

Pension-Related Changes: Massachusetts General Laws and Federal Statutes

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Commonwealth of Massachusetts
Public Employee Retirement Administration Commission

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Commonwealth of Massachusetts

Public Employee Retirement Administration Commission

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In 2002, G.L. c. 32 was amended to be in compliance with federal limitations on the dollar amounts of retirement allowances and the compensation used to calculate the allowances. Sections were also added that allow retirement boards to establish special funds to deal with compensation and benefits in excess of the limits.

Under the federal tax laws, the compensation used to calculate the retirement allowance in a defined benefit plan is limited. For 2008, the limit is generally \$230,000 (\$345,000 for persons who became members prior to December 31, 1995). The compensation limit is adjusted annually.

The federal laws also limit the retirement benefit that can be paid out. This limitation is much more complex than the compensation limitation. The general benefit limitation for 2008 is \$185,000 for a member retiring at age 65. The limitation is usually lower for members who retire earlier. The benefit limit is also adjusted annually.

Which members or retirees could be subject to the federal limitations?

- Any retiree whose regular compensation in any year was in excess of \$150,000
- Any retiree whose annual retirement allowance is in excess of \$90,000
- Any active member whose rate of regular compensation is in excess of \$200,000
- Any active member whose regular compensation in any year was in excess of \$150,000

In PERAC Memorandum #45/2002, boards were instructed to review their files and identify retirees or active members who might be subject to the limitations. Information was provided to the PERAC Actuary so actual problems could be identified and dealt with.

Since the enactment of the amendments, boards have requested PERAC assistance with respect to approximately 25 individuals. Of these, only four have actually presented problems with the limitations. In general, these problems were benefits payable that were too high. This can occur when a relatively young person with long service and high levels of compensation retires.

The number of current employees that will be impacted is limited because the definition of "regular compensation" has been amended to reflect the federal limitations. If a member reaches the limitation, contributions are to stop. The retirement board can establish a special fund to which contributions after the limitation is reached can be made and from which benefits can be paid. The State Retirement Board and the Cambridge Retirement Board have such special funds.

Actions Needed

- Look at all current retirees for those with regular compensation which in any year was in excess of \$150,000 and for those with a benefit in excess of \$90,000.
- Monitor current members for the compensation limit.
- As members retire, review the allowance payable to ascertain whether limitations are exceeded.

Termination Retirement Allowances

In 2002, the Legislature tightened up the procedures for receiving a termination retirement allowances under G.L. c. 32, § 10(2). The two changes were:

The employer of any employee applying for a termination retirement allowance must certify in writing, under the pains and penalties of perjury, that one of the following circumstances applies:

- (1) that the employee has failed of nomination or re-election, or
- (2) that the employee has failed of reappointment, or
- (3) that the employee's office or position has been abolished, or
- (4) that the employee has been removed or discharged from his position without moral turpitude on his part.

The Legislature required PERAC to review all retirement board grants of termination allowances pursuant to G.L. c. 32, § 10(2). Retirement boards must submit all termination retirement applications to PERAC for review. The standard for this review is the same as for PERAC's review of retirement board grants of disability retirements. The board grants may be remanded with written instructions to the retirement board for further proceedings if the decision of the board is:

- (1) made upon unlawful procedure, or
- (2) unsupported by substantial evidence, or
- (3) arbitrary and capricious, or
- (4) a result of fraud or misrepresentation.

PERAC will take action within 30 days of the date that the notification of the board's action is received. If PERAC takes no action within the 30-day period, the determination of the retirement board shall be considered to have been approved by PERAC. If an application is remanded, the applicant will be provided with a copy of PERAC's remand letter.

Uncompensated Town Moderators

G.L. c. 32, § 4(1)(o) was amended in 2002 to allow unpaid town moderators to purchase creditable service for their moderator service. Only town moderators who were first elected as the result of election by direct vote of the people before 1/1/86 are eligible. Such officials must pay into the annuity savings fund the amount which they would have contributed had they been paid \$2,500 per year, plus regular interest to the date of payment.

Ten-Year Creditable Service for Military Purchase Eliminated

Chapter 468 of the Acts of 2002 removed the ten-year creditable service requirement in order to purchase creditable service for military service. Any member in service who qualifies as a "veteran" can purchase up to four years of creditable service for his or her military service. There is no requirement of approval by the retirement board or municipality for this change to be effective. Any member who is eligible must be given 180 days to determine whether or not to purchase this creditable service.

Section 322 of Chapter 149 of the Acts of 2004

**G.L. c. 32,
§ 5(1)(e)**

Note: The Governor disapproved this section, but the legislature overrode his veto.

SECTION 322. Notwithstanding any general or special law to the contrary, where (i) 2 spouses married to each other are both members of the same or different systems, (ii) each of the spouses were members in service on or before November 1, 2003, and (iii) 1 of the 2 members is retired under the provisions of sections 1 to 28, inclusive, of said chapter 32; then the other member, upon his or her written application to the board, shall be retired for superannuation regardless of such member's age. The retirement of the other member shall occur on a date specified in the application, and must be subsequent to, but not more than, 4 months after the date of filing the application. The form of the application shall be prescribed by the board. Terms used in this section not herein defined are used as such terms are defined in chapter 32 of the General Laws.

Section 5(1)(e) Repeal Timeline

July 1, 2003	Aug. 12, 2003	Sept.10, 2003	Oct. 24, 2003	Oct. 27, 2003	Feb. 13, 2004 to June 4, 2004	July 1, 2004
In enacting the FY 2004 state budget, the Legislature repeals G.L. c. 32, § 5(1)(e), the so-called "Spousal Retirement Provision," which had first been enacted in 1945.	PERAC determines that any member who applied for retirement using G.L. c. 32, § 5(1)(e) before July 1, 2003 with a retirement date after July 1, 2003 will be eligible to retire using this provision despite its repeal.	DALA issues a decision permitting a member who applied to retire after July 1, 2003 to take advantage of the Spousal provision despite its repeal because a member of a retirement system is protected in the core of his or her reasonable expectations as to pension and benefits. CRAB decides to hear the case on its own initiative, so decision not final.	PERAC notifies the boards that the Legislature has overridden the Governor's veto of an extension of the time to file under G.L. c. 32, § 5(1)(e). PERAC determines that any member wishing to retire under this section has only until October 31, 2003 to do so.	PERAC informs the boards that it has determined that any member who applies for retirement using this provision before November 1, 2003 with a retirement date up to or after November 1, 2003 will be eligible to retire under this provision despite its pending repeal.	DALA issues decisions in three more cases involving the spousal retirement provision, again determining that the petitioners should be able to retire under Section 5(1)(e).	In enacting the FY 2005 state budget, the Legislature provides that although G.L. c. 32, § 5(1)(e) has been repealed, if the husband and wife were married to each other and members of their respective systems prior to November 1, 2003 they may avail themselves of this provision.

Lacey & Cintron **October 10, 2007**

CRAB issues decision in *Lacey & Cintron v. State Board of Retirement*, CR-06-896 (2007) determining that Section 5(1)(e) is applicable to individuals who were members of a retirement system on or before November 1, 2003, regardless of whether or not they were married on that date. CRAB stated:

Section 322 of Chapter 149 of the Acts of 2004 lays out the requirements for eligibility in plain and unambiguous terms and requires only that the members be married at the time of the application and have been members in service as of November 1, 2003.

To date, this remains the only CRAB case regarding the interpretation of Section 322 of Chapter 149 of the Acts of 2004.

Goodridge

In November of 2003, the Supreme Judicial Court handed down a decision in the matter of **Goodridge v. Dep't of Public Health**, 440 Mass. 309 (2003). This was a case in which seven same sex couples had attempted to obtain marriage licenses and had been denied those licenses. Because you need a marriage license to wed in the Commonwealth, the denial of the licenses was tantamount to denying these couples the right to marry. Ultimately, the Court decided that same sex couples in Massachusetts have a right to marry.

This decision has caused confusion in many areas of Massachusetts law, particularly in those matters where the federal government is involved. However, the decision is clearer in the interpretation and implementation of Chapter 32 and our retirement laws. Any member of a retirement system who is married to a person of the same sex will be eligible for the same benefit and in the same manner as have previously been available to any married couple.

In general, in discussing benefits available to married couples, Chapter 32 utilizes the term "spouse." Other terms may be used in other places, such as the use of the term "widow" in Section 101. However, as a 1987 Opinion of the Attorney General made clear, that section must also be read to apply to "widowers." It follows logically that where the term "husband," "wife," "widow," or "widower" are used, the board should look to who is the spouse of the member in those cases in determining an award of benefits.

87. At the request of Rich's mother, Rich will soon assume sole ownership of the family home. They have been advised that Rich cannot place the home in joint names with Gary without incurring tax penalties, even though they both pay on a home equity loan used to improve the house. Moreover, Rich fears that if he were to die soon, then Gary might have to pay taxes on his own home which he would be inheriting from Rich.
88. Although they have a health care proxy for each other, they worry about what would happen if they encountered a medical emergency outside of the communities that know them so well. They also carry copies of their adoption decree for their daughter for fear that someone, somewhere, will not recognize that they are both parents.
89. Gary has a pension plan at work, but under state law, because he is a municipal employee, that plan does not allow him the same range of options in providing for his beneficiary that a married spouse has and thus he cannot provide the same security to his family that a married person could if he should predecease Rich.
90. Because there is no legal recognition for their committed relationship, Gary and Rich are not considered to have any legal relationship to each other. These Plaintiffs are denied on a daily basis the legal and social status of a marital relationship, as well as the protections, benefits and obligations -- financial, legal, emotional and others—afforded to married couples.
91. In addition to making a statement to the world about their relationship and gaining access to greater legal security, the plaintiffs seek to marry for the sake of their

**Names and
Addresses of
Public Employees**

Section 8 of the FY05 Budget changed the public record status of the home addresses and telephone numbers of public employees. This information can now only be released to employee organizations established under G.L. c. 150E, nonprofit organizations for retired public employees established under G.L. c. 180, or a criminal justice agency as defined in G.L. c. 6, § 167. This exclusion extends to the family members of employees of the Commonwealth.

PERAC has taken the position that the home addresses and telephone numbers of retirees also fall within the exclusion.

Date of Birth

The Supervisor of Public Records has determined that due to current trends in the Legislature and identity theft concerns, an individual's date of birth may be withheld from disclosure.

Annuity Accounts

The Supervisor of Public Records has determined that the mandatory contributions to a member's annuity account and the interest credited to the account are akin to payroll records and are public records. If a member chooses to make additional contributions to his annuity account [see G.L. c. 32, § 22(1)(g)], the amounts of these voluntary additional contributions may be withheld from release. Retirement Boards should review policies regarding release of information about members of the System in light of the recent Advisory Opinion of the Supervisor of Public Records.

**The Cost of
Buying Back
Certain Creditable
Service Increases**

In 2004, the Legislature approved two acts, Chapters 279 and 280 of the Acts of 2004, which increased the cost of buying certain creditable service. These changes took effect on July 1, 2005. The following sections are affected by the acts: §§3(2)(a)(vii), 3(3), 3(4), 3(4A), 3(5), 3(6)(c), 3(6)(d) and 3(8)(b). Any buyback or make-up schedules in place prior to July 1, 2005 would not be affected by this change. The methodology to be used under these sections will be similar to the methodology used in years past except that "buyback interest" will be used in the calculation of the repayment amount instead of regular interest. Please note that "buyback interest" is based on one-half of the actuarial assumed interest rate (the investment return assumption) in the most recent actuarial valuation. Also note that the "buyback interest" rate applies for the entire period of the buyback/make-up, not just the period after July 1, 2005.

Any buybacks/make-ups that are calculated under the following sections will continue to use regular interest in the calculation of the repayment amount: §§4(1)(g)½, 4(1)(l), 4(1)(l)½, 4(1)(n), 4(1)(o), 4(1)(o)½, 4(1)(p) and 4(2)(c).

**New Actuarial
Equivalent
Factors Effective
July 1, 2004**

Sections 67 and 366 of the FY05 Budget mandated consideration and adoption of new actuarial factors. The new factors result in substantial increases in many Option C retirement allowances. The new factors will be used in calculating any retirement allowances with an effective date on or after July 1, 2004.

In 2005, the Legislature directed PERAC to select a new mortality table on or before January 1, 2014, and thereafter every ten years.

New Mortality Table

As a result of outside sections 63 and 210 of the FY05 Budget, all public employers must immediately notify the appropriate retirement board when an employee is under indictment for misconduct in his or her elective or appointive office or employment, and has been suspended from his or her position. The employer is also required to notify the retirement board of the outcome of any charges that were brought against the individual.

Changes in and Relating to Section 15

Outside section 79 also added Subsection 5 to G.L. c. 32, § 15. Subsection 5 provides that when the Attorney General or any district attorney becomes aware of a final conviction of a member of a retirement system under circumstances which may require forfeiture of said member's rights to a pension, retirement allowance, or a return of his accumulated total deductions he shall immediately notify the commission of such conviction.

As the boards are well aware, Section 15(4) makes clear that "in no event" is a member, following a conviction of a criminal offense related to their office or position, entitled to a retirement allowance. It is hoped that these changes in the law, coupled with changes on the retirement forms, will aid both PERAC and the boards in identifying those individuals who may not be eligible for a retirement allowance.

The 2005 state budget amended G.L. c. 32, § 12(1) so that one individual cannot receive both an accidental death benefit and an Option C benefit as the result of the death of a member. If the Option C beneficiary and the accidental death beneficiary are different individuals, two benefits will be available. This amendment will affect any retiree whose option election was filed on or after July 1, 2004. Members who retired and selected Option C between November 7, 1997 and June 30, 2004 will not be affected by this amendment. In those cases, the possibility remains that a single eligible beneficiary can receive both the Option C benefit and the accidental death benefit.

Death Benefits

The 2005 state budget added G.L. c. 32, § 105 to the retirement law. This section allows members receiving superannuation or termination retirement allowances to reenter the retirement system upon repayment (or entering into a repayment agreement) of the amount of superannuation/termination retirement allowance received through the date of reinstatement plus actuarial assumed interest.

Section 105

Since some members must repay large amounts of money and all members must work at least five years of full time employment (though they need not necessarily earn five years of creditable service), interested individuals should consider whether reinstatement is appropriate in their situations. Boards should carefully counsel members to assure that they are aware of the requirements and benefits of this section. Boards should complete the first portion of this form and provide it to such members. Upon signing this form, the members are transformed from retiree status to member in service status.

Change to the Definition of Veteran

In 2004, a new definition of “veteran” went into effect. Only a veteran may purchase military service credit.

Boards should keep in mind that an individual must be a member in service in order to purchase military service credit. Boards are also reminded that National Guard and reserve service continues to be purchased on a five years of such service to one year of creditable service basis.

Military Pay Act

Chapter 137 of the Acts of 2003 authorized counties, cities, and towns to pay any employee who has been granted a military leave of absence because the employee is a member of the army national guard, the air national guard or a reserve component of the armed forces of the United States called to active service in the armed forces of the United States after September 11, 2001 his base salary less any amount received for his or her military service. This Section requires local legislative approval. This provision expires on September 11, 2005.

In a county, city or town which adopts this provision, the difference between the member’s base salary and his or her military salary would be regular compensation for retirement purposes. Retirement deductions must be taken from this portion of the salary.

Extension of Military Pay Act

Section 1 of Military Pay Act (Chapter 77 of the Acts of 2005) extended from September 11, 2005 to September 11, 2008. (See PERAC Memo # 39/2001 for full discussion of Military Pay Act.)

Additional Allowance for Veterans

Section 1 of Chapter 157 of the Acts of 2005 allowed for veterans who are retired for accidental disability retirement to receive an additional allowance of \$15 per year of creditable service, not to exceed \$300 in total. Requires local acceptance.

Section 1 of Chapter 157 of the Acts of 2005 states that any member of Group 1 or Group 2 or Group 4 who retires due to an accidental disability who is a veteran will receive an additional yearly retirement allowance of \$15 for each year of creditable service or a fraction thereof, and the total amount of this additional yearly retirement allowance will not exceed \$300. Section 1 is subject to acceptance by both the retirement board and local legislative body. The definition of a “veteran” set forth in G.L. c. 4 § 7 cl. 43 as amended by Chapter 166 of the Acts of 2004, and explained in PERAC Memo #21/2004, will be used to determine a retiree’s eligibility under Chapter 157 of the Acts of 2005. If a retiree is a veteran under the current definition of G.L. c. 4 § 7 cl. 43, the retiree is entitled to a Section 1 allowance under Chapter 157 of the Acts of 2005.

Retroactive to the Date of Retirement

Section 2 of Chapter 157 of the Acts of 2005 provided for retroactivity of this benefit. Section 2 is subject to acceptance by both the Retirement Board and local legislative body. If Section 2 is accepted, payments will be retroactive to the date of retirement for living retirees only. If a retiree was a veteran under the definition of G.L. c. 4 § 7 cl. 43 in effect at the time of retirement, the retiree is entitled to a Section 2 allowance under Chapter 157 of the Acts of 2005.

As a result of changes in the law in 2005, a disability retiree's allowance will be terminated if he or she fails to file the Annual Statement of Earnings. If the retiree files the required statement after the allowance has been terminated, the allowance will commence again, but no payment will be made for the period during which the allowance was terminated.

Termination of Benefits for Failure to File the Annual Statement of Earnings (G.L. c. 32, § 91A)

PERAC reviews all submissions carefully. If a retiree fails to file the required documents, notice to the member is provided and a hearing before the board is available prior to termination. The PERAC wage reporting data base contains flags to identify retirees who are incompetent or in nursing homes. As a result, the allowances of very few retirees will be acted upon.

The new provision in G.L. c. 32, § 91A was implemented in the filing cycle that began on April 15, 2005.

Section 375 of the FY05 Budget directed the PERAC Actuary to analyze, study, and evaluate the costs and actuarial liabilities attributable to increasing the base to which cost of living adjustments (COLAs) are applied. The study was to include the cost and actuarial liability associated in increasing the base from \$12,000 to \$22,000 in \$1,000 increments. The Commission was to prepare supplemental pension funding schedules which were to be designed to reduce the actuarial unfunded liability, attributable to the increased COLA base, to \$0 on or before June 30, 2028. Two alternative schedules reducing the unfunded liabilities to \$0 by June 30, 2034 and June 30, 2038 were also to be prepared.

COLA Study

The COLA Study was prepared and can be found with PERAC Memo 29/2005.

Effective January 1, 2005, employers who do not provide Social Security coverage to their employees must provide notice to all new employees to explain the effect of non-Social Security employment on the receipt of Social Security benefits [Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP)]. The law requires the new employee to sign the notice, and the employer must provide a copy of the signed notice to the appropriate retirement board. The law also requires the Social Security Administration (SSA) to change its annual benefit statements to clarify the discussion of the potential impact of the GPO and WEP.

Disclosure to Employees Not Covered by Social Security: The Social Security Protection Act of 2004

Form SSA-1945 is available with PERAC Memo #5/2006.

The provisions of the **Pension Protection Act of 2006** ("PPA") include several sections of special interest to public retirement plans. The section that has generated the most interest is § 845 of the Act, which adds a new subsection to the Internal Revenue Code [26 USCA § 402(l)]. This provision allows eligible retired public safety officers to exclude from their gross income an amount up to \$3,000 that is deducted from a taxable retirement allowance for health insurance premiums or long term care insurance contracts.

Pension Protection Act of 2006

Exclusion from gross income of premiums withheld and paid to health insurance carriers

**Pension Protection
Act of 2006
(cont'd)**

Which retirees are eligible for this exclusion?

Public safety officers who retired for disability or who retired after having attained “normal retirement age.” The term “normal retirement age” means the age that a member can retire with an unreduced benefit. Normal retirement age for Group 4 members is age 55, while for Group 1 it would be 65.

What is the definition of “public safety officer”?

The definition of “public safety officer” is not necessarily consistent with the provisions of G.L. c. 32 or any provision of the Massachusetts General Laws, but is specifically governed by the PPA. The PPA adopts the definition contained in the Omnibus Crime Control and Safe Streets Act of 1986 [42 USCA § 3796b(9)(A)]. Under this definition, a “public safety officer” is an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, as a firefighter, as a chaplain, or as a member of a rescue squad or ambulance crew.

What premiums can be excluded from gross income?

Distributions withheld from the taxable portion of a retirement allowance that are withheld from an eligible retiree’s allowance and paid directly from a retirement system to a health insurance provider or to a long-term care insurance provider.

How much can be excluded from taxable income?

The maximum exclusion is the lesser of the actual premiums paid by the board or \$3,000. If a board withholds premiums for more than one insurance carrier, the total aggregate amount excludable is \$3,000. Members cannot exclude premiums that they pay directly to an insurance carrier.

How will retirees claim the exclusion?

The most recent information from the IRS indicates that the member will be required to report the exclusion on his or her IRS Form 1040. The excludable amount will not be reflected separately on the 1099R issued to the retiree. The instructions for the 2007 1040 are not available at this time. As soon as they are developed, further information will be provided.

Is a survivor of an eligible retiree eligible for the exclusion?

The exclusion is only available to eligible retirees.

What is the retirement board’s responsibility to its members regarding the exclusion?

Retirement boards have no mandated role in the implementation of this section of the PPA, but will be expected to assist members who are entitled to the exclusion by advising them of the amount that has been deducted from their allowance and paid to a health insurance provider or to a long-term care insurance provider.

**Pension Protection
Act of 2006:
Distributions from
Governmental
Plans**

Pension Protection Act of 2006

26 U.S.C.A. § 402(l) Distributions from governmental plans for health and long-term care insurance.

(1) In general.—In the case of an employee who is an eligible retired public safety officer who makes the election described in paragraph (6) with respect to any taxable year of such employee, gross income of such employee for such taxable year does not include any distribution from an eligible retirement plan to the extent

that the aggregate amount of such distributions does not exceed the amount paid by such employee for qualified health insurance premiums of the employee, his spouse, or dependents (as defined in section 152) for such taxable year.

(2) Limitation.--The amount which may be excluded from gross income for the taxable year by reason of paragraph (1) shall not exceed \$3,000.

Pension Protection Act of 2006: Distributions from Governmental Plans (cont'd)

Section 829 of the PPA adds non-spouse beneficiaries to the individuals who can make a direct trust-to-trust rollover without income tax withholding. The trust to which the distribution is transferred must identify the deceased member and the beneficiary. The example used in the IRS Notice 2007-7 is "Tom Smith as beneficiary of John Smith." Boards are not required to offer a direct rollover to non-spouse beneficiaries, but if such rollovers are offered, they must be offered to all non-spouse beneficiaries.

Non-spouse Beneficiaries

SEC. 829. ALLOW ROLLOVERS BY NON-SPOUSE BENEFICIARIES OF CERTAIN RETIREMENT PLAN DISTRIBUTIONS.

(a) IN GENERAL.-- (1) QUALIFIED PLANS.--Section 402(c) of the Internal Revenue Code of 1986 (relating to rollovers from exempt trusts) is amended by adding at the end the following new paragraph: "(11) DISTRIBUTIONS TO INHERITED INDIVIDUAL RETIREMENT PLAN OF NON-SPOUSE BENEFICIARY.-- "(A) IN GENERAL.--If, with respect to any portion of a distribution from an eligible retirement plan of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee-- "(i) the transfer shall be treated as an eligible rollover distribution for purposes of this subsection, *1002"(ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and "(iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan. "(B) CERTAIN TRUSTS TREATED AS BENEFICIARIES.--For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a trust designated beneficiary.". (2) SECTION 403(a) PLANS.--Subparagraph (B) of section 403(a)(4) of such Code (relating to rollover amounts) is amended by inserting "and (11)" after "(7)". (3) SECTION 403(b) PLANS.--Subparagraph (B) of section 403(b)(8) of such Code (relating to rollover amounts) is amended by striking "and (9)" and inserting ", (9), and (11)". (4) SECTION 457 PLANS.--Subparagraph (B) of section 457(e)(16) of such Code (relating to rollover amounts) is amended by striking "and (9)" and inserting ", (9), and (11)".

(b) EFFECTIVE DATE.--The amendments made by this section shall apply to distributions after December 31, 2006.

Pension Protection Act of 2006 PL 109-280, 2006 HR 4: Rollovers by Non-spouse Beneficiaries

**Direct Rollovers
of After-tax
Dollars**

Section 822 of the PPA allows defined benefit plans to accept direct rollovers of after tax dollars from qualified retirement plans. The after-tax dollars and interest accrued on these funds must be accounted for separately. The current regulations do not allow for this sort of rollover, so until such time as the regulations are amended, retirement systems can only accept pre-tax rollovers.

**Pension Protection
Act of 2006
PL 109-280, 2006
HR 4: Rollovers of
After-tax Amounts**

SEC. 822. ALLOW ROLLOVER OF AFTER-TAX AMOUNTS IN ANNUITY CONTRACTS.

(a) IN GENERAL.--Subparagraph (A) of section 402(c)(2) (relating to the maximum amount which may be rolled over) is amended-- (1) by striking "which is part of a plan which is a defined contribution plan and which agrees to separately account" and inserting "or to an annuity contract described in section 403(b) and such trust or contract provides for separate accounting"; and (2) by inserting "(and earnings thereon)" after "so transferred".

(b) EFFECTIVE DATE.--The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2006.

**Ad Hoc or
Temporary
Payments
& Regular
Compensation**

The amendment to 840 CMR 15.03 clarifies that ad hoc or temporary payments to members of retirement systems which will not recur or which will recur for only a limited or definite term are not regular compensation for purposes of making contributions to the retirement system or for calculating retirement allowances. The primary sort of such ad hoc payments are "salary augmentation plans" or "salary enhancement programs". These are contractual provisions that allow employees to elect to receive a temporary salary increase, often for a three year period, in some cases in exchange for giving up a longevity payment or a sick leave buy-out at retirement. These payments have been considered to be regular compensation in some instances, so the Commission included a "grandfathering" provision that allows such payments to retain this status at the current level for persons covered by a contract that contains such a provision for the term of contracts in existence on January 25, 2006, and for a successor collective bargaining agreement or individual employment contract. Only those plans that are otherwise consistent with the provisions of G.L. c. 32 will be granted this status. Thus, a plan requires notice of retirement or termination in order to be eligible to participate will not be considered to be regular compensation because G.L. c. 32, § 1 specifically excludes such payments.

**840 CMR 15.03
Regular
Compensation**

**Regular Compensation
840 CMR 15.03**

(1) During any period of active service subsequent to the effective date of 840 CMR 15.03(1) the term "regular compensation" as defined by M.G.L. c. 32, § 1, shall be determined subject to the following:

(a) To be considered regular compensation, any compensation to an employee must:

- i) have been actually paid to or on behalf of a member:
- ii) be made as remuneration for services actually rendered, for recurring payments for accrued sick leave, or for payments made pursuant to G.L. c. 41, § 111F in the year or part of a year to which the

compensation is attributed;
iii) be ordinary, normal, recurrent, repeated, and of indefinite duration;
iv) be made pursuant to an official written policy of the employer or to a collective bargaining agreement;
v) be made on a non-discriminatory basis and be generally available for employees who are similarly situated relative to the purpose of the payment (e.g. a longevity payment made recurrently to all employees in a bargaining unit having attained a specific length of service) provided that the ability of a payment to be denied due to merit shall not exclude it for that reason from regular compensation.

(b) Regular compensation shall include any part of such salary, wages, or other compensation derived from federal grants, except as otherwise provided in M.G.L. c. 32, § 3(2)(a)(xi);

(c) Lump-sum or retroactive payments which would have been regular compensation if paid in the periods in which the services remunerated thereby were actually rendered will be allocated to said periods rather than being entirely attributed to the time of receipt for the purpose of determining a member's regular compensation.

(d) Provided they meet the general criteria in 840 CMR 15.03(1)(a)-(c), payments to be considered regular compensation shall include:

- i) a member's annual rate of compensation as provided in an approved salary schedule;
- ii) any non-cash maintenance allowances in the form of full or partial boarding and housing, as provided in M. G.L. c. 32, § 22(1)(c);
- iii) any premiums paid by any governmental unit for the purchase of an individual or group annuity contract as authorized by M.G.L. c. 15, § 18A or by M.G.L. c. 71, § 37B;
- iv) any amounts paid as educational incentives;
- v) any amounts paid for length of service;
- vi) any amounts paid as premiums for shift differentials; and
- vii) any amounts paid as cost-of-living bonuses or cost-of-living pay adjustments.

(2) Any extraordinary or ad hoc payment amount shall be excluded from regular compensation. Exclusions shall include, but not be limited to:

- (a) any amounts paid for hours worked beyond the member's normal work schedule;
- (b) any amounts paid as premiums for working holidays, except as authorized by law;
- (c) any amounts paid as bonuses other than cost-of-living bonuses, provided that any payment to an employee or group of employees which will not recur or which will recur for only a limited or definite term will be considered a bonus, and further provided that any payments to an employee or group of employees as part of a salary augmentation plan or salary enhancement program which is provided for in an individual contract in effect on or before January 25, 2006 or in a collective bargaining agreement in effect on or before January 25, 2006, including payments under such a plan or program which will not recur or which will recur

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Regular
Compensation
(cont'd)

for only a limited or definite term, shall be treated as regular compensation; and further provided, that any employee who is covered by such an agreement or contract on January 25, 2006 and who begins, at any time during the life of a collective bargaining agreement or individual employment contract in effect on or before January 25, 2006, to receive benefits and make retirement contributions pursuant to a salary augmentation plan or salary enhancement program under such a collective bargaining agreement or individual employment contract, may complete the plan or program under that agreement or contract or under a successor collective bargaining agreement or individual employment contract, provided that the successor collective bargaining agreement or individual employment contract contains a salary augmentation plan or salary enhancement program; and further provided that the amount of the salary augmentation plan or salary enhancement program under a successor collective bargaining agreement or individual employment contract which shall be treated as regular compensation shall not exceed the amount of the salary augmentation plan or salary enhancement program provided under the collective bargaining agreement or individual employment contract in effect on or before January 25, 2006, and further provided that any member who has previously retired and is receiving benefits as of April 7, 2006 under the provisions of a salary augmentation plan or salary enhancement program shall have that plan deemed in compliance with the provisions of G.L. c. 32.

- (d) any amounts paid in lieu of or for unused vacation, sick leave, or other leave;
- (e) severance pay;
- (f) any amounts paid as early retirement incentives; and
- (g) Any other payments made as a result of the member giving notice of retirement.

Increase in
Accidental Death
Benefit for
Surviving Children

Chapter 55 and Section 3 of Chapter 64 of the Acts of 2006 have created a local option that will allow for an increase in the accidental death benefit for surviving children to an amount equal to the benefit provided for in G.L. c. 32, § 7(2)(a)(iii). That yearly benefit is currently \$629.64. The new amendments to G.L. c. 32, § 9 became effective on July 5, 2006.

The board of any retirement system that has accepted the local option contained in G.L. c. 32, § 7(2)(a)(iii) may accept the increase to the death benefit for surviving children under G.L. c. 32, § 9(2)(d)(ii). The retirement board must first accept the local option by an affirmative vote and then the board's action must be ratified by the chief executive officer and the legislative body.

When the retirement board and both the chief executive officer and the legislative body have accepted the local option and filed certificates of acceptance with the Commission, the allowances being paid to surviving children pursuant to under G.L. c. 32, § 9(2)(d)(ii) can be increased to an amount equal to the amount being paid to children pursuant to G.L. c. 32, § 7(2)(a)(iii). Benefit increases are payable from the date of acceptance and no retroactive payments can be made. The date of acceptance is the date that the certification of acceptances is filed with the Commission. The benefits payable under G.L. c. 32, § 9(2)(d)(ii) will be increased each year in an amount equal to the percentage increase approved by the General Court pursuant to G.L. c. 32, § 102.

AN ACT INCREASING THE ACCIDENTAL DEATH BENEFIT PAYABLE TO SURVIVING CHILDREN.

Paragraph (d) of subdivision (2) of section 9 of chapter 32 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following 2 clauses:-

(i) In the state employees' and teachers' retirement systems, the additional pension shall be fixed at a rate equal to the additional pension determined by the actuary under clause (iii) of paragraph (a) of subdivision (2) of section 7 and shall be increased by an amount equal to the percentage increase of the cost-of-living increase determination made by the general court for each year under section 102.

(ii) Any system which has adopted the supplemental dependent allowance under clause (iii) of paragraph (a) of subdivision (2) of section 7, may accept the provisions of this clause by an affirmative vote of the retirement board, ratified by the chief executive officer and legislative body as defined in paragraph (c) of subdivision (8) of section 22, and the additional pension shall be fixed at a rate equal to the additional pension determined by the actuary under said clause (iii) of said paragraph (a) of said subdivision (2) of said section 7 and shall be increased by an amount equal to the percentage increase of the cost-of-living increase determination made by the general court for each year under section 102. Any increased benefits provided by the acceptance of this clause shall be paid from the date of acceptance and shall not be paid retroactively. Acceptance of this clause may not be revoked. Acceptance of this clause shall be considered to have occurred upon the filing of certification of this vote with the commission.

Chapter 55 of the Acts of 2006

AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR 2006 TO PROVIDE FOR SUPPLEMENTING CERTAIN EXISTING APPROPRIATIONS AND FOR CERTAIN OTHER ACTIVITIES AND PROJECTS.

SECTION 3. Clause (ii) of paragraph (d) of subdivision (2) of section 9 of chapter 32 of the General Laws, added by chapter 55 of the acts of 2006, is hereby amended by inserting after the words "section 22" the following words:-but, in a regional retirement system, the "chief executive officer and legislative body" shall mean the regional retirement board advisory council.

Chapter 64 of the Acts of 2006

Chapter 162 of the Acts of 2007 amended the so-called Heart Law (G.L. c. 32, § 94) to add to those members entitled to the benefit of the presumption any employee of a county correctional facility whose regular or incidental duties require the care, supervision or custody of prisoners, criminally insane persons or defective delinquents. The amendment became effective on November 14, 2007.

Extension of the Heart Law Presumption

Any individual who was a member in service on or after the effective date, November 14, 2007, will be entitled to the application of the presumption. This will include active members making contributions to the retirement system, members receiving payments for sick leave and making contributions, members receiving Workers' Compensation for total incapacity for any condition, and members who are on an authorized leave of absence with pay or an authorized leave of absence without pay if such leave is due to the member's mental or physical incapacity for duty, or if such authorized leave of absence is not for more than one year.

**Extension of the
Heart Law
Presumption
(cont'd)**

If an eligible member meets the criteria of the statute and membership status as described above, and is in the process of applying for disability retirement as the result of incapacity caused by hypertension or heart disease, PERAC will convene a Heart Law panel upon the request of the board. A Heart Law panel will not be convened if the member is retired as of the effective date of the statute.

**Chapter 32:
Section 94**

IMPAIRMENT OF HEALTH CAUSED BY HYPERTENSION OR HEART DISEASE, RESULTING IN DISABILITY OR DEATH OF PAID FIRE OR POLICE DEPARTMENT MEMBER; PRESUMPTION

Notwithstanding the provisions of any general or special law to the contrary affecting the non-contributory or contributory system, any condition of impairment of health caused by hypertension or heart disease resulting in total or partial disability or death to a uniformed member of a paid fire department or permanent member of a police department, or of the police force of the Massachusetts Bay Transportation Authority, or of the state police, or of the public works building police, or to any employee in the department of correction or a county correctional facility whose regular or incidental duties require the care, supervision or custody of prisoners, criminally insane persons or defective delinquents, or to any permanent crash crewman, crash boatman, fire controlman or assistant fire controlman employed at the General Edward Lawrence Logan International Airport, shall, if he successfully passed a physical examination on entry into such service, or subsequently successfully passed a physical examination, which examination failed to reveal any evidence of such condition, be presumed to have been suffered in the line of duty, unless the contrary be shown by competent evidence.

As used in this section the words "permanent member of a police department" shall include a permanent member of the park police of a city or town.

**Impoundment
of Domestic
Relations Orders**

The Chief Justice of the Probate and Family Court has issued Standing Order 3-that requires Domestic Relations Orders involving public employees (Mangiacotti Orders) to be impounded. This means that Domestic Relations Orders will be retained separately from the case file and will be unavailable for public inspection. The Court's stated reason for doing this is that these Orders contain highly sensitive personal and financial information, and the privacy of the parties is to be protected. Retirement boards should not to release copies of Domestic Relations Orders without authorization from both parties to the Order.

**Standing
Order 3-08**

IMPOUNDMENT OF QUALIFIED DOMESTIC RELATIONS ORDERS, DOMESTIC RELATIONS ORDERS AND ORDERS COMMONLY KNOWN AS MANGIACOTTI ORDERS

Unless otherwise ordered by the court, all qualified domestic relations orders, domestic relations orders and orders issued pursuant to *Contributory Retirement Board of Arlington v. Mangiacotti*, 406 Mass. 184, (1989) are impounded. As used herein, "impounded" shall mean the act of keeping the orders separate and un-

available for public inspection. The following procedure will be followed:

1. Upon filing with the court, the orders shall be kept separate from the case file and unavailable for public inspection. Access to inspect the impounded orders is limited to the court, the attorney(s) of record, if any, and the party(ies), unless otherwise ordered by the court.
2. In accordance with Trial Court Rule IX, Rule 2, Uniform Rules on Subpoenas to Court Officials, the Register shall not provide a copy of the impounded orders to a person who is not a party to the case.
3. Relief from impoundment may be sought by Motion supported by affidavit, and may be granted after notice by the court only upon written findings.
4. Service of the Motion for Relief from Impoundment and affidavit shall be made on all parties in accordance with Rule 5 of the Massachusetts Rules of Domestic Relations Procedure. The time periods for hearing shall be as set forth in Rule 6 of the Massachusetts Rules of Domestic Relations Procedure.

March 10, 2008 //PMC

Date Paula M. Carey

Chief Justice

**Standing
Order 3-08
(cont'd)**

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