



PERAC HITS THE ROAD — NORTHAMPTON | HYANNIS | DANVERS

BOARD ADMINISTRATOR TRAINING

Anti-Spiking: Everything You Wanted to Know... *(and Have Asked Several Times)*



John Boorack | Senior Actuarial Associate
PERAC Board Administrator Training 2017

11/14/17



Anti-Spiking: Everything You Wanted to Know... *(and Have Asked Several Times)*

- Introduction
- Chapter 176 and PERAC Memos
- Who is affected?
- Section 14
- Section 18
- Both Section 14 and Section 18



Chapter 176 of the Acts of 2011

- Two anti-spiking provisions added to Chapter 32 by:
 - Section 14 of Chapter 176 - amended §5(2)(a)
 - Section 18 of Chapter 176 - added §5(2)(f)
 - Further amended by Section 68 of Chapter 165 of the Acts of 2014
- PERAC Memos
 - #36/2011 (Introduces Anti-spiking) - Pages 3-4 of the memo
 - #38/2012 (Explains Anti-spiking in detail)
 - #44/2012 (Worksheet and Instructions)
 - #46/2012 (No worksheet needed if in Union under Ch. 150E)
 - #16/2014 (Follow-up - Ch. 150E and bona fide changes in position)
 - #29/2014 (Adds new exemption) - Pages 2-3 of the memo

NOTES:



Who is Affected?

- Anyone who:
 - Retires on or after April 2, 2012, and
 - Has a benefit calculated under § 5, §6 (non-veteran), §10(1), §10(2)(b), §10(2)(b½), §10(2A) or §12(2)(d)



Section 14 of Chapter 176

- Amended G.L. c. 32, § 5(2)(a) by adding the following text:

...[I]f in the 5 years of creditable service immediately preceding retirement, the difference in the annual rate of regular compensation between any 2 consecutive years exceeds 100 per cent, the normal yearly amount of the retirement allowance shall be based on the average annual rate of regular compensation received by the member during the period of 5 consecutive years preceding retirement.

NOTES:



What Does This Mean?

- If in the last 5 years of creditable service, the rate of regular compensation increases by more than 100% (i.e. more than doubles) between two consecutive years, then Section 14 is violated.
- If Section 14 is violated, you MUST use the average of the last 5 years of creditable service!
- There are NO exceptions.



Section 14 - Example 1


- 2016 - \$80,000 (Mayor)
 - 2015 - \$80,000 (Mayor)
 - 2014 - \$80,000 (Mayor)
 - 2013 - \$20,000 (City Council)
 - 2012 - \$20,000 (City Council)
- ❓ Section 14 is violated. Why?

NOTES:



Section 14 - Example 2

- 2016 - \$80,000 (Mayor)
- 2015 - \$80,000 (Mayor)
- 2014 - \$80,000 (Mayor)
- 2013 - \$80,000 (Mayor)
- 2012 - \$80,000 (Mayor)
- 2011 - \$20,000 (City Council)
- 2010 - \$20,000 (City Council)

 Section 14 is not violated. Why not?



Section 18 of Chapter 176

- Added G.L. c. 32, § 5(2)(f)
 - Section 5(2)(f) was further amended by §68 of Ch. 165 of the Acts of 2014 (the underlined passage)

In calculating the average annual rate of regular compensation for purposes of this section, regular compensation in any year shall not include regular compensation that exceeds the average of regular compensation received in the 2 preceding years by more than 10 percent. This paragraph shall not apply to an increase in the annual rate of regular compensation that results from an increase in hours of employment, from overtime wages, from a bona fide change in position, from a modification in the salary or salary schedule negotiated for bargaining unit members under chapter 150E, from an increase in salary for a member whose salary amount is specified by law, or in the case of a teacher, from the performance of any services set forth in the third sentence of the first paragraph of the definition of “regular compensation” in section 1. Any withholdings excluded from the calculation of a member’s average annual rate of regular compensation under this paragraph, shall be returned to the member with interest at the assumed actuarial rate.

NOTES:



What Does This Mean?

- In determining the 3-year (or 5-year) average of regular compensation, if regular compensation in any year (of creditable service) exceeds the average of the regular compensation of the previous two years (of creditable service) by more than 10%, then Section 18 is violated.
- In calculating the benefit, cannot use regular compensation in excess of 10% of the average of the previous two years.



Exceptions

- If the increase in regular compensation is from one of the following, then Section 18 is not violated:
 - Increase in the number of hours worked
 - Overtime wages (not reg. comp. but included in §18)
 - Bona fide change in position
 - Modification in salary or salary schedule negotiated for bargaining unit members of Chapter 150E
 - Salary amount which is specified by law
 - (For Teachers only) the performance of any service set forth in the third sentence of the first paragraph of the definition of “regular compensation”

NOTES:



If Section 18 is Violated

- In calculating the benefit, cannot use regular compensation in excess of 10% of the average of regular compensation received in the previous two years.
- Any withholdings excluded from the calculation of the member's average annual rate of regular compensation shall be returned to the member with interest at the actuarial assumed rate.



Section 18 - Example 1

- 2016 - \$11,400 (cafeteria worker)
- 2015 - \$10,700 (cafeteria worker)
- 2014 - \$10,000 (cafeteria worker)
- 2013 - \$10,000 (cafeteria worker)
- 2012 - \$10,000 (cafeteria worker)
- ? Assuming no exceptions are met, is Section 18 violated? Why or why not?

NOTES:



Section 18 - Example 1

- Yes, Section 18 is violated!
 - For 2016:
 - Take the average of 2014 & 2015
($\$10,000 + \$10,700 / 2 = \$10,350$)
 - 110% of $\$10,350 = \$11,385$
 - Pay for 2016 is $\$11,400$ which is greater than 10% of the average of 2014 & 2015



Section 18 - Example 2

- 2016 - $\$50,000$
- 2015 - $\$45,000$
- 2014 - $\$40,000$
- 2013 - $\$39,000$
- 2012 - $\$37,000$
- ? Assuming no exemptions are met, Section 18 is violated.

NOTES:



Section 18 - Example 2

Year	(1) Pay	Avg. Of Prev. 2 Yrs.	(2) 110% Of Avg. Of Prev. 2 Yrs.	Pay To Use: Min (1) and (2)
2016	\$50,000	\$42,500	\$46,750	\$46,750
2015	\$45,000	\$39,500	\$43,450	\$43,450
2014	\$40,000	\$38,000	\$41,800	\$40,000
2013	\$39,000			
2012	\$37,000		3-yr. avg.:	\$43,400



Section 18 - Example 3: Bona Fide Change in Position (PERAC Memo #16/2014)

- 2016 - \$150,000
- 2015 - \$125,000
- 2014 - \$100,000
- 2013 - \$70,000
- 2012 - \$70,000
- Member had a bona-fide change in position effective January 1, 2014.
 - Member received \$25,000 raises in 2015 and 2016 which do NOT reflect a bona fide change in position.
 - This is the Example #1 from PERAC Memo #16/2014

NOTES:



Section 18 - Example 3: Bona Fide Change in Position (PERAC Memo #16/2014)

- First Incorrect Approach - This is how the numbers would look if we clicked “YES” to the bona-fide change in position.
 - By doing this, it assumes EVERY year’s pay meets the exemption.

Year	(1) Pay	Avg. Of Prev. 2 Yrs.	(2) 110% Of Avg. Of Prev. 2 Yrs.	Pay To Use: Min (1) and (2)
2016	\$150,000	\$112,500	\$123,750	\$150,000
2015	\$125,000	\$85,000	\$93,500	\$125,000
2014	\$100,000	\$70,000	\$77,000	\$100,000
2013	\$70,000			
2012	\$70,000		3-yr. avg.:	\$125,000



Section 18 - Example 3: Bona Fide Change In Position (PERAC Memo #16/2014)

- Second incorrect approach - This is how the numbers would look if we did not make any adjustment to account for the change in position other than meeting the exemption in 2014 (uses actual pay from 2012 and 2013).

Year	(1) Pay	Avg. Of Prev. 2 Yrs.	(2) 110% Of Avg. Of Prev. 2 Yrs.	Pay To Use: Min (1) and (2)
2016	\$150,000	\$112,500	\$123,750	\$123,750
2015	\$125,000	\$85,000	\$93,500	\$93,500
2014	\$100,000	\$70,000	\$77,000	\$100,000 ^(a)
2013	\$70,000			
2012	\$70,000		3-yr. avg.:	\$105,750

(a) The bona fide change in position exemption is met in 2014

NOTES:



Section 18 - Example 3: Bona Fide Change In Position (PERAC Memo #16/2014)

- This is how the numbers should look after we make all of the adjustments to account for the change in position.

Year	(1) Pay	Avg. Of Prev. 2 Yrs.	(2) 110% Of Avg. Of Prev. 2 Yrs.	Pay To Use: Min (1) and (2)
2016	\$150,000	\$112,500	\$123,750	\$123,750
2015	\$125,000	\$100,000 ^(b)	\$110,000	\$110,000
2014	\$100,000	\$100,000 ^(b)	\$110,000	\$100,000
2013	\$70,000			
2012	\$70,000		3-yr. avg.:	\$111,250

(b) Reflects the starting compensation of the bona fide change in position



Section 18 - Example 3: Bona Fide Change In Position (PERAC Memo #16/2014)

- Look at 2014 by itself:

Year	(1) Pay	Avg. Of Prev. 2 Yrs.	(2) 110% Of Avg. Of Prev. 2 Yrs.	Pay To Use: Min (1) and (2)
2016	\$150,000	\$112,500	\$123,750	\$123,750
2015	\$125,000	\$100,000 ^(b)	\$110,000	\$110,000
2014	\$100,000	\$100,000^(b)	\$110,000	\$100,000
2013	\$70,000			
2012	\$70,000		3-yr. avg.:	\$111,250

(b) Reflects the starting compensation of the bona fide change in position

- The bona fide change in position exemption is met.

NOTES:



Section 18 - Example 3: Bona Fide Change In Position (PERAC Memo #16/2014)

- Look at 2015 by itself

Year	(1) Pay	Avg. Of Prev. 2 Yrs.	(2) 110% Of Avg. Of Prev. 2 Yrs.	Pay To Use: Min (1) and (2)
2016	\$150,000	\$112,500	\$123,750	\$123,750
2015	\$125,000	\$100,000^(b)	\$110,000	\$110,000
2014	\$100,000	\$100,000 ^(b)	\$110,000	\$100,000
2013	\$70,000			
2012	\$70,000		3-yr. avg.:	\$111,250

- Because the pay for 2013 is from the prior position, we do not want to compare the pay for the current position to the pay for the prior position. When determining the average, use actual pay from 2014, but adjust pay for 2013 to the starting pay in the new position



Section 18 - Example 3: Bona Fide Change In Position (PERAC Memo #16/2014)

- Look at 2016 by itself:

Year	(1) Pay	Avg. Of Prev. 2 Yrs.	(2) 110% Of Avg. Of Prev. 2 Yrs.	Pay To Use: Min (1) and (2)
2016	\$150,000	\$112,500	\$123,750	\$123,750
2015	\$125,000	\$100,000 ^(b)	\$110,000	\$110,000
2014	\$100,000	\$100,000 ^(b)	\$110,000	\$100,000
2013	\$70,000			
2012	\$70,000		3-yr. avg.:	\$111,250

NOTES:



Example - (Violate Both Sections 14 and 18)

- 2016 - \$21,000 (City Council)
- 2015 - \$21,000 (City Council)
- 2014 - \$21,000 (City Council)
- 2013 - \$10,000 (City Council)
- 2012 - \$10,000 (City Council)
- 2011 - \$10,000 (City Council)
- 2010 - \$10,000 (City Council)



Example - (Violate Both Sections 14 and 18)

Year	(1) Pay	Avg. Of Prev. 2 Yrs.	(2) 110% Of Avg. Of Prev. 2 Yrs.	Pay To Use: Min (1) and (2)
2016	\$21,000	\$21,000	\$23,100	\$21,000
2015	\$21,000	\$15,500	\$17,050	\$17,050
2014	\$21,000	\$10,000	\$11,000	\$11,000
2013	\$10,000	\$10,000	\$11,000	\$10,000
2012	\$10,000	\$10,000	\$11,000	\$10,000
2011	\$10,000			
2010	\$10,000		5-yr. avg.:	\$13,810

NOTES:



Conclusion

- Anti-spiking provisions added to G.L. c. 32 by Sections 14 & 18 of Chapter 176 of the Acts of 2011
- Anti-spiking seems overwhelming, but it's really not
 - PERAC Memos offer guidance
- There appears to be no likelihood at this time that these sections will be subject to either repeal or amendment.

NOTES:

COMMONWEALTH OF MASSACHUSETTS

Public Employee Retirement Administration Commission

Five Middlesex Avenue, Suite 304 | Somerville, MA 02145

Phone: 617-666-4446 | Fax: 617-628-4002

TTY: 617-591-8917 | Web: www.mass.gov/perac

