

Anti-Spiking Provisions of Chapter 32

(for Board Members)

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Chapter 176 of the Acts of 2011

- Two anti-spiking provisions added to Chapter 32 by:
 - Section 14 of Chapter 176 – amends §5(2)(a)
 - Section 18 of Chapter 176 – adds §5(2)(f)
- See PERAC Memo #38/2012

Who is affected?

- Anyone who:
 - Retires on or after April 2, 2012, and
 - Has a benefit calculated under § 5, §6 (non-veteran), §10(1) or §12(2)(d)

Section 14 of Chapter 176

- Amends G.L. c. 32, § 5(2)(a) by adding the pertinent text:

...[I]f in the 5 years of creditable service immediately preceding retirement, the difference in the annual rate of regular compensation between any 2 consecutive years exceeds 100 per cent, the normal yearly amount of the retirement allowance shall be based on the average annual rate of regular compensation received by the member during the period of 5 consecutive years preceding retirement.

What does this mean?

- If in the last 5 years of creditable service, the rate of regular compensation increases by more than 100% (i.e. more than doubles) between two consecutive years, then Section 14 is violated.
- If Section 14 is violated, **MUST** use the average of the last 5 years!
- There are **NO** exceptions.

Section 14 - Example 1

2012 - \$80,000 (Mayor)

2011 - \$80,000 (Mayor)

2010 - \$80,000 (Mayor)

2009 - \$20,000 (City Council)

2008 - \$20,000 (City Council)

Section 14 is violated. Why?

Section 14 - Example 2

2012 - \$80,000 (Mayor)
2011 - \$80,000 (Mayor)
2010 - \$80,000 (Mayor)
2009 - \$80,000 (Mayor)
2008 - \$80,000 (Mayor)
2007 - \$20,000 (City Council)
2006 - \$20,000 (City Council)

Section 14 is not violated. Why not?

Section 18 of Chapter 176

- Adds G.L. c. 32, § 5(2)(f)

In calculating the average annual rate of regular compensation for purposes of this section, regular compensation in any year shall not include regular compensation that exceeds the average of regular compensation received in the 2 preceding years by more than 10 percent. This paragraph shall not apply to an increase in the annual rate of regular compensation that results from an increase in hours of employment, from overtime wages, from a bona fide change in position, from a modification in the salary or salary schedule negotiated for bargaining unit members under chapter 150E, or in the case of a teacher, from the performance of any services set forth in the third sentence of the first paragraph of the definition of “regular compensation” in section 1. Any withholdings excluded from the calculation of a member’s average annual rate of regular compensation under this paragraph, shall be returned to the member with interest at the assumed actuarial rate.

What does this mean?

- In determining the 3-year (or 5-year) average of regular compensation, if regular compensation in any year (of creditable service) exceeds the average of the regular compensation of the previous two years (of creditable service) by more than 10%, then Section 18 is violated.
- In calculating the benefit, cannot use regular compensation in excess of 10% of the average of the previous two years.

Exceptions

- If the increase in regular compensation is from one of the following, then Section 18 is not violated:
 - Increase in the number of hours worked
 - Overtime wages *(not reg. comp. but included in §18)*
 - Bona fide change in position
 - Modification in salary or salary schedule negotiated for bargaining unit members of Chapter 150E
 - (For Teachers only) the performance of any service set forth in the third sentence of the first paragraph of the definition of “regular compensation”

If Section 18 is Violated

- In calculating the benefit, cannot use regular compensation in excess of 10% of the average of regular compensation received in the previous two years.
- Any withholdings excluded from the calculation of the member's average annual rate of regular compensation shall be returned to the member with interest at the actuarial assumed rate.

Section 18 - Example 1

2012 - \$50,000

2011 - \$45,000

2010 - \$40,000

2009 - \$39,000

2008 - \$37,000

Section 18 is violated.

Section 18 - Example 1

Year	pay	Avg. Prev. 2 years	110% of avg.	pay to use
2012	- \$50,000	\$42,500	\$46,750	\$46,750
2011	- \$45,000	\$39,500	\$43,450	\$43,450
2010	- \$40,000	\$38,000	\$41,800	\$40,000
2009	- \$39,000			
2008	- \$37,000			

Example - (Violate Both Sections 14 and 18)

2012 - \$21,000 (City Council)

2011 - \$21,000 (City Council)

2010 - \$21,000 (City Council)

2009 - \$10,000 (City Council)

2008 - \$10,000 (City Council)

2007 - \$10,000 (City Council)

2006 - \$10,000 (City Council)

Example - (Violate Both Sections 14 and 18)

Year	pay	Avg. Prev. 2 years	110% of avg.	pay to use
2012	- \$21,000	\$21,000	\$23,100	\$21,000
2011	- \$21,000	\$15,500	\$17,050	\$17,050
2010	- \$21,000	\$10,000	\$11,000	\$11,000
2009	- \$10,000	\$10,000	\$11,000	\$10,000
2008	- \$10,000	\$10,000	\$11,000	\$10,000
2007	- \$10,000			
2006	- \$10,000			

Average salary would be \$13,810 [(\$21,000 + \$17,050 + \$11,000 + \$10,000 + \$10,000) / 5]