

These are questions that have been posed to PERAC regarding the ERI of 2010

Q - In the memo sent to the CEOs it defines the CEO of a town to be the Town Manager or Town Administrator, but I am wondering if that might not be true for my towns which have neither, and for nearly all purposes the Board of Selectmen is thought of as the Chief Executive Officer. In support of my assertion, I suggest this line from M.G.L. 32 §22(8)(c) " . . . For purposes of this section, "chief executive officer" shall mean the board of selectmen in a town, the mayor in a city, except in a city with plan D or plan E form of government it shall mean the city manager, municipality with a council form of government, the town manager and the county commissioners in a county. In a district or in an authority, "chief executive officer" shall mean the members of such district or authority. . . ."

A - You make a good point. If there isn't a Town Manager or Administrator, the Board of Selectmen is the logical CEO

Q - My second question regards whether or not members of my school districts, fire and water districts, housing authorities, and the regional council of governments are eligible to participate in the ERI. (All the language is specific to municipalities.) And by extension, if they are, who or what is the Chief Executive Officer of their respective units. Would it be school committees, board of directors, board of commissioners?

A - As noted at the beginning of our Memo, this ERI is available only to municipal employees. This means only active employees of cities and towns are eligible, not employees of districts, authorities and the like.

Q - Has anyone sorted out the chain of events required in the ERI law? Particularly the last four subparagraphs under (g)? I can follow the first four, (i) through (iv), but then the last two confuse me. They seem superfluous because (vi) seems to have a deadline earlier than (iv), and (v) seems late to the sequence, considering that the participating applicants need to be determined early in the process - before the plan is submitted to the actuary because the plan is supposed to include the number of participants.

A - Here's a summary of the provisions with examples of dates

- 1. CEO submits plan to PERAC 9-1-10
This plan would indicate the number of persons and related information about them that the CEO intends to offer the plan to, not the ones who actually take it.***
- 2. PERAC approves plan and returns to CEO 10-15-10. Next meeting of legislative body is 10-30-10***
- 3. 10-30-01 legislative body accepts plan, publishes it and makes it available to all employees on 11-10-10***

4. *Employees must apply within 2 months of publication 1-10-11*
5. *CEO determines who can participate and notifies them within 1 month 2-10-11*
6. *Applicants who are allowed to participate must retire within 2 months 4-10-11*

Q - "One question so far - In Section 66, paragraph (a) it states ".a municipality which accepts this section may establish." As part of the whole timeline, does Town Meeting also have to vote to accept Ch 188 Sect 66? If so, how early in the timeline does the vote need to happen?"

A - Note that in the section on page 1 of our Memo that begins "What steps must be taken" we state that the process is to be initiated by the CEO. The steps set out in the timeline in that portion of the Memo and as set for the in the example above then begins, with the deadline for submission of the plan to PERAC being September 28, 2010. The plan would be submitted to the Town Meeting at its next meeting date.

Q - Is an elected official of a municipality, who has 20+ years of service but is no longer contributing due to the \$5,000 minimum wage rule, eligible for the ERI?

A - A non-contributing person is an inactive member, and so not eligible.

Q - Referring to paragraph (e) of Section 66, the paragraph that describes the provisions for re-filling positions, it would provide greater opportunity for participation by small towns if any interpretation of this paragraph allowed for the inclusion of salaries from layoffs, along with the ERI retirements, when calculating the 30, 45, and 60% restrictions. For example: The Highway Superintendent is eligible for the ERI and has a current salary of \$50,000. The town can't leave the highway department without a superintendent, but it can layoff one of the highway workers, who earns \$35,000, as a way to save money and meet the 30% restriction. The town could then re-fill the superintendent's position. In your opinion, does paragraph (e) provide for this type of scenario?

A - (e) In filling positions which have been vacated by employees who participate in an early retirement incentive program under this section, the chief executive officer of the municipality shall be limited to paying compensation, contract and professional services in an amount that does not exceed the following percentage of the total annual salary of all participants in the program calculated as of their respective retirement dates: 30 per cent in fiscal year 2011, 45 per cent in fiscal year 2012 and 60 per cent in fiscal year 2013.

Section 66(e) refers specifically to positions vacated by participation in the ERI and the total annual salaries of the participants. It's clear that the per cent calculation is applied to the salaries of those who participated in the ERI.

Q - That the ERI is only available to municipal employees of cities and towns is creating an inequity that I wonder if we might be able to solve. School personnel that are not members of MTRB, (aides, custodians, administrative staff) are members with us (FRRS). However, the "cities and towns only" determination is splitting them into two classes of member simply because one group receives paychecks via a town, the other group is paid through a school district. Let me explain further by describing situations: Five towns (Erving, Leverett, Shutesbury, New Salem, and Wendell) share a superintendent and staff to oversee their elementary schools (School Union 28). Each of the first three towns pay all the invoices and payrolls for their respective school and the school personnel are considered employees of the town. The aides, custodians, and secretaries are considered to be eligible for the ERI. New Salem and Wendell however, share an elementary school, and formed a school district in order to do so. Their school personnel get their paychecks from the "district" (not the towns) which in theory excludes them from participating in the ERI. Five towns, four schools, all neighbors, managed by the same superintendent, sharing and swapping aides and teachers between schools, all serving municipal functions - can we find a way to treat them all equally regarding the benefits of the ERI?

Similar situations exist with our other school systems.

We have four other towns in southern county that each pay the expenses of their own elementary school but share a high school district. All five schools are administered by a shared superintendent (School Union 38). The aides, custodians, and secretaries of the elementary schools are considered eligible for the ERI, but the same level of personnel at the high school are not - simply because their paycheck comes from the district. Also, our members in our two K-12 school districts would also be excluded from the ERI, while their town-paid counterparts in other schools would be eligible.

Can we find a way to solve the inequity? Can we extend our understanding of what is "municipal" to include this second class of school employee (district paid)? They are no different than their town-paid counterparts.

A – Unlike earlier ERIs that included employees of districts and authorities, this one only includes municipal employees. (municipality is defined in G.L. c. 4, s. 7 as a city or town.) The ERI that was offered in 1992 initially included only municipal employees, but was amended after passage to include employees of districts and authorities. The 2002 ERI specifically included employees of districts and authorities. To correct this situation, the statute would need to be amended, much like it was in 1992.

Q - These questions focus on people who are active members in more than one unit.

1) We have a few people who are employed mainly with one of our districts but also are active with a town to a much lesser degree. Are they eligible for the ERI (assuming through the town)? Would the district salary and creditable service be included in the calculation of the liability? If so, would there be cost sharing between the district and town?

2) We have a few people who work for 2 towns. I think in all cases they work mostly for one, and a little for another. Would there be cost sharing? Could they ERI from the lesser town?

3) We have one person that works for 2 towns and 1 school district in nearly equal amounts of time and salary. Would there be cost sharing?

A – waiting for an answer 8/11/2010