

Approved for Release

Date

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DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT

HUMAN RESOURCES (HR) BULLETIN #255, FY21

SUBJECT: The Emergency Paid Leave Provision in the American Rescue Plan Act of 2021

EFFECTIVE DATE: March 11, 2021

QUALIFYING PERIOD EXPIRATION DATE: September 30, 2021, or until the Emergency Federal Employee Leave Fund (Fund) is exhausted

THE FUND IS AVAILABLE FOR REIMBURSEMENT THROUGH: September 30, 2022, or until the Fund is exhausted

SUPERSEDES: Not applicable

BACKGROUND: On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 (Public Law 117-2). Effective March 11, 2021, the law remains in effect until September 30, 2022. Section 4001 of the Act establishes 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,” which is funded by a \$570 million appropriated Emergency Federal Employee Leave Fund administered by the Director of the Office of Personnel Management (OPM). Section 4001 does not provide authority to offer paid leave outside of the Fund mechanism. OPM issued a Memorandum for Heads of Executive Department and Agencies, CPM-2021-15, “COVID-19 Emergency Paid Leave” on April 29, 2021. [COVID-19 Emergency Paid Leave | CHCOC](#)

PURPOSE: The bulletin provides Department of Commerce (DOC)-wide guidance on the implementation of the EPL provision of the Act, including the basic process for requesting reimbursement from the Fund.

SUMMARY: Section 4001 of the American Rescue Plan Act of 2021 provides up to 600 hours of EPL to eligible full-time employees, and a proportionally equivalent limit for part-time employees, as well as for employees on an uncommon tour of duty, and on a seasonal work schedule when they meet one of the 8 qualifying circumstances, as long as there is funding in the \$570 million Fund.

In accordance with the Act, when the Fund is exhausted, EPL cannot be used.

The granting of **all** EPL is tentative and conditional upon monies being available in the Fund. Before an employee is granted conditional EPL for the first time, they must agree in writing, using the “Employment Agreement in Connection with the Emergency Paid Leave (EPL) Provided Under

Section 4001 of the American Rescue Plan of 2021” (attached) that, if any EPL is subsequently granted to them and is not available due to exhaustion of the Fund, the employee must either retroactively use a form of personal paid leave or paid time off, or will retroactively be placed on leave without pay (LWOP) for the affected period and voluntarily reimburse the bureau/operating unit (OU) the overpayment, including through offset of Federal payments (including salary payments) to recover the amount owed, if necessary. Regulatory salary offset procedures do not apply when an employee consents to recovery (Title 5, Code of Federal Regulations (CFR) § 550.1102(b)).

Employees must follow the same procedures for requesting EPL as they do for other forms of paid leave, when practicable. For approval, employees must provide required documentation to their supervisor on the qualifying circumstance for which they are requesting EPL, by using the attached “COVID-19 Emergency Paid Leave (EPL) Employee Notification and Leave Request Form.”

EPL is a separate paid leave entitlement and does not affect balances of an employee’s personal paid leave accounts. It is paid at the same hourly rate as annual leave; however, the number of EPL hours that may be credited is subject to a biweekly limitation. In any biweekly period, an employee may be credited with hours of EPL only to the extent that the total amount of the payment for the EPL 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 a regular full-time employee with an 80-hour biweekly schedule, the \$2,800 limit equates to a \$35.00 hourly threshold.

An employee may request and must be granted EPL for which the employee is eligible (subject to Fund availability) to cover a past period of LWOP occurring during a qualifying period, and may be permitted to retroactively substitute EPL for personal paid leave used during a qualifying period, upon a decision by the supervisor that the employee lacked information about this new, temporary paid leave program or was not allowed to use EPL at the time.

While periods of EPL are considered creditable service for the same purposes as other paid leave (i.e., determining annual leave accrual rate, retirement eligibility, computing the high-3 average salary, and applying retirement deductions and agency contributions), periods of EPL reduce an employee’s total service used to calculate any Federal civilian retirement annuity benefit (e.g., the Civil Service Retirement System (CSRS) or the Federal Employees’ Retirement System (FERS)). However, any retirement-creditable basic pay generated by EPL is subject to employee retirement deductions and agency retirement contributions.¹ EPL that is used will be tracked using the attached “Emergency Paid Leave Tracking” form OF 5057, dated April 2021.

¹ Title 5 U.S.C. 8334 and 8422 require the employing agency to deduct retirement deductions from an employee’s basic pay. Section 4001(c)(4) of the American Rescue Plan Act mandates that EPL hours are not creditable in the retirement annuity computation. OPM does not have the authority to change these requirements.

ELIGIBILITY: Employees in the executive branch for whom annual and sick leave is provided under subchapter I of chapter 63 of Title 5, United States Code (U.S.C.). An employee 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)).

INELIGIBLE: Employees who are excluded from coverage under the Title 5 annual and sick leave program such as intermittent employees and leave-exempt Presidential appointees.

DEFINITIONS:

Child Care Provider – A provider who receives compensation for child-care services on a regular basis. The term includes a center-based child-care provider, a group home child-care provider, a family child-care provider, or other provider of child-care services for compensation licensed, regulated, or registered under State law as described in 42 U.S.C. 9858c(c)(2)(E); and satisfies the State and local requirements, including those referred to in 42 U.S.C. 9858c(c)(2)(F).

Family Member – Has the meaning given that term in OPM’s annual and sick leave regulations at 5 CFR § 630.201.

Health Care Provider – Has the same meaning given that term in OPM’s Family Medical Leave Act (FMLA) regulations at 5 CFR § 630.1202.

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” (ADLs) or “instrumental activities of daily living” (IADLs). ADLs include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing, and eating. IADLs include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using the telephones and directories, using a post office, etc.

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 they were quarantined or self-quarantined. For this purpose, “individual” does not include persons with whom the employee has no personal relationship.

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).

Place of Care – A physical location in which care is provided for the employee’s child/family member while the employee works. 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.

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 unable to telework/remote work). 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 (including unable to telework/remote work).

School – Means an elementary school or secondary school, except that the term does not include any education beyond grade 12.

Son or Daughter – Has the meaning given that term in OPM’s FMLA regulations at 5 CFR § 630.1202 – that is, 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.

Unable to Work – The employee would have been scheduled to work (or be on other paid leave) but for the qualifying circumstance. Telework-ready employees are not considered to be unable to work solely because they are required to isolate or self-quarantine; they are considered able to work.

POLICY:

I. Qualifying Reasons for EPL

In order to use EPL, an employee must be **unable to work** (including unable to telework/remote work) during some period(s) of time between March 11–September 30, 2021, 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 the 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.

Qualifying circumstance (1) – is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.

- An employee is subject to “quarantine” when exposed to COVID-19, as described in the Centers for Disease Control and Prevention (CDC) guidance; and 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 CDC.

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

- A health care provider may advise the employee to self-quarantine based on a belief that (A) the employee has or may have COVID-19; or (B) the employee is particularly vulnerable to COVID-19.

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

- The individual must depend on the employee to care for them and they must meet the conditions described in qualifying circumstance (1) or (2).

Qualifying circumstance (4) – is experiencing symptoms of COVID-19 and seeking a medical diagnosis

- In determining whether this circumstance applies, the bureau/OU and employees should follow the latest CDC guidance regarding COVID-19 symptoms.
- Leave under this circumstance is limited to the time the employee is unable to work because the employee is taking affirmative steps to obtain a medical diagnosis, such as making, waiting for, or attending an appointment for a test for COVID-19.

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

- For purposes of applying the EPL provision, the eligible child-care provider does not need to be compensated or licensed if they are a family member or friend, such as a neighbor, who regularly cares for the employee’s child.
- 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 unable to telework/remote work) as a result of providing care. Generally, an employee does not need to take such leave if a co-parent, co-guardian, usual child-care provider, or other suitable person is available to provide the care the child needs.
- The closure of schools or the use of virtual learning instruction models must be due to COVID-19 precautions. The non-availability of a child-care provider must be due to COVID-19 precautions.

Qualifying circumstance (6) – is experiencing any other substantially similar condition

- This circumstance applies only if the OPM Director 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, and the Director for Human Resources Management and Chief Human Capital Officer (Director, OHRM) will notify bureaus/OU’s if/when this situation exists.
- Bureaus/OU’s may not approve EPL under this qualifying circumstance prior to OPM approving a defined circumstance as being a “substantially similar condition” warranting treatment as a qualifying circumstance, and OHRM notifies the bureaus/OU’s.
- Bureaus/OU’s must notify the Director OHRM if they identify a possible “substantially similar condition” not already covered by the other qualifying circumstances listed in this section, and the Director will in turn consult with OPM, who will determine whether to define that circumstance as a qualifying circumstance.

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

- For this circumstance to apply, the family member must (A) have a mental or physical disability or be 55 years of age or older, and (B) be incapable of self-care.

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

OPM encourages agencies to address time off related to COVID-19 vaccination by granting administrative leave rather than EPL. Therefore, the DOC will use its established policy, “Excused Absence for COVID-19 Vaccinations” (March 9, 2021) for this qualifying circumstance. 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 EPL). If an employee claims they need more than the 4 hours of administrative leave provided in the March 9, 2021 policy, EPL may be granted.

II. Crediting of Leave Hours and Payments

1. Employee Request. An employee is entitled to use EPL upon request if the employee meets all conditions and requirements as described in this bulletin. A supervisor **may not** require an employee to use their personal paid leave before using EPL. If an employee has more hours of qualifying circumstances than hours of EPL (due to the limitations described in paragraph 4 below), the employee may request *when* the EPL hours are used during the biweekly pay period, and the supervisor should accommodate the employee’s request, while also accounting for mission considerations. Employees must use the attached “COVID-19 Emergency Paid Leave (EPL) Employee Notification and Leave Request Form.”
2. Relationship to Other Leave. EPL is a separate paid leave entitlement used in place of an employee’s personal paid leave or other paid time off an employee might otherwise use. It does not affect balances of the employee’s personal paid leave or other paid time off. An

employee may not use EPL concurrently² with other personal paid leave or paid time off; however, they may use other types of personal leave or paid time off in the same biweekly pay period, if applied to hours not covered by EPL (subject to the normal rules applicable to each type of personal paid leave).

3. Rate of Leave Payment.

- a. EPL 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 (Fair Labor Standards Act) 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 EPL, 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).

4. Maximum Limitations on Leave Hours. The amount of EPL hours with which an employee may be credited is subject to the limitations described below:

- a. Biweekly hours limit. In any biweekly pay period, an employee may be credited with hours of EPL 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 (e.g., \$1,400 for a part-time employee with a 40-hour biweekly tour instead of a full-time 80-hour biweekly tour, since $40/80 \times \$2,800 = \$1,400$).

IMPORTANT: For a regular full-time employee with an 80-hour biweekly tour of duty, the \$2,800 biweekly limit equates to a **\$35 hourly threshold**. In other words, the crediting of EPL in a biweekly pay period will be affected by the biweekly limit if the value of the hourly leave payment would exceed \$35. It is the responsibility of the supervisor and employee to compute the number of EPL hours the individual may receive.

² EPL and personal paid leave or other paid time off may not be used for the same period of time, essentially receiving double pay.

- Note: The National Finance Center (NFC) has a spreadsheet that can be used to help compute the number of EPL hours an employee may receive, located at [Attachment #3 - EPL biweekly limit tool \(5-4-21\).xlsx](#)

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 EPL 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 EPL 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.

As previously described, some employees receive additional pay as part of their leave payments. The total value of EPL (including such additional pay) in a biweekly pay period may not exceed the applicable biweekly limit, which will result in limiting the number of EPL hours that may be granted to the employee.

- b. Aggregate hours limit. The number of aggregate hours of EPL 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 (e.g., 300 hours for a part-time employee with 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 (e.g., 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 4a and the aggregate limit in paragraph 4b, an employee may not be credited with any EPL hours if the Fund has been exhausted.
5. Leave Increments. EPL is used in the same hourly increments as regular personal paid leave (1/4). In applying the paragraph 4 limitations, 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 4a or the aggregate limit in paragraph 4b 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 EPL 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, except for holidays.
8. Holidays. A holiday is a non-workday; thus, EPL may not be used on a holiday. It also may not be used on any other non-workday 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 a flexible schedule under which an employee may elect to vary daily work hours, the bureau/OU may allow the employee to determine (within agency-established limits) the number of scheduled hours during which EPL will be used on a given day.
10. Change in Tour of Duty. For purposes of applying the aggregate limit in paragraph 4b, a change in an employee's biweekly tour of duty during the qualifying period for using EPL requires adjustments. The aggregate limit must be recomputed to reflect the new tour of duty. The number of EPL 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 EPL 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 $300/600 \times 100 \text{ hours} = 50 \text{ hours}$).
11. Change in Employing Agency. The biweekly limit in paragraph 4a and the aggregate limit in paragraph 4b are per-employee limits. For example, an employee may not use more than 600 hours in aggregate even if the employee changes agencies or bureaus/OUTs in the DOC. The gaining organization must determine how many hours of EPL a newly hired or transferred employee has used under another Federal agency or bureau/OU.³
12. Retroactive Use. An employee may request, and the bureau/OU **must grant**, EPL for which the employee is eligible (subject to Fund availability) to cover a past period of leave without pay (LWOP) occurring during a qualifying period (see I. Qualifying Reasons for EPL). If the employee used a personal paid leave or other paid leave to cover the period for which EPL could have been used, the supervisor **may allow** the employee to substitute EPL retroactively on making a determination that the employee lacked information on this new, temporary paid leave program or was not allowed to use emergency paid leave at the time. EPL is an employee entitlement; therefore, every effort should be made to approve a retroactive request from an employee who meets one of the qualifying circumstances.
13. The fact that an employee was able to use EPL 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).

³ EPL must be tracked on OPM's "Emergency Paid Leave Tracking" form OF-5057, dated April 2021. The gaining bureau/OU must use this form to determine the amount of EPL the employee is eligible to use when newly hired or transferred from another agency or DOC bureau/OU.

PROCEDURES:

Employee Consent – Prior to granting EPL to an employee who meets one of the eligibility conditions, the employee must be informed that the use of EPL **is tentative and conditional upon monies being available in the Fund**. Before an employee is granted EPL for the first time, the employee must agree in writing, using the “Employee Agreement in Connection with Emergency Paid Leave (EPL) Provided Under Section 4001 of the American Rescue Plan of 2021” (attached) that, if any EPL subsequently granted to the employee is not available due to exhaustion of the Fund, the employee will apply another form of personal paid leave or paid time off (as available to the employee and as appropriate for the given circumstance; or limited amounts of administrative leave that may be granted by the bureau/OU in accordance with established principles) or will retroactively be placed on LWOP for the affected period and voluntarily provide monetary reimbursement to the bureau/OU to cover the resulting overpayment debt (5 CFR § 550.1102 (b)).

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 bureau/OU that granted conditional EPL to offset Federal payments (including salary payments) to the employee to recover the amount owed.⁴

An employee may also request to use advanced annual or advanced sick leave (as appropriate) under the normal rules governing such advances of leave.

Employee Notification, Documentation, and Recordkeeping

1. *Requirement for employee to provide notice.*
 - a. For all qualifying circumstances except (5) and (7), a supervisor may require an employee to follow leave requesting procedures after the first workday (or portion thereof) for which an employee takes EPL. However, nothing precludes an employee from requesting EPL sooner. Employees are encouraged, but not required, to notify their supervisor about their EPL request as soon as practicable. If an employee fails to give proper notice, the supervisor should give them notice of the failure and an opportunity to provide the required leave request and documentation prior to denying the request for leave.
 - b. For qualifying circumstances (5) and (7), an employee must provide the supervisor 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. If an employee fails to give proper notice, prior to denying a request for leave, the supervisor should give the employee notice of the failure and an opportunity to provide the required documentation needed for approval.
 - c. Generally, it is 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 to do so personally.

⁴ 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.

- d. Generally, it is reasonable for the supervisor to require oral notice and sufficient information for them to determine whether the requested leave meets the conditions for EPL. The supervisor may consult with their servicing human resources office (SHRO) for guidance if need be.
- e. Generally, it is reasonable for the supervisor to require the employee to comply with the bureau/OU's usual notice and procedural requirements for requesting leave, and in accordance with any applicable bargaining unit obligations, absent unusual circumstances.

2. *Requirement for employee to provide documentation (including employee certifications).*

- a. An employee is required to provide the supervisor with documentation containing the below information as soon as practicable, which in most cases will be when the employee provides notice under paragraph 1 above. Employees shall provide this information by submitting, "COVID-19 Emergency Paid Leave (EPL) Employee Notification and Leave Request Form" (attached) to their supervisor.
 - (1) Date(s) for which EPL is requested;
 - (2) Description of the qualifying circumstance justifying use of EPL;
 - (3) Written statement (certification) that they are unable to work (including unable to telework/remote work) because of the cited qualifying circumstance and that they will meet the conditions associated with the cited qualifying circumstance during the use of EPL; and
 - (4) Written statement (certification) meeting the requirements described in "Employee Consent" showing the employee understands (A) approval of EPL 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. (See Section II. 4. Maximum Limits on Leave Hours.)
- b. To confirm EPL eligibility for qualifying circumstance (1), an employee must provide to the supervisor the name of the government entity that issued the quarantine or isolation order.
- c. To confirm EPL eligibility based on qualifying circumstance (2), an employee must provide to the supervisor the name of the health care provider who advised the employee to self-quarantine due to concerns related to COVID-19.
- d. To confirm EPL eligibility based on qualifying circumstance (3), an employee must provide to the supervisor the same documentation described in paragraph b or c, as applicable.
- e. To confirm EPL eligibility based on qualifying circumstance (4), an employee must provide to the supervisor written certification that they are experiencing symptoms of COVID-19 and taking immediate steps to obtain a medical diagnosis.
- f. To confirm EPL eligibility based on qualifying circumstance (5), an employee must provide to the supervisor—
 - (1) The name of the son or daughter being cared for;
 - (2) The name of the school, place of care, or child-care provider that meets the conditions in qualifying circumstance (5) and a written description of how those conditions are satisfied.
 - (3) A written certification that no other suitable person is available to care for the son or daughter during the period for which they take EPL; and

- (4) A written explanation regarding why their circumstances (e.g., ages of children, number of children, special needs of children, lack of other adults in the home) make them unable to work (including unable to telework/remote work) during the requested hours of leave.
- g. To confirm EPL eligibility based on qualifying circumstance (6), an employee must provide to the supervisor any documentation the Director of OPM requires or recommends with respect to a particular substantially similar condition.
- h. To confirm EPL eligibility based on qualifying circumstance (7), an employee must provide to the supervisor documentation as follows—
 - (1) The name of the family member with a mental or physical disability and supporting documentation (that addresses the definition “Mental or Physical Disability” as defined in this bulletin), if applicable;
 - (2) The name/age of the family member who is 55 years or older, if applicable.
 - (3) A written description explaining how that family member is “incapable of self-care” (as defined in this bulletin), and how the hours of leave requested are necessary to provide essential care.
 - (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 why circumstances of the care situation make them unable to work (including telework) during the requested hours of leave.
- i. To confirm EPL eligibility based on qualifying circumstance (8), an employee must provide to the supervisor a written certification through the attached “COVID-19 Emergency Paid Leave (EPL) Employee Notification and Leave Request Form” 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 documentation requirements, a supervisor is authorized to request additional information, explanations, or certifications from an employee if there is reason to believe that EPL is not being used appropriately.

Effect on Retirement and Other Leave Benefits

- 1. Except as provided in paragraph 2 below, a period during which EPL is used 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, retirement eligibility, and computing the high-3 average salary. Also, 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 EPL is subject to employee retirement deductions and agency retirement contributions.⁵

⁵ Title 5 U.S.C. 8334 and 8422 require the employing agency to deduct retirement deductions from an employee’s basic pay. Section 4001(c)(4) of the American Rescue Plan Act mandates that ELP hours are not creditable in the retirement annuity computation. OPM does not have the authority to change these requirements.

2. Any EPL provided to an employee **reduces** the employee's total service used to calculate any Federal civilian retirement annuity benefit (e.g., a CSRS annuity benefit computed under 5 U.S.C. 8339 or a FERS annuity benefit computed under 5 U.S.C. 8415).⁶
 - a. When OPM calculates an employee's retirement annuity benefit, total creditable service will be reduced by the amount of EPL used.
 - b. Hours of EPL remain creditable service for (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. One percent of \$75,000 x 30 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. One percent of \$75,000 x 29 years and 8 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.

Note: For more detailed information, see OPM BAL 21-102, "The American Rescue Plan Act of 2021- Emergency Paid Leave Effect on Retirement," dated April 29, 2021. [Benefits Administration Letter 21-102 \(opm.gov\)](#)

⁶ If retirement contributions and deductions are not withheld from basic pay generated by EPL because an employee is ineligible for retirement coverage, the affected service will not be creditable for establishing eligibility to a retirement annuity benefit or for computing the high-3 salary. EPL hours received during a period of non-deduction service may reduce the total service if the employee later becomes eligible for retirement.

CODING TIME AND ATTENDANCE (T&A):

The NFC provided T&A coding guidance on May 18, 2021, through CAPPs Notification, Reference Number: NFC-1620070177. The NFC is implementing system changes in Pay Period (PP) 10, 2021. The Transaction Descriptors will be made available for use no later than May 23, 2021, for timesheets for PP10 and corrected timesheets for leave approved as of March 11, 2021. These values have been added to webTA and are available for use through PP 20 (September 26–October 9, 2021), or until the Fund is exhausted, whichever comes first.

Transaction Descriptors	Transaction Code	Suffix	TDC Definition	Description
87	01		EPL	ARPA EMERGENCY PAID LEAVE
87	01	1	EPL	ARPA EMERGENCY PAID LEAVE – SHIFT 1
87	01	2	EPL	ARPA EMERGENCY PAID LEAVE – SHIFT 2
87	01	3	EPL	ARPA EMERGENCY PAID LEAVE – SHIFT 3
87	11		EPL	ARPA EMERGENCY PAID LEAVE – NIGHT DIFF

Servicing Human Resources Offices (SHRO) Responsibilities

To ensure proper tracking of EPL, the SHROs must run a report for their serviced areas, biweekly from the webTA system, on the use of EPL. The report must include employees’ names and their individual hours of EPL used.

Documenting EPL in the OPF. The SHRO **must** document an employee’s EPL use through the OPM “Emergency Paid Leave Tracking” form (attached). It must be placed in the employee’s Official Personnel Folder (OPF) for permanent storage to ensure EPL hours are recorded for retirement annuity estimates, so the SHRO can provide the EPL hours used by the employee to the NFC if necessary (at retirement).

Retirement Estimates. When providing a retirement estimate to an employee, the total hours of EPL should be excluded from the total service so that the employee receives an accurate estimate of the future retirement benefit.

Transfer of Employee. When Standard Form 1150, “Record of Leave Data,” is prepared for a transferring employee, the aggregate amount of EPL used by the employee must be recorded in the Remarks section (block 24) as of the date of transfer.

Recordkeeping.

1. Supervisors are required to retain all documentation provided by employees regarding requests for EPL for a period of 4 years, regardless of whether the leave was granted or denied. If an employee provides oral statements to support their request, the supervisor is required to document and maintain such information for their record.
2. Since EPL is a temporary benefit, OPM is not creating a new leave data element in its Enterprise Human Resources Integration (EHRI) database; therefore, agencies will not be required to report usage of EPL as part of EHRI data reporting.

NFC Documentation of the Individual Retirement Record (IRR) – To reduce the total service used in calculation of annuity by the total hours of EPL, the NFC must annotate the separation and transfer or retirement IRR in remarks column (4) with EPL hours used by an employee during the creditable period of service. The data entered in column (4) must reference Public Law 117-2 with the total EPL hours used by an employee.

EPL hours received under non-deduction service need to be separated from EPL hours received under CSRS/FERS deduction service. EPL hours received while subject to non-deduction service will not reduce the total service used in the calculation of annuity. The hours of EPL received under non-deduction service need to be documented on the IRR. Generally, non-deduction service performed on or after January 1, 1989, is not creditable for any retirement purpose under FERS.

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 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.

Each agency with covered employees using EPL must submit to OPM’s Office of the Chief Financial Officer a request for reimbursement from the Fund, using OPM’s “Agency Request for COVID-19 Emergency Paid Leave Reimbursement” form ([see link here](#)).

Requests must be submitted to OPM via the following email:

OPMARPAServices@opm.gov.

For the purposes of applying the first-come/first-served protocol, OPM will not consider any 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 reimbursement requests until after the earliest-allowed-receipt point in time. Agencies will not enter into an Interagency Agreement (IAA) with OPM.

2. In accordance with Antideficiency Act requirements, each agency should consider the budgetary impact of leave payments to ensure that obligating and disbursement amounts do not exceed agency apportionments.
3. OPM will remit the reimbursement payment to the agency via the Treasury Department's Intra-Governmental Payment and Collection (IPAC) mechanism.
 - a. It is the responsibility of each bureau/OU, in consultation with their Chief Financial Officer, to determine the standard operating procedure for requesting reimbursement.
 - b. Requests for reimbursement may not be submitted until the leave covered by the request has been used by the employee. Requests must be associated with completed biweekly pay periods.
 - c. Separate reimbursement requests must be made for each biweekly pay period. The request must specify: 1) the biweekly pay period, by the pay period end date, 2) total number of leave hours covered, 3) total number of employees using the covered leave, and 4) total dollar value of the covered leave.
 - d. Reimbursement costs do not consider any benefit costs associated with basic pay generated by EPL.
3. OPM will provide regular updates on the balance remaining in the Fund on the OPM website at <https://www.opm.gov/policy-data-oversight/pay-leave/ARPA>.

Note: For more detailed information, see OPM BAL 21-303, "Emergency Paid Leave Reimbursement" dated April 2021. [Benefits Administration Letter 21-303 \(opm.gov\)](#)

OFFICE OF POLICY AND BENEFITS: OPBservices@doc.gov