

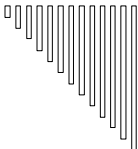
Membership in the Retirement System

Presented by:

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Deputy General Counsel

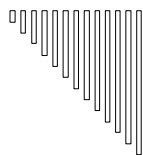
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Associate General Counsel

2010 Spring MACRS Conference



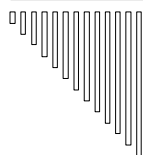
Overview

Part 1	Who must be a member?
Part 2	Who cannot be a member?
Part 3	Boards' discretion under M.G.L. c. 32, Section 3(2)(d) Reinstatement to service.
Part 4	Elected Officials
Part 5	Under \$5,000 Rule
Part 6	Is it possible to become a member again after retirement?



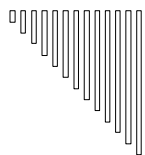
Who must be a member?

- If an employee meets the eligibility criteria for membership in a retirement system, eligibility in such a system is mandatory. An eligible employee, except for an elected official, does not have an option to elect to participate in the retirement system created by M.G.L. c. 32.



Membership, continued

- In order to be eligible for membership in a retirement system, individuals must regularly be employed in the service of any political subdivision, including employees of any free public library or any public museum maintained in any city or town, to the support of which said city or town contributes not less than one half of the cost.

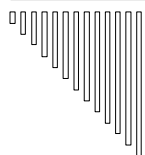


Membership in the Teachers' Retirement System

Determining eligibility

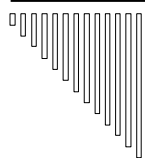
The two basic questions:

- 1) Does the employee meet the statutory definition of "teacher"?
- 2) Does the employee meet the four MTRS membership eligibility criteria (pursuant to CMR 807 4.02)?



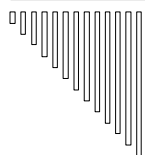
Membership in the Teachers' Retirement System

- The definition of "teacher" pursuant to M.G.L. c. 32, §1
- "Teacher" includes:
 - Any person employed by one or more school committees as a teacher (further defined by regulation) on at least a half-time basis
 - School social worker or adjustment counselor
 - Principal, assistant principal
 - Superintendent, assistant superintendent
 - School psychologist or psychiatrist



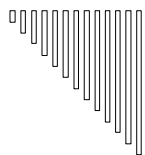
Membership in the Teachers' Retirement System

- If individual meets statutory definition of "teacher," then they must still satisfy the MTRS's four membership eligibility criteria as set forth in 807 CMR 4.02.
- The four criteria are:
 - covered by a contractual agreement regarding employment;
 - employed on at least a half-time basis;
 - certified by the Department of Education; and
 - contractual agreement requires that member be certified by the Department of Education as a condition of their employment.
- Directors of educational collaboratives and teachers in charter schools are also eligible for membership.



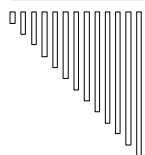
Who cannot be a Member?

- People who have already retired cannot be members of another system.
- Contractors cannot be members of a system.
- Some part-time, provisional, temporary, seasonal employees may be excluded under the awesome power of the Boards afforded under M.G.L. c. 32, Section 3(2)(d) and discussed further below.



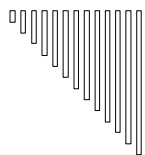
Who cannot be a Member of the MTRS?

- Substitute teachers, teachers aides and paraprofessionals are not eligible for membership in the MTRS; however,
 - Eligible for inclusion in local system;
 - Boston teachers are also mistakenly thought to be included in the MTRS



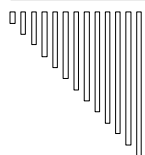
Board Discretion – M.G.L. c. 32, Section 3(2)(d)

- (d) In all cases involving part-time, provisional, temporary, temporary provisional, seasonal or intermittent employment or service of any employee in any governmental unit, including such employment or service of any state official, the board shall have and exercise full jurisdiction to determine such employee's eligibility for membership;



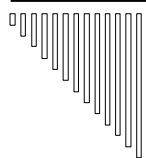
Discretion of Boards

- A retirement board has the right to promulgate regulations excluding part-time, provisional, temporary, temporary provisional, seasonal or intermittent employee from membership.
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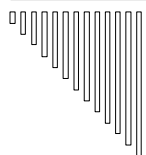
Board Discretion – M.G.L. c. 32, Section 3(2)(d)

- The first proviso of the subsection:
 - provided, that any person holding a position for which the annual compensation is fixed in an amount of two hundred dollars or less shall not be eligible for membership except by vote of the board;
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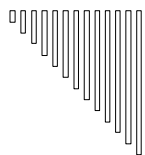
Does Board's discretion to exclude extend to elected officials?

- PERAC thinks not.
 - Elected officials given an affirmative right to join a system if they are compensated and may utilize such right within 90 days of assuming office.
 - CRAB agreed, then disagreed with PERAC.
 - Rotondi case is illustrative.
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Elected Officials

- Some boards take the position that since Section 3(2)(d) requires an affirmative board vote for membership in a system for persons making less than \$200 per year, elected officials may be excluded.
 - This is now CRAB's position as well.
 - But this has become less important in the wake of the "Under \$5000 Rule."
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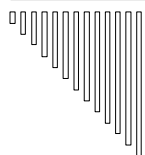


The New Section 4(1)(o) a/k/a “The Under \$5000 Rule”

- The Section 4(1)(o) now in effect provides as follows:

The service of a state, county or municipal employee employed or elected in a position receiving compensation of less than \$5,000 annually, which service occurs on or after July 1, 2009, shall not constitute creditable service for purposes of this chapter.

This section only deals with **creditable service**.

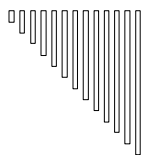


The Under \$5000 Rule

- Changes traditional understanding of how creditable service is accrued.
 - Tests the axiom “once a member, always a member.”
 - Challenges the notion that, with a few limited exceptions, all service as a public employee may be utilized/bought back for use toward a pension.
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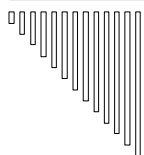
Membership in the Retirement System

Judith Corrigan, PERAC, and Rob Fabino, MTRS



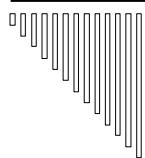
The Accrual of Creditable Service Before and After The Under \$5000 Rule

- Before July 1, 2009, in general, all service as an employee for which compensation was received was creditable service.
- On or after July 1, 2009, all service as an employee for which compensation of under \$5k per year is received will not be creditable service.



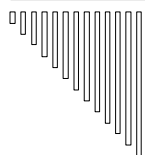
The Under \$5000 Rule and “Once a Member, Always a Member”

- Under the plain reading of M.G.L. c. 32, Section 3, a person making under \$5k per year who was a member in service based upon their service before July 1, 2009, would continue as a member even though they are no longer accruing creditable service for this time.
- Rationale: They are still in service to the employer, and have not died, retired, or resigned.



The Under \$5000 Rule and Buying Back Time

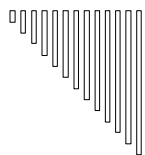
- Uncompensated service is not service as an employee and cannot, therefore, be purchased.
- But now, although service compensated under \$5k is service as an employee, it also cannot be purchased.
- Be careful: Pre-July 2009 service of under \$5000 may be purchased.



The Under \$5000 Grandfather Clause

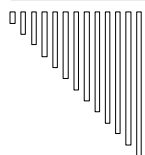
- SECTION 25. Section 5 of this act shall take effect July 1, 2009; provided, however, that creditable service **shall be granted** for the service of any state, county or municipal employee serving in a paid position earning less than \$5,000 after July 1, 2009, if such service is subject to a specified term as a result of an election, appointment or contract and the election, appointment or contract occurred or was executed prior to July 1, 2009, and if the service is otherwise eligible for creditable service under chapter 32 of the General Laws; and provided further, that such creditable service shall be granted until the expiration of the term, appointment or contract or July 1, 2012, whichever first occurs.

Chapter 21 of the Acts of 2009



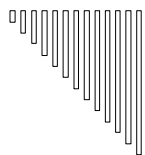
The Under \$5000 Grandfather Clause

- Elected or appointed to a term or in the midst of a contract, the remainder of the term/contract will count as creditable service even if a person is being paid less than \$5000 a year.
- Deductions shall continue to be taken, no opting out of paying.
- Extends no later than the end of the term or contract, or July 1, 2012, whichever occurs first.
- But, deductions continue to be taken thereafter.



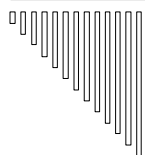
What happens if, after you retire, you again wish to be a member in service?

- A lot depends under which section of the law you retired.
- The three sections, two of which will be discussed in this presentation, have varied requirements.



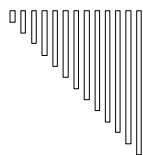
Reinstatement, or Return to Public Employment Post-Retirement

- A retiree has three, and only three, ways back to again become a member in service of a retirement system:
 - M.G.L. c. 32, Section 5(1)(g)
 - M.G.L. c. 32, Section 8
 - M.G.L. c. 32, Section 105



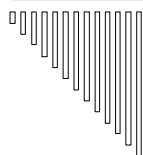
Section 5(1)(g), i.e., “The Forgotten Subsection”

- (g) Notwithstanding any provision of this chapter to the contrary, any member inactive of a retirement system who is elected to office by popular vote, or who is appointed to a position for a term of years by the governor, or who is appointed to any position by the mayor of a city or by a city council or by the selectmen of a town or by a sheriff, may elect to become a member in service of the system pertaining to the position to which he is elected or appointed; provided, that any such member inactive who is receiving a retirement allowance shall repay into the system from which he is receiving such allowance the total amount of any such allowance received from the date of his retirement to the date of his again becoming a member in service.



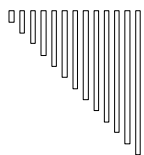
Why 5(1)(g) should not be forgotten

- Prior to Section 105's advent in 2004, this subsection provided the only way back into the system for a previously-retired, non-disability retiree.
- Actually is applicable by its terms to "any member inactive" meaning accidental, ordinary and superannuation retirees.
- Never repealed.
- Less expensive than Section 105.
- Member returns to original contribution rate.



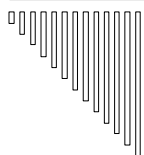
5(1)(g) applies to:

- An inactive member elected to office by popular vote;
- An inactive member appointed to a position by the governor; by the mayor or city council, or the selectmen of a town or by a sheriff;
- Governor's appointment must be "for term of years"
- Any retirement allowance must be repaid, *without interest*.
- Less strings attached than Section 105.



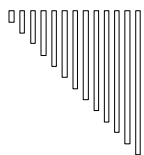
M.G.L. c. 32, Section 105

- (a) Any member retired under section 5 or section 10 shall be eligible to be reinstated in a retirement system established under this chapter, if the retired member repays to the system from which he retired an amount equal to the total amount of any retirement allowance received by the retired member, together with buyback interest....



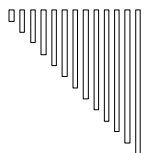
M.G.L. c. 32, Section 105, cont'd

- Such payment shall be made in one lump sum or in installments as the board shall prescribe. Upon such reinstatement, regular deductions shall be made from regular compensation pursuant to paragraphs (b) and (b 1/2) of subdivision (1) of section 22, and for such purpose, the member's date of entry into service shall be the date such member waived his retirement allowance or the date of reinstatement, whichever occurs earlier.



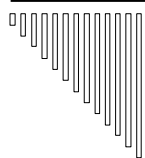
M.G.L. c. 32, Section 105

- Enacted fairly recently, in 2004;
 - Applies only to those retired under Section 5 or Section 10;
 - Member must pay back the total amount of any retirement allowance he or she has received, together with “buyback interest.”
 - Originally required “actuarial assumed interest” interest, amended in 2008 to require “buyback interest.” (See PERAC Memo #28/2008)
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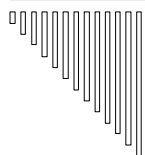
M.G.L. c. 32, Section 105, cont'd

- Payment may be made by lump sum or in installments, in the Board’s discretion;
 - Upon reinstatement, retirement deductions begin;
 - Contribution rate based on member’s entry into service and likely will not be the same rate the member was paying when he or she retired;
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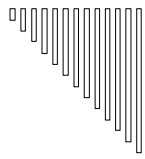
M.G.L. c. 32, Section 105, continued

- Right to a superannuation/termination retirement allowance will cease as of the reinstatement date.
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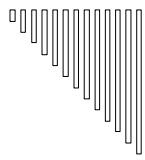
M.G.L. c. 32, Section 105 *Reinstatement Service*

- A member's period of full-time employment after reinstatement in a retirement system under this section.
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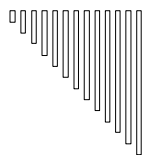
M.G.L. c. 32, Section 105 *Reinstatement Date*

The date the member is reinstated into the retirement system.



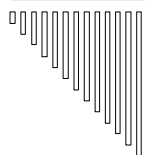
M.G.L. c. 32, Section 105 *Entry Date*

The Earlier of the Date of Waiver or Reinstatement Date. It is used to determine the Contribution Rate.



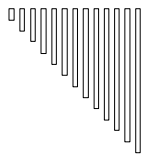
Less than 5 years reinstatement service

- Member works less than 5 years after reinstatement.
 - It's as if this whole thing never happened.
 - Full refund of amounts paid.
 - No entitlement to creditable service for reinstatement service, no additional make ups or buy backs possible.
 - Can buy service for interim public employment while out and pension waived, but this service does not count toward the 5 years.
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More than 5 years reinstatement service

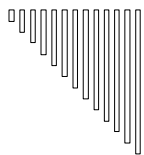
- Entitlement to creditable service based upon reinstatement service once all payments complete.
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M.G.L. c. 32, Section 105

The Earliest Date

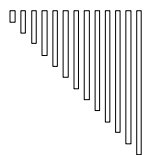
- The Earliest Date a member can retire after reinstatement and receive credit for Reinstatement Service is 5 years after the Reinstatement Date.
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M.G.L. c. 32, Section 105

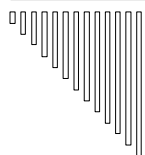
Contribution Rate

- The contribution rate in effect on the reinstatement date or the date that the member waived their retirement allowance, whichever is earlier, and not necessarily the contribution rate that the member paid when he or she last retired.
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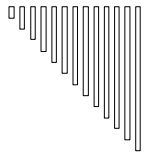
Section 105 Reinstatements - MTRS

- Approximately 12 reinstatements since enactment of Section 105 in 2004
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Section 105 Reinstatements across the state

- PERAC has been asked to give guidance to certain individuals considering the Section 105 option.
 - As a practical matter, however, until the Section 105 people apply to retire, PERAC is unable to opine as to how many people may be availing themselves of this option.
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M.G.L. c. 32, Section 8

- Available only to disability retirees;
 - Provides for a return to service if they are now medically fit to return to the job from which they retired;
 - Will be discussed at length tomorrow in its own section;
 - The most economical way back, as no pay back is required, but creditable service is given.
-