

## **Somerville Retirement Board**

### **POLICY ON WORKERS' COMPENSATION OFFSET IN AGREEMENTS TO REDEEM LIABILITY BY LUMP SUM SETTLEMENT**

#### **Introduction**

Under G.L. c. 32§ 14(2), workers' compensation disability payment made to a member who retired for accidental or ordinary disability on account of the same injury or hazard undergone are offset from the pension portion of the member's accidental or ordinary disability retirement allowance; workers' compensation death benefits paid to a deceased member's beneficiaries are offset from an accidental death allowance payable by reason of the same injury or hazard undergone.

In an *Agreement to Redeem Liability by Lump Sum Settlement* under G.L. c. 152§ 48, (hereinafter, "Agreement") an employer and an employee, or a deceased employee's beneficiaries, may agree to redeem liability for workers' compensation disability and death payments, and for other areas of employer liability under the Workers' Compensation Act, in exchange for payments to the employee, spouse or beneficiaries. Allocations of payments within such Agreements which are designated to redeem employer liability for benefits other than weekly disability or death benefits are not subject to pension offset. Such payments may include attorney's fees, medical expenses, vocational rehabilitation expenses, inchoate rights, loss of bodily function and disfigurement.

Whereas, an Agreement may impact the retirement allowances of disabled retirees or accidental death beneficiaries, and, whereas the Board has a fiduciary obligation to preserve the System's assets and to ensure fair offset recovery from such Agreements, the Board hereby adopts the following policy:

1. An Agreement shall provide an amount of no less than twenty (20%) percent of the gross proceeds representing workers' compensation disability or death payment subject to pension offset.

2. While this percentage is to be strictly applied by the Board as a general guideline, every such Agreement shall be evaluated individually as to its merits, so that the offset amount sought by the Board could be greater or lesser than the guideline percentage. Variance from the guideline, however, will be in the sole discretion of the Board and will require extraordinary circumstances, such as a catastrophic injury.

3. Upon establishment of the offset allocation, the Board's written consent to the Agreement may be provided to the member for inclusion with the Agreement document to be submitted for approval by the Department of Industrial Accidents.

4. The Agreement may provide for the amount of offset allocation to be deducted from the settlement proceeds and may be payable directly to the Somerville Retirement System. In such event, pension offset shall terminate upon receipt of the allocation proceeds, effective as of the date of approval of the Agreement by the Department of Industrial Accidents. If the Agreement provides for the amount of offset allocation to be retained by the member or beneficiaries, pension offset will continue for the corresponding period as set forth in G.L. c.32, §14(2).

5. It shall be the responsibility of the member or beneficiaries executing an Agreement to ensure compliance with this Policy. The Board will make reasonable efforts to advise the member or beneficiary of the Policy and may review draft Agreements for compliance with the policy, but the Board shall have no obligation or liability whatsoever arising from the drafting or approval of an Agreement.

6. Where the terms of an Agreement result in a statutory pension offset which is greater than the guidelines established in the Policy, whether such result was intended or unintended, the Board has no authority or discretion to accept less than the amount mandated by statute.

7. The Board's legal counsel is authorized to represent the interests of the Board in matters before the Department of Industrial Accidents, to apply the guidelines established herein, to make recommendations to the Board when appropriate or required, to appear before the Department of Industrial Accidents when appropriate or required, and to execute all documents necessary and incidental to the application of this Policy.

8. All determinations regarding pension offset are subject to final review and approval by the Public Employee Retirement Administration Commission.

*Adopted by Vote of the Somerville Retirement Board on May 25, 2017.*