



PERAC HITS THE ROAD — NORTHAMPTON | HYANNIS | DANVERS

BOARD ADMINISTRATOR TRAINING

# Regular (and Irregular?) Compensation



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PERAC Board Administrator Training 2017

11/14/17



## Pension Reform

- Chapter 21 of the Acts of 2009
  - “An Act Providing Responsible Reforms in the Pension System”
  - June 16, 2009



## Chapter 32, Section 1

- “Regular Compensation”
  - ...during any period subsequent to June 30, 2009, “shall be compensation received exclusively as **wages** by an employee for **services performed** in the course of employment for his employer.” (Emphases added).

### NOTES:

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## Chapter 32, Section 1

- **“Wages”**
  - “... the base salary or **other base compensation** of an employee for employment by an employer...” (Emphasis added).



## 840 CMR 15.03(3)

- PERAC’s regulation defining “regular compensation”
  - Effective on May 28, 2010
  - Concerns payments made after July 1, 2009
- Helps define “other base compensation”
  - “...pre-determined, non-discretionary, guaranteed payments paid by the employer to similarly situated employees...”

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## 840 CMR 15.03(3)(b)

- “Wages” shall include payments made by the employer to the employee because of:
  - the character of the work
  - the employee’s length of service
  - the time at which the work takes place
  - educational incentives, and
  - payments for certification and licensing



## 840 CMR 15.03(3)(f)

- “Wages” shall not include:
  - Overtime
  - Bonuses (other than COLAs)
  - Payments received via salary enhancement or augmentation plans
  - Indirect, in-kind or other payments for such items as housing, lodging, travel, clothing allowances
  - 1-time lump sum payments in lieu of or for unused vacation or sick leave
  - Severance payments

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## PERAC Memoranda

- PERAC Memo #24/2009
- PERAC Memo #24/2010
- PERAC Memo #33/2011
- PERAC Memo #39/2012



## PERAC Memorandum #24/2009

- Post-Chapter 21 of the Acts of 2009
- Purpose: Outline the provisions of the bill, its impact, and the effective dates of the various sections.
- Issued on June 22, 2009.

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## PERAC Memo #24/2009 (Continued)

- Chapter 21 limits regular compensation to “wages” and, with a few exceptions, defines wages as base salary.
- Incidental or one-time payments that are not regular and recurring are not regular compensation.
- Specifically excludes certain payments, including: “...overtime, commissions, bonuses other than cost of living bonuses, amounts derived from salary enhancements or salary augmentation plans which will recur for a limited or definite term, indirect, in-kind or other payments for such items as housing, lodging, travel, clothing allowances, annuities, welfare benefits, lump sum buyouts for workers’ compensation, job-related expense payments, automobile usage, insurance premiums, dependent care assistance, one-time lump sum payments in lieu of unused vacation or sick leave or the payment for termination, severance, dismissal, or any amounts paid as premiums for working holidays...”
  - Two exceptions to those exclusions: (1) premiums for police officers and firefighters for working holidays, and (2) payments to teachers for additional services related to a school lunch program or athletics.



## PERAC Memorandum #24/2010

- Issued on June 17, 2010, following enactment of 840 CMR 15.03 on May 28, 2010
- In determining whether payments on or after July 1, 2009 are “regular compensation” for purposes of Chapter 32, Retirement Boards must consider whether the payments are:
  - base salary or other base compensation of an employee paid to that employee for employment by an employer including pre-determined, non-discretionary, guaranteed payments paid by the employer to similarly situated employees;
  - because of the character of the work (an example could be hazardous duty pay);
  - because of the employee’s length of service (an example could be longevity payments);
  - because of the time at which the work takes place as a condition of employment in a particular position (an example could be night differential pay);
  - because of educational incentives, and payments for holding the training, certification, licensing or other educational incentives approved by the employer for the performance of services related to the position the employee holds; and,
  - payments made by the employer to the employee calculated as a percentage of base pay.
- After considering these factors, the payments must be compared with the specific exclusions contained in G.L. c. 32, § 1 and 840 CMR 15.03(3).
- Noted the recent decision in O’Brien v. CRAB, 76 Mass. App. Ct. 901 (2010), wherein the Appeals Court concluded that a “uniform allowance” was not regular compensation because it was not intended to compensate the employee for his service.
  - The uniform was a “tool” that was required to be used.

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## PERAC Memo #24/2010 (Continued)

- CBAs in effect on May 1, 2009
  - Payments that meet the previous definition of “regular compensation” shall continue to be regular compensation during the term of the CBA.
  - Regardless of the length of the CBA, all payments made after June 30, 2012 will be assessed under the new definition of regular compensation.



## PERAC Memorandum #33/2011

- Issued to “follow up on recent legislative and judicial changes in regard to regular compensation.”
- To determine what constitutes, and what does not constitute, regular compensation on or after July 1, 2009, one must look to the following:
  - Massachusetts General Laws Chapter 32, Section 1, (as amended by Chapter 21 of the Acts of 2009);
  - 840 CMR 15.03 (as amended on May 28, 2010);
  - Pelonzi v. Retirement Board of Beverly, 451 Mass. 475 (2008) (car allowance was not regular compensation); and
  - O’Brien v. CRAB, 76 Mass. App. Ct. 901 (2010) (uniform allowance was not regular compensation).

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## Memo #33/2011 (Continued)

- **What are some characteristics of payments which may be includable in regular compensation?**
  - base salary or other base compensation
  - payment for services performed
  - pre-determined, non-discretionary, guaranteed payments
  - paid to similarly situated employees
  - payment for the character of the work
  - payment for an employee's length of service
  - payment for the time at which work takes place
  - educational incentives
  - payments for holding certification, licensing, training
  - payments made as a percentage of base pay



## Memo #33/2011 (Continued)

- **What is excluded from regular compensation by statute, regulation and case law?**
  - overtime
  - commissions
  - bonuses, other than cost of living bonuses
  - amounts derived from salary enhancements or salary augmentation plans
  - indirect, in-kind or other payments for such items as housing or lodging, travel, clothing allowances, annuities
  - welfare benefits
  - lump sum buyouts for workers' compensation
  - job-related expense payments
  - automobile usage
  - insurance premiums
  - dependent care assistance
  - 1-time lump sum payments in lieu of or for unused vacation or sick leave
  - payment for termination, severance, dismissal
  - any amounts payable as premiums for working holidays (certain employees excepted)
  - early retirement incentives
  - any other payment made as a result of the employer having knowledge of the member's retirement
  - tuition
  - payments in kind
  - all payments other than payment received by an individual from his employing unit for services rendered to such employing unit, regardless of taxability

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## Memo #33/2011 (Continued)

**What must be considered in determining whether or not a payment will be included in a person’s regular compensation?**

- When questions arise regarding whether something should be included in regular compensation or not, retirement boards should consider:
  - Is the payment one which meets one of the criteria of regular compensation?
  - Is the payment for service provided to the employer by the employee?
  - Is the payment part of the base salary of the employee?
  - Is the payment included in the base compensation of the employee, meaning it is paid on an annual basis, even though it does not become part of the base salary?
  - Is the payment excluded by either the statutory or regulatory definition of regular compensation or by the case law?
  - Is the payment for services or for a tool supplied to the employee for the employer’s convenience?



## Memo #33/2011 (Continued)

- If a payment is included in base salary, is that payment automatically considered regular compensation?
  - As a preliminary matter, it is important to note that the employer and employee do not get to announce that a given payment is regular compensation. The determination of whether a payment is regular compensation resides with the statute, the regulations and the case law.
  - That being said, the inclusion of a payment in base salary does not necessarily mean that that payment should be included in regular compensation for retirement purposes. A retirement board should first look at whether a payment meets one of the criteria of regular compensation. After the board determines that a payment could fit those criteria, then the inquiry becomes whether that payment has been explicitly excluded by the statute, the regulations or case law.

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## Memo #33/2011 (Continued)

- **Must payments be included in the base salary in order to become part of regular compensation? For example, if a hazardous duty stipend is paid annually, is that regular compensation although it does not become part of the base salary?**
  - Wages are defined in G.L. c. 32, § 1 as “the base salary or other base compensation of an employee paid to that employee for employment by an employer...” There is a difference between “base salary” and “base compensation” or there would have been no need for the Legislature to include both terms. It follows then that a payment could be “base compensation” and regular compensation without being rolled into the “base salary” year after year.
  - As to the question above, a hazardous pay stipend could be regular compensation (“the character of the work” see 840 CMR 15.03 (3) (b)). Then an analysis must be conducted as to whether or not it should be excluded from regular compensation. One time payments, or payments in the nature of a bonus, must be excluded from regular compensation. In the example given above, the payment is paid annually. Therefore, it would be considered regular compensation even though it does not become part of the base salary.



## Memo #33/2011 (Continued)

- **A library worker works 30 hours a week, but occasionally works 4 to 6 hours beyond that in a week. Are those 4 to 6 hours excludable from regular compensation?**
  - One of the enduring characteristics of regular compensation is predictability, and the new regulation in effect for the time period of July 1, 2009 onward reflects this predictably concept with the terms “base salary,” “base compensation” and “pre-determined, non-discretionary, guaranteed payments.”
  - The new regulation (and statute) specifically exclude “amounts derived from salary enhancements or salary augmentation plans which will recur for a limited or definite term.” Although a person working a couple of extra hours now and then is not a salary augmentation plan, the principle remains the same. The resulting pay increase would be a payment of a limited term, a payment which is not a part of the person’s regular pay, and so should be excluded from regular compensation.

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## Memo #33/2011 (Continued)

- **Why are items such as a car allowance or a name tag allowance no longer includable in regular compensation?**
  - On February 18, 2010, the Appeals Court of Massachusetts issued a decision in the case of O'Brien, supra. Expanding on certain language in the Supreme Judicial Court case of Pelonzi, supra, the O'Brien Court explained that tools provided by an employer to an employee as a convenience for the employer should not be considered regular compensation. At issue in O'Brien was a clothing allowance, and at issue in Pelonzi was the personal use value of an employer-supplied car.
  - The definition of regular compensation being keyed to services of an employee provided to an employer, the question of whether a payment is for a service or a tool must be answered in conducting an analysis of whether a given payment qualifies as regular compensation. This analysis extends to any payment which may be a “tool” supplied to an employee for the employer’s convenience.



## Memo #33/2011 (Continued)

- **When Is “Standby” Pay Includable In Regular Compensation?**
  - Some examples may prove useful.
  - In “Office A” someone must be on standby each weekend. Four people work in Office A, and all four people rotate this duty, each of them being on standby every fourth weekend.
  - In “Office B” each employee must be on standby once every three weeks.
  - In “Office C” each employee is required to be on standby every other Saturday.
  - In each case, if a situation arises in their office when they are on standby, they must be prepared to address such a situation. In order to be alerted as conditions arise, they carry a beeper, and must curtail their activities in certain respects, i.e., not leaving the city limits.
  - In each instance above, the pay received for standby services would be regular compensation because the employee is performing a service to the employer. The payments are pre-determined, non-discretionary and guaranteed, in addition to being paid to similarly situated employees.

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# PERAC Memorandum #39/2012

“Regular Compensation Status Of Payments Made In Lieu Of Taking Vacation Leave”

### Threshold Requirements

- The payments must either be part of the base salary of the employee or “other base compensation of the employee”. Payments cannot be found to be “other base compensation” if a payment is of only limited duration or if the payments lack predictability.
- The payments must be for services performed. A retirement board would have to find that working in lieu of taking vacation is a “service performed”.

### Further Criteria

- Payments for unused vacation leave are not excluded by statute, regulation or case law.
- Such payments are not ‘1 time’ because they have been made year after year.
- Such payments have not been made primarily in the last three years or for any other period of limited duration such that they could be considered ‘salary enhancements or salary augmentation plans which will recur for a limited or definite term...’
- If an individual elects to participate in a buyback program, he or she must do so in a consistent manner from year to year and in conformity with the legal restrictions of salary augmentation contained in the statute and regulations.
- Participation in such a plan is available to all similarly situated employees.
- Such payments were actually earned during the 12 month period for which such purchase is authorized.
- Such a payment has not been made as a result of giving notice of retirement.
- Payments must only be made pursuant to an official written policy of the employer, a collective bargaining agreement, or an individual employment contract that allows an employee to receive compensation in lieu of vacation time.
- Payments must be in a reasonable amount which would not cause a substantial burden on the retirement system.
- If such payments are deemed to be regular compensation, anti-spiking provisions would apply in the calculation of retirement benefits.



## Recent Cases

- *Fair v. Middlesex County Ret. Bd.*, CR-15-294 (CRAB) (Nov. 18, 2016)
- *O’Leary v. Lexington Ret. Bd.*, CR-15-30 (DALA) (Oct. 6, 2016)
- *Dewey v. Mass. Teachers Ret. Bd.*, CR-11-596 (CRAB) (Dec. 21, 2016)
- *Kelleher v. Barnstable County Ret. Bd.*, Barnstable County Superior Court, 1672-CV-00174 (Feb. 17, 2017)
- *Fletcher & Thornton v. PERAC*, CR-11-118 (CRAB) (March 31, 2016)

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## ***Fair v. Middlesex County R.B.***

- CBA permitted employee to sell back two weeks of unused sick time
- Employee sold it back every year prior to retirement
  - Do those payments constitute “regular compensation?”
- **In a nutshell:** Payments received for unused sick time do not constitute “regular compensation,” regardless of what is contained within CBA. Such payments are similar to overtime payments, and are not regular and recurrent. CRAB commented - but did not rule - that the same would apply to payments made in lieu of taking vacation days.
- No further appeal.



## ***O’Leary v. Lexington R.B., & PERAC***

- CBA permitted certain police officers to sell back unused vacation time.
- **In a nutshell:** Payments made in lieu of taking vacation days did not constitute “other base compensation” as they needed to be elected every year. The payments were also effectively overtime payments and, in this situation, appeared to be salary enhancements as the option was only available to officers with 20 or more years of service.
- Appeal currently pending before CRAB.

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## Dewey v. Mass. Teachers Ret. Bd.

- Contract provided \$8,000 annual “longevity payment”
  - 840 CMR 15.03(3)(b): “wages shall include payments made by the employer to the employee...because of the employee’s length of service...” (Emphasis added).
  - However, no evidence that this “longevity payment” was tied to his length of service, or that his employer had any such plan in place.
- **In a nutshell:** Calling something a “longevity payment” does not automatically qualify the payment as regular compensation. The longevity payment in this case was actually a bonus.
- No further appeal.



## Kelleher v. Barnstable County Ret. Bd., & PERAC

- Attendance at HazMat training sessions was mandatory and regularly scheduled:
  - Are the payments received “regular compensation?”
- **In a nutshell:** Payments made to a HazMat team member for his attendance at mandatory training sessions was not regular compensation, because it constituted overtime as it was in addition to his payment for his regular hours for that pay cycle.
- No further appeal.

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## *Fletcher & Thornton v. PERAC*

- Due to budget shortfall, police officers agreed to defer salary increases.
  - However, retiring officers would get the salary increases prior to retirement.
  - Did the increases constitute “regular compensation?”
- **In a nutshell:** A payment that is contingent upon retirement, no matter how it is described, is excluded from “regular compensation.”
- No further appeal.



## PERAC Opinion Letters

- PERAC has opined on numerous regular compensation related issues, including:
  - Settlement Agreements
  - Board Supplemental Regulations
  - Licenses and Certificates
  - Similarly Situated Employees
  - On-Call Duty Payments
  - Payments For Non-Membership Eligible Positions
  - Health Incentive Payments
  - Contingent Payments
  - Indirect, In-Kind or Other Payments
  - Salary Enhancements or Augmentations
  - Services Performed

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## Settlement Agreements

- Dispute between member and employer
- Settlement agreement provides for compensation to be paid to member
- Settlement agreement must be structured to make the person whole for lost salary and benefits, including pension credit
- General lump sum awards are not regular compensation



## Settlement Agreements

- Settlement negotiations ongoing, board asked:
  - If amount is paid in lump-sum, can the parties identify the time periods the payment is meant to cover for pension purposes?
    - Yes. It is immaterial that the member did not perform his or her duties because the settlement is the result of the member being improperly denied the opportunity.
  - If payments are made in the form of front pay (periods beyond the settlement) can deductions be taken so it remains pension eligible?
    - No. Such a payment would not be for services performed in the course of employment for his or her employer.

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## Board Supplemental Regulation

- A board cannot draft a regulation limiting the scope of “regular compensation.”
- Example: A board proposed a supplemental regulation excluding from regular compensation all payments for unused vacation time.
  - PERAC rejected it: Memo #39/2012 states that a retirement board must conduct an analysis to determine whether such payments constitute regular compensation, and it should be done on a “case by case” basis.



## Payments for Licenses and Certificates

- Collective bargaining agreement stipends:
  - “license to carry stipend”
  - “breathalyzer certificate stipend”
- 840 CMR 15.03(3)(b): “wages... shall include payments made by the employer to the employee... *for holding the training, certification, licensing or other educational incentives...*” (Emphasis added).
- Stipends are paid to members who qualify for and maintain those licenses/certificates, so the stipends are regular compensation.

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## Payments for Licenses and Certificates (Continued)

- Incentive payment to certain workers to obtain licenses so they can perform duties outside their job description:
  - Not required to have a license to do current job; and
  - Incentive payment will terminate upon promotion to a job requiring the license.
- **Not** regular compensation: The licenses are not necessary to those workers for the performance of their present job:
  - 840 CMR 15.03(3)(b): “wages...shall include payments... for holding the training, certification, licensing... *for the performance of services related to the position the employee holds...*” (Emphasis added).



## Payments for Licenses and Certificates (Continued)

- Collective Bargaining Agreement:
  - Operators hired prior to 10/1/2016 *may voluntarily* obtain a license.
  - Operators hired after 10/1/2016 are *required* to obtain a license.
- Regular compensation for both groups:
  - Payment for holding a license for the performance of services for the employer.
  - Program was available to all similarly situated employees.

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## Similarly Situated Employees

- CBA provides for a stipend for increased duties and responsibilities for city inspectors.
- However, only the incumbent inspectors (specified by name) were eligible for the stipend.
- 840 CMR 15.03(3)(b): “wages shall mean the base salary or other base compensation of an employee paid to that employee for employment by an employer including pre-determined, *non-discretionary*, guaranteed payments paid by the employer to *similarly situated employees...*” (Emphases added).
- Not regular compensation because it was discretionary and not available to all similarly situated employees.



## On-Call Duty

- CBA provided that similarly situated employees would be compensated for being “on-call duty.”
- Constitutes a payment for services performed for the employer; regardless of whether the employee actually is required to report to work while on-call duty, he or she is performing a service for the employer by being available.
- All similarly situated employees must participate in the on-call rotation.

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## Payments For Non-Membership Eligible Positions

- Situation where a member takes on a second position with the same employer and the second position is less than 20 hours per week and/or pays less than \$5,000 annually.
- On its own, this second position would not entitle the employee for membership and no retirement contributions would be withheld.
  - Are the payments for the work in the second position regular compensation?
- Yes. The fact that the second position is filled by a member changes the status of the compensation received in that position to regular compensation.
  - The member is performing a service to the employer, and is entitled to and subject to all the rights and responsibilities of membership.
  - Would include a member who also earns a \$3,000 stipend as a member of a retirement board.



## Health Incentive Pay

- CBA provides for payment of \$10 per week to police officers who meet weight/height standards or body fat standards: Is it regular compensation?
- No. This is a bonus, which is specifically excluded from the definition of wages.
- Also, it is not “pre-determined, non-discretionary” or “guaranteed” because the officer may qualify for it some times, and then not qualify for it other times.

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## Contingent Payments

- Town inspector was paid exclusively in relation to the number of inspections he conducted:
  - He received a portion of the fee charged for the inspection.
- Payments were not pre-determined, non-discretionary or guaranteed as required by 840 CMR 15.03(3)(b), so they weren't regular compensation.
- Supplemental regulation: "...full-time creditable service will be given to all inspectors... *if they qualify for membership.*" (Emphasis added).
  - PERAC determined he did not qualify for membership, because he did not earn regular compensation.
- Board refunded almost 10 years of contributions, with interest.
- Similar case involved a sheriff paid in relation to the number of process servings he performed.



## Indirect, In-Kind Or Other Payments

- Upon receipt of a superannuation retirement application, the board reviewed the member's employment agreement:
  - \$10,000 paid in lieu of automobile usage; and
  - \$3,500 paid in lieu of life insurance premiums.
- Member argued - and employer agreed - that those provisions should have been removed from the language of the contract, and that the \$13,500 was really part of base salary.
- Have to rely on the plain language in the contract:
  - Such payments clearly excluded: "wages shall not include... indirect, in-kind or other payments for such items as...automobile usage, insurance premiums..." (840 CMR 15.03(3)(f)).

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## Salary Enhancement or Augmentation

- Union contract for a three-year period, where members get a 1.5% salary increase, and a one-time lump sum of 1.5% (goal being a 3% raise).
- The 1.5% lump sum appears to be part of base salary, but it also appears to run afoul of 840 CMR 15.03(3)(f):
  - “wages shall not include... amounts derived from salary enhancements or salary augmentation plans *which will recur for a limited or definite term...*” (Emphasis added).
  - Here, the contract specified that it was only for a three-year term.



## Services Performed

- Clause in CBA between town and police union permits the police department to annually drug test up to 25% of the police officers.
- In exchange, the police officers are paid a \$400 yearly stipend.
- Is the stipend regular compensation? No.
  - PERAC declined to view the mere possibility (no more than a 25% chance) of providing a urine sample for a drug test during a sixty-day period a “job duty.”
  - Because the stipend is not “for services performed” it is not regular compensation.

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## Services Performed *(Continued)*

- Deputy Chief of Police agrees to perform day-to-day administrative functions.
- Given \$4,000, paid out bi-weekly.
- Regular compensation:
  - Compensation for services performed for his employer.
  - Pre-determined, non-discretionary and guaranteed.
- PERAC cautioned: Depending on his age and intent to retire, possible that he may trip the anti-spiking provisions of Section 18 of Chapter 176 of the Acts of 2011.
  - Section 18 would not apply if the Board determines the increase was the result of either an increase in hours of employment or from a bona fide change in position.



## Conclusion

- Neither the employer nor the employee determines whether a payment is regular compensation.
  - That determination resides with the statute, the regulation, and case law.
- PERAC Memoranda are available to assist retirement boards with analyzing whether a payment is or is not regular compensation.
  - PERAC staff is available to assist retirement board members and staff with any questions that may arise.

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## 840 CMR 15.03(3)

- (3) During any period of active service subsequent to July 1, 2009 the term “Regular Compensation”, as defined by M.G.L. c.32, § 1, shall be determined subject to the following:
  - (a) to be considered regular compensation, any compensation to an employee must be compensation received exclusively as wages by an employee for services performed in the course of employment for his employer.
  - (b) “wages” shall mean the base salary or other base compensation of an employee paid to that employee for employment by an employer including pre-determined, non-discretionary, guaranteed payments paid by the employer to similarly situated employees, provided, that “wages” shall include payments made by the employer to the employee because of the character of the work, because of the employee’s length of service, because of the time at which the work takes place as a condition of employment in a particular position, because of educational incentives, and payments for holding the training, certification, licensing or other educational incentives approved by the employer for the performance of services related to the position the employee holds and payments made by the employer to the employee calculated as a percentage of base pay;
  - (c) Any amount, benefit or payment included in the definition of “regular compensation” by law or by regulation prior to July 1, 2009 and included in any applicable collective bargaining agreement or individual contract for employment in effect on May 1, 2009, shall continue to be included in the definition of “regular compensation” during the term of that collective bargaining agreement or contract; provided, however, that any such amount, benefit or payment received after the term of said collective bargaining agreement or contract ends or after June 30, 2012, as the case may be, shall continue to be considered regular compensation unless such payment does not meet the criteria set forth in 840 CMR 15.03 (3) (b) or is excluded by the provision of 840 CMR 15.03 (3) (f);



## 840 CMR 15.03(3) (Continued)

- (d) Regular compensation shall include any part of the wages derived from federal grants except as provided in M.G.L. c. 32 § 3(2)(a)(xi);
- (e) Lump-sum retroactive payments which would have been wages if paid in the periods in which the services remunerated thereby were actually rendered will be allocated to said periods rather than being entirely attributed to the time of receipt for the purpose of determining a member’s regular compensation;
- (f) “wages” shall not include, without limitation, overtime, commissions, bonuses other than cost-of-living bonuses, amounts derived from salary enhancements or salary augmentation plans which will recur for a limited or definite term, indirect, in-kind or other payments for such items as housing, lodging, travel, clothing allowances, annuities, welfare benefits, lump sum buyouts for workers’ compensation, job-related expense payments, automobile usage, insurance premiums, dependent care assistance, 1-time lump sum payments in lieu of or for unused vacation or sick leave or the payment for termination, severance, dismissal or any amounts paid as premiums for working holidays, except in the case of police officers, firefighters and employees of a municipal department who are employed as fire alarm signal operators or signal maintenance repairmen money paid for holidays shall be regarded as regular compensation, amounts paid as early retirement incentives or any other payment made as a result of the employer having knowledge of the member’s retirement, tuition, payments in kind and all payments other than payment received by an individual from his employing unit for services rendered to such employing unit, regardless of federal taxability; provided further, that notwithstanding the foregoing, in the case of a teacher employed in a public day school who is a member of the teachers’ retirement system, salary payable under the terms of an annual contract for additional services in such school and compensation for services rendered by a teacher in connection with a school lunch program or for services in connection with a program of instruction of physical education and athletic contests as authorized by section 47 of chapter 71 shall be regarded as “regular compensation” rather than as bonus or overtime and shall be included in the salary on which deductions are to be paid to the annuity savings fund of the teachers’ retirement system.

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**COMMONWEALTH OF MASSACHUSETTS**

**Public Employee Retirement Administration Commission**

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