

PERAC

COMMONWEALTH OF MASSACHUSETTS | PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION

PHILIP Y. BROWN, ESQ., *Chair*

WILLIAM T. KEEFE, *Executive Director*

Auditor DIANA DIZOGGIO | KATHLEEN M. FALLON | KATE FITZPATRICK | JAMES J. GUIDO | RICHARD MACKINNON, JR. | JENNIFER F. SULLIVAN, ESQ.

MEMORANDUM

TO: All Retirement Boards

FROM: Bill Keefe, Executive Director

RE: Violent Assault Disability: Chapter 149 of the Acts of 2024

DATE: October 29, 2024

On July 31, 2024, Governor Healey signed Chapter 149 of the Acts of 2024, “An Act Relative to Disability Pensions and Critical Incident Stress Management for Violent Crimes” (“Violent Assault Disability”). This Act creates an enhanced new type of G.L. c. 32, Section 7 accidental disability retirement benefit for firefighters, emergency medical technicians, licensed health care professionals and certain police officers¹, who become permanently physically disabled with a catastrophic, life-threatening or life-altering bodily injury disability as the result of a Violent Act Injury by means of a dangerous weapon.

The effective date of Chapter 149 of the Acts of 2024 is October 29, 2024, and the Violent Act Injury disability will be available to any member who qualifies and has not been approved for disability as of that date. Anyone who has previously been approved for disability is not eligible to have the provisions of this act apply to their retirement allowance and their benefit cannot be recalculated.

THE STATUTORY DEFINITION OF A VIOLENT ACT INJURY

“Violent Act Injury” is defined in G.L. c. 32, § 1 as:

A catastrophic, life-threatening or life-altering and permanent bodily injury sustained as a direct and proximate result of a violent attack upon a person by means of a dangerous weapon, which is designed for the purpose of

¹ State Police retire under Section 26 of Chapter 32 and are thus not eligible for benefits under the Violent Act Injury provision provided for in Section 7.



MEMORANDUM - Page Two

TO: All Retirement Boards
FROM: Bill Keefe, Executive Director
RE: Violent Assault Disability: Chapter 149 of the Acts of 2024
DATE: October 29, 2024

causing serious injury or death, including, but not limited to, a firearm, knife, automobile or explosive device.

In order to qualify for a disability under the Violent Act Injury provision a member must demonstrate, and the retirement board must determine that all three of the following elements are established:

- 1) That they suffered a catastrophic, life-threatening or life-altering permanent bodily injury;
- 2) That the injury was the direct and proximate result of a violent attack upon a person, which means the injury must result from an intentional physical act, and not result from an accident or from negligence; and
- 3) That the attack was by means of a dangerous weapon as defined in this statute – i.e., “designed for the purpose of causing serious injury or death.”

As the definition of a “Violent Act Injury” makes clear, this enhanced disability benefit is not for every instance in which a member suffers a disability in the line of duty. The definition clarifies that the permanent bodily injury must be of a **catastrophic, life-threatening or life-altering nature**. The definition states that the injury must be a permanent bodily injury and Section 2 of the Act amends paragraph (1) of Section 7 to make clear that the member must be physically unable to perform their essential duties. These two provisions mean that **only physical injuries qualify** a member for the Violent Act Injury disability. Therefore, psychological and emotional disabilities do not and will not qualify.

A catastrophic, life-threatening or life-altering injury must be something that goes beyond preventing a member from being physically able to perform the essential duties of their position (the current disability standard and still available to all). We intend to initiate a regulatory process that will define these terms. Until that time, as an illustration, we highlight this example of the United States Department of Labor Office of Workers’ Compensation Programs definition of “catastrophic:”

MEMORANDUM - Page Three

TO: All Retirement Boards
FROM: Bill Keefe, Executive Director
RE: Violent Assault Disability: Chapter 149 of the Acts of 2024
DATE: October 29, 2024

...those in which the injured worker (IW) has sustained life-threatening injuries or the injury has resulted in extensive functional deficits where the medical recovery is expected to extend over a long or indefinite period of time (traumatic head or spinal cord injuries, severe burns, strokes, multiple fractures, amputations, etc.). Catastrophic cases are primarily those cases involving multiple and/or complex medical conditions and involve multiple and various medical specialists and other health care professionals.²

By no means are these the only examples of “catastrophic,” but this definition is included to illustrate the nature of injuries rising to this level.

In addition to requiring that the member suffer a catastrophic, life-threatening or life-altering permanent bodily injury that injury must be the result of a violent attack upon the member **by the means of a dangerous weapon**. A dangerous weapon in this statute is defined as a weapon “which is designed for the purpose of causing serious injury or death, including, but not limited to, a firearm, knife, automobile or explosive device.” Thus, an assault or violent attack on a member must be perpetrated by the use of a weapon which is designed to injure or kill, not simply an everyday item that is used in the attack. A member who is punched or kicked and sustains serious injury would not qualify for the enhanced disability under this provision because such an assault does not involve a dangerous weapon that was designed for the purpose of causing serious injury or death. While an automobile is not designed for the purpose of causing serious injury or death, it is specifically listed in the statute. In order for an injury from an automobile accident to qualify under this statute, it must be demonstrated that the automobile was intentionally used in a violent attack upon the member. A typical automobile accident, or one lacking a violent intent, will not qualify for the enhanced benefit.

WHO QUALIFIES FOR THE VIOLENT ACT INJURY DISABILITY?

Section 3 of Chapter 149 of the Acts of 2024 inserts a new clause (iv) into Section 7(2) of Chapter 32 that details the benefit amount and specifies the limited group of members who

² <https://www.dol.gov/agencies/owcp/FECA/regs/compliance/DFECfolio/FNHB-PT5#:~:text=Table%20of%20Contents-,1.,Assigning%20a%20Field%20Nurse>

MEMORANDUM - Page Four

TO: All Retirement Boards
FROM: Bill Keefe, Executive Director
RE: Violent Assault Disability: Chapter 149 of the Acts of 2024
DATE: October 29, 2024

may qualify for consideration under the Violent Act Injury provision. That clause limits the potential candidates to the following:

Notwithstanding clauses (i) to (iii), inclusive, a yearly amount of pension for any firefighter, any call, volunteer, auxiliary, intermittent or reserve firefighter, any call, volunteer, auxiliary, intermittent or reserve emergency medical services provider who is a member of a police or fire department and who is not subject to chapter 152, any police officer, any auxiliary, intermittent, special, part-time or reserve police officer or any municipal or public emergency medical technician or licensed health care professional...

Accordingly, the Violent Act Injury is NOT available to all public employees. Indeed, the Violent Act Injury benefit is potentially available only to police officers, firefighters, EMTs and other licensed health care professionals. State Police do not qualify for the Violent Act Injury benefit because they do not retire under Section 7 of Chapter 32. State Police benefits are determined under Section 26 and no reference to the Violent Act Injury benefit was inserted into Section 26.

BENEFITS

A member found to be disabled under Section 7 receives an accidental disability retirement benefit that provides for a pension of 72% plus an annuity. Under the new Violent Act Injury provision, however, a member receives a benefit equal to 100% of the regular rate of compensation which would have been paid to the member had they continued in service at the grade held by the member at the time of their retirement. This 100% benefit includes all compensation, including stipends, that were being paid to the member on the date of injury and which were included as pensionable earnings. This 100% benefit is adjusted in the same manner as a Section 100 benefit and is payable to the member until their death or until they reach mandatory retirement age.

Upon retirement the member receives a lump sum payment from the retirement board equal to the member's total accumulated retirement deductions.

MEMORANDUM - Page Five

TO: All Retirement Boards
FROM: Bill Keefe, Executive Director
RE: Violent Assault Disability: Chapter 149 of the Acts of 2024
DATE: October 29, 2024

The statute further provides that, upon reaching the mandatory retirement age for the position, if applicable, the member's benefit must be reduced to 80% of the average annual rate of compensation paid to the member in the previous 12 months. This 80% amount will be adjusted annually by any cost-of-living increases ("COLAs") that a retirement board approves. This benefit level will continue until the member's death. If there is no mandatory retirement age then the benefit does not get reduced from the 100% level but continues unchanged.

If the member predeceases their spouse, prior to the mandatory retirement age, then the spouse is entitled to 75% of what the member would have received had they not died. The spouse's benefit, upon the date the member would have reached mandatory retirement, becomes 75% of the benefit the member would have received at the time they reached mandatory retirement (75% of the 80% benefit). This amount would then be increased by any COLAs that a retirement board approves. If the member was in a position that was not subject to a mandatory retirement age then the benefit for the spouse will be 75% of the amount that the member would have received had they not died.

Upon the death of the member the spouse shall be eligible for the 75% specified in Section 7. The Violent Act Injury disability specifies which benefits a surviving spouse is eligible to receive and thus a surviving spouse is not eligible for a Section 9 benefit. Under Chapter 32 a member or beneficiary is not eligible to receive two benefits on account of one member.

If the member and their spouse predecease their children and any of the member's children are unmarried, under the age of 18 or under age 22 and full-time students, or are over age 18 but physically or mentally incapacitated from earning income on the date of the member's retirement, such children shall be entitled to a benefit equal to 75% of the amount of the pension payable to the member at the time of their death. This benefit would be split equally between all eligible children. When a child is no longer eligible for their portion of the benefit it shall cease and the other children will continue to receive their original portion. The benefit of the remaining children is not increased when one of their number is no longer eligible.

MEMORANDUM - Page Six

TO: All Retirement Boards
FROM: Bill Keefe, Executive Director
RE: Violent Assault Disability: Chapter 149 of the Acts of 2024
DATE: October 29, 2024

Upon retirement under the Violent Act Injury provision the member's benefit will be paid as an Option A allowance. The member's accumulated total accumulated deductions are returned to the member and therefore there can be no Option B beneficiary. Likewise, the Violent Act Injury provision specifies benefits that are available to beneficiaries such as the spouse and children, and, therefore, precludes the naming of an Option C beneficiary.

POST-RETIREMENT EARNINGS

Members retired under the Violent Act Injury clause have different earnings limitations than those established by Chapter 32 Sections 91(b) and 91A. A member retired under the Violent Act Injury may earn up to $\frac{1}{2}$ of the amount of their retirement allowance if they work in the public sector. They are prohibited from doing any work in a position classified in Group 3 or Group 4. Members may be employed in the private sector or by a private entity without any earnings or hours restrictions, provided that service is not devoted to the Commonwealth, or a city, town, district or authority, therein.

CRITICAL INCIDENT STRESS MANAGEMENT

A new subdivision (7) has been added to Section 7 by Chapter 149 of the Acts of 2024 which requires that those members eligible for the Violent Act Injury disability shall be provided with notice of critical incident stress management debriefing programs, including the location and times for the programs and contact information. This is the responsibility of the employer and does not require any action by the retirement board.

HOW SHOULD BOARDS HANDLE APPLICATIONS FOR A VIOLENT ACT INJURY DISABILITY?

The Member's Application for Disability Form and the Employer's Involuntary Disability Application will be updated to provide for the option of a member or the employer to apply for an accidental disability with a Violent Act Injury. Once the Board receives an application in which the member or the employer has selected this option, the Board will process it like any other disability, by gathering the same information and any forms that are required for a Section 7 ADR application. If a Board receives an application for voluntary or involuntary ADR that does not check off the Violent Act Injury provision, but

MEMORANDUM - Page Seven

TO: All Retirement Boards
FROM: Bill Keefe, Executive Director
RE: Violent Assault Disability: Chapter 149 of the Acts of 2024
DATE: October 29, 2024

the Board determines that the situation would merit consideration of the application under that provision, then the Board should discuss it with the member or employer and amend the application if warranted. Likewise, if a Board receives an application for ADR in which the member or employer checks off the Violent Act Injury provision, but the Board has reason to believe that the member may not be eligible due to the above-listed restrictions of the provision, then the Board should notify the member or the employer of those restrictions and the member or employer will have the opportunity to adjust the application accordingly.

Unlike the majority of G.L. c. 32, Section 7 applications, Violent Act Injury applications **MUST** include Board Findings of Fact, which must be submitted to PERAC for its 30-day disability review process. Findings of Fact for a Violent Act Injury application are essential to ensure that the injury sustained qualifies for the enhanced benefits of this provision. The Findings of Fact should detail the injury sustained and how it was catastrophic, life-threatening or life altering, the dangerous weapon that was used in the assault and the circumstances of such assault, and any other information the Board relied upon in determining that the member qualified for the Violent Act Injury provision.

We trust the foregoing will be of assistance. If you have any questions, please feel free to contact Deputy Executive Director Ken Hill at 617-591-8945 or at Kenneth.j.hill@mass.gov. Thank you.