

**Chapter 410: RETIREES RETURNING TO EMPLOYMENT AFTER RETIREMENT WITH THE SAME EMPLOYER WORK**

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**SUMMARY:** This Chapter addresses ~~the~~ requirements and guidance regarding retiree reemployment while receiving a MainePERS retirement benefit procedures that govern MainePERS retirees who return to employment after retirement with the same employer, as that term is defined in the rule.

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**SECTION 1. DEFINITIONS**

- ~~1. **Effective date.** Except as otherwise specifically provided in a particular provision of this rule, the effective date of the rule is May 3, 2004.~~
  
- ~~2. **Definitions.** For purposes of this Chapter, the following terms are defined as follows:~~
  - ~~1. **Actuarial Equivalent Rate.** “Actuarial Equivalent Rate” means the actuarial discount rate adopted by the MainePERS Board of Trustees. “Normal Retirement Age.” “Normal Retirement Age” means the age, years of service or combination of age and years of service at which a MainePERS member is eligible for service retirement benefits that are not subject to reduction.~~
  
  - ~~2. **Bona Fide Termination of Employment.** “Bona Fide Termination of Employment” means that the retiree terminated employment in good faith without any explicit understanding or agreement to return to work with the Same Employer “MainePERS employer.” “MainePERS employer” means the State of Maine, each Maine school administrative unit, and each participating local district (PLD) whether or not the PLD is in the Consolidated Plan for PLDs.~~
  
  - ~~3. **Early Distribution Tax.** “Early Distribution Tax” is an additional ten percent (10%) federal tax on retirement benefits paid prior to age 59 ½ “Employment after retirement with the same employer.” “Employment after retirement with the same employer” means:
    - ~~A. In all cases, employment after retirement with the MainePERS employer for whom a retiree last worked prior to retiring;~~
  
    - ~~B. In the case of a retired State employee or retired teacher (as defined in 5 MRSA §§ 17001(40) and 17001(42), respectively), employment after retirement as either a State employee or a teacher with an MainePERS employer other than the MainePERS employer for whom the retiree last worked prior to retiring; or~~
  
    - ~~C. In the case of a participating local district (PLD) employee who retires from a PLD in the Consolidated Plan at the time of the retiree’s retirement, employment with any PLD that is in the Consolidated Plan at the time the retiree returns to employment.~~~~

4. Normal Retirement Age. “Normal Retirement Age” has the same meaning as defined in 5. M.R.S. §17001(23.)
5. Same Employer. “Same Employer” as used in the Chapter means the employer for whom the retiree last worked prior to retiring who provides the MainePERS retirement plan from which the retiree retired. It does not include other employers that participate in the same retirement program.

## SECTION 2. RESTRICTIONS AND EARLY DISTRIBUTION TAX

Retirees may be subject to restrictions on their ability to return to work with the Same Employer and may be subject to an Early Distribution Tax on their service retirement benefit as follows:

1. Except as set forth in subsections 4 and 5, a retiree who has reached 59 ½ may return to work as an employee with the Same Employer without restrictions and without an Early Distribution Tax on the retiree’s service retirement benefit.
2. A retiree who has not reached age 59 ½, but has reached Normal Retirement Age, may return to work with the Same Employer. However, the retiree’s service retirement benefits are subject to an Early Distribution Tax until the retiree reaches age 59 ½ if the retiree has not had a Bona Fide Termination of Employment.
3. A retiree who has neither reached 59 ½ nor Normal Retirement Age may return to work for the Same Employer only after a Bona Fide Termination of Employment, and any such return to work if limited to no more than 90 days in any one year.
4. In no case may a retiree return to work with the Same Employer before the effective date of retirement.
5. In addition to the above requirements, a retired State employee or teacher may not return to work with the Same Employer for at least 30 days after termination of employment.
6. A judge or justice who has terminated employment and becomes an active retired judge or active retired justice before the effective date of retirement is not considered a retiree returning to work for the Same Employer and is not required to terminate employment again to subsequently qualify for retirement.

## SECTION 3. REPORTING REQUIREMENTS

1. MainePERS is required to report to the Internal Revenue Service whether retirement benefit distributions are subject to the Early Distribution Tax. For purposes of determining whether there has been a Bona Fide Termination of Employment, if the retiree is below age 59 ½, both the retiree and employer must certify to MainePERS at the time of retirement whether there is an explicit understanding or agreement that the employee will be reemployed after retirement.
2. An employer who provides retirement benefits through a MainePERS retirement plan is required to identify and report to MainePERS all retirees from the plan who have returned to work with the employer, regardless of whether the employer is the Same Employer under Section 1, subsection 5.

## **SECTION 4. BENEFIT SUSPENSION AND RECOVERY**

1. The service retirement benefit must be suspended during any time period when a retiree fails to comply with the requirements in Section 2, subsections 3 or 4.
2. Any payment of retirement benefits made to a retiree during a period of non-compliance with Section 2, subsections 3 or 4, will be considered an overpayment. MainePERS may recover the overpayment plus interest at the Actuarial Equivalent Rate by adjusting any future benefit payments or as otherwise permitted by 5 M.R.S. § 17054(3).

### **~~3. Applicability~~**

- ~~1. In accordance with the applicable time periods set out in it, this rule applies to MainePERS members who retire with a MainePERS service retirement benefit and who return to employment after retirement with the same employer. Where a specific provision of the rule modifies this general applicability provision, this provision must be read as so modified.~~
- ~~2. In addition to the general applicability set out above in 1, this rule applies as follows to MainePERS members to whom 5 MRSA §18252(6) applies:~~
  - ~~A. To such members who have not reached Normal Retirement Age at retirement, all of the provisions of this rule apply, and such members may not exercise the election provided in §18252(6) as provided therein until they reach Normal Retirement Age; and~~
  - ~~B. To such members who have reached Normal Retirement Age at retirement, all of the provisions of this rule except Section 6 apply, and such members may exercise the election under §18252(6) as provided therein.~~

### **~~4. Waiver and Acknowledgement~~**

- ~~1. A member who terminates employment and at the time of termination is eligible to retire, regardless whether the member has reached Normal Retirement Age, may choose:~~
  - ~~A. To begin receiving MainePERS retirement benefits immediately, in exchange for foregoing additional accrual of service credit and possible increase in earnable compensation upon any return to employment after retirement with the same employer; or~~
  - ~~B. To defer receiving retirement benefits, thereby continuing to be eligible to accrue additional service credit and possibly to increase earnable compensation upon any return to employment with the same employer.~~
- ~~2. To begin to receive immediate retirement benefits, every MainePERS member must sign a written statement prior to retirement in a form acceptable to MainePERS that acknowledges that the member knows and understands that he/she has this choice, and that he/she knowingly and voluntarily waives the right to accrue additional service credit and possible increases in earnable compensation if he/she returns to employment after~~

retirement with the same employer after commencement of retirement benefits. By signing the statement, the member waives all claims of whatever nature under federal or state law based on additional service credit not being accrued and possible increases in earnable compensation not being received if the member returns to employment after retirement with the same employer.

## **5. ~~Bona Fide Termination of Employment~~**

- ~~1. For a member who has not reached Normal Retirement Age to be eligible to receive retirement benefits, federal law and rules require that the member have a bona fide termination of employment. Every member whose retirement becomes effective after the effective date of this rule, and who has not reached Normal Retirement Age at retirement, must be able to demonstrate that he/she had a bona fide termination of employment prior to retirement. A bona fide termination requires the following:
  - ~~A. The member must not return to employment after retirement with the same employer for at least 30 calendar days after the termination of employment; and~~
  - ~~B. At retirement, the member must certify to MainePERS that he/she did not have any discussion or negotiation prior to his/her termination that resulted in an explicit or implicit arrangement or expectation of future employment after retirement with the same employer.~~~~
- ~~2. Regardless whether a retiree has reached Normal Retirement Age, he/she must terminate employment in order to receive a retirement benefit and must not return to employment after retirement with the same employer before the effective date of his/her retirement.~~

## **6. ~~Restrictions on Retirement Benefit Payments~~**

- ~~1. Notwithstanding a bona fide termination of employment, MainePERS is restricted by current federal law and rule from paying benefits to a retiree who has not reached Normal Retirement Age and who returns to employment after retirement with the same employer. For members whose retirement becomes effective after the effective date of this rule, the restrictions shall be as follows:
  - ~~A. When a retiree who has not reached Normal Retirement Age returns to employment after retirement with the same employer, MainePERS shall suspend the retiree's service retirement benefits, beginning the first day of the month following the retiree's return to employment. A retiree who returns to employment after retirement with the same employer without benefits suspension is responsible for repayment to MainePERS of the full amount of any retirement benefits that were subject to suspension but paid to the retiree.~~
  - ~~B. The benefits suspension will remain in effect until the earlier of the retiree's attainment of Normal Retirement Age or the retiree's termination of his/her employment after retirement with the same employer. If the triggering event is termination, the retiree and the employer must each certify to and in the manner required by MainePERS that the retiree has terminated employment.~~~~

- ~~C. The benefits will be reinstated beginning the first day of the month following the month in which the event triggering reinstatement occurs. Monthly benefits paid after reinstatement will be increased by an actuarial adjustment accounting for the period of suspension.~~
- ~~D. A member whose retirement is effective no later than May 3, 2004 is not subject to these restrictions. A member whose retirement is effective no later than July 1, 2004 is not subject to the restrictions if the member has, no later than May 3, 2004, initiated the retirement process with MainePERS by submitting a written request for a service retirement benefits estimate specifying an effective date of retirement not later than July 1, 2004.~~
- ~~2. This section is not applicable to a retiree who returns to employment after retirement with the same employer if the retiree returns to employment for no more than 90 days in one year, which days may be consecutive. "Year" is defined to be consistent with MainePERS statutes and rules governing the employer with whom the retiree returns to employment.~~

## ~~7. Inquiry, Certification and Reporting Requirements~~

- ~~1. An employer who provides retirement benefits through a MainePERS retirement plan or plans must:~~
- ~~A. Ascertain from records and/or by inquiry of the person whether any person employed by the employer is a MainePERS retiree who has returned to employment after retirement, regardless whether the retiree has reached Normal Retirement Age and regardless whether the retiree's retirement became effective before or after the effective date of this rule; and~~
- ~~B. Report to, and in the manner as required by MainePERS, any such retiree.~~
- ~~2. Every MainePERS retiree who has returned or does return to employment with the same employer, regardless whether the retiree has or has not reached Normal Retirement Age and regardless whether the retiree's retirement became effective before or after the effective date of this rule, must inform his/her employer that he/she is a MainePERS retiree returning to employment after retirement.~~
- ~~3. Every MainePERS retiree to whom Section 6 is not applicable because of the exception established in Section 6(2) is responsible to ensure that he/she does not exceed the 90-day limitation on employment after retirement. Such retirees must comply with any related documentation and/or reporting requirements established by MainePERS.~~

## ~~8. Compliance.~~

- ~~Failure by any retiree who has not reached Normal Retirement Age to comply with Section 5, Section 7(2) or Section 7(3) of this rule will result in immediate suspension of the retiree's retirement benefit, if the retiree's noncompliance has prevented a timely suspension of benefits pursuant to Section 6 of this rule. The retiree must repay to MainePERS the amount of benefits paid, plus interest on that amount at the rate set by~~

~~the Board for the purchase of service credit, during the period in which the retiree's benefit should have been suspended. MainePERS will collect the repayment owed from the retiree's retirement benefits whenever the benefits are no longer required to be suspended under Section 6. Monthly benefits paid after reinstatement will be decreased by an actuarial adjustment accounting for the overpayment of benefits. Instead of this adjustment, the retiree may elect to repay the amount due by making a lump sum payment of the repayment owed within 30 days of being notified by MainePERS that repayment is owed, which amount will not include interest.~~

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STATUTORY AUTHORITY: 5 MRSA §§ 17103(4), ~~17603(9), 18205(9); 18801 and PL 2003, Chapter 387~~

EFFECTIVE DATE:  
April 17, 2004

AMENDED:  
August 30, 2009 – filing 2009-444