

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)

Retirement Sick Leave Computation
5 M.R.S.A. 1094-16

STATE OF MAINE

Inter-Departmental Memorandum Date May 31, 1977

To Philip R. Gingrow, Asst. Exec. Director Dept. Maine State Retirement System
From Kay R. H. Evans, Assistant Dept. Attorney General
Subject Interpretation of Amendment to 5 M.R.S.A. § 1094, sub-§ 16

Your memo of March 29, 1977, asks our opinion whether lapsed sick leave days may be included to make up the total of 90 days of accumulated, unused and unpaid sick leave which are to be credited as membership service under § 1094, sub-§ 16. This question was put to you by a member of the Retirement System whose use of sick leave days late in his career may leave him with fewer than 90 days of accumulated, unused, unpaid and unlapsed leave at point of retirement and who has a number of lapsed days of such leave. He wishes to know if he may draw on lapsed days to make up the total of 90 days allowed credit as membership service.

We conclude that days of lapsed sick leave may be included to make up the 90-day total. Our conclusion is based on the legislative changes which resulted in the present formulation of sub-§ 16 and on the purposes behind those changes as well as those behind the general revisions to the retirement law. Further, we note that days of lapsed leave fit the statutory terms for leave for which credit is to be allowed.

OPINION:

Sub-§ 16 of § 1094 was both enacted and amended by the 107th Legislature. The original version^{1/} provided that

. . . Accumulated or accrued leave shall not include lapsed leave. . . .

Later changes^{2/} resulted in the present form of sub-§ 16, the relevant portions of which are:

. . . Accumulated or accrued leave credited for membership service shall not exceed a total of 90 days, except as provided by this section.

Accumulated or accrued leave beyond 90 days may be credited for membership service, up to the maximum set as accumulated or accrued, without lapsing, by personnel rules or regulations, or by contract. . . .

1/ Section 38-A, Ch. 622, P.L. 1975.

2/ Section 1, Ch. 742, P.L. 1975.

Although both versions contain "lapse" language, the use of the language plainly differs. The former version flatly prohibited the inclusion of lapsed leave days in those credited as membership service. The present language provides that days of lapsed leave are not to be included in the number of days beyond 90 for which membership credit may be purchased.^{3/}

The principle argument of the proponents of the later changes was the need, in the interest of the stability of the Retirement System, to put a ceiling for all members^{4/} on the number of unpaid-for days - that is, days for which the cost is borne by the System, since no contribution is made - which could be included as membership service in computing benefits due. Beyond that, the general purpose of structuring a more equitable system of contributions and benefits which was behind the 107th's substantial revisions to the Retirement Law as enacted by Chapter 622 was behind Chapter 742's further revisions as well.^{5/} There is general legislative comment to this effect.

3/ Paragraphs (A), (B) and (C) of sub-§ 16 provide ways in which certain categories of members can by contribution purchase credit for leave days beyond 90

4/ A ceiling previously existed only for State employees, who were limited by Personnel Rule 11.8 to 90 days of accumulated sick leave, after which leave days lapsed. The former prohibition on inclusion of lapsed leave in that for which membership credit could be given effectively carried the Personnel Rule limit over into the Retirement Law. The ceiling for teachers depended on the provisions of their contracts and were generally substantially higher.

5/ The effect of sub-§ 16 in its present form is to equalize as between teachers and State employees at the number of days of accumulated sick leave which can be credited as membership service, of which the cost is borne by the Maine State Retirement System.

Inclusion of lapsed sick leave to make up the basic 90 days is not contrary to the legislative goals of System stability and equity. The ceiling on days is not raised. The inclusion of days from the lapsed column furthers the goal of a more equitable System by eliminating the discriminatory advantage otherwise given to members whose use of sick leave occurs early in their career, after which they have a longer time in which to work their way back to 90 days of unused leave.

It should be noted that leave from the lapsed column fits the statutory definition of that which is to be credited, up to a maximum of 90 days, as membership service. It is "accumulated or accrued sick leave. . . for which the member is credited^{6/} on termination of service, but for which the member does not receive payment."

Kay R. H. Evans

KAY R. H. EVANS
Assistant Attorney General

KRHE/ec

6/ In the case of State employees, the mechanism for "crediting," albeit developed for other purposes, is provided by Personnel Rule 11.8. Under the Rule, lapsed days are to be credited for the purpose of providing the employee with a bank of days on which he, at the discretion of the Commissioner of Personnel, can draw in the event of extended illness.