



Does This Violate Chapter 32? **(Agreements, Contracts, DROs)**



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Introduction

- Chapter 32 is the Plan document that controls our public pension system.
- All agreements and contracts must be made in conformity with Chapter 32.
- If any parts of an agreement violate Chapter 32, they cannot legally be enforced.
- Topics covered today:
 - Collective Bargaining Agreements
 - Domestic Relation Orders
 - Settlement Agreements

Collective Bargaining Agreements (“CBAs”)

Role of CBAs

- CBAs are created usually between unions and employers to ensure contractually guaranteed benefits for employees.
- Many CBAs will include notations after a stipend that “this payment is considered regular compensation and pensionable for retirement purposes.”
- However, CBAs **cannot** dictate what is considered regular compensation.
- The determination of what is regular compensation lies with the retirement boards and PERAC.

CBAs – Always Right?

Examples Where They Usually Get it Wrong:

- Clothing Allowances
- Overtime Pay
- Drug Testing
- Holiday Premiums
- No Services Provided
- Payment Isn't Guaranteed

Examples Where They Usually Get it Right:

- Training/Certification
- Shift Differentials
- On-Call
- Additional Services Beyond Job Duties

CBAs – Summary

- Just because a CBA indicates a payment is regular compensation should not influence your review.
- The determination of whether a payment is regular compensation is a fact specific inquiry.
- **Remember:** Payments must be received for services performed by the employee on behalf of the employer.
- Payments must also be pre-determined, non-discretionary, guaranteed, and available to all similarly situated employees.

Domestic Relations Orders (“DROs”)

What is a DRO?

- A DRO is a judicial order that splits a retirement benefit by recognizing the joint marital ownership in the benefit by the plan participant and their former spouse.
- DRO's must be provided to retirement boards so that a copy can be maintained on file in the event of retirement.
- At the time of a member's retirement, retirement boards should ask and confirm whether there is a DRO in place.

What DROs Can Do

- Usually, DROs will assign a percentage or amount of a retiree's retirement allowance to the ex-spouse.
 - This can become effective immediately, because the member is retiring, or in the future at the time of the member's actual retirement.
- The ex-spouse is then paid directly from the retirement board as the "alternate payee."
- Can also require that a member designate the ex-spouse as an Option C beneficiary at the time of retirement.**

What DROs Cannot Do

- Usually, the issues with DROs arise when the divorce occurs after the member has already retired.
- DROs cannot change a retiree's option selection as G.L. c. 32, s. 12(1) requires that the election be made prior to retirement.**
- DROs cannot change a nominated beneficiary after retirement.**

Settlement Agreements

What are Settlement Agreements?

- Settlement agreements are usually entered into over some type of employment dispute, i.e., discrimination or unlawful firing.
- The settlement agreement will seek to make the member whole, which can occur in several ways:
 - Reinstatement
 - Back Pay Award
 - Front Pay Award
 - Lump-sum Payment for Damages/Fees

General Issues

- Issues usually arise when the member has already retired and then receives the settlement agreement.
- However, regardless of whether the member is retired or not, a settlement agreement cannot count “front pay” or “damages” as regular compensation.
- Additionally, back pay must be awarded, the period it covers should be identified, and contributions must be remitted to the retirement board on that pay for it to count as creditable service.
- See **Montiero v. PERAC**, CR-19-0453 (DALA Oct. 7, 2022).

What Happens if a Member Already Retired?

- If a member has already retired and is awarded back pay, deductions must be paid to receive creditable service.
- If the retiree wants their retirement allowance recalculated to include the additional service, they must refund their received retirement allowance in full.
 - An individual cannot be both a member-in-service receiving regular compensation and accruing creditable service while simultaneously being a retiree receiving a retirement allowance.
 - See **Leary v. Hull Ret. Bd. & PERAC**, CR-08-551 (DALA Sept. 16, 2011)

Settlement Agreements – Summary

- PERAC Memorandum #28 of 2001.
 - Addresses specific guidelines for the inclusion of back pay for retirement purposes for settlement agreements.
- **Key Point:** Chapter 32 cannot be used as a vehicle to resolve employment disputes. Agreements must be in conformity with Chapter 32, even if the settlement agreement was court-ordered, or they cannot be enforced.
 - See ***Tarlow v. Teachers' Ret. Sys.***, CR-10-793 (CRAB, Nov. 26, 2013)

Conclusion

- Main question to always ask when reviewing any type of contract or agreement: Does it Violate Chapter 32?
- If it does, it cannot be legally enforced, as Chapter 32 “reigns supreme.”
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Any Questions?