



MACRS

Recent Legislative Changes in the Retirement Law



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MACRS 2018 FALL CONFERENCE

What Are We Going To Talk About?

- Section 5 of Chapter 218 of the Acts of 2018 (new buyback provision)
- Chapter 148 of the Acts of 2018 (Cancer Presumption)
- Group Classification after Chapter 176 of the Acts of 2011
- Special Acts and Individual bills

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Section 5 of Chapter 218 of the Acts of 2018

- **SECTION 5.** Subdivision (1) of section 4 of chapter 32 of the General Laws, as so appearing, is hereby amended by inserting after paragraph (r) the following paragraph:-
 - (r½) Notwithstanding any general or special law to the contrary, a member in service who: (i) served in the United States Public Health Service Commissioned Corps or the National Oceanic and Atmospheric Administration Commissioned Officer Corps; (ii) has completed not less than 4 years of membership service; and (iii) has retired or will retire on or after January 1, 1975 shall receive full credit for the period of such service; provided, however, that such a member shall receive credit for not more than 4 years of that service. Eligibility for the creditable service of members in service shall be conditioned upon payment into the annuity savings fund of the applicable retirement system, in 1 sum or in installments upon such terms as the applicable retirement board may provide, of an amount equal to the contributions that a member would have otherwise paid into the retirement system plus buyback interest thereon for the period of commissioned corps service based upon the annual salary the member received in the first year of membership service after the member's commissioned corps service.

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NOTES:

Who Is Covered By This Law?

- **United States Public Health Service Commissioned Corps:** More than 6,500 Commissioned Corps officers work on the front lines of public health - fighting disease, conducting research, and caring for patients in underserved communities. Corps officers serve in 15 careers in a wide range of specialties within Federal agencies such as the National Institutes of Health (NIH) and the Centers for Disease Control and Prevention (CDC).
- **National Oceanic and Atmospheric Administration Commissioned Officer Corps:** The NOAA Commissioned Officer Corps (NOAA Corps) is one of the nation's seven uniformed services. NOAA Corps officers are an integral part of the National Oceanic and Atmospheric Administration (NOAA), an agency of the U.S. Department of Commerce, and serve with the special trust and confidence of the President. With 321 officers, the NOAA Corps serves throughout the agency's line and staff offices to support nearly all of NOAA's programs and missions.

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Who Qualifies As A Veteran?

(1) G.L. c. 4, s. 7, cl. 43rd 1st paragraph

- a) **Wartime Service** — “Persian Gulf veteran” shall mean any person who performed such wartime service during the period commencing August 2, 1990 and ending on a date to be determined by presidential proclamation or executive order and concurrent resolution of the Congress of the United States.
- b) 90 days one of which is wartime service, unless during wartime a person receives a service connected disability, purple heart or dies.
- c) 180 days active service in the Army, Navy, Marine Corps, Coast Guard or Air Force and was honorably discharged (c.116 of the Acts of 2004).

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NOTES:

Chapter 218 and Veteran Status

- Members who served in the United States Public Health Service Commissioned Corps or the National Oceanic and Atmospheric Administration Commissioned Officer Corps were not added to the definition of Veteran in Chapter 4 of the General Laws.
- Not eligible for the provisions of G.L. c. 32, s. 4(1)(h).
- Not eligible for the increased Ordinary Disability benefit.
- Not eligible for the \$15 per year for each year of creditable service up to \$300 contained in Sections 5, 7 or 26 of Chapter 32.

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Chapter 148 of the Acts of 2018

- **SECTION 1.** Section 94B of Chapter 32 of the General Laws is hereby amended by inserting after the word “skin”, in line 3, as appearing in the 2016 Official Edition, the following word:- , breasts.
- **SECTION 2.** Said section 94B of said chapter 32 is hereby further amended by inserting after the word “oral”, in line 4, as so appearing, the following word:- , reproductive.
- **SECTION 3.** Section 111F of chapter 41 of the General Laws, as amended by section 8 of chapter 161 of the acts of 2017, is hereby further amended by adding the following paragraph:-

The presumption established in section 94B of chapter 32 shall apply in determining eligibility for leave without loss of pay under this section when such leave is taken: (i) by a person serving in a position covered by both this section and said section 94B of said chapter 32; and (ii) as a result of a disabling condition of cancer identified in said section 94B of said chapter 32.

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NOTES:

Chapter 148: What Does It Do?

- Expands the types of cancer which are covered by the presumption to include breast and reproductive cancers.
- Amends Chapter 41 Section 111F to include leave for a person with disabling cancer who is subject to Section 94B and Section 111F.

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Why is Expansion of Section 111F Relevant to Retirement Boards?

- Retirement date.
- Section 7 has three possible retirement dates.
 - Date the injury was sustained or hazard undergone,
 - Six months prior to the filing of application, or
 - Date last received regular compensation whichever date shall last occur.

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NOTES:

Chapter 41, Section 111F Regular Compensation

All amounts payable under this section shall be paid at the same times and in the same manner as, and for all purposes shall be deemed to be, the regular compensation of such police officer or fire fighter....

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Cancer Presumption

- Number of Cancer Presumption Cases per year?
- **Section 94B:** Member must have “successfully passed a physical examination on entry into such service or subsequent to such entry, which examination failed to reveal any evidence of such condition...”

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NOTES:

Cancer Presumption *(Continued)*

- PERAC reviews all approved disabilities.
- PERAC can remand a disability to the board under G.L. c. 32, s. 21 (1)(d) for 4 reasons:
 - Unlawful procedure,
 - Unsupported by substantial evidence,
 - Arbitrary and capricious, or
 - Result of fraud or misrepresentation.

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Cancer Presumption *(Continued)*

- Most remands under the Cancer Presumption are because the Board did not submit a physical.
- Physical is generally a pre-employment physical but the statute allows for a physical that is subsequent to employment as long as it fails to show evidence of cancer.
- Physical requirement is also in the so called Heart and Lung Presumptions.

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NOTES:

Group Classification

- Chapter 176 of the Acts of 2011 provided for prorating of group time:
- “Any **active** member as of April 2, 2012, who has served in more than 1 group may elect to receive a retirement allowance consisting of pro-rated benefits based upon the percentage of total years of service that the member rendered in each group”. (G.L. c. 32, s. 5(2)(a)) (Emphasis supplied)

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Group Classification *(Continued)*

- “A member who entered service on or before April, 2, 2012 and seeks Group 2 or Group 4 classification and is no longer a public employee at the time of the member's retirement shall be classified based on the position from which the member was last employed”...(G.L. c. 32, s. 5(2)(a)).

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NOTES:

Group Classification for Members Who Enter Service On Or After April 2, 2012

- On or after April 2, 2012 hires are subject to mandatory prorating of group time.
- [t]he retirement allowance for members who became members on or after April 2, 2012, and who served in more than 1 group, shall receive a retirement allowance consisting of pro-rated benefits based upon the percentage of total years of service that member rendered in each group...” (G.L. c. 32, s. 5(2)(a)).

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Group Classification *(Continued)*

- What happens when a position’s group classification changes either by legislation or by retirement board action?
- Chapter 221of the Acts of 2018
 - Employees of the South Essex Sewerage District who are employed as licensed electricians were added to Group 2.

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NOTES:

Group Classification *(Continued)*

- Those who became members before April 2, 2012 will be treated differently than those who became members on or after April 2, 2012.
- The hired on or after April 2, 2012 must be prorated from the effective date of the reclassification.
- Those who were members prior to April 2, 2012 do not prorate if the current group is better than the original classification. They retire from the group classification held at retirement.

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Group Classification *(Continued)*

Chapter 32, Section 3(2)(g): [p]rovided that a member entering service prior to April 2, 2012 must be actively employed in a Group 2 or Group 4 position by a governmental unit which is subject to a retirement system under chapter 32, and must be actively performing the duties of said position for which the member seeks classification for not less than 12 consecutive months immediately preceding termination or retirement in order to qualify for the retirement allowance calculation of said group contained in subdivision (2) of section 5.

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NOTES:

Group Classification *(Continued)*

- How does the 12 month requirement effect retirements when a pre April 2, 2012 member's position is reclassified?
- If they work at least 12 months then there is no issue and they get to retire under the new group. But what if they don't work 12 months?
- 12 month requirement says that you must be "actively performing the duties of said position".

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Special Legislation

- Special bills that apply to individuals occur each session and the retirement board will need to determine what impact if any the legislation has on retirement benefits.
- Special acts for disability.
- Age exemptions for Public Safety.
- Sick leave bank bills.
- Working after retirement exemptions.

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NOTES:

Conclusion

- Chapter 32 is amended in almost every legislative session. Some changes are substantial and effect thousands of members, like Chapter 176, while other amendments impact few members but those changes can still be quite substantial for the affected individuals.
- Special acts occur every session as well and they may not amend Chapter 32 but may still significantly impact the retirement system.

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