

Post Retirement Earnings for regular retirees* - FRRS guidelines
(*disability retirees have similar but different considerations)

It is the responsibility of each retiree to inform their employer and the treasurer or other person responsible for the payment of the compensation for the position in which they are to be employed, the limitations on the number of days or hours which they can be employed in any such calendar year and the limitations on the amount of earnings in same calendar year. Reporting to FRRS is not required until you are nearing the hours or earnings limit and unless there are overearnings that are to be recovered via the return of retirement benefits. Please use the “Post Retirement Earnings Worksheet” to report to the employer - available under the retirees’ page of the FRRS website:

<http://www.frrsma.com/retirees/working-after-retirement/>

MGL 32 §91(b) . . . may, . . . , be employed in the service of the commonwealth, county, city, town, district or authority, including as a consultant or independent contractor or as a person whose regular duties require that his time be devoted to the service of the commonwealth, county, city, town, district or authority during regular business hours for not more than 1,200 hours in the aggregate, in any calendar year; provided that the earnings therefrom when added to any pension or retirement allowance he is receiving do not exceed the salary that is being paid for the position from which he was retired or in which his employment was terminated or the salary upon which the retirement allowance is based, whichever is greater plus \$15,000; provided however that in the first 12 months immediately following the effective date of retirement, the earnings received by any person when added to any pension or retirement allowance the person is receiving shall not exceed the salary that is being paid for the position from which the person was retired or in which the person's employment was terminated or the salary upon which the retirement allowance is based, whichever is greater.

It is not the treasurers’ responsibility to track this.

Nor is it the retirement system’s responsibility. It is the retiree’s responsibility to stay compliant with the law. The information stated herein is only intended to keep all informed. If the retiree is compliant, they will keep the employer(s) and treasurer(s) informed when they reach the 1200 hours (note: they might be working for multiple employers), and they will stop working for all employers. If they have exceeded the earnings limitations, they will give money back to the employers, and the treasurers will then decide what account to credit the return of wages. At this time FRRS has no advice about reversing taxes – other than it’s best to avoid overearning.

MGL 32 §91 (c) Each person referred to in paragraph (b) shall certify to his employer and the treasurer or other person responsible for the payment of the compensation for the position in which he is to be employed, the number of days or hours which he has been employed in any such calendar year and the amount of earnings therefrom, and if the number of hours exceeds 1,200, in the aggregate, he shall not be employed, or if the earnings therefrom exceed the amount allowable under paragraph (b), he shall return to the appropriate treasurer or other person responsible for the payment of compensation all such earnings as are in excess of said allowable amount. The amount of any excess not so returned may be recovered in an action of contract by the appropriate treasurer or other person responsible for the payment of the compensation of any such person.

FRRS has the secondary authority to require the return of retirement benefits.

The FRRS stance is that a retiree must stop being employed once the 1200 hours or dollar limit is reached, and it is retiree’s responsibility to repay the overearnings to the treasurer. In all situations the FRRS Board will collect the overearnings from the retiree when the employers have not.

When the FRRS becomes involved, and documentation is required, It is likely that the FRRS Board will follow its regulations regarding documentation for service purchases, and require “ . . . *documentation in the form of actual payroll records that include: position, wages paid, hours and/or payrate, and start and end dates, are to be provided by the unit treasurer. Where no payroll records exist, the board will review provided materials.*”

When the return of retirement benefits, in the amount of overearnings, is not paid by the retiree, FRRS will withhold monthly retirement benefits until the full recovery of the overage.

Please note that the retiree can waive retirement benefits until the period of potential overearnings ceases. To invoke the waiver, please deliver a letter to FRRS requesting the waiver. Please indicate the beginning and end dates of the waiver period.

What income is included in the calculation?

- **All compensation:** Any compensation received for services performed in relation to any positions held with any governmental unit in Massachusetts is added to the calculation when determining the earnings limit.
- Nearly All Positions: There is a comprehensive list of positions that are exceptions to the limitations, but they are all atypical of the positions in the FRRS region except for elected positions.
 - See the end of this sheet for specifics on elected positions.
 - See the law for all the odd positions that are exempt (M.G.L. 32 §91(a)):
 - <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIV/Chapter32/Section91>
 - Here are some that are not specifically listed in §91(a):
 - CPCS (Committee for Public Counsel Services) – PERAC – *“We have previously opined that an individual working for CPCS as a private investigator would not be subject to Section 91(b) limitations, because they would be employed in the service of individual defendants despite being paid for their services through CPCS and the Indigent Costs Act.” June 8, 2021*
- Even “Non-Pensionable” compensation that was not allowable as pensionable income prior to retirement:
 - Add these to “Salary From Which They Retired”
 - fees (collector, treasurer, clerk, etc.)
 - Add these to “Post-retirement Earnings”
 - fees (collector, treasurer, clerk, etc.)
 - off-duty details
 - overtime
 - help-out after storm emergencies
 - consultant or contractor pay (applicable to retirees that retired after July 1, 2009)
 - payment to closely held corporations
 - <list to be expanded as other types are realized>
- Special note: The July 1, 2009 reference date only applies to consultant or contractor pay. All other forms of compensation apply to all retirees - regardless of their date of retirement.
- This includes income from government agencies that are not part of any Massachusetts, Chapter 32, retirement system, e.g., Ashfield Water District
- This includes the Senior Tax Work-off program.
- What “salary retired from” will be used in the calculation?
 - While the exact reading of the law indicates that the retirement benefit and extra earnings “*shall not exceed the salary that is being paid for the position from which the person was retired*” there is some flexibility in determining the “salary”. FRRS will take the following approach under varying circumstances:
 - FRRS will use the annual rate at the date of retirement, but in some circumstances will use the average salary used in the retirement calculation. The predominant reason for using the 3-high would be when the members’ hours were cut in the last years of their employment and the majority of their career was full-time. This generally will not apply to part-time positions with variable hours.

- We no longer use the current employee's salary. We now will always start with the salary at retirement and add annual COLAs, longevity increases, and education incentives. The COLA increases will be the same as that given the current employee (when different than other town employees).

Earnings limitations.

The earnings limitation applies to calendar years, not 12-month spans, and the limit is not prorated for partial years, i.e., if someone retires in November, and the dollar limit for the calendar year is \$20k, then they can earn the full \$20k from the date they retired through December 31st (same with the hours limit of 1200). The \$15k would be added that following November for a total of \$35,000 in the next calendar year.

- The "\$15k cushion after one year" is added to the calculation on the 366th day after the date of retirement (PERAC's date for the sake of clarity).

The limits are totals in the year, not spread out over the year.

The limits are calculated using post-retirement earnings and hours – not hours in the CY that were pre-retirement. (PERAC FAQs 10/23/2017 describe them as "post-retirement employment" in question 2, so we take that as confirmation that pre-retirement wages and hours would not be included in the calculation.)

Wages on the hours beyond 1200 are also subject to repayment. All PERAC communications and worksheets are clear that if the retiree works more than 1200 hours, then the wages on those hours over the 1200 are to be returned to the employer.

Salaries, appointed, positions are usually "based" on a number of hours, and therefore FRRS will look to determine and assign a number of hours to use in the calculation of the hours limitation. One method is to divide the salary/stipend by the MA minimum wage rate to determine a reasonable number of hours. Elected positions are not assigned a "number of hours".

We are sticking to the concept of "hours worked", and so vacation, sick, etc. hours would not be included in the 1200 (following PERAC guidance). We also would not include the unworked hours when someone gets paid a minimum (4) number of hours although they only worked for less (1) hours.

Elected Officials

In addition, you may be elected to office by a direct vote of the people following your retirement and be paid for the same without limitation; provided the position from which you retired was not the same elected office. If the position from which you retired was the same elected office, then the earnings limitations will apply to you unless at least one year has passed from the last day you held said public office and the commencement of your post-retirement election to the same position. If you return or continue in the same elected position, either via appointment, election, or continuation, before the expiration of 1 year, you will be subject to the limitations of MGL 32 §91(b) from then on for that position. The statute refers to "said" public elected office, meaning that this prohibition on returning to an elected office applies only to the elected office from which a person retired.

SECTION 49 OF CHAPTER 176 OF THE ACTS OF 2011