

FAQS REGARDING CHAPTER 21 OF THE ACTS OF 2009

Chapter 21 of the Acts of 2009 extends the limits on post retirement earnings under M.G.L. Chapter 32, Section 91 on members receiving a pension or retirement allowance to those who have retired from an "authority" and it extends the type of earnings that will be examined in assessing violations of those limits to retirees who are employed "...as a consultant or independent contractor or a person whose regular duties require that his time be devoted to the service of the commonwealth, county, city, town, district or authority during regular business hours." What members are subject to these added provisions?

Section 26 of Chapter 21 states that unless otherwise provided the act will apply to "...all members of retirement systems who retire after July 1, 2009". Consequently, this added provision of Chapter 32, Section 91 only applies to earnings by members who retire after July 1, 2009. However, all other provisions of Section 91 would apply to the earnings of those members.

I am 60 years old and have creditable service in two systems prior to 1/1/10. Prior to that date I have 15 years of service in System A and 5 years of service in System B. The service was not concurrent. After 1/1/10 I will have concurrent service of five years making me subject to the Dual Membership provisions of Chapter 21. My average three year regular compensation is \$30,000 in System A and \$10,000 in System B. When I became a member of System A, I transferred to that system my previous non-concurrent service with System B. At retirement how will my non-concurrent service to be treated?

In this example, the member will receive retirement benefits as follows: For the period after 1/10/10, the benefit will not use the combined compensation from System A and System B in the calculation, but the member will receive a separate benefit from each system. To determine the first separate benefit, you would couple the 15 years of service from System A with the 5 years of non-current service in System B, and assuming the member remains a member for five years after 1/1/10 in System A, a total of 25 years of creditable service would accrue, resulting in the following calculation: $2.0\% \times \$30,000 \times 25 = \$15,000$. The other separate benefit for System B would then be calculated with the member receiving a benefit using the formula 5 (years of concurrent service after 1/1/10), $\times 2.0\%$ (age 60 factor) $\times \$10,000 = \$1,000$ per year. Combining both calculations, the total benefit for the member will be \$16,000 per year (\$15,000 from System and A \$1,000 from System B).

Under the previous formula, the member would have received a benefit based on the combined compensation of the concurrent positions. That would provide a benefit calculated as follows: 25 (years of service) $\times 2.0\%$ $\times \$40,000 = \$20,000$ per year.

A member is employed full-time in a town and also holds an appointed position in a different town. Both units belong to a regional retirement system. She receives a full-time salary of \$40,000 and compensation of \$2,500 in the appointed position. Do the membership limits in Section 5 of Chapter 21 impact the "regular compensation" to be used in calculating her retirement benefit?

No, the regular compensation to be used in calculating her benefit will be \$42,500. The \$5,000 earnings requirement in Section 5 addresses the issue of creditable service and does

not impact the calculation of regular compensation, however, in order to include that compensation in the retirement calculation the member must continue to make contributions. This also applies to compensation for two positions in the same town. It should be noted that this is not the case if the positions are not in units which are member units of the same retirement system. In addition any compensation to be considered “regular compensation” must meet the definition of “regular compensation”.

Chapter 21, Section 5 changes the manner of calculating the pension for a member of two systems in certain circumstances. Who are the members impacted by this change?

There are two classes of members to whom these provisions do not apply - (1) a member who receives regular compensation from two or more governmental units belonging to different retirement systems and is vested in two or more systems as of 1/1/10 and (2) a member who does not receive regular compensation from two or more governmental units belonging to different retirement systems on or after 1/1/10. All other members who receive regular compensation from two or more governmental units belonging to different retirement systems will be impacted by Section 5.

What is the Status of a Call Firefighter and Reserve or Permanent-Intermittent Police Officer?

A call firefighter and reserve or permanent-intermittent police officer making less than \$5,000 as of July 1, 2009 will no longer be an active member of a retirement system. If the retirement board is collecting contributions on such service it should cease to do so as of July 1, 2009. A call firefighter and reserve or permanent-intermittent police officer will have the same rights as any non-member or inactive member of a Chapter 32 retirement system beginning on July 1, 2009 with the exception of the provisions of G.L. c. 32, § 4(2)(b). A call firefighter and reserve or permanent-intermittent police officer will be able to receive creditable service pursuant to G.L. c. 32, § 4(2)(b) if such person meets the requirements of that section.

Are payments under the “Quinn Bill” regular compensation under Chapter 21?

“The Quinn Bill” established by G.L. c. 42, § 108L clearly provides that Quinn Bill payments become a permanent part of an individual’s base pay. Therefore, they are included in the new definition of regular compensation. Funding of the Quinn Bill is a separate issue.

Are other so-called educational incentives regular compensation under Chapter 21?

If educational incentives for individuals are a permanent part of the base salary, such payments are included in the new definition of regular compensation. If not part of the base salary, no, unless provided for in a collective bargaining agreement or employment contract in effect on May 1, 2009, in which case it will remain regular compensation until the contract expires but no later than July 1, 2012.

Are longevity payments, EMT payments, HazMat payments, Defibrillator payments, Homeland Security payments, Stand-By payments, and other similar payments regular compensation under Chapter 21?

If longevity EMT, Hazardous Material, Defibrillator, Homeland Security, Stand-by payments, and other similar payments are permanent part of base pay, such payments are included in the new definition of regular compensation. If not part of the base salary, no, unless provided for in a collective bargaining agreement or employment contract in effect on May 1, 2009, in which case it will remain regular compensation until the contract expires but no later than July 1, 2012.

Do amounts paid for working holidays for certain public safety personnel continue to be regular compensation?

Yes.

A collective bargaining agreement or employment contract was in effect prior to May 1, 2009. There is no new contract as of July 1, 2009 and the parties are operating under the old agreement until a new one is executed. If a new agreement is executed after July 1, 2009 how will this be assessed under Chapter 21?

If the old contract was in effect prior to May 1, 2009, the successor contract would be effective on the date the old contract expired and payments that were regular compensation will retain that status until the end of the successor contract, but not later than June 30, 2012. Retirement contributions should continue to be withheld while the new contract is being negotiated.

Does the definition of regular compensation impact payments made prior to June 30, 2009?

The new definition of regular compensation established by Chapter 21 does not impact payments made prior to July 1, 2009. Regular compensation status for payments made prior to July 1, 2009 will be determined according to the "old" definition. As a result there will be instances in which a member's three year average will include regular compensation which is determined under both definitions. For example, regular compensation for June 30, 2007 to June 30, 2008 and for July 1, 2008 to June 30, 2009 will be determined under the "old" definition and regular compensation for July 1, 2009 to June 30, 2010 will be determined under the definition established by Chapter 21.

PERAC WILL CONTINUE TO POST ADDITIONAL QUESTIONS AND ANSWERS IN THE COURSE OF THE NEXT SEVERAL DAYS.