

# MACRS



**“ONCE A MEMBER,  
ALWAYS A MEMBER”**



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MACRS 2017 SPRING CONFERENCE LEGAL PANEL

## Membership, Everlasting

Section 3(1)(ii)(c) proudly proclaims that  
*“A member shall retain his membership in the system so long as he is living and entitled to any present or potential benefit therein.”*

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## “Once a Member, Always a Member”

- **PERA and PERAC’s traditional view:** Once a person becomes a member of a system, only death or termination of employment coupled with a withdrawal of funds ends membership.
- **What can’t happen:** Members falling in and out of membership while they remain employed because they fall below a retirement board’s initial membership criteria.

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### NOTES:

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## 3 Familiar Concepts & One New Vocabulary Word

### The concepts:

1. Membership
2. Regular Compensation
3. Creditable Service

### The new word:

- Non-full-time employee

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## Non-Full-Time Employees

- More familiarly known to us as employment which is:
  - Part-time
  - Provisional
  - Temporary
  - Temporary provisional
  - Seasonal **OR**
  - Intermittent

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## ***Stoneham Retirement Board v. CRAB, 476 Mass. 130 (2016)***

- **Crucial Information:** For the time period in question, the Stoneham Retirement Board (“SRB”) had promulgated a rule regarding eligibility in the system which provided that a person was eligible for membership in the system **if he or she was scheduled to work more than 30 hours per week for a period of 7 days.**

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## **The Underlying Facts of This Case**

- Employee = Christine DeFelice (“DeFelice”)
- Part-time employee in school department
- Worked 19½ hours per week from November 2000 to June 2009, and did not gain membership from this position because it was under 30 hours.
- April 2001: Held a second job with Stoneham to fill a temporary vacancy, and the second job lasted nine weeks.
- Second job boosted her hours from 19½ hours per week to over 30 hours per week.

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## More Facts

- In 2009, DeFelice sought retroactive membership in the system based on the nine-week period in 2001.
- In August of 2010, the SRB, after an initial denial, granted her membership for the nine-week period only.
- Her request to have her membership extend through the time she remained a part-time employee was denied.
- The legal appeal followed.



## Supreme Judicial Court Question No. 1

The Supreme Judicial Court (“SJC”) answered two legal questions in this case:

1. Whether a municipal retirement board possesses absolute discretion to terminate a part-time employee’s membership in a retirement system to which that board has granted the employee membership?

**SJC Answer:** No.

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## Supreme Judicial Court Question No. 2

2. Even if such a board does not have the power to terminate a part-time employee’s membership, does a “separation from service” under G.L. c. 32, Section 3(1)(a)(i) occur when a part-time employee working two jobs for the same municipal employer ceases to work only one of those jobs?

**SJC Answer:** No.

## G.L. c. 32, Section 3(2)(d)

- The retirement boards are given much authority and discretion with regard to “non-full-time employees” and their initial membership, but that authority and discretion does not extend to terminating their membership while they remain employed.

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## G.L. c. 32, Section 3(1)(a)(i)

- The term “service” is defined broadly by Chapter 32, and makes no distinction between full-time and part-time service.
- Following her departure from the position she held for a nine-week period during the 2000-2001 school year, DeFelice remained “in service” at the school department in a non-full-time capacity for at least 8 more years.
- No “prior separation from service” had occurred and the statutory requirements for terminating membership were not met.

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## Correction of Errors

- Very few retirement boards implemented the approach of the SRB. For those that did, errors must be corrected under G.L. c. 32, Section 20(5)(c) when discovered, and so the Boards in question must:
  - Reinstatement membership of members wrongly unenrolled under this rejected approach, both presently and retroactively **and**
  - Grant creditable service for the time the members were wrongly excluded, after make up payments are received from such members.

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## “A Low Threshold”

- The SJC stated that the SRB had “established a low threshold for membership in its retirement system.”
- Boards may wish to have a “high threshold” when deciding upon initial membership qualifications for their systems.

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## Two Takeaways

1. It’s important to have in place supplemental regulations regarding initial membership.
2. It is equally important to have in place supplemental regulations regarding the pro-ration of creditable service for non-full-time employees who qualify for membership.

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## Conclusion

- A person once made a member will always remain a member, so long as they remain continuously employed.
- Please see the SJC case, and PERAC Memorandum #8/2017, for further information.

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**COMMONWEALTH OF MASSACHUSETTS**

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