. The contribution rate is determined by the start date of membership in a public retirement system⁵. The rates range from 5% to 12% of regular salary. Most employees also pay an extra 2% contribution on any salary over \$30,000. All contributions made after 1988 are on a federal pre-tax basis. Less than full time employees may receive a portion of a year of creditable service for a one-year period. In limited circumstances, employees can also purchase additional years of creditable service for periods when they were not employed by a Massachusetts government entity. As an example, teachers can purchase creditable service for maternity leaves, out of state teaching employment and nonpublic school teaching, elected officials can purchase creditable service for some unpaid service and veterans can purchase military service⁶. Most members must have ten years of creditable service to retire at age 55 or twenty years of creditable service to retire at any age.

The third component is the average annual rate compensation for a particular three-year period, generally the highest three years. The formula simply multiplies the age factor by the number of years of creditable service by the average compensation. This provides a yearly retirement allowance which is comprised of an annuity portion and a pension portion. A retirement allowance can be paid under three different options, including an option for a survivor benefit. The yearly allowance is reduced depending on the option selected. After retirement, Cost of Living Adjustments may increase the retirement allowance.

Disability

An important component of the Massachusetts retirement plan is the disability benefits available to injured employees. Accidental Disability Retirement is a lifetime benefit with the option for a survivor allowance for injuries suffered while in the performance and as a result of a job-related injury or hazard undergone⁷. A different benefit for

long term employees who are permanently disabled for non-job related reasons is called Ordinary Disability Retirement⁸. Disability retirement involves a complex body of case law which is separate and distinct from Workers' Compensation law and the public safety Injured On Duty statute⁹. The basic requirements were set out by the court in Malden Retirement Board v. Contributory Retirement Appeal Board¹⁰. The retirement law also provides other death benefits which are too broad to discuss in this primer.

Appellate Review

An important note for attorneys practicing in this area is the appeal rights provided by the statute. Any decision of any public retirement board or the oversight agency is subject to an administrative appeal. The Contributory Retirement Appeal Board (or CRAB as it is called) is the administrative tribunal statutory charged with hearing appeals on public retirement matters¹¹. The CRAB assigns all appeals to the state Division of Administrative Law Appeals for a hearing before an Administrative Magistrate. This is a crucial hearing for practitioners given the wide deference given to the decisions of administrative agencies in their area of statutory authority¹². The decisions of the Division are then subject to a paper review by CRAB if any party files objections with CRAB. After a ruling is issued by CRAB, decisions may be appealed to Superior Court under G.L. c. 30A, § 14¹³. Except in limited circumstances provided by statute, a member must exhaust his or her administrative remedy before seeking judicial review¹⁴.

Other Issues

As noted above, the retirement law winds itself into numerous other areas of law. One important area is in the divorce world. Since a pension is often one of the most significant assets of a married couple, dividing the plan assets is an important component in the divorce of a public employee. The only method of providing for benefits to an ex-spouse is through a Domestic Relations Order approved by a court and filed with the appropriate retirement board. Unlike in traditional retirement plans, the public retirement plan does not allow a separate account to be created for a spouse. Additionally, given the interplay between death and retirement benefits, practitioners must be careful to avoid dividing assets based on benefits which may not be ultimately paid to the member. The foremost Supreme Judicial Court case in this area is Early v. Early¹⁵.

Summary

Contrary to the initial perceptions of many attorneys, the public retirement system is a complex and difficult area of law fraught with confusing and conflicting provisions. These provisions can easily trap an inexperienced practitioner. The new practitioner must take the time to absorb the entire picture before attempting to tackle a single area of the law. Given the prevalence of public employees in this state and the importance of retirement assets in a society with an ever-aging population, public retirement law promises to be an important area of law for decades to come.

Footnotes

¹ Evans v. Contributory Retirement Appeal Bd., 46 Mass. App. Ct. 229, 233 (1999).

² Sankey, Judith, Ed., Employee Benefit Plans: A Glossary of Terms, IFEBP (1997), 41.

³ As noted in this article, the public retirement law is a complex set of statutes, regulations and precedent. Numerous provisions in the law provide special and different benefits to certain employees or in certain circumstances, including state police. This article is intended only to give the basics as they apply to most public employees covered by the G.L. c. 32 retirement law.

⁴ The term of art for this regular salary from which retirement contributions are made is “regular compensation.” Regular compensation, defined in G.L. c. 32, § 1 and 840 CMR 15.03, is the regular and recurring payments for services rendered, not including overtime or bonuses.

⁵ See Claire McIntire v. Contributory Retirement Appeal Board, 417 Mass. 35 (1994).

⁶ See G.L. c. 32, §§ 4(1)(g $\frac{1}{2}$), 3(4), 3(4A), 4(1)(o), 4(1)(o $\frac{1}{2}$) and 4(1)(h), respectively.

⁷ G.L. c. 32, § 7.

⁸ G.L. c. 32, § 6.

⁹ G.L. c. 152 and G.L. c. 41, § 111F, respectively.

¹⁰ 1 Mass. App. Ct. 420 (1973)

¹¹ See G.L. c. 32, § 16(4).

¹² See Arthurs v. Board of Registration in Medicine, 383 Mass. 299 (1981); Flint v. Commissioner of Public Welfare, 412 Mass. 416, 420 (1992); Southern Worcester Regional Vocational Sch. Dist. v. Labor Relations Commission, 386 Mass. 414, 420 (1982); Felix A. Marino Co., Inc. v. Commissioner of Labor and Industries, 426 Mass. 458 (1998).

¹³ See also Superior Court Standing Order I-96 as amended.

¹⁴ See Daniels v. Contributory Retirement Appeal Board et al., 418 Mass. 721 (1994) and cases cited.

¹⁵ 480 Mass. 836 (1995).