

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of  
the Maine Attorney General as transferred to  
the Maine State Law and Legislative Reference  
Library on January 19, 2022**

# STATE OF MAINE

Inter-Departmental Memorandum Date August 15, 1975

To Philip Gingrow, Assistant Executive Dir Dept. Retirement System

From Donald G. Alexander, Assistant Dept. Attorney General

Subject Change from Ordinary Disability Retirement Allowance to Service Retirement Allowance

Your memo of July 18 indicates that, because of Internal Revenue Service regulations some retirees may wish to stay on disability retirement even though receiving less compensation than regular service retirement. You then ask whether 5 M.R.S.A. § 1122-1-C allows the Maine State Retirement System to give persons receiving disability retirement the option of changing to service retirement or remaining on disability retirement, at age 60. The answer is No.

Paragraph C of Subsection 1 of § 1122 is stated in mandatory terms.

C. Any person who attains age 60 while a recipient of a disability retirement allowance in accordance with paragraph A shall be entitled to a recomputation of benefits as provided in section 1121 and shall be paid that amount which is greater. Further, if the amount of the service retirement allowance is greater than that being paid as the ordinary disability retirement allowance, the recipient shall no longer be considered as receiving a disability retirement allowance.

This paragraph requires that retirees be paid the greater of the benefits provided for disability or regular service retirement. In addition the second sentence of paragraph C says that if the amount of service retirement is greater, the recipient can no longer be considered as receiving disability retirement income. Thus the status of the recipient is required to change, even if the recipient refuses the additional income. There are no options given to the Maine State Retirement System or the recipient retirees by this language. The term "shall", in interpreting legislation, is considered as a mandatory term unless the context clearly indicates otherwise. There is no such contrary indication in this case.

Further, there will be no change in this opinion resulting from the revised retirement law (P.L. 1975 c. 607.) The new § 1122-3 reads:

3. Change to service retirement.

A. The disability retirement allowance of a beneficiary will cease upon the attainment of his mandatory retirement age, without extensions, or prior thereto

whenever the service retirement allowance of the beneficiary would equal or exceed the amount of his disability retirement allowance.

B. A service retirement allowance shall be paid to the beneficiary commencing at the date of termination of the disability retirement allowance as determined in paragraph A.

Under this provision also, disability compensation and status cease where service retirement benefits exceed disability benefits or on mandatory retirement age.

DGA:jg