

941 CMR 2.09

2.09: Contract Service as Creditable Service

The purpose of 941 CMR 2.09 is to clarify the provisions of [M.G.L. c. 32, § 4\(1\)\(s\)](#). Specifically, 941 CMR 2.09 shall define the eligibility requirements for the purchase of contract service as creditable service, the standards for calculating contract service as creditable service and the actual purchase of contract service as creditable service.

(1) State Board of Retirement's Authority. The State Board of Retirement may review any request related to a service purchase pursuant to [M.G.L. c. 32, § 4\(1\)\(s\)](#) and 941 CMR 2.09.

(2) Definitions. The following definitions apply to 941 CMR 2.09:

Member means any employee included in the Massachusetts State Employees' Retirement System (MSERS).

Member-in-service means any member of the MSERS who at the time of a contract service purchase request is regularly employed in the performance of his or her duties as detailed in [M.G.L. c. 32, § 3\(1\)\(i\)](#).

Membership Service means service as an employee of the Commonwealth rendered since becoming a member of the MSERS.

(3) Eligibility Requirements. Members of the Massachusetts State Employees' Retirement System (MSERS) who retired prior to October 17, 2006 are not eligible to purchase contract service pursuant to [M.G.L. c. 32, § 4\(1\)\(s\)](#). Otherwise eligible members of the MSERS purchasing creditable service for service provided to the Commonwealth as a "contract employee", must meet all of the following requirements:

(a) Membership Service Requirement. 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~~ with the MSERS at the time of the application to purchase. This ten-year service requirement shall not include:

~~1. any other creditable service, including service purchased as a member of the MSERS, or transferred from any other retirement system arising out of employment with other public entities, such as, but not limited to, cities, towns or counties of the Commonwealth; or~~

~~2. any other purchased service not arising from employment with the Commonwealth as a member of the MSERS, such as, but not limited to purchased military service.~~

(b) Contract Service must Have Been Provided to the Commonwealth. The contract service being purchased must have been service to the Commonwealth, not service to a city, town, county or other governmental entity.

(c) Service Through a Vendor or Contractor. The contract service being purchased must have been service as a "contract employee" of the Commonwealth. Except only as otherwise set forth in 941

CMR 2.09(3)(c) members who were employees of a vendor or contractor, which was selected and contracted to provide services to the Commonwealth, are specifically excluded from purchasing contract service as creditable service. The Board may consider as eligible contract service such service provided through a vendor established and operated by, or that functions as an instrumentality of, the Commonwealth or a Commonwealth agency. The Board may consider as eligible contract service:

~~1. such service, as verified by the Board, provided through a vendor established and operated by, or that functions as an instrumentality of, the Commonwealth or a Commonwealth agency; or~~

~~2. such service, as verified by the Board, provided through a vendor by an individual:~~

~~a. who was under the supervision and control of a Commonwealth agency or its employees; and~~

~~b. which service was performed in the standard and ongoing course of an agency's regular business function, but not including any such service provided as part of any specific or defined projects of that agency for which a vendor was selected.~~

~~No credit shall be allowed for any such service provided through a vendor for which the member shall be or is entitled to receive a retirement benefit, allowance, annuity, or pension from any other source.~~

(d) Contract Service Position must Be Substantially Similar. 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 characteristics and requirements for each position shall be determined by the relevant job descriptions, or if there is no job description, other documentation provided by the employers and acceptable to the Board. The contract position and the position upon entry into membership may be with different Commonwealth agencies or departments.

(e) Timing. The contract employee service being purchased must have immediately preceded membership or re-entry into the MSERS. For purposes of 941 CMR 2.09 "immediately preceded" shall mean within 180 calendar days. Additionally:

1. An employee may purchase two consecutive periods of contract service that satisfy all other requirements of the statute and 941 CMR 2.09, provided that the period between the two periods of contract service does not exceed 180 calendar days.

2. A member who refunds his or her retirement contributions terminates membership in the MSERS. If the individual later returns to service for the Commonwealth, he or she is considered a new member for the purposes of M.G.L. c. 32. Thus, a member of the MSERS may not purchase contract service if such contract service preceded a period of membership service for which the member took a refund.

(f) Buy Back Form and Documentation. Prior to purchasing any eligible contract service, a member must have the State Board of Retirement's Contract Service Buy Back Form completed by the State

agency where the contract service was provided and submit the required documentation to the State Retirement Board for review and approval. No creditable service shall be allowed unless the member provides documentation of the contract service satisfactory to the State Retirement Board.

(4) Calculating Contract Service as Creditable Service for Purposes of Retirement.

(a) Amount of Contract Service Credited Based on a 12-month Calendar Year. Eligible contract service purchased as creditable service shall, in all circumstances, be calculated based on a 12-month calendar year. For purposes of calculating this contract service as creditable service there shall be no distinction between types of employment (*i.e.*, seasonal, academic year, *etc.*). A member purchasing contract service as creditable service shall not be entitled to the benefits of membership service for that period of contract service.

(b) Part-time Contract Service. Eligible part-time contract service shall be credited proportionally based on a 12-month calendar year.

(c) Concurrent Service. Otherwise eligible contract service provided concurrently with creditable employment service to the Commonwealth may be purchased. In such instances, a member shall not be credited with anymore creditable service than would otherwise be allowed under M.G.L. c. 32.

(d) Any creditable service purchased pursuant to [M.G.L. c. 32, § 4\(1\)\(s\)](#) and 941 CMR 2.09 shall be classified in Group 1 for purposes of M.G.L. c. 32.

(5) Purchasing Contract Service as Creditable Service, if the Member is Found Eligible.

(a) Maximum Service Allowed to be Purchased. The maximum amount of contract service eligible to be purchased is four years.

(b) Time to Purchase Service. Once a member is notified by the Board that he or she is eligible to purchase contract service, he or she must within 180 days after the notice either:

1. purchase the service via a lump sum payment; or
2. enter into an installment payment agreement

If the 180-day period expires without action by a member, the contract service shall no longer be eligible for purchase.

If a member enters into an installment payment agreement and such payments terminate before completion of the service purchase, the Board reserves the right to further review the request, including any request to resume installment payments, on a case by case basis.

(c) Cost to Purchase Service. The cost to purchase contract service is the amount equal to that which would have been withheld as regular retirement deductions for the contract service as if the service had been rendered as a state employee, and the individual had been a member of the MSERS, plus buyback interest on that amount.

(d) Salary Information Used to Determine Cost to Purchase Service. Board staff may utilize salary information when an individual became a member of the MSERS for purposes of determining a contract service buy back if no satisfactory salary information becomes available.

Salary earned during any period of qualifying contract service that is purchased pursuant to [M.G.L. c. 32, § 4\(1\)\(s\)](#) may not be utilized, or considered “regular compensation” in calculating a member's retirement allowance.