

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

**Chapter 415: CONTRIBUTIONS, BENEFITS AND SERVICE CREDIT WITH RESPECT TO QUALIFIED MILITARY SERVICE**

**SUMMARY:** This Chapter establishes the rules under which contributions, benefits and service credit shall be provided to members with qualified military service pursuant to Internal Revenue Code Section 414(u).

**SECTION 1. DEFINITIONS**

1. **Code.** "Code" means the Internal Revenue Code of 1986, as amended.
2. **Qualified Military Service.** "Qualified Military Service" means any service in the uniformed services as defined in USERRA by an individual if such individual is entitled to reemployment rights under USERRA with respect to such services.
3. **USERRA.** "USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994, as codified at Chapter 43, Title 38, of the United States Code.

**SECTION 2. COMPLIANCE WITH CODE SECTION 414(u) FOR CERTAIN VETERANS**

1. Notwithstanding any provisions to the contrary, contributions and service credit with respect to qualified military service under defined benefit retirement programs administered by the Maine Public Employees Retirement System shall be provided in accordance with USERRA; Code Section 414(u); and effective January 1, 2007, Code Section 401(a)(37), as amended from time to time.
2. If a member resumes employment in accordance with USERRA, the employer shall make any employer contribution that would have been made if the member had remained employed during the member's qualified military service. Employer contributions made under this paragraph must be made no later than ninety (90) days after the date of reemployment or when contributions are normally due for the year in which the qualified military service was performed, if later. When determining the employer's contribution, a member shall be treated as receiving compensation from the employer during such period of qualified military service equal to (i) the compensation the member would

have received during such period if the member were not in qualified military service, determined based on the rate of pay the member would have received from the employer but for the absence during the period of qualified military service, or (ii) if the compensation the member would have received during such period was not reasonably certain, the member's average compensation from the employer during the twelve month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

3. Effective January 1, 2007, to the extent provided under Code Section 401(a)(37), in the case of a member whose employment is interrupted by qualified military service and who dies while performing qualified military service, the survivor of such member shall be entitled to any additional benefit (other than benefit accruals) provided under the retirement program as if the member timely resumed employment in accordance with USERRA and then terminated employment the next day on account of death. Such qualified military service will count for vesting purposes.
4. Effective January 1, 2009, a member whose employment is interrupted by qualified military service or who is on a leave of absence for qualified military service and who receives a differential wage payment within the meaning of Code Section 414(u)(12)(D) from the employer shall be treated as an employee of the employer and the differential wage payment shall be treated as compensation for benefit calculation purposes and compensation for purpose of applying limits under Code Section 415. This provision shall be applied to all similarly situated individuals in a reasonably equivalent manner.

STATUTORY AUTHORITY: 5 MRSA §17103(4)

EFFECTIVE DATE: February 9, 2010

**BASIS STATEMENT FOR ADOPTION JANUARY 14, 2010/STATEMENT OF COMMENTS:**

This rule was noticed for public hearing on November 18, 2009. A public hearing was held on December 10, 2009. No members of the public presented testimony at the hearing and no written comments were submitted prior to or at the hearing or during the subsequent 10-day period for written comments. The public comment period closed on December 21, 2009.

In 2007, the Internal Revenue Service (“IRS”) implemented a staggered remedial amendment program allowing governmental plans to submit for updated determination letters and retroactively amend plan documents (i.e., statutes and rules) to bring them into compliance with federal law. MainePERS retained outside pension tax counsel in June of 2008 to complete a detailed review of the System’s compliance with the provisions of the Internal Revenue Code (“IRC”) and to assist the System with an application to the IRS for an updated qualified plan status determination letter. A number of areas where the defined benefit plans administered by MainePERS were not in compliance with the IRC were identified during the review, and applications were submitted to enter the defined benefit plans in the IRS Voluntary Compliance Program (“VCP”) in January 2009. To enter the VCP, the System was required to both identify the areas of non-compliance and propose amendments to correct those deficiencies.

Federal law provides special contribution and service credit pension benefit rules for re-employed veterans and deceased veterans who died while performing qualified military service, including IRC Section 414(u), IRC Section 401(a)(37) and the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”). These federal laws are applicable to all governmental defined benefit retirement plans qualified under IRC Sections 401(a) and 414(d) and apply to all of the defined benefit plans administered by MainePERS. A violation of the rules could lead to the disqualification of the defined benefit plans administered by MainePERS, resulting in the loss of favorable tax status.

MainePERS was and continues to be operationally compliant with IRC Sections 414(u) and 401(a)(37) and USERRA. However, federal law requires that there be written provisions in the plan documents detailing the specific contribution and service credit benefit provisions for re-employed and deceased veterans. In the case of a governmental plan, the written plan documents are the statutes and rules governing the plan.

On August 20, 2009, MainePERS received favorable determination letters from the IRS confirming the continued qualification and favorable tax treatment of the defined benefit plans administered by the System, subject to correction of the compliance issues self-identified by MainePERS in its January 2009 VCP filings with the IRS. The Compliance Statements that accompanied the determination letters approve the methods of correction proposed in the VCP filings and require MainePERS to verify the adoption of the changes no later than December 31, 2010. The adoption of this rule brings MainePERS plan documents into compliance with IRC Section 414(u), IRC Section 410(a)(37), and USERRA.

At its regular meeting held on January 14, 2010, Dick Metivier made the motion, seconded by Catherine Sullivan, to adopt the rule on contributions, benefits and service credit with respect to qualified military service. Voted unanimously by those Board members present.