

ESSEX REGIONAL RETIREMENT SYSTEM



SUPPLEMENTAL REGULATION GUIDE BOOK

Updated January 2019

INTRODUCTION

The Essex Regional Retirement Board (ERRB) is one of 104 public retirement boards governed by Massachusetts General Law Chapter 32 (MGL c.32). The Public Employee Retirement Administration Commission (PERAC) is a state agency that is responsible for monitoring the 104 public retirement boards in the Commonwealth.

In addition to MGL c.32, the 104 public retirement boards may from time-to-time issue rules applicable to that board which supplement the provisions of the statute. These supplemental regulations require PERAC's approval and are often created to accomplish a goal unique to the individual retirement board and which could not otherwise be accomplished via the statute or by conveniently amending PERAC's rules.

Since becoming a regional board in the wake of the abolition of county government, the ERRB has approved and amended several supplemental regulations. These regulations govern the eligibility for membership in the Essex Regional Retirement System (ERRS), the award of creditable service to members, and how payments are to be made when an error in a member's benefit is discovered. In addition, the members of the ERRB are subject to the requirements of a travel supplemental regulation. There are also supplemental regulations governing investments made by the ERRB.

This booklet contains only those regulations that directly affect members of the retirement system. Travel and investment regulations are not included in this booklet. This booklet is being published in the hopes of providing guidance to the members of ERRS on how the supplemental regulations adopted by the ERRB and approved by PERAC could affect your future retirement benefit. We hope that this booklet will help clarify which regulations may apply to you and, therefore, help you better plan for your future retirement benefit.

The supplemental regulations covered in this booklet relate to the following areas:

- Membership
- Creditable Service
- Payment of Interest – Correction of Errors

While all of these regulations affect members of the retirement system, we suggest that you pay particular attention to the discussion pertaining to the rules governing the award and proration of creditable service. No single supplemental regulation, rule or policy affects more members more often than the Supplemental Creditable Service Regulation.

When discussing each regulation, you will find a brief introduction explaining the background of the supplemental regulation, followed by the regulation itself. Finally, there is a section describing how the supplemental regulation is applied by the ERRB.

We hope that you will find this information helpful and that it will clarify for you the regulations that may apply to you. We also encourage you to visit our website at www.essexregional.com where you will find all of the supplemental regulations applicable to ERRS, as well as information

on other policies approved by the retirement board, and a variety of additional information relating to the retirement system and the calculation of retirement benefits.

This booklet was developed and prepared exclusively for ERRS members. It is not intended as a substitute for the Massachusetts General Laws, or the Internal Revenue Code, nor will its interpretation prevail should a conflict arise between the contents of this booklet and either M.G.L. c. 32, 840 CMR 1.00 et seq. (PERAC Regulations), the Internal Revenue Code and/or any binding administrative or judicial decision. Rules governing retirement benefits, policies and procedures are subject to change periodically either by statute, regulation or judicial ruling, and the Board will make every effort to annually update this booklet to reflect any such changes.

Also, at the end of this booklet there is contact information for the ERRB's staff. If you have questions about any of this information, please do not hesitate to contact us and we will be happy to assist you.

Thank you.

Charles E. Kostro
Executive Director

SUPPLEMENTAL REGULATION – MEMBERSHIP

Introduction: Since 1996, the retirement system has had a regulation governing an employee’s eligibility to join the retirement system. Over this period, the threshold requirement for membership has consistently been that an employee must work at least twenty-hours per week to become a member.

The original regulation governing membership eligibility was effective as of September 24, 1996 and remained in effect until April of 2012. However, the original 1996 regulation also contained a provision that permitted part-time employees who did not work a fixed scheduled to be eligible for membership if, after a ninety-day period, their work week averaged twenty-hours per week. This provision was dropped when the 1996 membership regulation was rescinded in April of 2012 and a new membership policy was adopted.

The membership policy adopted in April of 2012 continued the requirement that an employee had to work a permanent twenty-hour per week schedule in order to be eligible for membership. This new membership policy also required that in order to continue to accrue creditable service, a member had to maintain a permanent work schedule of at least twenty-hours per week. If a member’s work schedule was less than twenty-hours per week then from that point forward the member would be considered inactive and would no longer contribute to the retirement system or continue to accrue creditable service.

In December of 2016, the Supreme Judicial Court (SJC) ruled on a case involving the Stoneham Retirement Board, which had a membership regulation similar to ERRS. The SJC ruled that once an employee became a member of the retirement system that employee remained a member regardless of the number of hours the employee worked during their membership. The SJC determined that only if an employee separated from service would they no longer be an active member of a Massachusetts public retirement system.

In accordance with the SJC decision, the ERRB developed a new membership supplemental regulation. This new membership regulation became effective as of May 16, 2017. Members who were made inactive under the membership policy approved in April of 2012 and who did not accrue creditable service after that period, are entitled to purchase their service in this period pursuant to the decision of the SJC in the Stoneham case. The current membership regulation of the retirement system is below.

Supplemental Regulation – Membership: Any individual who is permanently employed twenty (20) or more hours per week by a single member unit of the Essex Regional Retirement System (“System”) and who receives at least \$5,000 in wages as defined in M.G.L. c. 32, § 1 and 840 CMR 15.03 shall become a member of the System.

For the purpose of this regulation, “permanently employed 20 hours per week” shall mean that the employee is guaranteed 20 hours of weekly compensation each and every week.

Any elected official who earns at least \$5,000 in wages may elect to become a member of the System within ninety days after the date of assuming office.

APPROVED: May 16, 2017

Summary: Under the current membership regulation, as with all prior membership regulations, to be eligible for membership in the retirement system, an individual must work twenty hours per week in one or more positions for one employer. An employee who does not work twenty hours per week for a single employer is not eligible for membership.

The twenty-hour per week schedule must be permanent, which means a regular schedule which guarantees the employee twenty or more hours per week, *every week*. To be eligible for membership, school employees employed from on or about September 1st to on or about June 30th (ten-month school employees), must receive at least twenty-hours per week of regular compensation each and every week that school is in session.¹

In accordance with the new membership regulation, individuals holding intermittent, reserve or call positions are not eligible for membership in the retirement system as they do not work a regular, guaranteed schedule of twenty or more hours per week. An individual who temporarily works or averages twenty hours per week does not meet the membership requirements. An individual who is assigned a twenty hour per week schedule but who is not guaranteed to receive regular compensation at least twenty hours per week, every week, is not eligible for membership. And an individual assigned to a position classified as temporary, seasonal or provisional is not eligible for membership even if they are working more than twenty-hours per week.

Once an individual meets the requirements of membership in the retirement system, they shall remain a member as long as they are continuously employed by the same employer, even if they no longer work at least twenty hours per week. A member whose employment is terminated will become a member inactive. If a member inactive subsequently returns to public employment in the retirement system, they will become an active member again only if their new position meets the membership requirements. A member who is not terminated from employment but is reassigned to a position with the same employer that is less than twenty hours per week will continue to be an active member of the retirement system.

¹ From August of 2017 to February of 2018, ERRS had a regulation governing membership for ten-month school employees only. This regulation was rescinded a few months after it was adopted and, as it was never formally approved by PERAC, the membership regulation described in this section was determined to apply to ten-month school employees just as it would to employees who work twelve months per year.

The provision providing elected officials with ninety-days to decide whether to join the retirement system was originally adopted as a separate regulation in 1996. In April of 2012, the requirement that an elected official receive at least \$5,000 per year in regular compensation was added to bring the membership regulation into conformance with the requirements of MGL c.32 as amended by Pension Reform, which requires that a member earn at least \$5,000 annually to receive creditable service.

Under the ERRS membership regulation, an elected official who fails to elect to become a member within ninety days of assuming office must wait until the start of a new term in order to become a member. Although there are decisions of the Division of Administrative Law Appeals (DALA) which call into question whether MGL C.32 permits the purchase of prior non-membership *elected* service, the ERRB did vote that the purchase of prior non-membership service in an elected position shall be permitted if the member earned in excess of \$200 or more annually prior to July 1, 2009, and \$5,000 or more thereafter.

SUPPLEMENTARY CREDITABLE SERVICE REGULATION

Introduction: A creditable service regulation defines the manner in which service will be awarded to members of a retirement system. In addition, for members to be able to purchase prior non-membership service, or in order for the retirement board to prorate a member's service where applicable, a Massachusetts public retirement system must have a PERAC approved creditable service regulation.

MGL c.32 requires that members of a retirement system may only purchase and receive credit for prior non-membership service if there is a PERAC approved supplemental regulation in place that permits such a purchase. Unfortunately, the first creditable service regulation adopted by the Essex Regional Retirement Board was not until October of 2009. The failure to adopt a creditable service regulation earlier meant that all purchases of prior non-membership before October of 2009 were potentially invalid.

In March of 2013, the new Board consolidated and revised the existing creditable service regulation. This new creditable service regulation cleaned up the confusing language of the 2009 regulation and addressed several gaps in creditable service rules that had not been covered by the earlier regulation. But the fundamental calculations for awarding service remained based on the same formulae established by the 2009 regulation.

In addition, to address the problem of service purchases made prior to October of 2009, the new Board also adopted a policy that would equitably award service to all ERRS members. The Board's applied its March 2013 Supplementary Creditable Service Regulation to all members and former members who had not yet retired and who purchased and received credit for past non-membership service. This meant that all active ERRS members would be awarded creditable service in the same manner and under the same calculations.

The Supplementary Creditable Service Regulation became effective in March of 2013 and has been amended twice since that time. The full current creditable service supplemental regulation is below.

Supplementary Creditable Service Regulation: Members of the Essex Regional Retirement System shall receive creditable service, in whole month increments, consistent with this regulation in the following manner:

1. For a member in service who is employed in a full-time capacity, he/she will receive one (1) month of creditable service for each full month for which the employee receives regular compensation and remits the appropriate contributions to the Essex Regional Retirement System ("System"), with said service not to exceed one (1) year of creditable service in any calendar year.

2. For a member in service who is employed in a part-time capacity throughout his/her entire career, he/she will receive one (1) month of creditable service for each full month for which the employee receives regular compensation and remits the appropriate contributions to the System, with said service not to exceed one (1) year of creditable service in any calendar year.
3. For a member who has rendered membership service in the System in both a full-time and part-time capacity, the member shall receive full credit for all full-time service and prorated credit for part-time service based on the full-time equivalency of 150 hours being the equivalent of one (1) month of service.
4. For a member who is employed in a part-time capacity throughout his/her career but who either purchases past refunded service, or has transferred into the System previous service rendered in a full-time capacity, the member's part-time service shall be prorated based on the full-time equivalency of 150 hours per month.
5. In the case of School Department employees whose full-time employment requires them to work from on or about September 1st to on or about June 30th, including but not limited to cafeteria workers, clerical and secretarial staff, teacher's assistant and teaching professionals, such as therapists, said employees shall receive one month of creditable service for each full month the employee is receiving regular compensation, with ten (10) months being the equivalent of one (1) year of creditable service. School Department employees who are employed in a part-time capacity shall have their creditable service prorated in the same manner as all members of the System as set forth in this regulation.
6. The Board recognizes that certain School Department employees, including but not limited to custodians and secretaries, are required to work the entire calendar year, and in such a situation, said employee's creditable service will be calculated based on a twelve (12) month year.
7. Creditable service for 10-month employees shall be based on 1,500 hours being the equivalent of 1 year, whereas creditable service for 12-month employees shall be based on 1,800 hours per year.
8. Any member purchasing past part-time service rendered shall have said service prorated based on 150 hours being considered a full month of service.
9. Members of the System may only purchase and receive credit for past service rendered in a member unit of the System, or if the past service was rendered under the jurisdiction of another retirement system, such service may only be purchased if rendered in a temporary, provisional or substitute capacity, provided that the individual was excluded from

membership in the other retirement system. All prior non-membership service shall be calculated with 150 hours being the equivalent of one (1) month of creditable service.

10. Any member in service, whose status is changed so that they are employed less than 20 hours per week, but who continues to receive at least \$5,000 in regular compensation per year as defined in M.G.L. c. 32, § 1 and 840 CMR 15.03, shall receive prorated credit based on the full-time equivalency of 150 hours being the equivalent of one (1) month of service. Such proration shall be effective as of the date upon which the member was no longer permanently employed at least 20 hours per week. Any member who returns to being permanently employed at least 20 hours per week shall receive service credit pursuant to the creditable service regulation of the retirement system.²
11. Any member in service who does not earn at least \$5,000 in regular compensation per year as defined in M.G.L. c. 32, § 1 and 840 CMR 15.03, will not receive any creditable service but the member must still remit contributions to the retirement system in accordance with Memorandum #10 of 2010 issued by the Public Employee Retirement Administration Commission.³

APPROVED: March 20, 2013

Summary: This summary contains a paragraph-by-paragraph explanation of the creditable service regulation.

Paragraphs 1 and 2 of the regulation apply the limitations on awarding creditable service as described in MGL c.32 for members with concurrent service with more than one public employer, or with concurrent service in more than one public position. These paragraphs limit a member to no more than one month of service for every month worked, and no more than one year of service for every year worked. In short, no matter how many employers an individual may work for, and no matter how many positions they may hold, no member can ever earn more than one month of service in any month, and can earn no more than one year of service in any calendar year.

Paragraph 3 is one of the most difficult regulations for the retirement system to enforce. This paragraph requires that a member with a mix of part-time and full-time service must have their part-time service prorated. This has been a requirement of ERRS since September of 1996, but was not always properly or adequately enforced. This paragraph also establishes that when part-time service is prorated it is done so where one month of creditable service is awarded for every one hundred and fifty hours worked. This is essentially the same thirty-five hour per week service proration standard originally contained in the first creditable service regulation adopted in October of 2009. However, since creditable service is required to be awarded on a monthly basis, the

² Approved May 16, 2017.

³ Approved May 16, 2017.

calculation in the current regulation is based the monthly total of one hundred and fifty hours rather than on the weekly standard of thirty-five hours.

Paragraph 4 also applies to a member who has a mix of part-time and full-time service, but in this instance the member's full-time service is with another retirement system. If this member's full-time service is transferred to ERRS, or if this member took a refund of their full-time service and now wishes to purchase their refunded service, their part-time service with ERRS will be prorated. The same standard of one hundred and fifty hours equaling one month of service is used to prorate the part-time service.

Paragraph 5 provides a full year of creditable service for school employees who work on a ten-month basis. These employees will receive a full year of creditable service as long as they work the full school year. If these members work less than the full school year, they will receive creditable service for only those months actually worked. This paragraph also applies the same proration standard referenced above for those members who are school employees if they have a mix of part-time and full-time service.

Paragraph 6 provides that school employees who work twelve months in a year will have their creditable service calculated on a twelve-month basis.

Paragraph 7 defines in hours what constitutes a full year of service for a member who works twelve months per year and for a school employee who works the ten-month school year.

Paragraph 8 applies the one hundred and fifty hours equals one month of service standard to the calculation used when a member purchases prior non-membership service.

Paragraph 9 defines what type of prior non-membership service may be purchased by members of ERRS. This paragraph limits the non-membership service eligible for purchase to only that service rendered while an employee of a unit of ERRS. If the prior non-membership service was rendered in another retirement system, that service may be purchased only if it was rendered in a temporary, provisional or substitute capacity, in which case ERRB is obligated by statute to accept liability for the future cost of the retirement benefit attributable to the purchase of this service.

Temporary, provisional or substitute service differs from seasonal or intermittent service. For instance, working as a lifeguard during summers for a municipality prior to becoming a member of ERRS would be considered seasonal service, not temporary, substitute or provisional. If this service was rendered with a municipality that was an employer within ERRS, the member would be eligible to purchase the service. If the same service was rendered with an employer who is not a member unit of ERRS, the member could not purchase the service. The only exception to this limitation is if the other retirement system accepts liability for the cost of that portion of a future retirement benefit that will be attributable to the non-membership service that is being purchased, but this is very rare.

Paragraph 10 was adopted by the Board in 2017. While the SJC decision in the Stonham case meant that a member whose schedule falls below twenty-hours per week remains an active member of the retirement system, this amendment to the creditable service regulation prorates that service based on the one hundred and fifty hours per month standard. For example, an employee who works twenty hours per week is enrolled in the retirement system. Later in their career, this member's work schedule is changed so that he or she now works ten hours per week. As this member has always been part-time, he or she will receive full creditable service for the period in which she worked twenty-hours per week. However, her service for the period in which she worked less than twenty-hours per week will be prorated. In this example, the member would have to work fifteen weeks during that period in which he or she was working ten hours per week in order to receive one month of creditable service.

Paragraph 11 requires that those members who cannot earn creditable service because they do not earn the statutorily required \$5,000 in regular compensation per year must still contribute retirement deductions to the retirement system. This is in accordance with the directive issued by PERAC in a memo distributed to all retirement boards in 2010.

PAYMENT OF INTEREST – CORRECTION OF ERRORS

Introduction: On July 15, 2013 the Supreme Judicial Court (SJC) decided the case of Herrick v. Essex Regional Retirement Board. Due to an incorrect reference contained in a footnote in that decision, the SJC issued a corrected decision on September 20, 2013. In this case, Robert D. Herrick (“Herrick”) sought interest from the ERRB after the State Appeals Court determined the ERRB improperly forfeited Herrick’s pension approximately a decade earlier. Herrick received a retroactive pension payment but did not receive interest on this payment. Herrick sued ERRS to recover interest on the retroactive payment. In that case, the Superior Court ruled that the ERRB owed Herrick compound interest at the statutory contract interest rate (12%) and the ERRB appealed that decision. ERRS Counsel argued against the rate of interest as applied by the Superior Court and ultimately was successful, reducing the amount of interest owed to Herrick by approximately \$90,000. The SJC ruled that where a retirement board makes a legal error in denying retirement benefits that is corrected by a court, the plaintiff is entitled to a rate of interest determined by the board’s actuary “so that the actuarial equivalent of the pension or benefit to which the member or beneficiary was correctly entitled shall be paid.” The SJC ordered ERRS “to make a one-time lump sum payment to the plaintiff.” Although the SJC established that interest is due any time a member’s benefit is adjusted as a result of a retirement board error, the SJC did not specify what interest rate was to be used.

After the decision in Herrick, PERAC issued a memo indicating its belief that retirement boards have discretion to adopt an appropriate interest rate. PERAC further noted that in 2011, the Legislature adopted a 3% rate of return on refunds to members who leave the system after less than 10 years’ service, indicating legislative intent relative to an appropriate interest rate. Whatever rate that was adopted, PERAC advised, must be applied consistently and used to calculate overpayments as well as underpayments.

In light of the SJC decision in Herrick and PERAC’s memo on interest rates, the ERRB adopted the policy below relative to the payment of interest when an error is corrected.

Payment of Interest – Correction of Errors: The provisions of M.G.L. c. 32, § 20(5)(c)(2) state “[w]hen an error exists in the records maintained by the system or an error is made in computing a benefit and, as a result, a member or beneficiary receives from the system more or less than the member or beneficiary would have been entitled to receive had the records been correct or had the error not been made, the records or error shall be corrected and as far as practicable, and future payments shall be adjusted so that the actuarial equivalent of the pension or benefit to which the member or beneficiary was correctly entitled shall be paid. If it is determined that a member has contributed an incorrect amount to the retirement system, the member shall be required to contribute an amount sufficient to correct such error or the board shall pay an amount to the member to correct such error, as the case may be.”

The Board's policy with respect to the correction of such errors, and the calculation of what constitutes the actuarial equivalent, consistent with the decision rendered in *Herrick v. Essex Regional Retirement Board*, 465 Mass. 801 (2013) and PERAC Memorandum #32/2013, shall require the Board to pay to the member or beneficiary, or in the case in which a member or beneficiary has been overpaid by the Board, the amount of the corrected benefit, together with three percent (3%) annual interest on the benefit paid or owed, as the case may be, computed from the date the error occurred to the date the error was corrected. In a circumstance in which the Board owes funds to the member or beneficiary, the Board will make a one-time lump-sum payment of the amount owed, and prospectively from the date of payment correct the error such that the member or beneficiary receives the corrected monthly benefit. In a circumstance in which the Board is owed funds by a member or beneficiary to correct an error, the Board shall in its sole discretion withhold an amount it deems appropriate from the member's or beneficiary's monthly benefit until such time as the debt is fully recovered. In a circumstance in which the Board is owed funds by a member or beneficiary to correct an error, and the member or beneficiary is no longer entitled to receive a monthly benefit, the Board will seek to recover any amount owed in the most prudent and practical manner possible, and reserves the right to maintain an action in contract to recovery any amount due from the member, beneficiary or the member's or beneficiary's estate.

APPROVED: October 21, 2014

Summary: This policy established 3% as the interest rate applied when a payment is made due to a retirement board error which affects a retirement benefit. However, not every payment made as a result of a retirement board error requires interest to be added, as not every error affects a member's retirement benefit. To clarify when interest does apply, in 2018, PERAC issued a chart showing when to apply interest to a payment that is a result of a retirement board error. The chart is reprinted below.

PAYMENT OF INTEREST CHART <i>(Issued with PERAC Memo #14/2018 and effective 3/2/2018)</i>			
Scenario	Interest is Paid	Interest is not Paid	Comments
Payroll incorrectly withheld retirement deductions from overtime payments.		√	This does not affect the benefit to which the member was entitled. The refund of the deductions will be without interest.
Member overpaid for a service purchase.		√	This refund of money paid will not affect the amount of the benefit to which the member was entitled. Therefore, the

			money will be returned without interest.
Retirement allowance calculation does not include stipend in a 3-year or 5-year average.	√		This affects the benefits or amount of pension to which the member is entitled, so the correction of errors interest rate will attach to the retroactive payment.
Dependent Allowance not paid for four years after ADR is approved.	√		Correction of errors interest rate would attach since this affects the amount of the allowance or benefit.
Person on Superannuation is approved for accidental disability retirement, and an adjustment must be made.		√	This adjustment is payable without interest, as no error has been made by either the board or the member, no matter what the separate options were.
A member receives a retroactive contract settlement.		√	There is no interest because there has been no error.
Member erroneously excluded from membership buying back excluded time.	√		Member will pay the correction of errors interest rate which has been adopted by his or her retirement board.
Member paid amount Board calculated for service purchase, but this was later found to understate what should have been paid.	√		Member will pay the interest rate of the section the buyback was originally made under, either Section 3 or 4. Generally speaking, the purchase of service will always include an interest payment to the Board.
Payroll did not withhold retirement deductions on a stipend.		√	When making up an underpayment of deductions, such a payment will always be made without interest.
Retirement allowance overpaid for a number of years.	√		The repayment of the amount overpaid by the retirement board will include the correct of errors rate of interest. This affects the benefits or amount of pension to which a member is entitled.

Member making an overpayment under Section 91 or 91A to a retirement board.		√	No interest is payable as it does not affect the amount of a benefit or pension.
Option B refund underpaid or overpaid.	√		Correction of Errors Interest Rate is payable because an Option B refund would be considered a benefit.
Member given a refund, but interest not paid at the correct rate. (He should have been paid 3% but his refund was calculated with regular interest instead.) The Board is paying him the difference in the interest three years later.		√	No interest is payable to him on this payment because this error does not affect the member's benefit.

CONTACT INFORMATION

The State Appeals Court has consistently noted that the statute governing Massachusetts public pension benefits (MGL c.32) is “notoriously complex.” The supplemental regulations adopted by retirement boards can also be complex and their meaning or applicability is not always readily apparent. If you have a question about any of the supplemental regulations contained in this booklet, we urge you to contact the retirement system for guidance. This booklet was issued to assist our members in calculating and planning for their future retirement benefit and the staff at ERRS remain ready to further assist our members any time you have a question. The staff contact information is below.

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The retirement system office is located at 491 Maple Street, Building 200, Danvers, MA 01923. The fax number is (978) 750-0745 and there is a general email at info@essexrrs.org. You may also submit inquiries via the Employee/Retiree web portal that is on the website at www.essexrgional.com. Office hours are Monday through Friday from 8:30 a.m. to 4:30 p.m.