

**Chapter 104: LIMITATIONS ON EARNABLE COMPENSATION FOR PURPOSES OF CALCULATING AVERAGE FINAL COMPENSATION OF STATE EMPLOYEE AND TEACHER MEMBERS**

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**SUMMARY:** This Chapter implements 5 M.R.S.A. §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.

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**SECTION 1. DEFINITIONS**

Solely for purposes of this Chapter, these terms have the following meanings:

1. **AFC period.** For a state employee or teacher member whose total membership service as a state/teacher member consists of at least 3 years of creditable service, “AFC period” means the three years of creditable service, not necessarily consecutive, in the membership period in which the member’s annual rate of compensation is highest.

For a state employee or teacher member whose total membership service as a state/teacher member consists of at least 1 year but less than 3 years of creditable service, “AFC period” means all of the creditable service, not necessarily consecutive, in the membership period.

2. **Year 1 of the AFC period.** “Year 1 of the AFC period” means the chronologically earliest year used in the AFC period.
3. **Year 2 of the AFC period.** “Year 2 of the AFC period” means the chronologically second year used in the AFC period.
4. **Year 3 of the AFC period.** “Year 3 of the AFC period” means the chronologically third year used in the AFC period.
5. **Collectively bargained salary or wage increase.** “Collectively bargained salary or wage increase” means an increase to a collectively-bargained position’s earnable compensation rate of pay contained in or resulting from a collective bargaining agreement and includes longevity pay increases, merit raises, and general increases.
6. **Primary position.** “Primary position” means the position from which the member earns the majority of their compensation within each AFC period.
7. **Promotion.** “Promotion” means a change in a member’s position, including in an acting capacity, that involves an increase in earnable compensation rate of pay or the addition of a new type of pay, such as a stipend for responsibilities required to be performed in the position.

8. **Regular earnings.** “Regular earnings” means the amount of earnable compensation prior to the inclusion of any payment allowed pursuant to 5 M.R.S.A. §17001(13)(B)(1) and prior to the exclusion of any excess increases required pursuant to 5 M.R.S.A. §17001(13)(C) and the provisions of this Chapter.
9. **Year.** “Year” means one of the following periods of time during which a state employee or teacher member earned creditable service:
- A. a contract year for teacher members paid on a contract year basis;
  - B. a school year for teacher members who are paid on a school year basis and whose employment is not covered by an individual employment contract or a collective bargaining agreement;
  - C. a calendar year beginning January 1<sup>st</sup> for state employee members with creditable service periods prior to calendar year 1994. For purposes of transition from a calendar year to a fiscal year in the half-year period of January 1, 1994 through June 30, 1994 for state employees with creditable service after June 30, 1995, proration will be applied;
  - D. a fiscal year beginning July 1<sup>st</sup> for state employee members retiring with less than 3 years of creditable service after June 30, 1995;
  - E. a rolling 12 month period of creditable service beginning with the final payment of compensation and going back until 12 months of creditable service is accumulated for state employee members retiring with 3 years or more of creditable service after June 30, 1995.
  - F. In cases that present factual circumstances to which application of any of the definitions of “year” set out in paragraphs A through E above would produce a result that is inconsistent with or has effects that are unrelated to the statutory purpose of the cap limitations, as described below, the System will define a “year” of creditable service in a manner that does not produce a result
    - (1) that is driven by factors that are unrelated to the statutory purpose of the cap limitations, or
    - (2) that, while consistent with the statutory purpose of the cap limitations, arbitrarily affects similarly situated members differently.

As used in this subsection, the statutory purpose of the cap limitations is to limit increases in earnable compensation in the AFC years.

## SECTION 2. APPLICABILITY

1. **General Statement.** The provisions of this Chapter must be applied when computing average final compensation for a state employee or teacher member whose total membership period as a state/teacher member exceeds 1 year of creditable service subject to the following conditions:

- A. For teacher members paid on a contract year basis, regular earnings are subject to the cap limitations when paid on a contract year basis after June 30, 1993 in accordance with
  - (1) an individual employment contract executed after June 30, 1993 or
  - (2) a collective bargaining agreement, including an addendum or amendment to a previous collective bargaining agreement, effective after June 30, 1993 unless the collective bargaining agreement was executed or ratified in its final form by final vote of one party to the agreement before July 1, 1993 or as a result of other action by the governing body of a school administrative unit before July 1, 1993.
- B. For teacher members not paid under an individual employment contract or collective bargaining agreement, regular earnings are subject to the cap limitations when paid after June 30, 1993.
- C. For all state employee members, regular earnings are subject to the cap limitations when paid to state employees on or after July 1, 1995.
- D. The excess increases determined in accordance with this Chapter must be excluded from the member's earnable compensation for purposes of determining the AFC unless the cost of the additional actuarial liability arising from the excess increase is paid by the employer as provided in 5 M.R.S.A. §17154.

### **SECTION 3. APPLICATION OF THE 5% AND 10% CAP LIMITATIONS**

- 1. When regular earnings for Year 1 of the AFC period are subject to the cap limitation, the earnable compensation for this AFC year must equal the uncapped earnable compensation for Year 1 of the AFC period.
- 2. When regular earnings for Year 2 of the AFC period are subject to the cap limitations, the earnable compensation for this AFC year must equal the lower of the following:
  - A. the uncapped earnable compensation for Year 2 of the AFC period; or
  - B. 105% of the earnable compensation of Year 1 of the AFC period.
- 3. When regular earnings plus any amount payable pursuant to 5 M.R.S.A. §17001(13)(B)(1) for Year 3 of the AFC period are subject to the cap limitations, the earnable compensation for this AFC year must equal the lower of the following:
  - A. the uncapped earnable compensation for Year 3 of the AFC period determined by adding the amount of any payment allowable pursuant to 5 M.R.S.A. §17001(13)(B)(1) to the regular earnings for Year 3 of the AFC period;
  - B. 105% of the capped earnable compensation used for Year 2 of the AFC period; or

- C. 110% of the earnable compensation for Year 1 of the AFC period.
4. If AFC Years 2 and 3 are the only AFC years subject to the cap limitations, the capped earnable compensation for each year shall be determined as in subsections 2 and 3 above. If AFC year 3 is the only AFC year subject to the cap limitations, the capped earnable compensation for that year shall be determined as in subsections 3(A) and (B) above. If none of the regular earnings for an AFC year are subject to the cap limitation, then the uncapped earnable compensation for each such AFC year is the earnable compensation used for determining average final compensation. If only part of the regular earnings in an AFC year is subject to the cap limitations, the earnable compensation for that AFC year shall be determined as in subsections 2 or 3 above and the increase limitations shall be applied only to that period subject to the cap limitation.
5. ~~Members who experience If, based on subsections 1 through 4, earnings would be excluded as a result of a cap limitation, earnings increases during the AFC period for the member's primary position that are the result of a collectively bargained salary or wage increase or a promotion in their primary position during an AFC year are not subject to the corresponding cap limitations must be determined. These earnings increases are added to the 5% and 10% cap limits in the corresponding years, resulting in increased cap limitations. Earnings are excluded only to the extent that the increased cap limitations are exceeded.~~
- ~~6. A member who has earnings excluded as a result of a cap limitation after application of subsection 5 may, within 60 days of receiving notice of the exclusion, provide MainePERS with proof that excluded earnings for a position other than a primary position resulted from a collectively bargained salary or wage increase or a promotion. If the member does so, these earnings increases are added to the 5% and 10% cap limits in the corresponding years, resulting in increased cap limitations. Earnings are excluded only to the extent that the increased cap limitations are exceeded.~~
67. The amount of earnable compensation for each AFC year shall be determined by the usual procedures followed by the System for converting earnable compensation first into an average daily rate and then into allowable annual earnable compensation.
78. Member contributions in any AFC year that have been paid on earnable compensation that has been excluded from the benefit calculation by operation of this section shall be refunded to the member.

## STATUTORY AUTHORITY:

5 MRS §§ 17001(4), 17001(13), 17103(4).

## EFFECTIVE DATE:

June 18, 2000 – filing 2000-256

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