

**MASSACHUSETTS**  
Public Employee Retirement Administration Commission  
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MEMORANDUM

TO: All Retirement Boards

FROM: Robert F. Stalnaker, Executive Director

RE: Retirement Boards and the Offsets

DATE: May 3, 1999

A recent case from the Reviewing Board of the Department of Industrial Accidents, the administrative tribunal for Workers' Compensation, has reinforced the importance of board's applying for and proceeding with potential claims for Workers' Compensation and against liable third parties when disability applicants fail to do so. The Reviewing Board found that retirement boards have the ultimate burden to assure that, if there is a possible Workers' Compensation claim, the member seeks payments under that claim.

G.L. c. 32, § 14(2)(c) provides:

If a member or a beneficiary entitled to a pension under the provisions of section six, seven or nine, and also having a right to compensation under the provisions of chapter one hundred and fifty-two by reason of the same injury or death of such member, as the case may be, neglects or fails to prosecute fully such right or to co-operate with the board in its prosecution thereof, as provided for by the provisions of section seventy-three of such chapter, the board may, during the period of such neglect or failure, suspend such member's or beneficiary's right to further payment under the provisions of section six, seven or nine. Under the circumstances set forth in the said section seventy-three, the duty of the board to prosecute shall be mandatory.

Additionally, G.L. c. 32, § 14A requires retirement boards to prosecute a civil suit "to recover lost wages from any party other than his employer by reason of the same injury or death of such member" when the member fails to pursue such a suit. That member is required to cooperate with the board in its prosecution.

All retirement boards should review their procedures to assure that the board is pursuing all Workers' Compensation claims and third party claims when members who are applying for disability retirement fail to do so. Boards should seek the advice of board counsel in this regard.

We trust the foregoing is of assistance. If you have further questions or concerns, please contact this office.