



Vernava Implementation: Slide 17
Questions Which Have
Already Arisen



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The following includes responses to phone and email inquiries to PERAC as well as questions which have resulted in technical advisories being issued in the wake of the *Vernava* decision.

Chapter 41, Section 111F

Will payments made to public safety employees pursuant to G.L. c. 41, Section 111F be impacted by this decision?

PERAC's Response: The *Vernava* decision does not impact the regular compensation status of these payments. The SJC decision is limited to payments received as a supplement to Workers' Compensation. Firefighters and police officers do not receive Workers' Compensation. Further, Section 111F provides:

All amounts payable under this section shall be paid at the same times and in the same manner as, and for all purposes shall be deemed to be, the regular compensation of such police officer or fire fighter.

The Legislature has specifically and unequivocally made Section 111F benefits regular compensation.

Collective Bargaining Agreements

When employers pay the members' full salary, pursuant to their CBA, less Workers' Compensation benefits (i.e., paid leave), are these payments now excluded from "regular compensation?"

PERAC's Response: Yes, if the member retires under the provisions of G.L. c. 32, Section 7. This is so because, in this example, we understand members sign over their Workers' Compensation to the employer periodically. In signing the Workers' Compensation benefits over to the employer, a member is effectively rendering the leave they are being paid "supplemental" to such payments.

Establishment of Retirement Date

Footnote 3 states that the interpretation of regular compensation in the Vernava decision is “limited to the receipt of supplemental pay in connection with workers’ compensation benefits, for the purpose of determining an employee’s effective date of retirement under G.L. c. 32, Section 7.” So should we be refunding contributions only when a person retires for the same injury for which they receive Workers’ Compensation?

PERAC’s Response: No. The implementation of the *Vernava* decision should be distinguished from the offset provisions of G.L. c. 32, Section 14. A member’s disability allowance must be offset when he or she is also receiving Workers’ Compensation “by reason of the same injury.” The *Vernava* decision involves the regular compensation status of certain payments. Although it is true that a member injured in multiple ways and on Workers’ Compensation multiple times throughout his or her career might end up having regular compensation excluded for a period involving an injury on account of which they do not retire, further limiting this decision to accidental disability retirees who retire for the same injury for which the accidental disability retirement allowance is granted would be impractical and unwieldy.

The “Estimate” Question

We would like to think we would have the discretion not to execute ‘hypothetical’ requests from accidental disability retirees who want to know the impact of applying Vernava before formally making the request.

PERAC’s Response: The *Vernava* case applies to all accidental disability retirees retired from January 1, 1946 to the present. It is not practical for a retirement board to use time and resources to identify such a large group of people, some of whom, along with their beneficiaries, must be deceased. That being said, once a member of that group has self-identified the Board must proceed with that recalculation. It would not be practicable to do recalculations for retirees, and then have them reject such calculations as not being beneficial to them.

Longevity Payments

We have a member who is on Workers' Compensation and periodically receives a longevity payment. Should that longevity payment be considered regular compensation?

PERAC's Response: Yes. The SJC decided that all payments made to supplement Workers' Compensation must be excluded from regular compensation. However, a longevity payment is not a supplement to Workers' Compensation. It would be received regardless of whether the member was on Workers' Compensation or not. The member's receipt of a longevity payment has no connection to his or her receipt of a Workers' Compensation payment.

Memorandum #12 of 2018

In Memorandum # 12 of 2018, PERAC told us to have payroll stop making deductions from all payments which were supplemental to Workers' Compensation. Now you're telling us to restart the contributions? Should we follow Memo # 12 or Memo # 17?

PERAC's Response: You should follow Memorandum #17. Memorandum #17 explicitly supersedes Memorandum #12.

In the wake of the *Vernava* decision, PERAC and many attorneys representing various retirement boards advised the retirement boards that deductions should not be taken from any payments which were made as a supplement to Workers' Compensation. However, thereafter PERAC concluded that Footnote 3 in the *Vernava* decision limited the scope of this determination to those retiring for accidental disability retirement only. As soon as a reasonable approach to implementing the Footnote 3 restriction was found, PERAC issued Memorandum #17.

Other Supplemental Payments

Has PERAC considered the situation where a member on [Workers' Compensation], supplemented by sick or vacation pay, is also receiving some other [form] of regular comp., i.e. longevity payment, educational differential, etc. Would we be still be refunding sick/vacation [deductions]?

PERAC's Response: The sick and vacation time payments received by the member would still not be includable in regular compensation, pursuant to the *Vernava* decision, if the person retires under Section 7. Refunds would still have to be made on such payments, regardless of whether or not those payments were made in conjunction with some other form of payment not excluded as regular compensation by the *Vernava* decision.

Personal Days

An issue has arisen regarding the use of personal days. For the purposes of determining the effective date of retirement under Section 7, are personal days considered to be a subspecies of vacation leave and therefore not regular compensation?

PERAC's Response: Yes, personal days used to supplement the payment of Workers' Compensation will not be regular compensation if the member ultimately retires for accidental disability retirement. Any payment used to supplement Workers' Compensation will be excluded from regular compensation pursuant to *Vernava*, with the only exception involving payments which would not be used to supplement but would be paid regardless of whether Workers' Compensation is received.

Recalculating the Benefit

An accidental disability retiree has contacted the Board about the Vernava case. What steps should we take in recalculating his benefit?

- 1) Determine the new date of last regular compensation.
- 2) Determine new retirement date.
- 3) Refund deductions taken after new retirement date.
Adjust for interest to new retirement date.
- 4) New allowance calculation will use the lower ASF balance, resulting in a lower annuity.
- 5) Determine the salary to be used (rate on date of injury unchanged, but average annual rate for last 12 months will likely be lower).
- 6) Run new calculation (if salary now lower, allowance will be lower).
- 7) Calculate new pension amount after offset and remember that new annuity will be lower.
- 8) Adjust dependent allowance too (if necessary.)
- 9) Add COLAs based on new retirement date to get allowance as of today.

Returning to Service Under G.L. c. 32, Section 8

How should we handle the situation where a retiree returns to service under the provisions of Section 8?

PERAC's Response: This is a situation which will rarely arise. When it does, please consult PERAC's Actuarial Unit. One thing to remember is, when this situation does arise, any deductions refunded to a member pursuant to the *Vernava* case would need to be repaid to the Board after a Section 8 reinstatement.

Section 91A

Has PERAC given any thought to 91A cases that may be impacted by this?

PERAC's Response: Any accidental disability retiree who has their retirement allowance recalculated will be subject to the provisions of Section 91A.

Self-Identification

If an ADR retiree requests the Board to provide an estimate for a recalculated retirement allowance, citing Vernava, will that self-identified retiree have the option to decline the recalculated allowance?

PERAC's Response: The *Vernava* decision applies to all accidental disability retirees who have retired under G.L. c. 32, Section 7, since its insertion into the statute. We instructed in Memorandum #17/2018 that a Board could allow members to “self-identify” because of the impracticability of locating this large class of people, many of whom, it must be presumed, have already died. However, if a retiree has self-identified, they cannot decline the recalculated allowance, as the law applies to them. They will thus have no option to “accept” or “decline” the new calculation.

Special Acts

The Town of X has special legislation, which provides that its employees who are out on Workers' Compensation be paid up to the full amount of their regular salaries or wages during the period of time such employees are incapacitated. This is not vacation or sick time. Should it be treated the same as payments from sick or vacation leave?

PERAC's Response: All payments made to supplement an employee's receipt of Workers' Compensation, regardless of whether they are taken from the accrued sick or vacation leave of the employee must be excluded from regular compensation if a person eventually retires pursuant to G.L. c. 32, Section 7.

State Police

Will members of the State Police be impacted by this decision?

PERAC's Response: Members of the State Police will not be impacted by the *Vernava* decision. This is for two reasons:

- 1) Their accidental disability benefits are governed by G.L. c. 32, Section 26, not Section 7 and
- 2) They don't receive Workers' Compensation pursuant to the provisions of Chapter 152.

Superannuation Pending ADR Approval

How do we calculate the benefit for someone who is on superannuation pending ADR approval?

- 1) Determine retirement date under the ADR
- 2) Determine ASF balance as of the ADR DOR – refund deductions as per *Vernava* and adjust the annual interest accordingly
 - a) if ADR DOR BEFORE Super DOR – also adjust the interest to new DOR
 - b) if ADR DOR AFTER Super DOR – reduce the ASF balance by annuity payments received under Super
- 3) Determine new salary to be used (annual rate on DOI or average annual rate for last 12 months)
- 4) Run new calculation – use the revised ASF Balance to determine the annuity
 - c) NOTE: 75% limit may apply even if hired before 1988 (may not be continuously a MIS since 1988)
- 5) ADR benefit may be subject to WC offset / Super wouldn't be subject to offset
- 6) Add COLAs based on ADR DOR to get the allowance as of today
- 7) The ADR payments would be offset by the moneys paid under Super

(Pretend the super benefit is not happening and calculate the disability in their normal way- it's only when determining the retro payment/amount owed that the super enters the picture. The important things to remember would be 1) the regular comp status of the sick/vacation time will change, 2) the super is not subject to the w/c offset, and 3) the member can choose different options for the two benefits.)

Survivors

Given the facts of the case and the language of the memo, would the case apply to survivors of disability retirees?

PERAC's Response: Yes, in those cases where a survivor's benefit is based upon an ADR benefit granted under Section 7, the survivor's allowance will also necessarily be impacted.

Typical Result of Recalculation

Is there a typical result of recalculating a person's accidental disability retirement allowance as a result of Vernava?

PERAC's Response: There is not. This recalculation will depend upon a variety of factors, including, but not limited to how long a person has been retired, what date the Workers' Compensation offset would be effective, whether there was a pay raise between the two possible dates of retirement, and how much money will be refunded to the member (and so removed from the annuity account, and the member's annuity payment.)

There is also no typical result for an accidental disability retiree who was out on superannuation.

Conclusion

- This concludes the questions PERAC has received as of 5/31/2018 on *Vernava* implementation.

- Further calculation questions should be directed to PERAC's Actuarial Unit.
- Further general questions should be directed to PERAC's Legal Unit.
- Thank for your attention to this presentation.

