

Emerging Issues

2024

# FORUM

## 03. Legislative Updates

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DoubleTree by Hilton  
Westborough, MA

September 18, 2024



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Emerging Issues **2024**  
**FORUM**



## 03. LEGISLATIVE UPDATES — RECENT LEGISLATION

**Speaker:**

**Patrick M. Charles, Esq.,** Assistant Deputy Director | PERAC

## What Are We Going To Cover Today?

- Chapter 141 of the Acts of 2024 **“An Act Relative to Salary Range Transparency”**
  - Anti-spiking;
  - Post-Retirement Earnings.
- Chapter 140 of the Acts of 2024 FY25 Budget
  - Return to Service changes.

## What Are We Going To Cover Today? *(Continued)*

- Chapter 149 of the Acts of 2024 **“An Act Relative to Disability Pensions and Critical Incident Stress Management for Violent Crimes.”**
  - Violent Act Injury 100% disability.
- Chapter 178 of the Acts of 2024 **“An Act Honoring, Empowering, and Recognizing our Service Members and Veterans” (“HERO Act”)**
  - Veterans’ Buyback Changes

### NOTES:

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## Salary Transparency Act (Anti-Spiking)

- New exception to G.L. c. 32 § 5(2)(f)
  - “from a bona-fide increase in salary related to eliminating wage differentials as required pursuant to section 105A of chapter 149 or from an employer’s systemic wage adjustments.”

## Salary Transparency Act (Anti-Spiking) *(Continued)*

- Chapter 149 of the General Laws is the **Massachusetts Equal Pay Act (“MEPA”)**
  - An increase in salary done following a MEPA salary study will **NO LONGER** trigger anti-spiking.
  - Employer’s systemic wage adjustments
    - Increases to employee’s salaries across an employer or a segment of the employer are **NOT** subject to anti-spiking.
  - Effective date is **July 1, 2018**.

### NOTES:

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## Memorandum #21 of 2024

- Steps Boards must take:
  - Identify retired members of the system who had the anti-spiking provision of Section 5(2)(f) applied to their allowance on or after **July 1, 2018**.
  - Determine whether any received a salary increase pursuant to either MEPA or an “employer’s systemic wage adjustment”.
  - If yes, then retirement allowance must be recalculated to remove the downward adjustment for spiking.
  - After adjusting allowance, board must refund to the member the underpayment amount of their allowance plus correction of errors interest.
  - Offset from the lump sum payment to be made to member the amount of any contributions that were returned to the member when anti-spiking was applied.

## Salary Transparency Act (Post-Retirement Earnings)

- Amends the salary that is used when calculating retiree earnings limitations pursuant G.L. c. 32, § 91(b).
  - Now use the greater of two figures:
    - Salary being paid for the position from which the member retired or,
    - Salary upon which the retirement allowance is based.
  - *Dixon v. Lynn Ret. Sys.*, CR-16-0289 & CR-19-0469 (CRAB March 15, 2024).
  - What is **“the salary upon which the retirement allowance is based”**?
    - Average salary figure used in the allowance calculation

### NOTES:

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## FY 2025 Budget - Return to Service, G.L. c. 32, § 8

- Members retired for disability who are cleared to return to service to their original position may now be hired for that position with the original employer or a different employer.
- Members may also **REQUEST** that they be evaluated for a different position.
  - This can be with the same employer or with a different employer, even if that employer is in a different retirement system.
  - Member must identify the new position and a job description that shows the essential duties of that position.

## Return to Service, G.L. c. 32, § 8 (Continued)

- Member must be evaluated through the return to service examination process.
  - Either examined for the same position or,
  - Examined for a new position.
  - If found able to return to the same position, then return to service proceeds as it always has in the past.
  - If found able to return to a different position with the same employer, then the member is returned to the same retirement system, just like before, and receives creditable service for all the time they were receiving disability.

### NOTES:

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## Return to Service, G.L. c. 32, § 8 (Continued)

- If member is found able for a new position with a **DIFFERENT** employer, they may join a new retirement system.
  - Member will be given creditable service by the first system for the entire period the member collected disability.
  - Member will become a member-in-service of the new system.
  - Upon retirement under superannuation liability will be apportioned under Section 3(8)(c) between the systems, exactly as occurs when a member retires with service in multiple systems currently.
  - If the member goes out on disability based on the original injury, then the first system will be assessed a portion of the liability under Section 7(5).

## Chapter 149 of the Acts of 2024 (Violent Act Injury Disability)

- Amends Section 7 to provide a 100 % disability to police, firefighters and EMT's who are found disabled as the result of a "violent act injury."
  - **"Violent Act Injury"** is a catastrophic, life-threatening or life-altering and permanent bodily injury sustained as a direct and proximate result of a violent attack upon a person by means of a dangerous weapon, which is designed for the purpose of causing serious injury or death, including, but not limited to, a firearm, knife, automobile or explosive device.

### NOTES:

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## Violent Act Injury Disability *(Continued)*

- This 100% benefit is for catastrophic, life-threatening or life-altering permanent bodily injuries.
  - Must be physical injuries; emotional/psychological injuries are not covered.
  - Injuries must be the result of a violent attack upon the member by means of a dangerous weapon.
    - Dangerous weapon must be designed for the purpose of causing serious injury or death, including, but not limited to, a firearm, knife, automobile or explosive device.

## Violent Act Injury Disability *(Continued)*

- 100% disability
- Allowance shall be equal to 100% of their regular compensation, including all applicable benefits and stipends, that the member was earning on the date of such violent act injury.
- Mandatory Retirement Age: member receives 80% of the annual rate of compensation paid in the previous 12 months.
- Return of total accumulated retirement deductions.
- Spouse receives 75% of members pension upon the death of the member.

### NOTES:

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## Violent Act Injury Disability *(Continued)*

- Post-Retirement Earnings limitations.
  - 50% of retirement allowance amount may be earned in Massachusetts public employment but service cannot be in a Group 3 or Group 4 position.
  - May be employed by a private entity or in the private sector without earnings limitations.

## Chapter 178 of the Acts of 2024, HERO ACT

- What has **NOT** changed:
  - Definition of Veteran in G.L. c. 4, s. 7 cl. 43rd.
  - Purchase up to 4 years of prior military service.
  - 10% of regular compensation when the member most recently established membership in the system.
  - 5 to 1 ratio for National Guard and active Reserve time, **MUST** qualify as a veteran to be eligible.
  - Active duty for training for the National Guard and Reserves is excluded.
  - Active duty leave time cannot be counted towards buyback.
  - **MUST** be a member-in-service

### NOTES:

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## HERO Act - Changes to Veterans' Buyback

- Rewrites G.L. c. 32, s. 4(1)(h).
- Eliminates the 180-day requirement from **Chapter 71 of the Acts of 1996**.
- **Requires Boards to give notice of potential benefits to all new employees.**
- Provides that the purchase must be made within 1 year of vesting, (11 years of creditable service).
- National Guard and Reserves have a different purchase window.
- New 1-year window for anyone who missed purchasing their service.

## G.L. c. 32, s. 4(1)(h)

Notwithstanding the provisions of this chapter or any other general or special law, rule or regulation to the contrary, a member in service of a retirement system as defined in section 1 **shall be provided written notice by the retirement board upon entry into service** that if they qualify as a veteran who served in the armed forces of the United States, they shall be entitled to credit for active service in the armed services of the United States; provided, however, that such active service shall not be credited until such member, **prior to or within 1 year of vesting pursuant to this chapter**, has paid into the annuity savings fund of such system, in 1 sum or in installments, upon such terms and conditions as the board may prescribe, makeup payments, for each year of creditable service sought, of an amount equal to 10 per cent of the regular annual compensation of the member when said member entered the retirement system; provided further, that such creditable service shall not be construed to include service for more than 4 years; and provided further, that such creditable service shall not be allowed for any period of active service for which said veteran has received credit pursuant to this paragraph. This paragraph shall apply to national guard and active reserve personnel, both former and present. Creditable service time, both enlisted and commissioned, may be applied toward retirement on a ratio of 5 years of national guard service or 5 years of active reserve service substitutable for each year of active service. **National guard and active reserve personnel shall not be precluded from making said purchase if they qualify as a veteran after vesting or if they reach the maximum of 4 years of eligible service purchase after vesting and qualifying as a veteran; provided, however, that they enter into a purchase agreement within 5 years of the last occurring event. (Emphasis added).**

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## No More 180-Day Restriction

- Members no longer have to make arrangements for their military purchase within 180 days.
- Members now have until 1 year after they vest in the retirement system.
- Vesting, for Chapter 32, means a member has 10 years of creditable service. This includes service earned since joining the system and any service purchased.
- Effectively 11 years to decide to purchase military service.

## National Guard and Reserves

- National Guard and Reserves may purchase up to 4 years of time like all other service members.
- May have additional time to make service purchase.
- If they do not qualify as a veteran by the time they reach within 1 year of vesting or if they are not yet eligible for the full four-year buyback, they are given additional time.
- Later of two dates:
  - 5 years from when they qualify as a veteran, or
  - 5 years from the date they qualify for the full 4 years of purchase.

### NOTES:

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## One Year Grace Period

- **Members-in-Service** who missed the opportunity to purchase their military service prior to the enactment of the HERO Act will have a 1-year window in which to make the purchase.
  - This applies to people who missed the 180-day deadline or didn't complete the purchase prior to reaching 11 years of creditable service.
- Members have until **August 8, 2025**, to make arrangements with their Board for the purchase.

## What Do Members Need To Do?

- Member who has already completed military service purchase **DOES NOT NEED TO DO ANYTHING.**
- Member who has **MORE** than 11 years of creditable service and has not completed the buyback has until **August 8, 2025**, to enter into a purchase agreement with the Board. This could be a lump sum or an installment plan agreement depending on board policy.
- Member who has **LESS** than 11 years of service has until either they reach 11 years of service or **August 8, 2025**, whichever is later, to enter into a purchase agreement.

### NOTES:

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## What Do Members Need To Do? *(Continued)*

- Member has entered into an agreement but has not completed the purchase.
  - These are members who signed the form saying they wanted to buy time but the Board did not require that the purchase be completed.
  - Member **MUST** complete the purchase or enter into an installment agreement before they complete their 11<sup>th</sup> year of creditable service or **August 8, 2025**, whichever date **LAST** occurs.
  - We encourage boards to consider installment plans.

## What Does the Board Need to Do?

- **MUST** send notice to **ALL** active members of the retirement system informing them that they may be eligible for military service buyback.
- Notice **MUST** be sent by **November 6, 2024**.
- **Sample Notice** provided as part of PERAC Memo #23 of 2024.

### NOTES:

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## What Do Boards Need To Do? *(Continued)*

- Notify any member who previously completed the **Veterans' Buyback Application** but who has **NOT** made arrangement for payment that they must do so by the new deadlines.
  - **LATER** of 11<sup>th</sup> year of creditable service or **August 8, 2025**.

## What Do Boards Need To Do? *(Continued)*

- Review any Board regulations regarding veterans' buyback and submit updated regulations or notice of repeal to PERAC for approval.
- Begin using the updated **Notice of Potential Benefits** forms on our website.

### NOTES:

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## Notice, Notice, Notice

- Boards **MUST** begin giving notice of the military service buyback provisions to **EVERY** new member when they enroll in the system.
- Boards should provide the updated **Notice of Potential Veterans' Benefit** Form available on PERAC's website to **EVERY** member when they enroll in your system.
  - Should be part of any new member enrollment packet.

## Contact Information

- If you have any questions, please email me at [patrick.m.Charles@mass.gov](mailto:patrick.m.Charles@mass.gov).
- Phone is 617-591-8914
- **Salary Transparency Act** see Memo # 21 and #22 of 2024
- For details on **HERO Act** and sample notice please see Memo 23 of 2024. <https://www.mass.gov/memorandum/perac-memo-23-veterans-buyback-changes>
- **Notice of Potential Veterans' Benefit Form** on our website at <https://www.mass.gov/doc/veterans-buyback-form-0/download>

## NOTES:

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# QUESTIONS??



## NOTES:

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