



Maine State

# Retirement News

for Members, Retirees and Employers

Maine State Retirement System

SPECIAL LEGISLATIVE ISSUE - Summer 2004

## RETIRING BEFORE NORMAL RETIREMENT AGE

If you have not reached your normal retirement age (NRA) and are considering retiring, there are some requirements related to your future retirement that may affect your retirement planning.

Federal law requires a "bona fide termination" of employment prior to your receipt of a service retirement benefit. For there to be a bona fide termination, you must have had no discussions or negotiations prior to termination of employment with your employer or any other employer defined as the "same employer" that resulted in an explicit or implicit arrangement or expectation of future employment after retirement with the "same employer."

Whether or not there has been a bona fide termination of employment, federal law and IRS regulations restrict MSRS from paying a retirement benefit to a retiree who has not reached NRA and who returns to employment with the same employer after retirement.

By way of illustration, you generally would be considered to be returning to work with the "same employer" if you retire as a State employee or a teacher and are returning to either State or teacher employment. If you retire from a Consolidated Participating Local District (PLD), returning to work with the "same employer" means returning to MSRS-covered employment with the employer from which you retired, or with any PLD that participates in the Consolidated Plan. If you retire from a PLD that is not in the Consolidated Plan, "same employer" means returning to MSRS-covered employment with the employer from which you retired.

Why should members and retirees care about IRS requirements? If the IRS requirements are not followed, the MSRS plan might lose its status as a "qualified plan" under federal law. If the MSRS plan were not a "qualified plan," members' contributions could not be made on a (federal) pre-tax basis. Members' contributions made after 1988 are pre-tax for federal income tax purposes. Clearly, the MSRS cannot allow the "qualified" status of its plan to be jeopardized, given the severe consequences that could ensue to members.

To avoid plan disqualification and the hardships that would result to our members, the MSRS Board of Trustees promulgated MSRS Rule Chapter 410. This rule requires suspension of your retirement benefit if you return to employment with the same employer after retirement until you either stop working or reach your NRA, whichever first occurs. Your benefit payment will be reinstated beginning the first day of the month after you reach your NRA or after you terminate employment with the "same employer," whichever first occurs. At that time, your monthly benefit amount will be increased to account for the period during which it was suspended.

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## DISABILITY REVIEWS

After an initial benefit period of two years, recipients of MSRS disability benefits are periodically reviewed to determine whether their medical conditions allow them to continue receiving a disability benefit. Recipients who have or regain the capacity to engage in substantial gainful activity (SGA) lose their eligibility for disability benefits, although benefits can continue until they find employment, so long as they are actively seeking work.

The 121<sup>st</sup> Legislature enacted Public Law Chapter 675, which changes how a disability recipient's ability to engage in SGA is determined. Prior to the passage of Chapter 675, a disability recipient's ability to engage in SGA was measured against a standard determined by calculating 80% of the recipient's average final compensation (AFC) at the point of retirement, adjusted by any applicable cost-of-living allowance (COLA). For example: if a recipient's AFC adjusted to include COLA was \$21,000, the SGA standard used would be \$16,800 ( $\$21,000 \times .80$ ). If the recipient were determined to have the capacity to earn \$16,800 per year, he or she would be considered no longer eligible for continued disability benefits.

Effective July 30, 2004, the SGA measurement standard is

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**MESSAGE FROM THE EXECUTIVE DIRECTOR**

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## YOUR PERSONAL INFORMATION IN OUR HANDS

For the Retirement System to do its job, it has to have personal information about its members and retirees, each and every one of you. The personal information that the System has to have includes name, address, phone number, date of birth/age, Social Security number, employer name, position or job, payroll reports of time worked and payment for work, information about termination of work and leaves of absence, information related to retirement and disability benefits including benefit amount, information about beneficiaries - name, Social Security number, date of birth - and information about life changes, for example, divorce and death.

Think of your personal information as information that identifies you individually and about which you have a choice whether or not to give to some other person or to an agency. Even if you have to give the information in order to get something you want or need (e.g., a credit card, utility service, a mortgage, insurance), you make the decision that what you want or need is important enough to you that you will give the required personal information to get it. Allowing the Retirement System to have your personal information is one of these choices, even if you are required by law to be a System member because of the job you are in. The decision to take that job is yours to make.

From the System's perspective, we regard your personal information as (1) information that we must have to do our work on your behalf, and (2) information that we have for that purpose only. That last point is what we believe is our duty with respect to your personal information: that we use it for purposes of our work only. However, there are circumstances in which we cannot keep personal information to ourselves, so to speak. In those circumstances, personal information in the System's hands can go outside the System.

### *When can personal information that the System has go outside the System?*

One circumstance is when you tell us that you want us to give your personal information to someone else. For example, you may tell us to give certain personal information to a bank or a credit card company for purposes of getting a loan or a credit card. You may tell us to give personal information to a financial or insurance advisor. For your protection, we always require that you give us these directions in writing and sometimes to use a particular form in doing so. In some situations, we require that the writing be notarized.

Another circumstance in which your personal information can go outside the System is when the System is required by specific law to provide the information to others. For example, we are required to provide certain information to the federal and state governments for tax purposes. We may be required to provide information for court actions. We may be required to provide personal information in matters of child support.

Another circumstance is when a general law says that the System must provide the information if it is asked for it under that law. For example, someone may ask for personal information under a "public records" or a "freedom of access" or "freedom of information" law. Unless there is a specific exception under the law, the System must provide the information to whomever requests it. Until very recently, the only exceptions for personal information in the System's hands were very narrow ones having to do with disability and group life insurance matters. But, in the last legislative session, the System asked the Legislature to enact a law that would provide an exception for a broader category of personal information of members and retirees, specifically, "home contact information." "Home contact information" was defined in the bill as home addresses, home telephone numbers, home facsimile transmission numbers and home email addresses. The bill was enacted. Under the new law, the System cannot provide members' or retirees' home contact information to any person or organization, unless the member gives up ("waives") her or his right to have the System not give out the information. Under the new law, there is no circumstance or situation in which the System can give out home contact information without a written waiver from the member or retiree.

In this new law, the Legislature did enable individuals to waive their rights to have their information not be given out by the System, but made it clear that only an across-the-board waiver was permitted. That is, individuals could not waive this right in some particular circumstance but not in others. If an individual waives his or her right, the right is waived for all instances in which the individual's home contact information is requested.

What about personal information that is not home contact information, like the amount of a retiree's benefit or the amount of a member's contributions? We sometimes are asked for such information, for example by the press or by some individual

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## 2004 Legislative Update

### Legislation Enacted in the Second Regular and Second Special Sessions of the 121<sup>st</sup> Legislature

#### An Act to Update Laws Affecting the Military

PL 2003, Chapter 583 [LD 1752]  
Effective Date: July 30, 2004

This bill reduces from 15 to 5 the number of consecutive days that a member of the Maine National Guard must be on active state service in order for MSRS membership to be available under the optional membership provisions. All other requirements and limitations as previously enacted in by PL 2003, Chapter 404 remain the same. (*See the Summer 2003 issue of Retirement News for in-depth article.*)

#### An Act To Amend the Laws Concerning Optional Membership for Participating Local Districts in the Maine State Retirement System

PL 2003, Chapter 630 [LD 1810]  
Effective Date: July 30, 2004

This bill changes the purchase of service provisions that apply to optional members in participating local district (PLD) plans. It also removes the requirement that a member returning to MSRS membership must wait two years prior to being eligible to repay previously withdrawn member contributions. This change applies to all members.

#### An Act to Protect the Privacy of Home Information of Maine State Retirement System Members, Benefit Recipients and Staff

PL 2003, Chapter 632 [LD 1687]  
Effective Date: July 30, 2004

This bill makes specific information pertaining to MSRS members, retirees and staff confidential. It also provides that the confidentiality of home contact information for members and retirees can be waived by signing a waiver form provided by the Retirement System. (*See related article on page 2 of this issue.*)

#### An Act Concerning Disability Retirement Benefits under the Maine State Retirement System

PL 2003, Chapter 675 [LD 1814]  
Effective Date: July 30, 2004

This bill changes the standard by which it is determined whether a disability retirement benefit recipient is able to engage in substantially gainful activity (SGA). This bill changes that standard from 80% of AFC to either \$20,000 or 80% of AFC, whichever is greater. (*See related article on page 1 of this issue.*)

#### An Act to Amend the Laws Governing Purchase of Military Time Service Under the Maine State Retirement System

PL 2003, Chapter 693 [LD 1836]  
Effective Date: July 30, 2004

This bill provides the ability for the recipients of specific military awards to purchase military service credit at a subsidized rate under specific conditions. The changes do not apply to PLD members. (*See related article on page 4 of this issue.*)

#### NOTE

*In order for specific legislation explained in this newsletter to apply to participating local district (PLD) members, further action is required by the PLD Consolidated Plan Advisory Committee and/or action by individual non-consolidated plan PLDs.*

*Personal Information continued from page 2*

or organization. The System cannot ultimately refuse to provide the information but we can and do have some options in providing it. We insist on a formal, written request that meets the requirements of Maine's Freedom of Access law. We require that a requestor pay the cost of our providing the information, as the law permits. And we are looking for other ways that we can, within our legal obligations, make our process and requirements for responding to requests for information more effective from the standpoint of our members and retirees.

*Is misuse of personal information by the System possible?*

The short answer to this question is yes. A mistake can be made. Intentional misuse by a staff person who has access to the information for work purposes can happen. We work very hard at not letting either mistakes or intentional misuse happen:

- ◆ We have a formal written policy that deals with staff use of personal information. We emphasize and reemphasize the strength and importance of this policy. Each staff person has signed a statement indicating that he or she has read and understands the policy. Each new staff member must do so at the time of hire.
- ◆ We use the occurrence of a mistake to reemphasize the policy to staff and to train or retrain staff.
- ◆ We are very clear and uncompromising about the consequences of intentional misuse: immediate termination, when there is no question that the misuse occurred; immediate suspension when an investigation must be done; informing law enforcement agencies when we think there is or may have been a criminal violation and cooperating in prosecution when a crime is charged; cooperating in a civil case brought by a person whose personal information is in question when we are required by law to cooperate or, if not required, can nonetheless legally do so. If a criminal violation is alleged and prosecuted, we would make certain that all of our staff knows about the prosecution, to underscore how serious we are about preventing and punishing misuse of personal information.

The important point is that we take misuse of personal information with utter seriousness, regardless of the purpose for which it is used and of the effect or consequences of the misuse. Utter seriousness about your personal information is a fundamental attitude here, a principle of behavior and conduct in doing our work.

  
Executive Director

## PURCHASING MILITARY SERVICE CREDIT

Members of the MSRS who meet specific eligibility requirements are able to purchase military service earned prior to MSRS membership as service credit towards retirement eligibility and benefit determination. Under most circumstances, the military service must have been rendered during a "federally recognized period of conflict" in order for the member to purchase the military service credit at a "subsidized" cost. It is important to note that periods of conflict are established by federal and state laws and not by the Retirement System. In determining whether a member is eligible to purchase military service credit and if so, at what cost, the Retirement System is administering those established laws. The Legislature recently enacted PL 2003, Chapter 693, which expands the group of members in the State employee/teacher retirement plan who may be able to purchase military service credit at a subsidized cost.

The newly enacted law provides the ability for the recipients of specific military awards to purchase military service credit at a subsidized rate under specific conditions. In most cases, those members are already eligible to purchase the service credit at the actuarial cost, which is far more expensive than under a subsidized rate. Under the new law, the receipt

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*Normal Retirement Age continued from page 1*

There is one exception to Chapter 410's benefit suspension provision that you should be aware of: your benefit will not be suspended if you return to covered employment for no more than 60 days per year in a position that provides only intermittent on-call services, or services in a non-permanent interim assignment or appointment, provided that your employer's ordinary business operations depend on your services.

Whether retirement is before or after NRA, Chapter 410 makes clear that retirees do not accrue additional service credit nor are earnings received after retirement considered in determining the amount of a retirement benefit. Retirees are required to sign a waiver form to that effect as part of the retirement application process.

Chapter 410 can be viewed and downloaded from the MSRS web site ([www.msrs.org](http://www.msrs.org)). You can also request a copy by contacting the MSRS.

*VISIT US ONLINE!*

Maine State Retirement online is intended to inform members, retirees, employers, and the general public of the functions and benefits of the Retirement System. Included are informative pages on MSRS benefits, programs, downloadable forms, and more!

Check us out at:

**[www.msrs.org](http://www.msrs.org)**

*Disability continued from page 1*

determined by the potential to have annual earnings that exceed the greater of \$20,000 or 80% of AFC at retirement, in either case adjusted by any applicable COLA. This means that a recipient with the \$16,800 SGA (using the 80% of AFC plus COLA standard noted in the previous paragraph) would need to have the ability to engage in employment that would equal or exceed the \$20,000 plus COLA standard. The \$20,000 plus COLA figure is currently \$20,860.72 and will be adjusted in September of 2004 based upon the COLA applied to recipients' benefits. This change in statute serves to create a higher SGA standard for recipients for whom 80% of the adjusted AFC is less than the \$20,000.

This law change is effective for State and Teacher plan disability recipients beginning July 30, 2004. Coverage for recipients governed by the PLD Consolidated Plan is dependent upon adoption of the changes by the PLD Advisory Committee.

**UPDATE**

## RETIREMENT PLAN COVERAGE FOR LAW ENFORCEMENT OFFICERS IN THE DEPARTMENTS OF INLAND FISHERIES AND WILDLIFE AND MARINE RESOURCES

Since September 1, 2002, law enforcement officers with the Department of Inland Fisheries and Wildlife and the Department of Marine Resources hired after August 31, 1984 have been covered by a special retirement plan which provides for retirement at any age after the completion of twenty-five (25) years of service in a covered capacity with no benefit reduction based on early retirement. This plan is commonly referred to as a "25 year/no age" plan. Those hired before September 1, 1984, continue to be covered by a special "20 year/no age" plan which provides for an unreduced benefit after twenty (20) years of service.

Although the Legislature enacted the "25 year/no age" plan in 2002, it was effective only for covered service rendered on and after September 1, 2002. The inclusion of

covered service prior to September 1, 2002 was contingent upon additional funding. Until sufficient funds were allocated, service prior to that date remained under the 1998 Special Plan, which provided for a normal retirement age of 55 for service rendered after June 30, 1998, and either 60 or 62 for service rendered before July 1, 1998.

At the close of the 2003 Fiscal Year, sufficient funds were allocated to meet the contingency associated with coverage in the new plan. Therefore, law enforcement officers with the Department of Inland Fisheries and Wildlife and Department of Marine Resources are now able to include all service in a covered capacity in the new "25 year/no age" plan, regardless whether the service was rendered before or after September 1, 2002.

*Military Service continued from page 4*

of an award that would allow an individual to be considered "preference eligible" under the United States Code makes a member eligible to purchase military service credit at a subsidized rate. The Department of Defense, Veterans and Emergency Management will be assisting the MSRS in determining whether a member has met the "preference eligible" requirement.

Before a subsidized purchase under this new law may be made by a member, the legislature must first make an appropriation that covers the difference in cost between the actuarial cost and the subsidized cost. The MSRS will submit an annual report to the Legislature of the total appropriation necessary to fund the military service credit purchases for members who have requested to purchase service under this new law. Until such an appropriation is made to the MSRS, a member may only purchase the military service at the actuarial cost. If an appropriation is made after a purchase is made at the actuarial cost, then the member is entitled to a refund of the difference in the costs.

**NEWSLETTER MAILED TO HOME ADDRESSES**

**The Retirement System is now mailing issues of the newsletter to members' and retirees' home addresses. To save resources, we are sending only one copy per household. The newsletter is also available online at [www.msrs.org](http://www.msrs.org).**



Maine State Retirement System  
**Retirement News**

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*Retirement News* is intended to provide timely information about the MSRS to members, employers and retirees. For the most complete and up-to-date information, please contact an MSRS representative. The contents should not be considered the basis of any contractual rights between the MSRS and its members. The official wording of the laws of Maine will govern.

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**SPECIALIZED MSRS UNITS**

**For State Employee, Legislative or Judicial Members:**  
(207) 512-3158

**For Teacher Members:**  
(207) 512-3159

**For Participating Local District (PLD) Members:**  
(207) 512-3247

**OTHER PROGRAMS**

**Group Life Insurance:**  
(207) 512-3244

**Disability:**  
(207) 512-3170

All other inquiries should be made by calling the following numbers:

**Main:** (207) 512-3100  
**Toll-Free:** 1-800-451-9800  
**Fax:** (207) 512-3101  
**TTY:** (207) 512-3102

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