

94-411

MAINE STATE RETIREMENT SYSTEM

Chapter 802

PARTICIPATING LOCAL DISTRICTS: MEMBERSHIP FOR PART-TIME, SEASONAL OR TEMPORARY EMPLOYEES

SUMMARY: This Chapter establishes the extent to which a participating local district may include or exclude its part-time, seasonal or temporary employees from membership in the Maine State Retirement System. It specifies the manner in which a participating local district must notify the System of its decision with respect to these employees. It provides that under certain circumstances, employees have an option to withdraw from or join the System. It requires that participating local districts continue to contribute to the System in accordance with their existing plans on behalf of part-time, seasonal or temporary employees until the System is notified of any change and it establishes deadlines for action and the consequences of failure to act.

1. Purpose and Scope

The purpose of this Chapter is to establish the criteria and procedures by which participating local districts may, in accordance with Federal Social Security law and IRS rules and with Retirement System statutes, include part-time, seasonal or temporary employees in or exclude them from membership in the System. Under Retirement System statutes (5 MRSA §18202, sub-§2) a statutory amendment which could grant benefits to employees of a participating local district is effective as to that district only if the district adopts the amendment. Accordingly, the provisions of PL 1991, c. 619 which could grant benefits (e.g., "immediate vesting" in a non-forfeitable right to a refund of contributions at 7.5%; annualized compensation) are effective as to a participating local district only if adopted by it. This Chapter provides the mechanism for and results of adoption, and nonadoption of these. The non-benefit provisions of PL 1991, c. 619 which apply to participating local districts are effective without adoption by the districts.

The Chapter governs membership for those part-time, seasonal or temporary employees who fit the definitions of these terms as established by Federal law (26 CFR Part 31) and adopted by the Maine Legislature and by this Chapter. Thus, not all employees who work in part-time or seasonal or temporary positions are part-time, seasonal or temporary employees within the scope of this Chapter.

This Chapter supersedes and replaces Chapter 802 (emergency) of the Board's rules.

2. Authority

This Chapter is adopted under the authority of 5 MRSA §18202 (2), 5 MRSA §18206 as amended by PL 1991, c. 619, and 5 MRSA §8051 - §8064.

3. Definitions

- A. Board. "Board" means the Board of Trustees of the Maine State Retirement System.
- B. Participating local district. "Participating local district" means a local district which has approved the participation of its employees in the Retirement System under §18201.
- C. Part-time, seasonal or temporary employee. "Part-time, seasonal or temporary employee", means an employee whose employment position is part-time, seasonal or temporary as defined in 26 CFR Part 31, attached to this rule as an Appendix.
- D. PL 1991, c. 619. "PL 1991, c. 619" means, for purposes of section 5 and section 6 of this Chapter, those provisions of PL 1991, c. 619 which could grant benefits to the employees of participating local districts.
- E. System. "System" means the Maine State Retirement System.

4. Applicability"

This Chapter applies to all participating local districts, regardless whether they have Section 218 agreements, and as of January 1, 1992, governs membership in the System by part-time, seasonal or temporary employees of the districts.

5. Participating Local Districts Without Section 218 Agreements

A participating local district which does not have a Section 218 agreement may:

- A. Adopt PL 1991, c. 619 for all Part-time, seasonal or temporary employees. A district may adopt PL 1991, c. 619 for all of its part-time, seasonal or temporary employees who were employees of the district on December 31, 1991, and all part-time, seasonal or temporary employees hired on or after January 1, 1992 by filing with the Board a certified copy of the vote of the body entitled to approve participation in the System. All of the district's part-time, seasonal or temporary employees must be members of the System.
- B. Adopt PL 1991, c. 619 for employees who were part-time, seasonal or temporary employees of the district on December 31, 1991. A

participating local district may adopt PL 1991, c. 619 only for those part-time, seasonal or temporary employees who were employees of the district on December 31, 1991, by filing with the Board a certified copy of the vote of the body entitled to approve participation in the System. All of the district's part-time, seasonal or temporary employees who were employees of the district on December 31, 1991, must be members of the Retirement System. Part-time, seasonal or temporary employees hired by the district after December 31, 1991, may not become members of the System.

NOTE: A district must also meet the requirements of Federal Social Security law and IRS rules for part-time, seasonal or temporary employees hired after December 31, 1991.

- C. Decline to adopt PL 1991, c. 619. A participating local district may decline to adopt the provisions of PL 1991, c. 619 by filing with the Board a certified copy of the vote of the body entitled to approve participation in the System.
 - (1) A person who was a part-time, seasonal or temporary employee of the district on December 31, 1991, who was a member of the System on December 31, 1991 and who first became a member before July 1, 1991 may elect to withdraw from the System, as follows:
 - a. The district must give written notice to each such employee of the employee's right to withdraw from membership.
 - b. The employee must give written notice to the district that s/he elects to withdraw from membership.
 - c. The district must transmit each employee's written notice of election to withdraw to the System no later than September 1, 1992.
 - d. All elections to withdraw are effective as of January 1, 1992 and are final. The System will refund the contributions of each employee who elects to withdraw.
 - e. An employee who does not elect to withdraw continues to be a member under the System's statutes without the amendments made by PL 1991, c. 619 and may not later withdraw under this Chapter.
 - (2) The provisions of paragraph l(a)-(e) apply to the part-time, seasonal or temporary employees of a participating local district which, acting

under Chapter 801 (Emergency), declined to adopt the provisions of PL 1991, c. 619 and which does not act to change its election under subsection F. An employee who was removed from membership as a result of action taken by the district under Chapter 801 (Emergency) who does not elect to withdraw must be reinstated as a member effective as of the date of removal. Employer and employee contributions must be made on compensation paid for service rendered during the time between removal and reinstatement.

- (3) The district may exclude from membership persons who were part-time, seasonal or temporary employees of the district on December 31, 1991, and who were members of the System on December 31, 1991 but who became members on or after July 1, 1991. The exclusion is effective as of January 1, 1992. The provisions of this paragraph apply to participating local districts which, acting under Chapter 801 (Emergency), declined to adopt the provisions of PL 1991, c. 619 and which does not act to change its election under subsection F.
 - a. The district must establish the exclusion by filing with the Board a certified copy of the vote of the body entitled to approve participation in the System, together with the names of the affected members.
 - b. Contributions of excluded employees related to service after January 1, 1992 must be refunded.
- (4) A part-time, seasonal or temporary employee hired after December 31, 1991 may not become a member of the System.

NOTE: A district must also meet the requirements of Federal Social Security law and IRS rules for its part-time, seasonal or temporary employees. The amendments made by c. 619 do not apply to the district's part-time, seasonal or temporary employees.

- D. Effective date of action. Regardless of the date upon which the vote under A, B or C is filed, the action is effective as of January 1, 1992.
- E. Status until action taken. Until a participating local district takes action as required under this section, it must continue to make contributions to the System, if it is required to do so by terms of its participation, for all of its part-time, seasonal or temporary employees whether they are employees of the district on December 31, 1991 or are hired thereafter.

NOTE: A district must also meet the requirements of Federal Social Security law and IRS rules for its part-time, seasonal or temporary employees.

- F. Change of Prior election. A district which filed an election with the System under Chapter 801 (Emergency) before the effective date of this Chapter may change its election by taking action under A, B or C above. The deadline established by G applies to a change of election and the new election is effective as of January 1, 1992. If a district files a change of election, the election bearing the latest date controls. An election made under this Chapter is final.
- G. Failure to act. Except as provided in section 6, a district which does not file the vote required by this Chapter with the Board by September 1, 1992, will be deemed to have declined to adopt the provisions of PL 1991, c. 619.
 - (1) The district may not in future make an election under this Chapter.
 - (2) The provisions of section 5(C) with respect to employee election apply as in Section 5(c).

NOTE: A district must also meet the requirements of Federal Social Security law and IRS rules for its part-time, seasonal or temporary employees.

- H. No Part-time, seasonal or temporary employees. A district which has no part-time, seasonal or temporary employees on December 31, 1991, must make its election under this chapter no later than the time at which it first hires a part-time, seasonal or temporary employee.

6. Participating Local Districts Having Section 218 Agreements

A participating local district which has a Section 218 agreement may adopt PL 1991, c. 619 only for those part-time, seasonal or temporary employees of the district who were not covered by the district's Section 218 agreement prior to July 1, 1991, and who were members of the System on June 30, 1991, for the purpose of offering to those employees the choice of membership in the System under the System's statutes as amended by c. 619. The district must make the adoption by filing with the Board a certified copy of the vote of the body entitled to approve participation in the System.

- A. The district must give written notice in a timely manner to each such employee of the employee's right to choose to be a member of the System under the System's statutes as amended by PL 1991, c. 619.

- B. The employee must give written notice to the district that s/he chooses to be a member of the System under the System's statutes as amended by PL 1991, c. 619.
- C. The district must transmit to the System no later than September 1, 1992 each employee's written notice of choice.
- D. The employee's choice is effective as of January 1, 1992 and is final.
- E. An employee who does not choose to be a member as provided in this section by July 1, 1992, may not later become a member under this section.

EFFECTIVE DATE: May 4, 1992

EFFECTIVE DATE: June 9, 1992 (Permanent Rule)

EFFECTIVE DATE (ELECTRONIC CONVERSION): May 5, 1996

NON-SUBSTANTIVE CORRECTIONS: October 3, 1996 - minor spelling and format.

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK:
July 17, 2025

APPENDIX TO CHAPTER 802, M.S.R.S. RULES

26 CFR Part 31: DEFINITIONS OF PART-TIME, SEASONAL AND TEMPORARY EMPLOYEE

(iii) Definitions of part-time, seasonal and temporary employee--

- (A) Definition of part-time employee. For purposes of this section, a part-time employee is any employee who normally works 20 hours or less per week. A teacher employed by a post-secondary educational institution (e.g., a community or junior college, post-secondary vocational school, college, university or graduate school) is not considered a part-time employee for purposes of this section if he or she normally has classroom hours of one-half or more of the number of classroom hours designated by the educational institution as constituting full-time employment, provided that such designation is reasonable under all the facts and circumstance. In addition, elected officials and election workers (otherwise described in section 3121 (b) (7) (F) (iv) but paid in excess of \$100 annually) are not considered part-time, seasonal or temporary employees for purposes of this section. The rules of this paragraph (d) (2) (iii) are illustrated by the following example.

Example. A community college treats a teacher as a full-time employee if the teacher is assigned to work 15 classroom hours per week. A new teacher is assigned to work 8 classroom hours per week. Because the assigned classroom hours of the teacher are at least one-half of the school's definition of full-time teacher, the teacher is not a part-time employee.

- (B) Definition of seasonal employee. For purposes of this section, a seasonal employee is any employee who normally works on a full-time basis less than 5 months in a year. Thus, for example, individuals who are hired by a political subdivision during the tax return season in order to process incoming returns and work full-time over a 3-month period are seasonal employees.
- (C) Definition of temporary employee. For purposes of this section, a temporary employee is any employee performing services under a contractual arrangement with the employer of 2 years or less duration. Possible contract extensions may be considered in determining the duration of a contractual arrangement, but only if, under the facts and circumstances, there is a significant likelihood that the employee's contract will be extended. Future contract extensions are considered significantly likely to occur for purposes of this rule if on average 80 percent of similarly situated employees (i.e., those in the same or a similar job classification

with expiring employment contracts) have had bona fide offers to renew their contracts in the immediately preceding 2 academic or calendar years. In addition, future contract extensions are considered significantly likely to occur if the employee with respect to whom the determination is being made has a history of contract extensions with respect to his or her current position. An employee is not considered a temporary employee for purposes of this rule solely because he or she is included in a unit of employees covered by a collective bargaining agreement of 2 years or less duration.