

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 2.43.1302, 2.43.1306,	)	PROPOSED AMENDMENT
2.43.2102, 2.43.2105, 2.43.2109,	)	
2.43.2110, 2.43.2114, 2.43.2115,	)	
2.43.2120, 2.43.2301, 2.43.2309,	)	
2.43.2310, 2.43.2317, 2.43.2319,	)	
2.43.2608, 2.43.2609, 2.43.2702,	)	
2.43.2703, 2.43.2704, 2.43.2901,	)	
2.43.3001, 2.43.3004, 2.43.3005,	)	
2.43.3009, 2.43.3402, 2.43.3540,	)	
2.43.3545, 2.43.4616, 2.43.4617, and	)	
2.43.4807, all pertaining to the	)	
operation of the retirement systems	)	
and plans administered by the	)	
Montana Public Employees'	)	
Retirement Board	)	

TO: All Concerned Persons

1. On August 3, 2011, at 9:00 a.m., the Public Employees' Retirement Board (PER Board) will hold a public hearing in its board room, at 100 North Park Ave., Suite 200, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The PER Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the PER Board no later than 5:00 p.m. on August 1, 2011, to advise us of the nature of the accommodation that you need. Please contact Dena Helman, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail dhelman@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.43.1302 DEFINITIONS Undefined terms used in this chapter are consistent with statutory meanings. Defined terms will be applied to the statutes unless a contrary meaning clearly appears. For the purposes of this chapter, the following definitions apply:

(1) through (8) remain the same.

(9) "Direct rollover" means a payment by a retirement plan or system to the eligible retirement plan specified by the distributee or a payment from an eligible retirement plan to the retirement plan or system specified by the distributee.

(9) through (27) remain the same but are renumbered (10) through (28).

AUTH: 19-2-403, MCA

IMP: 19-2-303, 19-2-403, 19-2-1007, MCA

REASON: Chapter 284 Montana Session Laws of 2009 adopted changes in federal law allowing direct rollovers under several circumstances. Specifically, payments can now be rolled over to any beneficiary, not just a surviving spouse. These changes require the frequent use of the term "direct rollover" in forms, letters and other communication relied on by the Montana Public Employee Retirement Administration (MPERA) and members of the retirement systems administered by MPERA. The term "direct rollover" is being defined to assist retirement system members in understanding what is meant by the term and because the term is now used in ARM 2.43.3009.

2.43.1306 ACTUARIAL RATES AND ASSUMPTIONS (1) and (2) remain the same.

(3) This rule applies to all systems administered by MPERA, including the VFCA but excluding the deferred compensation (457) plan.

AUTH: 19-2-403, MCA

IMP: 19-2-405, 19-17-107, MCA

REASON: The Volunteer Firefighters' Compensation Act (VFCA) requires consideration of actuarial rates and assumptions. Therefore, the policies, actuarial rates, and assumptions adopted by ARM 2.43.1306 are used for valuation and actuarial equivalence purposes in the administration of the VFCA. According to ARM 2.43.1301, the rules in this subchapter apply only to the Public Employees', Game Wardens' and Peace Officers', Judges', Highway Patrol Officers', Sheriffs', Municipal Police Officers', and Firefighters' Unified Retirement Systems, unless an individual rule specifically notes otherwise. Therefore, it is necessary to specifically state that the policies, rates, and assumptions adopted in this rule apply to the VFCA.

2.43.2102 OPTIONAL MEMBERSHIP (1) remains the same.

(2) The board may permit an employee to discontinue optional membership if the employee submits proof that the employee was not informed membership was optional. The employee must submit such proof within ~~480~~ 90 days of the employee's first day of employment, or within ~~480~~ 30 days of the filing of the application form, whichever is later.

(a) Membership discontinued pursuant to (2) must be treated as a reporting error and will be corrected pursuant to ARM 2.43.2115.

(b) The board shall issue a credit to the employer for all erroneous contributions.

(c) The employer is responsible for refunding appropriate contributions to the employee.

- (3) If an employer discovers that an eligible employee was not notified of the option to join PERS, the employer must:
- (a) provide the employee the optional membership application form immediately upon discovery of the omission;
  - (b) notify the employee that the application must be completed within ~~180~~ 90 days of employment, or within 30 days after receipt of the application, whichever is later; and
  - (c) notify MPERA of the omission and the employee's decision whether or not to join PERS.
- (4) and (5) remain the same.

AUTH: 19-2-403, MCA  
IMP: 19-2-903, 19-3-412, MCA

REASON: Chapter 284 Montana Session Laws of 2009 changed optional membership election windows from 180 and 300 days to 90 days for consistency purposes. ARM 2.43.2102 references these same election windows when describing the election process. It is necessary to change the length of the election windows to be consistent with statute and for internal consistency.

2.43.2105 BASIC PERIOD OF SERVICE (1) through (3) remain the same.

(4) Upon retirement, MPERA will adjust the service credit for members who work less than full time. ~~The~~

(a) For a member initially hired prior to July 1, 2011, the service earned during the member's normal work year will be the total service earned during the period of the "highest average compensation" or "final average compensation" divided by three will define the service earned during the member's normal work year.

(b) For a member initially hired on or after July 1, 2011, in a PERS, SRS, or GWPORS-covered position, the service earned during the member's normal work year will be the total service earned during the period of the "highest average compensation" divided by five.

~~(a)(c)~~ The member must be granted proportional service credit for each fiscal year of employment on the basis of the member's normal work year.

~~(b)(d)~~ The proportion will be equal to the number of documented hours for which compensation during a calendar month was reported for the employee, divided by the average number of hours worked each month during the period of the "highest average compensation" or "final average compensation" times 12, but may not be greater than 1.

AUTH: 19-2-403, MCA  
IMP: 19-2-701, 19-3-108, 19-3-904, 19-5-502, 19-6-502, 19-7-101, 19-7-503, 19-8-101, 19-8-603, 19-9-804, 19-13-704, MCA

REASON: The proposed amendments are necessary to reflect provisions in the Montana Session Laws of 2011 increasing from 36 months to 60 months the period over which "highest average compensation" is calculated for new hires in PERS

(Chapter 369), SRS (Chapter 155), and GWPORS (Chapter 154). Because of these statutory amendments, the factor by which total service must be divided increases from three years to five years in order to correctly calculate the service credit for PERS, SRS and GWPORS members initially hired on or after July 1, 2011, who work less than full time.

2.43.2109 RECEIPT OF SERVICE CREDIT ON OR AFTER TERMINATION OF EMPLOYMENT (1) A member terminating employment shall receive service credit for lump sum payments of severance pay or paid leave, including banked holiday time, vacation, personal, sick, or compensatory leave, received in the month following termination of employment unless the member elects to retire effective that month. No member can receive both service credit and a retirement benefit for the same month.

AUTH: 19-2-403, MCA

IMP: 19-2-303, 19-3-108, 19-6-101, 19-7-101, 19-8-101, 19-9-104, 19-13-104, MCA

REASON: Chapter 99 Montana Session Laws of 2011 added "banked holiday time" as a defined term meaning "the hours reported for work performed on a holiday that the employee may use for equivalent time off or that may be paid to the employee as specified by the employer's policy." Lump-sum payment of banked holiday time was then included in the types of lump-sum payments for which service credit is awarded, provided the lump sum is paid out at termination of employment. Accordingly, lump-sum payments of banked holiday time must be included in the calculation of a member's service credit under this rule.

2.43.2110 CALCULATION OF HIGHEST AVERAGE COMPENSATION OR FINAL AVERAGE COMPENSATION (1) For "highest average compensation" and "final average compensation" purposes:

(a) for a member initially hired prior to July 1, 2011, compensation means the total compensation earned during 36 consecutive calendar months divided by 36; and

(b) for a member initially hired on or after July 1, 2011 in a PERS, SRS, or GWPORS-covered position, compensation means the total compensation earned during 60 consecutive calendar months divided by 60.

(a)(2) Lump-sum payments of paid leave, including banked holiday time, vacation, personal, sick, or compensatory leave must be used to extend the compensation on the basis of either the regular hourly rate in effect for the employee at the time of termination and on identified future regular payroll reports, or the monthly salary earned at the time of termination.

(b)(3) The lump-sum payment of paid leave, including banked holiday time, vacation, personal, sick, or compensatory leave, for members whose monthly compensation varies will be extended by multiplying their hourly rate times 2080 (the assumed number of hours worked in a fiscal year) divided by 12 to determine the monthly wage going forward.

(2)(4) Lump-sum payments for banked holiday time, compensatory leave, sick leave, or vacation leave paid without termination of employment will not be

considered as compensation for any purpose regardless how the payout is classified, including identifying the payout as a bonus.

AUTH: 19-2-403, MCA

IMP: 19-2-303, 19-2-506, 19-3-108, 19-6-101, 19-7-101, 19-8-101, 19-9-104, 19-13-104, MCA

REASON: The proposed amendments are necessary to reflect provisions in the Montana Session Laws of 2011 increasing the period over which "highest average compensation" is calculated for new hires in PERS (Chapter 369), SRS (Chapter 155), and GWPORS (Chapter 154). Further, Chapter 99 of the Montana Session Laws of 2011 added "banked holiday time" as a defined term to be treated the same as vacation and sick leave for compensation purposes.

2.43.2114 REQUIRED EMPLOYER REPORTS (1) All reporting agencies shall file required employer reports, other than working retiree reports required by ARM 2.43.2608 and optional member election applications required by ARM 2.43.2102, no later than five working days after each regularly occurring payday.

(a) Each report must be accompanied by statutorily required employer and employee contributions to the retirement system. The required contribution rate is the rate in effect at the time the employees are paid, and not the contribution rate in effect when the compensation was earned.

(b) Beginning July 1, 2003, reporting agencies shall use MPERA's online web-based reporting system and shall remit payment via automated clearing house (ACH).

(c) If the reporting agency does not have access to the internet, the employer reports may be either hard-copy or electronic, but must be in the format provided by MPERA, and must be accompanied by the payment of applicable contributions.

(2) through (5) remain the same.

AUTH: 19-2-403, MCA

IMP: 19-2-506, 19-3-315, 19-3-316, 19-3-412, 19-3-1106, 19-3-2117, 19-7-1101, MCA

REASON: With the advent of web reporting and the Employers Reporting All Employees initiative, employers now file optional membership election forms separate from and more frequent than they file regular payroll reports. It is therefore necessary to exclude these reports from the "no later than five working days after each regularly occurring payday" requirement contained in this rule and which is applicable only to regular payroll reports.

2.43.2115 CORRECTION OF DEFINED BENEFIT RETIREMENT SYSTEM REPORTING ERRORS (1) through (5) remain the same.

(6) The employer must correct its payroll records and pay the refund to the DGRP DBRP participant.

AUTH: 19-2-403, MCA

IMP: 19-2-506, 19-2-903, MCA

REASON: A typographical error was made during the 2008 rulemaking process. ARM 2.43.2115 addresses the correction of errors in a defined benefit plan retirement account. Therefore the refund goes to a DBRP participant, not to a DCRP participant. The proposed change is necessary to fix this inadvertent error.

2.43.2120 REINSTATEMENT – CREDIT FOR LOST TIME (1) and (2) remain the same.

(3) In order to receive full membership service and service credit, employee and employer contributions must be paid by the employer on the ~~gross~~ total compensation the member would have received, including any interim earnings. Proportional service credit will be granted if employee and employer contributions are paid on a lesser amount of compensation. Any statutorily required state contributions must also be received.

(4) remains the same.

AUTH: 19-2-403, MCA

IMP: 19-2-303(47)(46), MCA

REASON: The term "gross compensation" includes compensation that is not considered compensation for retirement system purposes, for instance contributions to group insurance under certain circumstances. The intent of the rule is to ensure contributions are paid on the amount of compensation the member would have received had the member not been terminated. This includes the compensation awarded as a result of the suit, court order, arbitration, or out-of-court settlement, plus any compensation earned in the interim. Therefore, the better descriptor is "total" compensation.

2.43.2301 PROCESS FOR PURCHASING SERVICE (1) through (4) remain the same.

(5) Lump-sum payment methods include cash, personal check, and direct rollovers or trustee-to-trustee transfers from an eligible retirement plan ~~or IRA~~.

(a) Lump-sum payments by cash or personal check require completion of the service purchase contract only.

(b) Payment by direct rollover or trustee-to-trustee transfers from an eligible retirement plan require completion of the service purchase contract and the rollover/transfer notification.

(6) through (8) remain the same.

AUTH: 19-2-403, MCA

IMP: 19-2-303(22), 19-2-704, MCA

REASON: The Internal Revenue Service added Roth IRAs to available distribution and payment options in 2007. Chapter 284 Montana Session Laws of 2009 adopted that change for Montana's public employee retirement systems. Therefore, the term "eligible rollover distributions" now includes IRAs of any type. The change is

necessary because current language distinguishing an eligible retirement plan from an IRA may mislead the reader to believe an IRA is not an eligible retirement plan.

2.43.2309 SERVICE PURCHASES BY INACTIVE VESTED MEMBERS

(1) An inactive vested member may purchase any service for which the member is eligible any time prior to retirement.

(2) The inactive vested member's most recent termination date will be considered the purchase request date for all service purchases other than refunded service, which is addressed in 19-2-603, MCA.

(a) The actuarial cost of the service purchase will be determined based on the member's age at the time of the purchase and the member's salary at the time of the member's most recent termination.

(b) Interest ~~at an effective annual rate of 8 % per year~~, compounded monthly, will be charged from the member's most recent termination date to when the member completes payment for the cost of the purchase:

(i) for members terminated prior to July 1, 2010, at an effective annual rate of 8% per year; and

(ii) for members terminated on or after July 1, 2010, at an effective annual rate of 7.75% per year.

(3) An inactive vested member who purchases service may not elect a retirement date prior to the date the service purchase is completed.

AUTH: 19-2-403, MCA

IMP: 19-2-403, 19-2-603, 19-2-715, 19-2-908, 19-3-401, 19-5-301, 19-6-301, 19-7-301, 19-8-301, 19-9-301, 19-13-301, MCA

REASON: Pursuant to 19-2-403(9), MCA and Board Policy Admin No. 9, and based upon actuarial findings, the board adopted an interest rate of 7.75% effective July 1, 2010. This rate is applicable to interest charged for various types of service purchases, including purchase of service by inactive vested members. The proposed amendment is necessary to reflect the new rate.

2.43.2310 PURCHASE OF FULL-TIME SERVICE OR ONE-FOR-FIVE SERVICE BY PART-TIME MEMBERS (1) remains the same.

(2) If the member later retires with a full-time final average compensation or highest average compensation, the member may either:

(a) have the amount of full-time service purchased under (1) proportionally reduced based upon the ratio of time worked when the service was purchased to full-time work; or

(b) retain the full-time service by paying the difference between the cost actually paid and the cost had the member been paid a full-time salary at the time of the purchase, plus ~~8%~~ interest:

(i) for members who purchased the service prior to July 1, 2010, at a rate of 8%; and

(ii) for members who purchased the service on or after July 1, 2010, at a rate of 7.75%.

AUTH: 19-2-403, MCA

IMP: 19-2-403, 19-2-704, 19-2-715, MCA

REASON: Pursuant to 19-2-403(9), MCA and Board Policy Admin No. 9, and based upon actuarial findings, the board adopted an interest rate of 7.75% effective July 1, 2010. This rate is applicable to interest charged for various types of service purchases, including service purchases by part-time members. The proposed amendment is necessary to reflect the new rate.

2.43.2317 PURCHASE OF REFUNDED SERVICE OR SERVICE FROM ANOTHER MPERA-ADMINISTERED RETIREMENT SYSTEM (1) At any time prior to retirement, a member who is statutorily eligible to do so may:

(a) elect to purchase into their current retirement system all or any portion of their previously refunded service in that system; or

(b) elect to purchase service from another MPERA-administered retirement system for which the member has received or is eligible to receive a refund.

(2) Section (1)(b) shall not be construed to allow the purchase of service between two retirement systems while the individual is a member of both systems.

(3) In order to purchase the ~~previously refunded~~ service, an eligible member must file a request to purchase service with MPERA identifying, in writing, the system to which the member currently contributes and the period of employment which is to be purchased.

(4) After reviewing the ~~refund~~ information in its files, MPERA shall notify the member of the amount of service eligible to be purchased and the cost of that service.

AUTH: 19-2-403, MCA

IMP: 19-2-704, 19-2-709, 19-2-710, 19-2-715, MCA

REASON: Certain MPERA employees have incorrectly construed ARM 2.43.2317 to only permit the purchase of service that has already been refunded. In fact, statute permits the purchase of service that has been or can be refunded. The proposed change makes this clarification and ensures proper interpretation by both staff and retirement system members.

2.43.2319 PURCHASE OF "ONE-FOR-FIVE" SERVICE BY EMPLOYERS FOR REDUCTION IN FORCE EMPLOYEES (1) through (5) remain the same.

(6) A cost statement for the employer's portion of the cost of the one-for-five service will be sent to the member's former employer after the member terminates. The employer may pay the amount in full within one month of billing, or may select an installment plan of no more than ten years duration. Installment plans will include interest at an ~~effective annual rate of 8%~~, compounded monthly:

(i) for members terminated prior to July 1, 2010, at an effective annual rate of 8%; and

(ii) for members terminated on or after July 1, 2010, at an effective annual rate of 7.75%.

(7) and (8) remain the same.

AUTH: 19-2-403, MCA  
IMP: 19-2-403, 19-2-706, MCA

REASON: Pursuant to 19-2-403(9), MCA, and Board Policy Admin No. 9, and based upon actuarial findings, the board adopted an interest rate of 7.75% effective July 1, 2010. This rate is applicable to interest charged for various types of service purchases, including purchases of one-for-five service for employees subject to a reduction in force. The proposed amendment is necessary to reflect the new rate.

2.43.2608 RETURN TO COVERED EMPLOYMENT BY PERS, SRS, OR FURS RETIREE – REPORT (1) through (3) remain the same.

(4) The certification report must include the following information for each individual referred to in (1) through (3):

- (a) name and social security number;
- (b) pay period being reported;
- (c) name and address of employer;
- (d) the daily and total number of regular, overtime, holiday, sick leave, and vacation or annual leave hours worked for the employer;
- (e) gross compensation received from the employer; and
- (f) the employer's verification that the employer provided the working retiree with the information submitted to MPERA.

(5) The employer must submit the certification report by filing it with MPERA no later than ten working days after each regularly occurring payday. The certification report may be submitted electronically using MPERA's online web-based reporting system.

(6) A separate certification report must be filed with MPERA for each position held by the working retiree.

AUTH: 19-2-403, MCA  
IMP: 19-3-1104, 19-3-1106, 19-7-1101, 19-13-301, MCA

REASON: The term "gross compensation" includes compensation that is not considered compensation for retirement system purposes, for instance contributions to group insurance under certain circumstances. Statute uses the defined term "compensation". Rule should do the same.

MPERA has enacted changes to its web-reporting system through the "Employers Reporting All Employees" initiative that now permit the electronic filing of working retiree certifications. The rule is being changed to inform and remind employers of this reporting option.

2.43.2609 RETURN TO EMPLOYMENT WITHIN SAME JURISDICTION

(1) remains the same.

(2) A retired member who returns to employment ~~under (1)~~ as a working retiree must notify the board and ensure a working retiree report is filed with MPERA ~~on a monthly basis~~ for each payroll period worked. Service performed under a

contract that fails the tests set out in ARM 2.43.1302 is employment subject to the 960-hour limitation and reporting requirements.

(3) When a member who has returned to work under (1) exceeds 960 hours in a calendar year, the member forfeits the additional service received attributable to the contributions paid by the employer. Pursuant to 19-2-706, MCA, the board will credit the member's employer with the employer's contribution for the additional service that exceeds the total retirement benefits paid to the member from retirement to forfeiture.

(a) If the employer paid the contributions owed MPERA in a lump sum, the employer will be credited with the difference between contributions paid and benefits received;

(b) If the employer is paying the contributions owed MPERA on an installment contract and the total retirement benefits received by the member:

(i) do not exceed the amount that has been paid on the installment contract, the employer will be credited with the difference between contributions paid and benefits received;

(ii) exceed the amount that has been paid on the installment contract but not the total amount due on the installment contract, the employer will be required to continue paying on the installment contract until the amount paid equals the retirement benefits received. Any outstanding balance due on the installment contract will continue to be charged interest at the actuarially assumed rate of interest, compounded monthly.

(c) If the total benefits received by the member exceed the total contributions owed by the employer, no adjustment will be made to the employer's contributions.

(4) Additional service purchased by the member pursuant to 19-2-706(4) is not forfeited.

AUTH: 19-2-403, MCA

IMP: 19-2-706, MCA

REASON: MPERA has enacted changes to its web-reporting system through the "Employers Reporting All Employees" initiative that now permit the electronic filing of working retiree certifications every payday as opposed to monthly. Section (2) applies only to working retirees, not to individuals who return to active service under (1). Section (2) is proposed to be amended to require payday-based reporting so that MPERA will be better able to track the hour and wage limitations applicable to working retirees, resulting in more timely correction of errors.

Changes to (3) and adoption of (4) are proposed as MPERA sees no reason to return employee contributions for this additional service. The contributions and associated service will remain in the member's account.

2.43.2702 PERIODIC MEDICAL REVIEW OF DISABILITY BENEFIT RECIPIENTS – INITIAL NOTICE TO MEMBER (1) MPERA will send written notification of medical review to a member receiving a disability benefit which is subject to periodic review. The notice will be sent to the member at the most recent address provided and will inform the member of:

- ~~(a) the date by which medical information and records must be filed; and~~
- ~~(b) any specific medical tests or diagnosis required for the review.~~

(2) The member will be required to have the results of a current medical examination, ~~including any specifically required tests or diagnosis,~~ filed directly with MPERA by the examining medical authority(ies) within 60 calendar days of initial notification. The medical examination must be performed by the member's treating physician or other competent medical authority. To be considered current, the date of a medical examination must be no earlier than six months prior to the date filed with MPERA.

~~(3) Members receiving a disability benefit who are required by MPERA or the board to obtain tests pursuant to (2) will be reimbursed for travel necessary to obtain the MPERA-required examinations or tests provided current medical examinations or tests are not otherwise available. Reimbursement for lodging, meals, and mileage will be at the rates established for state employees in Title 2, chapter 18, MCA.~~

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA

IMP: 19-3-1015, 19-3-2141, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA

REASON: ARM 2.43.2702 was meant to address only the initial notice to a member of a pending periodic medical review of the member's disability. The language proposed to be deleted applies to follow-up testing requirements, not to the initial notice. Reimbursement language related to follow-up testing is found in the more appropriate rule, ARM 2.43.2703.

2.43.2703 PERIODIC REVIEW OF MEDICAL EVIDENCE – NOTICE OF ADDITIONAL EVIDENCE REQUIRED

(1) The board's medical consultant and disability claims examiner will review all medical records previously submitted and those requested for the current period and submit interpretations and recommendations as to the current disability status of the member.

(2) If MPERA determines the records submitted by the member's treating physician in response to the initial notice of review are not current or are otherwise inadequate to complete a review, MPERA will send written notice to the member of the specific examinations, diagnoses, or tests necessary for adequate review of the disabling condition. When appropriate, the type of medical authority to conduct the necessary tests or examination will be specified or a particular physician may be appointed to conduct the required examinations or tests.

(3) Any medical tests requested under this rule will be paid for by MPERA.

(4) Members will be reimbursed for travel necessary to obtain the MPERA-required examinations or tests. Reimbursement for lodging, meals, and mileage will be at the rates established for state employees in Title 2, chapter 18, MCA.

~~(3)~~(5) The member will be allowed 60 days from the date of notification to complete the required examinations or tests and have the results sent directly to MPERA by the examining physician.

~~(4)~~(6) If the member chooses not to provide additional medical evidence administratively determined as necessary, the previous medical evidence filed will

be presented to the board along with staff recommendations regarding continuing disability of the member.

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA

IMP: 19-2-406, 19-3-1015, 19-3-2141, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA

REASON: The Montana Public Employees' Retirement Board has determined that MPERA will pay for all MPERA-required medical tests of individuals seeking a disability benefit, as well as associated travel costs; not just costs incurred by members receiving a disability benefit. The rule is proposed to be amended to provide that the board will pay the medical expenses and that the member will be reimbursed for any travel expenses related to any MPERA-required medical tests.

2.43.2704 FAILURE TO RESPOND – SECOND NOTICE (1) A member who fails to file all medical information as required in the initial notice will be sent a second notice by certified mail, return receipt requested. The second notice will inform the member of:

(a) ~~any specific~~ their failure to submit current medical tests information and diagnoses records required by the board for the review; and

(b) the date on which disability benefits will be suspended if the member does not provide the medical evidence.

(2) The member may request an extension to accommodate scheduled appointments. The written request justifying the need for additional time must be filed with MPERA at least 15 days prior to the end of the time period. Any requests for extensions in excess of 30 days will not be approved.

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA

IMP: 19-3-1015, 19-3-2141, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA

REASON: Questions have arisen regarding the initial and second notices provided to disabled members whose eligibility for disability is being reviewed. The proposed amendments to ARM 2.43.2704 are necessary to clarify the nature of the information required of disabled members at various stages of the review process.

2.43.2901 REFUNDS TO MEMBERS (1) Any contributing member who has terminated employment for any reason other than death or retirement may elect to withdraw their accumulated contributions provided:

(a) the member makes written request within three months of termination on the most recent application provided by MPERA;

(b) the refund application is completed by both the member and the employer, and forwarded to MPERA by the employer;

(c) the contribution and service credit from the report on which the member last appears is credited to the member's account;

(d) the employer's report indicates the member has terminated;

- (e) the member will not return to covered employment for at least 30 days;  
and
- (f) the member does not have an established agreement for reemployment in a position covered by the retirement system providing the refund.
- (2) Correctly completed and submitted refund applications will be processed within three weeks after the member's final contributions are credited to the member's account, including termination payments of sick and annual leave.
- (3) An alternative refund form is available from MPERA for the member who has terminated and whose member's account has been inactive for more than three months. Termination will be verified with the employer if not satisfactorily indicated on the refund form.
- (4) No partial refunds of normal contributions will be made.

AUTH: 19-2-403, MCA

IMP: 19-2-303, 19-2-602, 19-5-403, 19-6-403, MCA

REASON: MPERA previously issued different refund forms, one for recent terminations that could be easily submitted by both the member and the employer and one for more dated terminations that required follow-up with an employer. MPERA has determined to use only one refund form that provides for additional follow-up with the employer as necessary. The rule is being proposed to be amended to reflect this change in process.

#### 2.43.3001 FAMILY LAW ORDERS – GENERAL REQUIREMENTS

- (1) Upon request, MPERA will provide a checklist of mandatory and optional family law order (FLO) provisions.
- (2) Information concerning a participant's account will only be released subject to the terms of ARM 2.43.1405, and policies adopted by MPERA and the board.
- (3) ~~Except with respect to the DCRP, an~~ An account cannot be established for an alternate payee in a retirement system or plan.
- (4) A FLO may not force a member to:
- (a) terminate employment;
  - (b) retire from employment; or
  - (c) belong to a specific retirement system or plan.
- (5) through (9) remain the same.

AUTH: 19-2-403, 19-2-907, MCA

IMP: 19-2-907, MCA

REASON: Provisions of the Internal Revenue Code and Chapter 248 Montana Session Laws of 2009 permit MPERA to distribute the alternate payee's share of a defined contribution member's account immediately upon approval of a Family Law Order. The board believes this option to be beneficial to its DCRP members as it eliminates the member's responsibility, and possible liability, for the investment of funds which will ultimately be paid to the member's alternate payee. Since the

alternate payee's portion will be immediately paid to the alternate payee, a separate account for the alternate payee is no longer necessary.

2.43.3004 FAMILY LAW ORDERS FOR THE PERS DEFINED CONTRIBUTION RETIREMENT PLAN (1) This rule applies only to the PERS defined contribution retirement plan DCRP.

(2) A "participant" may be a member or a "primary" or "contingent beneficiary."

(3) Disability benefits under the defined contribution plan may not be divided by a FLO.

(4) In the PERS defined contribution retirement plan, the payments to an alternate payee are allowed as follows:

(a) The FLO must state the amount or the proportion, or it must describe the method for calculating the amount or proportion.

(b) If the participant is not eligible for a distribution of their account, the alternate payee's amount or proportion must be paid as soon as administratively feasible.

~~(b)(c) If the participant is receiving or is eligible to receive distributions from their account, the alternate payees' amount or proportion must be paid from the distributions as set out in the applicable family law order. receives lump sum payments in addition to periodic payments, the FLO must specify a separate proportion or fixed amount to be applied to the lump sum payments. Otherwise the lump sum payments will not be divided.~~

~~(e)(d) The fixed amount, the designated monthly dollar amount, the designated number of months, and the proportion may not be changed by future conditions or events.~~

~~(d)(e) Payments will end when:~~

~~(i) payments to the participant end;~~

~~(ii) the fixed amount is paid; or~~

~~(iii) the account is depleted.~~

AUTH: 19-2-403, 19-2-907, MCA

IMP: 19-2-907, MCA

REASON: Provisions of the Internal Revenue Code and Chapter 248 Montana Session Laws of 2009 permit MPERA to distribute the alternate payee's share of a defined contribution member's account immediately upon approval of a Family Law Order. The board believes this option to be beneficial to its DCRP members as it eliminates the member's responsibility, and possible liability, for the investment of funds which will ultimately be paid to the member's alternate payee. Proposed (4)(b) is necessary to provide for immediate payment of the alternate payee's portion in the event the member is not eligible for distribution of their account. Proposed amendments to (4)(c) are needed to ensure that the terms of the family law order can be followed with respect to both lump-sum and periodic payments.

2.43.3005 FAMILY LAW ORDERS – APPROVAL AND IMPLEMENTATION FOR THE DEFINED CONTRIBUTION RETIREMENT PLAN (1) This rule applies only to the DCRP.

(2) A participant or alternate payee must submit a certified copy of a family law order (FLO) to MPERA for board approval. The board has delegated authority for approval to the executive director.

(3) MPERA will notify the participant and the alternate payee when it receives a certified copy of a FLO. The notice will explain the procedures for determining if the FLO can be approved.

(4) While reviewing the FLO, MPERA will work with the record keeper to prevent distributions from the participant's account, ~~but allow the participant to manage the investments~~ and to segregate the amounts, and earnings thereon, that will be owed to the alternate payee if the FLO is approved. The participant will remain eligible to manage and invest the funds not owed to the alternate payee.

(5) The segregated amount, with any earnings thereon, will be distributed to the participant if the FLO is not approved within 18 months of the date it was received by MPERA and the participant is entitled to and requests distribution of the account.

(6) ~~Upon approval of the FLO, MPERA will:~~

~~(a) notify the participant and the alternate payee that when the FLO is approved; and~~

~~(b) work with the recordkeeper to ensure a separate subaccount containing the alternate payee's entitlement is created.~~

~~(i) The alternate payee will be given necessary information for managing the investments in the subaccount.~~

~~(ii) The subaccount will be distributed to the alternate payee upon termination of service or death of the participant.~~

(7) The FLO will be applied prospectively if approved more than 18 months after the date it was first received by MPERA.

AUTH: 19-2-403, 19-2-907, MCA

IMP: 19-2-907, MCA

REASON: Provisions of the Internal Revenue Code and Chapter 248 Montana Session Laws of 2009 permit MPERA to distribute the alternate payee's share of a defined contribution member's account immediately upon approval of a Family Law Order. The board believes this option to be beneficial to its DCRP members as it eliminates the member's responsibility, and possible liability, for the investment of funds which will ultimately be paid to the member's alternate payee. Since there will be no separate account established for an alternate payee, the processes proposed to be repealed are no longer necessary or appropriate.

2.43.3009 FAMILY LAW ORDERS – APPROVAL AND IMPLEMENTATION FOR DEFINED BENEFIT PLANS (1) through (3) remain the same.

(4) If a member requests a refund, the MPERA will notify the alternate payee. The alternate payee may request a direct payment ~~or may roll the payment over~~ or a direct rollover to another eligible plan. Within 60 days of the date of notification, the

alternate payee must inform MPERA of his or her choice and if necessary, provide MPERA with any information necessary for a rollover to MPERA. Otherwise a direct payment will be made to the alternate payee after 60 days.

(5) and (6) remain the same.

AUTH: 19-2-403, 19-2-907, MCA  
IMP: 19-2-303(18), 19-2-907, MCA

REASON: Chapter 284 Montana Session Laws of 2009 adopted changes in federal law allowing direct rollovers under several circumstances, including the direct rollover of an alternate payee's portion of a member's funds to an eligible retirement plan. This rule is proposed to be amended to reflect the specific options now available to alternate payees and to clarify the rollover process.

2.43.3402 RETIREMENT SYSTEM MEMBERSHIP OPTIONS FOR LEGISLATORS (1) remains the same.

(2) A legislator's application to join PERS, to join their existing public retirement system, or to decline retirement system membership must be filed with MPERA within ~~180~~ 90 days of the first day of the legislator's term of office.

(3) through (5) remain the same.

(6) A senator who is subsequently elected to serve as a representative, or a representative who is subsequently elected to serve as a senator, is considered to have started a new term of office and has a new ~~180-day~~ 90-day election period under (1) if they previously declined participation in any public service retirement system.

(7) A senator or representative whose district changes as a result of redistricting is not considered to have started a new term of office and does not have a new ~~180-day~~ 90-day election period.

(8) A PERS DBRP member who elects to purchase into PERS previous service as a legislator must comply with 19-3-505, MCA, except the cost will not include interest for any contributions due on service prior to July 1, 1993.

(9) A PERS DCRP member cannot purchase noncompensated legislative service into the DCRP as service purchases are not available in the DCRP plan.

AUTH: 19-2-403, MCA  
IMP: 5-2-304, 19-2-715, ~~19-2-718~~, 19-3-412, 19-3-521, 19-3-522, MCA

REASON: Chapter 284 Montana Session Laws of 2009 changed optional membership election windows from 180 days to 90 days for consistency purposes. ARM 2.43.3402 references these same election windows when describing the election process for legislators. It is necessary to change the length of the election windows to be consistent with statute. Section (9) is proposed to be adopted as certain legislators have not understood that pursuant to 19-3-522, MCA, service purchases do not apply in the DC plan. They have requested clear documentation of that limitation and the reason for it.

There is no 19-2-718, MCA. Sections 19-3-412 and 19-3-521, MCA apply to legislators and are implemented by this rule.

2.43.3540 DISABILITY BENEFITS FOR MEMBERS OF THE DEFINED CONTRIBUTION RETIREMENT PLAN (1) Members of the Defined Contribution Retirement Plan (DCRP) who are found by the board to be disabled are entitled to a disability benefit pursuant to 19-3-2141, MCA.

(2) The disability benefit awarded a member of the DCRP is calculated based on the member's years of service credit, not years of membership service. The applied factor, ~~either 1/56 or 1/50~~, is based on membership service and the member's initial hire date, pursuant to 19-3-2141, MCA.

(3) The disability benefit awarded a member of the DCRP is not a retirement benefit, but a benefit paid from the long-term disability trust fund established pursuant to 19-3-2141, MCA.

(4) through (6) remain the same.

AUTH: 19-3-2104, 19-3-2141, MCA

IMP: 19-3-2141, MCA

REASON: Chapter 369 Montana Session Laws of 2011 added provisions specifying different disability calculation factors for members hired prior to July 1, 2011, and members hired on or after that date, eliminating the need to include the factors in rule.

2.43.3545 DISTRIBUTION TO PARTICIPANT (1) and (2) remain the same.

(3) The participant shall also, no later than 30 days before the start of the distribution of the accounts, select a payment option.

(a) Payment options include:

(i) a lump-sum distribution of the participant's vested accounts, less applicable taxes;

(ii) a direct trustee-to-trustee rollover of the participant's vested accounts to an eligible retirement plan, ~~a traditional or Roth individual retirement account, or an annuity;~~

(iii) a regular rollover of the participant's vested accounts to an eligible retirement plan;

(iv) periodic payments of a fixed amount; or

(v) periodic payments based on the participant's life expectancy, determined annually.

(b) A payment option may only be selected if the amounts payable to the participant are expected to be at least equal to the minimum distribution required under section 401(a)(9) of the Internal Revenue Code and satisfy the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code.

(c) If the participant does not select a payment option, the vested accounts will be paid in a lump sum, less applicable taxes.

(4) If the participant fails to choose a payment option or a distribution time, a lump-sum distribution with 20% withheld for federal taxes will occur 120 days after termination of service from a PERS-covered position.

AUTH: 19-2-403, 19-3-2104, MCA

IMP: 19-2-1007, 19-2-303(22), 19-3-2123, 19-3-2124, MCA

REASON: The Internal Revenue Service added Roth IRAs to available distribution and payment options in 2007. Chapter 284 Montana Session Laws of 2009 adopted that change for Montana's public employee retirement systems. Therefore, the term "eligible rollover distributions" now include IRAs of any type. The change is necessary because current language distinguishing an eligible retirement plan from an IRA may mislead the reader to believe an IRA is not an eligible retirement plan.

2.43.4616 INTEREST PAID TO PARTICIPANTS (1) A participant's DROP account must include compounded annual interest.

(2) Subject to (3), the interest rate will be fixed at the end of each fiscal year and will equal the ~~total rate~~ actuarially assumed rate of return for the trust fund. ~~Interest rates for any part of the current fiscal year will be based on the previous fiscal year's total rate of return.~~

(3) Interest credited on the DROP account shall comply with any applicable provisions of 29 USC section 623(i)(10)(B)(i) of the federal Age Discrimination in Employment Act (ADEA) and any applicable federal treasury regulations establishing market rates of return for purposes of complying with ADEA.

~~(4) When the total rate of return for the trust fund is less than zero, participants will receive zero interest.~~

AUTH: 19-2-403, 19-9-1203, MCA

IMP: 19-9-1206, 19-9-1208, MCA

REASON: Chapter 283 Montana Session Laws of 2009 changed the interest on a deferred retirement option plan account from the Municipal Police Officers' Retirement System's actual annual investment rate to the actually assumed rate of return. The change eliminates the sometimes wildly fluctuating annual changes in interest and replaces it with a smoothed rate of return. This change eliminates the possibility of receiving no interest on the DROP account, while capping the interest at the actuarially assumed rate. The proposed amendments to ARM 2.43.4616 will result in a rule with requirements that are consistent with statute.

2.43.4617 DISTRIBUTION OF DROP BENEFIT (1) through (4) remain the same.

(5) Upon a DROP participant's death, the participant's DROP benefit will be paid to the participant's survivors or, if no survivors exist, then to the participant's designated beneficiaries. The DROP benefit will be paid in a lump sum, unless the recipient is the surviving spouse, in which case the surviving spouse may choose chooses to receive the DROP benefit in a ~~lump sum or in~~ direct rollover to another eligible retirement plan, as allowed by the IRS.

AUTH: 19-2-403, 19-9-1203, MCA  
IMP: 19-2-1007, 19-9-1206, 19-9-1208, MCA

REASON: Chapter 284 Montana Session Laws of 2009 adopted changes in federal law allowing direct rollovers under several circumstances. Specifically, payments can now be rolled over to any beneficiary, not just a surviving spouse. The proposed amendments are necessary to reflect this change in the availability of direct rollovers to all designated beneficiaries.

2.43.4807 PART-PAID FIREFIGHTERS' SERVICE (1) and (2) remain the same.

(3) A part-paid firefighter will accrue service credit of one month for each calendar month during which contributions are made; however, if and when the part-paid service is qualified into another system, or if the part-paid firefighter also has full-paid firefighter service credit, each calendar month of part-paid service shall be credited as only ~~45~~ .15 months of service.

AUTH: 19-2-403, MCA  
IMP: 19-13-301, MCA

REASON: A typographical error was made during the 2008 rulemaking process. The error is proposed to be corrected as part-paid firefighters receive only a fraction of a month of service credit, not multiple months of service credit, for each month of service.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Roxanne M. Minnehan, Executive Director, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana, 59620; telephone (406) 444-5459; fax (406) 444-5428; or e-mail [rminnehan@mt.gov](mailto:rminnehan@mt.gov), and must be received no later than 5:00 p.m., August 12, 2011.

5. Dena Helman, Montana Public Employee Retirement Administration has been designated to preside over and conduct this hearing.

6. The PER Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of

State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Melanie A. Symons  
Melanie A. Symons  
Chief Legal Counsel  
and Rule Reviewer

/s/ John Nielsen  
John Nielsen  
President  
Public Employees' Retirement Board

Certified to the Secretary of State July 5, 2011.