

Date: April 6, 2021 **Code:** TECHNICAL LETTER
HR/Leaves 2021-04

To: Associate Vice Presidents, Human Resources **Reference:** HR 2021-01

From: Tammy Kenber  Associate Vice Chancellor, Human Resources
Beth Ryan  Sr. Director, Benefits and Payroll Data Operations

Subject: Expanded COVID-19 Related Leave (ECRL) – Non-Represented Employees

Summary

The purpose of this technical letter is to provide campuses with instructions regarding the administration of the new Expanded COVID-19 Related Leave (ECRL) program for non-represented employees. Pursuant to [HR 2021-01](#), paid leave up to 128 hours (16 days) has been granted effective January 1, 2021 through December 31, 2021 for non-represented employees unable to work due to COVID-19-related reasons as outlined in [Senate Bill 95 \(Chapter 13\)](#) which was signed by the Governor on March 19, 2021.

The paid leave provisions in ECRL comply with and enhance the requirements prescribed in SB 95. Campuses may use this technical letter, SB 95, and the [Department of Industrial Relations FAQ](#) for guidance. However, the SB 95's requirements and DIR's FAQs may not fully cover the expanded benefits under the CSU's ECRL policy.

Action Items

This Technical Letter should be reviewed by staff personnel responsible for administering and/or explaining CSU leaves.

Affected Employee Groups/Units

All non-represented employees are eligible to participate in ECRL. Please see below for exception.

Details

Eligibility

Non-represented employees eligible for ECRL include the following:

Most employees, including exempt and non-exempt, are eligible for ECRL. Retired annuitants are ineligible as they are excluded by law from receiving any leave benefits. The number of hours available for employees who work less than full-time shall be prorated according to their full-time equivalency, or the percent of the appointment (hours normally scheduled to work). There is no waiting period to become eligible for this leave, and new employees hired after the effective date are considered eligible upon hire. Personal leave credits used by employees for ECRL qualifying reasons after the effective date of this program and before the issuance of this technical letter shall have their leave restored upon written or oral request by the employee.

Distribution:

Vice Chancellor, Human Resources
Vice Presidents
Labor Relations Designees

Benefits Officers
Payroll Managers
Leave Coordinators

Employees may only utilize ECRL for time periods in which they are scheduled to work, thus making time off necessary and given the employee is unable to work on site or telework. ECRL cannot be used to extend a temporary appointment or to receive pay during periods in which an employee is not scheduled to work.

Qualifying Reasons for Leave

ECRL can be used for the following reasons when employees are unable to work on site or telework:

- Employee is subject to a quarantine or isolation period related to COVID-19 as defined by federal, state, or local orders or guidelines.
- Employee is advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- Employee is attending an appointment to receive a COVID-19 vaccine.
- Employee is experiencing symptoms related to a COVID-19 vaccine.
- Employee is experiencing COVID-19 symptoms and seeking a medical diagnosis.
- Employee is caring for a family member who is subject to a quarantine or isolation order or guideline or who has been advised to self-quarantine by a health care provider due to concerns related to COVID-19.
- Employee is caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

NOTE: The quarantine or isolation period related to COVID-19 is the period defined by an order or guidelines of the California Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer with jurisdiction over the workplace.

Total Time Available under ECRL

Eligible employees may utilize up to 128 hours (16 days) under ECRL. Leave may be used from January 1, 2021 through December 31, 2021. ECRL may be used before using other accrued leave balances or any other paid leave, or continuation pay such as Exclusion Pay outlined in [HR/Leaves 2021-01](#) that may be available.

Full Time Employees

Employees receive 128 hours if fulltime, time base is 1.0 (FTE) or, on average, they worked or were scheduled to work at least 40 hours per week in the two weeks preceding the date they took leave.

- Exempt Employees – Under the Fair Labor Standards Act (FLSA), exempt employees must use paid leave in full day increments unless the leave is designated under qualified medical and family reasons covered by CSU Family and Medical Leave (FML).
- Non-Exempt employees - Under the Fair Labor Standards Act (FLSA), non-exempt employees may use time in less than full day increments.

Less than Full Time Employees

The number of hours (or days, if exempt) for employees who work less than full-time shall be prorated according to the percent or time base of the appointment (hours normally scheduled to work). In the case of an employee whose schedule varies from week to week to such an extent that the campus is unable to determine with certainty the number of hours the employee would have worked if such employee had not taken leave, the campus shall use the following in place of such number:

If the normal hours scheduled are unknown, or if the part-time employee's schedule varies, campuses may use a six-month average to calculate the average daily hours. If this calculation cannot be made because the employee has not been employed for at least six months, use the number of hours that the employee is expected to work.

Calculation of Pay

Employees on ECRL will be paid at their “regular rate of pay” as defined by FLSA. This includes pay the employee is receiving currently which could include base pay, shift differential, stipends, allowances, etc. ECRL shall not be used to extend temporary appointments. If an employee separates from employment unused ECRL has no value.

For **non-exempt** covered employees, pay is calculated by the highest of the following;

- Calculated in the same manner as the regular rate of pay for the workweek in which the covered employee uses ECRL.
- Calculated by dividing the covered employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.

ECRL for **exempt** covered employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

Retroactive Corrections

ECRL is effective on March 29, 2021 and retroactive to January 1, 2021. Campuses are not required to proactively process retroactive corrections for employees who may have used their own leave balances or were docked pay for reasons that qualify for ECRL between January 1, 2021 and March 19, 2021. Employees must request a retroactive correction verbally or in writing. Campuses may require an employee requesting a retroactive correction to submit an ECRL request form.

Reasonable Notification and Documentation

ECRL (DIR) Poster

Effective immediately, campuses must post the Department of Industrial Relations Model Notice (Attachment A). A footnote has been added to the bottom of the attached DIR Notice recognizing that the CSU has enhanced certain provisions of SB 95. Campuses should post this notice on the campus website, on their COVID-19 specific site or send to employees electronically.

Employee Documentation

The campus shall make ECRL available for immediate use by the employee, upon oral or written request. If practical, employees should request ECRL by submitting a Request for Expanded COVID-19 Related Leave Form (Attachment B) to their appropriate administrator and self-certify the reason for the leave. The use of ECRL must meet the qualifying reasons for leave and shall not be denied if deemed eligible. Employees should provide as much advance notice as possible of the need to use ECRL. In circumstances where the CSU has information indicating that the employee is not requesting ECRL for a valid purpose, the campus may require documentation or medical certification before paying ECRL. The CSU will not deny ECRL solely for lack of medical certification.

Pay and Leave (Paid and Unpaid) Allowed under other Programs

Continuance of Pay for Employees who must Quarantine due to COVID-19 Exposure at the Work Site

When noticed by the campus of potential exposure of COVID-19 on campus, employees must quarantine and not return to work until the return-to-work requirements are met as prescribed. Employees may telework, if available, during periods of quarantine. For employees excluded from work and otherwise “able and available” to work, campuses must continue and maintain the employee’s earnings, seniority, and all other employee rights and benefits, including the employee’s right to their former job status, as if the employee had not been removed from their job. If unable to telecommute, eligible non-represented employees shall receive Exclusion Pay while in quarantine after a worksite exposure. Employees exposed outside the worksite must use ECRL. For more information see [HR/Leaves 2021-01](#).

Family Medical Leave

The CSU Family Medical Leave (CSU FML) policy will apply to employees meeting the definition of a serious medical condition for themselves or immediate family members. If an exempt employee is covered under CSU FML, leave may be tracked by hours rather than in full day increments.

Non-Industrial Insurance (NDI) and other CSU Disability Leave Programs including Workers' Compensation/Industrial Disability Leave (IDL)

Employees may be eligible to apply for these leaves if they meet the eligibility requirements and approvals specific to each leave program.

Catastrophic Leave Program – Illness or Injury

Employees may be eligible for the CSU Catastrophic Leave Program for illness or injury if they meet the eligibility requirements as described in the respective Executive Order.

Definitions

Place of Care (for a child)

A “place of care” is a childcare center or the home of someone who cares for the employee’s child. This also includes individuals paid to provide childcare, like nannies, au pairs, and babysitters, who may come to the employee’s home under normal circumstances. It also includes individuals who provide childcare on a regular basis at no cost to the employee and without a license, for example, grandparents, aunts, uncles, or neighbors.

Child (Son or Daughter)

A biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status.

Employee

All non-represented employees. Exceptions: Rehired Annuitants and work-study student employees.

Family member

For the purpose of ECRL, a family member is defined as:

- A child, which for purposes of this article means a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status.
- A biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee’s spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.
- A spouse
- A registered domestic partner
- A grandparent
- A grandchild
- A sibling

Common Management Systems (CMS) Processing Instructions

Absence Management

CMS will leverage the "PAL/FFCRA" leave code for reporting ECRL as done for CPAL and FFCRA. Campuses are directed to immediately begin reporting ECRL paid leave in Absence Management under "PAL/FFCRA". The following notation is to be included in the Comments section of the absence event:

- ECRL

AM reports will be updated in a future MP (Maintenance Pack) and noticed to campuses in a future CMS communication.

Time and Labor

A new Time Reporting Code (TRC) will be available in Time and Labor for reporting positive pay for time taken under ECRL.

- ECRL – Expanded COVID-19 Related Leave - (Effective 1/1/2021)

Existing reports will be updated to track usage in Time and Labor.

Both of these changes are being developed with the intent of having an MP available in April. More information will be forthcoming once the process is finalized.

Questions regarding this Technical Letter may be directed to the CO Human Resources Management Team at hradmin@calstate.edu or (562) 951-4411. For your convenience, this memorandum is also available on the CSYou website at: <https://csyou.calstate.edu/Policies/HRPolicies/Forms/Default.aspx>.

Attachment A: **ECRL (DIR) Poster**
Attachment B: **Request for ECRL Form**

TK/br

2021 COVID-19 Supplemental Paid Sick Leave*

Effective March 29, 2021

Covered Employees in the public or private sectors who work for employers with more than 25 employees are entitled to up to 80 hours of COVID-19 related sick leave from January 1, 2021 through September 30, 2021, immediately upon an oral or written request to their employer. If an employee took leave for the reasons below prior to March 29, 2021, the employee should make an oral or written request to the employer for payment.

A covered employee may take leave *if the employee is unable to work or telework for any of the following reasons:*

- Caring for Yourself: The employee is subject to quarantine or isolation period related to COVID-19 as defined by an order or guidelines of the California Department of Public Health, the federal Centers for Disease Control and Prevention, or a local health officer with jurisdiction over the workplace, has been advised by a healthcare provider to quarantine, or is experiencing COVID-19 symptoms and seeking a medical diagnosis.
- Caring for a Family Member: The covered employee is caring for a family member who is subject to a COVID-19 quarantine or isolation period or has been advised by a healthcare provided to quarantine due to COVID-19, or is caring for a child whose school or place of care is closed or unavailable due to COVID-19 on the premises.
- Vaccine-Related: The covered employee is attending a vaccine appointment or cannot work or telework due to vaccine-related symptoms.

Paid Leave for Covered Employees

- 80 hours for those considered full-time employees. Full-time firefighters may be entitled to more than 80 hours, caps below apply.
 - For part-time employees with a regular weekly schedule, the number of hours the employee is normally scheduled to work over two weeks.
 - For part-time employees with variable schedules, 14 times the average number of hours worked per day over the past 6 months.
- Rate of Pay for COVID-19 Supplemental Paid Sick Leave: Non-exempt employees must be paid the highest of the following for each hour of leave:
 - Regular rate of pay for the workweek in which leave is taken
 - State minimum wage
 - Local minimum wage
 - Average hourly pay for preceding 90 days (not including overtime pay)
- Exempt employees must be paid the same rate of pay as wages calculated for other paid leave time.

Not to exceed \$511 per day and \$5,110 in total for 2021 COVID-19 Supplemental Paid Sick leave.

Retaliation or discrimination against a covered employee requesting or using COVID-19 supplemental paid sick leave is strictly prohibited. A covered employee who experiences such retaliation or discrimination can file a claim with the Labor Commissioner's Office. Locate the office by looking at the [list of offices on our website](http://www.dir.ca.gov/dlse/DistrictOffices.htm) (<http://www.dir.ca.gov/dlse/DistrictOffices.htm>) using the alphabetical listing of cities, locations, and communities or by calling 1-833-526-4636.

This poster must be displayed where employees can easily read it. If employees do not frequent a physical workplace, it may be disseminated to employees electronically.



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*The California State University system is offering an enhancement to SB 95's Supplemental Paid Sick Leave. Please see your collective bargaining agreement for details.