

**Chapter 510: REDUCTION OF DISABILITY RETIREMENT BENEFITS BECAUSE OF LUMP-SUM SETTLEMENTS OF BENEFITS PAYABLE UNDER THE WORKERS' COMPENSATION OR SIMILAR LAW OR THE UNITED STATES SOCIAL SECURITY ACT**

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**SUMMARY:** This chapter sets forth the methodology by which disability retirement benefits are reduced when a beneficiary of such benefits receives a lump-sum settlement of benefits payable under the workers' compensation or similar law or the United States Social Security Act.

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**SECTION 1. DEFINITIONS**

1. **Accumulated Contributions.** The term “accumulated contributions” as used in this Chapter means the amount of “accumulated contributions” calculated pursuant to the provisions of the applicable Retirement System plan, as of the effective date of the recipient’s entitlement to Retirement System disability retirement benefits.
2. **Actuarial Equivalent of Accumulated Contributions.** “Actuarial Equivalent of Accumulated Contributions” as used in this Chapter means the recipient’s accumulated contributions at the time of his or her disability retirement divided by the “annuity factor for recipient’s age at retirement” as calculated pursuant to Section 5.2, and then converted to a monthly amount by dividing by twelve.
3. **Actuarial Equivalent of the Lump-Sum Settlement.** “Actuarial Equivalent of the Lump Sum Settlement” as used in this Chapter means the amount of the “lump-sum settlement” divided by the “annuity factor for recipient’s age at effective date of lump-sum settlement” calculated pursuant to Section 5.3, and then converted to a monthly amount by dividing by twelve.
4. **Average Annual Earnings.** “Average Annual Earnings” means the total of the person’s average final compensation plus other wages and earnings from employment for the calendar year in which the person has the highest total of other wages and earnings from employment during the 5 years immediately preceding the year in which the person became disabled.
5. **Average Final Compensation.** “Average Final Compensation” as used in this Chapter means the amount of “average final compensation” calculated pursuant to the provisions of the applicable Retirement System plan, as of the effective date of the recipient’s entitlement to Retirement System disability retirement benefits.
6. **Initial Disability Retirement Benefit.** “Initial disability retirement benefit” as used in this Chapter means the monthly disability retirement benefit, not reduced because of disability benefits received under other laws, payable to the recipient as of the effective date of his or her entitlement to Retirement System plan disability retirement benefits, calculated pursuant to the applicable Retirement System plan provisions.

7. **Lump-Sum Balance.** “Lump-Sum Balance” as used in this Chapter in a given month means the sum of the lump-sum settlement and interest for that month and all prior months subject to reduction pursuant to this Chapter less the reduction amount determined pursuant to Section 4.1 for that month and all prior months subject to reduction pursuant to this Chapter.
8. **Lump-Sum Settlement.** “Lump-sum settlement” as used in this Chapter means the amount paid or to be paid pursuant to a settlement agreement under the workers’ compensation law and/or similar law and/or the United States Social Security Act for the same disability for which Retirement System plan disability retirement benefits are awarded, but not including any part of the lump-sum settlement amount attributable to vocational rehabilitation, attorneys’, physicians’, nurses’, hospital, medical, surgical or related fees or charges or any amount paid or payable under former Title 39, section 56-B for permanent impairment or under Title 39-A, section 212, subsection 3 for specific loss benefits. “Lump-sum settlement” includes amounts paid or to be paid under the United States Social Security Act only if the employment for which Retirement System creditable service with the employer is allowed was also covered under that Act at the date of disability retirement.
9. **Lump-Sum Settlement Agreement.** A “Lump-Sum Settlement Agreement” as used in this Chapter is an agreement, signed or otherwise approved by the approving authority, describing payment of the lump-sum settlement.
10. **Retirement System Plan.** “Retirement System plan” as used in this Chapter means a benefit plan of the Maine Legislative Retirement System, Maine Judicial Retirement System, or the Maine State Retirement System. Benefit plans of the Maine State Retirement System include benefits for eligible state employees, teachers, and Participating Local District (“PLD”) members.

## SECTION 2. APPLICABILITY

This Chapter applies to any disability retirement benefit recipient who enters into a lump-sum settlement agreement or otherwise receives a lump sum settlement under the workers’ compensation or similar law or the United States Social Security Act for the same disability for which disability retirement benefits were awarded pursuant to a Retirement System plan.

## SECTION 3. MAKING THE REDUCTION

1. When a disability retirement benefit recipient enters into a lump-sum settlement agreement, the monthly Retirement System disability retirement benefit shall be reduced by an amount determined pursuant to the provisions of this Chapter.
2. The reduction amount determined pursuant to the provisions of this Chapter shall be deducted from Retirement System disability retirement benefits payable to the recipient, beginning the first day of the month following the effective date of the lump-sum settlement. For purposes of this Chapter, the effective date of the lump-sum settlement is the date that the settlement agreement is signed by the approving authority.

3. That same reduction amount determined pursuant to the provisions of this Chapter shall continue to be deducted from the monthly disability retirement benefit otherwise payable for the length of time that the recipient receives a Retirement System disability retirement benefit. If, for periods of time prior to the effective date of the lump-sum settlement during which Retirement System disability retirement benefits are payable to the recipient, the recipient is also paid benefits under the workers' compensation or similar law or the United States Social Security Act, subject to the same limitations described in Section 1.7, then the recipient's disability retirement benefits shall also be reduced by amounts equal to those benefits unless the applicable statute bars any reduction or requires a smaller reduction.
4.
  - A. Notwithstanding Section 3.3, reductions pursuant to this Chapter for a recipient who continues to be entitled to receive disability retirement benefits pursuant to a Retirement System plan that provides for cost-of-living adjustments ("COLAs") shall cease when the sum of the reduction amount equals the amount of the lump-sum settlement plus monthly interest on the lump-sum balance calculated at the annual rate of four percent (4%);
  - B. Notwithstanding Section 3.3, reductions pursuant to this Chapter for a recipient pursuant to a Retirement System plan that does not provide for COLAs shall cease under the same circumstances as for Section 3.4.A except that monthly interest on the lump-sum balance shall be calculated at the annual rate of six percent (6%).
5. To determine when the sum of the reduction amounts will equal the lump-sum settlement plus interest calculated monthly at the annual rate specified in Section 3.4.A and 3.4.B as applicable:
  - A. Calculate the interest for the first month subject to reduction by multiplying the lump-sum settlement by the specified annual interest rate and then dividing the product by 12.
  - B. Determine the lump-sum balance in the given month.
  - C. Calculate the interest for each month after the first month subject to reduction by multiplying the lump-sum balance for the previous month by the specified annual interest rate and then dividing the product by 12.
6. The month in which the lump-sum balance is zero is the last month of disability retirement benefits that will be reduced pursuant to Sections 3.4.A and 3.4.B.
7. If there is no month in which the lump-sum balance is zero, then the last month of disability retirement benefits that will be reduced pursuant to Sections 3.4.A and 3.4.B is the first month in which the lump-sum balance is a negative number. In such case, the reduction amount required for the last month shall be equal to the lump-sum balance for the previous month plus interest.
8. Notwithstanding Sections 3.3, 3.4 and 3.5, the reduction amount shall be recalculated pursuant to the provisions of this Chapter if the recipient enters into a subsequent lump-sum settlement agreement.

9. The amount payable to the disability retirement recipient after the reduction amount is applied will be adjusted by any cost-of-living adjustments (“COLAs”) according to the provisions of the applicable Retirement System plan.

#### **SECTION 4. DETERMINING THE REDUCTION AMOUNT, IF ANY**

1. The reduction amount that is to be applied to the recipient’s monthly disability retirement benefit is determined as follows:
  - A. For members of the State Employee and Teacher, Legislative and Judicial Retirement Program, by subtracting the figure representing 80% of average final compensation, converted to a monthly amount by dividing by twelve, from the amount represented by the sum of the initial disability retirement benefit and actuarial equivalent of the lump sum settlement.
  - B. For members of the Participating Local District Retirement Program, by subtracting the figure representing 80% of average annual earnings, converted to a monthly amount by dividing by twelve, from the amount represented by the sum of the initial disability retirement benefit and actuarial equivalent of the lump sum settlement.
2. If the result obtained in Section 4.1 is zero or a negative number, then no reduction is applied to the monthly disability retirement benefits.
3. If the reduction amount calculated in Section 4.1 causes the initial disability retirement benefit to be reduced to an amount that is less than the “actuarial equivalent of accumulated contributions”, then the full reduction amount calculated in Section 4.1 may not be applied. Instead, the recipient shall receive the “actuarial equivalent of accumulated contributions” in lieu of the amount obtained by applying the full reduction described in section 4.1.

#### **SECTION 5. DETERMINING THE ANNUITY FACTORS TO BE USED FOR SECTION 4**

1. **Selecting the Applicable Table.** To determine the “annuity factor at age of retirement” or the “annuity factor at age at effective date of lump-sum settlement,” use Table AA of Chapter 303.

NOTE: As of the effective date of this rule, judicial retirement, legislative retirement, and Maine State Retirement System plans for state employees and teachers all include COLAs. Some Participating Local District (“PLD”) plans include COLAs and others do not.

2. **Determining the “Annuity Factor for Recipient’s Age at Retirement.”** To determine the “annuity factor for recipient’s age at retirement,” use the applicable Table to locate the annuity factor that corresponds to the recipient’s attained age as of the first day of the first month for which he or she received Retirement System plan disability benefits. If the recipient’s previous birthday was six months or more prior to the first day of the first month for which he or she received Retirement System plan disability retirement benefits, then use the recipient’s age at his or her next birthday to locate the applicable annuity factor.

3. **Determining the “Annuity Factor for Recipient’s Age at Effective Date of Lump-Sum Settlement.** To determine the “annuity factor for recipient’s age at effective date of lump-sum settlement, use the applicable Table to locate the annuity factor that corresponds to the recipient’s attained age as of the effective date of the lump-sum settlement. If the recipient’s previous birthday was six months or more prior to the effective date of the lump-sum settlement, then use the recipient’s age at his or her next birthday to locate the applicable annuity factor.

**SECTION 6. DETERMINING THE AMOUNT OF THE “LUMP-SUM SETTLEMENT” IF THE SETTLEMENT PROVIDES FOR PAYMENT IN A MONTH OR MONTHS FOLLOWING THE DATE THAT THE SETTLEMENT AGREEMENT IS SIGNED BY THE APPROVING AUTHORITY**

1. If the lump-sum settlement is to be paid in a single payment but at a date subsequent to the effective date of the settlement agreement, then the single settlement payment must be converted into a single present value amount using the methodology of Section 6.5.B. The resulting present value shall be used as the amount of the lump-sum settlement for purposes of this Chapter.
2. If the lump-sum settlement is to be paid not as a single settlement payment, but instead is to be paid in installments, then the installment amounts must be converted into a single present value amount pursuant to the provisions of this Section. The resulting single present value shall be used as the “lump-sum settlement” for purposes of this Chapter.
3. The provisions of this Chapter do not apply if all of the installments to be paid pursuant to the lump-sum settlement agreement are to be paid in scheduled increments such that the total paid each month is less than or equal to the recipient’s disability retirement benefit for that month in the absence of any reduction because of benefits payable under the workers’ compensation or similar law or the United States Social Security Act. Instead, the recipient’s disability retirement benefits shall be reduced in the same manner as if there had been no lump-sum settlement agreement.
4. Any part of the lump-sum settlement payment amounts attributable to vocational rehabilitation, attorneys’ fees, physicians, nurses, hospital, medical, surgical or related fees or charges of any amount paid or payable under former Title 39, section 56-B for permanent impairment or under Title 39-A, section 212, subsection 3 for specific loss benefits shall not be included in any of the payment amounts for purposes of this Section.
5. The single present value of the settlement paid in installments shall be calculated as follows:
  - A. Determine the amount of the first installment payment if the first payment is scheduled to be issued in the same month or in the month immediately following the month that the settlement agreement is signed or otherwise approved by the approving authority.
  - B. To determine the present value of any payment to be issued in a subsequent month, except for any installment amount to be paid for a “term certain and life thereafter,” apply an effective (“real”) interest rate of 7.75% per year.

- C. Determine the present value, using an effective (“real”) interest rate of 7.75% per year of any settlement installment amount to be paid for a certain term of years (“term certain”) and life thereafter as follows:
- (1) Add the recipient’s age as used in Section 5.3 to the number of years in the term certain.
  - (2) Using the sum obtained in Section 6.5.C.1, locate on Table X the corresponding figure in Column B.
  - (3) Divide the amount obtained in Section 6.5.C.2 by the figure in Column A in Table X corresponding to the recipient’s age as used in Section 5.3.
  - (4) Add the result in Section 6.5.C.3 to the annuity factor on Table Y corresponding to the number of months in the term certain.
  - (5) Multiply the result obtained in Section 6.5.C.4 by the installment amount to be paid annually for the term certain and life thereafter.
- D. Add the total results obtained in Sections 6.5.A, 6.5.B and 6.5.C.A to obtain the single value amount to be used as the amount of the “lump-sum settlement” for purposes of this Chapter.
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The attached TABLES are an integral part of this Chapter:

TABLE ‘X’: Annuity Factors for use with installment settlement

TABLE ‘Y’: Annuity Factors (for installment settlements) corresponding with the number of months in term certain.

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*APA Office Note: the tables are available from the Maine Public Employees Retirement System.*

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STATUTORY AUTHORITY: 3 M.R.S.A. § 853; 4 M.R.S.A. § 1353(6); 5 M.R.S.A. §§ 17930(4) and 18530(4)

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