



PERAC HITS THE ROAD

2022 BOARD ADMINISTRATOR TRAINING

Working After Retirement



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Introduction

- Chapter 32 of Massachusetts General Laws contains several statutes that pertain to public retirees working after retirement.
 - All references to sections of the statute are to Chapter 32, unless otherwise noted.
- By statute, retirees working for public bodies in Massachusetts are limited in two important ways:
 - The **number of hours** they may work; and
 - The **amount they may earn** in salary or pay.



Section 91(a) – Overview

- “No person while receiving a pension, disability pension or retirement allowance from the commonwealth, or from any county, city, town, district or authority shall, after the date of his retirement be paid for any service rendered to the commonwealth or any county, city, town or district, **except....**” (Emphasis added.)

NOTES:



Section 91(a) – Earnings Exceptions

- Jury Service
- Service as a Judge (under certain provisions)
- Some Elected Officials
 - Requires a **one-year gap** if retired from same position.
- Certain State Government Appointments
 - Must waive pension.
- Service on a PERAC medical panel

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Section 91(a) – Earnings Exceptions *(Cont'd)*

- Service as an Election Officer
- Service in an Emergency
- Service During a Declared Emergency
 - Vacancy must exist
 - No one comparable is available
 - Limited to one year (except as to doctors and nurses)
 - Pension benefit is offset

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NOTES:



Section 91(b) - Overview

- “In addition to and notwithstanding the foregoing provisions of this section or similar provisions of any special law....”
 - Among other things, this means that Section 91(b) is independent of anything contained within Section 91(a).

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Section 91(b) - Overview (Cont'd)

- “Any person who has been retired . . . may . . . be employed in the service of the commonwealth, county, city, town, district or authority, including as a consultant or independent contractor or as a person whose regular duties require that his time be devoted to the service of the commonwealth, county, city, town, district or authority during regular business hours...

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NOTES:



Section 91(b) - Overview *(Cont'd)*

- ...for not more than 1,200 hours in the aggregate, in any calendar year; provided that the earnings therefrom when added to any pension or retirement allowance he is receiving do not exceed the salary that is being paid for the position from which he was retired or in which his employment was terminated plus \$15,000;...

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Section 91(b) - Overview *(Cont'd)*

- ...provided however that in the first 12 months immediately following the effective date of retirement, the earnings received by any person when added to any pension or retirement allowance the person is receiving shall not exceed the salary that is being paid for the position from which the person was retired or in which the person's employment was terminated."

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NOTES:



Section 91(b) - Limitations

- Employment of any public sector retiree for a governmental unit is limited.
- Such employment is **limited by both hours AND earnings**.
- Hours
 - 1200 hours per calendar year
 - See PERAC Memo # 29 of 2021
- Earnings
 - Compensation when added to the retirement benefit cannot exceed the salary being paid for the position from which he/she retired (plus \$15,000 after the first calendar year following retirement).

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Section 91(b) - Employed "in the service of"

- Retirees receiving a retirement allowance may be employed "in the service of" a Massachusetts governmental unit.
- This includes as a consultant or independent contractor.
- This also includes a person whose regular duties require that their time be devoted "to the service" of a Massachusetts governmental unit.
- Whether someone is employed "in the service of the commonwealth" is a very individualized and fact-specific inquiry.

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NOTES:



Section 91(b) - Not Necessarily "Employed by"

- If a member is paid by a private company but is performing a service for a Massachusetts governmental unit, **Section 91(b) applies.**
- If a member is paid by a grant but is performing a service for a Massachusetts governmental unit, **Section 91(b) applies.**
- Fact that the employer is not a member of a Chapter 32 system does not matter.
 - *Kahn v. State Bd. of Ret.*, CR-14-524 (DALA Feb. 28, 2019) (appealed to CRAB)
 - *Pellegrino v. Springfield Pkg. Auth.*, 69 Mass. App. Ct. 94 (2007)
- Focus on **who receives the service**, not who cuts the check.

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Section 91(b) - Hours Limitation

- A retiree performing a service for a Massachusetts governmental unit cannot work for more than 1200 hours in the aggregate, in any calendar year.
- The 1200 hours is for **hours paid, not necessarily for hours worked.**
 - Example: Retired police officer works a detail for 2 hours but is paid for a minimum of 4 hours. In this scenario, 4 hours counts toward the 1200-hour limit.
- Not pro-rated in the first year of retirement.
 - Example: Member retires on October 1, 2021, they are eligible to work 1200 hours from that date until December 31, 2021.

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NOTES:



Section 91(b) - Calculation of Allowable Earnings

- The retirement benefit plus the earnings must be less than or equal to the current salary that is being paid for the position from which the member retired (plus \$15,000 after the first calendar year).
- However, public policy is to base it upon the salary a retiree's pension is based upon because otherwise some situations arise in which a retiree wouldn't be able to work after retirement at all, which the Legislature can't have intended.

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Section 91(b) - Calculation of Allowable Earnings *(Cont'd)*

- Situations which might limit the ability of a retiree to work post-retirement if the salary which formed the basis of the pension was not used:
 - The position has been dissolved.
 - The replacement earns significantly less.
 - The retiree was only working part-time when he/she retired.
 - The retiree benefit is not based on the last salary earned.

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NOTES:



Section 91(b) - Plus \$15,000

- Retirees are permitted to earn an additional \$15,000 per year more than the difference between the retirement allowance and salary being paid.
- However, the additional \$15,000 will not be permitted until **at least** one calendar year following retirement.
 - Example: if a member retired in June of 2020, the additional \$15,000 is not added to the calculation of their earnings limitation until January of 2022.

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Section 91(c) - Overview

- Retirees employed in the service of a Massachusetts governmental unit **must** certify to their employer the number of hours worked and earnings therefrom.
 - The onus is on the member and their employer to monitor and record the hours worked.
- If the number of hours exceeds 1200, the retiree shall not be employed.
- If the earnings exceed the amount allowable, the retiree shall return to their employer "all such earnings as are in excess of said allowable amount."

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NOTES:



Section 91(c) – Recovery of Excess Earnings

- “The amount of any excess not so returned may be recovered in an action of contract by the appropriate treasurer or other person responsible for the payment of the compensation of any such person.”
- If the Employer or Treasurer do not take action to recoup excess earnings, the retirement board has implicit authority to pursue such excess earnings.
 - *Flanagan v. CRAB and State Ret. Bd.*, 51 Mass. App. Ct. 862 (2001).

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Section 91A – Disability Retirees

- “Every person pensioned or retired under any general or special law for disability, including accidental disability, shall in each year on or before April fifteenth subscribe, under the penalties of perjury, and file with the commission a statement, in such form as the commission shall prescribe, certifying the full amount of his earnings from earned income during the preceding year....

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NOTES:



Section 91A - Disability Retirees *(Cont'd)*

- ...If such earnings exceed an amount which when added to the member's retirement allowance is greater than the amount of regular compensation which would have been payable to such member if such member had continued in service in the grade held by him at the time he was retired plus \$15,000, said member shall refund the portion of his retirement allowance for such preceding year equal to such excess and until such refund is made, his pension or retirement allowance shall be held as security therefor."

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Section 91A - Limitations

- In addition to the limits on public employment, disability retirees are limited on **total** earnings in a calendar year.
- The combined retirement allowance and total earnings in either **public or private sector employment** cannot exceed the regular compensation payable to such member had he or she continued in service in the grade held at retirement plus \$15,000.
- Superannuation retirees **are not** limited in their earnings in the private sector.

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NOTES:



Section 91A - Statement of Earned Income

- Form must be filed yearly, on or before April 15.
- Certifies the full amount of **a member's earnings from earned income** during the preceding year.
- Must submit all pertinent tax documents with the Form.
- Where a Board is issuing a multi-year retroactive award of accidental disability retirement benefits to a member, the member must complete this Form for each year in which they are receiving a retroactive retirement benefit.

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Section 91A - "Earnings from Earned Income"

- 840 CMR 10.16(4)
- "The term 'earnings from earned income' as used in G.L. c. 32, § 91A shall mean income that implies **some labor, management or supervision in the production thereof**, not income derived from ownership of property....

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NOTES:



Section 91A - "Earnings from Earned Income" (Cont'd)

- ...For purposes of G.L. c. 32, § 91A, if an individual operates a business for profit, individually or through an agent, that individual does not have the option of classifying such income as dividends as opposed to wages. Profits derived from the operation of a business through some labor, management or supervision of such profits are earned income, regardless of how a retiree categorized such income for income tax or other purposes." (Emphasis added.)



Section 91A - Statement of Earned Income Waiver

- The Commission may waive the requirement of filing if the member:
 - has been retired for more than 20 years;
 - has had no earnings for the prior 10 years; and
 - signs a waiver "under the penalties of perjury" that they will notify the Commission should they start earning income (and begin submitting Statement again).

NOTES:



Section 91A – Termination of Retirement Allowance

- If a retiree fails to submit the required Statement of Earned Income and pertinent tax forms, that retiree's retirement allowance is **terminated**.
- Upon compliance with the required submission, the retirement board may resume the retirement benefit.
- Such retiree is not entitled to a retroactive payment (benefit was terminated, rather than suspended).
- Termination may impact a retiree's health insurance.

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Section 91A – Termination Process

- Prior to any termination or reduction of benefits under Section 91A, the retirement board must:
 - Provide the retiree with written notice and an opportunity to be heard by the board; and
 - Upon such termination or reduction of benefits, the retiree shall have the right to appeal to CRAB.
- Termination of a retirement allowance under 91A shall be considered effective as of the date that such Statement was due.
- If a retirement allowance was paid during any period when the retirees' right to a retirement allowance was terminated, the retiree must refund such retirement allowance to the retirement board.

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NOTES:



Fraud Prevention Unit

- Chapter 427 of the Acts of 1996 established the creation of a Pension Fraud Unit within PERAC.
 - Manager is Sandra King – sandra.e.king@mass.gov
- The Unit is required to administer the 91A process and collect the Annual Statements of Earned Income for disabled retirees.
- The Unit is charged with the prevention and investigation of fraudulent disability pension claims and payments.
- Fraud Hotline: (800) 445-3266 and email pensionfraud@mass.gov

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Private Sector Employment

- Disability retirees are subject to earnings limitations **regardless** of where they work.
- Superannuation retirees do not have limits for working in the private sector.
- BUT, if a member is employed in the private sector and their duties consist of providing direct service to the Commonwealth, they will be subject to the limitations of Section 91(b).

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NOTES:



Domestic Relations Orders ("DROs")

- Pursuant to a DRO, an ex-spouse receives a percentage or amount of a retiree's retirement allowance.
- The ex-spouse is paid directly from the retirement board as the "alternate payee."
- The retiree's earning restriction is based on the **entirety of the retirement allowance**, even though a portion of that retirement allowance is paid to the ex-spouse.

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Options for Working After Retirement

- Retirees can work within the limitations of Section 91 and Section 91A (disability retirees).
 - Superannuation retirees can work in the private sector without restriction.
- Waiver pursuant to G.L.c. 32, § 90B.
- Reinstatement under G.L. c. 32, § 105.
- Retirees can work in certain positions specifically exempted from the limitations of G.L. c. 32, § 91.

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NOTES:



Section 90B - Waiver of Retirement Allowance

- "Any person retired from the service of the commonwealth, or any of its political subdivisions, under any provision of any general or special law or any person claiming under any such retired employee whether as beneficiary, dependent or otherwise, may waive and renounce for himself, his heirs and legal representatives any portion of the pension or retirement allowance payable to him from the commonwealth, or any of its political subdivisions, for such period as he may specify in such waiver and renunciation. Such person may, in lieu of specifying an exact period of time in such waiver and renunciation, include a provision that such shall remain in effect until further notice."

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Section 90B - Waiver of Retirement Allowance (Cont'd)

- Retirees can temporarily stop taking their pensions while working and start receiving them again once they stop working.
- Retirees cannot waive their pensions on an annual basis.
- Whether or not retirees are able to maintain their health insurance while on waiver status with the retirement board is within the retirement board's discretion.

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NOTES:



Section 105 – Reinstatement

- Requirements
 - Must repay all retirement benefits received (plus buyback interest).
 - Must work for **5 years full-time** after reinstatement.
 - Must submit a signed Reinstatement to Service Form.
- The repayment can be made in a lump-sum or in installments to the system, however said system determines.
- Retirees can start work as soon as a payment arrangement is made.

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Section 105 – Reinstatement (Cont'd)

- The time worked while making repayments will count towards a new retirement allowance calculation.
- Repayment must be completed before retirees are eligible for a new retirement allowance calculation.
- If a retiree works less than five years, they will just re-retire with their previous benefit and receive a refund of their payments.
- Once the retiree reaches the 5-year service requirement, they may apply to retire with the system in which their employer is under, at any time thereafter.

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NOTES:



COVID-19 Legislation

- Pursuant to Chapter 80 of the Acts of 2022, the hours and earnings restrictions for superannuation retirees was waived for calendar year 2022, or a significant portion thereof.
- The waiver remains in effect until December 31, 2022, or up to 90 days following the end of the Public Health Emergency.
- This waiver **does not apply** to disability retirees.
- See PERAC Memorandum # 16 of 2022.

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Conclusion

- For retirees wishing to work in the public sector after retirement, it is important that they monitor their hours **AND** earnings.
- Disability retirees are subject to additional limitations on their post-retirement employment, so it is important that they monitor all their earnings and provide PERAC with all necessary documentation each year.
- Superannuation retirees have been able to work unrestricted and will continue to be able to do so until **December 31, 2022** (or up to 90 days after the end of the Public Health Emergency).

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NOTES:



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Questions??



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