

The Commonwealth of Massachusetts
Public Employee Retirement Administration Commission
John W. McCormack Building, Room 1101
One Ashburton Place Boston, MA 02108
(617) 727-9380

MEMORANDUM

TO: All Retirement Boards

FROM: Robert F. Stalnaker, Executive Director

RE: Contribution Rates of Members

DATE: August 26, 1997

It has come to our attention that there have been numerous cases where employers have provided retirement boards with incorrect contribution rates for members employed in their units. The purpose of this memo is to request that Board staff verify employer records to insure that the contribution rates of members match the rate in effect on the date of the members' enrollment in the retirement system. Just as a reminder Boards are advised that contribution rates must be based upon the date that a member enrolled in the retirement system as set out below. The legal basis for contribution rate requirements are set out on the attached pages for your reference.

Employees who enrolled as members prior to January 1, 1975 must contribute 5 percent of their regular compensation;

Employees who enrolled as members on or after January 1, 1975 but prior to January 1, 1984 must contribute 7 percent;

Employees who enrolled as members on or after January 1, 1984 but prior to July 1, 1996 must contribute 8 percent;

Employees who enrolled as members on or after July 1, 1996 must contribute 9 percent, and;

Employees appointed to the state police and who enrolled as members on or after July 1, 1996 must contribute 12 percent.

MEMORANDUM - Page Two

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This is a process that should be ongoing as new employees are hired and enrolled in the system. Thank you for your prompt action on this request.

Legal Basis For Contribution Rate Requirements

In McIntire v. CRAB, 417 Mass. 35 (1994) the Supreme Judicial Court held that the date of enrollment in the retirement system and not the date of commencement of employment determines a member's contribution rate. Some boards may have been relying on a November 8, 1974 letter from the Division of Insurance in allowing members who had been employed prior to January 1, 1975 (the date the contribution rate increased from 5% to 7%) but who were precluded from joining the retirement system to contribute at the 5% rate when subsequently enrolled. However, the Division of Administrative Law Appeals (DALA) has specifically held that the McIntire decision "negates" the Division of Insurance's holding in that November 8, 1974 letter. In Martin v. Brockton Retirement Board, CR-93-408 (Decision dated July 15, 1994) a DALA Magistrate concluded, consistent with McIntire, that "it is the date of entry into the contributory retirement system, not the date of commencement of employment, that determines the rate of employee contribution to the retirement system." CRAB affirmed DALA's Decision in Martin by Decision dated February 3, 1995. Numerous other decisions of DALA and CRAB hold that where a member or members have been contributing at an lesser rate than required the board must correct such error and require make-up payments from such members. The members cannot be required to pay interest on the underpayments but must make-up the difference. Likewise, where a member has been contributing at a rate greater than that which he or she should be contributing, the overpayment must be refunded to the member.

There are very few exceptions to this rule. PERAC has previously opined that "if a person was eligible for membership and should have been enrolled as a member of the system but was not so enrolled due to an administrative oversight or error, the individual would be allowed to contribute at the rate that was in effect when he or she should have been enrolled as a member." In this circumstance we have also said that the member would be required to pay into the system an amount equal to the amount that he or she would have contributed had membership commenced when the individual was first eligible before being eligible to contribute at the lower rate.

MEMORANDUM - Page Three

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G.L. c. 32, § 3(2)(d) gives the retirement boards jurisdiction to determine eligibility for membership in the following cases:

In all cases involving part-time, provisional, temporary, temporary provisional, seasonal or intermittent employment or service of any employee in any governmental unit...the board shall have and exercise full jurisdiction to determine such employee's eligibility for membership...

Based on the foregoing, if a board enrolled certain employees in a specific job category (e.g., reserve police officers), a consistent application of its policies would require that all employees in that category be enrolled in the system. If certain employees were enrolled but others were not, those that were not could legitimately claim that they were improperly excluded and should be entitled to the contribution rate in effect at the time of their hire. If a board excluded all employees in a certain job category or who worked less than a specified number of hours per week, employees in that position who are subsequently enrolled as members could not claim entitlement to the contribution rate in effect at their time of hire.

Also, if a member left active service, took a refund of his or her contributions, returned to active service within two years of his or her prior separation from service and was required to make a make-up payment pursuant to G.L. c. 32, § 3(6)(c), he or she would be allowed to contribute at the rate that was in effect during his or her earlier period of membership service. However, the requirement that persons who return within two years buy back prior service was repealed as of January 4, 1983. Persons who re-enter active service after that date would not be entitled to the earlier contribution rate.

Other than these limited exceptions, members must contribute at the rate in effect at the time they are enrolled in the retirement system even if they buy back prior service. We trust that the foregoing helps to clarify this issue for Boards. If you have any questions or concerns, please contact this office.

RFS/ds

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