



## ***Benefits Administration Letter***

Number 21 - 102

Date: 04-29-2021

### **Subject: The American Rescue Plan Act of 2021 - Emergency Paid Leave Effect on Retirement**

#### **Background**

The American Rescue Plan Act of 2021 (ARP), Public Law 117-2, was signed into law on March 11, 2021. Sections 4001, 7103, 7104, and 8008 of the Act establish a new category of paid leave for certain Federal employees based on COVID-19-related qualifying conditions. Emergency Paid Leave (EPL) may be used by a covered employee only during the “qualifying period,” which began on March 11, 2021, and ends on September 30, 2021. Under each of the four EPL authorities, Congress established an EPL Fund. Each 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 before that time. If the Fund is exhausted, payments of paid leave under this authority will cease.

#### **Guidance**

OPM has issued a memorandum to agencies providing guidance on EPL under the Fund it administers. (See Compensation Policy Memorandum 2021-15 at <https://www.chcoc.gov/content/covid-19-emergency-paid-leave>.)

If agency headquarters staff have questions about this or any pay and leave policy, they may contact the Pay and Leave office at [pay-leave-policy@opm.gov](mailto:pay-leave-policy@opm.gov).

Section 4001(c)(4) of ARP governs how OPM must treat EPL for purposes of calculating retirement benefits:

**(4) Calculation of retirement benefit. — Any paid leave provided to an employee under this section shall reduce the total service used to calculate any Federal civilian retirement benefit.**

Sections 7103, 7104, and 8008 of ARP, covering employees of the Federal Aviation Administration (FAA), Transportation Security Administration (TSA), and Veterans Administration (VA) (title 38 employees), have identical provisions regarding calculation of retirement benefits.

These provisions require OPM to reduce the total service used in the calculation of an annuity by the total hours of leave paid from the EPL Fund. EPL remains creditable service for determining an employee's total service credit for the purpose of establishing eligibility for a retirement annuity benefit and for determining an employee's standard rate of basic pay for purposes of calculating his or her high-3 average salary computation. This BAL provides instructions for documenting employee records so that OPM and agencies may properly calculate retirement benefits.

### **Retirement Deductions**

Basic pay generated by EPL is subject to retirement deductions and contributions in the same manner as basic pay generated by other types of paid leave. The total hours of EPL an employee receives will reduce the total service used in the annuity calculation. EPL remains creditable for establishing eligibility to a retirement annuity benefit and for purposes of computing a retiree's high-3 average salary. (Note: 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 average salary. EPL hours received during a period of non-deduction service may reduce the total service if the employee later becomes eligible for retirement. For non-deduction service, apply CSRS and FERS deposit rules.)

Note: 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 ARP mandates that EPL hours are not creditable in the retirement annuity computation. OPM does not have the authority to change these requirements.

### **Employee Personnel Records**

Please use the attached worksheet (Attachment 1) or a similar document to record an employee's dates of EPL, EPL hours received, and total EPL hours. Agencies must place the worksheet in the employee's Official Personnel Folder (OPF) for permanent storage to ensure EPL hours are recorded for retirement annuity estimates and so that agencies can provide the EPL hours the employee used to the payroll office at retirement, if necessary.

### **Agency Transfers**

The American Rescue Plan of 2021 created four emergency paid leave authorities for OPM, FAA, TSA, and VA with separate funds. OPM states in its EPL guidance that, if an employee moves from a position covered by one of those other authorities to a position covered by the OPM-administered section 4001 authority, hours of emergency paid leave granted under those other authorities may not be counted towards the biweekly limit or the aggregate limit. OPM's EPL guidance also notes that, for VA employees who are covered by both the VA Fund (section 8008) and the OPM Fund (section 4001) and for whom VA seeks reimbursement from the OPM Fund, any emergency paid leave granted under the VA authority will not be counted in applying the biweekly limit or the

aggregate limit under the OPM authority. This means that an employee may exceed the aggregate limit (600 hours of EPL for a regular full-time employee) if they receive EPL under more than one authority.

### **Employee Payroll Records**

To reduce the total service used in the calculation of annuity by the total hours of EPL, payroll providers must annotate the separation and transfer or retirement Individual Retirement Record (2806/3100) in remarks column (4) with EPL hours used by an employee during creditable periods 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 Individual Retirement Record (IRR). Generally, non-deduction service performed on or after January 1, 1989, is not creditable for any retirement purpose under FERS.

**Example:** An employee receives 100 EPL hours under non-deduction service, then converts to a FERS career conditional appointment on 6/1/2021 and receives another 200 hours of EPL. The EPL hours need to be separated on the IRR to ensure the 100 EPL hours received under the non-deduction service do not reduce the employee's total service.

**PL 117-2—200 hours FERS**  
**PL 117-2—100 hours Non Deduction**

### **Agency Guidance**

Agency guidance to employees using EPL should note the effect paid EPL has on the retirement annuity benefit. Agencies should inform employees of the impact EPL will have on their retirement benefits before employees receive EPL hours.

**Example:** EPL will reduce an employee's retirement annuity calculation by the total hours of EPL received. 600 hours of EPL will reduce the total service of a retirement annuity benefit by 3 months and 14 days.

### **Retirement Estimates**

When preparing a retirement estimate, ensure that the EPL hours are subtracted from total service before computing the estimated retirement annuity. Agencies should inform retiring employees that the total service in their retirement annuity computation will be reduced by the number of EPL hours used.

**Example 1:** If an employee retires with 30 years of service and during 2021 received 348 hours of EPL, OPM must compute the years of service as 29 years and 10 months in the retirement annuity calculation.

- Based on the 2087-hour chart, 348 hours of EPL converts to 2 months.
- The 2 months of service time paid through EPL remain creditable for purposes of qualifying for retirement and for computation of the high-3 average salary.
- The employee remains eligible for an MRA+30 retirement even though the computation only includes 29 years and 10 months of service.

**Example 2:** If an employee retired under disability annuity provisions with exactly 18 months of total creditable service, but received 522 hours of EPL, the employee would continue to satisfy the 18-month eligibility criteria necessary to establish entitlement.

- Based on the 2087-hour chart, 522 hours of EPL converts to 3 months.
- The 3 months of EPL will be subtracted from total service used in the computation when the disability annuitant is eligible for the earned rate.

**Example 3:** If an employee retires at age 62 with 20 years of service, and during 2021 received 522 hours of EPL, OPM must deduct the number of EPL hours received, and compute the employee's total service as 19 years and 9 months in the retirement annuity calculation.

- Based on the 2087-hour chart, 522 hours of EPL converts to 3 months.
- The 3 months of service time paid through EPL remain creditable to qualify for retirement and for the high-3 average salary calculation.
- The employee remains eligible to receive the 1.1% formula in the annuity calculation.

**Example 4:** If an employee retires at age 60 with 20 years of service with a high-3 average salary of \$50,000, and the employee received 522 hours of EPL during his or her high-3 average salary period, OPM must reduce the employee's total service by the amount of EPL hours. The employee's average salary computation would remain the same.

- Based on the 2087-hour chart, 522 hours of EPL converts to 3 months.
- OPM would reduce the total service by 3 months and calculate the annuity based on 19 years and 9 months.
- The high-3 average salary would not be reduced by the 3 months of EPL.

1% of \$50,000 x 19 years and 9 months (19.750000) = \$9,875  
\$9,875/12 = \$822 monthly annuity (rounded down to the next lower whole dollar amount)

**Example 5:** If an employee retires with 30 years of service, and during 2021 received 600 hours of EPL, OPM must 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.

An employee covered by FERS retires at age 57 with 30 years of service and a high-3 average salary of \$75,000:

1% of \$75,000 x 30 years of service = \$22,500

\$22,500/12 = \$1,875 monthly annuity (rounded down to the next lower whole dollar amount)

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 and 8 whole months for the annuity computation.

1% of \$75,000 x 29 years and 8 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.

If you have questions about this or any retirement issue please contact Benefits Officer Development & Outreach at [benefits@opm.gov](mailto:benefits@opm.gov) or call 202-606-0788.

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