

MEMORANDUM #24, 2009

Commonwealth of Massachusetts | Public Employee Retirement Administration Commission
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MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Chapter 21 of the Acts of 2009, Pension Reform (Cover Memo)

DATE: June 22, 2009

On June 16, 2009 Governor Deval Patrick signed what is now designated as Chapter 21 of the Acts of 2009, An Act Providing Responsible Reforms in the Pension System. A copy of the bill is attached. The law has an emergency preamble and effective dates contained in some sections. The purpose of this memorandum is to outline the provisions of the bill, its impact, and the effective dates of the various sections. Further guidance and information will be forthcoming.

DEFINITION OF REGULAR COMPENSATION

Sections 1, 2, and 3 create a new definition of “regular compensation” for payments made after June 30, 2009.

The new definition, which takes effect on July 1, 2009, limits regular compensation to “wages”, and, with a few exceptions, defines wages as base salary. Payments that are permanent increases to base pay will continue to be regular compensation for retirement purposes. Incidental or one-time payments that are not regular and recurring are not regular compensation. Other payments specifically enumerated in the statute will not be considered to be regular compensation. These include “...overtime, commissions, bonuses other than cost of living bonuses, amounts derived from salary enhancements or salary augmentation plans which will recur for a limited or definite term, indirect, in-kind or other payments for such items as housing, lodging, travel, clothing allowances, annuities, welfare benefits, lump sum buyouts for workers’ compensation, job-related expense payments, automobile usage, insurance premiums, dependent care assistance, one-time lump sum payments in lieu of unused vacation or sick leave or the payment for termination, severance, dismissal, or any amounts paid as premiums for working holidays...” There are two exceptions to these exclusions from regular compensation, (1) premiums for working holidays for police officers, firefighters and municipal employees employed as fire alarm signal operators and maintenance repairmen and (2) payments to teachers for additional services under the terms of an annual contract in connection with a school lunch program or for services in connection with physical education and athletic contests.

Section 23 allows payments that otherwise would not be regular compensation under the new definition set forth in a collective bargaining agreement or employment contract in effect on May 1, 2009 to continue to be regular compensation during the term of the agreement or contract provided that the payments meet the previous definition of regular compensation. In any event, regardless of the length of the contract, all payments made after June 30, 2012 will be assessed under the new definition of regular compensation. The June 2012 date is apparently in recognition that many collective bargaining agreements are for a term of three years.

CREDITABLE SERVICE FOR ELECTED OFFICIALS

Section 4 removes the provision in G.L. c. 32, § 4(1)(a) that allowed elected officials to be granted one full year of creditable service for any year during which they served in elective office. If an elected official retires on or before July 1, 2009 he can receive a full year of credit for any year in which he served for less than a full year. However, if such a member retires subsequent to July 1, 2009 he will be credited with time actually served and will not receive one year for one day of service regardless of when that service took place.

CREDITABLE SERVICE FOR UNCOMPENSATED POSITIONS AND MINIMUM COMPENSATION FOR CREDITABLE SERVICE

Section 5 repeals G.L. c. 32, § 4(1)(o) and (o¹/₂), which allowed certain persons in an uncompensated position to purchase creditable service. This repeal takes effect on July 1, 2009. Persons who have already purchased this service prior to the effective date of the repeal will retain this creditable service.

Section 5 also enacts a new G.L. c. 32, § 4(1)(o) which prohibits employees who earn less than \$5,000 in a position from being granted creditable service for that position. It appears that this section is position specific, so if a person has several positions, each must be reviewed individually. This section takes effect with respect to service on or after July 1, 2009. Persons who performed service in a position and who were compensated less than \$5,000 prior to July 1, 2009 are entitled to that service. Persons who are prohibited from being granted creditable service by this amendment will be required to participate in the alternative plan for public employees not enrolled in the Retirement System.

Section 25 provides that a person in a position that pays less than \$5,000 will be allowed creditable service for the service for periods after July 1, 2009 if they were serving in the position as the result of an election, appointment, or contract that was in effect on July 1, 2009. This service is to be granted until the end of the term, appointment, or contract, but may not be granted for a period after July 1, 2012.

MINIMUM CREDITABLE SERVICE FOR ELECTED OFFICIALS

Sections 6 and 13 eliminate the provisions in G.L. c. 32, § 5(1)(m) and § 10(2)(b) that allowed elected officials to retire at age 55 with 6 years of creditable service. Any elected official retiring after July 1, 2009 will be required to be at least age 55 and to have been granted at least 10 years of creditable service. If the elected official retires on or before July 1, 2009, they can do so with at least 6 years of creditable service as long as they are at least age 55.

RETIREMENT CALCULATION FOR DUAL MEMBERS

Section 7 adds G.L. c. 32, § 5(2)(e) and establishes the calculation formula for persons who are employed concurrently by more than one governmental unit and who are members of more than one retirement system. Under this formula the person would be paid an allowance that is calculated as if his or her employment was solely in each position with each benefit separately calculated. The two allowances would then be added together. The limitation does not apply to persons who are vested (having been granted 10 years of creditable service in each of 2 or more systems) and who receive regular compensation from 2 or more units in more than one retirement system, as of January 1, 2010. It also does not apply to any member who does not receive regular compensation from each of 2 or more units concurrently on or after January 1, 2010. Consequently such a member can retire before January 1, 2010 under the previous formula. The allowance of members not subject to the limitation will be calculated using the formula in effect before the amendment.

CALCULATION OF ACCIDENTAL DISABILITY RETIREMENT ALLOWANCES

Section 8 amends G.L. c. 32, § 7(2)(a)(ii) and changes the formula by which the allowance of an accidental disability retirement is calculated. This section applies to all retirements with an effective date on or after July 1, 2009, including the retirements of persons who are injured while serving in an acting or temporary capacity. Under this formula, the pension portion of the allowance of a person who is working in their permanent position will be equal to 72% of the annual rate of regular compensation on the date such injury was sustained or such hazard was undergone. The pension of a person who is injured and who returns to work in a permanent position and whose initial injury is exacerbated by a later on-the-job injury will be 72% of the average annual rate of regular compensation on the date of the later injury

that exacerbated the initial injury. Thus, if salary increases are granted to the member who returns to work and who is later re-injured, the formula will take the salary increase into consideration.

If, however, the person was in a temporary or acting position on the date the injury was sustained or hazard was undergone, the amount of the pension will be equal to 72% of the average annual rate regular compensation during the previous 12 month period for which he last received regular compensation immediately preceding the date such injury was sustained or such hazard undergone. The pension of a person who is injured and returns to work in a temporary or acting position, and whose initial injury is exacerbated by a later on-the-job-event, will be 72% of the average annual rate of regular compensation received in the 12 months immediately prior to the date of the later injury that exacerbated the initial injury. Again, if salary increases are granted to the member who returns to work and who is later re-injured, the formula will take the salary increases into consideration.

The new calculation formula applies to all retirements that take effect on or after July 1, 2009.

Members retiring under one of the presumptions, G.L. c. 32, §§ 94, 94A, and 94B need not provide an injury date because the condition is presumed to be job related. In presumption cases, the date of injury for purposes of calculating the allowance will be the date that the member last received regular compensation.

The effective date of an accidental disability retirement allowance continues to be established by G.L. c. 32, § 7(2) which provides that the member shall receive an accidental disability retirement allowance to become effective on the date the injury was sustained or the hazard on account of which he is being retired was undergone, or on the date six months prior to the filing of the written application for such retirement with the board and his respective employer, or on the date for which he last received regular compensation for his employment in the public service, whichever date last occurs.

TERMINATION ALLOWANCES FOR ELECTED OFFICIALS

Sections 9, 10, 11, and 12 amend G.L. c. 32, § 10 to eliminate provisions that allow an elected official under age 55 with at least 20 years of creditable service to be granted a "termination allowance" if the official fails of nomination or re-election, or fails to become a candidate for nomination or re-election. The attestation that the employer is required to make is changed to reflect the above-discussed changes. This provision applies to all retirements after July 1, 2009. If an elected official retires with an effective date on or before July 1, 2009, the termination provision is available to the individual.

EMPLOYER NOTIFICATION AND RESPONSIBILITY WITH REGARD TO CONTRIBUTION WITHDRAWALS

Section 14 adds G.L. c. 32, § 11(1)(d) which will require the Retirement Board to contact the employer of a member seeking a return of his or her contributions from the system to ascertain whether the member owes the employer anything under the employee benefit plan. If the member owes the employer an obligation, the Board shall not release the member's account until the employer tells the Board that the obligation has been satisfied. **This section became effective on June 16, 2009, so all Boards should make this inquiry beginning immediately when a member requests a return of his or her contributions.** PERAC will design a form for the Boards' use in complying with this section.

DISTRIBUTIONS TO MEMBERS OVER AGE 70 ½

Section 15 adds a section to Chapter 32, G.L. c. 32, § 12D that will bring the retirement law into conformity with the federal law that requires members of the Retirement System who are not active members (not contributing) to begin to withdraw their account, either by taking a refund or beginning to receive an allowance, no later than April of the calendar year after which the member attains age 70 ½. PERAC will be designing notification forms to assist the Boards in implementing this section by the end of this calendar year.

DIRECT DEPOSIT

Section 16 adds G.L. c. 32, § 13(1)(d) which allows a Retirement Board to require that a member receiving a

retirement allowance have the allowance directly deposited into a financial institution that the retiree must designate.

BILLING FOR INSURANCE PREMIUMS

Section 17 amends G.L. c. 32, § 19A and provides that if a retiree's allowance is not sufficient to satisfy the full amount of the deduction required for subscriber premiums for health insurance and other similar insurance products, the Board is to notify the former employer and the employer is to bill the retiree for the amount of the insufficiency.

This section became effective on June 16, 2009 and can be implemented with the next allowance payment.

EXTENSION OF FUNDING SCHEDULES

Section 18 amends G.L. c. 32, § 22D to allow a Retirement System to extend its funding schedule to 2030. The PERAC Actuarial Unit will assist and advise the Boards in regard to the implementation of this provision.

COST IMPACT OF STATUTORY CHANGES TO THE RETIREMENT LAWS

Section 19 adds a new section, G.L. c. 32, § 22E that requires PERAC to report, if requested by the Legislature to the appropriate joint committee of the Legislature, the impact of any statutory adjustment to the retirement law that changes the actuarial liability of the Commonwealth's pension system. The report must be submitted within 90 days of the request.

POST-RETIREMENT EARNINGS LIMITATIONS

Sections 20 adds "authority" to the list of entities in G.L. c. 32, § 91(a) whose retirees' post-retirement employment is limited except for the exceptions listed in that section. Section 21 adds independent contractors and consultants to the list of positions or employment in which earnings and hours of employment after retirement are limited. This section took effect on June 16, 2009. PERAC will be issuing further guidance with respect to the implementation of this provision.

SPECIAL COMMISSION TO STUDY THE PUBLIC PENSION LAW

Section 22 reconstitutes the special commission established by Chapter 182 of the Acts of 2008 with an increased membership and expanded matters to be considered. The special commission's report along with proposed legislation and the PERAC analysis of the cost of the proposal is to be filed with the House and Senate Clerks, the House and Senate Committees on Ways and Means, and the Joint Committee on Public Service no later than September 1, 2009.

We acknowledge that Chapter 21 of the Acts of 2009 is a changing paradigm in both practice and procedure and could result in some confusion and concerns, however, it must be understood, this is now the law of the Commonwealth.

We hope this clarifies any questions you may have, however, if you have any further questions please call this office.

Attachment

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