

Guidance on COVID-19 Emergency Paid Leave (Section 4001 of the American Rescue Plan Act of 2021)

A. General Information

1. The American Rescue Plan Act of 2021 (Public Law 117-2) was enacted on March 11, 2021.
2. Section 4001 of the Act established a new category of paid leave for certain categories of Federal employees based on certain COVID-19-related qualifying circumstances. This paid leave is hereafter referred to as “emergency paid leave” or “EPL.” This emergency paid leave is to be funded by a \$570 million Emergency Federal Employee Leave Fund (hereafter referred to as the “Fund”) administered by the Director of the Office of Personnel Management.

NOTE: Sections 7103, 7104, and 8008 of the Act establish a similar authority and Fund for employees of the Federal Aviation Administration (FAA), the Transportation Security Administration (TSA), and the Department of Veterans Affairs (VA; limited to those appointed under chapter 74 of title 38, United States Code), respectively. Except for section G, this guidance pertains solely to employees covered by section 4001. VA employees appointed under 38 U.S.C. chapter 74 are covered by either a VA-established leave system under 38 U.S.C. 7421 or the title 5 annual and sick leave program. Those VA employees who are appointed under 38 U.S.C. chapter 74 and who are covered by the title 5 annual and sick leave program are covered by both section 8008 and section 4001.

3. Section 4001 does not provide authority to offer paid leave outside of the Fund mechanism. Any paid leave provided under the section 4001 authority must be covered by payments from the Fund. If the Fund is exhausted, payments of paid leave under this authority will cease.
4. Under section 4001(c)(1), emergency paid leave may be used by a covered employee only during the “qualifying period,” which begins on the date of enactment of the Act (March 11, 2021) and ends on September 30, 2021.

B. Coverage

1. Section 4001 covers the following categories of employees:
 - a. an individual in the executive branch for whom annual and sick leave is provided under subchapter I of chapter 63 of title 5, United States Code;
 - b. an individual employed by the United States Postal Service;
 - c. an individual employed by the Postal Regulatory Commission; and
 - d. an employee of the Public Defender Service for the District of Columbia and the District of Columbia Courts.

2. An employee in category “a” in paragraph B.1 is an individual who—
 - a. is an employee appointed in the civil service as described in 5 U.S.C. 2105 (as provided in 5 U.S.C. 6301(2)(A));
 - b. holds a civil service position in the executive branch; and
 - c. is covered by the title 5 annual and sick leave program (i.e., not excluded from coverage by another law and not in an excluded category listed in clauses (i) through (xiii) of 5 U.S.C. 6301(2)).

NOTE 1: Foreign Service employees are “civil service” employees under 5 U.S.C. 2105. See definition of “civil service” in 5 U.S.C. 2101.

NOTE 2: Examples of employees excluded from coverage under the title 5 annual and sick leave program by another law include employees of the Federal Aviation Administration, the Transportation Security Administration, and Department of Defense (DOD) or Coast Guard nonappropriated fund instrumentalities (as described in 5 U.S.C. 2105(c)). Examples of employees excluded from coverage under the title 5 annual and sick leave program by an exclusion in 5 U.S.C. 6301(2) include employees with intermittent work schedules, VA employees covered by a leave system established under 38 U.S.C. 7421, DOD overseas teachers holding a teaching position as defined in 20 U.S.C. 901, and leave-exempt Presidential employees.

3. The agencies employing individuals in categories “b”, “c”, and “d” in paragraph B.1 are responsible for identifying covered employees in those categories. Where special authorities, conditions, or circumstances apply to such employees in a manner not specifically addressed in this guidance, the agency should strive to be consistent with the guidance (or underlying principles) to the extent reasonable and practicable.

C. Fund Administration

1. The \$570 million Fund is available to make leave payments to covered employees in qualifying circumstances for leave used during the qualifying period from March 11, 2021, through September 30, 2021. The Fund is also available for reasonable expenses incurred by the Office of Personnel Management in administering the section 4001 authority. The Fund remains available through September 30, 2022 (to make reimbursements to agencies for payments for leave used during the qualifying period) unless the Fund is exhausted prior to that date. If the Fund is exhausted, payments of paid leave under this authority will cease.
2. Each agency with covered employees using emergency paid leave must submit to OPM a request for reimbursement from the Fund.
 - a. An agency may not submit a request for reimbursement until the leave covered by the request has been used by the employee. An agency request must be associated with completed biweekly pay periods.

- b. An agency must submit a separate reimbursement request for each biweekly pay period. The request must identify the pay period by the pay period end date. In addition to providing the total dollar value of the conditionally granted emergency pay leave for which reimbursement is sought, the request must also include the total number of leave hours covered and the total number of employees using the covered leave.
3. Agencies must inform employees that the granting of emergency paid leave to employees who meet the eligibility conditions is tentative and conditional upon monies being available in the Fund. Before an employee is granted conditional emergency paid leave for the first time, the employee must agree in writing that, if any conditional emergency paid leave subsequently granted to the employee is not available due to exhaustion of the Fund, the employee will apply other paid leave or paid time off (as available to the employee and as appropriate for the given circumstance, including any limited amounts of administrative leave that may be granted by the agency in accordance with established principles) or will retroactively be placed on leave without pay for the affected period and voluntarily provide monetary reimbursement to the agency to cover the resulting overpayment debt. (See 5 CFR 550.1102(b). The regulatory salary offset procedures do not apply when an employee consents to recovery. However, the monetary reimbursement may be made by offsetting salary payments, since the employee will have voluntarily agreed to permit the agency that granted conditional EPL to offset Federal payments (including salary payments) to the employee to recover the amount owed. Any offset of salary payments will be limited to 15 percent of an employee's disposable pay, except in the case of a final check at the time of separation from employment.) An employee may seek to apply advanced annual or advanced sick leave (as appropriate) under the normal rules governing such advances of leave. (See paragraph F.4 and attached templates.)
4. If the Fund approaches the point where it will be exhausted, agency reimbursement requests will be processed on a first-come, first-served basis, based on the date and time OPM receives each agency reimbursement request, subject to the rules in the following paragraphs.
 - a. For the purposes of applying the first-come/first-served protocol, OPM will not consider any agency reimbursement request in connection with a given biweekly pay period to be received prior to 12:00 noon on the second Friday following the end of that pay period—regardless of the actual day and time of receipt. OPM will not process agency reimbursement requests until after this earliest-allowed-receipt point in time. (This rule considers the fact that agencies have different payroll processing timeframes.)
 - b. An agency reimbursement request (or set of agency requests with the same receipt date/time) that exhausts the Fund will result in a partial reimbursement to the agency (or agencies). The partial reimbursement will be determined applying a proration percentage derived by dividing the remaining funds available by the total dollar value of the affected agency (or agencies') reimbursement requests. In this partial reimbursement scenario, OPM will organize agency claims by

biweekly pay period. OPM will apply available funds to reimbursement claims for the earliest biweekly pay period, seeking to provide full reimbursement, until it identifies the earliest biweekly pay period for which there are insufficient funds to fully cover the reimbursement claims associated with that period. OPM will provide partial reimbursement for claims associated with that biweekly pay period and will provide no reimbursement to claims associated with any later biweekly pay period. When an agency receives a partial reimbursement, it will need to determine how to allocate available funds to cover (i.e., give final approval of) affected individual employee EPL claims that were conditionally granted. (See paragraph e.)

- c. Agency reimbursement requests must be submitted in accordance with the procedures established by OPM, and a request will not be considered to be received by OPM unless and until those procedures are established and followed.
 - d. Since reimbursement requests will be processed on a first-come, first-served basis as described in this guidance, OPM strongly encourages agencies to submit reimbursement requests on a biweekly basis, rather than hold and bundle requests covering multiple biweekly pay periods.
 - e. If an agency's reimbursement request cannot be granted due to exhaustion of the Fund, the emergency paid leave conditionally granted to an employee by the agency must be cancelled. The affected period of time will be converted to a period of leave without pay (resulting in an overpayment) unless the employee elects, in accordance with the signed Employee Agreement (see paragraph F.4 and attached template), to apply other paid leave or paid time off available to the employee (including advanced annual leave or advanced sick leave, as appropriate).
5. OPM will provide agencies with regular updates on the balance remaining in the Fund.
 6. When submitting a reimbursement claim to OPM, an authorized agency official must attest that, to the official's knowledge, the agency's established policies and procedures for implementing emergency paid leave are in compliance with section 4001 and OPM's supporting guidance.

D. Qualifying Circumstances

1. *General.* In order to use emergency paid leave, an employee must be unable to work because the employee—
 - (1) is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
 - (2) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 - (3) is caring for an individual who is subject to such an order or has been so advised;

- (4) is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 - (5) is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, if the school of such son or daughter requires or makes optional a virtual learning instruction model or requires or makes optional a hybrid of in-person and virtual learning instruction models, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions;
 - (6) is experiencing any other substantially similar condition (see paragraph D.8);
 - (7) is caring for a family member with a mental or physical disability or who is 55 years of age or older and incapable of self-care, without regard to whether another individual other than the employee is available to care for such family member, if the place of care for such family member is closed or the direct care provider is unavailable due to COVID-19; or
 - (8) is obtaining immunization related to COVID-19 or is recovering from any injury, disability, illness, or condition related to such immunization.
2. *Unable to work.* An employee must certify that he or she is unable to work because of a qualifying circumstance. In other words, the employee would have been scheduled to work (or be on other paid leave) but for the qualifying circumstance (see paragraph E.7, Scheduled Hours). Since the term “work” includes telework, an employee who is able to telework is considered able to work. See section F for guidance on employee notification, certification, and documentation.
 3. *Qualifying circumstance (1) – is subject to a Federal, State, or local quarantine or isolation order related to COVID-19*
 - a. The term “quarantine or isolation order” includes quarantine, isolation, containment, shelter-in-place, or stay-at-home orders issued by any Federal, State, or local government authority that cause the employee to be unable to work (including telework). This also includes when a Federal, State, or local government authority has advised categories of citizens (e.g., of certain age ranges or with certain medical conditions) to shelter in place, stay at home, isolate, or quarantine, causing those categories of employees to be unable to work.
 - b. An employee is subject to “isolation” when the employee has a positive COVID-19 test result or displays COVID-19 symptoms, as described in guidance issued by the Centers for Disease Control and Prevention (CDC).
 - c. An employee is subject to “quarantine” when exposed to COVID-19, as described in CDC guidance.

4. *Qualifying circumstance (2) – has been advised by a health care provider to self-quarantine due to concerns related to COVID-19*
 - a. The term “health care provider” has the same meaning given that term in OPM FMLA regulations at 5 CFR 630.1202.
5. *Qualifying circumstance (3) – is caring for an individual who is subject to such an order or has been so advised*
 - a. The term “individual” means an employee’s family member (as defined in 5 CFR 630.201), a person who regularly resides in the employee’s home, or a similar person with whom the employee has a personal relationship that creates an expectation that the employee would care for the person if he or she were quarantined or self-quarantined. For this purpose, “individual” does not include persons with whom the employee has no personal relationship.
 - b. The individual must depend on the employee to care for him or her and the individual must meet the conditions described in qualifying circumstance (1) or (2).
6. *Qualifying circumstance (4) – is experiencing symptoms of COVID-19 and seeking a medical diagnosis*
 - a. In determining whether this circumstance applies, agencies and employees should follow the latest CDC guidance regarding COVID–19 symptoms.
 - b. Leave under this circumstance covers the time it takes an employee experiencing symptoms to obtain a medical diagnosis, as long as the employee is taking affirmative steps (i.e., actively seeking) to obtain a diagnosis as soon as possible.
7. *Qualifying circumstance (5) – is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, if the school of such son or daughter requires or makes optional a virtual learning instruction model or requires or makes optional a hybrid of in-person and virtual learning instruction models, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions*
 - a. The term “son or daughter” has the meaning given that term in OPM FMLA regulations at 5 CFR 630.1202—i.e., a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age; or 18 years of age or older who is incapable of self-care because of a mental or physical disability.
 - b. The term “school” means an elementary school or secondary school, except that the term does not include any education beyond grade 12.
 - c. The term “place of care” means a physical location in which care is provided for the employee’s child while the employee works for an agency. The physical location does not have to be solely dedicated to such care. Examples include day care facilities, preschools, before and after school care programs, schools, homes, summer camps, summer enrichment programs, and respite care programs.

- d. The term “child care provider” means a provider who would normally be available to provide care of an employee’s child (including a center-based child care provider, a group home child care provider, a family child care provider, a family member, a friend or neighbor), regardless of whether the care is compensated.
 - e. This circumstance applies only when an employee needs to, and actually is, caring for the employee’s son or daughter and if the employee is unable to work (including telework) as a result of providing care.
 - f. The closure of schools or the use of virtual learning instruction models must be due to COVID-19 precautions. The nonavailability of a child care provider must be due to COVID-19 precautions.
8. *Qualifying circumstance (6) – is experiencing any other substantially similar condition*
- a. This circumstance applies only if the Director of the Office of Personnel Management approves a defined circumstance as being a “substantially similar condition” that warrants treatment as a qualifying circumstance. OPM will notify agencies of any such approval.
 - b. Agencies may not approve emergency paid leave under this qualifying circumstance prior to OPM approving a defined circumstance as being a “substantially similar condition” warranting treatment as a qualifying circumstance. Agencies must consult with OPM if they identify a possible “substantially similar condition” not already covered by the other qualifying circumstances listed in this section, and OPM will determine whether to define that circumstance as a qualifying circumstance.
 - c. An authorized agency official (headquarters level) seeking OPM consideration of a possible condition as a qualifying circumstance under this paragraph 8 should send an email to pay-leave-policy@opm.gov with the subject line: “Request for a new EPL qualifying circumstance.”
9. *Qualifying circumstance (7) – is caring for a family member with a mental or physical disability or who is 55 years of age or older and incapable of self-care, without regard to whether another individual other than the employee is available to care for such family member, if the place of care for such family member is closed or the direct care provider is unavailable due to COVID-19*
- a. The term “family member” has the meaning given that term in OPM’s annual and sick leave regulations at 5 CFR 630.201.
 - b. The term “mental or physical disability” means a “physical or mental impairment” that “substantially limits” one or more of the “major life activities” of an individual, based on the definitions in 29 CFR 1630.2 (h), (i) and (j).
 - c. The term “incapable of self-care” means that the person requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” (ADL’s) or “instrumental activities of daily living” (IADL’s). Activities of daily living include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing, and eating. Instrumental activities of

daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using the telephones and directories, using a post office, etc.

- d. The term “place of care” means a physical location in which care is provided for the family member while the employee works for an agency. The physical location does not have to be solely dedicated to such care.
- e. For this circumstance to apply, the family member must (1) have a mental or physical disability or be 55 years of age or older, and (2) be incapable of self-care.

10. *Qualifying circumstance (8) – is obtaining immunization related to COVID-19 or is recovering from any injury, disability, illness, or condition related to such immunization*

- a. The Administration has already issued guidance on the use of administrative leave for COVID-19 vaccination purposes. (See Q&A on administrative leave issued by Safer Federal Workforce Task Force at <https://www.usa.gov/safer-federal-workforce>.) That guidance addressed administrative leave to cover time spent getting a COVID-19 vaccination, including necessary travel time; however, it did not address situations in which an employee has adverse reactions to a vaccination and needs time to recover. OPM encourages agencies to address time off related to COVID-19 vaccinations by granting administrative leave rather than emergency paid leave, as described in paragraph b. This will preserve the Fund for other qualifying uses and fully incentivize employees to get a vaccination (since there will be no loss of service credit in their retirement annuity computation if administrative leave is granted instead of emergency paid leave). Administrative leave should be granted for both time spent getting the vaccination (including necessary travel time) and also for a reasonable recovery time, subject to the limitations described in paragraph b. If an employee claims he or she needs more time to recover, the agency may make a determination to grant emergency paid leave at that point. (OPM views the granting of administrative leave for vaccination recovery periods as a special exception warranted by the severity of the COVID-19 pandemic.)
- b. Agencies should grant administrative leave for an appropriate number of hours (based on each employee’s specific situation) when an employee receives a COVID-19 vaccination dose, with consideration of both the time spent getting the vaccination and necessary travel time. An agency should grant up to 2 workdays of administrative leave if an employee has an adverse reaction to a COVID-19 vaccination dose (i.e., no more than 2 workdays of administrative leave for any adverse reactions associated with a single vaccination dose). If an agency has not previously been providing administrative leave for an employee’s recovery following a COVID-19 vaccination, it should commence providing such leave effective on March 11, 2021. If an employee claims he or she needs more than 2 workdays to recover, the agency may make a determination to grant emergency paid leave or other appropriate leave (e.g. sick leave) at that point.

E. Crediting of Leave Hours and Payments

1. *Use at employee request.* An employee may be entitled to use emergency paid leave upon request if the employee meets all conditions and requirements, as described in this guidance. An agency may not require that an employee use other available paid leave before using emergency paid leave. If an employee has more hours of qualifying circumstances than hours of emergency paid leave—due to the limitations described in paragraph 4—the employee may request *when* the emergency paid leave hours are used during the biweekly pay period, and the agency should seek to accommodate the employee’s request while also taking into account mission considerations.
2. *Relationship to other leave.* Emergency paid leave is a separate paid leave entitlement that is used in place of other paid leave or other paid time off an employee might otherwise use. It does not affect balances of other paid leave or paid time off. Emergency paid leave may not be used by an employee concurrently with any other paid leave or paid time off. However, an employee may use other types of paid leave or paid time off in the same biweekly pay period in which emergency paid leave is used, if applied to hours not covered by emergency paid leave—subject to the normal rules applicable to each type of paid leave or paid time off.
3. *Leave payment.*
 - a. Emergency paid leave is paid at the same hourly rate as annual leave.
 - b. For most employees, the hourly leave payment is equal to the employee’s hourly adjusted rate of basic pay (including any applicable locality payment, special rate supplement, or the equivalent).
 - c. For certain employees, the leave payment reflects certain additional payments such as—
 - recurring overtime/premium payments (such as standby duty premium pay and related FLSA overtime pay associated with regularly scheduled overtime hours; law enforcement availability pay; Border Patrol overtime supplements);
 - nonforeign area cost-of-living allowances and post differentials; or
 - night pay under 5 U.S.C. 5545(a), as described in paragraph d.
 - d. For employees receiving emergency paid leave, night pay under 5 U.S.C. 5545(a) for hours within an employee’s tour of duty established for leave-charging purposes is payable only as allowed under the 8-hour rule in 5 CFR 550.122(b).

NOTE: The other types of leave that are considered in applying the 8-hour rule are annual leave (including donated annual leave), sick leave, home leave, and shore leave. In applying the 8-hour rule, do not consider types of paid leave that, by law, are provided without any reduction in pay; for those types

of leave, night pay for applicable hours is always included. Thus, in applying the 8-hour rule, emergency paid leave would be combined with annual leave, sick leave, home leave, and shore leave in determining whether an employee has less than 8 hours of paid leave in a given biweekly pay period. If the employee has less than 8 hours of the specified types of leave, night pay would be included for applicable leave hours; if the employee has 8 or more leave hours, no night pay would apply for the specified types of leave.

4. *Limitations on leave hours.* The amount of emergency paid leave hours with which an employee may be credited is subject to the limitations described in this paragraph 4.
 - a. *Biweekly hours limit.* In any biweekly pay period, an employee may be credited with hours of emergency paid leave only to the extent that the total amount of the payment for such leave does not exceed—
 - \$2,800 for each full-time employee (including both regular full-time employees with an 80-hour biweekly tour of duty or employees with an uncommon tour of duty); or
 - a proportionally equivalent biweekly limit for a part-time employee (for example, \$1,400 for a part-time employee who has a 40-hour biweekly tour instead of a full-time 80-hour biweekly tour, since $40/80 \times \$2,800 = \$1,400$).

NOTE 1: For a regular full-time employee with an 80-hour biweekly tour of duty whose hourly leave payment is equal to the employee's hourly adjusted rate of basic pay, the \$2,800 biweekly limit equates to a \$35 hourly threshold ($\$2,800 / 80 \text{ hours} = \35). In other words, the crediting of emergency paid leave in a biweekly pay period will be affected by the biweekly limit if the value of the hourly leave payment would exceed \$35. Below are examples for a regular full-time employee whose hourly leave payment is equal to the employee's hourly adjusted rate of basic pay (including locality pay, special rate supplements, or the equivalent):

Example A: If the employee's hourly adjusted rate of basic pay is \$35 or less, the employee would be able to use up to 80 hours of emergency paid leave in a biweekly pay period.

Example B: If the employee's hourly adjusted rate of basic pay is \$70, the employee would be limited to 40 hours of emergency paid leave in a biweekly pay period, since \$2,800 divided by \$70 equals 40 hours. This employee could request other available leave (e.g., annual leave or, if appropriate, sick leave) to cover remaining hours.

NOTE 2: As described in paragraph 3.c, some employees receive additional pay as part of their leave payments. The total value of emergency paid leave (including such additional pay) in a biweekly pay period may not exceed the applicable biweekly limit, which will result in limiting the number of

emergency paid leave hours in a biweekly pay period that may be granted to such an employee.

Example: A criminal investigator receives 25 percent law enforcement availability pay (LEAP) as part of his leave payments. The investigator is at GS-13, step 3, and has an official worksite in Washington, DC; therefore, the criminal investigator's locality-adjusted hourly rate of basic pay is \$53.00. In the investigator's payroll system, LEAP is computed to be \$13.25 per hour of basic pay ($25\% \times \$53 = \13.25). When the investigator is on leave, the number of paid leave hours are multiplied by \$13.25 to derive the portion of the leave payment based on LEAP. The total hourly leave payment is \$66.25 ($\$53.00 + \13.25). To determine how many hours of emergency paid leave the investigator may receive in a biweekly pay period, divide \$2,800 by \$66.25, which yields 42.26 hours. Since the investigator is in a payroll system that uses quarter-hour (15-minute) increments, the investigator may receive up to 42.25 hours of emergency paid leave, if there are qualifying circumstances to support the hours.

- b. *Aggregate hours limit.* The number of aggregate hours of emergency paid leave that any employee may receive over the entire qualifying period is limited to—
 - 600 hours of paid leave for each regular full-time employee;
 - a proportionally equivalent aggregate limit for a part-time employee (for example, 300 hours for a part-time employee who has a 40-hour biweekly tour instead of a full-time 80-hour biweekly tour, since $40/80 \times 600 = 300$);
 - a proportionally equivalent aggregate limit for an employee on an uncommon tour of duty (for example, 1,080 hours for an employee with a 144-hour biweekly uncommon tour of duty, since $144/80 \times 600 = 1,080$);
 - a proportionally equivalent aggregate limit for an employee with a seasonal work schedule (taking into account the portion of the qualifying period that includes the employee's work season and the employee's biweekly tour of duty, for example, if the employee's work season includes half of the March 11 through September 30 qualifying period and if the employee has a 40-hour biweekly tour of duty, then $\frac{1}{2} \times 40/80 \times 600$ hours = 150 hours).
 - c. *Fund exhaustion.* Notwithstanding the biweekly limit in paragraph 4.a and the aggregate limit in paragraph 4.b, an employee may not be credited with emergency paid leave hours if the Fund has been exhausted.
5. *Leave increments.* Emergency paid leave is used in the same hourly increments (hours and specified fractions of an hour) as regular paid leave under the timekeeping system applicable to the employee (i.e., fraction such as 1/10th or 1/4th of an hour). In applying the limitations in paragraph 4, payment may not be made for an increment of leave if it would cause the total leave payments to exceed the applicable limitation.

6. *Part-time tour of duty.* In determining the proportional equivalent of the biweekly limit in paragraph 4.a or the aggregate limit in paragraph 4.b for a part-time employee, the part-time tour of duty is the tour of duty established for leave-charging purposes.
7. *Scheduled hours.* An employee must use emergency paid leave during scheduled hours within the employee's tour of duty established for leave-charging purposes when the employee would otherwise be working or using other paid leave.
 - a. A seasonal employee is not scheduled to work during the off-season and, thus, may not use emergency paid leave during off-season periods.
 - b. An employee who is furloughed is not scheduled to work while in furlough status and, thus, may not use emergency paid leave during furlough periods.
 - c. An employee who is suspended is not scheduled to work while in suspension status and, thus, may not use emergency paid leave during the suspension period.
 - d. An employee who is on leave without pay for service in the uniformed services ("Absent-US") is not scheduled to perform civilian work while serving in the uniformed services and, thus, may not use emergency paid leave during periods of service in the uniformed services.
 - e. An employee who is on leave without pay (LWOP) while in receipt of workers' compensation benefits is not scheduled to work during such a LWOP period and, thus, may not use emergency paid leave during any such LWOP period.
 - f. An employee who is already on LWOP under FMLA or for some other reason is not scheduled to work during such a LWOP period and thus, may not use emergency paid leave during any such LWOP period (unless the LWOP is solely due to the need to take leave because of a qualifying circumstance identified in section D).
8. *Holidays.* A holiday is a nonworkday; thus, emergency paid leave may not be used on a holiday. It also may not be used on any other nonworkday established by Federal statute, Executive order, or administrative order.
9. *Flexible work schedule.* Employees with a flexible work schedule may have fixed basic work requirement hours per day or may be allowed to elect to vary basic work requirement hours by day. In the case of a flexible work schedule under which an employee may elect to vary daily work hours, the employing agency may allow the employee to determine (within agency-established limits) the number of scheduled hours during which emergency paid leave will be used on a given day, if the agency determines the employee is entitled to emergency paid leave during the specified time periods.
10. *Change in tour of duty.* For purposes of applying the aggregate limit in paragraph 4.b, a change in an employee's biweekly tour of duty during the qualifying period for using emergency paid leave requires adjustments. The aggregate limit must be recomputed to reflect the new tour of duty. The number of emergency paid leave hours used under the previous tour of duty must be converted to the proportional equivalent hours under the new tour of duty. For example, if an employee first had a regular full-time tour of duty with a 600-hour aggregate limit, used 100 hours of emergency paid leave under that tour, and then changed to a half-time tour of duty, the new aggregate limit would be 300 hours,

and the 100 hours used under the full-time tour would be converted to 50 hours (since $300/600 \times 100 \text{ hours} = 50 \text{ hours}$).

NOTE: An agency may choose to track usage of emergency paid leave where usage is measured by weeks of leave used, instead of hours. For example, 600 hours for a regular full-time employee with an 80-hourly biweekly tour of duty equates to 15 weeks of leave (since $600 / (80 / 2) = 15$), and 300 hours for a part-time employee with an 40-hourly biweekly tour of duty (half-time) equates to 15 weeks (since $300 / (40 / 2) = 15$). No conversion is required in connection with a change in an employee's tour of duty if the unused balance is expressed as weeks of leave.

11. *Change in employing agency.* The biweekly limit in paragraph 4.a and the aggregate limit in paragraph 4.b are per-employee limits. For example, an employee may not use more than 600 hours in aggregate even if the employee changes agencies. Agencies must determine how many hours of emergency paid leave a newly hired or transferred employee has used under another Federal agency. (See paragraph F3c.)

NOTE: This guidance implements the emergency paid leave authority in section 4001 of the American Rescue Plan Act of 2021. As discussed in the NOTE in paragraph A.2, that Act created three other emergency paid leave authorities for FAA, TSA, and VA with separate funds. If an employee moves from a position covered by one of those other authorities to a position covered by the OPM-administered section 4001 authority, hours of emergency paid leave granted under those other authorities may not be counted towards the biweekly limit in paragraph 4.a or the aggregate limit in paragraph 4.b. Also, for VA employees who are covered by both the VA Fund (section 8008) and the OPM Fund (section 4001) (see NOTE under paragraph A.2) and for whom VA seeks reimbursement from the OPM Fund, any emergency paid leave granted under the VA authority will not be counted in applying the biweekly limit in paragraph 4.a or the aggregate limit in paragraph 4.b, since those limits apply only to emergency paid leave granted under the OPM authority.

12. *Retroactive use.* An employee may request, and an employing agency must grant, emergency paid leave for which the employee is eligible (subject to Fund availability) to cover a past period of leave without pay occurring during the qualifying period described in paragraph A.4. If an agency determines that an employee used other paid leave to cover a period of time for which emergency paid leave could have been used, an agency may allow the employee to retroactively substitute emergency paid leave for such other paid leave upon making a determination that the employee lacked information or was not allowed to use emergency paid leave at the time.

F. Employee Notification, Documentation, and Recordkeeping

1. *Requirement for employee to provide notice.*
 - a. For all qualifying circumstances except (5) and (7), an employing agency may require an employee to follow reasonable notice procedures after the first workday (or portion thereof) for which an employee takes emergency paid leave.

Whether a procedure is reasonable will be determined under the facts and circumstances of each particular case. Nothing in this section precludes an employee from offering notice to his or her agency sooner. Employees are encouraged, but not required, to notify their agency about their request for emergency paid leave as soon as practicable. If an employee fails to give proper notice, the agency should give him or her notice of the failure and an opportunity to provide the required documentation prior to denying the request for leave.

- b. For qualifying circumstances (5) and (7), an employee must provide the agency with notice of the intent to use emergency paid leave as soon as practicable, which will generally be prior to the first workday leave is used if the need for leave was foreseeable. If an employee fails to give proper notice, the employer should give him or her notice of the failure and an opportunity to provide the required documentation prior to denying the request for leave.
 - c. Generally, it will be reasonable for notice to be given by the employee's spokesperson (e.g., spouse, adult family member, or other responsible party) if the employee is unable or otherwise inhibited from doing so personally.
 - d. Generally, it will be reasonable for the agency to require oral notice and sufficient information for the agency to determine whether the requested leave meets the conditions for emergency paid leave.
 - e. Generally, it will be reasonable for the agency to require the employee to comply with the agency's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.
2. *Requirement for employee to provide documentation (including employee certifications).*
- a. For all requests for emergency paid leave (EPL), an employee is required to provide the employing agency with documentation containing the following information as soon as practicable, which in most cases will be when the employee provides notice under paragraph 1:
 - (1) Date(s) for which EPL is requested;
 - (2) Description of the qualifying circumstance justifying use of EPL;
 - (3) Written statement (self-certification) that the employee is unable to work (including telework) because of the cited qualifying circumstance and that the employee will meet the conditions associated with the cited qualifying circumstance during the use of EPL; and
 - (4) Written statement (self-certification) meeting the requirements described in C3 indicating that the employee understands (A) that approval of emergency paid leave is conditional upon the availability of monies in the Fund, and (B) what obligations the employee will have if the leave is cancelled due to exhaustion of the Fund. (NOTE: Agencies must have employees sign this statement before approving an employee's first use of EPL. An agency may require a separate certification in connection with

each subsequent use of EPL by the employee but is not obligated to do so.)

- b. To confirm eligibility for EPL for qualifying circumstance (1), an employee must provide to the agency the governmental quarantine or isolation order applicable to the employee.
- c. To confirm eligibility for EPL based on qualifying circumstance (2), an employee must provide to the agency the name of the health care provider who advised the employee to self-quarantine due to concerns related to COVID-19.
- d. To confirm eligibility for EPL based on qualifying circumstance (3), an employee must provide to the agency the same documentation described in paragraph b or c, as applicable.
- e. To confirm eligibility for EPL based on qualifying circumstance (4), an employee must provide to the agency a written self-certification that the employee is experiencing symptoms of COVID-19 and taking immediate steps to obtain a medical diagnosis.
- f. To confirm eligibility for EPL based on qualifying circumstance (5), an employee must provide to the agency—
 - (1) the name of the son or daughter being cared for;
 - (2) the name of the school, place of care, or child care provider and a brief description of the situation (i.e., closure, use of on-line instruction, unavailability of the child care provider); and
 - (3) a written explanation regarding why the employee’s circumstances (e.g., ages of children, number of children, special needs of children, lack of other adults in the home) make the employee unable to work (including telework) during the requested hours of leave.
- g. To confirm eligibility for EPL based on qualifying circumstance (6), an employee must provide to the agency any documentation the Director of OPM requires or recommends with respect to a particular substantially similar condition.
- h. To confirm eligibility for EPL based on qualifying circumstance (7), an employee must provide to the agency documentation as follows—
 - (1) the name of the family member with a mental or physical disability and a written certification by the employee that the identified family member has a mental or physical disability (as defined in paragraph D.9.b), if applicable;
 - (2) the name and age of the family member that is 55 years or older, if applicable;
 - (3) a written certification by the employee that the identified family member is “incapable of self-care” (as defined in paragraph D.9.c);

- (4) the name of the place of care that is closed or the direct care provider that is unavailable and a written explanation of how the closure or unavailability is due to COVID-19; and
 - (5) a written explanation regarding why the employee's care responsibilities make the employee unable to work (including telework) during the requested hours of leave.
- i. To confirm eligibility for EPL based on qualifying circumstance (8), an employee must provide to the agency a written self-certification that the leave will be (or was) used to obtain immunization related to COVID-19 or to recover from any injury, disability, illness, or condition related to such immunization.
 - j. In addition to the above generally required documentation requirements, an agency is authorized to request additional reasonable information, explanations, or certifications from an employee if the agency has reason to believe that EPL is not being used for the qualifying circumstance(s) invoked by the employee.
 - k. Once an employee has met the requirements of paragraphs a through i, as applicable, the agency may grant conditional approval of EPL. However, an agency may deny EPL based on an agency's determination that an employee's justification for the leave is not supported by the documents submitted or any other available facts. If the agency questions the validity or adequacy of the employee's justification, the employee must have an opportunity to provide documentation or further supplement his/her response to the agency before EPL is denied. An agency may conditionally approve use of EPL pending receipt of acceptable documentation and other information as required under paragraph j; however, it must ensure that the employee understands his/her obligations to resolve the overpayment of leave if the agency's final decision is to deny the leave.

3. *Recordkeeping.*

- a. An employing agency is required to retain all documentation provided by the employee for 4 years, regardless of whether leave was granted or denied. If an employee provided oral statements to support his or her request, the agency is required to document and maintain such information in its records for 4 years.
- b. Since emergency paid leave is a temporary benefit, OPM is not creating a new leave data element in its Enterprise Human Resources Integration (EHRI) database; thus, agencies will not be required to report usage of emergency paid leave as part of EHRI data reporting. OPM leaves to agencies and payroll providers the decisions regarding how to implement emergency paid leave within the parameters set by law and this guidance. OPM recognizes that, at least in the near term, agencies may need to report this paid leave under an existing leave category (e.g., administrative leave). At the same time, agencies must ensure that the biweekly and aggregate limits are applied to each employee, consistent with statutory requirements. Also, as discussed in section G, agencies must document

use of emergency paid leave on employees' Individual Retirement Records. Agencies may determine a reasonable way to comply with the various requirements.

- c. When an agency prepares a Standard Form 1150, Record of Leave Data, for a transferring employee, it should record the aggregate amount of emergency paid leave used by the employee (as of the time of transfer) in the Remarks section (block 24).
4. *Forms.* Agency forms to document employee leave requests, general certifications, and agreements must contain the same or equivalent elements found in the templates attached to this guidance. As part of documentation, employees may be required to provide additional special certifications related to the given qualifying circumstance, as provided in paragraph 2.
5. *Sensitive medical information.* Agencies must maintain records and documents relating to medical information, medical certifications, or medical histories of employees or employees' family members created for EPL purposes as confidential medical records in separate files/records from the usual personnel files and in accordance with 29 CFR 1630.14(c)(1), if Americans with Disabilities Act standards apply, and in accordance with 29 CFR 1635.9, if the Genetic Information Nondiscrimination Act applies.

G. Effect on Retirement and Other Leave Benefits.

1. Except as provided in paragraph 2, a period during which emergency paid leave is used is creditable service for the same purposes as other paid leave. For example, periods of time covered by emergency paid leave are creditable service for purposes of determining an employee's annual leave accrual rate. Also, emergency paid leave generates basic pay that affects other payments and benefits in the same manner as other paid leave. For example, any retirement-creditable basic pay generated by emergency paid leave is subject to employee retirement deductions and agency retirement contributions.

NOTE: For some employees, leave payments may include special payments in addition to regular basic pay. Some of those special payments may be retirement-creditable basic pay (e.g., law enforcement availability pay, Border Patrol overtime supplement, standby duty premium pay, the straight-rate portion of overtime pay for hours in a firefighter's regular tour of duty under 5 U.S.C. 5545b), and some of those special payments are not retirement-creditable basic pay (e.g., night pay under 5 U.S.C. 5545(a), nonforeign area post differentials and cost-of-living allowances, the non-straight-rate portion of overtime pay for hours in a firefighter's regular tour of duty under 5 U.S.C. 5545b).

2. Any emergency paid leave provided to an employee under sections 4001, 7103, 7104, and 8008 of the Act reduces the employee's total service used to calculate any Federal civilian retirement annuity benefit (e.g., a Civil Service Retirement System (CSRS) annuity benefit computed under 5 U.S.C. 8339 or a Federal Employees' Retirement System (FERS) annuity benefit computed under 5 U.S.C. 8415).

- a. When OPM calculates an employee's retirement annuity benefit, total creditable service will be reduced by the amount of emergency paid leave used.
- b. Hours of emergency paid leave remain creditable service for purposes of (1) determining an employee's total service credit for the purpose of establishing eligibility for a retirement annuity benefit and (2) determining periods of time during which an employee has a rate of basic pay used in computing an employee's high-3 average rate of basic pay.

3. *Examples*

Example 1: If an employee retires with 30 years of service and during 2021 received 600 hours of EPL, OPM would reduce the retirement annuity calculation by the 600 EPL hours. Based on the 2087-hour chart, 600 hours of EPL converts to 3 months and 14 days. The retirement annuity calculation would be based on 29 years and 8 months.

Example 2: An employee covered by FERS retires at age 57 with 30 years of service and a high-3 average salary of \$75,000. $1\% \text{ of } \$75,000 \times 30 \text{ years of service} = \$22,500$. $\$22,500/12 = \$1,875$ monthly annuity

If the same employee received 600 EPL hours in 2021: 600 EPL hours converts to 3 months and 14 days.

30 years – 3 months 14 days = 29 years 8 months 16 days

$1\% \text{ of } \$75,000 \times 29 \text{ years and } 8 \text{ whole months } (29.666667) = \$22,250$

$\$22,250/12 = \$1,854$ monthly annuity (rounded down to the next lower whole dollar amount)

In this example, the employee would lose \$21 a month in retirement benefits for receiving 600 EPL hours.

4. For employees covered by an OPM-administered retirement system, agencies must document the employee's use of emergency paid leave and provide such documentation to the OPM Retirement Services. OPM will issue a Benefits Administration Letter (BAL), in consultation with agency human resources offices and payroll providers, that provides specific instructions for documenting employees' Individual Retirement Records. When providing a retirement estimate to an employee, the total hours of emergency paid leave should be excluded from the total service so that the employee receives an accurate estimate of the future retirement benefit. OPM's BAL will provide guidance and procedures for documenting the use of EPL so that agencies may accurately prepare retirement estimates.
5. The fact that an employee was able to use emergency paid leave instead of annual leave, resulting in an excess balance of annual leave at the end of the leave year, is not a basis for the restoration of forfeited annual leave due to an exigency of the public business under 5 U.S.C. 6304(d)(1)(B).

H. Legislation

Section 4001 of the American Rescue Plan Act of 2021 (H.R. 1319; Public Law 117-2) was enacted on March 11, 2021:

SEC. 4001. EMERGENCY FEDERAL EMPLOYEE LEAVE FUND.

(a) ESTABLISHMENT; APPROPRIATION.—There is established in the Treasury the Emergency Federal Employee Leave Fund (in this section referred to as the “Fund”), to be administered by the Director of the Office of Personnel Management, for the purposes set forth in subsection (b). In addition to amounts otherwise available, there is appropriated for fiscal year 2021, out of any money in the Treasury not otherwise appropriated, \$570,000,000, which shall be deposited into the Fund and remain available through September 30, 2022. The Fund is available for reasonable expenses incurred by the Office of Personnel Management in administering this section.

(b) PURPOSE.—Amounts in the Fund shall be available for reimbursement to an agency for the use of paid leave under this section by any employee of the agency who is unable to work because the employee—

(1) is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;

(2) has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

(3) is caring for an individual who is subject to such an order or has been so advised;

(4) is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

(5) is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed, if the school of such son or daughter requires or makes optional a virtual learning instruction model or requires or makes optional a hybrid of in-person and virtual learning instruction models, or the child care provider of such son or daughter is unavailable, due to COVID-19 precautions;

(6) is experiencing any other substantially similar condition;

(7) is caring for a family member with a mental or physical disability or who is 55 years of age or older and incapable of self-care, without regard to whether another individual other than the employee is available to care for such family member, if the place of care for such family member is closed or the direct care provider is unavailable due to COVID-19; or

(8) is obtaining immunization related to COVID-19 or is recovering from any injury, disability, illness, or condition related to such immunization.

(c) LIMITATIONS.—

(1) PERIOD OF AVAILABILITY.—Paid leave under this section may only be provided to and used by an employee during the period beginning on the date of enactment of this Act and ending on September 30, 2021.

(2) TOTAL HOURS; AMOUNT.—Paid leave under this section—

(A) shall be provided to an employee in an amount not to exceed 600 hours of paid leave for each full-time employee, and in the case of a part-time employee, employee on an uncommon tour of duty, or employee with a seasonal work schedule, in an amount not to exceed the proportional equivalent of 600 hours to the extent amounts in the Fund remain available for reimbursement;

(B) shall be paid at the same hourly rate as other leave payments; and

(C) may not be provided to an employee if the leave would result in payments greater than \$2,800 in aggregate for any biweekly pay period for a full-time employee, or a proportionally equivalent biweekly limit for a part-time employee.

(3) RELATIONSHIP TO OTHER LEAVE.—Paid leave under this section—

(A) is in addition to any other leave provided to an employee; and

(B) may not be used by an employee concurrently with any other paid leave.

(4) CALCULATION OF RETIREMENT BENEFIT.—Any paid leave provided to an employee under this section shall reduce the total service used to calculate any Federal civilian retirement benefit.

(d) EMPLOYEE DEFINED.—In this section, the term “employee” means—

(1) an individual in the executive branch for whom annual and sick leave is provided under subchapter I of chapter 63 of title 5, United States Code;

(2) an individual employed by the United States Postal Service;

(3) an individual employed by the Postal Regulatory Commission; and

(4) an employee of the Public Defender Service for the District of Columbia and the District of Columbia Courts.

Attachments (See 508-conformant attachments at <https://www.chcoc.gov/content/covid-19-emergency-paid-leave>)

- Template: Employee Notification and Leave Request Form
- Template: Employee Agreement