

# 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 September 10, 1975

To Philip R. Gingrow, Asst. Ex. Director Dept. Retirement System

From Donald G. Alexander, Assistant Dept. Attorney General

Subject Accumulated or Accrued Vacation or Sick Leave

Your memorandum of September 2, 1975 asks a number of questions of interpretation of P.L. 1975 chap. 622 § 38-A which becomes 5 M.R.S.A. § 1094 sub-§16. That section provides: "All accumulated or accrued sick leave or unused vacation leave or a combination of both, for which the member is credited on termination of service, but for which the member does not receive payment, shall be credited as membership service. Accumulated or accrued leave shall not include lapsed leave, or other leave beyond a maximum set as accumulated or accrued by personnel rules or regulations or by contract."

The questions and answers follow:

1. Are we correct in considering that each 5 days of unused sick leave or vacation leave would constitute 1 week of membership service?

Answer: Yes.

2. Should public school teachers be treated differently from State employees and District employees?

Answer: No.

Discussion:

There is no basis in the law suggesting that public school teachers be treated specially because their year of service may be computed differently. For all eligible employees, one day of accumulated or accrued vacation or sick leave which is uncompensated on termination of service and has not lapsed should be treated as one additional day of membership service for purpose of determination of retirement benefits.

3. As unclassified State employees and officials are not subject to the Personnel Rule relating to the maximum number of days accrued sick leave, how do we handle sick leave credits for such members? Should we require that each department and agency supply us with a copy of their rules, regulations, or contracts relating to such employees or officials?

Answer: You should assume that there are no sick leave or vacation credits for such unclassified members of the retirement system unless and until the agencies employing them develop clear and specific rules and regulations relating to accumulation of and compensation for vacation and/or sick leave. No such rules apparently exist now and no rights can be provided to such unclassified employees pursuant to sub-§16 until clear rules are established which give rights to accumulation of vacation and/or sick leave such as would bring § 16 into operation. You may wish to recommend that the Governor's office, the Attorney General's Office and other agencies employing large numbers of unclassified employees develop some rules in these areas if they wish to qualify their unclassified employees for the benefits of § 16.

4. May membership service received as a result of unused sick leave be used to meet the requirements relating to minimum number of years required for retirement; that is, 25 years for an ordinary employee or 20 years for a State Police officer or game warden?

Answer: Yes.

The provisions in 5 M.R.S.A. § 1121 addressing the years of service required to be eligible for retirement speak in terms of "creditable service" while sub-§16 speaks of "membership service." However, there does not appear to be a difference intended or in fact between the intent of the two. Section 16 says that uncompensated and unlapsed sick leave may be used at termination to add additional membership service for computation purposes. For example, if, after 19 years and 10 months a State Police Officer with 2 months of accumulated sick leave chose to retire he could do so, have the additional sick leave added to his 19 years and 10 months' actual service to reach a total of 20 years and become eligible for retirement because even though 20 years was not actually reached, he would have 20 years "membership" or "creditable" service under the law.

As the current rules relating to sick leave, with the 90 day limitation, etc. are rules published by the Department of Personnel, it may be appropriate to inform Personnel of the effect of this new law. Personnel, if they wish, could revise their rules to assure that accumulated sick leave is not used to allow persons to retire in advance of the minimum times specified by statute.

5. If the answer to the preceding question is in the affirmative, would a member be considered to be "eligible .....to retire", as provided in 5 M.R.S.A. Section 1128 as amended by Section 62 of Chapter 622 of the Public Laws of 1975, if, "on the day immediately preceding the effective date of the retirement adjustment allowance", his total creditable service, including membership service to which he would be entitled on termination of service under the provisions of 5 M.R.S.A. Section 1094, subsection 16, as enacted by Section 38A of Chapter 620 of the Public Laws of 1975, he would meet the minimum requirements for retirement under the provisions of the Retirement law applicable to him?

Answer: Yes.

The effect of the new sub-§16 in connection with the provisions of § 1121 and the Personnel Rules is that a person is eligible to retire when the combination of (a) that person's actual service and (b) the accumulated sick leave or vacation leave which can be credited as additional membership service totals the amount of creditable service necessary to render one eligible for retirement. As indicated above, this could be changed by a shift in the personnel rules dealing with use of sick leave as a factor to accelerate the date of eligibility for retirement.

DA/mf



Donald G. Alexander  
Assistant Attorney General