

### §1353. Disability retirement

**1. Conditions.** Any member who becomes disabled while in service may receive a disability retirement allowance by order of at least 5 Justices of the Supreme Judicial Court or upon written application to the executive director and approval of that application by at least 5 of the Justices of the Supreme Judicial Court if that member is mentally or physically incapacitated to the extent that it is impossible for that member to perform the duties as a judge and the incapacity is expected to be permanent, as shown by medical examination or tests. A health care provider mutually agreed upon by the executive director and member shall conduct the examinations or tests at an agreed upon place, and the costs must be paid by the Maine Public Employees Retirement System.

A. [PL 1991, c. 887, §1 (RP).]

B. [PL 1991, c. 887, §1 (RP).]

[PL 2021, c. 277, §8 (AMD).]

#### 1-A. Eligibility for disability.

A. A member with less than 5 years of continuous creditable service immediately preceding an application for a disability allowance is not eligible for that disability retirement allowance if that disability is the result of a physical or mental condition which existed prior to the person's latest membership in a retirement program of the Maine Public Employees Retirement System, unless the disability is a result of, or has been substantially aggravated by, an injury or accident received in the line of duty. [PL 2007, c. 491, §49 (AMD).]

B. [PL 1997, c. 384, §1 (RP).]

[PL 2007, c. 491, §49 (AMD).]

**2. Amount.** When a member qualified under subsection 1 and, if applicable, subsection 1-A, paragraph A, retires, the amount of a disability retirement allowance is 59% of the member's average final compensation. The 59% level must be reviewed for cost-neutral comparability as a part of the actuarial investigation provided under Title 5, section 17107, subsection 2, paragraph E, beginning with the investigation made January 1, 1997 and every 6 years after that time. The review that takes place every 6 years must compare actual experience under the disability plans with actuarial assumptions regarding election and costs of benefits under the new options elected and identify possible options for compliance with the federal Older Workers Benefit Protection Act that protect benefits for employees without additional cost to the State and participating local districts.

A member who by election remains covered under subsection 1 as written prior to its amendment by Public Law 1991, chapter 887, section 1 may receive a disability retirement allowance when, in addition to meeting the requirements of subsection 1, the member has not completed the eligibility requirements for retirement under section 1351, subsection 1, 1-A or 2. When such a member is entitled to receive a disability retirement allowance, the amount of the allowance is 66 2/3% of the member's average final compensation.

[PL 1997, c. 384, §2 (AMD).]

**3. Commencement.** Disability retirement allowance payments shall commence on the first day of the month following the date of termination of active service of the member. Termination of active service shall create a vacancy on the court.

[PL 1989, c. 133, §29 (AMD).]

**4. Continuance.** Payment of a disability retirement allowance must continue subject to subsection 7 and the following conditions.

A. During the first 2 years, the allowance continues as long as the beneficiary cannot perform the duties of a judge. [RR 2021, c. 1, Pt. B, §45 (COR).]

B. After that period, the allowance continues only if the beneficiary is unable to engage in any substantially gainful activities for which the beneficiary is qualified by training, education or experience. [RR 2021, c. 1, Pt. B, §45 (COR).]

C. The executive director may require the beneficiary to undergo annual medical examinations or tests for the purpose of determining whether the beneficiary is incapacitated. These examinations or tests must be conducted by a health care provider, mutually agreed upon by the executive director and beneficiary, at a place also mutually agreed upon, and the costs of the examination or tests must be paid by the Maine Public Employees Retirement System. If the beneficiary refuses to submit to an examination or tests, the beneficiary's disability allowance ceases until the beneficiary agrees to the examination or tests. If the beneficiary's refusal continues for one year, all rights to any further benefits under this section terminate. [PL 2021, c. 277, §9 (AMD).]

D. For purposes of this subsection, the disability beneficiary's average final compensation at retirement must be used to determine the beneficiary's earning capacity in the relation to the beneficiary's ability to engage in a substantially gainful activity. It must be adjusted by the same percentage, if any, as applied to the beneficiary's retirement allowance under section 1358. [RR 2021, c. 1, Pt. B, §45 (COR).]  
[RR 2021, c. 1, Pt. B, §45 (COR).]

**5. Earnings.** The executive director may require each disability beneficiary to submit an annual statement of earnings received from any gainful occupation during that year. For any year during which the total of those earnings and the disability allowance exceeds the current salary of the position that the disabled beneficiary last held, the excess must be deducted from any disability retirement allowance payments made to the beneficiary during the next calendar year. These deductions are prorated on a monthly basis, in an equitable manner prescribed by the board of trustees, over the year or part of the year for which benefits are received. The beneficiary is responsible for reimbursing the Maine Public Employees Retirement System for any excess earnings not so deducted.

If a beneficiary does not submit an earnings statement within 30 days of receiving a request from the executive director, the disability retirement allowance is discontinued until the statement is submitted. If the statement is not submitted within one year of receiving a request, all the beneficiary's rights to any further benefits cease.  
[PL 2007, c. 491, §51 (AMD).]

**6. Reduction.** The disability retirement allowance must be reduced if a disability beneficiary is receiving or has received payments for the same disability under the workers' compensation law, or similar law, except for amounts that may be paid or payable under former Title 39, section 56 or 56-A or Title 39-A, section 212, subsection 2 or 3.

The total of the allowance, not including adjustments under section 1358 and the payment described in the preceding paragraph, may not exceed 80% of the beneficiary's average final compensation. The disability retirement allowance may in no event be reduced below the actuarial equivalent of the beneficiary's accumulated contributions at the time of retirement.

If the disability beneficiary has received a lump-sum settlement of workers' compensation benefits, any portion of that settlement not attributable to vocational rehabilitation, attorneys' fees or medical expenses must reduce the disability retirement allowance in the same manner and amount as monthly workers' compensation benefits. The reduction must be prorated on a monthly basis in an equitable manner prescribed by the board.

If amounts paid or payable under workers' compensation or the amount of the lump-sum settlement or its attribution are in dispute, those disputes must be settled by a single member of the Workers' Compensation Board as provided under Title 39-A. Determinations of the commissioner may be appealed in the manner provided by Title 39-A, section 322.  
[PL 1991, c. 885, Pt. E, §5 (AMD); PL 1991, c. 885, Pt. E, §47 (AFF).]

## 7. Change to service retirement.

A. The disability retirement allowance of a beneficiary must cease whenever the service retirement allowance of the beneficiary would equal or exceed the amount of the member's disability retirement allowance. For a member who by election or by having retired on disability retirement prior to October 16, 1992 remains covered under this section as written prior to its amendment by Public Law 1991, chapter 887, section 3, the disability retirement allowance must cease at age 70, or prior to that age, whenever the service retirement allowance would equal or exceed the amount of the disability retirement allowance. [PL 1997, c. 384, §3 (AMD).]

B. A service retirement allowance shall be paid to the beneficiary commencing on the date of termination of the disability retirement allowance as determined in paragraph A. [PL 1983, c. 853, Pt. C, §§15, 18 (NEW).]

[PL 1997, c. 384, §3 (AMD).]

### SECTION HISTORY

PL 1983, c. 853, §§C15,18 (NEW). PL 1983, c. 863, §§B26,B45 (AMD). PL 1989, c. 133, §29 (AMD). PL 1991, c. 633 (AMD). PL 1991, c. 885, §E5 (AMD). PL 1991, c. 885, §E47 (AFF). PL 1991, c. 887, §§1-3 (AMD). PL 1993, c. 595, §1 (AMD). PL 1995, c. 643, §3 (AMD). PL 1997, c. 384, §§1-3 (AMD). PL 2007, c. 58, §3 (REV). PL 2007, c. 491, §§49-51 (AMD). PL 2017, c. 88, §§6, 7 (AMD). PL 2021, c. 277, §§8, 9 (AMD). RR 2021, c. 1, Pt. B, §45 (COR).

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