



Memorandum # 3/2004

Commonwealth of Massachusetts | Public Employee Retirement Administration Commission
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MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

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

DATE: January 12, 2004

As the year begins, it is important for boards to consider the impact of G.L. c. 32, § 91 on their retirees. As you 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.

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.

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

In 2001, the Massachusetts Appeals Court ruled that retirement systems have the ability to collect over earnings under § 91 by retirees if the public entities for which they are employed fail to do so. The Court ruled in *Flanagan v. Contributory Retirement Appeal Board et al.* that “[i]t is the retirement board, serving thousands of other retirees that has reason to enforce the law by recouping pension payments which violate the clear and longstanding intent of the retirement law.” In situations where employers decline to or delay in enforcing the provisions of G.L. c. 32, § 91, retirement boards must seriously consider taking action on their own.

As part of the separate PERAC-administered G.L. c. 32, § 91A process, PERAC will notify retirement systems if it discovers that a disability retiree has public sector employment. Retirement boards can then take action under § 91 if required. PERAC does not and will not calculate or administer § 91.

Lastly, 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. You may wish to forward a copy of this memorandum to such Treasurers.

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