

Annual List of Rule-Making Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: **Maine Public Employees Retirement System (MainePERS)**
Umbrella-Unit: **94-411**
Statutory authority: 5 MRS §17103(4)
Chapter number/title: **Ch. 104**, Limitations on Earnable Compensation for Purposes of Calculating Average Final Compensation of State Employees and Teacher Members
Filing number: **2021-113**
Effective date: 5/30/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule implements 5 MRS §17001(13)(C), the provisions in the Maine Public Employees Retirement System statute relating to limitations or “caps” on earnable compensation for the purposes of determining average final compensation for state employee and teacher members.

Basis statement:

This amended rule implements PL 2019 ch. 395, which excludes collectively bargained salary and wage increases and job promotions from the 5% and 10% average final compensation increase caps. Under the amendment, those types of increases received in a member’s primary position are automatically excluded from the cap. Increases from other positions are subject to exclusion if identified by the member. The amendment also removes obsolete language.

Fiscal impact of rule:

None

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Agency name: Maine Public Employees Retirement System (MainePERS)
Umbrella-Unit: 94-411
Statutory authority: 5 MRS §17103(4)
Chapter number/title: Ch. 414, Required Minimum Distributions
Filing number: 2021-084
Effective date: 4/19/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule establishes the date when a member must begin to receive a service retirement benefit or withdraw accumulated contributions under a retirement program pursuant to *Internal Revenue Code*.

Basis statement:

This rule establishes the date when a member must begin to receive a service retirement benefit or withdraw accumulated contributions under a retirement program pursuant to *Internal Revenue Code*. The proposed amendment makes three changes: (1) update the required minimum distribution (RMD) age to correspond to changes in federal law; (2) permit MainePERS to mandate a lump sum RMD on a terminated member as early as the beginning of the year when they will reach RMD age; and (3) provide clarification on the minimum distribution incidental benefit (MDIB) rule.

Fiscal impact of rule:

None

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Agency name: Maine Public Employees Retirement System (MainePERS)
Umbrella-Unit: 94-411
Statutory authority: 5 MRS §17103(4)
Chapter number/title: Ch. 511, Standards for Actively Seeking Work
Filing number: 2021-241
Effective date: 12/8/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule sets out the standards and definitions to be applied in determining under 5 MRS §§ 1729(2)(B)(1) and 18529(2)(B)(1) whether a disability retirement benefit recipient is actively seeking work.

Basis statement:

The proposal for rule-making was noticed on September 22, 2021. No public hearing was held, and no members of the public submitted written comments prior to the October 22, 2021 comment deadline.

This rule sets out the standards and definitions to be applied in determining whether a disability retirement benefit recipient is actively seeking work. The proposed rule repeals and replaces the current rule.

The new proposed rule: (1) updates job-seeking requirements by eliminating required in-person job seeking contacts and permitting online applications; (2) specifies that job applications must be submitted to employers who are accepting applications; (3) elaborates on activities required to be taken with the Maine Department of Labor Career Center; (4) clarifies that decisions to suspend benefits are subject to the informal hearing, written decision, and appeal rights in 5 MRS §17105-A; (5) changes from six to three the number of months that the member can be noncompliant in any twelve-month period before benefits are terminated; (6) deletes an obsolete provision; and (7) removes unnecessary language and improves readability.

At the Board's regular meeting held on November 18, 2021, Ken Williams made the motion, seconded by Mark Brunton, to repeal and replace the rule. Voted unanimously by five Trustees.

Fiscal impact of rule:

None

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Agency name: Maine Public Employees Retirement System (MainePERS)
Umbrella-Unit: 94-411
Statutory authority: 5 MRS §17103(4), 18200 *et seq.*, 18252-C(5), 18801 *et seq.*
Chapter number/title: Ch. 803, Participating Local District Consolidated Retirement Plan
Filing number: 2021-197
Effective date: 10/4/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule governs the Consolidated Plan for Participating Local Districts. Under the current rule, participating local district employees with optional membership who decline or terminate membership are not permitted to join or rejoin The Plan.

Basis statement:

The proposal for rule-making was noticed on July 21, 2021. Additionally, a notice of proposed rulemaking was sent to PLD employers for distribution to employee/members on August 11, 2021. This notice included information about the rulemaking as well as the deadline for written comments.

Under the current rule, participating local district employees with optional membership who decline or terminate membership are not permitted to join or rejoin the Plan. The proposed amendments incorporate the provisions of newly enacted public laws ch. 90 and 286, which extend additional membership opportunities under specific circumstances. As proposed, the provisions of ch. 286 only apply to employees of participating local districts that adopt those provisions.

The proposed amended rule also: (1) clarifies the effective date of participation agreements entered into by local districts; (2) excludes workers compensation earnings from wages subject to the return to work contribution payment; (3) removes obsolete language; and (4) corrects a cross-reference.

No public hearing was held. Comments were received from three members of the public prior to the comment deadline of August 20, 2021. Two individuals¹ commented in favor of the proposed changes that permit additional membership opportunities to certain participating local district employees. Both of these individuals commented that they are prior members who withdrew from the System and would like the opportunity to rejoin. One of those individuals² also requested the opportunity to buy back prior years of service. One individual³ commented in opposition to the proposed changes that permit additional membership opportunities. This individual opined that individuals who made prior decisions to withdraw from the System should not now be allowed to rejoin, purchase prior service and retire from the Plan. The commenter offered an alternative approach that would require those who rejoin to work some period of time rather than being able to purchase service and immediately retire.

MainePERS staff recommends one additional amendment to the rule. Specifically, to change the date by which PLD employers must adopt the provisions of Chapter 286 to be the later of November 1, 2021 or the next meeting of the elected body authorized to take that action. After distributing information to PLD employers about the changes permitted by ch. 286, MainePERS received feedback from at least one PLD employer that adopting the

¹ Bill Prout, Cumberland County Sheriff's Office and Peter Anderson, Cumberland County Sheriff's Office

² Peter Anderson, Cumberland County Sheriff's Office

³ Richard Polk, City of Old Town

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provisions of ch. 286 by November 1, 2021 would be impossible given the governance structure of local governments. The additional recommended change will permit more PLD employers to make the election to allow additional membership opportunities to employees.

The PLD Advisory Committee was provided with a summary of the proposed changes. No member of the Committee raised an objection to MainePERS staff recommending these amendments to the Board of Trustees.

After considering the comments, the Board adopts the proposed changes, including the additional change recommended by staff, without further modification. The Board declined to expand the ability to purchase prior service or to impose additional work requirements as beyond the scope of ch. 286 and the proposed amendment. The Board declined to adopt the position of the commenter in opposition because the Board views the proposal as meritorious.

At the Board's meeting held on September 9, 2021, Henry Beck made the motion, seconded by Shirrin Blaisdell, to adopt the amended rule. Voted unanimously in favor by the seven members present.

Fiscal impact of rule:

None