**94-411 MAINE PUBLIC EMPLOYEES RETIREMENT SYSTEM**

**Chapter 101: EARNABLE COMPENSATION AND CALCULATION OF AVERAGE FINAL COMPENSATION**

**SUMMARY:** This Chapter clarifies the definition of earnable compensation for the purpose of computing average final compensation when calculating benefits to be paid by the Maine Public Employees Retirement System.

**SECTION 1**. **Definitions**

1. All terms used in this chapter, unless the context otherwise indicates, shall have the same definition as in 5 M.R.S. §17001 inclusive.
2. For the purpose of this chapter, compensation for actual services rendered does not include any amount paid:
3. in lieu of fringe benefits;
4. as a retirement stipend, an incentive to retire, or as consideration for notice of planned retirement;
5. as a bonus;
6. from a sick leave bank;
7. as interest to an employee, including interest on retroactive wage increases or other settlements; or
8. which is not compensation for actual services rendered, or which is not paid at the time the actual services are rendered.
9. For the purpose of this chapter, the terms “sick leave” and “vacation leave” include accrued paid time off, provided that payment for the accrued paid time off is not otherwise excluded from the definition of earnable compensation.

**SECTION 2. Calculations**

For the purpose of calculating benefits payable to members, the Maine Public Employees Retirement System will determine average final compensation based upon the member’s earnable compensation during the three years of creditable service in Maine in which the member's earnable compensation is highest.

1. Payment for sick and/or vacation leave. For state employee and teacher members having at least 10 years of creditable service by July 1, 1993, and for participating local district members eligible pursuant to 5 M.R.S. §18356, earnable compensation may include payment for not more than 30 days of unused and accumulated or accrued sick and/or unused vacation leave. For purposes of this subsection, a day is the normal number of hours worked in a day by the employees in a given classification up to a maximum of eight (8) hours. If a member retires and is paid for unused sick leave or vacation leave, the gross amount paid for unused sick leave and vacation leave will be converted to the equivalent days at full salary and deducted from the total days of unused sick leave and vacation leave. To be included in earnable compensation, sick and vacation leave must meet the following requirements:

A. Sick leave must have been available to the member to be used in the ordinary course of employment on account of illness or accident, and must be in fact unused and accumulated or accrued as of the date on which the member's service to the employer ceases.

B. Vacation leave must have been available to the member to be used in the ordinary course of employment for vacation, and must in fact be unused as of the date on which the member’s service to the employer ceases.

C. Sick and vacation leave as described in paragraphs A and B must be so verified in records of the employer.

D. Payment for such leave must be made within a reasonable time, normally understood to be thirty (30) days after the date of the member's last termination before retirement. The applicable employer and member contributions must be made on the payment.

E. The policy or practice of making payments for such leave must be applied consistently by the employer to all of the employees in a given class.

F. The payments must not be excludable under section 1 of this rule.

2. Per diem rates for sick and/or vacation leave. Payment for unused and accumulated or accrued sick and/or unused vacation leave will be included in earnable compensation on the basis of the following per diem rates:

A. State and participating local district-employees other than school employees who are employed on a school-year basis. Divide the full-time equivalent applicable wage or salary by 260 days.

B. Public school teachers, excluding those to whom paragraph C or D applies, and school employees who are participating local district employees and who are employed on a school-year basis. Divide the full-time equivalent applicable wage or salary, exclusive of any additional amounts paid for administrative, supervisory or extracurricular activities or duties, by the number of days prescribed by the employer as full-time for employees in the same classification, typically 180 days.

C. Superintendents and other public school administrators, including teaching Principals, who are employed on a full-year basis. Divide the full-time equivalent applicable wage or salary by 260 days.

D. Public school administrators, including teaching Principals, who are employed on less than a full-year but more than the academic-year basis. Divide the full-time equivalent applicable wage or salary by 220 days.

3. Holiday pay. Earnable compensation shall include holiday pay provided it is paid as part of the payroll for the period during which the holiday occurred.

4. Payments to teachers for administrative, supervisory or extracurricular activities or duties. Payments made to members who meet the definition of "teacher" under 5 M.R.S, § 17001, sub-§42, for administrative, supervisory or extracurricular activities or duties may be included in earnable compensation, provided that:

A. The payments are paid as part of the payroll for the contract year within which the activities or duties are performed; and

B. Provided further that, in the case of a position to which 5 M.R.S., §17001, sub‑§42(B) applies, the position is considered to have as its principal function the introduction of new learning to students if it has as its purpose:

(1) to coach, advise, or supervise students engaged in extracurricular activities; or

(2) to coordinate, supervise or direct academic or extracurricular programs, except for a position the purpose of which is to provide or perform technical services with respect to machinery, or equipment of whatever nature; and

(3) to coach or advise teachers as part of a certification/ recertification program established pursuant to Maine statutes or rules of the Maine Department of Education.

Payments for service in such a position may be included in earnable compensation if the employer can document the purpose and duties of a position and that the member served in the position.

5. Arbitration awards, judgments, and written settlement agreements. Amounts paid pursuant to an arbitration award, judgment, or written settlement agreement that requires retroactive reclassification, reallocation, or reinstatement of the employee, or otherwise requires the payment of back pay, are considered to be “compensation for actual services rendered” and “paid at the time the actual services are rendered” if the arbitration award, judgment, or written settlement agreement resolves a bona fide dispute between the employee and employer and, based on the arbitration award, judgment, or written settlement agreement, the amounts paid are compensation for services that were rendered or would have been rendered absent employer misconduct or, in the case of a settlement agreement, alleged employer misconduct. Earnable compensation under this subsection will be allocated to the period when the services were rendered or would have been rendered.

STATUTORY AUTHORITY: 5 M.R.S. §17103(4)

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