

MEMORANDUM #17, 2010

Commonwealth of Massachusetts | Public Employee Retirement Administration Commission
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MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Limits on Massachusetts Public Employment for Massachusetts Public Retirees and a Post-Retirement Earnings Worksheet

DATE: April 14, 2010

Massachusetts public retirees, who return to public employment with any governmental entity in Massachusetts, are subject to significant earnings and hourly service limitations under state retirement laws [G.L. c. 32 § 91(b) & (c)]. Any member who retired after July 1, 2009 and returned to the service of any governmental entity 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 is also subject to such earnings limitations. The limitations apply to all persons retired from the public sector in Massachusetts who are receiving a retirement allowance, both superannuation and disability retirees.

There are several exceptions to the limitations, for example, retirees who are elected to office by a direct vote of the people. This memorandum is not intended to discuss the exceptions, nor is it intended to discuss the separate limit on any earnings, public or private, to which disability retirees are also subject in Chapter 32, Section 91A.

Essentially, this post-retirement employment cannot exceed service in excess of 960 hours in a calendar year, nor can any compensation from a city, town, the Commonwealth, or any of its subdivisions, when added to his/her retirement allowance exceed the salary currently being paid for the position from which he/she retired.

For example, a retiree is receiving an allowance of \$40,000, and the position from which he or she retired is currently paying \$55,000. The retiree may not earn more than \$15,000 and/or work more than 960 hours in the service of the Commonwealth or a political subdivision thereof in a calendar year.

Clearly, the above example is a very simplistic view of this post-retirement earnings limitation, however, in many cases the enforcement and monitoring is not as simple. For instance, the retiree may be receiving compensation from multiple employers requiring the collection of compensation to determine the total in the aggregate. Also, the information needed to calculate the limits may not be available from the respective retirement board or employer. In any event, the statute is clear, the responsibility for monitoring post-retirement earnings is placed upon the employer and the retiree [G.L. c. 32, § 91(c)].

If a public retiree is re-employed in the service of a city, town, the Commonwealth or any of its political subdivisions the employer and respective treasurer or person responsible for the payment of compensation, should require the retiree to certify the number of days or hours which he or she has been employed and the amount of earnings in any calendar year. If the number of hours exceeds 960 in the aggregate, the retiree shall not continue to be employed or if the earnings exceed the amount allowed, the retiree shall return to the appropriate treasurer or person responsible for the

payment of compensation all earnings in excess of the allowable amount. The amount of any excess not returned may be recovered in an action in contract by the treasurer or person responsible for the payment of the compensation to the retiree.

The court has ruled that if the employer does not seek or receive the reimbursement from the retiree, the Retirement Board that paid his/her retirement allowance may recoup the excess payments [*Flanagan v. Contributory Retirement Appeal Bd.*, 51 Mass.App.Ct. 862, 750 N.E.2d 489 (2001)].

In an effort to help Board Administrators, public employers, and retirees better understand, enforce, and monitor this post-retirement earnings limitation PERAC has developed a post-retirement earnings worksheet in Excel. The “Post-Retirement Earnings Worksheet” and related instructions will be available in the 2010 Memo Section of our Website (www.Mass.gov/perac). In addition, this worksheet and the instructions for its use will also be electronically distributed separately to all Board Administrators to facilitate forwarding them to the employer units within their respective systems.

We urge all retirement boards and public employers to utilize this worksheet to ensure that the hours of employment and earnings being paid to public sector retirees are thoroughly scrutinized. Retirement Boards should share this memorandum with the employers who make up the governmental units in their Retirement Systems to make certain that the information is accurately conveyed and widely distributed.

Thank you very much for your cooperation.

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