

## Maine Revised Statutes

### Title 5: ADMINISTRATIVE PROCEDURES AND SERVICES

#### Chapter 421: GENERAL PROVISIONS

##### §17159. EARLY RETIREMENT INCENTIVE COSTS

When an employee retires prior to normal retirement age and receives from the employer any significant monetary or nonmonetary payment or award in connection with the employee's retirement, the employer must, prior to the effective date of the employee's retirement, demonstrate that the payment or award is not a retirement incentive or pay the additional actuarial and reasonable administrative costs of the employee's early retirement. [1995, c. 541, §3 (NEW).]

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Early retirement" means retirement before normal retirement age with a reduced retirement benefit as provided by section 17851-A, subsection 4, section 17852, subsection 3 or 3-A or subsection 10, paragraph C or C-1; section 17857, subsection 3-A; section 18452, subsection 3; or section 18462, subsection 3. [2007, c. 249, §19 (AMD).]

B. "Employer" means, in the case of a member who is a state employee, the department of State Government by which the member was last employed prior to retirement; in the case of a member who is a teacher, the local school administrative unit by which the member was last employed prior to retirement; and in the case of a member who is an employee of a participating local district, the district by which the member was last employed prior to retirement. [1995, c. 541, §3 (NEW).]

[ 2007, c. 249, §19 (AMD) .]

**2. Criteria for identifying an early retirement incentive.** A payment or award in connection with retirement is an incentive for early retirement for which the employer offering the incentive is responsible for the additional costs pursuant to section 17154, subsection 10 if all the criteria established in this subsection are met:

A. The payment or award is intended to induce the member's early retirement; [1995, c. 541, §3 (NEW) .]

B. The payment or award is a one-time, time-limited or occasional offer outside the employer's regular benefit program; [1995, c. 541, §3 (NEW) .]

C. The payment or award is not part of a longevity-based employee retention program; and [1995, c. 541, §3 (NEW) .]

D. The payment or award is not made pursuant to a collective bargaining agreement for the initial term of that agreement if that agreement is executed or ratified in its final form by final vote of at least one of the parties to the agreement prior to July 1, 1993. [1995, c. 541, §3 (NEW) .]

[ 1995, c. 541, §3 (NEW) .]

**3. Employer provides information.** If a member retires prior to normal retirement age and receives a significant monetary or nonmonetary payment or award in connection with the retirement, prior to the effective date of the member's retirement or, if a payment or award that was not known or anticipated prior to retirement is given after retirement, within 7 business days of the date upon which the payment or award is given, the employer must provide the following information to the retirement system:

A. Documents demonstrating that any of the criteria established in subsection 2 is not met. By way of example and not limitation, such documents include collective bargaining agreements, whether principal agreements, side agreements or memoranda of agreement or understanding; records of official actions by the employer; relevant rules or policies of the employer; records of prior or contemporaneous relevant retirements of employees of the employer; notices, memoranda or other communications from the employer to employees regarding retirement; and correspondence between the employer and an employee, employees or employee representatives concerning retirement; and [1995, c. 541, §3 (NEW).]

B. Certification on a form provided by the retirement system and signed by the employer, or the responsible officer of the employer on the employer's behalf, that the payment or award does not meet the criteria established in subsection 2 and is not an action or practice causing or encouraging early retirement. [1995, c. 541, §3 (NEW).]

[ 1995, c. 541, §3 (NEW) .]

#### **4. Early Retirement Incentives Review Panel.**

[ 1999, c. 668, §55 (RP) .]

#### **5. Panel determinations.**

[ 1999, c. 668, §56 (RP) .]

#### **6. Panel decision.**

[ 1999, c. 668, §56 (RP) .]

#### **7. Reconsideration; final decision.**

[ 1999, c. 668, §56 (RP) .]

**8. Employer payment for costs resulting from early retirement incentives.** Employer payment for costs resulting from early retirement incentives are governed by this section pursuant to section 17154, subsection 10.

A. The additional actuarial costs that result from the early retirement of a member who has received an early retirement incentive must be paid to the retirement system by the employer as provided in this paragraph.

(1) The retirement system shall determine the additional actuarial costs for which the employer is liable in individual situations as follows:

(a) First, the annual retirement benefit payable to the member upon the member's early retirement date must be calculated in accordance with the governing provisions of the retirement system statutes and rules;

(b) Second, the annual retirement benefit that would be payable to the member on a fully actuarially reduced basis must be calculated in accordance with the actuarial equivalent early retirement reduction factors prescribed by the retirement system's consulting actuary and approved by the board;

(c) Third, the retirement benefit calculated in division (b) must be subtracted from the retirement benefit calculated in division (a); and

(d) Fourth, a present-value factor must be applied to the amount determined in division (c) to convert the annual benefit amount to a lump sum present-value dollar amount. This amount represents the additional actuarial cost resulting from the early retirement of a member who has been offered a retirement incentive.

(2) The retirement system shall bill the employer of retiring members who will receive or have received early retirement incentives for the additional actuarial costs as determined by the retirement system in subparagraph (1). The bill must be accompanied by a statement of the basis of the costs identified in the bill and the supporting calculations.

(3) All determinations of additional actuarial costs are subject to recalculation upon the actual retirement of the member and upon any subsequent recalculation of the member's early retirement benefit due to misreporting of member-specific information, error or any direction by the board to recalculate a member's benefit. Any resulting change in additional actuarial costs must be paid or refunded, as appropriate, to the employer. Any administrative costs for recalculation of additional actuarial costs that is caused by actions of the employer must be paid by the employer. [ 1995 , c. 541 , §3 (NEW) . ]

B. The reasonable administrative costs that result from the early retirement of a member who has received a retirement incentive must be paid to the retirement system by the employer as provided in this paragraph.

(1) Subject to review and approval by the board, the executive director shall establish and may revise from time to time an administrative processing fee to determine the member-specific additional actuarial costs relating to an early retirement incentive for which the employer is liable. The fee must be based on the time required for making such determinations, must be reasonable and may not be set at a level that requires the retirement system's members and employers as a whole to subsidize the cost of a determination. The fee must be paid before the retirement system determines the member-specific additional actuarial costs.

(2) The employer must pay any additional actual administrative costs for member-specific information at an hourly administrative cost rate for the retirement system plus the retirement system's actual costs related to actuarial and legal services. Subject to review and approval by the board, the executive director shall establish and may from time to time revise the administrative cost rate.

(3) The employer must be billed for any actual administrative costs beyond the processing fee. If the member is already receiving a retirement benefit or preliminary benefit when the employer is billed for administrative costs, the employer must also be charged interest as a cost and must pay interest retroactive to the member's effective date of retirement. The bill must be accompanied by a statement of the basis of the administrative costs. [ 1995 , c. 541 , §3 (NEW) . ]

C. For early retirement incentives granted between July 1, 1993 and March 15, 1996, the employer must pay the amount calculated under paragraphs A and B plus interest due to the retirement system in accordance with a payment schedule not to exceed 10 years. For early retirement incentives granted after March 15, 1996, the employer must pay the amount calculated under paragraphs A and B to the retirement system within 30 days of receipt of the bill. [ 1995 , c. 541 , §3 (NEW) . ]

D. If the employer or the member disputes the determination that additional actuarial costs must be paid by the employer, the amount of the additional actuarial costs or the amount of actual administrative costs, an appeal may be brought pursuant to section 17451 and Chapter 702 of the board's rules. [ 1995 , c. 541 , §3 (NEW) . ]

E. Interest must be charged by the retirement system and must be paid by the employer on all overdue amounts pertaining to the processing fee, additional actuarial costs and administrative costs. In addition, an employer who fails to pay is liable for penalties on a case-by-case basis as recommended by the executive director and approved by the board and shall pay all of the retirement system's costs associated with collection of amounts overdue and enforcement of the provisions of this section. [ 1995 , c. 541 , §3 (NEW) . ]

[ 1995 , c. 541 , §3 (NEW) . ]

#### SECTION HISTORY

1995, c. 541, §3 (NEW). 1997, c. 651, §4 (AMD). 1999, c. 668, §§55,56 (AMD). 1999, c. 731, §CC2 (AMD). 2007, c. 249, §19 (AMD).

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