

UNDERSTANDING THE AMERICAN RESCUE PLAN ACT OF 2021 AND EMERGENCY FEDERAL EMPLOYEE LEAVE

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We have received numerous calls at the National Office since March wanting information on the Emergency Federal Employee Leave, so I decided to provide what we have received in this article.

On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021. The Act included provisions authorizing emergency paid leave, also known as Emergency Federal Employee Leave (EFEL), for covered federal and postal employees in specified qualifying circumstances through a special fund. This fund, which contains \$570 million, is administered by the U.S. Office of Personnel Management (OPM). This fund applies to qualifying leave that is taken from March 11 through September 30, 2021 or until the fund is depleted.

EFEL is a separate leave entitlement used only at the employee's request. An employee is not required to exhaust other available paid leave, such as annual or sick leave, prior to being eligible for EFEL. An employee, including all career and non-career Mail Handlers, is eligible to use up to 600 hours or 15 weeks regardless of how long they have been employed. EFEL is paid at the same hourly rate as annual leave, unlike the extra leave provided under the previous Families First Coronavirus Response Act (FFCRA). At the same time, time on leave while on EFEL does not count towards creditable service time under retirement benefits.

The law identified eight qualifying circumstances under which you can use feel. These include when the employee is:

1. Subject to COVID-19 governmental quarantine or isolation order/advisory.
2. Advised by a health care provider to self-quarantine due to COVID-19 concerns.
3. Caring for an individual subject to (1) such order/advisory or (2) such advice.
4. Experiencing symptoms of COVID-19 and actively seeking (i.e., taking immediate steps to obtain) a medical diagnosis.
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.

6. Experiencing any other substantially similar condition (as approved by OPM).
7. Caring for a family member (1) who has a "mental or physical disability"* or who is 55 years of age or older and (2) 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).
8. Obtaining immunization related to COVID-19 or recovering from any injury, disability, illness, or condition related to such immunization.

On March 12, 2021, the Postal Service issued interim instructions to employees while they were waiting for the official guidelines from OPM on this leave usage. The interim instructions stated that USPS employees would be able to use EFEL while the Postal Service was waiting for the official OPM guidelines by submitting a 3971 indicating one of the qualifying reasons for the leave and affirmatively stating that they are unable to work due to this qualifying reason. On March 18, 2021, the Postal Service sent out additional instructions to their managers stating that supervisors were only authorized to approve up to 80 hours of leave as they were not sure what OPM would require from them or the employees for approval and reimbursement of this leave from the fund. On March 30, April 14, and April 29, 2021, management again sent interim instructions while waiting on OPM to issue the official guidance.

Finally, on April 30, 2021, OPM issued its official guidelines for implementation of the use of the EFEL. As part of these guidelines, management sent out notification on April 30 that, effective immediately, employees requesting EFEL must provide the following per OPM for their request.

1. A completed 3971, Request for or Notification of Absence;

2. COVID-19 Emergency Federal Employee Leave (EFEL) Employee Notification and Leave Request Form and all documentation required by the specific qualifying circumstance, as indicated on the request form; and
3. A signed Employee Agreement in connection with Emergency Federal Employee Leave provided under Section 4001 of the American Rescue Plan Act of 2021. The Employee agreement is required for the first use of EFEL.

OPM also established what documentation is required for each of the eight circumstances. These include the following:

- To confirm eligibility for EPL for qualifying circumstance (1), an employee must provide to the agency the governmental quarantine or isolation order applicable to the employee.
- To confirm eligibility for EPL based on qualifying circumstance (2), an employee must provide to the agency the name of the health care provider who advised the employee to self-quarantine due to concerns related to COVID-19.
- To confirm eligibility for EPL based on qualifying circumstance (3), an employee must provide to the agency the same documentation described in paragraph b or c, as applicable.
- To confirm eligibility for EPL based on qualifying circumstance (4), an employee must provide to the agency a written self-certification that the employee is experiencing symptoms of COVID-19 and taking immediate steps to obtain a medical diagnosis.
- To confirm eligibility for EPL based on qualifying circumstance (5), an employee must provide to the agency—
 - a. *the name of the son or daughter being cared for;*
 - b. *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 child care provider); and*
 - c. *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.*
- To confirm eligibility for EPL based on qualifying circumstance (6), an employee must provide to the agency any documentation the Director of OPM requires or recommends with respect to a particular substantially similar condition.

- To confirm eligibility for EPL based on qualifying circumstance (7), an employee must provide to the agency documentation as follows—
 - a. *the name of the family member with a mental or physical disability and a written certification by the employee that the identified family member has a mental or physical disability (as defined in paragraph D.9.b), if applicable;*
 - b. *the name and age of the family member that is 55 years or older, if applicable;*
 - c. *a written certification by the employee that the identified family member is "incapable of self-care" (as defined in paragraph D.9.c);*
 - d. *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*
 - e. *a written explanation regarding why the employee's care responsibilities make the employee unable to work (including telework) during the requested hours of leave.*
- To confirm eligibility for EPL based on qualifying circumstance (8), an employee must provide to the agency a written self-certification that the leave will be (or was) used to obtain immunization related to COVID-19 or to recover from any injury, disability, illness, or condition related to such immunization.

On May 5, 2021, the Postal Service sent notification to the Union that it was planning to send letters to all employees, on May 7, who had requested and were conditionally approved for EFEL from March 11 through May 3. The letters that were sent to each employee's address of record required each employee to provide the documentation that was mandated by OPM to support the need for EFEL and to sign an Employee Agreement.

The Employee Agreement, which is also mandated by OPM, shows that the employee is aware that the EFEL is conditional and subject to the availability of EFEL funds. It also makes the employee aware that, if the fund is exhausted before the reimbursement is received by the Postal Service for the use of the EFEL, the leave will be cancelled and the employee will be responsible for either using another form of paid leave or using leave without pay (LWOP). If LWOP is chosen, the employee will be responsible for paying the resulting debt from the leave used.

The Postal Service gave employees until May 21 to submit all required documentation to their supervisor. The letter stated if the documentation was not provided by that time, the EFEL would be cancelled and the employee would need

to elect another type of paid leave or LWOP. Letters were sent to approximately 77,000 employees.

After OPM released its guidelines, the Postal Service created a Frequently Asked Questions (FAQS) document which was released on May 7. This is a lengthy document that you can review either on the Coronavirus Employee Resources page on LiteBlue, under the EFEL tab, or at <https://www.npmhu.org/> where you can find most if not all of the information that I have included in this article.

After a review of these FAQs and recognizing that leave needs to be treated differently for many mail handlers working nights and other unusual hours, the NPMHU sent a letter to Kathleen McGettigan, Acting Director of the Office of Personnel Management requesting clarification on their guidelines for EFEL Qualifying Circumstance #5.

According to the OPM guidance, a covered employee is eligible for EPL if the employee certifies “that he or she is unable to work because of a qualifying circumstance.” One qualifying circumstance is “(5) Caring for employee’s 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.” The guidance goes on to state that “[t]his 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.” Finally, the guidance directs federal agencies, including the Postal Service, “[t]o confirm eligibility for EPL based on qualifying circumstance (5)” by requiring “an employee [to] provide to the agency— (1) the name of the son or daughter being cared for; (2) the name of the school, place of care, or child care provider and a brief description of the situation (i.e., closure, use of on-line instruction, unavailability of the child care provider); and (3) a written explanation

regarding why the employee’s circumstances (e.g., ages of children, number of children, special needs of children, lack of other adults in the home) make the employee unable to work (including telework) during the requested hours of leave.”

After OPM guidance was issued, management at the Postal Service issued frequently asked questions (FAQs) to cover postal employees, including mail handlers. Those FAQs included in number 8 the following question and answer:

I work a tour that does not directly conflict with my child’s hours of virtual/hybrid schooling or my need to provide childcare as a result of the childcare provider’s unavailability. Am I eligible for EFEL under qualifying reason 5?

No. EFEL under qualifying reason 5 is available only for hours that an employee actually is providing childcare because of the qualifying reason.

As made clear by the Postal Service’s answer to this FAQ, postal management has taken the position that an employee is eligible only if the employee “actually is” providing childcare during the hours that the employee is scheduled to work. The NPMHU believes that this restriction is a misunderstanding or misinterpretation of OPM’s guidance, which simply states that to be eligible the employee “actually is” caring for a child and because the employee is providing such childcare the employee is “unable to work.” The NPMHU does not believe that the OPM guidance requires an absolute match between the hours providing childcare and the hours required or scheduled to work. As of the writing of this article, we have not yet received a response from OPM on our request.

If you have any additional questions, please ask your stewards for more information.

