

MEMORANDUM #24, 2010

Commonwealth of Massachusetts | Public Employee Retirement Administration Commission
Five Middlesex Avenue, Suite 304, Somerville, MA 02145
Ph 617 666 4446 | Fax 617 628 4002 | TTY 617 591 8917 | www.mass.gov/perac
Domenic J. F. Russo, *Chairman* | A. Joseph DeNucci, *Vice Chairman*
Paul V. Doane | James M. Machado | Donald R. Marquis | Robert B. McCarthy | Gregory R. Mennis
Joseph E. Connarton, *Executive Director*

MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: 840 CMR 15.03 Amendments to Regulations Regarding Regular Compensation

DATE: June 17, 2010

Attached is a copy of 840 CMR 15.03, PERAC's regulation defining "regular compensation". This regulation was the subject of several public hearings. After the hearings and public comment period it was further refined by the Commission and filed with the Legislature as required by G.L. c. 7, § 50. The final regulation was published in the State Register and became effective on May 28, 2010. Earlier versions of the regulation must be disregarded.

In determining whether payments on or after July 1, 2009 are "regular compensation" for purposes of Chapter 32, Retirement Boards must consider the criteria contained in 840 CMR 15.03(3)(b). Generally the considerations are whether the payments are:

- base salary or other base compensation of an employee paid to that employee for employment by an employer including pre-determined, non-discretionary, guaranteed payments paid by the employer to similarly situated employees;
- because of the character of the work (an example could be hazardous duty pay);
- because of the employee's length of service (an example could be longevity payments);
- because of the time at which the work takes place as a condition of employment in a particular position (an example could be night differential pay);
- because of educational incentives, and payments for holding the training, certification, licensing or other educational incentives approved by the employer for the performance of services related to the position the employee holds; and,
- payments made by the employer to the employee calculated as a percentage of base pay.

After considering these factors, the payments must be compared with the specific exclusions contained in G.L. c. 32, § 1 and 840 CMR 15.03(3). With the exception of clothing allowances, those items that are specifically excluded are not to be considered to be regular compensation. Excluded items, however, may be considered regular compensation through the end of an existing collective bargaining agreement or employment contract in effect on May 1, 2009 but not later than June 30, 2012. Please refer to PERAC Memo #24/2009 for such excluded items.

All determinations regarding clothing allowances should be delayed pending possible legislative action that may

impact the exclusion of these payments from the definition of “regular compensation.” Clothing allowances contained in such agreements or contracts may continue as regular compensation for the above mentioned periods upon passage of this legislative action.

PERAC will be providing additional guidance as the implementation of the regulation and of the decision in O’Brien v. CRAB & another, 76 Mass. App. Ct. 901 (2010) continues. If you have questions, please contact this office.

[Attachment](#)

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