

**MASSACHUSETTS**  
Public Employee Retirement Administration Commission  
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MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Guidelines for Civil Service or Court-Ordered Settlements

DATE: April 30, 2001

Enclosed, please find guidelines to assist boards in determining the regular compensation and creditable service which should be credited to a member who has received payments because of a Civil Service or court-ordered settlement.

In situations where a member is granted back pay as a result of a wrongful termination or the failure of an employer to restore a member to employment, that member may be entitled to have such pay included for retirement purposes. These guidelines spell out the steps that retirement boards must use in order to determine if and to what extent such a member is entitled to creditable service and to have any back pay considered as regular compensation. These guidelines are only intended to provide technical assistance to the boards and are not an endorsement of any such settlements.

We trust the foregoing is of assistance. If you have further questions or concerns, please contact this office.

## Guidelines for dealing with Civil Service Commission or Court approved back pay awards

In cases where a member of a retirement system has been improperly terminated or where the employer improperly refused to restore the member to service, a back pay award may be made. Usually these orders provide that the member is reinstated without loss of benefits. The following are steps to be taken by the Retirement Board in evaluating these cases:

1. Determine the exact period that the back pay award covers. This is important for granting creditable service and for evaluating whether, and to what extent, the member mitigated the damages owed.
2. Determine the amount of regular compensation that the member would have received had he or she not been improperly terminated or had he or she been restored to service when he or she should have been. The parties must demonstrate to the Board how the amount was arrived at and supply documentation. An example of appropriate documentation would be written documentation of the amount of regular compensation that a person holding an identical position received.
3. Determine the amount of earnings that the member had during the period of the back pay award. If the member had no earnings or was not fully employed, the order should reflect the amount that the member would have earned had he or she made reasonable and diligent efforts to be employed up to his or her working capacity. The actual or calculated earnings would have been used to reduce the amount of the back pay that the member will be paid. The back pay award is likely to be a taxable event, so the member may wish to seek advice from a tax professional.
4. If the member received a retirement allowance of any sort during the period of the back pay award, it must be repaid to the Retirement System by the member. The member may direct the employer to pay this amount directly to the Retirement Board, but this would not affect the status of the payment as being regular compensation.
5. Retirement contributions would be paid to the retirement system on the full amount of regular compensation that the member would have received at the appropriate contribution rate.

Example:

1. The period of the back pay award is stated in the award or otherwise determined as being from January 1, 1998 to December 31, 2000. This period would reflect three years of creditable service.
2. The regular compensation that the member would have received during this period would have been \$105,000 (\$30,000 in 1998, \$35,000 in 1999 and \$40,000 in 1999).
3. The member's earnings (actual or calculated) for purposes of mitigation are \$30,000 (\$10,000 per year for the period of the award).
4. The member received a disability retirement allowance during the period of the back pay award in the total amount of \$45,000.

The member receives a back pay award in the amount of \$75,000. This amount reflects the amount of regular compensation that he or she would have received if not for the wrongful termination or failure to reinstate reduced by the actual or calculated earnings. This amount is treated as regular compensation unless the documents establish that any portion of the payment does not meet the definition contained in G.L. c. 32, § 1. Because this amount is regular compensation, the appropriate state and federal taxes would be withheld, so a W-2 Form would be indicative of the status of the payment. Retirement contributions would be made on \$105,000 at the appropriate rate. The member could choose to repay any retirement allowance from this amount, but such a payment would not affect the status of the payment as compensation.

The member would receive creditable service for the period of the back pay award. If any portion of this service is used in calculating a retirement allowance pursuant to G.L. c. 32, § 5 or § 10, the **rate** of regular compensation, not the amount of compensation received, would be used in the calculation of the allowance. In the above example, the average annual rate of compensation for the three year period would be \$35,000.