

MEMORANDUM

TO: All Retirement Boards

FROM: John W. Parsons, Esq., Executive Director

RE: Paid Family and Medical Leave (“PFML”) & Supplemental Payments

DATE: November 1, 2023

Statement Regarding Prior Memorandum

On April 13, 2021 PERAC issued Memorandum #15 of 2021 (“Memo #15/2021”) concerning the interplay between Chapter 32 and the Massachusetts General Laws Chapter 175M, “Family and Medical Leave.” Memo #15/2021 remains in full force and effect.

Updates to Paid Family and Medical Leave: Supplemental Payments

The enactment of Massachusetts General Laws Chapter 175M, “Family and Medical Leave,” established a right to Paid Family and Medical Leave (“PFML”) for qualifying employees. This law was enacted on June 28, 2018. One of the characteristics of this law was that employees were not allowed to be paid PFML and accrued leave time together. In general, while receiving PFML benefits, an employee could not receive supplemental payments from his or her employer. That has changed with the passage on October 17, 2023 of Chapter 55 of the Acts of 2023.

For applications filed on or after November 1, 2023, employees receiving PFML benefits may supplement (or “top off”) their PFML benefits with any available accrued paid leave (sick time, vacation, PTO, personal time, etc.). For employees who choose to supplement their PFML benefits in this way, the combined weekly sum of PFML benefits and employer-provided paid leave benefits cannot exceed the employee’s Individual Average Weekly Wage (“IAWW”).

The question naturally arises in the context of Chapter 32 whether an employee receiving PFML benefits together with payment for their accrued time would be entitled to treat those supplemental payments as regular compensation and so be eligible for creditable service during the period that they are out on leave? The answer to that question is no.



MEMORANDUM – Page Two

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Determining Creditable Service and Regular Compensation

As discussed in Memo #15/2021, the PFML leave time does not constitute creditable service and the payments received under PFML are not regular compensation. The sick and vacation time that can now be taken in conjunction with PFML benefits is also not regular compensation and does not constitute creditable service pursuant to the Supreme Judicial Court (“SJC”) decisions in *PERAC v. CRAB et al.*, 478 Mass. 832 (2018) (“*Vernava I*”) and *Worcester Reg. Ret. Bd. & others v. PERAC*, 489 Mass. 94 (2022) (“*Vernava II*”).

In *Vernava I* and *Vernava II*, the SJC concluded G.L. c. 32, § 1 was clear and unambiguous that “regular compensation” was “compensation received exclusively as wages by an employee for service performed in the course of employment for his employer.” The SJC held that:

“...where an employee receives accrued vacation or sick leave pay in conjunction with workers’ compensation benefits, such accrued vacation or sick leave used as supplemental pay is not ‘regular compensation’ because the ‘injured employee has ceased providing service to the employer.’” *Vernava II* at 96, citing *Vernava I* at 838.

The SJC’s holdings in *Vernava I* and *Vernava II* were not focused on the type of benefits that Mr. Vernava was receiving, i.e., Workers’ Compensation, but rather that he had stopped providing services to his employer while receiving those benefits. As Mr. Vernava was not providing services to his employer during his leave and receipt of Workers’ Compensation benefits, any of the supplemental pay taken in conjunction with his leave was not regular compensation.

Thus, in examining the standard set out in *Vernava I* and *Vernava II*, the supplemental payments of sick and vacation time taken in conjunction with PFML benefits do not meet the definition of regular compensation. When receiving PFML benefits, as with Workers’ Compensation, the member is not performing any service for the employer during the period they are on leave and receiving the benefits. Therefore, any supplemental pay taken in conjunction with PFML is not regular compensation and does not constitute creditable service.

We trust the foregoing will be of some assistance to you. If you have further questions about PFML, please refer to Memo #15/2021 for more background information. If you have further questions about this change in the law, please feel free to contact General Counsel Judith Corrigan at (617) 591-8904 or at judith.a.corrigan@mass.gov. Thank you.