

**Annual List of Rule-Making Activity**  
**Rules Adopted January 1, 2019 to December 31, 2019**  
*Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5*

**Agency name:** Maine Public Employees Retirement System (MainePERS)  
**Umbrella-Unit:** 94-411  
**Statutory authority:** 5 MRS §17103(4)  
**Chapter number/title:** Ch. 414, Required Minimum Distributions  
**Filing number:** 2019-065  
**Effective date:** 4/17/2019  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

This rule establishes the date when a member must begin to receive a service retirement benefit or withdraw accumulated contributions under a retirement program pursuant to *Internal Revenue Code*.

**Basis statement:**

The rule was amended on an emergency basis on April 11, 2019, to remove a retirement effectiveness date restriction that is not required by federal law and that is inconsistent with the determination of that date outside of the required minimum distribution context.

**Findings of Emergency**

Immediate adoption of this amendment is necessary to protect the general welfare. Adoption of this amendment using non-emergency rulemaking would result in members with an April 1, 2019 Required Beginning Date being forced to retire with a later retirement effectiveness date than they would with this amendment. This would cause these members unnecessary financial harm that is avoided by emergency adoption.

At the Board's regular meeting held on April 11, 2019, Kenneth Williams made the motion, seconded by Shirrin Blaisdell, to adopt the amended rule on an emergency basis. The motion was unanimously approved by those Board members present.

**Fiscal impact of rule:**

None

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**Agency name:** **Maine Public Employees Retirement System (MainePERS)**  
**Umbrella-Unit:** **94-411**  
**Statutory authority:** 5 MRS §17103(4)  
**Chapter number/title:** **Ch. 414**, Required Minimum Distributions  
**Filing number:** **2019-100**  
**Effective date:** 6/24/2019  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

This rule establishes the date when a member must begin to receive a service retirement benefit or withdraw accumulated contributions under a retirement program pursuant to *Internal Revenue Code*.

**Basis statement:**

The amendment removes a retirement effectiveness date restriction that is not required by federal law and that is inconsistent with the determination of that date outside of the requirement minimum distribution context.

**Fiscal impact of rule:**

None

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**Agency name:** **Maine Public Employees Retirement System (MainePERS)**  
**Umbrella-Unit:** **94-411**  
**Statutory authority:** 5 MRS §§ 17103(4), 18200 *et seq.*, 18801 *et seq.*  
**Chapter number/title:** **Ch. 803**, Participating Local District Consolidated Retirement Plan  
**Filing number:** **2019-101**  
**Effective date:** 6/24/2019  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

This rule governs the Consolidated Plan for Participating Local Districts. The amendments to the rule are the recommendations of the Participating Local District Advisory Committee to clarify recently adopted amendments to the Plan by further amending provisions relating to the allocation of costs between employers and employees, earnable compensation, service credit and retire/rehire. The amendments also include some adjusted wording on an unrelated technical provision of the rule.

**Basis statement:**

The Participating Local District (“PLD”) Advisory Committee and MainePERS staff proposed several substantive changes to Chapter 803 to enhance the PLD Consolidated Retirement Plan’s ability to protect the basic retirement benefit and improve the long-term financial health of the Plan. The recommended changes were adopted by the Board of Trustees at its May 10, 2018 and September 13, 2018 meetings.

Several of the adopted changes are effective July 1, 2019. While preparing to implement the changes, MainePERS staff determined that further refinement of some of the changes might be beneficial to the Plan. These additional changes were considered by the PLD Advisory Committee, and the Committee recommended that the amendments be brought to the Board of Trustees for their consideration.

Notice of this proposed amendment and public hearing was published in accordance with 5 MRS §8053 on April 17, 2019. Additionally, a notice of public hearing was sent to PLD employers for distribution to employee/members on April 17, 2019. This notice included information about the public hearing as well as the deadline for written comments.

The amended rule: (1) removes the option for a retiree who returns to work to re-enter the plan to avoid potential plan qualification issues; (2) changes the rate split between employers and employees to 58%/42% from 55%/45% for consistency with the rate caps and current rates; (3) excludes disability retirees from the requirement that a retiree must have at least 20-years of service credit in order to use paid accrued leave for earnable compensation or unpaid accrued leave for service credit; (4) clarifies that special plan members who do not satisfy the special plan requirements may retire under regular plan provisions; and (5) corrects an erroneous reference to a special plan as a regular plan.

A public hearing on the proposed amended rule was held on May 9, 2019, before the MainePERS Board of Trustees. Three members of the public attended the hearing. Comments were made at the hearing by two individuals. One commenter spoke on his own behalf, as a stated member of local boards.<sup>1</sup> This individual opined that the rate splits and accrued leave provisions were too favorable to employees. The second commenter was a member of the PLD Advisory Committee<sup>2</sup> who commented that the effectiveness date for the accrued leave provisions, and the language used to describe the effectiveness date, would adversely impact

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<sup>1</sup> Albert Hodsdon, Fairfield

<sup>2</sup> Rick Cailler, Professional Firefighters of Maine

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PLD plan members who work for schools (e.g., cafeteria workers) who would like to complete the school year before retiring. Written comments were received by one PLD employer<sup>3</sup> by the comment deadline of May 20, 2019. The one written comment was generally supportive of the proposed changes.

The PLD Advisory Committee was provided with a summary of the comments received on May 29, 2019 along with the MainePERS staff recommendation that, based on the comments received, the effectiveness date of the accrued leave provisions be delayed one month. MainePERS staff also suggested one additional amendment to correct an outdated statutory reference in another part of the rule. The Committee raised no objections to MainePERS staff recommending these additional amendments to the Board of Trustees.

After considering the comments, the Board adopts the proposed changes, with additional modifications as follows: (1) the retirement effectiveness date for the inclusion of unused sick or vacation leave is amended so that those who retire on or after August 1, 2019 must have 20-years of creditable service to include unused leave in the calculation of their retirement benefit. This modification allows PLD plan members who work for schools to complete the school year before retiring and (2) the outdated statutory reference is corrected.

In conclusion, the Board adopts the proposed amended rule as it pertains to the retire-rehire provisions, the rate split between employers and employees, the clarification of benefits for members who do not satisfy special plan requirements, and the correction of the erroneous reference to a special plan as a regular plan. The Board adopts the proposed amended rule as it pertains to the inclusion of unused sick or vacation leave and the correction of a statutory reference as outlined above. These modifications do not substantially change the rule as proposed.

**Fiscal impact of rule:**

None

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<sup>3</sup> Brenda Fox-Howard, Town of Kittery

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**Agency name:** **Maine Public Employees Retirement System (MainePERS)**  
**Umbrella-Unit:** **94-411**  
**Statutory authority:** 5 MRS §17103(4)  
**Chapter number/title:** **Ch. 101**, Earnable Compensation and Calculation of Average Final Compensation  
**Filing number:** **2019-187**  
**Effective date:** 11/4/2019  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

This rule sets forth the computation of average final compensation used in the calculation of retirement benefits paid by the Maine Public Employees Retirement System. The amendments to the rule clarify the inclusion of paid time off, sick and vacation leave payments for Participating Local District Plan members, and certain arbitration awards, judgments and written settlement agreements as earnable compensation. The amendments also correct some minor formatting issues.

**Basis statement:**

Notice of this proposed amendment and public hearing was published in accordance with 5 MRS §8053 on August 21, 2019.

The amended rule: (1) addresses the recent changes to ch. 803, the rule that governs the Participating Local District Consolidated Retirement Plan, on the use of payment for accrued leave in determining earnable compensation; (2) clarifies that “paid time off” is considered to be vacation/sick leave; and (3) provides guidance on the treatment of certain amounts paid pursuant to an arbitration award, judgment, or written settlement agreement.

A public hearing was held on September 12, 2019. Five members of the public attended the hearing. No members of the public offered comments at the hearing. One written comment was received by an employee group<sup>4</sup> by the comment deadline of September 23, 2019. The written comment was generally supportive of the proposed amendments and suggested additional clarifications to the rule. Specifically, that the rule be further amended to include (1) retroactive reallocations, (2) other types of back pay awards, and (3) flexibility in determining an arbitrator’s intent.

MainePERS staff also recommended one additional amendment to correct the cross-reference used to determine when a participating local district member is eligible to include paid vacation and sick leave as earnable compensation.

After considering the comments, the Board adopts the proposed changes, with additional modifications as follows: (1) the arbitration awards, judgments, and written settlement agreements section is amended to include reallocations and other agreements that require back pay, and (2) the cross-reference for participating local district members is corrected. These modifications do not substantially change the rule as proposed. The Board did not make changes in response to the comment on arbitrator intent because the amended rule as proposed appropriately provides for reference to the arbitration award to determine the nature of the dispute and the payments made to resolve it.

At the Board’s meeting held on October 15, 2019, Richard Metivier made the motion, seconded by Shirrin Blaisdell, to adopt the amended rule. Voted unanimously by those Board members present.

**Fiscal impact of rule:**

None

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<sup>4</sup> Tom Feeley, General Counsel, Maine State Employees Association, SEIU Local 1989

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**Agency name:** **Maine Public Employees Retirement System (MainePERS)**  
**Umbrella-Unit:** **94-411**  
**Statutory authority:** 5 MRS §17103(4)  
**Chapter number/title:** **Ch. 406**, Payment or Repayment of Contributions and Interest for the Purchase of Creditable Service  
**Filing number:** **2019-188**  
**Effective date:** 11/4/2019  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

This rule sets forth the requirements for members to purchase or repurchase creditable service. The amendments to the rule incorporate recent changes made in the law to permit the purchase of prior law enforcement officer service. The amendments also correct some minor formatting issues.

**Basis statement:**

Notice of this proposed amendment and public hearing was published in accordance with 5 MRS §8053 on August 21, 2019.

The proposed amended rule: (1) incorporates a new statute that permits the purchase of credit for prior law enforcement service earned with a federal, state, county or local law enforcement agency before becoming a MainePERS member, and (2) makes unrelated technical changes to how statutes are cited.

A public hearing was held on September 12, 2019. Five members of the public attended the hearing. One member of the public representing law enforcement offered comments in support of the proposed changes.<sup>5</sup> This individual commented that the change would be beneficial to employers' abilities to recruit and retain law enforcement officers. No members of the public submitted written comments prior to the comment deadline of September 23, 2019.

After considering the comments, the Board adopts the proposed changes, without modification.

At the Board's meeting held on October 15, 2019, Richard Metivier made the motion, seconded by Philip Brookhouse, to adopt the amended rule. Voted unanimously by those Board members present.

**Fiscal impact of rule:**

None

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<sup>5</sup> Jessica Laliberte, Laliberte Strategies on behalf of Maine Association of Police

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**Umbrella-Unit:** **94-411**  
**Statutory authority:** 5 MRS §§ 17103(4), 18200 *et seq.*, 18801 *et seq.*  
**Chapter number/title:** **Ch. 803**, Participating Local District Consolidated Retirement Plan  
**Filing number:** **2019-189**  
**Effective date:** 11/4/2019  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

This rule governs the Consolidated Plan for Participating Local Districts. The amendments to the rule are the recommendations of the Participating Local District Advisory Committee to incorporate recent changes made in the laws that govern benefit provisions for participating local districts. The amendments also include some adjusted wording on unrelated technical provisions of the rule.

**Basis statement:**

Notice of this proposed amendment and public hearing was published in accordance with 5 MRS §8053, on August 21, 2019. Additionally, a notice of public hearing was sent to PLD employers for distribution to employee/members on August 21, 2019. This notice included information about the public hearing as well as the deadline for written comments.

The proposed amended rule: (1) incorporates a new statute on purchasing prior law enforcement service credit; (2) incorporates a new statute that permits participating local districts to adopt a special plan for dispatchers; and (3) makes technical corrections and clarifications to existing language unrelated to the statutory changes.

A public hearing was held on September 12, 2019. Five members of the public attended the hearing. One member of the public representing law enforcement offered comments in support of the proposed changes.<sup>6</sup> This individual commented that the proposed changes would provide equality for dispatchers and would also be beneficial to employers' abilities to recruit and retain employees. No members of the public submitted written comments prior to the comment deadline of September 23, 2019.

MainePERS staff recommended one additional amendment to remove language that permits employers to elect a special plan with a 20-year, no-age requirement for all employees. As is the case with dispatchers, permitting these employees to participate in a plan that permits retirement with an unreduced benefit before 25 years of service at any age raises a potential Internal Revenue Service (IRS) plan compliance issue. The IRS proposed regulations in 2016 that provide governmental retirement plans with certain safe harbors for normal retirement age. A plan with a 20-year, no age requirement would be a safe harbor only for employees who provide "police protection, firefighting services, or emergency medical services." For other employees, the proposed regulations require at least 25 years of service for no age requirement plans. The IRS has not (yet) adopted the proposed regulations. MainePERS recommends this change in order to avoid possible future plan compliance issues.

The PLD Advisory Committee was provided with a summary of the proposed changes and the one comment received. No member of the Committee raised an objection to MainePERS staff recommending these amendments to the Board of Trustees.

After considering the comments, the Board adopts the proposed changes, with one additional modification to remove the ability for employers to elect a special plan with a 20-year, no-age requirement for all employees. This modification is consistent with the proposed

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<sup>6</sup> Jessica Laliberte, Laliberte Strategies, on behalf of Maine Association of Police

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rule as it relates to plan coverage for dispatchers, and it does not substantially change the rule as proposed.

At the Board's meeting held on October 15, 2019, Richard Metivier made the motion, seconded by Philip Brookhouse, to adopt the amended rule. Voted unanimously by those members present.

**Fiscal impact of rule:**

None