



PERAC HITS THE ROAD

2026 BOARD ADMINISTRATOR TRAINING

# Regular Compensation:

## Frequently Asked Questions & Common Audit Findings



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# Regular Compensation

What we will cover today:

- Definition of regular compensation through June 30, 2009\*
- Definition of regular compensation subsequent to June 30, 2009
- Notable regular compensation cases
- PERAC Memorandum No. 33 of 2011
- Several PERAC Memoranda addressing particular regular compensation issues



# Pre-July 1, 2009 Definition of Regular Compensation

- the salary, wages or other compensation *in whatever form*, lawfully determined for the individual service of the employee “by the employing authority, not including bonus, overtime, severance pay for any and all unused sick leave, early retirement incentives, or any other payments made as a result of giving notice of retirement, but including evaluated maintenance as provided for in paragraph (c) of subdivision (1) of section twenty-two...” (Emphasis supplied).



# Regular Compensation Definition July 1, 2009 and Thereafter

- "Regular Compensation", during any period subsequent to June 30, 2009, shall be compensation received exclusively as wages by an employee for services performed in the course of employment for his employer.
- "Wages", the base salary or other base compensation of an employee paid to that employee for employment by an employer;

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G.L. c. 32, Section 1



# A Walk Down Memory Lane

- PERAC Memo No. 33 of 2011
- Date: November 23, 2011
- Sought to be definitive source of all post-Chapter 21 of the Acts of 2009 guidance regarding regular compensation.
- “[T]he purpose of this memorandum is to follow up on recent legislative and judicial changes in regard to regular compensation.”



# PERAC Memorandum No. 33 of 2011

- Cited four sources to consult regarding what regular compensation is, or is not:
  - G.L. c. 32 (as amended by Chapter 21 of the Acts of 2009)
  - 840 CMR 15.03 (as amended May 28, 2010)
  - SJC decision in *Pelonzi* (the car case)
  - Appeals Court Decision in *O'Brien* (the tools/services case)



# Chapter 32's Regular Compensation Genealogy



- And together they caused Chapter 21's regular compensation definitions to come into being...



# ***Bulger v. CRAB***

**447 Mass. 651 (11/9/2006)**

- University of Massachusetts president, former Senate President
- Sought to include in his regular compensation:
  - Monthly cash housing allowance
  - Payments made on his behalf into an annuity fund



## ***Bulger (SJC)(2)***

- Housing allowance is in! "...[T]reating the housing allowance as anything other than 'other compensation is whatever form' would render that term in the statute meaningless."
- Annuity account is out! "Regular compensation" does not extend to payments made into an annuity account on an employee's behalf.



## Fallout from *Bulger* (3)

- Excluded from the definition of “wages” by Chapter 21 of the Acts of 2009:
  - Indirect, in-kind or other payments for items such as housing, travel, clothing, annuities



# ***Pelonzi v. Retirement Board of Beverly***

**451 Mass. 475 (5/21/08)**

- City's Commissioner of Public Safety sought to include the personal-use value of an automobile that city furnished to him during his employment as regular compensation.
- Nope! "The only noncash form of regular compensation expressly identified... is 'evaluated maintenance [in the form of full or partial boarding and housing]'... The Legislature did not include any similarly explicit directions for the treatment of the noncash benefit associated with an employee's personal use of an employer-supplied automobile."



# Fallout from *Pelonzi*

- Excluded from the definition of “wages” by Chapter 21 of the Acts of 2009:
  - [I]ndirect, in-kind or other payments for such items as housing, lodging, travel, clothing allowances, annuities, welfare benefits, lump sum buyouts for workers' compensation, job-related expense payments, **automobile usage**, insurance premiums, dependent care assistance...



# ***O'Brien v. CRAB & Another***

## **76 Mass. App. Ct. 901 (2010)**

- Mr. O'Brien, a correction officer for the Suffolk County Sheriff's office, was an ADR retiree who sought to include in his calculation:
  - Holiday Pay
  - A fitness bonus
  - A uniform allowance
  - Longevity pay
  - An educational differential



## *O'Brien (2)*

- The Appeals Court held:
  - Educational differential and longevity pay are in!
  - Holiday pay, fitness bonus and uniform allowance are out!



## Fallout from *O'Brien* (3)

- Although the decision postdates Chapter 21 of the Acts of 2009, as this case went up it likely had an impact on legislative decision makers.
- This case introduced the idea of “tools v. services.”
- Distinguishes between payments paid for services versus payments providing a tool for the employer’s convenience.



# Back to Memo No. 33, and Its Two-Part Analysis

- Memo No. 33 of 2011 instructed:
  - First, consider whether a payment meets one of the criteria of regular compensation.
  - If the answer to that question is “yes,” next consider whether such a payment has been explicitly excluded by the statute, the regulations or case law.



# Some Characteristics of “Regular Compensation” (1)

- Base salary or other base compensation
- Payment for services performed
- Pre-determined, non-discretionary, guaranteed payments
- Paid to similarly situated employees



## Some Characteristics of “Regular Compensation” (2)

- Payment for the character of the work
- Payment for the time at which work takes place
- Payment for an employee’s length of service
- Payments made for holding certification, licensing, training



# Examples of What is Not Regular Compensation (1)

- Overtime
- Bonuses
- Salary enhancements or salary augmentation plans
- Indirect, in-kind or other payments for items such as housing, travel, clothing, annuities
- Automobile usage



## Examples of What is Not Regular Compensation (2)

- Payment for termination, severance or dismissal
- Any amounts payable as premiums for working holidays\*
- 1-time lump sum payments in lieu of or for unused vacation or sick leave
- Payment made as a result of the employer having knowledge of the member's retirement



# Regular Compensation Analysis (1)

## Step One: Is it a Service?



## Hazardous Duty Stipend – An Example (1)

- Jack is a police officer in the Town of Quabbin.
- Like all other police officers in that town, he is paid a “hazardous duty stipend.”
- This is an automatic payment to each and every police officer in Quabbin, in recognition of the hazardous nature of the job.



## Hazardous Duty Stipend – An Example (2)

- This would not be regular compensation.
- It is payment, but not for a service.
- There is no training that precedes the payment of a stipend.
- Everyone can agree that being a police officer is hazardous, but that is part of the job. There is no extra duty attendant to this.



# Payments for Licenses and Certificates

- Collective bargaining agreement contains a “breathalyzer certificate stipend.”
- The stipend requires training before it is granted.
- 840 CMR 15.03(3)(b) includes in the definition of wages “payments... for holding the training, certification, licensing or other educational incentives.”
- This stipend is paid to members who qualify for and maintain this certificate, so the stipend is regular compensation.



## ***Kelleher v. Barnstable County Ret. Bd. & PERAC,*** Barnstable County Superior Court, 1672-CV-00174 (2/17/2017)

- Attendance at HazMat *training* sessions was mandatory and regularly scheduled.
- **Is the payment for *attending* these sessions regular compensation?**
  - **In a Nutshell:** Payments made to a HazMat team member for his attendance at mandatory training sessions was not regular compensation, because it constituted overtime as it was in addition to his payment for his regular hours that pay cycle.



## On Call Pay – An Example (1)

- There are four lawyers in the Azul Law Department, who each have to be on call every fourth weekend.
- They are each paid \$300 to be on call for their weekend.
- They can't drink alcohol on their on-call weekend or go more than 25 miles from Azul Center.
- **Is the payment of \$300 every four weeks regular compensation?**



## On Call Pay – An Example (2)

- This would be regular compensation.
- It is a payment, and there is a service attached to the payment. The service is being ready to answer any legal questions which come in over the weekend, and certain restrictions on how life may be lived while on call.
- The payment is pre-determined, non-discretionary and predictable.



# Regular Compensation Analysis (2)

**Step Two:** Is the payment for a service pre-determined, non-discretionary, and guaranteed?



# Section of Memo No. 33 Eliciting the Biggest and Most Adverse Reaction

- A library worker works 30 hours a week but occasionally works 4 to 6 additional hours in a week.
- **Are those 4 to 6 additional hours excludable from regular compensation?**
- PERAC said: ?



# Library Worker Guidance in Memo No. 33

- The new regulation, and the new statute for that matter, specifically exclude “amounts derived from salary enhancements or salary augmentation plans which will recur for a limited or definite term.”
- Although a person working a couple of extra hours now and then is not a salary augmentation plan, the principle remains the same.
- The resulting pay increase would be a payment of a limited term, a payment which is not part of a person’s regular pay, and so it should be excluded from regular compensation.



# Paraprofessionals – An Example (1)

- Melinda, Shirley and Crystal are paraprofessionals for the Magenta School System.
- They each work 25 hours per week, or 5 hours per workday, in their jobs.
- If a teacher is out unexpectedly, they would each then work (as called upon) another 2.5 hours a day as a sub.
- **Is this regular compensation?**



## Paraprofessionals – An Example (2)

- These payments fail the regular compensation test.
- They are receiving payments.
- They are receiving payments for a service.
- But it is unpredictable and sporadic pay, so excluded from regular compensation.



# Interrupting Our Regularly Scheduled Presentation...

- Last time this presentation was given (in Danvers) there was push back regarding a certain DALA decision and a different CRAB decision.
- DALA decision = ***Twohig***
- CRAB decision, now a Superior Court decision = ***Dudley***
- We're going to discuss each of these cases and then resume the program.  
**Spoiler Alert:** PERAC has not changed its position as articulated in this presentation, either in Northampton, in Danvers, or today.



# A Sticky Wicket

- British English
- A difficult, awkward or tricky situation that requires delicate handling
- Originates from “cricket”, a super boring game in England
- Synonyms include: predicament, dilemma, quandary, and tight spot.



# *Twohig v. Braintree Retirement Board & PERAC (1)*

- CR-18-505
- **DALA decision:** 5/20/2022
- Police department seeking accreditation from a particular police organization paid each officer across the Board “an annual accreditation stipend as an acknowledgement of their continued cooperation” in the accreditation process.
- Officers paid as a percentage of their base pay.



## ***Twohig v. Braintree Retirement Board & PERAC (2)***

- Braintree Retirement Board excluded this stipend, and PERAC agreed, unable to discern what additional service was being performed.
- **DALA:** Stipends should have been included as they were “recurrent, predetermined, non-discretionary and infinite in duration.”
- **PERAC:** Respectfully disagreed, and filed Notice of Objections in this matter on June 3, 2022,
- Therefore, this is not yet a final decision of CRAB.



# ***Dudley v. CRAB and Leominster Retirement Board (1)***

- Suffolk Superior Court
- Civil Action No.2584CV00263
- Date of Decision: December 18, 2025
- No appeal has been filed. This decision is final.
- Affirms earlier CRAB decision



## ***Dudley v. CRAB and Leominster Retirement Board (2)***

- Officer-in-Charge pay
  - **The facts:** Police officers could choose between various assignments, Plaintiff chose “Officer-in-Charge of the Detectives Bureau” which provided a special pay of \$4 “for each shift actually worked.” Plaintiff worked five Officer-in-Charge shift most weeks, but not every week.



# *Dudley v. CRAB and Leominster Retirement Board (3)*

- The Acting Captain Stipend
  - **The facts:** Around 2012, the Acting Captain became the acting Chief of the Department. Rather than hiring a new captain, the existing lieutenants were given new assignments and an annual \$5000 stipend. “Such stipend reflected additional duties and responsibilities...” “If the City appoints a new Chief in the future, the stipend to the lieutenants would cease and members would receive their pro rata share of the stipend up to the date of the new appointment.”



## ***Dudley v. CRAB and Leominster Retirement Board (4)***

- The officer-in-charge pay
  - **The Superior Court Determined:** This is not regular compensation.
  - “The Officer-in-Charge pay was not a guaranteed recurrent payment. Such is clearly evidenced by the fact that the Plaintiff did not get the Officer-in-Charge payment for eight weeks from 2012 to 2015, during the time where he did not serve as the Officer-in-Charge.”



## ***Dudley v. CRAB and Leominster Retirement Board (5)***

- The Acting Captain pay
  - **The Superior Court Determined:** This is not regular compensation. “Similarly, although the Plaintiff was paid the annual \$5K stipend from 2012 to 2015, this stipend was contingent upon Leominster PD not having a captain or a deputy chief. This stipend occurred for a limited and for a conditional term, and by its nature, cannot be considered wages.”



## We Now Return To Our Regularly Scheduled Presentation.

- Please keep these two cases in mind as we go forward with the presentation.
- PERAC is a party to **Twohig**, but it is not yet a final decision of CRAB.
- PERAC is not a party to **Dudley**, so is not bound by it.
- **Bonus question:** Do you see the difference between the findings in **Twohig** and **Dudley**? (Will explain two slides from now).



# Acting Plant Manager – An Example (1)

- The Vermelho Power Plant is a busy, vibrant enterprise, and employs 400 workers at its offices.
- The Plant Manager suddenly quits in a huff, not even giving two weeks notice, mind you, and storms off leaving the plant without a manager.
- Darren DuRumple, one of the assistant plant managers, is made “Acting Plant Manager” while the City of Vermelho begins the difficult task of replacing the former plant manager.
- **Is Darren’s increase in salary to be considered regular compensation?**



## Acting Plant Manager – An Example (2)

- This answer may surprise you: **Yes.**
- Darren is going to be in the position for an indefinite amount of time. There is no end in sight.
- Meantime he is being paid for services on a regular, recurring basis and the payment is predictable and guaranteed.
- This is where ***Twohig*** and ***Dudley*** collide.



# Out of Grade Pay – An Example (1)

- The police officers in the Town of Verdade have a contract which provides that there must be an officer in charge during each shift.
- If the actual officer in charge is absent, or there is no officer in charge on a particular shift, the duty then rotates among various officers.
- They have no choice but to perform these services. The services are mandatory. They are paid a percentage of their actual hourly rate to perform these services.



## Out of Grade Pay – An Example (2)

- CRAB recently rejected an “officer in charge” stipend as regular compensation. CRAB determined that the pay was not “guaranteed,” or of “indefinite duration.” \*
- Specifically, CRAB determined that because there was no pattern or schedule which dictated when a member took on the officer-in-charge duties, it could not be considered regular or recurring.

See ***Dudley v. Leominster Retirement Board***, CR-18-0627, CR-19-0039 (CRAB Dec. 31, 2024), recently affirmed by the Superior Court as noted in the slides above.



# Contingent Payments – An Example (1)

- Owen works for the Ornithology Unit at the DCR.
- Occasionally, he is called upon to switch out a nesting box for an owl.
- This is an arduous task, and he is paid \$50 extra each time he has to switch out a box.
- He switches out five of these boxes in 2024.
- **Is the \$250 regular compensation?**



## Contingent Payments – An Example (2)

- This would not be regular compensation.
- This is a payment, this is a service to the employer, and it's dangerous. Replacing these owl nesting boxes is tough, particularly if there is an owl in there.
- **But:** It's unpredictable, and not guaranteed, so it can't be included.



# Regular Compensation Analysis (3)

## Some Special Situations



# Vague Coding – Some Examples

- Payroll codes payment as follows:
  - “Stipend – Nonpensionable”
  - “Stipend – Pensionable”
  - “Other”
  - “Adjustment”
- The Retirement Board needs to investigate these and determine whether they are or are not pensionable, to prevent trouble down the road.



## Second Job – An Example

- Timothy is a full-time clerk in the voting department at Branco City Hall.
- He also serves as a coach for the high school soccer team, for which he is paid a stipend of \$6,500 per year.
- **Is the payment for coaching regular compensation?**
  - Yes – a second (or third) job in the municipality is considered regular compensation and deductions should be taken.



## Holiday Pay – An Example

- Patsy is a surveyor for the Town of Fuchsia.
- A major realignment of Fuchsia's downtown is currently underway.
- Due to the press of time, the Lord Mayor of Fuchsia authorizes surveyors to work holidays until this project is done.
- They are paid a special perk, an amount of two times a day's salary, to work the holiday.
- **Is this regular compensation?**



# Holiday Pay Exclusion

- Wages shall not include “any amounts paid as premiums for working holidays, except in the case of police officers, firefighters, correctional officers and employees of a municipal department who are employed as fire alarm signal operators or signal maintenance repairmen money paid for holidays shall be regarded as regular compensation...”
- Premiums paid to surveyors for working holidays would not be includable in regular compensation.



# Beyond Memo No. 33 of 2011

- **PERAC Memo No. 21 of 2022** – *Vernava II* (July 29, 2022)
- **PERAC Memo No. 23 of 2022** – Vacation Buybacks as Regular Compensation (September 12, 2022)
- **PERAC Memo No. 21 of 2025** – FY2026 Budget and Definition of Wages in Chapter 32 (July 14, 2025)



## PERAC Memo No. 21 of 2022 - *Vernava II* (July 29, 2022)

- This is the “rescue legislation memo.”
- Section 149 of Chapter 126 of the Acts of 2022.
- No one who retired prior to July 1, 2022 will have their retirement allowances reduced under the SJC decision in ***Vernava II***.
- **“*Vernava II*”** rule: Payments of accrued time taken while a member is on Workers’ Compensation will not be regular compensation.



## *Vernava II* – Example

- Dorisa Day is injured on the job at the Laranja Town Hall.
- She goes on partial incapacity under Chapter 152 of the General Laws.
- To survive, she is using up her sick and vacation time.
- **Is her sick and vacation time regular compensation?**
  - No, it is not, due to the SJC decision in *Vernava II*.



## PERAC Memo No. 23 of 2022 - Vacation Buybacks as Regular Compensation (September 12, 2022)

- Yet more rescue legislation but enacted just before the SJC decision in ***O'Leary***. The SJC, Chief Justice Budd writing, determined that payment in lieu of vacation time is not regular compensation.
- Chapter 147 of the Acts of 2022 added a new section of Chapter 32, Section 106. Section 106 holds harmless those who have already retired using these payments.
- Provides for limited continued use of these payments as regular compensation, which will be eventually phased out.



# Vacation Buyback – An Example

- Luke McGlucke is a police officer for the Town of Periwinkle, and an active member in Periwinkle as of May 1, 2018.
- The Periwinkle Police CBA had provided for a vacation buyback program, and Luke had participated in it.
- Luke continues to have unused vacation days paid to him, every other year.
- **Regular compensation?**
  - As long as he keeps up regular payments, this will remain regular compensation.



# PERAC Memo No. 21 of 2025 FY2026 Budget and Definition of Wages in Chapter 32 (July 14, 2025)

- Paid Family and Medical Leave ("PFML") does not apply to the vast majority of municipalities in the state.
- This new legislation largely affects PFML payments.
- This new amendment clarifies that any accrued sick, personal or vacation leave is regular compensation when said leave is used, unless it is used in conjunction with Workers' Compensation.



## PFML – An Example

- Renee Rotolf has a baby and takes PFML for six months.
- Also, during the six months, she augments her PFML with her accrued vacation time.
- **Is this regular compensation?**
  - The vacation time is regular compensation, the PFML payments are not, and creditable service will be pro-rated in accordance with each retirement board's regulations.



# Conclusion

- Regular compensation is very simple yet can paradoxically also be complex.
- There is a lot to consider, and each set of facts is different.
- Memorandum No. 33 of 2011 is an important guide to use in working through various scenarios.
- Contact me with questions: [judith.a.corrigan@mass.gov](mailto:judith.a.corrigan@mass.gov)

