

Annual List of Rule-Making Activity
Rules Adopted January 1, 2022 to December 31, 2022
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. 202 (*Repeal*), Medical Board
Filing number: 2022-098
Effective date: 5/30/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This governs the establishment of the Medical Board of the Maine Public Employees Retirement System.

Basis statement:

The proposal for rulemaking was noticed on March 23, 2022. A public hearing was held on April 14, 2022. One member of the public provided oral and written comments at the public hearing. No other members of the public submitted written comments prior to the April 25, 2022 comment deadline.

The proposal was to repeal the rule. The rule governs the establishment of the Medical Board and obtaining consultations from the Medical Board or other providers. The System proposed repeal of the rule because statutory references to a Medical Board have been repealed and the Medical Board has been disbanded.

One member of the public presented comments in opposition to the repeal of this rule. The commenter advocated for rulemaking to address medical reviews and independent medical examinations (“IMEs”) by the System’s vendors and to address other matters regarding the disability and appeals programs.

Because the commenter did not identify any reasons why the current version of rule Chapter 202 should continue in effect, the Board repeals the rule.

At the Board’s regular meeting held on May 12, 2022, Ken Williams made the motion, seconded by Mark Brunton to repeal the rule and to adopt the basis statement. Seven Trustees voted in favor of the motion, and one (John Kimball) abstained. Motion to repeal the rule carried.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2022 to December 31, 2022
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), 17603(9)
Chapter number/title: Ch. 414, Required Minimum Distributions
Filing number: 2022-151
Effective date: 8/20/2022
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* Section 401(a)(9), and any Code requirements on the form of distribution.

Basis statement:

The proposal for rulemaking was noticed on June 14, 2022. A public hearing was held on July 14, 2022, at which no members of the public submitted comments. No members of the public submitted written comments prior to the July 25, 2022 comment deadline.

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. The proposed changes establish the form and timing of the payment of a required minimum distribution to a beneficiary of a deceased vested member who does not otherwise execute a benefit selection form in a timely manner.

While performing a final review of the proposed amended rule, staff noticed that section 1 of the rule included redundant numbering. The rule considered for adoption by the Board includes this correction.

At the Board's regular meeting held on August 11, 2022, Dick Metivier made the motion, seconded by Ken Williams to adopt the amended rule. Voted unanimously by those board members present.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2022 to December 31, 2022
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), 17921, 18521
Chapter number/title: **Ch. 509**, Determination of Inability to Perform the Essential Functions of the Employment Position
Filing number: **2022-187**
Effective date: 9/20/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule specifies the standard and definitions to be applied under 5 MRS §§ 17921 and 18521 in determining whether a disability applicant is unable to perform the essential functions of the employment position with reasonable accommodation.

Basis statement:

The proposal for rule-making was noticed on July 20, 2022. A public hearing was held on August 11, 2022, One member of the public provided oral and written comments at the public hearing. No other members of the public submitted written comments prior to the August 22, 2022 comment deadline.

This rule specifies the standard and definitions to be applied under 5 MRS §§ 17921 and 18521 in determining whether a disability applicant is unable to perform the essential functions of the employment position with reasonable accommodation. The amendments incorporate the provisions of PL 2021 ch. 277 that modified the definition of “disabled.” The amendments also make non-substantive changes and remove obsolete language.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2022 to December 31, 2022
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. 512 (New), Independent Medical Examinations
Filing number: 2022-099
Effective date: 5/31/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This new rule implements and describes procedures for conducting independent medical examinations for applicants for disability retirement benefits under 5 MRS §17106-B(2), as enacted by Public Law 2021 ch. 277.

Basis statement:

The proposal for rule-making was noticed on March 23, 2022. A public hearing was held on April 14, 2022. One member of the public provided oral and written comments at the public hearing. No other members of the public submitted written comments prior to the April 25, 2022 comment deadline.

The proposal is new rule Chapter 512, the purpose of which is to address reimbursement rates for attending Independent Medical Examinations (IME) and means for waiving IMEs under the new disability law, PL 2021 ch. 277. The proposed rule establishes the rate at which a member's representative who attends the member's IME is reimbursed for mileage and for time if the representative is a health care provider. The proposed rule also establishes the manner in which a member may waive an IME.

One member of the public presented comments in opposition to the repeal of this rule. The commenter did not object to the substance proposed in Chapter 512. Rather, the commenter opined that the proposed rule "...answers only the simplest procedural questions... (and that)...more clarification of procedures around Independent Medical Exams is necessary." The Board notes that the rule as proposed addresses the specific requirement of Chapter 277 that the Board establish reimbursement rates for IMEs. While the law does not specifically require the Board to define what constitutes a waiver of an IME, the Board determines that given the potential significance of waiving an exam, the guidance should be clear as to how an IME is waived. Because the commenter did not identify any reasons why the provisions proposed should not be adopted, the Board adopts the rule as proposed.

At the Board's regular meeting held on May 12, 2022, Dick Metivier made the motion, seconded by Shirrin Blaisdell to adopt the rule and its basis statement. Seven Trustees voted in favor of the motion, and one (John Kimball) voted in opposition. Motion to adopt the rule carried.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2022 to December 31, 2022
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. 702, Appeals of the Decisions of the Chief Executive Officer
Filing number: 2022-188
Effective date: 9/20/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule sets out the process for appeals of decisions of the Chief Executive Officer to the Board of Trustees. It provides for the appointment of a hearing officer to conduct an appeal and to prepare a recommended decision for action by the Board.

Basis statement:

The proposal for rule-making was noticed on July 20, 2022. A public hearing was held on August 11, 2022, One member of the public provided oral and written comments at the public hearing. No other members of the public submitted written comments prior to the August 22, 2022 comment deadline.

This rule sets out the process for appeals of decisions of the Chief Executive Officer to the Board of Trustees. It provides for the appointment of a hearing officer to conduct an appeal and to prepare a recommended decision for action by the Board. The amendments incorporate the provisions of PL 2021 ch. 277 that: (1) include a mechanism for the appellant to participate in selection of the hearing officer, and (2) provide a process for a successful appellant to receive attorney's fees. The changes also incorporate the title change from Executive Director to Chief Executive Officer and remove obsolete language.

One member of the public presented comments in opposition to the proposed amendments to this rule. The commenter did not object to the substance proposed in Chapter 702. Rather, the commenter opined that there should be additional amendments made to the rule, including changing the word "shall" to "must" in Section 14 of the rule. 1 MRS §71 provides regulatory rules of construction. Subsection 9-A states, in part, "(s)hall" and "must" are terms of equal weight that indicate a mandatory duty, action or requirement." Further, the Maine Legislative Drafting Guide states that "(s)hall is properly used to impose a duty on a person or body or to mandate action by a person or body" and that "(m)ust, rather than "shall," should be used when the subject is not a person or body." Based on this guidance, staff does not believe that any changes to the proposed rule are necessary in response to this comment, and the Board concurs.

The commenter also opined that the existing rule does not provide a mechanism for filing a complaint against a hearing officer. Section 16(2) of the existing rule provides clear guidance as to how a party can address what they believe to be an error in the hearing officer's recommended decision. Staff does not believe that any additional changes to the proposed rule are necessary in response to this comment, and the Board concurs.

The commenter added that consensus-based rulemaking should be used to address further policy issues regarding appeals and the disability program. Consensus-based rulemaking is not required, 5 MRS §8051-B. However, staff is initiating consensus-based rulemaking on these subjects. Because this comment did not identify any reasons why the amendments proposed should not be adopted, the Board adopts the amended rule as proposed.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

At the Board's regular meeting held on September 8, 2022, Shirrin Blaisdell made the motion, seconded by Dick Metivier to adopt the amended rule. Voted unanimously by those board members present.

Fiscal impact of rule:

None.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2022 to December 31, 2022
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), 18801
Chapter number/title: Ch. 803, Participating Local District Consolidated Retirement Plan
Filing number: 2022-137
Effective date: 7/23/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The amendment to the rule sets the cost-of-living adjustment for the period September 1, 2021 to August 31, 2022, to 3.5%. The amendments also remove obsolete language and corrects cross-references.

Basis statement:

The proposal for rulemaking was noticed on May 18, 2022. A public hearing was held on June 9, 2022.

Under the current rule, cost-of-living adjustments (COLA) are paid to eligible retirees based on the Consumer Price Index for All Urban Consumers (CPI-U), up to a maximum of 2.5%. The CPI-U for the twelve-month period ending June 30, 2021 was 5.4%. The proposed amendment to the rule authorizes the payment of an additional 1.0% cost-of-living adjustment effective September 2021 to eligible retirees. The proposed amendments also remove obsolete language and correct cross-references.

No members of the public provided comments at the public hearing. Two individuals submitted written comments prior to the June 20, 2022 comment deadline. One individual did not specifically address the proposals of the rule, but instead suggested that a new class of COLA recipients be established to address retirees for whom benefits are reduced by the Social Security Windfall Elimination Provision (WEP). The other individual commented in favor of the proposed changes to the COLA provision.

The PLD Advisory Committee was provided with information about the cost-of-living adjustment provision and discussed various options to address the unusually high inflation. Committee members reached consensus that an additional 1.0% COLA should be provided to eligible retirees, in line with the additional COLA provided to eligible retirees from the State-sponsored plans. 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 without modification. The Board declined to establish a new class of COLA recipients as part of this rulemaking and requested that staff bring the individual's comment to the PLD Advisory Committee for future consideration.

At the Board's regular meeting held on July 14, 2022, Dick Metivier made the motion, seconded by Henry Beck to adopt the amended rule. Voted unanimously by all trustees present.

Fiscal impact of rule:

None