



# MACRS

## PERAC'S PROPOSED CHANGES TO ELECTION AND DISABILITY REGULATIONS



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# MACRS

## **840 CMR 7.00**

Standard Rules For Elections

## 840 CMR 7.00

### Standard Rules for Elections

- The Election regulations only apply to local systems and not to the State, Teachers, Regional or County Systems
- Systems not covered by 840 CMR 7.00 are covered by their own provisions in statute

# 840 CMR 7.00

## Standard Rules For Elections

- **Member in Service:** regularly employed in the performance of his or her duties
- **Member Inactive:** no longer employed but entitled to present or potential retirement allowance or a return of deductions
- **Retiree:** member retired and who is receiving a retirement allowance

## **Elected Members: Who Can Serve On a Board?**

- Member in Service
- Retired Member
- Both can be elected to the Retirement Board
- Member Inactive can vote in an election but may not be elected to a board

# Election Notice

- 90 day notice requirement
- Should include:
  - Time
  - Place
  - Manner—Polling place or mail
  - Nomination procedure
  - Election procedure-including polling procedure and absentee ballot procedure
- Waiver of 90 day notice requirement from PERAC

## Notice

- 1) Mailed to each active, inactive and retired member; or
- 2) Mailed to each retired member and inactive member and posted for all members in at least 3 public locations

# Nominations

- Active or retired members may qualify by submitting nomination papers with at least 5 signatures of active or retired members
- Must be filed no later than 45 days prior to date of election



# Election Ballot

- Candidates shall be listed in an order determined by random drawing of names
- Incumbent elected members may be identified as such
- Ballot shall state the length of the term

## Counting of Ballots

- Ballots tabulated by persons designated by the Board and supervised by the Election Officer
- Must notify each candidate of the time and location of vote count
- At least 2 people shall be responsible for counting of ballots

## How Long Do We Keep Ballots?

- All ballots received, including invalid ballots, must be preserved for 30 days after finalization of count by the Election Officer or the Election Board

## Simultaneous Elections

- Simultaneous elections may be held if the terms of each have expired or both are vacant and they are equal terms
- Two separate ballots should be used unless PERAC has approved a written request for the use of one ballot

## Length of Terms

- Not more than 3 years
- Elected member serves until the qualification of his or her successor—even if that means more than 3 years
- If a vacancy exists board must schedule election as soon as practicable
  - Board must determine if election will be to fill remainder of term or will be for new 3 year term



# MACRS

## **840 CMR 10.00**

**STANDARD RULES FOR DISABILITY RETIREMENT**

## 840 CMR 10.00

### Standard Rules for Disability Retirement

- **10.02** - When a member is **NOT** receiving salary, workers comp, or injured on duty benefits, the board should expedite consideration of the disability application

## 10.04 Standard For Decisions

- For **Ordinary** the Board must find:
  - The member is unable to perform the essential duties of his position; and
  - The inability is likely to be permanent
- For **Accidental** the Board must also find:
  - that the incapacity is the natural and proximate result of a personal injury sustained or hazard undergone while in the performance of the member's duties at some definite place and time without serious and willful misconduct on the member's part



## 840 CMR 10.10

### Examination by Medical Panel

- (4) Representation
- PERAC seeks to add language re: who may be present during the decision making process of the medical panel
  - “At the discretion of the member and his or her legal counsel and the employer and its legal counsel, said legal counsels may be present during the decision making process of the panel; provided, however, that neither counsel shall have a vote in the final determination of the panel.”
  - Consistent with M.G.L. c. 32, § 6(3)(b)

## 840 CMR10.10 *(Continued)*

- (7) Confidentiality
- No substantive changes: remains consistent with § 6(3)(b)
  - Attendance at medical panel examinations:
    - Member's physician and legal counsel
    - Employer's physician and legal counsel
- Further, 10.10 also continues to include:
  - “The member may permit the presence of other individuals, provided that their presence will not disrupt the examination.”

## 840 CMR 10.11

### Notice of Medical Panel Findings

#### ▪ (2) “Clarifications”

- When a board believes that additional information or a clarification is needed from a medical panel, the board shall make such request to PERAC.
- PERAC will forward the request to the panel, and the panel shall provide clarification.
- If the board wants further clarification, PERAC shall decide whether further clarification is warranted.
  - If warranted, PERAC shall forward the request to the panel.
  - If unwarranted, PERAC shall notify the board in writing of the reasons why the request was denied.

# 840 CMR 10.12

## Retirement Board Hearing

- (3)(e) - Executive Session
- Currently, attendance limited to:
  - The board
  - The board's secretary
  - The board's counsel
  - The parties and their authorized representatives
  - "such other persons as the presiding officer shall deem necessary for the conduct of the hearing"
- PERAC seeks to add that, in the event of emotional disability cases, the hearing officer shall have discretion to limit attendance at the hearing
  - Intended as a safeguard for certain members
  - (3)(f)(2) - PERAC also seeks to add that, in emotional disability cases, the hearing officer may direct that questions by the parties be directed through the hearing officer to the witness

## 840 CMR 10.13

### Decision

- (1)(a) - Decision to grant application must be approved and signed by a minimum of three members of the board (4 for MTRS)
- (1)(b) - When the applicant is a member of the board, he/she shall not be permitted to participate as a board member or approve his/her application
  - Board member is still permitted to testify and present his/her application
- (1)(c) - Edited language that board must include member's appeal rights under §§ 16(3) and (4) with a denial
- **Subsection (2)** (“Decision to Restore a Member Who Was Retired for Disability to Active Service”) moved to 10.15(2)

## What Must The Board Present To PERAC When Approving A Disability?

- Disability Transmittal signed by at least 3 board members (4 for Teachers)
- Member Application
- Employer Statement
- Treating Physician Statement
- Description of Job Duties
- Injury Reports
- Medical Panel Certificate
- Findings of Fact
- Physical at time of hire - for presumption cases

## 840 CMR 10.14

### Comprehensive Medical Evaluation

- This section is new
- PERAC realized that the current 10.15 (“Examination of a Member Previously Retired for Disability”), did not adequately or clearly explain the Comprehensive Medical Evaluation (“CME”) process
- Based on the procedures followed by PERAC nurse case managers in our Disability Unit

## 840 CMR 10.14 *(Continued)*

- After a member is retired for accidental or ordinary disability retirement:
  - Evaluated once per year during first two years, once every three years thereafter
  - Evaluation consists of a review of the retiree's medical records to determine whether the member is permanently or currently unable to perform duties
  - For public safety personnel, PERAC shall utilize the Regulations for the Initial Medical and Physical Fitness Standards promulgated by HRD



## 840 CMR 10.14 *(Continued)*

- Following review, PERAC may determine that:
  - Retiree is permanently disabled
    - No CME required
  - Retiree is currently disabled
    - No CME now, but may be subject to future CME
  - Further information needed
    - PERAC may request additional medical records

## 840 CMR 10.14 *(Continued)*

- After future information is provided:
  - PERAC will review and determine whether the member is permanently or currently disabled, or whether the case will proceed to a CME
    - If found to be permanently or currently disabled, prior provisions will hold
    - If PERAC determines the case should proceed, PERAC will schedule a CME
      - CME referral is made to a single physician, but may involve consultations with other doctors, pursuant to M.G.L. c. 32, § 8
        - » If the CME doctor determines that the retiree is able to perform the essential duties of his/her prior position, the member will enter the Restoration to Service (RTS) phase

## 840 CMR 10.15

### Restoration to Service

- Initially the same; clarified the composition of the medical panel
- Deleted the language regarding certain Return to Service proceedings as duplicative of the language contained within 10.10, 10.11, and 10.14 concerning medical panels
- If the retiree is deemed able to perform duties, during wait for available position, the retiree *may* need to undergo a CME upon any significant change in medical condition

## 840 CMR 10.15 *(Continued)*

- Restoration to service of a member who was retired
  - This language is taken directly from the language that was contained in 10.13(2)
- Restoration to service of a member of the State Police
  - Moved this language from the former 10.15(9)
  - In the second paragraph, PERAC inserted the requirement that the RTS panel's decision to return a State Police retiree to service must be unanimous
  - Clarified that the medical reports are sent to the member and the Retirement Board, as well as the Colonel of the SP

## 840 CMR 10.16

### Annual Statement of Earnings

- Formerly 10.14; virtually no changes
- PERAC added the following waiver to the filing requirement:
  - If the retiree has been retired for 20 or more years;
  - Has not reported any earnings for the prior 10 years; and
  - Signs an affidavit stating that if they realize any earnings in the future, they will notify PERAC and file an Annual Statement

## 840 CMR 10.17

### Modification of Retirement Allowance

- Formerly 10.16
- Updated the definition of “regular compensation” to comply with the current definition found in M.G.L. c. 32, § 1
- Updated the amount of money a disability retiree may earn in addition to their regular compensation amount from \$5,000 to \$15,000
- Removed PERAC’s annual issuance of an advisory regarding increases in the compensation amount

## 840 CMR 10.18

### Evaluation for Rehab

- PERAC may require a member to be evaluated to determine if a rehab program is warranted
  - One per year for first 2 years and then one per 3 years, or at member request
- Rehab program may be required
- If member refuses to participate, their benefit shall be terminated by the board after given notice of right to hearing

## 840 CMR 10.21

### Essential Duties

- The Employer must determine what constitutes the essential duties of a job or position
- **“Essential Duties”** - those duties or functions of a job or position which must necessarily be performed by an employee to accomplish the principal object(s) of the job or position



# Is Duty Essential?

- Employer should consider:
  - (a) Nature of the employer's operation and structure
  - (b) Current job description
  - (c) Whether employer requires all employees in position to be prepared to perform specific duty
  - (d) Number of employees available that the job function can be distributed
  - (e) Time employees spend performing the function
  - (f) Whether function is highly specialized
  - (g) Consequence of not requiring employee to perform the function
  - (h) Actual experience of people holding position
  - (i) Collective bargaining agreements

## 840 CMR 10.23

### Disability of a PERAC Employee

- If PERAC employee files for disability, PERAC will act solely as the employer and no electronic submission will be sent to PERAC
- State Board will determine if a panel is needed and ask the DIA or HRD to assemble a panel from doctors on PERAC's vendor list
- Medical reports sent directly to SBR, clarifications requested directly by SBR

# Disability Review of PERAC Employee

- SBR must choose 2 attorneys to review the disability (non-treasury employees)
- PERAC required to maintain a database of all disabilities for earnings and CME purposes
  - PERAC will be given paper file and only limited info will be electronic to allow tracking for CME and 91A issues
- If retirement allowance not granted, paper file kept by PERAC
- File shall be maintained in paper form for 25 years or the death of member