

MASSACHUSETTS PUBLIC EMPLOYEE GUIDE TO
SURVIVOR BENEFITS

FOR THOSE BECOMING MEMBERS
ON OR AFTER APRIL 2, 2012



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MASSACHUSETTS PUBLIC EMPLOYEE GUIDE TO **SURVIVOR BENEFITS**

FOR PUBLIC EMPLOYEES WHO BECAME MEMBERS ON OR AFTER APRIL 2, 2012

This guide is designed to familiarize you with the benefits to which eligible survivors of public employees, who were members of Massachusetts contributory retirement systems, are entitled. 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.

This guide reflects changes and amendments to the law through July 1, 2015. This guide is applicable to persons who became members on or after April 2, 2012*.

To gain a basic understanding of each subject area, please read all the questions and answers for that area. Officials of your retirement board are available to further explain the law and to counsel you about your rights and benefits.

For procedures applicable to public employee retirement generally for those who became members of a retirement system on or after April 2, 2012, please refer to *Massachusetts Public Employee Retirement Guide for those Who Became Members On or After April 2, 2012*. For information about your possible eligibility for a disability retirement, please refer to PERAC's *Guide to Disability Retirement for Public Employees (Regardless of the Date of Membership)*.

- ***Note:** Persons who were members of a retirement system before April 2, 2012 and took a refund for their contributions after terminating from service, will be subject to the rules in place for those becoming members on or after April 2, 2012 if they return to public employment after that date, regardless of whether the member redeposits the funds that he or she withdrew upon termination.



LETTER FROM THE EXECUTIVE DIRECTOR

Members of the Commonwealth's Public Employee Retirement Systems:

Chapter 306 of the Acts of 1996 created the Public Employee Retirement Administration Commission (PERAC) to oversee and regulate the public pension systems in the Commonwealth, constituted under Chapter 32 of the Massachusetts General Laws. One important aspect of PERAC's stewardship is the distribution of information about the rights and benefits of public employees under Chapter 32.

In November of 2011, Governor Patrick signed Chapter 176 of the Acts of 2011, reforming and modernizing Massachusetts' public pension laws. With the enactment of Chapter 176, whether one's membership in a Massachusetts contributory retirement system commences before, or on or after April 2, 2012 has become an important distinction.

To assist members of the systems and other interested parties about retirement benefits PERAC is publishing five guides:

- ▶ ***Massachusetts Public Employee Retirement Guide for those Who Became Members Prior to April 2, 2012***
- ▶ ***Massachusetts Public Employee Retirement Guide for those Who Became Members On or After April 2, 2012***
- ▶ ***Guide to Disability Retirement for Public Employees (Regardless of Date of Membership)***
- ▶ ***Guide to Survivor Benefits for Public Employees Who Became Members Prior to April 2, 2012***
- ▶ ***Guide to Survivor Benefits for Public Employees Who Became Members On or After April 2, 2012***

PERAC and the Commonwealth's public employee retirement systems are working together to provide all members and their survivors with clear, accurate and up-to-date information. We are committed to putting our resources at your disposal. I urge you to call upon us for information and guidance.

Sincerely,



Joseph E. Connarton
Executive Director

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INTRODUCTION

Membership in a contributory retirement system is mandatory for nearly all Massachusetts public employees who are regularly employed on a full-time basis. Membership status for public employees is defined in two ways in Chapter 32 of the Massachusetts General Laws: “member-in-service”, and “member-inactive.”

Any member who is regularly employed in the performance of his or her duties is considered a member-in-service. Member-in-service status continues until death or separation from service by reason of retirement, resignation, failure of reelection or re-appointment, or removal or discharge from office or position.

Members-in-service become members-inactive when they:

- ▶ retire and receive a retirement allowance; or
- ▶ when their employment has been terminated and they are entitled to any present or potential retirement allowance or a return of accumulated payroll deductions; or
- ▶ when they are on an authorized leave of absence without pay which extends for more than a year and which is for a reason other than retirement board duties or mental or physical incapacity for duty.

Massachusetts contributory retirement systems offer several types of survivor benefits to their members:

- ▶ Survivor benefits that are based on a member selecting Option B or C upon retirement for superannuation; (Survivor benefits are not payable under Option A.)
- ▶ Survivor benefits for members-in-service who die prior to retirement;
- ▶ Survivor benefits for inactive members;
- ▶ Survivor benefits for accidental disability retirees;
- ▶ Survivor benefits for firefighters, police officers, and corrections officers who are killed or who sustain injuries under certain circumstances, which result in death while in the performance of their duties.

The amount of benefits payable in any particular instance may depend on a number of factors including the length of the member’s service, the amount of the member’s salary, the eligibility of the member’s immediate family members, and the cause and date of the member’s death.

RETIREMENT ALLOWANCE

Public employee retirement allowances consist of two parts: an annuity and a pension.

What is an Annuity?

The payroll contributions that have been deducted during the course of a member's employment are deposited in an annuity savings fund by the member's retirement board. The interest that accrues on these contributions is also credited to the member's individual account. That part of the member's retirement allowance that is based on the total amount in his or her annuity savings account on the date of retirement is the annuity. It generally accounts for approximately 15-20 percent of a retirement allowance.

What is a Pension?

A pension is the difference between the total retirement allowance specified by law and the amount provided by employee contributions.

What Factors Generally Affect the Amount of a Retirement Allowance?

- ▶ The member's age;
- ▶ The member's length of creditable service;
- ▶ The member's average annual rate of regular compensation; and
- ▶ The member's group classification.

OPTIONS FOR RETIREES

“Option” is the term used to describe how a retirement allowance is allotted. The allowance must be paid to the member in lifetime monthly payments, but the apportionment of those payments will differ depending upon the member’s option selection. Option selection also determines what benefits, if any, will be paid to survivors after a retiree’s death.

What Factors Should Influence a Member’s Choice of Option?

The member’s health and age at retirement, income from other sources, financial obligations, and the need to provide for others who may survive the member are just some of the factors that should be considered carefully.

Are There Any Restrictions on a Member’s Selection of an Option?

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

When Must a Member Select an Option?

A member must choose an option before the date his or her retirement allowance becomes effective. Retirement board staffers are available to thoroughly discuss options with the member prior to that date. If a member refuses or fails to select an option before the date his or her retirement allowance becomes effective, the law provides that the member will be retired under Option B.

Is a Member Permitted to Change His or Her Option Selection?

A member is not permitted to change his or her option selection after the date upon which his or her retirement allowance becomes effective.

Must a Member’s Spouse Acknowledge the Member’s Option Selection?

Yes, a married member’s *Choice of Retirement Option* form must contain the signature of the member’s spouse, acknowledging the spouse’s understanding of the option chosen. If a married member files a *Choice of Retirement Option* form that has not been acknowledged by his or her spouse, the member’s retirement board is required to notify the member’s spouse within fifteen days by registered mail of the option selection and of the spouse’s right to sign and return an acknowledgment of receipt and understanding of such selection.

An unacknowledged option selection shall not take effect unless the spouse fails to submit the signed spousal acknowledgment within thirty days of receipt of the information regarding the option selection from the retirement board. The effective date of the member’s retirement will not be affected by the requirement that spousal acknowledgment be obtained.

What are the Options Available at Retirement?

Options A, B and C.

What if a Member Fails to Pick an Option?

Option B is the “default” option to which those who fail to select an option are assigned. Please see a detailed discussion of Option B below.

What Will Happen if the Member Elects Option A?

The election of Option A means that the member will receive a full retirement allowance in monthly payments as long as he or she lives. All allowance payments will cease upon the member’s death and no future allowance payments will be made to anyone, nor will a return of any amount remaining in the member’s annuity savings account be made. The only amounts payable will be payment owed for the days the retiree lived in the month of his or her death. For example, if a person dies on the 16th of September, they are still owed 16 days of payment. This could result in a check being issued to an individual’s estate. Some retirement boards provide forms to permit a member to designate a beneficiary for this residual payment.

What Does Option B Provide?

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

Under Option B, How Soon Could a Member’s Retirement Contributions be Depleted?

It is impossible to generalize because people retire at different ages but it is usually the case that all of the accumulated deductions which the member contributed to the system during his or her career will be dissipated approximately 12 to 15 years after retirement. It is important to note that a member’s retirement allowance is not reduced upon the depletion of the amounts in the account. When the member dies, if any balance remains in the account, it will be paid to the beneficiary or beneficiaries of record. If there is no balance remaining, no payment will be made to the designated beneficiary or beneficiaries.

Is a Member’s Choice of Beneficiary Limited under Option B?

Under Option B, a member may designate as many beneficiaries as he or she desires. He or she may designate an individual, individuals, a charity, an institution, or virtually any entity or entities. Although the choice of an option may not be changed after the date a retirement allowance becomes effective, a retiree may change his or her Option B beneficiary designation at any time.

What is Option C?

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

How Are the Monthly Allowance Payments Calculated Under Option C?

The monthly allowance payable under Option C depends upon life expectancy factors for the member and the member's designated beneficiary.

Who May Be Named as a Beneficiary under Option C?

Only one beneficiary may be named under Option C. The eligible beneficiary is limited to a member's spouse, the member's former spouse (provided he or she has not remarried at the time the Option C benefit becomes payable to the member), the member's child, parent, or sibling.

Is a Member Permitted to Change His or Her Option C Beneficiary Designation?

No. Once a member's retirement has become effective, the Option C beneficiary designation cannot be changed.

If a Member's Spouse Dies After Receiving Allowance Payments Under Option C, Will Benefits Then be Payable to the Member's Children?

Each child would be eligible to receive an equal share of the allowance that the spouse had been receiving. Payments would be made to the legal guardian of each child and would cease upon each child's 18th birthday.

What if a Person Designated as an Option C Beneficiary Dies Before the Retiree?

If the member's allowance was as the result of an application filed on or after January 12, 1988 and his or her Option C beneficiary dies before the member, the member would thereafter be paid the full retirement allowance he or she would have received had he or she originally selected Option A. (This conversion is commonly referred to as the Option C "Pop-Up".) Any cost-of-living increases that are granted after the member's Option C retirement becomes effective will be reflected in the newly established Option A allowance. All payments will cease upon the member's death. No payments will be available to any beneficiaries.

Does Divorce Following Retirement Change the Status of a Member's Former Spouse as His or Her Option C Beneficiary?

If a member names his or her spouse as the Option C beneficiary during their marriage, the former spouse will continue to be the Option C beneficiary even if they are subsequently divorced after the member's retirement.

What if a Former Spouse is Named as the Option C Beneficiary, but Then Remarries Following the Member's Retirement?

He or she would remain the Option C Beneficiary. A person's eligibility to be the Option C beneficiary is determined at the time of the member's retirement, not at the time of the member's death.

What is a DRO and How Might it Impact the Survivor's Benefits to Which a Beneficiary May be Entitled?

Regardless of whether a member divorces before or after retirement, a divorce or separation may result in a Domestic Relations Order (DRO) being generated. A DRO is an order of the Court and must be followed as long as it is consistent with the provisions of Chapter 32. A DRO may require a member to name their former spouse as an Option C beneficiary, or entitle the former spouse to a certain percentage of the member's allowance, and those directives of the court must be carried out. However, a DRO cannot create a right or establish a benefit that is inconsistent with the provisions of G.L. c. 32. For example, a DRO, which purports to order the disbursement of the member's accumulated total deductions prior to retirement or separation from service, would be invalid.

I Have an Ironclad DRO Requiring My Former Spouse to Name Me as His Option C Beneficiary When He Retires. Is There Any Way He can Get Around This?

Yes, but it will be at great personal cost to himself. He must die before retirement, having remarried. If he dies as a result of, or while in the performance of his duties, his current spouse would get an accidental death benefit pursuant to G.L. c. 32, Section 9. Alternatively, if the member dies while a member of a non-job related cause, the present spouse could elect the 12(2)(d) benefit even if you are the Option D beneficiary. Please see a more detailed discussion of both accidental death benefits and Option D benefits on the following pages.

COST OF LIVING ADJUSTMENTS

Am I Automatically Entitled to an Annual Cost-of-Living Increase in the Allowance I am Receiving as a Beneficiary?

No, Cost-of-Living Adjustments (COLAs) are not automatic. The Procedure for granting a COLA is as follows:

1. The decision to grant a COLA is made by the state legislature and Governor for retirees from the State and Teachers' Retirement Systems.
2. Each year the PERAC Actuary advises the Retirement Boards of the increase in the Consumer Price Index. The Retirement Boards then can grant a COLA, not to exceed 3%. Notice must be given to the legislative body before the Board grants the COLA.
3. Once the legislation has been accepted by the Retirement Board and the legislative body, a retirement system can vote to grant an increase for a given year.
4. Every member and beneficiary in that system who was receiving an allowance as of June 30 of the prior fiscal year would then be entitled to a COLA.

What is the COLA Amount?

- ▶ The percentage increase in an allowance will be made on the full amount of an allowance up to a base of \$12,000.
- ▶ A retirement board, with the approval of the local legislative body, may increase the COLA base beyond the \$12,000 level in \$1,000 increments.
- ▶ The cost of living percentage is based on the cost of living increase granted under the Consumer Price Index, not to exceed 3.0%.
- ▶ If the COLA granted under the Consumer Price Index is less than 3% then, pursuant to another local option section, the total COLA payable may be increased up to no more than 3% of \$12,000 or the locally accepted COLA base.
- ▶ Effective February 16, 2012, the COLA base for retirees of the State Retirement System and the Teachers' Retirement System will be \$13,000.

SOCIAL SECURITY

I am Entitled to Both Social Security and a Massachusetts Public Pension. May I Receive Both Simultaneously?

Benefits paid under provisions of Chapter 32 will offset Social Security benefits in a variety of circumstances. Although a Massachusetts retirement allowance cannot be reduced as a result of other retirement benefits, Social Security benefits may be reduced.

PERAC has no special expertise in regard to the Social Security System. Questions regarding the Social Security System and your entitlement to such benefits either based upon your work history or your status as the beneficiary of another should be addressed to the local Social Security office.

RETURN OF ACCUMULATED DEDUCTIONS

In All Cases, Will a Member's Designated Beneficiary or Beneficiaries Receive the Member's Accumulated Deductions Should the Member Die In Service?

When an individual becomes a member of a Massachusetts contributory retirement system, he or she is asked to designate a beneficiary or beneficiaries who will receive the member's accumulated retirement deductions in one sum if he or she dies as a member-in-service. Generally speaking, this beneficiary designation will be effective unless the member leaves survivors whose rights are superior by law. However, the law provides that amounts owed for child support may be intercepted by the Department of Revenue before the funds are disbursed to a beneficiary.

Is a Member Limited in His or Her Choice of a Beneficiary?

Members may choose any person or entity as their beneficiary for the return of accumulated deductions. Members may name more than one beneficiary and designate the percentage of their account to go to each. However, members who are minors must designate a relative as their beneficiary.

Is a Member Permitted to Change His or Her Beneficiary Designation?

The member may change his or her beneficiary designation at any time by filing a new form with the retirement board.

What if the Designated Beneficiary Predeceases the Member?

If there is no living beneficiary at the time of the member's death prior to retirement, the member's retirement board shall determine the person or persons who are entitled, in their judgment, to payment of the account if the account is less than \$300. Otherwise, the account must be paid to representatives of the member's estate.

OPTION D

If a Member Dies Before Retiring, Can the Member Provide for Payment of a Lifetime Allowance to a Surviving Family Member?

Members have the right to choose what is called an “Option D beneficiary” upon becoming a member or at any point prior to retirement. Option D provides a designated beneficiary with an allowance for life. However, if the member does not designate an Option D beneficiary and if his or her eligible spouse does not elect to receive a lifetime allowance, the member’s accumulated deductions will be paid in a lump sum to the beneficiary or beneficiaries he or she has designated to receive a return of the amounts in the member’s annuity account, and no lifetime allowance will be paid. An exception to this is if a member dies survived by minor children, which will be discussed more fully below.

Who May a Member Designate as His or Her Option D Beneficiary?

Members may designate only one Option D beneficiary. The eligible beneficiary is limited to a member’s spouse, the member’s former spouse (provided he or she has not remarried at the time of being designated as the Option D beneficiary), the member’s child, parent, or sibling. Even if not nominated, an eligible spouse may elect to receive this benefit upon the death of the member. The right of election by a spouse is discussed more fully below.

May a Member Change His or Her Option D Beneficiary Designation?

A member may change his or her Option D beneficiary designation by giving written notice on a prescribed form to his or her retirement board. Members are encouraged to revisit the selection whenever they wish, and particularly when major life events such as death or divorce occur. Changes in personal circumstances do not automatically alter the designation. The Option D beneficiary remains the same until a new beneficiary is designated in the prescribed manner on a prescribed form.

Can a Beneficiary Make any “Make-Up” Payments That a Member Had Been Eligible to Make?

If a member’s accumulated deductions do not reflect all of the member’s service to which he or she is entitled, the member’s Option D beneficiary has 90 days in which to make any “make-up payments” to establish a more complete record of creditable service. However, a beneficiary may not buy back veteran’s service to which the member might have been entitled.

Does a Member Have to Designate an Option D Beneficiary?

No, there is no requirement that a member designate an Option D beneficiary. If a member does make such a designation, they may retract it at any time by giving written notice to his or her retirement board.

Under What Circumstances is a Member's Option D Election Superseded?

An Option D designation has a serious and lasting legal impact unless:

- ▶ a member cancels it; or
- ▶ a member's designated beneficiary predeceases the member; or
- ▶ a member retires; or
- ▶ a member's surviving beneficiaries are eligible to receive an accidental death benefit; or
- ▶ a member's eligible surviving spouse elects to receive a benefit, even if the member did not choose the spouse as his or her Option D beneficiary.

What is the Minimum Age for Retirement?

Minimum age for retirement is the earliest age at which a member may retire for superannuation retirement under Section 5 of Chapter 32 if otherwise eligible. Members in Group 1, which includes most public sector employees, cannot retire under Section 5 prior to attaining age 60. Members in Group 2 (members in certain hazardous occupations) and Group 4 (public safety officers, such as police officers, firefighters and some corrections officers) cannot retire under Section 5 prior to attaining age 55.

How is the Amount of an Option D Benefit Calculated if a Member Dies Before His or Her Minimum Age for Retirement?

The designated beneficiary is entitled to receive the Option C allowance the member would have been entitled to receive if the member had attained the minimum age for retirement and retired on the date he or she died. The number of years of service that the member had been granted when he or she died plus any service for which the beneficiary makes a "make-up" payment will be used in the calculation.

What Age Factor is Used for the Beneficiary When a Member Dies Before Attaining the Minimum Age for Retirement?

The beneficiary's age factor is also increased, by the number of years necessary to bring the member up to the minimum age for retirement. For example, Jack Jones, a member in Group 1, dies at age 49, and his wife Mary is 45. The age factor used for Jack will be 60, or an increase in 11 years. Mary's age factor will also be increased by 11 years, in this case resulting in an age factor of 56.

What is the Option D Benefit if a Member's Death Occurs On or After His or Her Minimum Age for Retirement?

The designated beneficiary is entitled to receive the Option C allowance the member would have received if the member had retired on the date he or she died.

Under What Circumstances May a Member's Spouse Elect to Receive Option D Benefits?

A member's spouse may elect to receive Option D benefits if the following conditions are met:

1. The member dies as a member-in-service and has not nominated any Option D beneficiary, or has nominated someone other than the spouse as an Option D beneficiary; and
2. The member has been married to the spouse for at least one year and dies with at least two years of creditable service; and
3. The member was living with the spouse at the time of death, or, if they were living apart at the time of death, it must be for a justifiable cause other than the spouse's desertion or moral turpitude.

How and When May a Member's Spouse Elect Option D Benefits?

The retirement board will notify a member's spouse of his or her right to elect Option D benefits. A spouse has 90 days from the date this notice is mailed to elect Option D benefits. To be effective, the election must be made on a prescribed form filed with the retirement board within this period.

Would a Spouse Ever be Permitted to Elect the Option D Benefits if More Than 90 days Has Passed Since the Spousal Notification?

Yes, in a certain, limited circumstance. If a spouse (or other eligible person) is entitled to accidental death benefits pursuant to Section 9 of Chapter 32, they may apply for the Option D benefit at any time up to one year following the death of the member.

What Happens if a Surviving Spouse Does Not Elect Option D Benefits?

If the member had not named another individual as his or her Option D beneficiary, the member's accumulated deductions would be paid to the surviving beneficiaries of record or, if there are none, to the member's surviving spouse in one sum.

If the member had named another individual as his or her Option D beneficiary, that individual would receive a lifetime allowance (instead of a lump sum payment of accumulated deductions being made to the surviving beneficiaries of record).

If Designated as an Option D Beneficiary on the Prescribed Form, May a Spouse Opt Not to Take the Allowance?

No. If any eligible person (spouse, former spouse who has not remarried at the time of option selection, child, mother, father, brother or sister) is named as an Option D Beneficiary, they must take the allowance. No disbursement of the member's accumulated total deductions may be made if a beneficiary is nominated under Section 12(2)(d).

If a Member Has Already Retired, is There a Circumstance in Which the Surviving Spouse Could Elect to Receive Option D Benefits?

If the member dies within 30 days of retirement without having selected Option C, the spouse can elect to receive Option D benefits. The member must be living with his or her spouse at the time of death or if the couple is living apart, it must be for a justifiable cause other than the spouse's desertion or moral turpitude.

Is There a Minimum Allowance Provided For Under Option D?

In a limited circumstance, yes. Sometimes, the allowance which is based on the age factors of the member and beneficiary and the member's years of service and salary may be extremely small. The law provides that certain surviving spouses be granted an allowance which does not go below a certain minimum amount as explained below.

When is a Member's Surviving Spouse Entitled to a Minimum Allowance?

A member's surviving spouse is guaranteed a minimum allowance if the member designated the spouse as his or her beneficiary or if the spouse elected to receive Option D benefits and:

- ▶ the member dies as a member-in-service, and
- ▶ was married to the spouse for at least one year, and
- ▶ had completed at least two years of creditable service.

The couple must be living together at the time of the member's death or if they are living apart, it must be for a justifiable cause other than the surviving spouse's desertion or moral turpitude.

What is the Amount of the Minimum Allowance?

The amount of the minimum allowance for the survivor of a member who dies in service depends upon whether or not a local option has been accepted. If the local option has not been accepted, the minimum allowance is \$250.00 per month or \$3,000.00 annually. If the retirement system has accepted the local option, the minimum allowance is \$500.00 per month or \$6,000.00 annually.

If a Spouse is Receiving an Option D Allowance, is There Any Additional Benefit for the Children?

The spouse can receive an additional allowance of \$120.00 a month (or \$1,440.00 annually) for the benefit of the first eligible child and \$90.00 per month (or \$1,080.00 annually) for each additional eligible child.

When Does This Additional Allowance for Children Terminate?

Payments to the spouse for the benefit of the children will continue until each child's 18th birthday. If a child is a full-time student at an accredited educational institution, benefits will be extended until the child's 22nd birthday. Benefits will end if a child dies, marries or is adopted. In addition, even if a child is still under 22, benefits will terminate when he or she ceases to be a full-time student. There is no termination of benefits for a child who is physically or mentally incapacitated from earning on the date of the member's death.

Is the Amount of the Allowance Limited?

The Option D benefit, together with amounts payable to a surviving spouse for the benefit of children, cannot exceed the annual rate of regular compensation the member was receiving on the date of his or her death.

What Happens if the Member's Spouse Remarries?

The spouse will continue to receive the Option D allowance.

What Benefits are Payable to a Member's Eligible Children if the Member is Unmarried or the Spouse Dies After Receiving Some Benefits?

The allowance which would have been payable to the spouse, and the additional allowance for the benefit of the children, will be paid to the surviving eligible children through a legally appointed guardian.

What Benefits are Payable if an Individual Dies as a Member With Less Than Two Years of Service?

If a member dies with less than two years of service and has designated an Option D beneficiary, the nominated eligible beneficiary would receive the Option C allowance the member would have received if the member had retired on the date of his or her death. If the member is under the minimum age for retirement on the date he or she dies, the allowance would be calculated as if the member had attained the minimum age for retirement. If the member's death occurs after the member had attained the minimum age for retirement, the allowance would be calculated using the member's actual age on the date of death.

If an Individual is an Inactive Member When He or She Dies, What Benefits are Payable to the Member's Spouse?

The spouse has the same choice, with certain limitations as discussed further down, as the surviving spouse of a member-in-service whose death occurs prior to retirement. The eligible spouse may elect to receive an Option D allowance. If the spouse fails to elect the Option D allowance, the accumulated deductions will be paid to the member's surviving beneficiaries of record or, if there are none, to the surviving spouse in one sum.

If an Individual Dies as an Inactive Member, is His or Her Spouse Entitled to a Minimum Allowance?

No. The spouse of an inactive member has no minimum guaranteed allowance.

If an Individual Dies as an Inactive Member, What Benefit is Payable for His or Her Minor Children?

None. The surviving spouse of an inactive member is not entitled to any additional allowance to be paid for the benefit of the children.

No minimum guaranteed allowance would be payable to the spouse nor can any additional allowance be paid for the benefit of the children of an inactive member.

When is a Member Considered to Have Inactive Status?

Members-in-service become members-inactive upon their retirement. Members-in-service also become members-inactive when their employment terminates and their accumulated deductions remain in the system of which they were an active member; or when they are on an authorized leave of absence (non-medical) without pay for a reason other than retirement board duties which extends for more than a year.

ACCIDENTAL DEATH BENEFITS

When is an Accidental Death Benefit Payable?

A member's eligible survivor is entitled to an accidental death benefit if the member's death is the natural and proximate result of a personal injury sustained or hazard undergone while in the performance of his or her duties and without serious and willful misconduct on the member's part. The member's injury must be sustained while he or she is a member-in-service.

Special provisions are applicable to firefighters, police officers, and corrections officers who are killed in the line of duty in certain specific circumstances. (Please refer to the section of this guide entitled, "Death of Firefighters, Police Officers, and Corrections Officers in the Line of Duty.")

How Will the Injury Report Requirement be Satisfied if the Person Dies?

Whenever a member is injured or exposed to a hazard on the job, the member should notify both his or her employer and retirement board immediately. Usually this is done by filling out an injury report when the injury occurs. This injury report should be filed with the employer, and with the member's retirement board. This establishes the time, place, and occurrence of the accident for future reference. Of course, if a member dies as a result of an incident or accident at work he or she may not have an opportunity to file such a report. In such a case, as is discussed below, it is very important that the beneficiary file for accidental death benefits within two years of the event which caused the member's death.

If a member dies from a job-related injury or exposure to a hazard more than two years after the occurrence of the injury or exposure, accidental death benefits will be denied unless a notice was filed with the retirement board within 90 days of the injury or exposure or, if there are records of workers' compensation payments for the same injury or, if the member is not covered by workers' compensation, a record of such injury or hazard undergone is on file in the official records of his or her department.

If a Job-Related Accident or Exposure to a Hazard Causes the Death of a Member-in-Service, What Happens to the Amount in the Member's Annuity Account?

The member's accumulated deductions and related interest will be paid to his or her beneficiaries of record in one sum.

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

What Is the Pension Benefit if the Death of a Member-In-Service is Caused by a Job-Related Accident?

The eligible beneficiary of the member's pension benefit will receive a yearly pension equal to either 72% of the annual rate of regular compensation, which the member had been earning on the date of injury, or 72% of the average annual rate of regular compensation for the 12-month period for which the member last received regular compensation, whichever is greater. A slightly different formula is used when a member dies in a position in which they were temporarily assigned, i.e., a fire lieutenant temporarily serving as an acting captain.

Who is the Primary Beneficiary of the Pension Benefit?

The primary beneficiary of an accidental death benefit pension is the deceased member's surviving spouse. The spouse is eligible to receive a pension if the spouse was living with the member at the time of death or was living apart from the member for justifiable cause.

Could Any Eligible Surviving Children Receive Pension Benefits?

If the member leaves no eligible spouse or if the spouse dies after being awarded accidental death benefits, pension payments would be paid instead to a guardian for the benefit of the surviving eligible children.

Who is an Eligible Child?

Any member's child is eligible who is under the age of 18 and unmarried or who is over the age of 18 and physically incapacitated from earning on the date of the member's death, or who is under the age of 22 but is a full-time student at an accredited educational institution.

When Will Children Cease to be Eligible to Receive the Aforementioned Pension Payments?

Payments will be made as long as the children remain unmarried and under age 18 or as long as they remain physically or mentally incapacitated from earning, or as long as they are under the age of 22 and remain a full-time student at an accredited educational institution.

What is the Additional Pension Benefit for Dependent Children if a Member's Death is Caused by a Job-Related Accident?

An additional yearly pension will be paid for the benefit of each of the surviving eligible children. To be eligible, a child must be unmarried, under the age of 18 or 22 if a full-time student at an accredited educational institution, or be physically or mentally incapacitated from earning on the date of the member's death regardless of age. The amount of the benefit depends upon whether or not a local option has been accepted. Because of this, some retirement boards pay \$312.00 annually, while others pay \$846.12 annually. The \$846.12 amount is correct as of the time of this writing, but is subject to change. Please consult your retirement board to see what the amount of additional pension payable will be in your case.

Is There a Maximum Benefit Payable?

The total yearly amount, including the 72% pension and any additional pension for the benefit of eligible children, may not exceed the greater of two rates: the member's annual rate of regular compensation on the date of injury or the salary the member received during the last year of regular compensation.

If a Member's Surviving Spouse Dies, Could the Member's Surviving Children Become Eligible to Receive the Pension Benefits the Spouse Had Been Receiving?

If the spouse had been receiving the 72% pension before his or her death, that pension plus each child's additional pension benefit could continue to be accepted by a court-appointed legal guardian on behalf of the surviving eligible children. As noted above, whether a person is eligible to receive \$312.00 or \$846.12 depends upon whether a local option has been accepted. Please consult your retirement board to see what the amount of additional pension payable will be in your case.

Can Pension Benefits Be Paid to Other Family Members if a Member Leaves No Eligible Spouse or Children?

If a member leaves no eligible spouse or children, the pension benefit would be paid to his or her totally dependent father or mother or both. If the parents are deceased or are not totally financially dependent upon the member, the pension benefit would be paid to any totally financially dependent unmarried or widowed sibling provided that the unmarried or widowed sibling was living with the member when the member died. Pension payments will continue as long as the beneficiary or beneficiaries survive, do not marry or remarry and remain unable to support themselves.

Is the Accidental Death Benefit Affected By Amounts Received From Workers' Compensation?

Amounts received under Workers' Compensation are offset and therefore reduce the pension portion of the accidental death benefit if the death benefit and the Workers' Compensation benefit result from the same injury. They do not affect the payment of remaining accumulated deductions.

SURVIVOR BENEFITS FOR ACCIDENTAL DISABILITY RETIREES

What if an Accidental Disability Retiree Dies Following Retirement? What Benefits, if Any, are Payable in That Case?

If the member's death, after retirement, is found by the retirement board to be the natural and proximate result of the injury or hazard which was the basis of the member's accidental disability retirement, the member's spouse, or if there is no spouse, an eligible family member, may petition the retirement board for an accidental death benefit.

How is the Amount of the Accidental Death Benefit Determined?

An accidental death benefit is the greater of 72% of compensation received on the date of injury or compensation for the last 12 months, but it will never be less than the pension portion of the allowance the member had been receiving at the time of death, taking into account such factors as allowances for eligible children, cost-of-living adjustments, and any retroactive collective bargaining raises that the member may have received after retirement. It will also include payment of any remaining accumulated deductions in one sum to the designated beneficiary if the member retired under Option B.

Will Accidental Death Pension Payments be Made to Other Family Members if a Retiree Dies and Leaves No Eligible Spouse or Eligible Children?

As is the case in regard to an in-service death, if an accidental disability retiree dies as the natural and proximate result of the cause for which he or she retired, leaving no eligible spouse, pension payments will be made to the retiree's eligible children. If there are no eligible children, the pension benefit will be paid to the member's dependent father or mother or both. If the parents are deceased or were not totally financially dependent upon the member, pension payments will be paid to any totally financially dependent unmarried or widowed sibling if the member was living with the unmarried or widowed sibling at the time of death. Pension payments will continue as long as the beneficiary or beneficiaries survive, do not marry or remarry and remain unable to support themselves.

Would the Balance of a Retiree's Accumulated Deductions be Paid Out if the Retiree Dies as the Result of the Cause For Which He or She Retired?

Beneficiaries would not be entitled to a return of accumulated deductions unless the retiree had elected Option B on retirement. If the retiree did pick Option B upon retirement, the balance of accumulated deductions and related interest that remained at the retiree's death would be paid to the beneficiary or beneficiaries designated under Option B. No payment of any amounts in the annuity account would be payable if the retiree picked either Option A or Option C.

SECTION 101 ALLOWANCES

What Benefits are Payable if a Member's Death, After Retirement, is NOT Found to be a Direct Result of the Injury or Hazard That Caused the Member's Accidental Disability Retirement?

Section 101 of Chapter 32 provided a benefit to certain individuals who retired for accidental disability or ordinary disability at a time when they could not pick "Option C" and provide a lifetime benefit for their surviving spouses. Section 101 will have virtually no applicability to those who entered service on or after April 2, 2012, except in limited circumstances where an accidental or ordinary disability retiree remarries following retirement. Please ask your retirement board for more information about this benefit if you fall into that category.

PENDING DETERMINATION OF ACCIDENTAL DEATH BENEFITS FOR BOTH RETIREES AND MEMBERS-IN-SERVICE

If an Individual Dies as a Member-In-Service From Causes That May be Job-Related, are There Benefits Which His or Her Family May be Eligible to Receive While They Await a Decision About an Accidental Death Benefit?

If a person dies as a member in-service, Option D benefits should be available in most circumstances, while the decision is being made about eligibility for accidental death benefits. For further information about eligibility, please refer to the Option D section of this booklet. As noted in that section, when an accidental death benefit may be payable, the spouse is given one year following the date of death to elect the Option D benefit. This contrasts to the 90-day window a spouse has to elect where there is no claimed entitlement to accidental disability retirement benefits.

DEATH OF FIREFIGHTERS, POLICE OFFICERS, AND CORRECTIONS OFFICERS IN THE LINE OF DUTY

What is a “Killed in the Performance of Duties” Retirement Allowance, and Will All Police Officers, Firefighters and Corrections Officers Who Die on the Job be Covered Under This Allowance?

A pension equal to the amount of regular compensation the member would have received had he or she been receiving the maximum salary for the position at the time of his or her death is payable to the spouses of some police officers, firefighters and corrections officers who die in the performance of their duties. Such a pension will be adjusted in accordance with any salary increases granted for the position.

However, not every death of a police officer, firefighter or corrections officer will trigger this pension benefit.

Under What Circumstances Would Such a Pension Benefit be Paid?

A firefighter’s spouse will receive a pension benefit if the firefighter dies or sustains injuries which result in death while in the performance of his or her duties and as a result of an accident while responding to or returning from an alarm or fire or any emergency, or as the result of an accident involving a fire department vehicle which the firefighter is operating or in which the firefighter is riding, or while at the scene of a fire or any emergency.

A police officer’s spouse will receive a pension benefit if the officer is killed or sustains injuries that result in death while in the performance of his or her duties and as a result of an assault on his or her person or an accident involving a police department vehicle that the officer is operating or in which the officer is riding.

A corrections officer’s spouse will receive a pension benefit if the officer is killed or sustains injuries which cause death as a result of an assault on his or her person while in the performance of his or her duties.

What if the Spouse is Deceased, or the Deceased Member Had No Spouse at the Time of Death?

If there is no spouse, or if the spouse dies, then a surviving child or children will be eligible to receive 72% of the pension the spouse had been receiving on the date of death as well as \$312.00 in additional pension per child. The benefit will be paid to a legal guardian of the child or children. A child’s eligibility will continue until age 18 or until age 22 if full-time student in an accredited educational institution. The benefits will continue indefinitely for a child who is mentally or physically incapacitated from earning on the date of the death of their parent.

In a Situation Where the Spouse of a Police Officer, Firefighter or Corrections Officer is Eligible for This “Killed in the Performance of Duty” Benefit, What Happens to the Member’s Accumulated Total Deductions?

The accumulated deductions and related interest would be paid in one sum to the member’s surviving beneficiary of record, or if there is no beneficiary living, then to the person or persons appearing in the judgment of the board to be entitled thereto.

KILLED IN THE LINE OF DUTY LUMP SUM BENEFIT

Under What Circumstances are Family Members Entitled to a Lump Sum Payment?

If a firefighter, police officer, public prosecutor, or corrections officer is killed in the line of duty and as a result of an incident, accident or violence or sustains injuries that are the direct and proximate cause of death, his or her family members are entitled to a one-time award of \$150,000.

Which Family Members Would be Entitled to This Lump Sum Benefit?

The surviving spouse of such a firefighter, police officer, public prosecutor, or corrections officer, or, if there is no surviving spouse, the child or children, or, if there is no surviving child, the parent or parents would be entitled to this benefit.

Who Administers This Benefit?

The State Board of Retirement administers and pays this benefit for all eligible public employees, regardless of which retirement system a member is enrolled in at the time of death.

THIRD PARTY RECOVERY

Must Recoveries be Sought From “Third Parties” That Cause Disability or Death to Public Employees?

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

What Happens if a Member or Beneficiary Fails to Fully Prosecute Such Rights?

Boards shall prosecute such rights on a member's behalf. If a member or a beneficiary fails to cooperate with the board in its prosecution, the board may, during the period of such failure, suspend the member's or the beneficiary's rights to further payment.

APPEALS

Who Has the Right to Appeal to the Contributory Retirement Appeal Board (CRAB) and When Must an Appeal be Filed?

Any person who is aggrieved by a decision of a retirement board or the Public Employee Retirement Administration Commission (PERAC) or by the failure of a board or PERAC to take action may appeal to the Contributory Retirement Appeal Board, or “CRAB”. In some limited cases, the right of appeal lies with the district court.

Appeals to CRAB must be filed within 15 days of the date that the board or PERAC acted, or within 30 days of the date they were supposed to act.

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; and 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 substitutes for PERAC’s designee.

How Does This Appeals 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 (“DALA”). The Administrative Magistrate then conducts a hearing and issues a written decision that shall become final and binding upon the board and all other parties. This DALA decision shall be complied with 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 and take action it deems appropriate. CRAB’s final decision may be appealed to the Superior Court.

KEY ADDRESSES & PHONE NUMBERS

Public Employee Retirement Administration Commission

5 Middlesex Avenue, Suite 304
Somerville, MA 02145
Phone: 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

Retirement Boards:

Contact your personnel officer for the phone number and address of your retirement board.

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

NOTES

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COMMONWEALTH OF MASSACHUSETTS

Public Employee Retirement Administration Commission
Five Middlesex Avenue | Suite 304 | Somerville, MA 02145
Phone: 617 666 4446 | Fax: 617 628 4002
TTY: 617 591 8917 | Web: www.mass.gov/perac