



# **(Relatively) Recent Changes in Massachusetts Public Pension Law**



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FEBRUARY 26, 2020

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- ❖ Important changes in the law, recently, from 2018 to 2020, and less recently from 2014 to 2017.

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## Still Important Changes Noted in the Addendum

- ❖ Chapter 658 of the Acts of 1945
- ❖ Chapter 306 of the Acts of 1996
- ❖ Chapter 123 of the Acts of 2000
- ❖ Chapter 21 of the Acts of 2009
- ❖ Chapter 176 of the Acts of 2011

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### NOTES:

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## The “SECURE” Act

- ❖ Effective Date of January 1, 2020
- ❖ “Setting Every Community Up for Retirement Enhancement” Act of 2019
- ❖ Increases age of required minimum distribution from 70 ½ to 72 (applies to people turning 70 ½ in 2020 or later)
- ❖ Eliminates maximum age for traditional IRA contributions (You can contribute to your traditional IRA as long as you are still working.)
- ❖ Non-spousal beneficiaries must withdraw all assets from an inherited account within 10 years.

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## The “SECURE” Act *(Continued)*

- ❖ **Previous Law:** required minimum distributions must begin for a member by April 1 of the calendar year following the calendar year in which the individual attains age 70 ½.
  - Example: A member who turned 70 ½ on December 25, 2019, must begin taking required minimum distributions by April 1, 2020 because they reached age 70 ½ on or before December 31, 2019.
- ❖ **Law Change:** required minimum distributions must begin for member by April 1 of the calendar year following the calendar year in which the individual attains age 72.
  - Example: A member who turns 70 ½ on January 1, 2020, must begin taking required minimum distributions by April 1, 2022, because the member would turn 72 in 2021.

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### NOTES:

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## The “SECURE” Act *(Continued)*

- ❖ Members must begin to receive required minimum distributions from the Retirement System if:
  - they are not receiving a retirement allowance;
  - they are no longer employed with the governmental employer; and
  - they have attained age 70 ½ on or before December 31, 2019 or age 72 on or after January 1, 2020.
- ❖ Failure to take the required minimum distribution will result in a federal tax penalty equal to 50% of the amount that should have been distributed as a required minimum distribution.

## *Gomes*

- ❖ *Plymouth Retirement Board v. CRAB and PERAC*, 483 Mass. 600 (December 3, 2019) (“*Gomes*”)
- ❖ PERAC Memorandum No. 11/2020
- ❖ Service purchases under the 2<sup>nd</sup> and 3<sup>rd</sup> provisos of Section 4(2)(b) must be purchased by a member, and are not available without cost.
- ❖ Generally, this will involve call firefighter and permanent intermittent, reserve or call police officers.

### NOTES:

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***Gomes (Continued)***

- ❖ The SJC has also applied the “Under \$5000 Rule” to the award of such service.
- ❖ This will eliminate some service after June 30, 2009 which had already been purchased or awarded.

***Swallow & O’Hare***

- ❖ *Essex Regional Retirement Board v. Swallow & Others*, 481 Mass. 241 (January 18, 2019)
- ❖ *State Board of Retirement v. O’Hare & Others*, 481 Mass. 241 (January 18, 2019)
- ❖ These cases explicitly narrow of the ambit of the pension forfeiture statute, G.L. c. 32, § 15(4), and clarify that police officers will no longer be held to a higher standard than non-police officers.
- ❖ “Where there are neither factual links nor legal links between the officers’ positions and their convictions, forfeiture of their pension allowances is not legally tenable.”

**NOTES:**


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## Education Waiver

- ❖ PERAC Memorandum No. 15/2019
- ❖ Chapter 439 of the Acts of 2018, effective January 10, 2019
- ❖ Amends Section 20(7) of Chapter 32
- ❖ A retirement board member may petition PERAC for a waiver of training restrictions due to extenuating circumstances provided that the retirement board member completes the required 18 hours of training during their term.

## DALA/CRAB Cases of Interest

- ❖ *Basile v. Springfield Retirement Board*, CR-17-109 (DALA May 3, 2019)
- ❖ *Cambridge Retirement Board v. PERAC*, CR-13-466 (DALA Feb. 22, 2019)
- ❖ *Jump v. State Board of Retirement*, CR-17-1056 (DALA June 14, 2019, on appeal to CRAB)

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## Vernava

- ❖ *PERAC v. CRAB & Others*, 478 Mass. 832 (February 13, 2018)
- ❖ PERAC Memorandum No. 17/2018
- ❖ The SJC rejected the long-held position of PERAC, and PERA before it, that vacation and sick time taken in conjunction with Workers' Compensation benefits should be considered regular compensation.
- ❖ Limited to those applying under Section 7 by Footnote 3 of decision.
- ❖ PERAC was sued by five retirement boards after this memo issued, and that lawsuit is currently pending. During the pendency of the action and unless corrective legislation is filed, boards should continue to follow Memorandum No. 17/2018.

## Interest Payments

- ❖ PERAC Memorandum No. 14/2018
- ❖ Sought to reconcile “*Hollstein*” and “*Herrick*”
- ❖ Issued March 5, 2018

### NOTES:

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## PROSPER – 91A

- ❖ Section 91A phase of PROSPER becomes available
- ❖ PERAC Memoranda No. 20/2018, 25/2018

## *O'Leary*

- ❖ Vacation buybacks rejected by CRAB and the Superior Court as regular compensation.
- ❖ *O'Leary v. Lexington Retirement Board and PERAC*, CR-15-30 (July 23, 2018)
- ❖ PERAC Memoranda No. 26/2018, 33/2018
- ❖ Superior Court upheld CRAB.
- ❖ Currently on Appeal to Appeals Court, but CRAB's decision must be followed.
- ❖ Partial Stay in effect to prevent retirees' allowances from being recalculated while the appeal is pursued.

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## DALA/CRAB Cases of Interest

- ❖ *Marathas v. Dukes County Retirement System*, CR-17-096 (DALA Sept. 1, 2018)
- ❖ *Gorman v. Plymouth County Retirement Board*, CR-15-579 (DALA Sept. 21, 2018)
- ❖ *Pare-Doherty v. State Board of Retirement*, CR-17-829 (DALA May 25, 2018)

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## Repeal of Section 90G $\frac{3}{4}$

- ❖ FY 18 Budget Repealed this Section effective 7/1/2017
- ❖ PERAC Memorandum No. 25/2017
- ❖ This section of the law required those members of the retirement systems approaching age 70 to affirmatively decide whether to continue making contributions to the retirement system.
- ❖ It had caused some IRS issues.
- ❖ Antiquated section of the law from a time when a member could not work past age 70.

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### NOTES:

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**2017**

## **PROSPER**

- ❖ PERAC's self-service web-based communication system rolled out to the retirement boards
- ❖ PERAC Memoranda No. 19/2017, No. 22/2017
- ❖ Has streamlined the Medical Panel/Disability Transmittal process

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**2016**

## **Determination Letter Expiration Dates**

- ❖ IRS Revenue Procedure 2016-37
- ❖ Generally effective January 1, 2017 but
- ❖ Provides that, as of January 2, 2016, determination letters issued to individually designed plans will no longer contain an expiration date, and expiration dates included in determination letters issued prior to January 4, 2016 (such as ours), will no longer be operative.
- ❖ PERAC Memorandum No. 12/2020

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### **NOTES:**

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## Once a Member...

❖ *Retirement Board of Stoneham v. Contributory Retirement Appeal Board & Another*, 476 Mass. 130 (2016) (“DeFelice”)

- Once a member is granted initial membership in a retirement system, he or she will retain that membership status so long as he or she remains employed.
- A member, whose hours or pay are reduced below the initial membership threshold of a particular board, may not have their membership revoked.

❖ PERAC Memorandum No. 8/2017

## Binding Effect of PERAC Memoranda

❖ CRAB decision in *Grimes v. Malden Retirement Board & PERAC*, CR-15-5 (November 18, 2016):

...[R]etirement boards must follow PERAC’s directives because of the statutory grant of power to PERAC to issue such directives in order to ensure that the more than one hundred retirement systems in the Commonwealth operate efficiently and apply uniform rules and policies.

❖ PERAC Memorandum No. 2/2017

### NOTES:

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## Domestic Relations Orders

- ❖ Chapter 77 of the Acts of 2016
- ❖ Applies to benefits first granted on or after July 1, 2016
- ❖ PERAC Memorandum No. 16/2016
- ❖ Protects rights of ex-spouses who were the named Option C beneficiary in a DRO, but the member spouse married another and then died, making the present spouse eligible for Section 9 death benefits.
- ❖ Current spouse paid the difference between the Section 9 benefit and Option C benefit, former spouse gets the Option C.

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## Board Election Regulations

- ❖ 840 CMR 7.00
- ❖ Effective date of March 11, 2016
- ❖ PERAC Memorandum No. 12/2016
- ❖ Defined “Member in Service,” “Member Inactive,” “Retiree”
- ❖ Clarified rights of inactive members
- ❖ Allowed for electronic balloting with approval of PERAC
- ❖ Board staff member may not be elected to retirement board for which he or she is employed (absent grandfathering).

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### NOTES:

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## Bettencourt

❖ *PERAC v. Bettencourt*, 474 Mass. 60 (April 6, 2016)

- **In a nutshell:** A pension forfeiture, as set out in M.G.L. c. 32, § 15(4), is a “fine” for purposes of the Eighth Amendment to the United States Constitution, and said forfeiture may be halted if it is found to be “excessive.”

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## Future Pension Forfeiture Cases

1 <sup>st</sup> , “Was the Crime Related to the Person’s Office or Position?”	“Should the 8 <sup>th</sup> Amendment Halt the Forfeiture?”
• District Court	• District Court
• Superior Court	• Superior Court
• Appeals Court, possibly	• Appeals Court, possibly SJC
• SJC	
<i>If this question answered in the affirmative, then on to --</i>	

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### NOTES:

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2016

## Appealing Pension Forfeiture After *Bettencourt*

- ❖ Is the pension forfeiture grossly disproportional to the gravity of the offense?
- ❖ Four factors courts will consider after establishing the amount of the forfeiture:
  1. The nature and circumstances of the offense
  2. Was it related to any other illegal activities?
  3. The aggregate maximum sentence that could have been imposed
  4. The harm resulting from the offense

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2015

## Post-Retirement Earnings

- ❖ PERAC Memorandum No. 11/2015
- ❖ Chapter 492 of the Acts of 2014
- ❖ Applies to earnings during and after calendar year 2015
- ❖ Public employees receiving a disability pension may now earn an additional \$15,000 during a calendar year

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### NOTES:

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## ***Zavaglia***

- ❖ *Zavaglia v. Gloucester Retirement Board & Salem Retirement Board*, CR-09-459 (amended decision issued April 13, 2015)
- ❖ Not appealed so final decision of CRAB
- ❖ PERAC Memorandum No. 12/2015
- ❖ In the absence of specific, enumerated instances in the statute, prior service may only be purchased by active members of a retirement system
- ❖ Largest exception: The redeposit of previously refunded account pursuant to Section 3(6)(d)

## **Section 3(8)(c) Reimbursements**

- ❖ Calculation Policy 15-001, implemented August 10, 2015
- ❖ Published to the retirement boards on December 11, 2017 via
- ❖ PERAC Memorandum No. 37/2017
- ❖ Involves Retirement Boards belatedly requesting a Section 3(8)(c) reimbursement.

### **NOTES:**

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## Dual Member Provisions

- ❖ Chapter 165 of the Acts of 2014 (FY 2015 budget)
- ❖ PERAC Memorandum No. 29/2014
- ❖ Amends Section 5(2)(e), the dual member provision inserted by Chapter 21 of the Acts of 2009
- ❖ Overlapping periods in two systems shall not be considered dual membership if less than 60 days.
- ❖ A member shall not be considered a dual member if one of the positions is compensated at less than \$5000 per year.
- ❖ Applies only to the 5 years of creditable service immediately preceding retirement.
- ❖ No applicability to Section 6, ordinary disability retirement.

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## Conclusion

- ❖ There have been a lot of recent and fairly recent changes to both State and Federal laws affecting public employee retirement.
- ❖ PERAC will continue to provide updated guidance to the Retirement Boards so they can effectively implement these changes.

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### NOTES:

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## Addendum

- ❖ Chapter 658 of the Acts of **1945**
- ❖ Chapter 306 of the Acts of **1996**
- ❖ Chapter 123 of the Acts of **2000**
- ❖ Federal Pension Protection Act of **2006**
- ❖ Chapter 21 of the Acts of **2009**
- ❖ Chapter 176 of the Acts of **2011**

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**1946**

## Chapter 32

- ❖ Chapter 658 of the Acts of 1945
- ❖ Effective date of January 1, 1946
- ❖ Created the Retirement Systems as we know them today.

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### NOTES:

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1996

## PERAC is Created

- ❖ Chapter 306 of the Acts of 1996
- ❖ As Amended by Chapter 427 of the Acts of 1996
- ❖ Effective Date of November 7, 1996
- ❖ PERAC Memorandum No. 33/1996
- ❖ Major pension reform. In addition to the institution of PERAC as PERA's successor:
  - Provided for 5 member retirement boards
  - Allowed accidental disability retirees to pick Option C
  - Instituted spousal notification of Option Selection
  - And much, much more!

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2000

## Chapter 123

- ❖ Removed the age limitations in Chapter 32 likely to violate the Federal Age Discrimination in Employment Act and Older Worker Benefit Protection Act.
- ❖ Effective September 28, 2000
- ❖ PERAC Memorandum No. 27/2000
- ❖ Removed "maximum age" except for public safety employees
- ❖ Members over age 55 eligible for a retirement allowance may nonetheless receive a return of accumulated deductions
- ❖ Members over 55 can receive ordinary disability retirement
- ❖ Removed age limits for Section 10 allowance

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### NOTES:

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2006

## Tax Limitations on Inactive Member Purchases of Service

- ❖ The question of whether an inactive member may purchase service under the Federal tax law has been a challenging one, but is allowable where the statute specifically permits it.
- ❖ Inactive members are no longer limited in their buyback to \$40,000 or what they make in a year.

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2006

## Tax Limitations on Inactive Member Purchases of Service *(Continued)*

- ❖ The Pension Protection Act amended the wording of section 415(n) of the IRS Code to read "participant" instead of "employee".
- ❖ The change allows inactive members to make purchases not subject to the \$40,000 or amount earned in a year limitations.
- ❖ The service purchases in question, however, must still be permissible under our plan, and are very limited pursuant to *Zavaglia*.

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### NOTES:

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## Pension Protection Act

- ❖ Federal Law
- ❖ Pension Protection Act of 2006
- ❖ PERAC Memorandum 37/2007
- ❖ Allows eligible retired public safety officers to exclude from their gross income an amount up to \$3,000 that is deducted from a taxable retirement allowance for health insurance premiums or long term care insurance contracts.
- ❖ Changes rules regarding rollovers for non-spouse beneficiaries.

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## Chapter 21

- ❖ Effective date of July 1, 2009
- ❖ PERAC Memorandum No. 24/2009
- ❖ Chapter 21 of the Acts of 2009 was major pension reform legislation
- ❖ Changed the definition of regular compensation
- ❖ Ended “year for a day” for elected officials
- ❖ Instituted the “Under \$5000 Rule”
- ❖ Employer must be contacted if employee asks for a refund of his or her accumulated deductions
- ❖ Minimum required distributions
- ❖ Direct deposit for retirees can be mandated

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### NOTES:

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## Chapter 176

- ❖ PERAC Memorandum No. 36/2011 (non governance provisions)
- ❖ Effective generally on February 16, 2012, but for certain sections other dates apply
- ❖ Amended regular compensation definition in regard to federal limitations
- ❖ Changed interest rates for the purchase of creditable service
- ❖ Set up new system for those who became members on or after April 2, 2012 including:
  - 5 year average for retirement calculation
  - New age benefit chart
  - New minimum age for Group 1 for retirement
  - Elimination of termination retirement benefit
  - Procurement reform
  - Retirement board members minimum education requirements
  - Statement of Financial Interest
  - Vendor Disclosures

### NOTES:

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**COMMONWEALTH OF MASSACHUSETTS**

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