

**94-411 MAINE PUBLIC EMPLOYEES RETIREMENT SYSTEM**

**Chapter 509: DETERMINATION OF INABILITY TO PERFORM THE ESSENTIAL FUNCTIONS OF THE EMPLOYMENT POSITION**

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**Summary:** The purpose of this rule is to specify the standard and definitions to be applied under 5 MRSA §§ 17921 and 18521 in determining whether a disability applicant is unable to perform the functions of the employment position with reasonable accomodation.

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**SECTION 1. Standard and Related Definitions**

A disability benefit applicant must meet certain statutory requirements under 5 MRSA §§ 17921 and 18521 in order to be eligible to receive disability retirement benefits. One of these requirements is that the applicant must demonstrate that the applicant is unable to perform the essential functions of the employment position with reasonable accomodation. The following standard and definitions govern the determination of whether this requirement is met.

1. A member shall not be considered incapacitated if the employer agrees to make job modifications as defined below that will enable the member to perform the functions of the employment position.
  - A. For these purposes, "job modification" means a change or changes to the member's work situation that alters any aspect(s) that, because of the member's physical or mental incapacity, inhibit ability to perform the functions of the employment position. "Job modification" includes but is not limited to modification in the job tasks or functions, change in the way a particular task or function is carried out, change to the physical environment, provision of adaptive equipment, and change in the job conditions.
  - B. "Employment position" means the position in which the member is employed at the time the member becomes incapacitated or this position as modified by the member's employer in accordance with (1) above, or a position that is made available to the member by the member's employer that is of comparable stature and equal or greater compensation and benefits to the position in which the member is employed at the time the member becomes incapacitated and whose location is of a reasonable commuting distance and does not require the member to relocate their residence.

**SECTION 2. Application of Standard**

1. The member who is an applicant for disability retirement benefits has the ultimate burden of demonstrating inability to perform the essential functions of the employment position with reasonable accomodation.
2. When a determination is made by the System that job modification would enable the member to perform the functions of the employment position, the System has the initial

burden to determine generally the job modifications that would enable the member to perform the functions of the employment position. This will be communicated in writing to the applicant and the applicant's employer prior to or at the time that a decision on eligibility for disability retirement benefits is made. If the member disputes the determination, the member then has the burden to demonstrate either that the member has requested the employer to provide the job modifications determined by the System and that the employer has refused to make these job modifications or that the modifications identified by the System would not allow the member to perform the functions of the employment position.

3. In the event that the employer refuses to make the requested modifications, a member must also demonstrate that they have requested the employer to provide a position that the member's disability does not prevent them from performing and that is of comparable stature and equal or greater compensation and benefits to the member's employment position at the time the incapacity arose and that the employer has refused to offer such a position.
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**STATUTORY AUTHORITY:**

5 MRS §§ 17103(4), 17921 and 18521

**EFFECTIVE DATE:**

June 7, 1997 – filing 97-199

September 20, 2022 – filing 2022-187