

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE STATE TREASURER
STATE BOARD OF RETIREMENT

NOTICE OF PUBLIC HEARING AND PUBLIC COMMENT PERIOD

Pursuant to G.L. c. 30A, § 2 and the authority granted to the Massachusetts State Board of Retirement (“MSRB”) under G.L. c. 32, § 1 et seq., the State Board of Retirement will hold a public hearing on September 30, 2016, at 1:00 p.m. at One Ashburton Place, 12th Floor, Boston, MA. The purpose of the hearing is to afford all interested persons an opportunity to provide oral and/ or written comment regarding the proposed amendment to 941 CMR 2.03(1). The proposed amendment provides updated definitions of membership to the Massachusetts State Employee Retirement System (“MSERS”). The proposed regulations are available for inspection at the MSRB or may be viewed at its website at <http://www.mass.gov/retirement>.

Speakers may notify the MSRB of their intent to testify by sending an e-mail to MSRBcomments@tre.state.ma.us. Anyone wishing to attend this hearing who seeks special accommodations in accordance with the Americans with Disabilities Act should contact Tim Hession at (617) 367-9333 or thession@tre.state.ma.us, and is asked to do so as much in advance as possible.

The MSRB encourages all interested parties to submit written testimony electronically by emailing it to MSRBcomments@tre.state.ma.us. Please submit electronic testimony as an attached word document or as text within the body of the email with “draft regulations comment” in the subject line. To be considered, all submissions must include the sender’s full name and address. Individuals who are unable to submit written testimony by email should mail submissions to Tim Hession, Office of the State Treasurer, One Ashburton Place, 12th Floor, Boston, MA 02108. Written testimony must be submitted by 5:00 P.M. on Friday, September 23, 2016.

Nicola Favorito, Esq.
Executive Director
State Board of Retirement
Dated: August 25, 2016

941 CMR 2.03(1): Membership and Creditable Service

(1) Membership

~~(a) An employee who is permanently employed, and works at least on a half-time basis or more in a regular workweek shall become a member of the retirement system.~~

(a) Initial membership in the Massachusetts State Employees Retirement System (“MSERS”) requires an employee as defined in G.L. c. 32 of a participating entity or employer in the MSERS to be permanently employed, and permanently work on a half-time basis or more during a regular work week.

~~(b) All eligible employees shall be enrolled in the system at the inception of their employment~~

(b) For those employees whose initial service with the MSERS commences on or after July 1, 2009 membership in the MSERS requires an employee as defined in G.L. c. 32 to: (1) be permanently employed; (2) work at least on a half-time basis or more during a regular work week; and, (3) receive regular compensation of not less than \$5,000.00 annually.

~~(c) Employees who are employed in a temporary, seasonal, provisional or intermittent capacity and work full-time on a weekly basis for six consecutive months shall be eligible for membership in the retirement system.~~

(c) Employees who are employed in a temporary, seasonal, provisional, or intermittent capacity and work in a full-time capacity on a weekly basis for six consecutive months shall be eligible for membership in the MSERS.

(d) Continuing membership and the accrual of creditable service shall also be subject to the provisions of G.L. c. 32.

(e) Final interpretation and application of the regulations contained 941 CMR 2.03 shall be made by the State Retirement Board, and / or its staff, as delegated.

(f) Once initial membership in the MSERS has been established, an otherwise already eligible member of the MSERS remains an active member so long as the member continues to work at their present position with their current employer, although their regular hours of employment may have fallen below the minimum level needed to establish membership initially.

(g) Once membership in the MSERS has been established, an otherwise already eligible member of the MSERS shall become an inactive member if the member separates from service for any period of time and thereafter takes a position with their former employer and their regular hours of employment are below the minimum level needed to establish membership initially as set forth in these regulations.

- (h) Once membership in the MSERS has been established, an otherwise already eligible active member of the MSERS who separates from employment and thereafter is employed by another employer that participates in the MSERS, shall remain an active member so long as the member satisfies the requirements of 941 CMR 2.03, including being permanently employed; and working at least on a half-time basis or more during a regular work week.
- (i) Members who are employed by a participating employer in the MSERS under a public school academic calendar year basis who perform work during the summer months shall remain an active member if the member's position in which he/she is employed during the school year requires that he/she works for 12 months and their employment contract provides for the same.
- (j) An otherwise already eligible active member of the MSERS who separates from employment and is thereafter employed by another employer that participates in the MSERS, and is employed in a position whose regular hours of weekly employment are below the minimum level needed to establish membership under 941 CMR 2.03 or whose employment status is as a non-permanent employment including, per diem, contract employment, seasonal, temporary, non-permanent part-time, or intermittent status, shall cease to be an active member of the MSERS and retirement contributions should not be withheld on their behalf.
- (k) For employees whose hours of employment do not initially allow for membership in the MSERS but whose weekly work hours fluctuate, membership may be established in accordance with 941 CMR 2.03. Additionally, the following criteria must also be met:
 - (1) The individual is a present employee of the Commonwealth or other participating employer of the MSERS;
 - (2) The individual has a present right to become a member or once had that right;
 - (3) During the present period of service the employee had previously been eligible for membership (i.e., there is no break in service between the time when late entry is sought and the time previous when the person was eligible to become a member); and,
 - (4) The Board has made a determination as to whether the individual is "regularly employed".
- (l) A formerly active member of the MSERS, or of a retirement system other than the MSERS whose status has changed to inactive, may not become an active member of the MSERS if the member takes a position with the Commonwealth or a participating employer of the MSERS that does not satisfy the initial eligibility criteria for membership in the MSERS as set forth in 941 CMR 2.03.

- (m) For purposes of 941 CMR 2.03, a “per diem” employee shall be an individual who is employed by the Commonwealth or other employing entity participating in the MSERS on a non-permanent, intermittent, less than full-time, or ad hoc basis, with or without an employment contract, compensated with pay earned on a per diem basis, and who works without basic employment benefits.

For retirement purposes, per diem employees may include individuals appointed to serve on boards and commissions, and for whom a statute may or may not provide a stipend to be paid to compensate them for this service.

Unlike a benefitted employee, a per diem employee is:

- Not entitled to membership in the MSERS;
- Not entitled to membership in the GIC sponsored or other employer sponsored insurance programs; and
- Not eligible for fringe benefits, sick, vacation or personal leave.

References: *MMARS Payroll Policy July 1, 2004 (as revised)*
G.L. c. 32, § 3(1)(a)(i); § 3(2)(d); § 3(3); § 4(1)(o)

Adopted: March 2016