

# PERAC

COMMONWEALTH OF MASSACHUSETTS | PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION COMMISSION


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## MEMORANDUM

TO: All Retirement Boards, State, County and Municipal Officials

FROM: John W. Parsons, Esq., Executive Director 

RE: Calendar Year 2022 Waiver of Section 91 Limits for Superannuation Retirees in the Public Sector

DATE: June 17, 2022

Massachusetts General Laws, Chapter 32, Section 91 (b) and (c) earnings and hours restrictions for superannuation public retirees working in the public sector will be waived for calendar year 2022, or a significant portion thereof, pursuant to the signing into law of Chapter 80 of the Acts of 2022 on June 7, 2022.

The waiver starts retroactively as of January 1, 2022, and will remain in place until December 31, 2022, or “up to 90 days” following the end of the declared Public Health Emergency, whichever occurs first. The statute has an emergency preamble and has taken effect immediately.

The Public Health Emergency is different than, but similar to, the State of Emergency which was in place earlier in the pandemic. Like the State of Emergency, it is initiated and terminated by the Governor. It authorizes the Commissioner of Public Health to take certain actions. The Public Health Emergency was declared pursuant to M.G.L.c. 17, Sec. 2A on May 28, 2021, in conjunction with the ending of the State of Emergency on June 15, 2021.

As noted above, if the Public Health Emergency concludes prior to December 31, 2022, the post-retirement earnings waiver will end “up to 90 days” after the Health Emergency has ended. This language means that the waiver could end any time between 1 day and 90 days after the conclusion of the Public Health Emergency. In PERAC’s view, the discretion on determining the “up to 90 days” would be decided by individual employers, consistent with the Governor’s expressed intent.

As with the previous post-retirement earnings waiver, **this waiver does not apply to disability retirees.**



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The following is the text of the statute:

Whereas, the deferred operation of this act would tend to defeat its purpose, which is to forthwith provide for the employment of certain retired employees during the outbreak of the 2019 novel coronavirus, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

(a) Notwithstanding any general or special law to the contrary, subsections (b) and (c) of section 91 of chapter 32 of the General Laws shall not apply in calendar year 2022 to the following 2 categories of persons for hours worked and earnings received during the outbreak of the 2019 novel coronavirus, also known as COVID-19, and subsequent variants:

(i) any person who has been retired and who is receiving a pension or retirement allowance, pursuant to said chapter 32 or any other general or special law, from the commonwealth or a county, city, town, district or authority; or

(ii) any person whose employment in the service of the commonwealth or a county, city, town, district or authority has been terminated, pursuant to said chapter 32 or any other general or special law, by reason of having attained an age specified in a general or special law or by the rules and regulations of any department or agency of the commonwealth or a county, city, town, district or authority without being entitled to any pension or retirement allowance.

These 2 categories of persons may, during calendar year 2022 and subject to all other laws, rules and regulations governing the employment of persons in the commonwealth or a county, city, town, district or authority, be employed in the service of the commonwealth or a county, city, town, district or authority, including as a consultant or independent contractor or as a person whose regular duties require that such person's time be devoted to the service of the commonwealth, county, city, town, district or authority during regular business hours.

(b) This section shall not apply to individuals who retired under a general or special law on disability.

Adherence to the post-retirement restrictions in any calendar year is the statutory responsibility of the employee and the employer. If employees or employers have questions relative to these provisions, please contact this office or your local retirement board.