



Defense Logistics Agency

Guidance on the American Rescue Plan Act of 2021 COVID-19 Emergency Paid Leave May 25, 2021

SUBJECT: American Rescue Plan Act of 2021 Emergency Paid Leave

REFERENCES:

- a. Defense Civilian Personnel Advisory Service (DCPAS) Memo, "COVID-19 Emergency Paid Leave," dated May 19, 2021.
- b. DCPAS Memo, "Administrative Leave for Coronavirus Disease 2019 Vaccination of Department of Defense Employees," dated April 14, 2021.
- c. Office of Personnel Management (OPM) Memorandum, "COVID-19 Emergency Paid Leave," April 29, 2021, <https://www.chcoc.gov/content/covid-19-emergency-paid-leave>
- d. The American Rescue Plan Act of 2021, Section 4001, <https://www.congress.gov/bill/117th-congress/house-bill/1319/text#toc-H210C2D88196E4247824F11E6DF3886A8>.
- e. Title 5, Code of Federal Regulations (CFR), <https://www.govinfo.gov/content/pkg/CFR-2012-title5-vol1/pdf/CFR-2012-title5-vol1.pdf>
- f. Title 5, United States Code (U.S.C.), <https://www.govinfo.gov/content/pkg/USCODE-2011-title5/pdf/USCODE-2011-title5.pdf>

BACKGROUND:

- a. Section 4001 of the American Rescue Plan Act (ARPA) of 2021 established a new category of emergency paid leave (EPL) for certain groups of federal employees based on specific COVID-19-related qualifying circumstances. This new emergency paid leave is funded by a \$570 million Emergency Federal Employee Leave Fund (hereafter referred to as the "Fund") administered by the Office of Personnel Management (OPM). This emergency paid leave is not an extension of the Families First Coronavirus Response Act (FFCRA) passed in April 2020; rather, it is a new form of paid leave with different qualifying circumstances and a specific, dedicated fund.
- b. 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.

- c. Section 4001 covers 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.

PROCEDURES:

1. Fund Administration

- a. 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.
- b. DLA 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.
 - (1) 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) 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)).
 - (2) 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 DLA to offset federal payments (including salary payments) to the employee to recover the amount owed.
 - (3) 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.
- c. If the Fund approaches the point where it will be exhausted, reimbursement requests will be processed on a first-come, first-served basis, based on the date and time the OPM receives each agency reimbursement request.

2. Qualifying Circumstances

- a. To use emergency paid leave, an employee must certify that he/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. Since the term "work" includes telework, an employee who is able to telework is considered able to work.
 - (1) *Qualifying circumstance (1) – is subject to a Federal, State, or local quarantine or isolation order related to COVID-19.*

- i. 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.
 - ii. 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).
 - iii. An employee is subject to “quarantine” when exposed to COVID-19, as described in CDC guidance.
- (2) *Qualifying circumstance (2) – has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.*
 - i. The term “health care provider” has the same meaning given that term in OPM Family and Medical Leave Act (FMLA) regulations at 5 CFR 630.1202.
- (3) *Qualifying circumstance (3) – is caring for an individual who is subject to such an order or has been so advised.*
 - i. 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/she were quarantined or self-quarantined. For this purpose, “individual” does not include persons with whom the employee has no personal relationship.
 - ii. 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).
- (4) *Qualifying circumstance (4) – is experiencing symptoms of COVID-19 and seeking a medical diagnosis.*
 - i. In determining whether this circumstance applies, follow the latest CDC guidance regarding COVID–19 symptoms.
 - ii. 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.
- (5) *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 childcare provider of such son or daughter is unavailable, due to COVID-19 precautions.*

- i. 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.
- ii. The term “school” means an elementary school or secondary school, except that the term does not include any education beyond grade 12.
- iii. The term “place of care” means a physical location in which care is provided for the employee’s child while the employee works for DLA. 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. The term “childcare provider” means a provider who would normally be available to care for an employee’s child (including a center-based childcare provider, a group home childcare provider, a family childcare provider, a family member, a friend, or neighbor), regardless of whether the care is compensated.
- iv. 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.
- v. The closure of schools or the use of virtual learning instruction models must be due to COVID-19 precautions. The nonavailability of a childcare provider must be due to COVID-19 precautions.

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

- i. 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. Emergency paid leave under this qualifying circumstance may not be approved prior to OPM approving a defined circumstance as being a “substantially similar condition” warranting treatment as a qualifying circumstance.

(7) *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.*

- i. The term “family member” has the meaning given that term in OPM’s annual and sick leave regulations at 5 CFR 630.201.
- ii. 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).
- iii. 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” (ADLs) or “instrumental activities of daily living” (IADLs). 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.
- iv. The term “place of care” means a physical location in which care is provided for the family member while the employee works for DLA. The physical location does not have to be solely dedicated to such care.
 - v. 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.
- (8) *Qualifying circumstance (8) – is obtaining immunization related to COVID-19 or is recovering from any injury, disability, illness, or condition related to such immunization.*
- i. Please refer to the guidance issued on the use of administrative leave for COVID-19 vaccination purposes. Administrative leave should be granted for both the time spent getting the vaccination including necessary travel time (up to 4 hours per vaccination) and for a reasonable recovery time (up to two workdays per dose). If an employee claims he or she needs more time to recover, a determination may be made to grant emergency paid leave at that point.

3. Crediting of Leave Hours and Payments

- a. *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. Employees are not required to use other available paid leave before using emergency paid leave.
- b. *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. Employees 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.
- c. *Leave payment.*
 - (1) Emergency paid leave is paid at the same hourly rate as annual leave.
 - (2) 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).
 - (3) For certain employees, the leave payment includes additional payments such as—
 - i. recurring overtime/premium payments (such as standby duty premium pay related and Fair Labor Standards Act (FLSA) overtime pay associated with regularly scheduled overtime hours; law enforcement availability pay);
 - ii. nonforeign area cost-of-living allowances and post differentials; or
 - iii. night pay under 5 U.S.C. 5545(a).
 - (4) 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).

- i. 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.

d. *Limitation on leave hours.*

- (1) *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—
 - i. \$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
 - ii. 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 $40/80 \times \$2,800 = \$1,400$).
 - iii. 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.
 - iv. NOTE 2: 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.

(2) *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—

- i. 600 hours of paid leave for each regular full-time employee;
 - ii. 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 $40/80 \times 600 = 300$);
 - iii. 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 $144/80 \times 600 = 1,080$); or
 - iv. 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 $\frac{1}{2} \times 40/80 \times 600\text{hours} = 150$ hours).
- e. *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 (i.e., 1/4th of an hour). In applying the limitations in paragraph d, payment may not be made for an increment of leave if it would cause the total leave payments to exceed the applicable limitation.
- f. *Part-time tour of duty.* In determining the proportional equivalent of the biweekly or the aggregate limit for a part-time employee, the part-time tour of duty is the tour of duty established for leave-charging purposes.

- g. *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.
- (1) A seasonal employee is not scheduled to work during the off-season and, thus, may not use emergency paid leave during off-season periods.
 - (2) 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.
 - (3) 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.
 - (4) 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.
 - (5) 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.
 - (6) 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.)
- g. *Holidays.* A holiday is a non-workday; thus, emergency paid leave 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.
- h. *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 employee is entitled to emergency paid leave during the specified time periods.
- i. *Change in tour of duty.* For purposes of applying the aggregate limit, 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 $300/600 \times 100$ hours = 50 hours).

- j. *Change in employing agency.* The biweekly and aggregate limits 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.
- k. *Retroactive use.* An employee may request 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. If an employee used other paid leave to cover a period of time for which emergency paid leave could have been used, the employee may 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.

4. Employee Notification and Documentation

a. *Requirement for employee to provide notice.*

- (1) For all qualifying circumstances except (5) and (7), employees must follow reasonable notice procedures after the first workday (or portion thereof) for which he/she 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 sooner. Employees are encouraged, but not required, to notify their supervisor about their request for emergency paid leave as soon as practicable. If an employee fails to give proper notice, the supervisor should give him or her notice of the failure and an opportunity to provide the required documentation prior to denying the request for leave.
- (2) For qualifying circumstances (5) and (7), an employee must provide notice of the intent to use emergency paid leave by submitting Appendix 1, *OPM ARPA EPL Employee Notification and Leave Request Form*, 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.
- (3) 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.
- (4) Employees must comply with DLA's normal notice and procedural requirements for requesting leave, absent unusual circumstances.
- (5) Employees should use the excused absence leave code "LV" and reason code "DW" in EAGLE to record qualifying circumstances identified in the American Rescue Plan Act 2021.

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

- (1) For all requests for emergency paid leave, an employee is required to provide documentation containing the following information by submitting Appendix 1, *OPM ARPA EPL Employee Notification and Leave Request Form*, as soon as practicable, which in most cases will be when the employee provides notice:
 - I. Date(s) for which EPL is requested;
 - II. Description of the qualifying circumstance justifying use of EPL;
 - III. 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
 - IV. Written statement (self-certification) by submitting Appendix 2, *OPM Employee Agreement in Connection with ARPA EPL*, 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: Employees must sign this statement before approving an employee's first use of EPL).
- (2) To confirm eligibility for EPL for qualifying circumstance (1), an employee must provide the governmental quarantine or isolation order applicable to the employee.
- (3) To confirm eligibility for EPL based on qualifying circumstance (2), an employee must provide the name of the health care provider who advised the employee to self-quarantine due to concerns related to COVID-19.
- (4) To confirm eligibility for EPL based on qualifying circumstance (3), an employee must provide the same documentation as for qualifying circumstance (1) or (2), as applicable.
- (5) To confirm eligibility for EPL based on qualifying circumstance (4), an employee must provide a written self-certification that the employee is experiencing symptoms of COVID-19 and taking immediate steps to obtain a medical diagnosis.
- (6) To confirm eligibility for EPL based on qualifying circumstance (5), an employee must provide—
 - i. the name of the son or daughter being cared for;
 - ii. the name of the school, place of care, or childcare provider and a brief description of the situation (i.e., closure, use of on-line instruction, unavailability of the childcare provider); and
 - iii. 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.
- (7) To confirm eligibility for EPL based on qualifying circumstance (6), an employee must provide any documentation the Director of OPM requires or recommends with respect to a particular substantially similar condition.
- (8) To confirm eligibility for EPL based on qualifying circumstance (7), an employee must provide documentation as follows—

- i. 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, if applicable;
 - ii. the name and age of the family member that is 55 years or older, if applicable;
 - iii. a written certification by the employee that the identified family member is “incapable of self-care;”
 - iv. 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
 - v. a written explanation regarding why the employee’s care responsibilities make the employee unable to work (including telework) during the requested hours of leave.
- (9) To confirm eligibility for EPL based on qualifying circumstance (8), an employee must provide 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.
- i. In addition to the above generally required documentation requirements, DLA is authorized to request additional reasonable information, explanations, or certifications from an employee if there is reason to believe that EPL is not being used for the qualifying circumstance(s) invoked by the employee.
 - ii. Once an employee has met the requirements and provided documentation, DLA may grant conditional approval of EPL. However, DLA may deny EPL based a 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 before EPL is denied. DLA may conditionally approve use of EPL pending receipt of acceptable documentation and other information; however, it must ensure that the employee understands his/her obligations to resolve the overpayment of leave if the final decision is to deny the leave.

5. Effect on Retirement and Other Leave Benefits.

- a. Periods 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, 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).

- b. 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). When OPM calculates an employee's retirement annuity benefit, total creditable service will be reduced by the amount of emergency paid leave used.
- c. 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.
- d. *Examples*
 - (1) *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.
 - (2) *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. $1\% \text{ of } \$75,000 \times 30 \text{ years of service} = \$22,500$.
 $\$22,500/12 = \$1,875 \text{ monthly annuity}$

If the same employee received 600 EPL hours in 2021: 600 EPL hours converts to 3 months and 14 days.
 $30 \text{ years} - 3 \text{ months } 14 \text{ days} = 29 \text{ years } 8 \text{ months } 16 \text{ days}$
 $1\% \text{ of } \$75,000 \times 29 \text{ years and } 8 \text{ whole months } (29.666667) = \$22,250$
 $\$22,250/12 = \$1,854 \text{ monthly annuity (rounded down to the next lower whole dollar amount)}$

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

Appendix 1

OPM American Rescue Plan Act (ARPA) COVID-19 Emergency Paid Leave (EPL) Employee Notification and Leave Request Form		
Identifying Information		
Employee name		
Phone number (work)	Email address (work)	
Name of organization (agency, office, division, branch, etc.)		
EPL Qualifying Circumstance Causing the Employee to be Unable to Work		
Employee is unable to work because the employee is—		
<div style="display: flex; flex-direction: column; gap: 10px;"> <div><input type="checkbox"/> (1) Subject to COVID-19 governmental quarantine or isolation order/advisory</div> <div><input type="checkbox"/> (2) Advised by health care provider to self-quarantine due to COVID-19 concerns</div> <div><input type="checkbox"/> (3) Caring for an individual subject to (1) such order/advisory or (2) such advice</div> <div><input type="checkbox"/> (4) Experiencing symptoms of COVID-19 and actively seeking (i.e., taking immediate steps to obtain) a medical diagnosis</div> <div><input type="checkbox"/> (5) Caring for a child when required because, due to COVID-19 precautions, the child's school or place of care has been closed, or the child is participating in virtual learning instruction, or the child's care provider is unavailable</div> <div><input type="checkbox"/> (6) Experiencing any other substantially similar condition (as approved by OPM)</div> <div><input type="checkbox"/> (7) Caring for a family member (i) who has a "mental or physical disability"* or who is 55 years of age or older and (ii) who is "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 (* as those terms are defined in OPM guidance)</div> <div><input type="checkbox"/> (8) Obtaining immunization related to COVID-19 or recovering from any injury, disability, illness, or condition related to such immunization (after using any administrative leave provided by the employing agency)</div> </div>		
Dates	Anticipated	Actual
Date use of EPL begins		
Date use of EPL concludes		
Employee Certifications (initial each box)		
<input type="checkbox"/> I attest that I will be using EPL to be excused from duty only during hours when I am unable to work (including telework) because an EPL qualifying circumstance applies to me.		
<input type="checkbox"/> I understand that any EPL provided to me will reduce my total creditable service used to calculate any Federal civilian retirement annuity benefit I may receive.		
<input type="checkbox"/> I attest that I have signed the EPL Employee Agreement and understand that the granting of EPL is conditional upon the availability of monies in the EPL Fund and that I will be obligated to take action as described in the EPL Employee Agreement to resolve any overpayment debt if conditional EPL is cancelled due to Fund exhaustion.		
<input type="checkbox"/> I hereby certify that all statements made in this application are true and correct to the best of my knowledge and belief. I understand that a false or misleading certification may be grounds for disciplinary action, up to and including removal.		
Employee's signature	Date	

Additional Documentation Requirements			
An employee must submit the following additional documentation in connection with each identified qualifying circumstance, as applicable:			
Qualifying circumstance	Insert ✓ if completed	Nature of Documentation	Instructions
(1)		the governmental quarantine or isolation order applicable to the employee	Attach the order or provide web address here:
(2)		the name of the health care provider who advised the employee to self-quarantine due to COVID-19	Provide name here:
(3)		the governmental quarantine or isolation order applicable to the employee (if applicable)	Attach the order or provide web address here:
		the name of the health care provider who advised the individual to self-quarantine due to concerns related to COVID-19 (if applicable)	Provide name here:
(4)		<i>No generally required additional documentation.</i>	
(5)		the name of the son or daughter being cared for	Provide name here:
		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)	Provide information here:
		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 during the requested hours of leave	Provide explanation here:
(6)		<i>any documentation the Director of OPM requires</i>	Follow agency instructions based on OPM guidance.
(7)		the name of the family member with a mental or physical disability (if applicable)	Provide name here:
		the name and age of the family member that is 55 years or older (if applicable)	Provide name and age here:
		the name of the place of care that is closed or the direct care provider that is unavailable due to COVID-19	Provide name here:
		a written explanation regarding why the employee's care responsibilities make the employee unable to work during the requested hours of leave	Provide explanation here:
(8)		<i>No generally required additional documentation.</i>	

NOTE: In addition to the above generally required documentation requirements, DLA is authorized to request supplemental information, explanations, or certifications from an employee if there is reason to believe that EPL is not being used appropriately. Once an employee has met the generally required documentation requirements described above, DLA may grant conditional approval of EPL. However, DLA 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 DLA 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. DLA may conditionally approve use of EPL pending receipt of supplemental documentation and other information as required under the first sentence of this note; however, it must ensure that the employee understands his/her obligations to resolve the overpayment of leave if the final decision is to deny the leave.

Appendix 2

OPM Employee Agreement in Connection with Emergency Paid Leave (EPL) Provided Under Section 4001 of the American Rescue Plan of 2021

[to be signed before approval of an employee's first use of EPL]

I, [insert employee's name], understand that my agency is granting EPL on a conditional basis, subject to the availability of monies in the EPL Fund. I understand that, if the EPL Fund is exhausted before my agency receives reimbursement from the Fund for any use of EPL by me, the affected conditional EPL will be cancelled, and I will be responsible for eliminating the resulting leave debt by taking one or both of the following actions:

- Requesting other paid leave or paid time off (as available to me and as appropriate for the given circumstance under normal leave rules) to substitute for the cancelled EPL—for example: annual leave (including advanced annual leave), sick leave (including advanced sick leave), compensatory time off for overtime work, compensatory time off for travel, credit hours under a flexible work schedule, and any limited amount of administrative leave that my agency may grant me.

and/or

- Voluntarily providing monetary reimbursement to the agency to satisfy the overpayment debt resulting from receiving payments for a period of time when I should have been in leave without pay status.

If I do not eliminate the leave debt by substituting other paid leave or paid time off, I agree to make the required monetary reimbursement to the agency that granted conditional EPL and to permit offset of Federal payments (including salary payments) to recover the amount owed. (Note: 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.) However, I reserve the right to challenge the agency decision through any applicable administrative grievance procedure, negotiated grievance procedure, or judicial process and to seek return of any amounts erroneously collected from me.

Employee's Signature _____ Date: _____

Note: This employee agreement must be filed with an employee's EPL request(s).