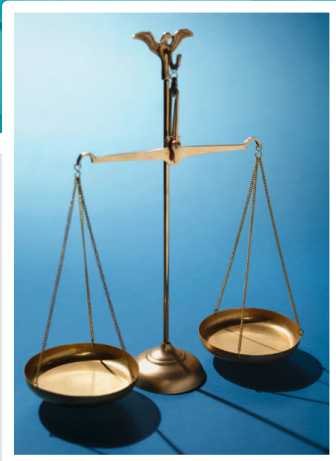


MACRS



CHAPTER 133 OF THE ACTS OF 2016

Pension Forfeiture Commission



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June 6, 2017

MACRS 2017 SPRING CONFERENCE LEGAL PANEL

Section 151 of Chapter 133 of the Acts of 2016

- There shall be a special commission on pension forfeiture to review the decision of the Supreme Judicial Court in Public Employee Retirement Administration Commission v. Edward A. Bettencourt, 474 Mass. 60 (2016). The commission shall consist of: the executive director of the public employee retirement administration commission or a designee who shall serve as chair; the house and senate chairs of the joint committee on public service; 2 members of the senate, 1 of whom shall be appointed by the minority leader; 2 members of the house of representatives, 1 of whom shall be appointed by the minority leader; the attorney general or a designee; the state treasurer or a designee; 1 person who shall be appointed by the Massachusetts District Attorneys Association; 1 person who shall be appointed by the Retired State, County & Municipal Employees Association of Massachusetts; and the president of the Massachusetts Association of Contributory Retirement Systems or a designee. The special commission shall make recommendations, including proposed amendments to section 15 of chapter 32 of the General Laws. The special commission shall file its recommendations, including any proposed legislation, with the clerks of the Senate and House of Representatives not later than May 1, 2017.

2

PERAC v. Bettencourt, 474 Mass. 60 (2016)

- Bettencourt was a Lieutenant in the Peabody Police Department who was convicted of 21 counts of “Unauthorized Access to a Computer System”.
- Sentence: Fined \$10,500 (\$500 per count), no jail time
- Found to have violated the laws applicable to his position and was subject to pension forfeiture under G.L. c. 32, s. 15(4).

3

NOTES:

Bettencourt (Continued)

- Bettencourt argued that the forfeiture of his pension, valued at \$659,000, was an excessive fine and a violation of the 8th Amendment to the United States Constitution.

4

8th Amendment to the U.S. Constitution

- Ratified in 1791
- “Excessive Bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted”
- 1st time used to halt a forfeiture was in 1998 in United States v. Bajakajian, 524 U.S. 321.

5

NOTES:

Pension Forfeiture = Fine

- The Supreme Judicial Court (“SJC”) of Massachusetts determined that the forfeiture of Bettencourt’s pension constituted a fine and a punishment, as it only happened following a conviction, and further that in Bettencourt’s case the fine was excessive.
- Bettencourt got to receive his pension in full.
- SJC suggested legislature could amend Section 15.

6

Chapter 32, Section 15(4) (as now appearing)

- (4) *Forfeiture of pension upon misconduct.* In no event shall any member after final conviction of a criminal offense involving violation of the laws applicable to his office or position, be entitled to receive a retirement allowance under the provisions of section one to twenty-eight, inclusive, nor shall any beneficiary be entitled to receive any benefits under such provisions on account of such member. The said member or his beneficiary shall receive, unless otherwise prohibited by law, a return of his accumulated total deductions; provided, however, that the rate of regular interest for the purpose of calculating accumulated total deductions shall be zero.

7

NOTES:

Pension Forfeiture in MA

- Currently forfeiture is an all or nothing proposition.
- Retirement boards must determine whether a member was convicted of a criminal offense related to the member's office or position.
- The Board has no discretion and if they answer yes then the member's benefit must be forfeited.

8

How Do Other States Handle Forfeiture?

- The Commission researched over 25 different state forfeiture laws.
- Focused on other Non-Social Security states.
- 6 Non-Social Security states (Alaska, Louisiana, Maine, Nevada, Ohio and Massachusetts).
- Some states participate in Social Security for State Employees but not Teachers.
- The focus was on states like Massachusetts with no Social Security.

9

NOTES:

Misdemeanor v. Felony

- Massachusetts is one of the only states that allows for forfeiture of a pension for the conviction of misdemeanors and is the only Non-Social Security state that does so.
- Many states specify which crimes trigger forfeiture but Massachusetts uses a broad standard (convicted of a criminal offense involving violation of the laws applicable to his office or position).

10

Who Is Impacted By Forfeiture?

- Member
- Spouse
- Beneficiary (dependent child)
- In Massachusetts retiree health insurance is tied to being a retired member of a MA pension system.
- If pension is forfeited the member is excluded from membership in the pension system and not eligible for retiree health insurance.

11

NOTES:

Partial Forfeiture

- Massachusetts is currently an all or nothing state.
- Other states allow for partial forfeiture, ie.,
 - Forfeit service to date of conviction
 - Forfeit an amount equal to or a multiple of monetary value of offense
- Some states forfeit the member’s allowance but allow an “innocent” beneficiary to receive all or part of the retirement allowance.

12

Commission Recommendations

- Redraft of Section 15 in its entirety
- Only felony convictions result in forfeiture
- Partial forfeiture for members with 10 or more years of service
- Members with less than 10 years of service as of date of conviction get a return of deductions with no interest
- Option C pop up available for beneficiary
- Appeal directly to Superior Court
- All forfeited members prohibited from being a member of a retirement system in the future
- Restitution may be made from accumulated deductions

13

NOTES:

What Would Trigger Forfeiture?

- Felony convictions for crimes involving laws applicable to position or crimes committed in the course of employment.
- Specific crimes:
 - Primary job responsibility involves contact with children:
 - Child pornography, sexually violent offense against minor or involving a child who member has contact with as part of their job duties.

14

Forfeiture Amount Member With 10 or More Years of Service

- Forfeiture of 1/3rd , 2/3rd of allowance or to a minimum allowance.
- Minimum allowance = benefit member would receive if they retired at minimum age for group 1 with 10 years of service but no less than what would be paid as the annuity portion of a full retirement allowance.

15

NOTES:

How Does Board Determine Amount?

- Severity of the crime, including actual sentence, maximum sentence;
- Amount of monetary loss and/or financial gain to member;
- Degree of public trust in member's position;
- Role of member in fraudulent scheme;
- Recommendation of prosecuting AAG or DA;
- Any other factor board determines justice requires.

16

What About Beneficiaries?

- Board must determine “innocent” beneficiary.
- If member selects Option C at time of retirement then the reduced amount determined by forfeiture is paid to the member.
- Upon member's death Option C beneficiary will receive full Option C benefit that would have been paid had forfeiture not occurred.

17

NOTES:

Less Than 10 Years Of Service

- If a member has less than 10 years of service as of the date of conviction they will be forfeited and receive a return of accumulated deductions with zero interest.
- They will also be prohibited from being a member of a retirement system again.

18

Appeals

- Any person aggrieved by a forfeiture decision shall appeal to Superior Court.
- No more appeals to CRAB and/or District Court.

19

NOTES:

Restitution

- If the member has misappropriated funds of their employer then restitution may be made using all or a portion of the accumulated total deductions on account with the retirement System.
- If restitution is made then upon retirement the annuity portion of a retirement allowance will be reduced to reflect the restitution.

20

Summary

- The Commission held its final meeting on May 11, 2017 and voted to submit a written report and draft legislation to the Legislature.
- Report was submitted on May 18, 2017 and will be given a bill number and hopefully the Legislature will hold a public hearing on the draft legislation.

21

NOTES:

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