

MACRS

LIMITS ON POST-RETIREMENT EARNINGS AND THE 91A PROCESS



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Resort and Conference Center at Hyannis



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Why Are Post-Retirement Earnings Monitored?

- Its been a public policy since 1913, Chapter 657 of the Acts and Resolves.
- Prohibited any public employment by a public retiree, except to serve as juror.
- Remained an absolute restriction until 1938, when only lower-pensioned teachers, jurors and elected officials were exempted.
- Nearly 80 years later and approximately 50 subsequent legislative Acts, Section 91 is what it is today. More recently, particularly as it relates to pension reform, the law has relaxed the amount of earnings, while broadening the scope of those subject to its provisions.

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NOTES:

Chapter 657 of the Acts of 1913

602 ACTS, 1913. — CHAPS. 657, 658.

Chap.657 AN ACT RELATIVE TO SERVICES RENDERED BY PENSIONERS OR ANNUITANTS TO A MUNICIPALITY OR COUNTY.

Be it enacted, etc., as follows:

Pensioners of cities, etc., not to be paid for services rendered.

SECTION 1. No person who now or hereafter receives a pension or an annuity from any city or town or any county shall be paid for any service, except service as a juror, rendered by him to said city, town or county after the date of the first payment of such pension or annuity.

SECTION 2. This act shall take effect upon its passage.
Approved May 16, 1913.

Post-Retirement Earnings Limits

- Limits on public post-retirement employment for all retirees
- Limits for disability retirees
- Monitoring retiree earnings

NOTES:

Service In the “ Public Sector”

- Public employee retired from the Montachusett Regional Planning Commission, a unit in the State retirement System, in 2003
- Same year, became full-time administrator of the Montachusett Regional Transit Authority (MART)
- While MART was not a member of a Chapter 32 retirement system, it clearly (by the language of its enabling statute) was a political division of the Commonwealth and provides a public service
- From 2003-2013, the member was found to have overearned \$647,138.00 (capped at amount of member’s annual pension)

Chapter 32, Section 91(b) Limits on Public Employment

(b) In addition to and notwithstanding the foregoing provisions of this section or similar provisions of any special law, any person who has been retired and who is receiving a pension or retirement allowance, under the provisions of this chapter or any other general or special law, from the commonwealth, county, city, town, district or authority, or any person whose employment, in the service of the commonwealth, county, city, town, district or authority, has been terminated, under the provisions of this chapter or any other general or special law, by reason of having attained an age specified in said general or special law or by the rules and regulations of any department or agency of the commonwealth, county, city, town, district or authority without being entitled to any pension or retirement allowance, may, subject to all laws, rules and regulations, governing the employment of persons in the commonwealth, county, city, town, district or authority, be employed in the service of the commonwealth, county, city, town, district or authority, including as a consultant or independent contractor or as a person whose regular duties require that his time be devoted to the service of the commonwealth, county, city, town, district or authority during regular business hours for not more than nine hundred and sixty hours in the aggregate, in any calendar year; provided that the earnings therefrom when added to any pension or retirement allowance he is receiving do not exceed the salary that is being paid for the position from which he was retired or in which his employment was terminated plus \$15,000; provided however that in the first 12 months immediately following the effective date of retirement, the earnings received by any person when added to any pension or retirement allowance the person is receiving shall not exceed the salary that is being paid for the position from which the person was retired or in which the person's employment was terminated.

NOTES:

What Does That Mean?

- Employment of any public sector retiree in a governmental unit is limited.
- Such employment is limited by hours and compensation.
- No public retiree may work more than 960 hours for a governmental unit in a calendar year.
- Compensation when added to the retirement benefit cannot exceed the salary being paid for the position from which he/she retired.
- Employer should recoup such excess earnings, if not, the Board has implicit authority to recoup (*Flanagan v. CRAB and SRB*, 51 Mass App. Ct., 862 (2001)).

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Calculation for Allowable Earnings

- Retirement benefit + earnings is less than or equal to current salary of position retired or employment terminated; and,
- If earnings are derived by hourly salary, such hours cannot exceed 960 in calendar year.
- These are concurrent limits and apply to all public employment in a calendar year.

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NOTES:

Recent Limit Change

- Beginning in calendar year 2012, retirees who retired before April 2, 2011 may earn an additional \$15,000 beyond the current limit.
- In calendar year 2013 and beyond, such increase applies to retirees who retired before January 1 of the PRIOR calendar year.
 - Example: For 2013 earnings, a retiree must have been retired before January 1, 2012

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2009 Amendment Regarding Consultants & Independent Contractors

- Broadened definition of a public employee under 91(b)
- Focus on who receives the service, not who cuts the check
- New law still being “defined”
- IT Company, DOC, MBTA

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NOTES:

Tool and Reference for Post-Retirement Earnings

- PERAC Home Page - Retirement Earnings Worksheet with Instructions
- Automatically calculates potential earnings, with additional \$15k, based on retirement date.
- PERAC Memo #28/2012 (Superannuation and Section 10 retirees only).

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Limits on Disabled Retirees

- In addition to limits on public employment, disabled retirees are limited on total earnings in a calendar year.
- Beginning in calendar year 2015, benefits and total earnings in either public or private sector employment cannot exceed the regular compensation payable to such member had he/she continued in service in the grade held at retirement PLUS \$15,000.
- The determination of overearnings is a product of the 91A process we will discuss later.

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NOTES:

Fraud Prevention Unit

- Chapter 427 of the Acts of 1996 established the creation of a Pension Fraud Unit within the Public Employee Retirement Administration Commission (PERAC).
- The Manager of the Pension Fraud Unit is Sandra King.
- The Unit is charged with the prevention and investigation of fraudulent disability pension claims and payments. The Unit is responsible for data collection relating to all disability retirees, including earnings and other tax statements, registry information, criminal offender record information, retirement board records and other relevant information.
- The Unit maintains a hot line number to be used to report suspected cases of fraudulent pension payments. The number is 800- 445-3266. Referrals may also be emailed to PensionFraud@per.state.ma.us.
- Required to administer the 91A process, the collection of the Annual Statements of Earned Income for disabled retirees

Chapter 32, Section 91A Each Calendar Year: January through May

Section 91A. *Every person pensioned* or retired under any general or special law *for disability*, including accidental disability, *shall* in each year on or before April fifteenth subscribe, under the penalties of perjury, and *file with the commission a statement*, in such form as the commission shall prescribe, certifying the full amount of his earnings from earned income during the preceding year. Such pensioned or retired person *shall annually submit to the commission all pertinent W-2 forms, 1099 forms, other requested tax forms and proof of income, and any other documentation requested by the commission*; provided, however, that the *commission may waive* such filing by *a member*, if said member shall have been *retired for more than 20 years, has not reported any earnings for the prior 10 years and signs an affidavit under the pains and penalties of perjury* indicating that should the member realize any earned income in the future the member will forthwith notify the commission of that fact and again report under this section. *Said forms and information shall be submitted on or before April fifteenth of each year*. If such pensioned or retired person fails to submit such statement or such forms, and unless such person shall show good cause for such failure to submit such statements to the commission, the member's rights in and to *the retirement allowance provided for in section six and seven shall terminate until the member has complied with his reporting requirements under this section*.

NOTES:

Chapter 32, Section 91A

Each Calendar Year: June through September

If such earnings exceed an amount which when added to the member's retirement allowance is greater than the amount of regular compensation which would have been payable to such member if such member had continued in service in the grade held by him at the time he was retired plus the sum of fifteen thousand dollars, said member shall refund the portion of his retirement allowance for such preceding year equal to such excess and until such refund is made, his pension or retirement allowance shall be held as security therefore. Prior to any termination or reduction of benefits pursuant to this section, the member shall be given a written notice and an opportunity to be heard by the retirement board and, upon such termination or reduction of benefits, shall have the right to appeal such action to the contributory retirement appeal board. A member shall not be entitled to recover a retirement allowance for any period during which the member's rights in and to his retirement allowance were terminated for failure to submit a statement to the commission under this section. After written notice and opportunity to be heard by the board, termination of a member's rights in and to a retirement allowance for failure to submit a statement to the commission shall be considered by the board to be effective as of the date that such statement was due to be submitted to the board. If a retirement allowance was paid to a member for any period during which such member's rights in and to a retirement allowance were terminated for failure to submit a statement to the commission, such member shall refund the portion of his retirement allowance attributable to such period.

The 91A Process – January Through May

JANUARY:

- Updated address changes and other status changes collected from all boards.

FEBRUARY:

- Updated information is received from members.

MARCH:

- Printer mails 91A Statements to all disability members (approx. 15,800)
- 91A Statements are received by PERAC, and scanned and processed in Wage Match system.
- Incomplete letters are mailed on a daily basis (approx. 1,500 each year).

APRIL:

- April 15th is the filing deadline for 91A Statements.
- Incomplete letters continue to be mailed on a daily basis.

MAY:

- 91A processing and recording of filings completed.
- Notice of Termination letters are mailed to members who have not complied with the 91A filing (approx. 1,200 members each year).

NOTES:

The 91A Process – June Through August

JUNE:

- Boards notify retirees of PERAC determination of their termination status and right to a hearing before the Board.
- Regular compensation requests are mailed to the boards, to determine excess earnings.
- Letters seeking salary information are mailed to 120 state agencies (approx.).

JULY:

- CORI Match
- DOR Match
- Verified data is entered into Wage Match.

AUGUST:

- Excess earnings letters are mailed to members and boards (approx. 175 each year).
- Affidavits are mailed to members who have been found by the Commission to be eligible for a waiver.

The 91A Process – September Through December

SEPTEMBER:

- Cases set aside for further review are reviewed and researched.
- Investigations by contracted licensed private investigators are scheduled.

OCTOBER:

- IRS extension deadline.
- Termination letters are sent to members who have still not complied.

NOVEMBER:

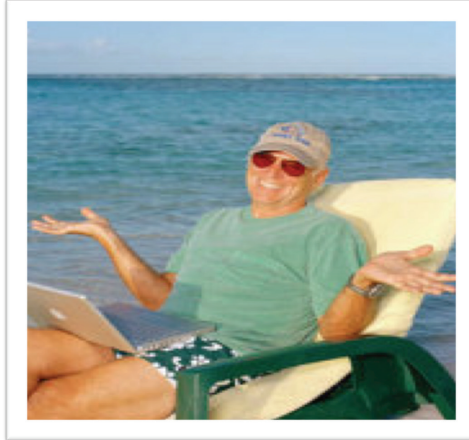
- Cases set aside for further review are reviewed and researched.

DECEMBER:

- Memos requesting data updates for the new year are sent to all boards.

NOTES:

It's Five O'clock Somewhere



NOTES:

COMMONWEALTH OF MASSACHUSETTS

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