

**Labor & Employment Alert**  
**February 8, 2022**

*Massachusetts Supreme Judicial Court Clarifies Definition of “Regular Compensation” for Retirement Boards*

**Background**

In 2018, the Massachusetts Supreme Judicial Court (“SJC”), in a case commonly known as the *Vernava* decision, declared that vacation or sick pay used to supplement workers’ compensation payments did not constitute “regular compensation” as defined in M.G.L. c. 32, § 1.

Based on the *Vernava* decision, PERAC issued a memorandum which interpreted the SJC’s *Vernava* decision as being limited to the calculation of regular compensation for those members who received accidental disability retirement benefits under M.G.L. c. 32, § 7. PERAC instructed all retirement boards to follow its interpretation of *Vernava* as outlined in the memorandum but not to apply the SJC’s analysis of regular compensation to ordinary disability or superannuation retirement applications.

**Procedural History**

As a result of PERAC’s memoranda, the Worcester Regional, Essex Regional, Franklin Regional, Stoneham, and Peabody Retirement Boards (“Boards”) sought a declaration that the SJC’s interpretation of regular compensation as outlined in the *Vernava* decision applied to all retirees, whether the member retired for superannuation under § 5, ordinary disability under § 6, or accidental disability under § 7. A Superior Court judge held that the *Vernava* decision was not limited only to retirees applying for accidental disability retirement under § 7. PERAC appealed the Superior Court’s decision. The SJC agreed to hear the case.

**SJC Holding - Merits**

While acknowledging that courts afford deference to an agency’s interpretation of a statute it administers, the SJC rejected PERAC’s “unreasonable” interpretation of “regular compensation” having different meanings depending on whether a retirement application was pursuant to § 5, § 6, or § 7. The SJC determined that the term “regular compensation” was consistently applied throughout M.G.L. c. 32, and that “lacking any evidence of contrary legislative intent,” it should be interpreted to have a consistent meaning. The Court held that the *Vernava* decision applied to all retirees, not just those retired under § 7 for accidental disability.

**SJC Application – Retroactivity**

The SJC applied its decision retroactively, to members who have already been approved for superannuation and ordinary disability retirements, as well as prospectively, to members whose applications are pending or who have not yet applied. The SJC noted that there is a

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general presumption of retroactivity and that “This court traditionally has given prospective effect to its decisions in very limited circumstances.” In declining a prospective application in this case, the Court did acknowledge that for some superannuation and ordinary disability retirees, recalculation based upon this decision may reduce creditable service to such an extent that they may not be qualified for benefits. However, the Court noted that PERAC did not provide a specific estimation of how many superannuation or ordinary disability retirees would be affected by this decision. The Court concluded that the lack of “specific evidence establishing the likely occurrence of extraordinary hardship weighs in favor of the presumption of retroactive application.”

**Moving Forward**

The SJC’s decision raises, though does not decide, the question of whether retirement boards have discretion to waive calculations that may cause members to lose their retirement benefit eligibility. Moving forward, each board should consider and consult with legal counsel regarding how to implement the SJC’s decision, recalculation of regular compensation for its members, and the possibility of waiving recalculations for certain affected members.

Lastly, the *O’Leary v. PERAC* case is pending before the SJC. This case also involves the definition of regular compensation as well as the question of retroactivity. The SJC solicited *amicus* briefs on the matter that are due by March 15. If you have not already discussed the matter with the firm, please let us know if you would like to participate as a party in an *amicus* brief filing.

This Client Alert was prepared by Matthew Feeney and Rachel Millette. This alert was reviewed by Katherine Hesse, Nan O’Neill and Kevin Bresnahan. If you have any questions, please contact Matthew Feeney, Katherine Hesse, the attorney responsible for your account, or call (617) 479-5000.

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