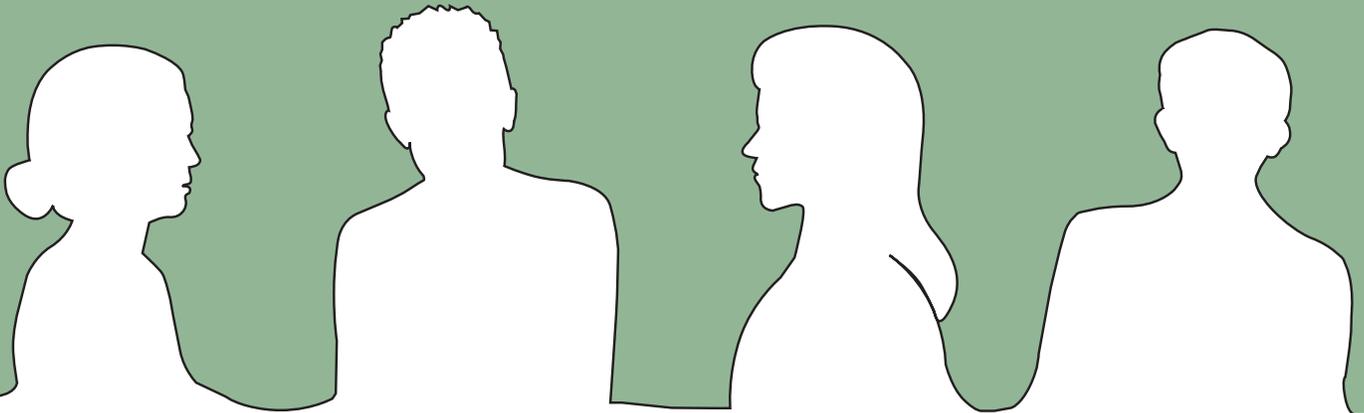


MASSACHUSETTS PUBLIC EMPLOYEE

Guide to Disability Retirement

(Regardless of the Date of Membership)



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GUIDE TO DISABILITY RETIREMENT

for Public Employees

This guide is designed to familiarize you with procedures applicable to the disability retirement of public employees who are members of Massachusetts contributory retirement systems. The contents do not affect the contractual rights between a system and its members and, in the case of any conflict, Chapter 32 of the Massachusetts General Laws and the regulations promulgated by the Public Employee Retirement Administration Commission (PERAC) shall govern. For procedures applicable to public employee retirement generally, members should refer to PERAC's Massachusetts Public Employee Retirement Guides and PERAC's Guides to Survivor Benefits for Public Employees. There are different guides on these topics depending upon a person's date of membership in the retirement system.

▶ **Updates to This Guide**

This guide reflects changes and amendments to the law through the enactment of Chapter 176 of the Acts of 2011.

▶ **Additional Copies**

Information about obtaining additional copies of this guide can be found online at www.mass.gov/perac.

 Printed on recycled paper.

Table of Contents

▶ Accidental Disability: Eligibility	1
• Notice of Injury Requirement	1
▶ Presumptions	2
• Heart Law	2
• Lung Law	2
• Cancer Presumption	2
• Health and Fitness Standards	3
▶ Ordinary Disability: Eligibility	3
▶ Involuntary Retirement	4
▶ Disability Application	4
▶ Standard to be Applied	6
▶ Regional Medical Panel Examinations	6
• Separate Single Physician Examinations	7
• Regional Medical Panel Findings	7
• Scheduling/Rescheduling	7
• Representation	8
• Applicant's Attendance at Regional Medical Panel Examination	8
• Posthumous Regional Medical Panel Examination of Records	8
• After the Regional Medical Panel Examination	9
▶ Effective Date of Allowances	10
• Accidental Disability	10
• Ordinary Disability	10
• Effect of Re-Entering Service on Eligibility for Ordinary Disability	10
▶ Disability Retirement Benefits	10
• Accidental Disability: Allowances	10
• Additional Pension For Children	11
• Limitation of Benefits	12
• Workers' Compensation Offset/Accidental Disability	12
• Third Party Recovery/Accidental Disability	12
• Ordinary Disability: Allowances	13
• Workers' Compensation Offset/Ordinary Disability	13
• Third Party Recovery/Ordinary Disability	13
▶ Suspension of Disability Benefits	14

▶ Options for Retirees	14
• Making a Choice	15
• Options Available at Retirement	15
• Option A	15
• Option B	15
• Option C	15
• Option C “Pop-Up”	16
• Spousal Acknowledgement	16
▶ Annual Statement of Earned Income	16
▶ Reduction or Suspension of Benefits	18
▶ Evaluation of Disability Retirees	19
• Findings	19
• Evaluation Schedule	19
• Records Review	19
• Comprehensive Medical Evaluation	20
• Restoration to Service Examinations	20
• Rehabilitation Programs	21
• Examination Following Rehabilitation	21
• Voluntary Rehabilitation Programs	22
▶ Restoration to Active Service	22
▶ Modification of Allowance	23
▶ Accidental Death Benefit	24
• Death Related to Accidental Disability	24
• Death Unrelated to Accidental Disability	25
• Pending Determination of Accidental Death Benefits	26
▶ Appeals	27
▶ Key Addresses & Phone Numbers	29

Disability Retirement

There are two types of disability for which public employees may be retired: Accidental and Ordinary.

1 Accidental Disability: Eligibility

→ ***Who is eligible to apply for an accidental disability retirement?***

Essential Duties of Position

Generally, if a member's permanent incapacitation prevents him or her from performing the essential duties of his or her position because of a personal injury sustained or a hazard undergone while in the performance of his or her duties at a definite time and place and without serious and willful misconduct on his or her part, he or she is eligible to apply.

→ ***Is there any age limitation for applying for accidental disability retirement?***

Maximum Age for Group

Firefighters, municipal police officers, correction officers, and state court judges must apply before reaching the maximum age for their group.

→ ***Do applicants for accidental disability retirement have to meet any minimum service or age requirements?***

No.

→ ***Must I be a member-in-service to apply for accidental disability retirement?***

A public employee applying for an accidental disability allowance need not be a member-in-service at the time of application. An applicant must be a member-in-service at the time of the injury, and must become permanently disabled while still a member-in-service.

→ ***May I receive an accidental disability allowance from one retirement system while continuing to be a member-in-service of another system?***

If you are eligible to receive an accidental disability allowance from one system, your disability pension or retirement allowance will not become effective until you terminate your service from the second system. Until such termination, you will be required to waive the receipt of your disability benefit.

Notice of Injury Requirement

→ ***Should I notify my retirement board if I am injured on the job?***

If you have an accident on the job, or are exposed to a health hazard, it is extremely important that a notice of injury is filed with your retirement board, in addition to the notice filed with your employer. The notice should be filed within 90 days of the occurrence of the injury or exposure. This establishes the time, place, and occurrence of the accident or hazard for future reference. If you later become disabled, and more than two years have passed since the accident or hazard, it is imperative that you have an official record in order to seek accidental disability benefits. The notice of injury serves as the official record.

Proof of receipt of Workers' Compensation benefits may fulfill the notice requirement for those members covered by Workers' Compensation. Official departmental records may be utilized for members who are not covered by Workers' Compensation.

2 Presumptions

There are certain presumptions that apply only to certain public safety personnel. These presumptions include:

HEART LAW

→ *What is the Heart Law and to whom does it apply?*

Under a special provision of state law, disability caused by heart disease or hypertension is presumed to be suffered in the line of duty for any employee who is: a uniformed member of a paid fire department or permanent member of a police department, or the state police, or of the public works building police, or any employee in the department of correction or a county correctional facility whose regular or incidental duties require the care, supervision, or custody of prisoners, criminally insane persons, or defective delinquents, or any permanent crash crewman, crash boatman, fire controlman, or assistant fire controlman employed at the General Edward Lawrence Logan International Airport or members of the Massachusetts military reservation fire department.

Any such employee must have successfully passed a physical examination on or after the date of hire, which failed to reveal any evidence of such condition.

A retirement board is required to presume that the heart disease or hypertension was caused by the job, unless the contrary can be shown by competent evidence. The employee must become incapacitated by the condition while still a member-in-service.

LUNG LAW

→ *What is the Lung Law and to whom does it apply?*

Any impairment of health which is caused by disease of the lungs or respiratory tract in uniformed members of a paid fire department, or any permanent crash crewman, crash boatman, fire controlman, or assistant fire controlman employed at the General Edward Lawrence Logan International Airport, or a member of the Massachusetts military reservation fire department, shall be presumed to have been suffered in the line of duty as a result of the inhalation of noxious fumes or poisonous gas, unless it is found that there is competent evidence to the contrary. Such individuals must have successfully passed a physical examination on or after their date of hire, which failed to reveal any evidence of such condition. The employee must become incapacitated by the condition while still a member-in-service.

CANCER PRESUMPTION

→ *What is the Cancer Presumption?*

Any condition of cancer affecting the skin or the central nervous, lymphatic, digestive, hematological, urinary, skeletal, oral, or prostate systems, or lung or respiratory tract, resulting in total disability or death shall be presumed to have been suffered in the line of duty, unless it is shown by a preponderance of the evidence that non-service connected risk factors or non-service connected accidents or hazards undergone, or any combination thereof, caused such incapacity.

→ *To whom does the Cancer Presumption apply?*

It applies to uniformed members of a paid fire department, or a member of the state police assigned to the fire investigation unit of the department of fire services, or a member of the state police K-9 unit or permanent crash crewman, crash boatmen, fire controlmen, or assistant fire controlmen employed at the General Edward Lawrence Logan International Airport or members of the Massachusetts military reservation fire department. To be eligible, a person must have been actively employed in one of the above named positions on or after July

5, 1990 (effective date of the Cancer Presumption legislation), and must establish that he or she has regularly responded to calls of fire during some portion of his or her service, and must have served for not fewer than five years at the time such condition is first discovered, or should have been discovered. Such individuals must have successfully passed a physical examination on or after their date of hire, which failed to reveal any evidence of such condition. Individuals who first discover such cancer within five years of the last date of his or her active service are also eligible to apply for benefits.

→ ***How is the Cancer Presumption applied?***

It shall only apply if the disabling or fatal condition is a type of cancer which may, in general, result from exposure to heat, radiation, or a known or suspected carcinogen as determined by the International Agency for Research on Cancer. The presumption will also apply to any condition of cancer (other than those listed in the response to the question above) which may, in general, result from exposure to heat or radiation or to a known or suspected carcinogen as determined by the International Agency for Research on Cancer, and the incidence of which is found by regulation by the Commissioner of Public Health to have a statistically significant correlation with fire service.

HEALTH AND FITNESS STANDARDS

Chapter 31 of the Acts of 1987 directs the Commonwealth's Personnel Administrator to establish initial and in-service health and physical fitness standards for police officers and firefighters. These standards are applicable to police officers and firefighters who are appointed after November 1, 1996, and who are working in cities and towns that accept the applicable provisions of Chapter 31. Please contact the Commonwealth's Human Resources Division for further information about the and their implementation.

→ ***Is a police officer or firefighter considered disabled if he or she fails to pass such an in-service examination?***

No, failure to pass such an examination does not create a presumption of disability for pension purposes.

3 Ordinary Disability: Eligibility

→ ***Who is eligible to receive an ordinary disability retirement allowance?***

Any member is eligible, provided that they meet the service requirements listed below, whose permanent incapacitation, due to sickness or injury that is not work-related, prevents him or her from performing the essential duties of his or her position.

→ ***Is there a service requirement?***

Non-Veterans

Service requirements vary. Applicants who file for ordinary disability retirement on or after January 12, 1988, from the State Retirement System, the Teachers' Retirement System, and any other system that has accepted the provisions of G. L. c. 32 § 6(1), must have been granted at least ten years of creditable service. Most systems have accepted this provision. All other applicants must have been granted at least 15 years of creditable service.

Veterans

Members who are veterans must have been granted at least ten years of creditable service.

4 Involuntary Retirement

→ ***Does my department head have the right to file an application to retire me?***

Your department head may file an application to retire you (Group 1, Group 2, or Group 4 members) upon the basis of disability (or superannuation). The minimum creditable service and age requirements that are applied to applications filed by members also apply to retirement applications initiated by an employer.

→ ***How does the process begin, and do I have any immediate recourse if I feel I should not be retired?***

Your department head will file an *Involuntary Retirement Application* with your retirement board, which requires no information or any statement from you. A copy of this form must be sent to you simultaneously. Some members may request a hearing before the retirement board with 15 days of receiving a copy of the form. Whether you have the right to ask for a hearing depends upon certain factors which are outlined below.

Members Prior to April 2, 2012

If you were a member before April 2, 2012, and you are a member-in-service classified in Group 1, Group 2, or Group 4 who has attained age 55 and who has completed 15 or more years of creditable service, or if you haven't attained age 55 but have completed 20 or more years of creditable service, you may request a hearing before your retirement board..

Individuals Who Became Members On or After April 2, 2012

If you became a member of a retirement system on or after April 2, 2012, and you are a member-in-service classified in Group 1, Group 2 or Group 4 who has attained age 60 and completed 15 or more years of creditable service, or if you haven't attained age 60 but have completed 20 or more years of creditable service, you may request a hearing before your retirement board.

→ ***Will the process include a medical examination and evaluation?***

If you are not entitled to an initial hearing and/or the board accepts the appropriateness of the disability application, the involuntary process will continue through the same medical evaluation process that governs a voluntary application for a disability retirement.

District Court Review

Any Group 1, Group 2, or Group 4 member who has been involuntarily retired and has attained age 55 and completed 15 or more years of creditable service, or any member so classified who has not attained age 55 but who has completed 20 or more years of creditable service, or any such member who is a veteran and has been granted 10 or more years of creditable service may seek review of such action in the district court in the district in which he or she resides within 30 days after the certification of the retirement board's decision.

5 Disability Application

→ ***What form should I use to apply for disability retirement?***

Whether you are applying for accidental or ordinary disability retirement or both (because of uncertainty about which is appropriate for your circumstances), you must file a *Member's Application for Disability Retirement* with your retirement board.

→ ***Where can I obtain a Member's Application for Disability Retirement and guidance in how to complete it?***

Your retirement board will provide you with a copy of the application. The retirement board staff will help you to understand the process, and will respond to your questions as things progress. You may also download a copy

of the application form from PERAC's Home Page on the Internet: www.mass.gov/perac.

→ ***What information must I include in my Member's Application for Disability Retirement?***

The Member's Application for Disability Retirement is a multi-page form. In order to complete your application, you must provide:

- A statement of your job duties
- Your employment history
- Statements about your background, qualifications, and recent physical activities
- The reason for accidental disability
- Information about incident reports and witnesses
- Information about filing for a grievance, Workers' Compensation, or Section 111F benefits
- Information about emergency medical treatment
- A listing of all hospitals and medical facilities from which you sought treatment within the last five years
- A listing of physicians with whom you have consulted or from whom you sought treatment within the last five years
- The name and address of your personal physician
- If you are represented by an attorney in connection with your application, the name and address of your attorney
- The name and address of relevant insurance carriers
- Authorizations for release of insurance records, medical records, and tax records
- Your regional medical panel selection choice

Date of Application

You must complete the *Member's Application for Disability Retirement* in its entirety and file it with your retirement board. Until all of the required information has been submitted, your retirement board cannot assign a date of application, which will be very important in determining your effective date of retirement and your retirement allowance date.

Information From Other Parties

Upon receipt of your disability retirement application, your retirement board will request written information from your employer on a prescribed form about the essential duties that you are required to perform in your current position and other information. The retirement board will ask your personal physician to complete a form that contains a diagnosis of your condition, as well as information about your medical treatment and history. He or she will be asked to assess your ability to perform your job duties, and to discuss whether or not your disability is likely to be permanent. Please note that, if you choose to do so, you may personally convey the form to your physician. Your board will request copies of records from the other physicians, hospitals, and insurance companies that you identified in your application.

When all of the required documents have been received, your retirement board will ask PERAC to appoint a medical panel to examine you.

→ ***What time frames govern the disability retirement application and determination process?***

The regional medical panel should meet within 60 days of being appointed by PERAC to conduct its examination.

- You will be given 14 days notice of the scheduled examination.
- The regional medical panel will report their findings and recommendations to PERAC within 60 days of completing their examination(s).
- Within 5 days of receipt of a properly completed medical report, PERAC will forward the report to your retirement board.
- Within 30 days of its receipt of the report, your retirement board will notify you of the panel's findings and provide you with a copy of all of the documents completed by the regional medical panel.
- Your retirement board has the option at this point of requesting further information or a clarification from the regional medical panel if they determine that it would be helpful.

- If the determination of the regional medical panel precludes retirement for the disability you claimed, your retirement board will either deny your application or they will ask PERAC for a new regional medical panel if they believe that circumstances warrant it.
- If PERAC declines to schedule a new examination, your retirement board will deny your application.
- If the determination of the regional medical panel permits retirement for the disability you claimed, your retirement board shall determine whether or not to approve the application. A hearing may be held on any disability retirement application, and must be held upon your request.
- If a hearing is scheduled, your board must give you at least 30 days notice of the time and place for the hearing and the issues involved.
- Your retirement board's decision about your eligibility for disability retirement must be made no later than 180 days after you file your completed application, unless PERAC grants an extension.
- If your retirement board approves your application, it will be transmitted to PERAC for final action. PERAC must act on your application within 30 days of its receipt.
- PERAC will either approve your application, or remand your application to the retirement board for further action.
- If your retirement board denies your application, your retirement board will advise you of your right to appeal the decision.

6 Standard to be Applied

→ *What standard determines whether I am incapacitated?*

Your retirement board must find that you are permanently incapacitated from performing the essential duties of your position. If you are applying for an accidental disability retirement, your retirement board must also find that your incapacity is the natural and proximate result of sustaining an injury or undergoing a hazard as a result of, and while in the performance of your duties, at a definite time and place, without willful and serious misconduct on your part.

→ *What is the definition of an essential duty?*

Essential duties are those duties or functions of a job or position that must necessarily be performed by an employee to accomplish the principal object(s) of the job or position. The essential duties are those that bear more than a marginal relationship to the job or position. Your employer makes the determination of what constitutes an essential duty within the context of the PERAC guidelines.

7 Regional Medical Panel Examinations

→ *When will a medical panel be appointed to examine me?*

When your retirement board determines that your application for accidental or ordinary disability retirement is complete, the board (which meets at least once each month) may petition PERAC to appoint a three-member, independent regional medical panel, paid for by PERAC, to examine you. No physician who has already examined or treated you, except as part of a prior disability medical panel, can be appointed to a panel to examine you.

→ *May physicians who are associated with each other serve together on a medical panel?*

PERAC will not appoint physicians who have a direct and substantial financial interest in each other's practice, unrelated to their service on PERAC appointed medical panels, to serve with each other on a medical panel. The statute provides that physicians who provide services through a disability review organization

are not “associated” unless they have a direct and substantial financial interest in the profit and loss of the organization.

SEPARATE SINGLE PHYSICIAN EXAMINATIONS

→ Do the three physicians who are appointed to my medical panel have to conduct a joint examination?

You have the right to request three separate single physician examinations when you file your disability application. Such separate examinations can be scheduled by PERAC to take place on three separate days, in three separate locations. If you do not request separate single examinations at application filing time, PERAC will generally schedule a joint examination. In instances where a joint examination cannot be convened in a timely manner, PERAC may schedule separate single physician examinations instead.

You may request separate examinations at any time prior to a joint examination date, but PERAC will not ordinarily consider requests for separate examinations less than 48 hours prior to a scheduled joint examination.

→ If I undergo three separate examinations, will the examining physicians each write his or her/ own report?

Yes.

REGIONAL MEDICAL PANEL FINDINGS

→ What questions must be addressed by the members of a regional medical panel?

The members of the regional medical panel must answer whether or not they find that you are unable to perform the essential duties of your job and whether such incapacity is likely to be permanent. In the case of an accidental disability retirement, the physicians must also state whether or not your disability is such as might be the natural and proximate result of the accident or hazard upon which your retirement application is based. The physicians must submit a written report in support of the conclusions that they reach.

→ Do all three physicians on a regional medical panel have to agree about the findings?

No. In a situation where two of the three members agree but the third physician doesn't agree with them, the physician who is not in agreement with the majority finding must submit a minority report in support of his or her own conclusions.

SCHEDULING/RESCHEDULING

→ Who schedules regional medical panel examinations?

PERAC's Disability Unit staff members schedule medical panel examination(s) for disability retirement applicants. You will be given at least 14 days written notice in advance of your appointment date(s), time(s), and location(s).

→ Under what circumstances may I request that a regional medical panel examination be rescheduled?

You may request that an examination be rescheduled only for compelling personal reasons including, for example, a death in the family or your own hospitalization. In the event you are unable to attend a scheduled examination, you should notify PERAC immediately.

If your request to reschedule your examination hasn't been approved, and you fail to keep your appointment, your application may be denied and you may have to reimburse PERAC for the cost of the appointment before a new examination will be scheduled.

REPRESENTATION

→ ***May my own doctor and attorney attend the exam(s)?***

When an examination(s) has been scheduled, you will be notified in writing of your right to have legal counsel and your physician attend the examination. Please note that it is your responsibility to notify them of the date(s), time(s), and location(s) of the examination(s). In addition, your employer may also have legal counsel and a physician attend your examination(s).

At your discretion, your physician's discretion, and the discretion of your employer and its physician, such physicians may answer questions from the panel, but they will have no vote in the final determination made by the panel.

PERAC will pay your physician a fee at a state-established rate for each examination attended, provided a third party does not reimburse such fees.

APPLICANT'S ATTENDANCE AT REGIONAL MEDICAL PANEL EXAMINATION

→ ***Is a disability retirement applicant required to attend the regional medical panel examination?***

In general, the applicant must be present for the examination. However, in a limited set of circumstances, exceptions are permitted. In accordance with PERAC guidelines, the requirement for a regional medical panel examination can be satisfied by the submission of records to be reviewed by three physicians appointed by PERAC, provided the following conditions are met:

- The application must be a voluntary disability retirement application filed by the member, not an involuntary disability retirement application filed by the employer.
- The completed application must have been on file with the retirement board for at least 15 days.
- The member must reside more than 150 miles from Boston.
- The member must waive his or her right to attend the examination, in writing.
- The member's employer must waive his or her right to attend the examination, in writing.
- The member's physician must provide a statement detailing the medical reason, accompanied by supporting medical documentation, that would prevent the member from traveling to an examination.

→ ***What materials does a member have to submit to his retirement board when requesting the appointment of a regional medical panel for an examination based on a review of the records?***

Documentation supportive of each of the conditions listed above must be submitted, as well as a completed *Member's Application for Disability Retirement* (described under the section of this guide entitled, "Disability Application").

After PERAC has scheduled the regional medical panel examination of records, PERAC's Medical Panel Unit will notify your retirement board and require your board to submit complete medical records and all other required documents to the medical panel physicians in the same manner as if you were being examined.

POSTHUMOUS REGIONAL MEDICAL PANEL EXAMINATION OF RECORDS

→ ***Is a disability retirement automatically precluded if a member dies before a regional medical panel can examine him or her?***

The member's retirement board may ask for a posthumous medical panel examination of records if the

member's completed disability retirement application had been on file with the retirement board for at least 15 days prior to the member's death.

AFTER THE REGIONAL MEDICAL PANEL EXAMINATION

→ ***Does the regional medical panel have a time frame in which to complete its work?***

The regional medical panel has 60 days in which to submit its report to your retirement board through PERAC.

→ ***When will my retirement board inform me of the medical panel's findings?***

Your retirement board must notify you and your employer of the panel's findings within 30 days of their receipt of the medical panel report or, in the case of separate examinations, within 30 days of receipt of the last of the three separate reports.

→ ***What happens to my application if the medical panel does find me to be disabled?***

Your retirement board will consider the report(s) of the regional medical panel and determine whether or not to approve your application. While the regional medical panel report is a very important element in the retirement board's consideration, it is only part of the information that must be reviewed by the board.

→ ***Will there be a hearing?***

The board may hold a hearing on any disability retirement application, and must hold a hearing upon your request.

Retirement board hearings are conducted in accordance with PERAC's Standard Rules for Disability Retirement, 840 CMR 10.12. These regulations cover notice, discovery, and conduct of the hearing, evidence, and subpoenas. Your retirement board or PERAC will furnish you with a copy of the regulations upon request.

→ ***What if I apply for accidental disability retirement, but my board approves an ordinary disability retirement for submission to PERAC?***

If PERAC approves an ordinary disability retirement in light of your retirement board's findings, the regional medical panel's report, and other evidence, you may be retired for ordinary disability provided you meet the other eligibility requirements for ordinary disability.

→ ***What happens if both the regional medical panel and my retirement board find me to be disabled?***

PERAC's staff will review your disability application. PERAC may return any application to the board for further action, within 30 days of its receipt, if PERAC finds the board's decision to have been made upon unlawful procedure, unsupported by substantial evidence, arbitrary and capricious, or a result of fraud or misrepresentation.

When your application has been approved by PERAC, or if no action is taken by PERAC within 30 days, your retirement board will notify you that your application for disability retirement has been granted.

→ ***What happens to my application if the medical panel does NOT find me to be disabled?***

You have a right to request a hearing before your retirement board upon your notification about the findings of the medical panel. Your retirement board may deny your application, or the board may seek additional information or clarification from the panel, or it may petition PERAC to schedule a new examination.

If your board requests a new examination, PERAC will either schedule a new panel examination or decline to do so. In the event PERAC declines to schedule a new panel examination, the board must deny your application.

If your application is denied, you must be notified of your right to appeal the denial of your application to the Contributory Retirement Appeal Board. Please see the section of this guide pertaining to appeals.

→ ***Is there a deadline by which my retirement board must complete action on my disability application?***

Your retirement board has 180 days from the filing of your application to make a final determination. If circumstances warrant, an extension may be granted by PERAC.

8 Effective Date of Allowances

ACCIDENTAL DISABILITY

→ ***When will my accidental disability retirement allowance become effective?***

An accidental disability retirement allowance will become effective (for Group 1, 2, and 4 members) on the date your injury was sustained or the hazard undergone, which formed the medical basis for your retirement; or on the date six months prior to your filing a written application with your retirement board, or on the date you last received regular compensation from your employer, whichever date last occurs.

ORDINARY DISABILITY

→ ***When will my ordinary disability retirement allowance become effective?***

An ordinary disability retirement allowance will become effective on the date of your retirement. Your retirement date may not be less than 15 days or more than four months after the date your application is filed. Also, it may not be later than the date on which you will reach the maximum age for your classification, or earlier than the last day for which you received regular compensation.

EFFECT OF RE-ENTERING SERVICE ON ELIGIBILITY FOR ORDINARY DISABILITY

→ ***Will my re-entry into service after a separation from service affect my eligibility for an ordinary disability retirement allowance?***

Any member who has re-entered service is not eligible to receive an ordinary disability retirement allowance until they have returned to active service for two consecutive years. This two-year requirement will not apply if the member was eligible to receive a termination retirement allowance, or had 10 years of creditable service prior to the last separation from service. In a few systems that have not adopted the 10-year ordinary disability provision, the member must have 15 years of creditable service.

9 Disability Retirement Benefits

ACCIDENTAL DISABILITY: ALLOWANCES

→ ***What makes up an accidental disability retirement allowance?***

An accidental disability allowance consists of two parts: an annuity and a pension. The allowance is payable on the last day of each month.

→ ***How is my annuity calculated?***

Annuity

Your annuity is based upon your total accumulated deductions, with related interest, and your age on the date of retirement.

→ ***How is my pension calculated?***

Pension

Your yearly pension is equal to 72% of the annual rate of regular compensation that you were earning on the date your injury was sustained, or 72% of the average annual rate of regular compensation for the twelve month period for which you last received regular compensation, whichever amount is greater.

Your yearly pension portion of the allowance if you are working in a permanent position will be equal to 72% of the annual rate of regular compensation on the date such injury was sustained or such hazard was undergone.

If you are injured and return to work in a permanent position and your initial injury is exacerbated by a later on-the-job injury your pension will be 72% of the average annual rate of regular compensation on the date of the later injury that exacerbated the initial injury. Thus, if you received salary increases, returned to work, and later were re-injured, the formula will take the salary increase into consideration.

If you are in a temporary or acting position on the date your injury was sustained or hazard undergone, the retirement allowance is based on the annual rate of regular compensation in your permanent position on the date such injury was sustained or such hazard was undergone, or the average annual rate of your regular compensation in your permanent position for the 12-month period for which you last received regular compensation immediately preceding the date your retirement allowance becomes effective, whichever is greater.

For any employee who was not a member-in-service on or before January 1, 1988 or who has not been continuously a member in service since that date, the total yearly amount of the sum of such pension and the annuity as determined shall not exceed 75% of the annual rate of regular compensation; and provided that no individual who was a member-in-service on January 1, 1988, whose allowance is limited by the 75% limitation as established in this paragraph, shall receive an amount of pension that is less than 72% of such individual's regular compensation on January 1, 1988;

Members retiring under one of the presumptions, G.L. c. 32, §§ 94, 94A, and 94B need not provide an injury date. In presumption cases, the date of injury for purposes of calculating the allowance will be the date that the member last received regular compensation.

ADDITIONAL PENSION FOR CHILDREN

→ ***Is there an additional pension benefit to which I am entitled if my children are eligible?***

Systems that have not accepted G. L. c. 32, § 7(2)(a)(iii)

In systems that have not elected to accept the provisions of G. L. c. 32, § 7(2)(a)(iii), you will receive a yearly amount of additional pension of \$312.00 for each of your surviving, unmarried children who are under the age of 18, or who are over said age but physically or mentally incapacitated from earning on the date of your retirement, or who are over age 18 but under age 22 and a full-time student at an accredited educational institution.

Systems that have accepted G. L. c. 32, § 7(2)(a)(iii)

After July 1, 1988, if you were a member of the State Retirement System, the Teachers' Retirement System, or any other system electing to accept the provisions of G. L. c. 32, § 7(2)(a)(iii), the yearly amount of additional pension you received on account of each of your eligible children was \$450.00. However, this amount has been increased by an amount equal to the percentage increase of the cost-of-living each year, as determined

by the General Court for retirement allowances, pensions, and annuities. As of July 1, 2011, the additional annual pension for eligible children was \$751.80.

→ How long will I continue to receive an additional pension on account of my children?

Payments will continue as long as the child survives, remains unmarried and is under age 18 or if the child is over age 18, for so long as the child remains a full-time student at an accredited educational institution and is under 22 years of age. If a child is physically or mentally incapacitated from earning, payments would continue for the duration of the child's incapacity.

LIMITATION ON BENEFITS

→ Is there a limitation on the retirement allowance payable to an accidental disability retiree?

There is a limitation on the allowance of any Group 1, 2, or 4 retiree, regardless of classification, who became a member-in-service after January 1, 1988, or who has not been a member-in-service continuously since January 1, 1988.

The annual retirement allowance (the sum of pension and annuity, exclusive of payments made for eligible children) of such retirees cannot exceed 75% of the annual rate of regular compensation used to calculate the allowance.

→ I was a member-in-service on or before January 1, 1988. Is my accidental disability retirement allowance subject to this limitation?

No, provided your member-in-service status has been continuous since that date. However, if your service has not been continuous since January 1, 1988, your allowance will be subject to the limitation.

WORKERS' COMPENSATION OFFSET/ACCIDENTAL DISABILITY

→ Am I required by law to file for the Workers' Compensation benefits to which I am entitled?

If the injury for which you seek accidental disability benefits is also covered by Workers' Compensation benefits, you must, as a condition to filing for disability retirement, also file for Workers' Compensation benefits. If you neglect to file, your retirement board will file on your behalf. Failure to cooperate with your retirement board will result in suspension of your right to receive a disability retirement allowance.

→ Does my receipt of Workers' Compensation payments affect my accidental disability retirement allowance?

If the payments that you receive under Workers' Compensation are based on the same injury for which you retired, your Workers' Compensation benefit will be offset against your retirement allowance, and will reduce the pension portion of your allowance, leaving the annuity portion unaffected. Workers' Compensation payments that are based on a different injury will not affect your retirement allowance.

THIRD PARTY RECOVERY/ACCIDENTAL DISABILITY

→ Must recovery be sought from "third parties" that cause the accidental disability or death of public employees?

Members or their beneficiaries who are entitled to accidental disability or death benefits must exercise their right to recover lost wages from such third parties. Amounts recovered on account of lost wages are offset against the pension benefit and, therefore, reduce the pension portion of the retirement allowance.

→ ***What steps must a retirement board take if a member or beneficiary fails to fully prosecute such rights?***

Retirement boards may prosecute such rights on a member's behalf. If a member or beneficiary fails to cooperate, the board may, during the period of such failure, suspend the right of the member or beneficiary to further payment.

ORDINARY DISABILITY: ALLOWANCES

→ ***How is an ordinary disability allowance for a non-veteran calculated?***

Non-Veterans who were members prior to April 2, 2012

An ordinary disability retirement allowance is calculated as though the non-veteran is being retired for superannuation at age 55 if under age 55, or at the actual age if over 55, with the amount of creditable service the member has actually achieved. Non-veteran members of Group 2 and 4 who become members on or after April 2, 2012 will still have this formula apply to them.

Non-Veterans who became members of Group 1 on or after April 2, 2012

An ordinary disability retirement allowance is calculated as though the non-veteran Group 1 member is being retired for superannuation at age 60 if under age 60, or at the actual age if over 60, with the amount of creditable service the member has actually achieved.

→ ***How is a veteran's ordinary disability allowance calculated?***

A veteran retired for ordinary disability will receive an allowance consisting of an annuity based on age and accumulated deductions, plus related interest, and a pension equal to 50% of the annual rate of regular compensation for the last year immediately preceding retirement for which he or she received regular compensation.

→ ***Is there a special provision that applies to veterans who are 55 or older?***

The allowance of a veteran retired for ordinary disability after becoming age 55 will not be less than the allowance he or she would receive if retired for superannuation.

WORKERS' COMPENSATION OFFSET/ORDINARY DISABILITY

→ ***Does my receipt of Workers' Compensation payments affect my ordinary disability retirement allowance?***

If the payments you receive under Workers' Compensation are based on the same injury for which you retired, your Workers' Compensation benefit will be offset against your retirement allowance, and will reduce the pension portion of your allowance, leaving the annuity portion unaffected. Workers' Compensation payments that are based on a different injury will not affect your retirement allowance.

THIRD PARTY RECOVERY/ORDINARY DISABILITY

→ ***Must recovery be sought from "third parties" that cause the ordinary disability of public employees?***

Members or their beneficiaries who are entitled to ordinary disability must exercise their right to recover lost wages from such third parties. Amounts recovered on account of lost wages are offset against the pension benefit and, therefore, reduce the pension portion of the retirement allowance.

→ ***What steps must a retirement board take if a member or beneficiary fails to fully prosecute such rights?***

Retirement boards may prosecute such rights on a member's behalf. If a member or beneficiary fails to cooperate, the board may, during the period of such failure, suspend the right of the member or beneficiary to further payment.

10 Suspension of Disability Benefits

→ ***Are there any circumstances under which accidental or ordinary disability benefits may be suspended?***

Incarceration

Yes, payments to most disability retirees who are incarcerated for a felony committed on or after July 1, 1996 will cease for the period of such member's incarceration.

Earned Income Reporting Requirements

Disabled retirees who fail to comply with reporting requirements about earned income may also be subject to forfeiture of benefits. Please see the section of this guide entitled, "Annual Statement of Earned Income."

11 Options for Retirees

"Option" is the term used to describe how your retirement allowance is allotted. Your allowance must be paid to you in lifetime monthly payments, but the apportionment of those payments will differ depending upon your option selection. Option choice also determines what benefits, if any, will be paid to survivors after a retiree's death.

MAKING A CHOICE

→ ***What factors should influence a member's choice of option?***

Your health and age at retirement, income from other sources, financial obligations, and need to provide for others who may survive you are some of the factors that you should consider carefully. Your decision should not be made on the basis of what options are the most popular, or the one chosen by a friend or acquaintance. It should be based on your own personal needs.

→ ***Are there any restrictions on my election of an option?***

There are no restrictions. Any member is free to select either Option A, Option B, or Option C upon retirement.

→ ***When must I make my option selection?***

You must choose an option before the date your retirement becomes effective. Retirement board staff members are available to thoroughly discuss options with you prior to that date. If you refuse or fail to select an option before the date your retirement becomes effective, the law provides that you shall be retired under Option B.

→ ***May I change my option choice?***

You are not permitted to change your option selection after your retirement becomes effective.

OPTIONS AVAILABLE AT RETIREMENT

OPTION A

Benefits Paid to Member Only

Election of Option A means that you will receive your full retirement allowance in monthly payments as long as you live. All payments will cease upon your death, and no benefits will be provided to your survivors.

OPTION B

Potential Benefit for Beneficiaries

Option B provides you with a lifetime allowance, which is approximately 1% to 5% less per month than Option A. The annuity portion of your allowance is reduced to allow a potential benefit for your beneficiary(ies). Upon your death, your surviving beneficiary(ies) of record or, if there is no beneficiary living, the person or persons appearing in the judgment of your retirement board to be entitled thereto, will be paid, in one sum, the unexpended balance of your accumulated total deductions, if any, from the annuity reserve account.

→ How soon would my contributions be depleted?

Although your retirement allowance is not reduced because of the depletion of your accumulated deductions, it is generally the case that your accumulated deductions are used up within eight to twelve years of your retirement, depending upon your age at retirement. Any remaining balance is to be paid to your beneficiary(ies) in the event of your death.

→ Is my choice of beneficiary limited under Option B? Can I change beneficiaries after retirement?

Under Option B, you may designate any person(s), charity, or institution as your beneficiary. You may, at any time after retirement, change your Option B beneficiary (but not your option selection).

OPTION C

Joint and Last Survivor Allowance

Option C is also known as the joint and last survivor allowance. Selecting this option means that the allowance payments that you will receive during your lifetime will be approximately 7% to 15% less than those you would receive under Option A. Upon your death, your designated beneficiary will be paid an allowance for the remainder of his or her lifetime. That allowance will be equal to two-thirds of the allowance that was being paid to you at the time of your death.

→ What determines the monthly payments of an allowance payable under Option C?

The monthly allowance you receive under Option C depends upon life expectancy factors for you and your designated beneficiary.

→ Who may I name as a beneficiary under Option C?

You may name only one beneficiary under Option C. The eligible beneficiaries are limited to your spouse, your former spouse (provided he or she has not remarried at the time the Option C benefit becomes payable to you), your child, your parent, or your sibling.

You may not change your Option C beneficiary after your retirement becomes effective.

→ If my spouse dies after receiving allowance payments under Option C, will benefits then be payable to our children?

Each child would be eligible to receive an equal share of the allowance his or her parent had been receiving.

Payments would be made to the legal guardian of each child, and would cease upon the child's 18th birthday.

→ ***Does divorce following retirement change the status of my spouse as my Option C beneficiary?***

Your spouse will continue to be your Option C beneficiary even if you subsequently divorce after retirement.

OPTION C "POP-UP"

→ ***How does my allowance change under Option C if my beneficiary dies before I do?***

Application filed on or after January 12, 1988

If your allowance is the result of a retirement application filed on or after January 12, 1988, and your Option C beneficiary dies on or after that date and before you die, you will thereafter be paid the full retirement allowance you would have received had you elected Option A at the time your retirement allowance became effective. You cannot select a new Option C beneficiary or a different option. (This conversion is commonly referred to as the Option C "Pop-Up".) Any cost-of-living increases that have been granted since your Option C retirement became effective will be reflected in your newly established Option A allowance. All payments will cease upon your death.

Retirement before January 12, 1998

For retirees whose retirement became effective before January 12, 1988 and who chose Option C and who are predeceased by their beneficiaries, extension of the Option C "Pop-Up" benefit is determined by their respective retirement board's (and relevant "legislative body's") acceptance of Section 288 of Chapter 194 of the Acts of 1998. Under Section 288, such adjustments must be made prospectively from July 1, 1998. No payment can be made relative to the period, if any, from the date of the death of the beneficiary to July 1, 1998.

SPOUSAL ACKNOWLEDGMENT

→ ***Must my spouse acknowledge my option election?***

Retirement boards must provide members and their spouses with detailed information regarding benefit options to help them make informed decisions.

A married member's *Choice of Retirement Option Form at Retirement* must be signed by the member's spouse, to acknowledge the spouse understands the option chosen. If a married member files a *Choice of Retirement Option Form at Retirement* that has not been acknowledged by his or her spouse, the retirement board is required to notify the member's spouse of the option selected within 15 days by registered mail.

Thirty days after the member's spouse has been notified as provided above, the option will take effect. The effective date of the member's retirement will not be affected by the requirement that spousal acknowledgment must be requested.

12 Annual Statement of Earned Income

→ ***What financial information must I file with PERAC after my disability allowance becomes effective?***

You are required to file an *Annual Statement of Earned Income* with PERAC on or before April 15th of each year, certifying the full amount, if any, of your earnings from earned income during the preceding year.

→ Are there forms that I must submit along with my Annual Statement of Earned Income?

If you filed a federal income tax return for the preceding year, even if it was filed jointly and the only income is attributable to your spouse, you must attach a copy of the first two pages of your Federal Form 1040, 1040A, or 1040EZ.

If you requested an IRS extension on filing your tax returns, you must attach a copy of the extension request form.

If your Federal tax return is filed electronically, you must print out a copy of your completed tax return in order to attach the required copies to the *Annual Statement of Earned Income*. If you file by telephone, you must submit a copy of the telephone (TeleFile) filing worksheet with the confirmation number on it.

If you derived income from employment, you must attach copies of any and all W-2 or 1099 forms related to that employment. Forms 1099 that are associated with interest or dividend and Form 1099R (issued by retirement boards to their retirees) should not be submitted.

If you engaged in any self-employment during the preceding calendar year, you must attach all Schedule Cs and/or K-1 forms.

If you derived income during the preceding calendar year from a business in which you, your spouse or dependent child had a proprietary (ownership) interest, you must attach a copy of the first two pages of the Corporate Return Form 1120 or 1120S, Partnership Form 1065, Sole-Proprietorship Schedule Cs, and any and all K-1 forms.

You may be asked to provide additional information.

→ What are the consequences of failing to file an Annual Statement of Earned Income and the other documents required by PERAC?

If a disability retiree fails to submit an *Annual Statement of Earned Income* and the tax forms required by PERAC, and does not show good cause for this failure, the retiree's rights to a disability retirement allowance will be terminated for the period of non-compliance. Prior to any termination of benefits, a disability retiree must be given notice and an opportunity to be heard by the retirement board.

→ Are there any exceptions to filing an Annual Statement of Earned Income and the other documents as required by PERAC?

Retirees who have been retired for 20 years or more and have not reported earnings for the 10 prior years may be determined by PERAC to be eligible for a waiver, and exempted from the filing of an Annual Statement of Earned Income.

→ What is the definition of earned income?

PERAC defines the term "earned income" as implying some labor, management, or supervision in production thereof, not income derived from ownership of property. This definition has been affirmed by the Supreme Judicial Court.

For the purposes of G.L. c. 32, if an individual operates a business for profit, individually or through an agent, that individual does not have the option of classifying such income as dividends as opposed to wages. Profits derived from the operation of a business through some labor, management, or supervision of production of such profits are earned income, regardless of how a retiree categorizes such income for income tax or other purposes.

→ ***If I did not earn any income during the preceding year, what forms do I have to complete and submit?***

You are required to complete the *Annual Statement of Earned Income* and return it to PERAC. This is true even if you don't file tax returns.

→ ***Should I use gross or net amounts when reporting earnings?***

When reporting wages earned as an employee, the gross amount from the W-2 form should be referenced. When reporting earnings from self-employment, use the net amount and include all Schedule Cs.

→ ***Does PERAC validate the earnings reported by disability retirees?***

The reported earnings are validated in a number of ways. Since retirees sign their *Annual Statements of Earned Income* under the pains and penalties of perjury, it is very important to report fully and accurately.

13 Reduction or Suspension of Benefits

→ ***Will my disability allowance be affected if my post-retirement earnings exceed a certain level?***

Yes, Section 91A of Chapter 32 of the Massachusetts General Laws provides that if the amount of your annual retirement allowance, when added to your post retirement earnings, is in excess of the regular compensation you would have received if you had continued in service in the grade you held on your retirement plus \$5,000, your retirement allowance may be reduced or suspended. The reduction or suspension of benefits will correspond directly with the amount that is in excess.

This adjustment, based on your actual earnings from the preceding year, is made annually. This information may also be used to make a permanent modification of your pension.

Certain payments including bonuses, overtime, severance pay, any and all unused vacation or sick leave, early retirement incentives, or any other payments made as a result of giving notice of retirement are not considered part of regular compensation and will not be utilized in this analysis.

Public Sector Work

Another section of the retirement law further limits the amount that any retiree may be paid for public sector work in Massachusetts. It is the retiree's responsibility to advise the person responsible for paying compensation that he or she is a public retiree and that, as a result, the hours he or she may work and his or her post-retirement earnings in the public sector are limited.

→ ***Can a retirement board simply reduce or terminate my benefits without any notice or without giving me a chance to be heard?***

Prior to any termination or reduction of benefits pursuant to Section 91A, you must be given written notice and an opportunity to be heard by your retirement board. If your board does terminate or reduce your benefits, you have the right to appeal these actions to the Contributory Retirement Appeal Board (CRAB).

→ ***How can I determine how much regular compensation is currently being paid for the position from which I retired?***

You may contact the personnel office with which you dealt as an active member.

14 Evaluation of Disability Retirees

FINDINGS

→ Is a disability retiree required to be evaluated by PERAC after his or her disability retirement becomes effective?

After PERAC consults with a member's retirement board, any member retired for ordinary or accidental disability will be required by PERAC to participate in an evaluation to determine whether:

- the member is able to perform the essential duties of the position from which he or she retired, or a similar job within the same department for which he or she is qualified,

or

- whether the member's return to his or her former or similar job would likely be expedited by participation in a medical or vocational rehabilitation program.

EVALUATION SCHEDULE

→ How frequently will such evaluations be scheduled?

PERAC may require an evaluation once per year during the first two years after retirement, and once every three years thereafter, or at any time upon the written request of a disability retiree. No member will be evaluated more frequently than once in any twelve-month period.

RECORDS REVIEW

→ How is the evaluation process begun?

PERAC begins this process by reviewing a retiree's records. PERAC's Disability Unit Case Manager may also contact the retiree and his or her retirement board. Once all appropriate information is obtained, a determination will be made by PERAC as to the need for a comprehensive medical evaluation to be conducted by a physician.

→ Which records will PERAC review?

The medical records pertaining to those examinations, tests, and studies performed since your disability retirement became effective are of crucial importance. With access to all up-to-date medical information, PERAC is better able to make an assessment without requiring the duplication of medical tests and studies to produce relevant data. If you advise PERAC that no additional medical records are available, PERAC will schedule you for a comprehensive medical evaluation with a physician.

→ What are the possible outcomes of a records review by PERAC?

PERAC may find that the catastrophic nature of your illness or injury is such that you do not need to be scheduled for any further review of records or any comprehensive medical evaluations in the future.

or

PERAC may find that you are currently unable to perform the essential duties of your former position or

a similar job. You will not be scheduled for a comprehensive medical evaluation. You will be scheduled for another records review in the future.

or

PERAC may find that a comprehensive medical evaluation must be scheduled in order to complete an assessment of your current ability to return to work, with or without rehabilitation. You will be given 14 days notice of the time(s) and place(s) of the evaluation. Your retirement board will also be notified.

COMPREHENSIVE MEDICAL EVALUATION

→ *What can be included in a comprehensive medical evaluation?*

A comprehensive evaluation may include mental or physical medical examinations, vocational testing, meetings and consultations with medical professionals, including your treating physician and vocational rehabilitation counselors. The goal is to provide objective data pertaining to your ability to safely perform the essential duties of your former or similar job, and whether or not your return to employment is likely to be facilitated by participation in a rehabilitation program.

The physician who coordinates this evaluation process will have copies of all of the available medical information and a copy of the current job description associated with the position you held at the time of retirement. If you are a retired police officer or firefighter, a copy of the medical standards established by the Commonwealth's Human Resources Division (HRD) for those positions will also be given to the physician.

The physician will submit his findings in a written report to PERAC. If the physician has concluded that you may benefit from rehabilitation, the doctor will include a rehabilitation plan with the report.

→ *What happens if I refuse to participate?*

If you refuse to participate in the evaluation without good cause, your retirement board must terminate your allowance. You must first be given written notice and an opportunity to be heard by the board.

→ *May I appeal a determination made by a comprehensive medical evaluation physician about my ability to perform the essential duties of the position from which I retired?*

Yes. You or any other party to the comprehensive medical evaluation process may appeal any decision to the Superior Court in the area in which you reside, or in Suffolk Superior Court. Upon request, a member's retirement board must assist the member in the filing of an appeal.

RESTORATION TO SERVICE EXAMINATIONS

→ *What happens if the physician who performs the comprehensive medical evaluation determines that I am able to perform the essential duties of the position from which I retired?*

PERAC will schedule you for restoration to service (RTS) examinations with three different physicians. These examinations are not conducted on a joint basis. Each physician will conduct a separate examination.

At least one of the physicians will be a specialist in the medical field related to the condition for which you retired. The other physician(s) will specialize in fields whose relevancy is determined by PERAC.

Your physician, legal counsel, and a person of your choosing may attend your RTS examinations. Your former employer/department head, and a physician and legal counsel designated by your former employer, may also be present.

→ ***What happens after the RTS examinations have been conducted?***

The physicians complete the RTS certificates and narrative reports and send them to PERAC within 60 days of conducting their examinations. You and your retirement board will receive copies of the certificates and narrative reports from PERAC. If the unanimous outcome of the RTS examination is that you should be restored to service, PERAC will notify your retirement board. Your retirement board must notify your former employer and the state's HRD that you must be restored to service.

→ ***May I appeal a determination made by a restoration to service examination physician about restoring me to active service?***

You or any other party to the RTS examination process may appeal any decision to the Superior Court. Upon request, a member's retirement board must assist the member in the filing of an appeal.

REHABILITATION PROGRAMS

→ ***What is the next step if the physician determines that my return to service would be facilitated by my participation in a rehabilitation program?***

If PERAC determines that you would benefit from a rehabilitation program, and that such a program is cost-effective, your retirement board must provide the rehabilitation program for you.

→ ***Who will pay for the rehabilitation program?***

Your retirement board must pay for the cost of the program, less any benefits payable under your insurance policies, and less any scholarships or grants otherwise available.

→ ***What services will be included in the rehabilitation program?***

Any rehabilitation program will include only those services that are aimed toward returning you to your former position, or a similar position in the same department.

All rehabilitation programs will include a determination of your functional capacity, age, education, and experience.

→ ***Are there any consequences associated with failure to complete a rehabilitation program?***

Your retirement allowance will be suspended if you fail to complete the program without good cause.

EXAMINATION FOLLOWING REHABILITATION

→ ***Must I be evaluated after I complete a rehabilitation program?***

If your retirement board believes that such an examination is warranted, your retirement board will ask PERAC to convene a medical panel to examine you to determine if you can perform the essential duties of the position from which you retired.

If your retirement board believes that such a medical panel examination is unwarranted, the board must file a written statement with PERAC stating the reasons why an examination is not justified.

If PERAC rejects this statement, PERAC will schedule either a single physician or a three member medical panel to determine the scope of your physical capabilities, and whether you can perform the essential duties of the position from which you retired, or a similar job within the same department. PERAC will pay for this medical examination.

VOLUNTARY REHABILITATION PROGRAMS

→ ***If a disability retiree wants to volunteer for rehabilitation, how will his or her request be processed?***

A member may initiate the rehabilitation process under Section 21 of Chapter 32. PERAC may require the member to be examined by a physician qualified to render rehabilitation services, or a vocational counselor, or both, for a recommendation as to the need and nature of rehabilitation.

15 RESTORATION TO ACTIVE SERVICE

→ ***What will happen if, within two years of the date I retired for disability, a regional medical panel determines that I am able to perform the essential duties of the position from which I retired, or a similar job within the same department?***

If there is a vacancy in the position that you held at the time of your retirement, you are required to be returned to that position, and your disability retirement will be revoked.

If there is no vacancy in your former position, but you are found able to perform the essential duties of a similar job within the same department, as determined by HRD, and such a position is vacant, you will be returned to that position, and your disability retirement will be revoked.

If no similar position is vacant, a vacancy must be created for you by reducing the rank and position of the last person promoted to such a position. The person whose rank or position has been reduced will be placed at the top of a list to fill vacancies for that rank or position during the subsequent two-year period.

→ ***What happens if more than two years have passed since I retired and a regional medical panel determines that I am able to perform the essential duties of the position from which I retired, or a similar job within the same department?***

If there is a vacancy in the position that you held, or a vacancy in a similar position within the same department, as determined by HRD, you are required to be returned to the position, and your disability retirement will be revoked.

If there is no vacancy, you will be granted a preference for the next available position or similar position for which you are qualified. You will continue to receive your retirement allowance until you are reinstated to your former position, or a similar position becomes available, or unless your earned income (See the section of this guide entitled, "Reduction or Suspension of Benefits") necessitates a reduction/revocation of your pension.

Any disability retiree who has been separated from his or her position for more than five years may be required to complete a retraining program, created by the employer and approved by the state HRD, after being returned to service.

→ ***How will my restoration to active service affect my record of creditable service?***

Any creditable service in effect at the time of your retirement for disability will be totally restored. Upon your subsequent retirement, you will also receive creditable service for the period of your disability. No additional contributions will be required as a precondition for receiving such creditable service.

16 Modification of Allowance

→ ***Will my allowance be affected if PERAC finds I am engaged in, or able to engage in, a gainful occupation while I am in receipt of a disability retirement allowance?***

Your retirement allowance may be modified if PERAC finds that you are engaged in or able to engage in a gainful occupation.

→ ***What will be considered in making determinations about potential earnings?***

PERAC will consider all pertinent facts and circumstances, including the retired member's functional capacity, age, education, and experience.

→ ***What formula is used to calculate a reduction in a disability retirement allowance based on actual or potential earnings?***

If your annual rate of actual or potential earnings is less than the regular compensation which would have been payable (including any increases in salary) during the preceding year (had you continued in service in the grade you held when you retired), but more than the difference between your regular compensation and your retirement allowance, the pension portion of your allowance will be reduced.

The amount of any reduced or modified pension will be the lesser of:

A) The amount by which the regular compensation exceeds the sum of the annuity portion of the retirement allowance and current actual or potential earnings;

or

B) The amount of the pension including any cost-of-living adjustments.

Example

The following example illustrates the calculation:

Assume that:

- The regular compensation currently paid for the position from which you retired is \$25,000, and
- Your actual or potential earnings are \$15,000, and
- Your retirement allowance is \$19,000:
 - Annuity of \$4,500
 - Pension of \$14,500

Your pension will be reduced because your actual or potential earnings (\$15,000) are less than the regular compensation (\$25,000) and more than the difference between the regular compensation and your retirement allowance (\$25,000 - \$19,000 = \$6,000) The amount of your reduced pension will be the lesser of:

A) Regular compensation less the sum of your annuity and your actual or potential earnings:

Regular Compensation \$25,000
Annuity-\$4,500
Actual or Potential Earnings-\$15,000
\$5,500

or

B) Your Current Pension:\$14,500

After modification, the amount of your retirement allowance will be \$10,000: your annuity remains \$4,500, and your newly reduced pension is \$5,500. If the result of the calculation under (A) is zero or negative, you will receive no pension, and your retirement allowance will be limited to payment of your annuity.

→ ***What if my disability pension has been reduced or suspended and my actual or potential earnings later change?***

Your pension will be further modified by increasing, reducing, or suspending it as the facts at that time may warrant.

17 Accidental Death Benefit

DEATH RELATED TO ACCIDENTAL DISABILITY

→ ***Is my beneficiary eligible to receive an accidental death benefit if my death, after retirement, is directly related to my accidental disability?***

This death benefit is commonly referred to as a “Section 9” benefit, because that is the section of the statute which provides for this benefit. Section 9 provides for an allowance to a surviving spouse or other eligible beneficiary in the event of the death of an accidental disability retiree from the same cause for which he or she retired.

→ ***Is there any circumstance in which my beneficiary would not be entitled to a Section 9 accidental death benefit if my death, after retirement, is directly related to my accidental disability?***

If you are a disability retiree who retired and selected Option C on or after July 1, 2004, your beneficiary will receive either the Option C benefit or the Section 9 accidental death benefit, whichever is greater.

→ ***What if I retired and chose Option C prior to July 1, 2004?***

In that event, your eligible beneficiary would be able to collect both benefits. This will apply to a small number of retirees: those who retired for accidental disability between November 7, 1996 and June 30, 2004, and who selected Option C.

→ ***What if I retire and choose Option C after July 1, 2004 and designate my child as my Option C beneficiary? Would my spouse be able to collect Section 9 accidental death benefits?***

Theoretically, yes. Providing your death is found to be the direct and proximate result of the condition for which you retired, and providing your Option C beneficiary is someone other than your spouse, your spouse would be able to collect Section 9 accidental death benefits, while your child would be eligible to receive the Option C allowance. In the rare event, such as the one described by you, when the Option C beneficiary and the Section 9 accidental death beneficiary are different individuals, two benefits will be available. The law, effective July 1, 2004, only prohibits one individual from collecting both benefits.

Under Section 9, a surviving spouse must have been living with the disability retiree at the time of death, or living apart for justifiable cause.

→ ***How is the amount of the death benefit determined?***

The accidental death consists of the continued payment of the pension portion of the allowance you were receiving at the time of your death, taking into account such factors as allowances for eligible children, cost-of-living raises, and any retroactive collective bargaining raises which you may have received after retirement.

If you selected Option B when you retired, any remaining accumulated deductions in your account will be paid to your designated beneficiary(ies). However, if you retired under Option A or Option C, your beneficiary will not be entitled to the amount of any accumulated total deductions remaining in your annuity account.

→ Is the accidental death benefit affected by amounts received from Workers' Compensation?

Amounts received by your survivor under Workers' Compensation law are offset and, therefore, reduce the pension portion of an accidental death benefit. They do not affect the payment of any remaining accumulated deductions.

→ Will pension payments be made to other members of my family if I leave no eligible spouse or eligible children?

If you leave no eligible spouse, pension payments will be made to your eligible children and, if there are no eligible children, pension payments will be made to your surviving, totally dependent father or mother. If your parents are deceased, or not totally, financially dependent upon you, pension payments will be made to any totally, financially dependent unmarried or widowed sibling with whom you live at the time of your death. Such pension payments will continue as long as your beneficiary or beneficiaries survive, do not marry or remarry, and remain unable to support themselves.

→ Is there an additional pension benefit to which surviving children are entitled?

In systems which have not elected to accept the provisions of chapter 55 of the acts of 2006 as amended by section 3 of chapter 64 of the acts of 2006, a yearly additional pension in the amount of \$312.00 will be paid for each surviving unmarried child who is under the age of 18 or who is over said age, but physically or mentally incapacitated from earning on the date of the member's death, or if over age 18 is under age 22 and a full-time student at an accredited institution.

After July 5, 2006, for members of the State Retirement System, the Teachers' Retirement System and any other system electing to accept the provisions of chapter 55 of the acts of 2006 as amended by section 3 of chapter 64 of the acts of 2006, the yearly amount of the additional pension payable for each eligible surviving child will be the same as the amount payable to surviving children of accidental disability retirees. As of July 1, 2011 the additional annual pension for eligible children was \$751.80.

→ How long will the additional pension be payable on account of eligible surviving children?

Payments will continue as long as a child remains a full-time student at an accredited educational institution and is under 22 years of age. No payment is made for a child who is already over the age of 18 at the date of the member's death unless the child is physically or mentally incapacitated from earning at that time, or under age 22 and a student at an accredited educational institution. In the event that a child is incapacitated, payments would continue for the duration of the child's incapacity.

→ After my death occurs, who would be eligible to receive the balance of my accumulated deductions?

Your beneficiaries will not be entitled to a return of your accumulated deductions unless you elected Option B on retirement. If you did, the balance of your accumulated deductions, and related interest, remaining on your death will be paid to your Option B beneficiaries.

The beneficiaries who receive your accumulated deductions are not necessarily the same beneficiaries who are eligible to receive the pension portion of your accidental death benefit.

DEATH UNRELATED TO ACCIDENTAL DISABILITY

→ What benefits are available to my family if my death, after retirement, is not found to be a direct result of the injury or hazard that caused my accidental disability retirement?

If you retired before November 7, 1996, your spouse is entitled to receive an allowance of \$6,000 or \$9,000 per year, depending upon whether a local action has been accepted. However, if you retired on or after November 7, 1996, you are permitted to select Option C upon retirement to provide an allowance for your spouse. As a result, the \$6,000 or \$9,000 allowance is not available.

→ Are surviving spouses of other deceased retirees also eligible to receive this benefit?

The surviving spouses of ordinary disability retirees who retired before December 30, 1971 and who die after January 1, 1973 are entitled to receive the allowance of \$6,000 or \$9,000 per year. As noted above, the amount of allowance depends upon whether a local option has been accepted. If a member retires for ordinary disability on or after December 30, 1971, the member is permitted to select Option C to provide an allowance for his or her spouse. As a result, the \$6,000 or \$9,000 allowance is not available.

→ Who is eligible to receive the balance of my accumulated deductions after my death?

Your beneficiaries will not be entitled to a return of your accumulated deductions unless you elected Option B on retirement. If you did, the balance of your accumulated deductions, and related interest, remaining on your death will be paid to your Option B beneficiary or beneficiaries.

PENDING DETERMINATION OF ACCIDENTAL DEATH BENEFITS

→ If I die while I am still a member-in-service of causes that may be job-related, are there benefits which my family may be eligible to receive while they await a decision about an accidental death benefit?

Your surviving spouse (or other eligible beneficiary whom you may designate at any time prior to your death) may elect to receive an Option D benefit in an amount equal to the yearly amount of the Option C allowance to which you would have been entitled had you retired on the date of your death. This benefit is payable pending determination of your beneficiary's eligibility for receipt of accidental death benefits. Your beneficiary must elect to receive such benefits within one year of the date of notification of eligibility to elect.

→ Who is eligible to be my Option D beneficiary?

The eligible beneficiaries are limited to your spouse, your former spouse who has not remarried at the time the Option D benefit becomes payable, your child, your parent, or your sibling.

Even if you select someone other than your spouse as your Option D beneficiary, if you die leaving a spouse to whom you were married for at least a year and with whom you were living at the time of your death (or living apart for justifiable cause), that spouse can elect to receive the Option D benefit, to the exclusion of the Option D beneficiary you named, so long as you have at least two years of creditable service.

→ Are there any additional benefits that my surviving eligible children may be eligible to receive during this interim period?

An additional allowance of \$120.00 a month (or \$1,440.00 annually) for the benefit of your first eligible child, and \$90.00 per month (or \$1,080.00 annually) for each additional eligible child, will be payable.

→ If my spouse elects to receive Option D payments during this interim period, is the amount of his or her benefit guaranteed to meet a certain level?

The benefit payable to your spouse will not be less than \$250.00 or \$500.00 per month, depending upon whether a local option has been accepted, if, at the time of your death, you were married for at least a year, were living with your spouse, and you had completed at least two years of service.

→ Would an accidental death benefit be affected by the payment of such an interim allowance?

In the event your accidental death benefit is approved, the accidental death benefit will be paid retroactively to the date of your death, and will be reduced by the total amount of such interim payments and any additional allowance paid for the benefit of your children, in most circumstances.

18 Appeals

→ *Who has the right to appeal to CRAB and when must an appeal be filed?*

Any person who is aggrieved by a decision of a retirement board or PERAC, or by the failure of a retirement board or PERAC to take action, may appeal to the Contributory Retirement Appeal Board (CRAB). In some cases, appeal lies with the district court or the Superior Court (This is discussed more fully below.)

Time Frame for Appeals

Appeals to CRAB must be filed within 15 days of notification of a retirement board or PERAC action.

If Chapter 32 does not specify a time within which a board or PERAC is required to act, an appeal of a failure to act must be filed within 15 days after the end of one month following the date that a written request to act was filed with the board or with PERAC.

→ *Who are the members of CRAB?*

The board consists of three members:

- an Assistant Attorney General, who acts as the chairman
- a designee of PERAC
- a person appointed by the Governor.

If the matter being considered by CRAB concerns a disability retirement, the Commissioner of Public Health, or his designee, will substitute for PERAC's designee.

→ *How does this appeal process work?*

Within a period of not less than 10 days or more than 60 days after the appeal is filed, CRAB must assign the matter to an Administrative Magistrate from the Division of Administrative Law Appeals. The Administrative Magistrate will conduct a hearing and issue a written decision that shall become final and binding upon the board and all other parties unless, within 15 days, either party files a written objection to CRAB or CRAB orders, in writing, that it will review the decision of the Administrative Magistrate. CRAB's final decision may be appealed to the Superior Court.

→ *Is there another avenue of appeal available?*

District Court

If you are a member of Group 1, Group 2, or Group 4 who has attained age 55 and who has completed 15 or more years of creditable service, or if you haven't attained age 55 but have completed 20 or more years of creditable service, or if you are a veteran and have completed ten or more years of creditable service, you may petition the district court for review of certain decisions involving involuntary retirement. Any member may petition the District Court for review in cases involving dereliction of duty.

However, in cases where a member has fully cooperated with the processing of an involuntary retirement application, CRAB has held that such cooperation effectively transforms the application from one of an involuntary nature to a voluntary one. In such circumstances, CRAB has held that it still has jurisdiction to hear the appeal.

→ If I am awaiting a decision from CRAB about disability, may I take a retirement allowance for which I am qualified?

You are permitted to take a superannuation retirement allowance (if otherwise eligible) pending a ruling by CRAB pertaining to your accidental or ordinary disability retirement allowance. You are permitted to take an ordinary disability retirement allowance (if otherwise eligible) pending a ruling by CRAB pertaining to your accidental disability retirement allowance. Your acceptance of an allowance will not prejudice your case for receipt of further benefits.

KEY ADDRESSES & PHONE NUMBERS

Public Employee Retirement Administration Commission
5 Middlesex Avenue, Suite 304
Somerville, MA 02145
(617) 666-4446

Contributory Retirement Appeal Board (CRAB)
Office of the Attorney General
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108
Phone 617-727-2200

The Division of Administrative Law Appeals (DALA) *
One Congress Street, 11th Floor
Boston, MA 02114
Phone 617-626-7200

Massachusetts Department of Revenue
100 Cambridge Street
Boston, MA 02204
Attention: Taxpayer Assistance
Phone 800-392-6089
Web: www.dor.state.ma.us

Internal Revenue Service
Taxpayer Assistance
Phone 800-829-1040
Web: www.irs.gov

Social Security Administration
Phone 800-772-1213
Web: www.ssa.gov

* New appeals are filed with DALA. Objections to DALA decisions are raised with the Chairman of CRAB.