

840 CMR 15.00: MISCELLANEOUS

Section

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15.01: Attestation of Retired Members and Beneficiaries

(1) No less frequently than once every two years, each retirement board shall require each member or beneficiary who receives a pension, retirement allowance, or survivor's allowance to file with the retirement board an attestation under the penalties of perjury, at such time and in such form as the board shall prescribe, containing the following information:

- (a) the name of the member or beneficiary;
- (b) the current address of the member or beneficiary;
- (c) a statement certifying that the member or beneficiary is currently living;
- (d) a statement describing the beneficiary's current marital status where marital status is relevant to continued receipt of benefits;
- (e) a statement describing the beneficiary's current dependency status where dependency is relevant to continued receipt of benefits; and
- (f) such additional information as the board may require to determine whether the member or beneficiary is entitled to continued receipt of benefits.

(2) If a member or beneficiary comes to the retirement office in person to verify the information in 840 CMR 15.01(1)(a) through (f), they will be considered to have satisfied the requirements of the attestation.

(3) The retirement board shall withhold the retirement benefits of any member or beneficiary who fails to file the attestation within the time prescribed pending receipt of the attestation. Upon receipt of the attestation, any benefits so withheld shall be paid to the retired member or beneficiary.

(4) The retirement board may review and verify the accuracy of any attestation submitted and shall audit a random sample of at least five per cent of the attestations received.

A retirement board shall be deemed to have complied with 840 CMR 15.01(1) through (4) if it performs a data match of the demographic information and status of current retirees and beneficiaries receiving benefits no less than every six months by a third-party entity contracted through an approved selection or procurement process.

A retirement board shall preserve or ensure that the results of any such data match are accessible through the next PERAC audit.

15.02: Purchase of Prior Membership Creditable Service; Purchase of Creditable Service for Non-membership Service; Rates of Contribution Upon Return to Active Service

(1) Purchase of Prior Membership Creditable Service. Any member authorized by law to purchase prior creditable service may purchase such service by paying an amount equal to the accumulated regular deductions withdrawn by the member, together with the appropriate statutorily defined interest. Any member may make a lump sum payment or installment payments over a period not exceeding five years and may, with the approval of the board, make installment payments over a period exceeding five years.

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(2) Purchase of Non-membership Creditable Service. Upon submission of documentation satisfactory to the retirement board and consistent with M.G.L. c. 32, a member will be allowed to purchase creditable service for periods of non-membership employment. The amount of creditable service that may be purchased shall be determined by the retirement board in a manner consistent with the retirement board's supplementary regulations that have been approved by PERAC pursuant to 840 CMR 14.00: *Applicability of Commissioner's Rules; Supplementary Rules*. The member may purchase less than all non-membership service available for purchase; provided, however, that in such event the member must purchase the most recent time first.

(3) If more than one type of purchase is available, the member can choose which type of service they wish to purchase. Additionally, if the member can complete both a purchase of non-membership and membership service, the member has the option to choose which to complete first.

(4) Rates of Contribution upon Return to Active Service. The rates of contribution for members formerly in service who have returned to the service of the same or another governmental unit shall be as follows:

- (a) for any member who contributed to a retirement system and did not receive a refund of accumulated deductions when he or she left service, the contribution rate upon the member's return to service shall be the same rate as the member was contributing at the time he or she left service;
- (b) the contribution rate for any member who contributed to a retirement system, and received a refund of accumulated deductions after termination of service, shall be the contribution rate in effect when the member re-established membership, whether or not the member purchases prior creditable service.

15.03: Regular Compensation

(1) During any period of active service prior to July 1, 2009 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:
 - 1. have been actually paid to or on behalf of a member;
 - 2. be made as remuneration for services actually rendered, for recurring payments for accrued sick leave, or for payments made pursuant to M.G.L. c. 41, § 111F in the year or part of a year to which the compensation is attributed;
 - 3. be ordinary, normal, recurrent, repeated, and of indefinite duration;
 - 4. be made pursuant to an official written policy of the employer or to a collective bargaining agreement;
 - 5. 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) through (c), payments to be considered regular compensation shall include:
 - 1. a member's annual rate of compensation as provided in an approved salary schedule;
 - 2. 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);
 - 3. 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;
 - 4. any amounts paid as educational incentives;
 - 5. any amounts paid for length of service;

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6. any amounts paid as premiums for shift differentials; and
7. any amounts paid as cost-of-living bonuses or cost-of-living pay adjustments.

(2) During any period of active service prior to July 1, 2009, 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 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 M.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.

(3) During any period of active service subsequent to July 1, 2009 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 be compensation received exclusively as wages by an employee for services performed in the course of employment for his employer;
- (b) "wages" shall mean the base salary or other base compensation of an employee paid to that employee for employment by an employer including pre-determined, non-discretionary, guaranteed payments paid by the employer to similarly situated employees, provided, that "wages" shall include payments made by the employer to the employee because of the character of the work, because of the employee's length of service, because of the time at which the work takes place as a condition of employment in a particular position, because of educational incentives, and payments for holding the training, certification, licensing or other educational incentives approved by the employer for the performance of services related to the position the employee holds and payments made by the employer to the employee calculated as a percentage of base pay;

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- (c) Any amount, benefit or payment included in the definition of "regular compensation" by law or by regulation prior to July 1, 2009 and included in any applicable collective bargaining agreement or individual contract for employment in effect on May 1, 2009, shall continue to be included in the definition of "regular compensation" during the term of that collective bargaining agreement or contract; provided, however, that any such amount, benefit or payment received after the term of said collective bargaining agreement or contract ends or after June 30, 2012, as the case may be, shall continue to be considered regular compensation unless such payment does not meet the criteria set forth in 840 CMR 15.03(3)(b) or is excluded by the provision of 840 CMR 15.03(3)(f);
- (d) Regular compensation shall include any part of the wages derived from federal grants except as provided in M.G.L. c. 2 and (2)(a)(xi);
- (e) Lump-sum retroactive payments which would have been wages 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;
- (f) "Wages" shall not include, without limitation, overtime, commissions, bonuses other than cost-of-living bonuses, amounts derived from salary enhancements or salary augmentation plans which will recur for a limited or definite term, indirect, in-kind or other payments for such items as housing, lodging, travel, clothing allowances, annuities, welfare benefits, lump sum buyouts for workers' compensation, job-related expense payments, automobile usage, insurance premiums, dependent care assistance, one-time lump sum payments in lieu of or for unused vacation or sick leave or the payment for termination, severance, dismissal or any amounts paid as premiums for working holidays, except in the case of police officers, firefighters and employees of a municipal department who are employed as fire alarm signal operators or signal maintenance repairmen money paid for holidays shall be regarded as regular compensation, amounts paid as early retirement incentives or any other payment made as a result of the employer having knowledge of the member's retirement, tuition, payments in kind and all payments other than payment received by an individual from his employing unit for services rendered to such employing unit, regardless of federal taxability; provided further, that notwithstanding the foregoing, in the case of a teacher employed in a public day school who is a member of the teachers' retirement system, salary payable under the terms of an annual contract for additional services in such school and compensation for services rendered by a teacher in connection with a school lunch program or for services in connection with a program of instruction of physical education and athletic contests as authorized by M.G.L. c. 71, § 47 shall be regarded as "regular compensation" rather than as bonus or overtime and shall be included in the salary on which deductions are to be paid to the annuity savings fund of the teachers' retirement system.

15.04: Benefit Calculation Factors

PERAC, through its Actuary, is required to review the mortality table and interest rate used in the determination of the actuarial equivalence factors for Options A, B, and C on or before January 1, 2014 and every ten years thereafter. After the review, if changes are warranted, the Actuary will select a revised mortality table and/or a revised interest rate to be used in the determination of actuarial equivalence factors and develop such revised factors.

15.05: Board Credit Cards

- (1) Retirement Boards may, by supplementary regulation, submitted to and approved by PERAC, authorize use of a credit card account issued to the Retirement Board. 840 CMR 15.05 should specifically include the amount upon which prior spending authorization is required and the categories for which the credit card account can be used.
- (2) Authorized users should be voted upon by the board and included in the board meeting minutes. No one other than an authorized user may utilize the board credit card account.
- (3) Any personal use of said credit card account issued to the board is prohibited.

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- (4) The board credit card account shall not be used to obtain cash advances, bank checks, traveler's checks, or electronic cash transfers.
- (5) The credit card account billings shall be issued to the board office and any authorized user shall be required to provide receipts for all expenses included in the monthly statement within ten business days of the statement date. If receipts are not provided, the authorized user will immediately reimburse the board for those items that appear on the credit card billing.
- (6) Credit card accounts issued to the board may be used to purchase supplies or other items that the Board, the board members, or the board's staff use on a regular basis in the performance of board-related duties. However, the board should follow a procurement process for the goods and services whenever possible. Credit card accounts issued to the board may also be used for board-related travel expenses, as described at 840 CMR 2.00: *Retirement Board Travel*, or the supplementary regulations of the board.
- (7) If the board credit card is lost or stolen, this must be immediately reported to the Board and to the financial institution issuing the card.
- (8) The board must pay off the credit card account in full every month so as not to incur any interest on the account.
- (9) The board's supplementary regulation shall include a provision that continued or repeated non-conformance to this policy will result in cancellation of the credit card account and such other actions as appropriate.

15.06: Board Debit Cards

Retirement boards are prohibited from the use of debit cards for any purchases of goods or services.

15.07: Non-disability Hearings by a Retirement Board

- (1) Purpose. The following procedures shall be used for all Board hearings not related to disability applications including, but not limited to, matters involving M.G.L. c. 32, §§ 15, 16 (involuntary superannuation), 91, and 91A.
- (2) Notice. The retirement board shall give all parties at least 30 days notice of the time and place for the hearing and of the issues involved in the hearing. If the issues cannot be fully stated in advance of the hearing, they shall be fully stated as soon as practicable.
- (3) Discovery. Any party and any authorized representative shall, at any time after a hearing has been requested or ordered and after reasonable notice to the retirement board, be permitted to examine and/or copy, during normal business hours, any document in the case file pertaining to the member's file or the record of the hearing. All other discovery shall be at the discretion of the retirement board. A request for discovery may be made by any party at any time after a hearing has been requested or ordered.
- (4) Conduct of Hearing. Hearings shall be conducted in an informal manner that affords all parties an opportunity to present all information and argument relevant to the proceeding.
 - (a) Presiding Officer. The chairperson of the retirement board, any other member of the board acting as chairperson, or any individual designated by the board, shall be the presiding officer and shall assure parties the right to call and question witnesses and introduce exhibits, and to present argument relevant to the proceeding. The presiding officer shall assure an orderly presentation of the evidence and argument and that a record is made of the hearing.
 - (b) Continuances. The presiding officer may change the date, time or place of the hearing on his or her own motion or on the request of any party, upon due notice to all other parties, and may continue the hearing to a subsequent date to permit any party to present additional evidence, witnesses or other materials. At any time prior to decision, the presiding officer may reconvene the hearing for any purpose upon ten days written notice to all parties, stating therein the purposes for reconvening, and the date, time and place of the reconvened hearing.

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(c) Oaths; Rulings; Briefs. The presiding officer shall administer the oath or affirmation to witnesses, shall rule upon the admissibility of evidence and upon any requests for rulings, and may order that pre and/or post hearing written briefs be submitted by the parties .

(d) The Record. All proceedings in connection with the hearing shall be recorded by electronic or stenographic means and such record shall be maintained as part of the hearing record. Transcripts or duplicate tapes of the proceedings shall be supplied to any party, upon request. At the discretion of the presiding officer, any party may be permitted to record the hearing (except, in the case of those hearings taking place at a meeting of the retirement board, those portions of the hearing which may be held in executive session) so long as this does not interfere with the conduct of the proceedings. All documents and other evidence received shall also become part of the record.

(e) Executive Session. If a hearing occurs at a meeting of the retirement board, and if the subject of the hearing is such that the matter may proceed in executive session the board must first convene in open session for which notice has been given, a majority of the members of the board must vote to go into executive session and the vote of each member must be recorded on a roll call vote and entered into the minutes, the presiding officer must have stated the purpose for an executive session, and stated before the executive session if the board will reconvene after the executive session. In such executive session only the retirement board, the secretary and the retirement board's counsel, the parties and their authorized representatives and such other persons as the presiding officer shall deem necessary for the conduct of the hearing shall be permitted to be present. The records of the hearing in executive session shall not be made available to the public except in accordance with the board's regulations on privacy and confidentiality and such other laws or regulations as may be applicable to such records.

(f) Evidence.

1. General. The retirement board need not observe the rules of evidence observed by courts but shall observe the rules of privilege recognized by law. Evidence shall be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely upon. Unduly repetitious evidence may be excluded.

2. Testimony; Stipulation. Witnesses shall testify under oath or affirmation and shall be available for questions by all parties. If a witness cannot, as a practical matter, be available in person the witness shall be available and testify remotely using adequate electronic means as ordered by the presiding officer. Stipulations by the parties as to any fact or as to the testimony that would be given by an absent witness may be offered and received as evidence.

3. Documentary Evidence. Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference at the discretion of the presiding officer.

4. Taking Notice of Facts. The retirement board may take notice of any fact which may be judicially noticed by the courts, and any fact within the retirement board's specialized knowledge. Parties shall be notified and afforded an opportunity to contest any facts so noticed.

5. Evidence to Be Part of Record. All evidence, including any records, reports and documents of the retirement board, to be considered in making a decision shall be offered and made a part of the record of the proceeding and the record shall at all times be open for inspection by any party or authorized representative during business hours. The retirement board may, with notice to all parties, require any party to submit additional evidence for the record and shall afford parties an opportunity to submit rebuttal evidence.

(g) Subpoenas.

1. Issuance. The presiding officer shall, within five days of a written request of a party, issue a subpoena requiring the attendance and testimony of a witness or the production of any evidence including books, records, correspondence or documents relating to any matter in question at the hearing.

2. Request to Vacate. Any person subpoenaed may file a written request to the presiding officer to vacate or modify the subpoena.

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3. Decision on Request to Vacate or Modify Subpoena. The presiding officer shall notify all parties of the request to vacate or modify the subpoena and afford parties a reasonable time to respond. The presiding officer shall grant the request to vacate or modify the subpoena if the testimony or evidence subpoenaed does not relate with reasonable directness to any matter at issue in the proceeding or if the subpoena is otherwise unreasonable or oppressive.
 4. Failure to Comply with Subpoena. If any person fails to comply with a properly issued subpoena, the retirement board or the party requesting the issuance of the subpoena may petition the Superior Court for an order requiring compliance.
- (5) Written Decision. The presiding officer shall issue a written decision to the retirement board following the conclusion of the hearing. The Board shall vote and issue a decision following receipt of the Presiding Officer's decision and provide the parties with the appropriate appeal rights.

REGULATORY AUTHORITY

840 CMR 15.00: M.G.L. c. 7, § 50; c. 32, and 21.