



MONTANA
ADMINISTRATIVE
REGISTER



PUBLIC EMPLOYEES' RETIREMENT BOARD

NOTICE OF PROPOSED RULEMAKING

MAR NOTICE NO. 2026-20.1

Summary

The proposed rulemaking revises ARM 2.43.2110 and 2.43.3008 to update administrative practices with the goals of providing uniform and equitable application for all participants and reducing administrative burden. The proposed rulemaking further repeals ARM 2.43.1312 as the provision in the Montana Code Annotated that this rule sought to implement has itself been repealed.

No Hearing Scheduled

If the agency receives requests for a public hearing on the proposed rulemaking from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed rulemaking; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

The estimated number of persons directly affected by the proposed rulemaking is 41,469 active or inactive vested members in defined benefit plans.

Comments

Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail mpera@mt.gov. Comments must be received by Friday, April 17, 2026, at 5:00 p.m.

Accommodations

The agency 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. Requests must be made by Friday, April 10, 2026, at 5:00 p.m.

Contact

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Rulemaking Actions

AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

2.43.2110 CALCULATION OF HIGHEST AVERAGE COMPENSATION WITH LUMP-SUM PAYMENTS

- (1) For applicable systems, lump-sum payments made upon termination of employment and for which required contributions have been made for paid leave, including banked holiday time, vacation, personal, sick, or compensatory leave may be included in the calculation of a member's highest average compensation (HAC) by replacing lower ~~consecutive~~ compensation months with the same number of higher ~~consecutive~~ compensation months.
- (2) The number of replacement months and the amount of compensation included in the replacement months ~~is~~ are determined by ~~either:~~ dividing the lump-sum payment by an amount calculated by
 - (a) ~~dividing the lump-sum payment by the regular hourly rate in effect for the employee at the time of termination, or the monthly salary earned at the time of termination; or~~
 - (b) ~~for members whose monthly compensation varies,~~ multiplying their averaged hourly rate during the HAC period by the averaged hours worked per month during the same period ~~times 2,080 (the assumed number of hours worked in~~

~~a fiscal year) divided by 12 to determine the monthly wage and then dividing the lump-sum payment by the monthly wage.~~

(3) remains the same.

Authorizing statute(s): 19-2-403, MCA

Implementing statute(s): 19-2-303, 19-2-506, 19-2-1005, 19-3-108, 19-6-101, 19-7-101, 19-8-101, 19-13-104, MCA

Reasonable Necessity Statement

The board proposes to amend this rule to replace the existing procedure for calculating a retiring participant's highest average compensation (HAC) with the inclusion of lump-sum payments for accumulated leave in the retirement benefit formula. The proposed new calculation method should produce fewer outlier results for retiring participants and provide for more uniform application. The proposed amendment achieves these goals via two primary changes. The first is by replacing language identifying one variable in the calculation as "the regular hourly rate in effect for the employee at the time of termination" with the "averaged regular hourly rate ... during the HAC period." This change eliminates situations where the calculation results in unusable replacement months for employees who make less compensation at the "termination," or end, of their career (and therefore, have an HAC period that does not fall at the end of the career). The second proposed change removes the word "consecutive" from (1), thus eliminating an unnecessary constraint as to where the replacement months may be applied within the HAC period. Although statute requires that the applicable 36- or 60-month HAC period be "consecutive" months, no law requires the consecutive application of HAC replacement months resulting from lump-sum payments for accumulated leave.

2.43.3008 FAMILY LAW ORDERS – CONTENTS AND DURATION FOR DEFINED BENEFIT PLANS

(1) through (6) remain the same.

(7) A FLO that orders the assessment of interest on the amounts payable to the alternate payee until the time of withdrawal may not specify an amount other than "regular interest" as defined in 19-2-303, MCA.

Authorizing statute(s): 19-2-403, 19-2-907, MCA

Implementing statute(s): 19-2-907, MCA

Reasonable Necessity Statement

The board proposes to amend this rule to add the requirement that any interest awarded to the alternate payee under a family law order (FLO) dividing a present or future retirement benefit be the uniform “regular interest” as the term defined in 19-2-303, MCA. This addition is necessary because of an influx of FLOs that order variable rates such as interest that tracks the consumer price index or the S&P 500 annual rate of return and that cannot be administered by the board’s line of business and accounting software.

REPEAL

The rule proposed to be repealed is as follows:

2.43.1312 APPLICATION OF ACTUARIAL ASSUMPTIONS FOR DETERMINING THE AMOUNT OF COAL SEVERANCE TAX AND INTEREST INCOME STATUTORILY APPROPRIATED TO THE PERS DEFINED BENEFIT PLAN TRUST FUND

Authorizing statute(s): 19-2-403, MCA

Implementing statute(s): 19-2-405, MCA

Reasonable Necessity Statement

The board proposes to repeal this rule because the statutory appropriation of coal severance tax and interest income to the Public Employees’ Retirement System defined benefit plan trust fund was repealed, effective July 1, 2017, by operation of House Bill 648 of the 2017 Legislative Session.

Small Business Impact

The board has determined that no class or group of businesses is directly affected by this proposed rulemaking. The proposed amendments and repealed rule will not result in material changes to existing retirement benefit payment accounts, and are not anticipated to substantially impact the future benefit payments of current plan members. Benefits were paid to 29,338 in-state recipients in state fiscal year 2025, totaling \$654,124,994.45. Please see the Public Employees’ Retirement Board Annual Comprehensive Financial Report for the Fiscal Year

Ended June 30, 2025, at page 202 (available at https://mpera.mt.gov/_docs/CAFR/2025ACFR.pdf).

Bill Sponsor Notification

The bill sponsor contact requirements do not apply.

Interested Persons

The Montana Public Employee Retirement Administration (MPERA) 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 above or may be made by completing a request form at any rules hearing held by MPERA.

Rule Reviewer

Nicholas Domitrovich

Approval

Maggie Peterson
President
Public Employees' Retirement Board