

Commonwealth of Massachusetts

Post Retirement Employment Guidelines



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Post Retirement Employment Guidelines

Introduction

The terms and conditions of employment for post retirement employees are set forth in the General Laws of Massachusetts, Chapter 32: Sections 91 and 91A. The guidelines are to be followed by Executive Branch departments and supersede any previous guidelines regarding post retirement (960-hour) employees.

Definition of a Post Retirement – 960 hour Employee

A person who has been retired and who is receiving a pension, disability pension or retirement allowance from the Commonwealth, or from any county, city, town or district may be employed in the service of the Commonwealth for up to 960 hours in the aggregate in any calendar year. Such person shall serve at the will of the Appointing Authority.

Job Classification

Post retirement employees may be rehired into their former job title or other job titles in accordance with the services they will provide.

Positions

Executive Branch post retirement positions must be established with a position type of PR – Post Retirement 120 day Appt. Non-Executive Branch departments are not required to use position type PR, but are encouraged to do so to ensure consistent practices and accurate reporting. This category of employee is not included in the agency official FTE count.

Compensation

Limitations on compensation include:

Employment may not exceed 960 hours per calendar year and/or total earnings per calendar year cannot exceed the difference between the retirement allowance and the

current pay rate for the position from which the employee was retired or terminated prior to his/her retirement. (See Appendix for sample calculations).

It is strongly recommended that each agency keep documentation in its files on the rationale for each post retiree's compensation limitation. It is also strongly recommended that agencies complete and provide postretirement employees with the attached Post Retirement Employment Statement of Earnings form (see Appendix) and require their signature on the form on or before the first day of their employment during each calendar year. Post retirement employees may negotiate their compensation rate with their employer so long as their calendar year earnings are in compliance with M.G.L.Ch 32 section 91. Post retirement employees are not eligible for collectively bargained step increases, COLAs, bonuses, or differentials. Post retirement employees are not eligible for Executive Branch management or Technical Pay Law pay increases. Post retirement pay rate, including differentials, is negotiated between the employee and the employer.

Post retiree employees may be reimbursed for mileage expenses incurred in the course of their work at rates negotiated between the employee and the employer.

Post retiree employees who are collecting a disability pension are subject to M.G.L. Ch 32 section 91A. This section states that such employees may earn up to \$5,000 more than the difference between the retirement allowance and the current pay rate for the position from which the employee was retired or terminated prior to his/her retirement. In addition, such employees must annually file a statement of earnings from all earned income for the previous calendar year with the Public Employees Retirement Administration Commission (PERAC) on or before April 15th of each year.

Time and Attendance

Post retirement employees in non-exempt titles (titles covered by collective bargaining or Manager I-IV) are eligible for overtime under the Fair Labor Standards Act (FLSA).

Post retirement employees are not eligible for paid time off; sick, vacation, personal, holiday, compensatory time, or emergency office closing (SNO/SKE) time. Nor are they eligible for such paid leave programs as blood donation, school volunteer, mentoring, organ donation, jury duty, etc.

Post retirement employees will be eligible for up to 12 weeks unpaid FMLA leave in the 52 weeks following retirement only if they meet the required criteria (serious health condition etc.)

Benefits

Post retirement employees are not eligible for union provided benefits, i.e. dental/vision, insurance, or other supplemental coverage. Questions regarding Group Insurance Commission (GIC) retirement benefits should be directed to the GIC.

Payroll Deductions

- a) Mandatory—All post retirement 960 hour appointments are subject to Medicare Tax regardless of status prior to retirement.
- b) Voluntary—Post retirement employees are eligible for the following payroll deductions: MBTA Charlie card and Charlie ticket; COMECC, Health Care Spending Account (HCSA), and Dependent Care Assistance Program (DCAP) deductions, SMART plan, UFUND, and savings bonds.

Related Policies and Documents

- HRCMS Job Aid - Hire Post Retirement
http://www.hrcms.state.ma.us/training/online/hr/new_hires/job_aid_post_retirement_960_hour_appt.htm
- Public Employee Retirement Administration Commission (PERAC) – Memo #24 – Restrictions on Post Retirement Public Sector Employment in Massachusetts
<http://www.mass.gov/perac/08memos/2408.html>
- Benefit Guide for the Massachusetts State Employees' Retirement System
<http://www.mass.gov/treasury/forms/ret/retguide.pdf>
- MMARS Policy: Payroll – Employee-Employer Relationship: State Employees
http://www.mass.gov/Aosc/docs/policies_procedures/payroll_lcm/po_pr_state_emp.doc
- MMARS Policy: Payroll – Employer Relationship: Types of Employment
http://www.mass.gov/Aosc/docs/policies_procedures/payroll_lcm/po_pr_types_employment.doc
- MMARS Policy: Payroll – Mandatory and Voluntary Deductions: Retirement Programs
http://www.mass.gov/?pageID=oscterminal&L=3&L0=Home&L1=Publications+and+Reports&L2=Policies&sid=Aosc&b=terminalcontent&f=policies_procedures_po_payroll_lcm&csid=Aosc

Frequently Asked Questions

Q: Who determines maximum allowable earnings in the calendar year?

Massachusetts General Law Chapter 32 sections 91-91A determine the maximum allowable earnings.

Q: What must a 960 hour Employee do if s/he exceeds the maximum allowable earnings in the calendar year as determined by Massachusetts General Law Chapter 32 Sections 91-91A?

If a 960 hour Employee exceeds the maximum allowable earnings in the calendar year as determined by Massachusetts General Law Chapter 32 sections 91-91A, s/he must repay the excess amount to the agency in which s/he is employed.

Q: Can a post retirement employee be hired into a collective bargaining title? Do they have to be paid from the collectively bargained salary chart?

Collective bargaining titles can be used for post retirement positions, but it is not required that the employee pay rate be from the bargaining unit salary chart. Post retirement pay rate, including differentials, is negotiated between the employee and the employer.

Q: Do post retirement employees have to pay union or agency fee dues?

No. Post retirement employees may choose to voluntarily contribute dues or fees to the union but are not required to. Voluntary contributions may not be made through a payroll deduction.

Q: Can a post retirement employee negotiate a higher pay rate than the rate they retired at? Can they receive a pay increase?

Yes, so long as their maximum calendar year earnings comply with M.G.L. Ch 32 section 91 maximum earnings definition.

Q: If an employee temporarily waives his/her retirement allowance and returns to full time employment do they resume contributions to state retirement plan?

Yes. It is also permissible for them to waive the receipt of their retirement allowance for the period of their full time employment so as to not violate the maximum allowable earnings limitations in M.G.L. Chapter 32 sections 91 and 91A.

Q: Is a post retirement employee eligible for unemployment benefits?

Post retirement employees may apply for unemployment compensation. The Division of Unemployment Assistance will determine their eligibility.

Appendix

Massachusetts General Law Chapter 32 Section 91

PART I. ADMINISTRATION OF THE GOVERNMENT

TITLE IV. CIVIL SERVICE, RETIREMENTS AND PENSIONS

CHAPTER 32. RETIREMENT SYSTEMS AND PENSIONS

MISCELLANEOUS PROVISIONS

Chapter 32: Section 91. Payment of pensioners for services after retirement

Section 91. (a) No person while receiving a pension, disability pension or retirement allowance from the commonwealth, or from any county, city, town or district, shall, after the date of his retirement be paid for any service rendered to the commonwealth or any county, city, town or district, except upon his return and restoration to active service as ordered by the appropriate retirement board after reexamination in case of retirement for disability, for jury service, for services as a retired chief justice or associate justice under the provisions of section twenty-four of chapter two hundred and eleven, for services as a retired chief justice or associate justice under the provisions of section sixteen of chapter two hundred and eleven A, for services as a retired justice under the provisions of section fourteen of chapter two hundred and eleven B, for service rendered in an emergency under section sixty-eight, sixty-nine or eighty-three, for work as an election officer at a polling place at a primary or election, for service in a public office to which he has thereafter been elected by direct vote of the people, for service rendered as an appointee under section sixteen of chapter two hundred and eight or section fifty-six A of chapter two hundred and fifteen, for service rendered when recalled under section fifteen A of chapter twenty-three, for service in a confidential capacity under section seven of chapter thirty in the executive department, or in the department of the state secretary, the state treasurer, the state auditor or the attorney general, for services rendered as an auditor or master by appointment of the probate court, the superior court or the supreme judicial court, for contractual service, or service as a nonemployee, rendered to the general court, for service as a physician, or as a member of a medical panel or similar board under this chapter, aggregating not more than thirty days in any year, or for emergency service for a period not to exceed one year in any position after certification that an emergency exists, that a vacancy exists, and that no person having the same or similar skill is available for such position, which certification shall, in each instance, be made by the appointing authority and, if the position is subject to the civil service laws or in the case of a state employee holding a position not subject to the provisions of chapter thirty-one, by the personnel administrator, in the case of a county employee, by the board of county commissioners, in the case of a city employee, by the city manager in a city having a Plan

D or Plan E charter and by the mayor in any other city, and in the case of a town employee, by the board of selectmen; provided, that there shall be deducted from the compensation for the services of any person employed in a confidential capacity or for emergency service other than service rendered in an emergency under section sixty-eight, sixty-nine or eighty-three, as aforesaid, an amount equal to the retirement allowance or pension received by him. The limitation of one year for emergency service, as set forth in the preceding sentence, shall not apply to such emergency service by a physician or registered nurse in the departments of mental health, mental retardation or public health, or in any of the institutions of said departments, or at the Soldiers' Home in Massachusetts or the Soldiers' Home in Holyoke, and any such physician or nurse may at the end of each period of such service, upon like certification, be reappointed for another period not to exceed one year; provided, however, that such emergency service shall not exceed five years in the aggregate. Notwithstanding the foregoing provisions of this section or similar provisions of any special law, a person who, while receiving such a pension or retirement allowance, is appointed for a term of years to a position by the governor with or without the advice and consent of the council or by the mayor or city manager of any city with or without confirmation by the city council or is elected for a term of years to a position by the city council, or is appointed to a position in a town and serves in such position under the direction of the selectmen thereof, or is appointed, chosen or elected to a position by the general court, shall be paid the compensation attached to such position; provided, that he files with the treasurer of the governmental unit paying such pension or allowance, a written statement wherein he waives and renounces for himself, his heirs and his legal representatives, his right to receive the same for the period during which such compensation is payable. In this section the words "general court" shall include any committee thereof, either branch thereof, any committee of either branch, and any special commission established to make an investigation and study of any matter and report thereon to the general court.

(b) In addition to and notwithstanding the foregoing provisions of this section or similar provisions of any special law, any person who has been retired and who is receiving a pension or retirement allowance, under the provisions of this chapter or any other general or special law, from the commonwealth, county, city, town, district or authority, or any person whose employment, in the service of the commonwealth, county, city, town, district or authority, has been terminated, under the provisions of this chapter or any other general or special law, by reason of having attained an age specified in said general or special law or by the rules and regulations of any department or agency of the commonwealth, county, city, town, district or authority without being entitled to any pension or retirement allowance, may, subject to all laws, rules and regulations, governing the employment of persons in the commonwealth, county, city, town, district or authority, be employed in the service of the commonwealth, county, city, town, district or authority for not more than nine hundred and sixty hours in the aggregate, in any calendar year; provided that the earnings therefrom when added to any pension or retirement allowance he is receiving do not exceed the salary that is being paid for the position from which he was retired or in which his employment was terminated.

(c) Each person referred to in paragraph (b) shall certify to his employer and the treasurer or other person responsible for the payment of the compensation for the position in which he is to be employed, the number of days or hours which he has been employed in any such calendar year and the amount of earnings therefrom, and if the number of hours exceeds nine hundred and sixty, in the aggregate, he shall not be employed, or if the earnings therefrom exceed the amount allowable under paragraph (b), he shall return to the appropriate treasurer or other person responsible for the payment of compensation all such earnings as are in excess of said allowable amount. The amount of any excess not so returned may be recovered in an action of contract by the appropriate treasurer or other person responsible for the payment of the compensation of any such person.

(d) Any person who is paid for any service rendered in any employment, permitted by this section, shall not, except upon his return and restoration to active service as ordered by the appropriate retirement board after reexamination in case of retirement for disability, be eligible to membership in any retirement system established under the provisions of this chapter or any other general or special law, except as provided in paragraph (g) of subdivision (1) of section five.

(e) Notwithstanding the provisions of paragraphs (a) to (d), inclusive, in any period during which there is a critical shortage of certified teachers available for employment in a school district, said school district may employ as a teacher or as a mentor to other teachers any person who has retired from the teachers' retirement system or the State-Boston retirement system. Any such retired person who renders service in a public school district as a teacher or as a mentor to other teachers shall be subject to all laws, rules and regulations governing the employment of teachers in the school district. Such person shall not be deemed to have resumed active membership in the teachers' retirement system or State-Boston retirement system and said service shall not be counted as creditable service toward retirement; but in the first two years immediately following the effective date of retirement, the earnings received by a teacher who retired pursuant to subdivision (4) of section 5 when added to any pension or retirement allowance he is receiving shall not exceed the salary that is being paid for the position from which he was retired or in which his employment was terminated.

Chapter 32: Section 91A. Adjusted pension or retirement allowances

Section 91A. Every person pensioned or retired under any general or special law for disability, including accidental disability, shall in each year on or before April fifteenth subscribe, under the penalties of perjury, and file with the commission a statement, in such form as the commission shall prescribe, certifying the full amount of his earnings from earned income during the preceding year. Such pensioned or retired person shall annually submit to the commission all pertinent W-2 forms, 1099 forms, other requested tax forms and proof of income, and any other documentation requested by the commission. Said forms and information shall be submitted on or before April fifteenth of each year. If such pensioned or retired person fails to submit such statement or such forms, and unless such person shall show good cause for such failure to submit such statements to the commission, the member's rights in and to the retirement allowance

provided for in section six and seven shall terminate until the member has complied with his reporting requirements under this section. If such earnings exceed an amount which when added to the member's retirement allowance is greater than the amount of regular compensation which would have been payable to such member if such member had continued in service in the grade held by him at the time he was retired plus the sum of five thousand dollars, said member shall refund the portion of his retirement allowance for such preceding year equal to such excess and until such refund is made, his pension or retirement allowance shall be held as security therefor. Prior to any termination or reduction of benefits pursuant to this section, the member shall be given a written notice and an opportunity to be heard by the retirement board and, upon such termination or reduction of benefits, shall have the right to appeal such action to the contributory retirement appeal board. A member shall not be entitled to recover a retirement allowance for any period during which the member's rights in and to his retirement allowance were terminated for failure to submit a statement to the commission under this section. After written notice and opportunity to be heard by the board, termination of a member's rights in and to a retirement allowance for failure to submit a statement to the commission shall be considered by the board to be effective as of the date that such statement was due to be submitted to the board. If a retirement allowance was paid to a member for any period during which such member's rights in and to a retirement allowance were terminated for failure to submit a statement to the commission, such member shall refund the portion of his retirement allowance attributable to such period.

Appendix
Maximum Earnings Calculation - Examples

Non Management Title

<i>Pay rate before retirement</i>	<i>56,500/yr (grade 11, step 9)</i>
<i>Current pay rate for position title employee retired from¹</i>	<i>57,630/yr (grade 11, step 9)</i>
<u><i>Retirement pension</i></u>	<u><i>45,200/yr</i></u>
<i>Max 960 hour earnings</i>	<i>12,430/yr</i>

1 New collective bargaining salary chart, may or may not include reclassification

Management Title

<i>Pay rate before retirement</i>	<i>87,430/yr (Exec Mgr VIII)</i>
<i>Current pay rate for position title employee retired from²</i>	<i>90,052/yr (Exec Mgr VIII)</i>
<u><i>Retirement pension</i></u>	<u><i>69,944/yr</i></u>
<i>Max 960 hour earnings</i>	<i>20,108/yr</i>

² The above calculation is based upon an average base salary increase of 3% for one year. Agencies may use average managerial base salary increases as a guideline for determining the current pay rate for management titles. There may be other legal alternative methods of calculating the current pay rate for the position from which the employee retired. Agencies may contact HRD if they wish to pursue these options. As indicated above, it is strongly recommended that agencies document their calculation method in case they become subject to audit.