May 2014

Subject: Optional Retirement Program (ORP) UPDATE

Section 60 & Creditable Service

Section 60 of Chapter 176 of the Acts of 2011("Section 60") provides a one time opportunity for eligible Optional Retirement Plan ("ORP") participants to transfer and enroll in the Massachusetts State Employees' Retirement System ("MSERS"), which is a contributory defined benefit system governed by G.L. c.32.

The legislation seeks to treat the eligible individuals as if they had been members in the MSERS during the period of their participation in the ORP.

Accordingly, during the Section 60 process, transferring employees will be billed by the State Retirement Board ("Board") ONLY for what would be considered to have been "membership service" under G.L. c.32. As Section 60 notes, this includes the time during which these employees contributed to the ORP, and any qualifying time that employees had with the MSERS which immediately preceded the transfer of the funds to the ORP.

Service Purchases

It is possible that individuals who transfer membership to the MSERS pursuant to Section 60 may also have other previous "creditable service" that they could purchase for retirement purposes. "Creditable service" is distinct from "membership service" and those terms are separately defined in G.L. c.32. "Creditable Service" is defined as "all membership service, prior service and other service for which credit is allowable under the provisions of sections 1-28, inclusive."

The eligibility criteria for the purchase of creditable service is separately outlined in and governed by various provisions of G.L. c. 32 and would not be included in the Section 60 transfer process. Some examples are noted below.

- Prior Membership service with a public employer in Massachusetts where retirement deductions were made for a public retirement system.
- Prior Non-Membership service with a public employer in Massachusetts. This type of employment may have been seasonal, temporary, provisional or part-time and is usually with a city, town or county, or the Commonwealth of Massachusetts or Massachusetts Teachers Retirement System. Retirement deductions may or may not have been taken during such periods of employment.
- Veteran's Creditable service. Up to four years of qualifying military service typically prior to public employment.
- Contract employment with the Commonwealth of Massachusetts. (See pages 2-3)
- Out of State Teaching Service (See page 2)

Eligibility for the purchase of any other "creditable service" will be determined separately from the Section 60 process. Transferring employees must first establish membership in the MSERS and all the funds required to effectuate the transfer must be remitted to the State Retirement Board.

The employee may then subsequently apply to purchase other "creditable service" with the Board under the same terms and conditions as any other member of the MSERS. If applying for multiple periods of other creditable service, the employee must document and purchase the closest period to membership in either the ORP or MSERS first. The Board will then determine if the service is eligible to be purchased pursuant to G.L. c.32. If so, the employee will then be separately billed for the purchase of that creditable service, including applicable interest.

Out of State Teaching Service

The following is a summary of the criteria for the purchase of previous out of state teaching service. Pursuant to G.L. c.32, §3(4), a member of the MSERS seeking to purchase this time must show that he or she is presently "employed in a teaching position" or as a "principal, supervisor or president" at a "school or college" as has been interpreted by case law. Specifically, the statute also states that the member must also show that he or she "…had rendered service in any other state for any previous period as a teacher, principal, supervisor or superintendent in the public day schools or other day school under exclusive public control and supervision…"

A "public school" as defined in G.L. c.32, §1 is defined as "any day school…under the superintendence of a duly elected school committee and also any day school conducted under the provisions of sections one to thirty-seven inclusive of chapter 74." (Chapter 74 governs vocational/agricultural education).

Further, pursuant to G.L. c.32, §3(4), a member may only purchase a …maximum credit for service in other states not to exceed ten years; provided, that no credit shall be allowed and no payment shall be accepted for any service for which the member shall be entitled to receive a retirement allowance from any other state…" This provision has been interpreted to mean that if you are entitled to a distribution from a retirement plan of another state and if that retirement plan is funded in part or wholly by another state in addition to your own employee contributions, you would not be allowed to purchase out of state teaching service for the period covered by the other retirement plan.

Determinations as to whether a member qualifies for the purchase of out of state teaching service would be made in the first instance by the State Retirement Board.

Adjunct Teaching Employment

Previous employment in an adjunct teaching capacity could be service that qualifies as creditable service under the Board's contract service provisions authorized by G.L. c.32, §4(1)(s). The contract service purchase requirements include:

- The individual seeking to purchase contract service must currently be a member in service of the MSERS with at least ten years of creditable service arising exclusively from employment with the Commonwealth as a member of the MSERS.

- The contract service being purchased must have been service to the Commonwealth, not service to a city, town, county or other governmental entity.

- The contract service being purchased must have been service as a "contract employee" of the Commonwealth and not as an employee of a vendor.

- As determined by the Board, the job description of the contract service position must have been substantially similar to the job description the member held upon becoming an employee of the Commonwealth and a member of the MSERS.

- The contract employee service being purchased must have immediately preceded membership or re-entry into the MSERS. "Immediately preceded" shall mean within 180 calendar days.

Additional information related to the requirements, including documentation, for contract service may be found at the Board's web site at: http://www.mass.gov/treasury/retirement/for-current-emps/return-to-state-service/buyback-purch-svc-curr/types-of-buybacks-return/contract-service-return/

Sabbaticals

Board regulations allow for the following with regard to creditable service and sabbaticals:

1. Persons who completed a full school year sabbatical leave prior to July 29, 1991, and received 50% of their regular compensation during said sabbatical, will receive one full year of creditable service for retirement purposes.

2. Persons who received approval for a sabbatical leave prior to July 29, 1991 and received 50% of their regular compensation during said sabbatical, regardless of whether the sabbatical leave was completed prior to July 29, 1991, will receive one full year of creditable service for retirement purposes.

3. Persons who applied for, and began a sabbatical leave on or after July 29, 1991 will receive creditable service for retirement purposes at a rate equal to the pro rata percentage of regular compensation received during the sabbatical period.

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