



Memorandum # 20/2004

Commonwealth of Massachusetts | Public Employee Retirement Administration Commission
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MEMORANDUM

TO: All Governmental Units

FROM: Joseph E. Connarton, Executive Director

RE: Post-Retirement Earnings Limitations in G.L. c. 32, § 91

DATE: May 19, 2004

All government units who employ public retirees must consider the impact of G.L. c. 32, § 91 on those employees. As you may know, § 91 limits the earnings of all retirees, superannuation and disability, who work in the public sector after retirement. The public sector is broadly defined as the Commonwealth and its political subdivisions, including cities, towns, authorities, districts and the like.

This section of the law limits a member who is receiving a retirement allowance to 960 hours of employment within the public sector in any calendar year. In addition, the salary for such public sector employment when added to the member's retirement allowance cannot exceed the salary that is currently being paid for the position from which the member retired. A person who has retired for superannuation (as opposed to a disability retiree) can be employed in the private sector or in the public sector in another state without limitation. Disability retirees' employment is also limited by the provisions of G.L. c. 32, § 91A.

It is important to note that retirees and the Treasurers of units hiring retirees have primary responsibility for assuring compliance with G.L. c. 32, § 91. Treasurers should devise a system, with the assistance of such employees, to assure that both the hour and earnings limitations are followed. Employers should consult with retirement boards as needed to assure the statute is being properly applied.

It is important to keep in mind:

- § 91 applies to both superannuation and disability retirees.
- § 91 applies to any public employment, regardless of whether or not it occurs in the same governmental unit from which the employee retired.
- It is irrelevant whether an employee-retiree chooses to classify him or herself as a "consultant" or "independent contractor" – the § 91 earnings limitations still apply.
- A retiree may not avoid the limitations in § 91 by forming a company if the primary reason for the formation is to avoid the limitations.
- Earnings for "details" which are paid by city or town payroll are included in the § 91 limitations, regardless of whether the city or town ultimately bills a private entity for the work.
- The § 91 limitations only apply to retirees, not survivors or beneficiaries.

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