

COVID-19 EMERGENCY PAID LEAVE SECTION 4001 OF THE AMERICAN RESCUE PLAN ACT OF 2021

INTRODUCTION

Section 4001 of the American Rescue Plan Act of 2021 (Public Law 117-2) established “emergency paid leave” (EPL) for certain categories of Federal employees based on COVID-19 related qualifying circumstances. This new type of leave is funded by a \$570 million Emergency Federal Employee Leave Fund and is administered by the Director of the Office of Personnel Management (OPM). This reference guide highlights key features of EPL and should be used in conjunction with OPM’s Memorandum for Heads of Executive Departments and Agencies (CPM 2021-15), “COVID-19 Emergency Paid Leave,” dated April 29, 2021. The OPM memorandum contains additional guidance, examples, templates, and frequently asked questions (FAQs) that will assist organizations in the administration of EPL.

COVERAGE

Section 4001 covers employees in the executive branch for whom annual and sick leave is provided under subchapter 1 of chapter 63 of title 5, United States Code. For these purposes, an employee is defined as 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)).

Excluded from coverage are DoD nonappropriated-fund employees and DoD teachers appointed under title 10 and title 20.

QUALIFYING CIRCUMSTANCES

In order to use EPL, an employee must be unable to work (including telework) 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.

KEY FEATURES

The \$570 million Fund is available to make leave payments to covered employees for EPL used during the qualifying period, March 11, 2021, through September 30, 2021. Agencies are required to submit claims to OPM for reimbursement from the Fund. If the Fund is exhausted prior to September 30, 2021, payments of EPL under this authority will cease. OPM will provide updates on the fund status at <https://www.opm.gov/policy-data-oversight/pay-leave/ARPA>.

Due to the possibility of Fund exhaustion, EPL is granted on a conditional basis. Before an employee is initially granted EPL, the employee must agree in writing that, if any conditional EPL is not available due to exhaustion of the Fund, the employee will:

- (1) apply other paid leave or paid time off (as available to the employee and as appropriate for the given circumstance) to cover the period of conditional EPL taken; or
- (2) will retroactively be placed on leave without pay for the conditional EPL time period and voluntarily provide monetary reimbursement to the agency to cover the resulting overpayment debt.

EPL is a separate leave entitlement used at an employee's request and employees are not required to first exhaust any other available paid leave. It may not be concurrently used with any other paid leave or paid time off since EPL is used in lieu of other paid leave or other paid time off an employee might otherwise use.

EPL is paid at the same hourly rate as annual leave, subject to the following two limitations:

- *Biweekly hours limits.* In any biweekly pay period, an employee may be credited with hours of EPL only to the extent that the total amount does not exceed \$2,800 for 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; and
- *Aggregate hours limit.* The number of aggregate hours of EPL that any employee may receive over the entire qualifying period (March 11 through September 30, 2021) is limited to 600 hours for full-time employees, or a proportionally equivalent aggregate limit for part-time employees, employees on uncommon tours of duty, or employees with seasonal work schedules.

For regular full-time employees with an 80-hour biweekly tour of duty, the amount of EPL that an employee may be credited in a biweekly pay period may be limited if their hourly leave payment exceeds the \$2,800 limit, or \$35 an hour (\$2,800 divided by 80 biweekly hours = \$35 an hour). In other words, the crediting of EPL in a bi-weekly pay period may be impacted if the value of the employee's hourly leave payment exceeds \$35. It is the responsibility of the Employee, Supervisor, and Timekeeper to ensure that the allowable amount of hours is not exceeded on the timecard.

Examples:

Employee A's hourly adjusted rate of basic pay is \$35. Employee A would be able to use up to 80 hours of EPL in a biweekly pay period, since \$2,800 divided by \$35 equals 80 hours.

Employee B's hourly adjusted rate of basic pay is \$70. Employee B would be able to use only 40 hours of EPL in a biweekly pay period, since \$2,800 divided by \$70 equals 40 hours. In this case, Employee B could request another type of paid leave, as available and appropriate for the circumstances, to cover the remaining hours.

NOTE: These examples assume the employee's hourly leave payment is equal to the employee's adjusted rate of basic pay (including locality pay, special rate supplements, or the equivalent). If the employee receives additional pay as part of their leave payment, refer to the OPM Guidance for a specific example.

EMPLOYEE NOTIFICATION AND DOCUMENTATION

For all qualifying circumstances except (5) and (7), employees should provide notice of their intent to use EPL as soon as practicable. Generally, this means providing notice after the first workday for which an employee takes EPL.

For qualifying circumstances (5) and (7), an employee must provide the agency with notice of the intent to use EPL as soon as practicable, which will generally be prior to the first workday leave is used if the need for leave was foreseeable.

Employees are required to provide documentation containing the following information:

- (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) indicating that the employee understands (A) that approval of EPL is conditional based 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: This is required if this is the first instance of requesting EPL; for any subsequent request for EPL, the terms of this written agreement will continue to apply.)

Additional documentation may be required depending on the qualifying circumstance. OPM's "Guidance on COVID-19 Emergency Paid Leave" details specific requirements for each of the qualifying circumstances (please see References below).

EFFECT ON RETIREMENT AND OTHER LEAVE BENEFITS

Any EPL provided to an employee under section 4001 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).

EPL is creditable service for the same purposes as other paid leave. For example, periods of time covered by EPL are creditable service for purposes of determining an employee's annual leave accrual rate. Additionally, EPL 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.

To ensure accurate retirement processing, DoD Components should require employees to acknowledge approved dates of EPL by signing OPM Optional Form 5057 (https://www.opm.gov/forms/pdf_fill/of5057.pdf) before uploading the form into the employee's official personnel folder.

FREQUENTLY ASKED QUESTIONS

Q1. Is this leave the same as emergency paid sick leave under the Families First Coronavirus Response Act (FFCRA) that was available in 2020?

A1. No, EPL is a new and separate category of paid leave created on March 11, 2021, when President Biden signed the American Rescue Plan Act of 2021 into law. EPL has different requirements, qualifying circumstances, and features than the emergency paid sick leave that was available under FFCRA in 2020. Time codes associated with the FFCRA emergency paid sick leave cannot be used for EPL.

Q2. Are DoD NAF employees and DoD teachers eligible for EPL?

A2. No, DoD NAF employees and DoD teachers appointed under title 10 and title 20 are excluded from coverage by Section 4001 of the American Rescue Plan Act of 2021 and therefore have no authority to receive EPL.

Q3. DoD Employees were recently authorized administrative leave for COVID-19 vaccinations in accordance with the USD(P&R) memorandum, "Administrative Leave for Coronavirus Disease 2019 Vaccination of Department of Defense Employees", April 14, 2021. EPL may also be used for vaccinations in accordance with qualifying circumstance (8). Which form of leave should I use while obtaining my COVID-19 vaccination?

A3. The DoD policy memorandum indicates that employees will be granted administrative leave when obtaining COVID-19 vaccinations and, if needed, for recovery time. The use of administrative leave for vaccinations and recovery time preserves money in the Fund for other qualifying circumstances. The use of administrative leave in this instance will not count towards the bi-weekly hour limit under EPL. Additionally, it is more beneficial to use administrative leave for circumstance (8), as there is no effect on retirement annuity calculations when administrative leave is used.

If the employee needs additional time to recover from the vaccine beyond the 2 workdays authorized in the USD(P&R) memorandum, then EPL under circumstance (8) could be requested for that purpose. As a reminder, the time and attendance code in the USD(P&R) memorandum for administrative leave (LN) is different from the code used for EPL.

Q4. Do employees need to use a certain format when requesting EPL?

A4. Employees must request to use EPL and must sign a written agreement to use EPL. The information required in each of these is detailed in OPM's "Guidance on COVID-19 Emergency Paid Leave", April 29, 2021 which includes sample templates organizations may use or adopt for EPL requests and agreements.

Q5. If employees have a qualifying circumstance, why is the granting of EPL on a conditional basis?

A5. The granting of any EPL is conditional as it is dependent on the availability of money in the Emergency Federal Employee Leave Fund.

Q6. What happens if an employee is conditionally granted EPL, but later learn the Fund was exhausted and the EPL is not reimbursable?

A6. As indicated in the written agreement, employees may substitute other available paid leave or paid time off, 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 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.

Q7. The EPL regulation states that EPL may not be used by an employee concurrently with any other paid leave. What does this mean? Can an employee take another type of paid leave on the same day or in the same pay period while using EPL?

A7. "Concurrently" means that an employee cannot take EPL and another form of paid leave to cover the same period of absence. In essence, the employee cannot receive double pay for the same period of time. EPL is used "in place of" other paid leave an employee might otherwise use. Employees may use other types of paid time off during the same day, or within the same pay period, but the other paid time off cannot be applied to hours already covered by EPL.

Q8. How should EPL be coded in the time and attendance system?

A8. EPL will be coded with time code LV and an environmental hazard code of DW. This leave code will be available after pay processes in the Defense Civilian Payroll System (DCPS) on May 21, 2021.

Q9. What do I need to do if I already utilized EPL prior to publication of OPM's guidance?

A9. If EPL was used prior to the final guidance issued by OPM, timecard corrections are required. Timecard entries must be corrected to "LVDW" after May 21, 2021.

Q10. What is required of employees for DoD to submit a reimbursement request?

A10. The Defense Finance and Accounting Service (DFAS) will provide reimbursement information to Office of the Under Secretary of Defense (Comptroller) to certify and submit the reimbursement claim for the Department. It is imperative that timesheets are corrected following the DCPS system change in pay period ending June 5 2021, to ensure the data is accurate at the time of submission and certification.

Q11. Where can I find additional information on the use of EPL and the associated retirement reduction?

A11. Additional information on the retirement reduction associated with the use of EPL is forthcoming. This information will include procedures for ensuring an employee's use of EPL and the effect on retirement is documented accurately.

Q12. I am a civil service employee who remained in a DoD NAF retirement plan following a qualified portability move from a DoD NAF to a civil service position. Will taking EPL reduce my total service for the purposes of calculating my federal retirement annuity?

A12. Yes, if an employee uses EPL under section 4001, and that time would otherwise be covered by a NAF retirement plan, the NAF retirement plan must subtract the EPL from the total service used in the NAF annuity computation.

REFERENCES

H.R. 1319 – American Rescue Plan Act of 2021 (Public Law 117-2), section 4001
(<https://www.congress.gov/bill/117th-congress/house-bill/1319/text>)

Office of Personnel Management Memorandum for Heads of Executive Departments and Agencies (CPM 2021-15), "COVID-19 Emergency Paid Leave" dated April 29, 2021,
(<https://www.chcoc.gov/content/covid-19-emergency-paid-leave>)

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