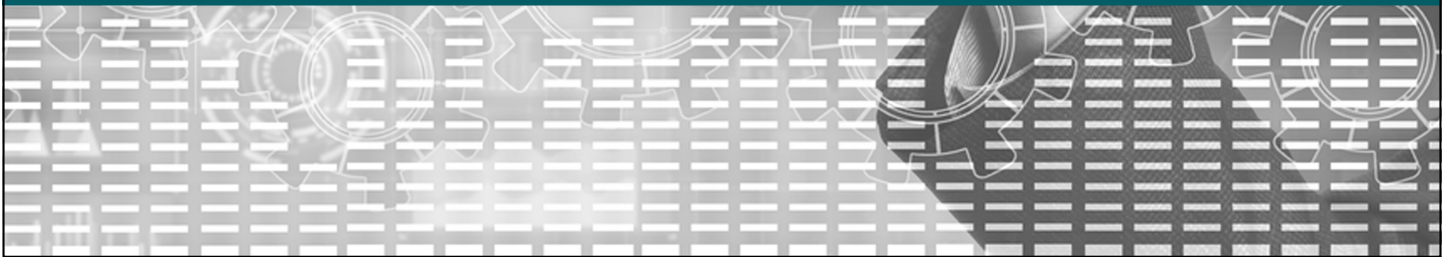




Working After Retirement

Patrick Charles | Senior Associate General Counselor | PERAC

June 20, 2019



Introduction

- ❖ Chapter 32 of Massachusetts General Laws contains several statutes that pertain to public retirees working after retirement.
- ❖ 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.
- ❖ We will discuss those limitations, as well as other post-retirement issues.

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Why Are Post-Retirement Earnings Monitored?

- ❖ It's been a public policy since 1913.
- ❖ Chapter 657 of the Acts and Resolves prohibited any public employment by a public retiree, except to serve as a juror.
- ❖ Remained an absolute restriction until 1938, when only lower-pensioned teachers, jurors and elected officials were exempted.
- ❖ More than 80 years later and approximately 50 subsequent legislative Acts, G.L. Chapter 32, Section 91 is what it is today. More recently, particularly as it relates to pension reform, the law has relaxed the amount of earnings, while broadening the scope of those subject to its provisions.

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NOTES:

Chapter 657 of the Acts of 1913

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ACTS, 1913. — CHAPS. 657, 658.

Chap. 657 AN ACT RELATIVE TO SERVICES RENDERED BY PENSIONERS OR ANNUITANTS TO A MUNICIPALITY OR COUNTY.

Be it enacted, etc., as follows:

Pensioners of cities, etc., not to be paid for services rendered.

SECTION 1. No person who now or hereafter receives a pension or an annuity from any city or town or any county shall be paid for any service, except service as a juror, rendered by him to said city, town or county after the date of the first payment of such pension or annuity.

SECTION 2. This act shall take effect upon its passage.
Approved May 16, 1913.

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Section 91(a)

“No person while receiving a pension, disability pension or retirement allowance from the commonwealth or any county, city, town or 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.)

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NOTES:

Section 91(a) Earnings Exceptions

- ❖ Jury Service
- ❖ Service as a Judge (under certain provisions)
- ❖ Service in an Emergency Pursuant to Sections 68, 69 or 83 (which is only applicable to police retired under Section 83 ... so it applies to no one)
- ❖ Some Elected Officials
 - Requires one year gap if retired from same elected position
- ❖ Service During a Declared Emergency
 - Vacancy must exist, no one comparable is available, limited to one year (except as to doctors and nurses), and pension benefit is offset
- ❖ Certain State Government Appointments (must waive pension)
- ❖ For service on a PERAC medical panel
- ❖ Service as an election officer

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Section 91(b)'s Introduction

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

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NOTES:

Section 91(b) (Part 1)

- (b) In addition to and notwithstanding the foregoing provisions of this section or similar provisions of any special law, any person who has been retired and who is receiving a pension or retirement allowance, under the provisions of this chapter or any other general or special law, from the commonwealth, county, city, town, district or authority, or any person whose employment, in the service of the commonwealth, county, city, town, district or authority, has been terminated, under the provisions of this chapter or any other general or special law, by reason of having attained an age specified in said general or special law or by the rules and regulations of any department or agency of the commonwealth, county, city, town, district or authority without being entitled to any pension or retirement allowance, may, subject to all laws, rules and regulations, governing the employment of persons in the commonwealth, county, city, town, district or authority, 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 for not more than nine hundred and sixty hours in the aggregate, in any calendar year...

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Section 91(b) (Part 2)

- ❖ ...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; 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:

What Does That Mean?

- ❖ Employment of any public sector retiree for a governmental unit is limited.
- ❖ Such employment is limited by hours and compensation.
- ❖ No public retiree may work more than 960 hours for a governmental unit in a calendar year.
- ❖ 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 a certain amount of time has passed).

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“... in the service of...”

- ❖ Retiree receiving a retirement allowance may be employed “in the service of” a Massachusetts governmental unit.
- ❖ Including as a consultant or independent contractor.
- ❖ Or as a person whose regular duties require that his time be devoted “to the service” of a Massachusetts governmental unit.

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NOTES:

Not Necessarily “Employed by”

- ❖ If you are paid by a private company but are performing a service for a Massachusetts governmental unit, Section 91(b) applies.
- ❖ If you are paid by a grant but are performing a service for a Massachusetts governmental unit, Section 91(b) applies.
- ❖ Fact that your employer is not a member of a Chapter 32 system does not matter.
 - *Khan v. State Bd. of Ret.*, CR-14-524 (2/28/18) (under appeal)
 - *Pellegrino v. Springfield Pkg. Auth.*, 69 Mass. App. Ct. 94 (2007)
- ❖ Focus on who receives the service, not on who cuts the check.

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2009 Amendment Regarding Consultants & Independent Contractors

- ❖ Broadened definition of a public employee under Section 91(b) to specifically include consultants and independent contractors.
- ❖ What if you retired prior to 2009? Are consultants and independent contractors who retired prior to 2009 exempt from Section 91(b)?
 - **No.** It also applies to everyone who retired prior to enactment of the statutory language in 2009.
 - *Plymouth Ret. Bd. v. CRAB and Others (“Daley”)*, 17-P-23 (Appeals Court) (Rule 1:28 Decision) (Feb. 16, 2018)

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NOTES:

960 Hours Restriction

- ❖ A retiree performing a service for a Massachusetts governmental unit cannot work for more than 960 hours in the aggregate, in any calendar year.
- ❖ Not pro-rated in first year.
- ❖ The 960 hours is for hours paid, not necessarily hours worked.
 - Example: Retired police officer works a detail for 2 hours but is paid for a minimum of 4 hours. In that scenario, 4 hours counts toward the 960.

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Calculation for 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.
- ❖ Public policy is to base it upon the salary a retiree's pension is based upon.
 - Some reasons why it cannot always be based upon "the salary that is being paid for the position from which he was retired:"
 - The position has been dissolved.
 - The replacement earns significantly less because they are less qualified or experienced.
 - The retiree was only working part-time when he or she retired.

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NOTES:

Plus \$15,000

- ❖ Retirees permitted to earn an additional \$15,000 per year over the retirement allowance and earnings limit.
- ❖ However, the additional \$15,000 will not be permitted until **at least** one calendar year following retirement.
 - Example: If you retired in June of 2018, the additional \$15,000 is not permitted until January of 2020.

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Tool and Reference for Post-Retirement Earnings

- ❖ PERAC Home Page contains a Retirement Earnings Worksheet with Instructions.
- ❖ It automatically calculates potential earnings, with the addition of \$15,000, based upon the applicable retirement date.
- ❖ See PERAC Memo #28/2012 (for Section 5 and Section 10 retirees only).

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NOTES:

Section 91(c)

- ❖ Retirees employed in the service of a Massachusetts governmental unit must certify to their employer the number of hours worked and earnings therefrom.
- ❖ If the number of hours exceeds 960, 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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Recovery of Excess Earnings

- ❖ The statute says that the employer can bring an action in contract to recoup excess earnings, but such actions are permitted administratively through the Contributory Retirement Appeal Board (“CRAB”).
- ❖ Employer can recoup such excess earnings, but if they do not, the Board has implicit authority to pursue such excess earnings.
 - *Flanagan v. CRAB and SRB*, 51 Mass. App. Ct. 862 (2001)

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NOTES:

One Issue Still Undecided

- ❖ May a retirement board take more than the member's retirement allowance when there are excess earnings?
 - Statute appears to say yes.
 - *Daley* suggests otherwise:
 - Affirmed CRAB decision that the retirement board may collect from Mr. Daley only his retirement allowance for the years he overearned, and not the amount he overearned (this decision is binding only on the parties, but the Appeals Court did leave open the possibility that this is the doctrine going forward).
 - The Appeals Court or the SJC likely will have to decide this issue in a future case.

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Section 91(e)

- ❖ Upon a "critical shortage" of certified teachers, a school district may employ as a teacher a retired teacher.
- ❖ In the first 2 years immediately following retirement, the earnings plus the retirement allowance cannot exceed the salary paid for the teacher position from which he or she retired.
- ❖ After retired for two years, there is no such limitation.

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NOTES:

Section 91A (Part 1)

- ❖ **Section 91A.** 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. Such pensioned or retired person shall annually submit to the commission all pertinent W2 forms, 1099 forms, other requested tax forms and proof of income, and any other documentation requested by the commission; provided, however, that the commission may waive such filing by a member, if said member shall have been retired for more than 20 years, has not reported any earnings for the prior 10 years and signs an affidavit under the pains and penalties of perjury indicating that should the member realize any earned income in the future the member will forthwith notify the commission of that fact and again report under this section. Said forms and information shall be submitted on or before April fifteenth of each year...

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Section 91A (Part 2)

- ❖ ...If such pensioned or retired person fails to submit such statement or such forms, and unless such person shall show good cause for such failure to submit such statements to the commission, the member's rights in and to the retirement allowance provided for in section six and seven shall terminate until the member has complied with his reporting requirements under this section. 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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NOTES:

Section 91A (Part 3)

- ❖ ...Prior to any termination or reduction of benefits pursuant to this section, the member shall be given a written notice and an opportunity to be heard by the retirement board and, upon such termination or reduction of benefits, shall have the right to appeal such action to the contributory retirement appeal board. A member shall not be entitled to recover a retirement allowance for any period during which the member's rights in and to his retirement allowance were terminated for failure to submit a statement to the commission under this section. After written notice and opportunity to be heard by the board, termination of a member's rights in and to a retirement allowance for failure to submit a statement to the commission shall be considered by the board to be effective as of the date that such statement was due to be submitted to the board. If a retirement allowance was paid to a member for any period during which such member's rights in and to a retirement allowance were terminated for failure to submit a statement to the commission, such member shall refund the portion of his retirement allowance attributable to such period.

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Section 91A Limits on Disabled Retirees

- ❖ In addition to limits on public employment, disabled 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.

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NOTES:

Section 91A

Statement of Earned Income

- ❖ Every year, disability retirees must submit, on or before April 15, a Statement of Earned Income certifying the **full amount of his or her earnings from earned income** during the preceding year.
- ❖ The disabled retiree must include all pertinent W-2 forms, 1099 forms and other requested tax forms.

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Section 91A

Waiver of Statement of Earned Income

- ❖ A retiree may obtain a waiver from having to file the Statement of Earned Income, if:
 - He or she has been retired for more than 20 years;
 - Has not reported any prior earnings for the last 10 years; and
 - Signs an affidavit stating that should he or she realize any earned income in the future he or she will notify PERAC and again report.

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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 (because the benefit was terminated, rather than suspended).
- ❖ Termination may impact a retiree's health insurance.

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Section 91A

Retirees' Rights Prior to Termination

- ❖ 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.

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NOTES:

Section 91A

Board's Right to Recover

- ❖ 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 to the retiree during any period when his or her rights to a retirement allowance were terminated under this section, the retiree must refund such retirement allowance to the retirement board.

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Fraud Prevention Unit

- ❖ Chapter 427 of the Acts of 1996 established the creation of a Pension Fraud Unit within PERAC.
- ❖ The Manager of the Pension Fraud Unit is Sandra King.
- ❖ 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. The Unit is responsible for data collection relating to all disability retirees, including earnings and other tax statements, registry information, criminal offender record information, retirement board records and other relevant information.
- ❖ The Unit maintains a hotline telephone number to be used to report suspected cases of fraudulent pension payments. The number is **(800) 445-3266**. Referrals may also be emailed to **PensionFraud@per.state.ma.us**.

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NOTES:

The 91A Process — January Through May

JANUARY:

- Address changes and other status changes are collected from all retirement boards

FEBRUARY:

- Updated information is received from members

MARCH:

- Printer mails 91A Statements of Earned Income to all disability members (approx. 15,800)
- 91A Statements are received by PERAC, and scanned and processed in Wage Match system
- Incomplete letters are mailed on a daily basis (approx. 1,500 each year)

APRIL:

- April 15th is the filing deadline for 91A Statements
- Incomplete letters continue to be mailed on a daily basis

MAY:

- 91A processing and recording of filings completed
- Notice of Termination letters are mailed to members who have not complied with the 91A filing (approx. 1,200 members each year)

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The 91A Process — June Through August

JUNE:

- Boards notify retirees of PERAC determination of their termination status and right to a hearing before the Board
- Regular compensation requests are mailed to the boards, to determine excess earnings
- Letters seeking salary information are mailed to 120 state agencies (approx.)

JULY:

- CORI Match
- DOR Match
- Verified data is entered into Wage Match

AUGUST:

- Excess earnings letters are mailed to members and boards (approx. 175 each year)
- Affidavits are mailed to members who have been found by PERAC to be eligible for a waiver

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NOTES:

The 91A Process – September Through December

SEPTEMBER:

- Cases set aside for further review are reviewed and researched
- Investigations by contracted licensed private investigators are scheduled

OCTOBER:

- IRS extension deadline
- Termination letters are sent to members who have still not complied

NOVEMBER:

- Cases set aside for further review are reviewed and researched

DECEMBER:

- Memos requesting data updates for the new year are sent to all boards

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Section 90B Waiver of Pension or Retirement Allowance

- ❖ Any person retired under Chapter 32 may waive and renounce any portion of the pension or retirement allowance payable to him or her.
- ❖ The waiver may specify the period of time the retiree wishes to waive, or it may remain in place “until further notice.”

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NOTES:

Section 90B Waiver

- ❖ A retiree may waive his or her retirement allowance.
- ❖ A retiree is not permitted to waive it every year as he or she nears the hours or earnings threshold.
- ❖ If a retiree receives a retirement allowance during a calendar year, they remain limited to working only 960 hours.
- ❖ Many boards permit a retiree to utilize a small portion of a retiree's allowance to cover health insurance premiums.

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Domestic Relations Orders

- ❖ 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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NOTES:

Option A vs. B vs. C

- ❖ Option A receives the highest retirement allowance, while Option C receives the lowest.
- ❖ Earnings restriction is based upon the retirement allowance received by the member under whichever option they have selected.
- ❖ So someone receiving an Option C benefit can earn more than someone receiving an Option A benefit.

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Conclusion

- ❖ For retirees working in the public sector after retirement, it is important that they monitor their hours and earnings.
- ❖ For disability retirees, it is important that they monitor all of their earnings, and that they provide PERAC with any and all necessary documentation.

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NOTES:

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COMMONWEALTH OF MASSACHUSETTS

Public Employee Retirement Administration Commission

Five Middlesex Avenue, Suite 304 | Somerville, MA 02145

Phone: 617-666-4446 | Fax: 617-628-4002

TTY: 617-591-8917 | Web: www.mass.gov/perac

