



# Frequently Asked Questions and Answers on Earned Paid Leave (Municipalities)

Maine Department of Labor - Bureau of Labor Standards

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*Disclaimer: The following information is general guidance based on hypothetical scenarios. It is not legal advice on any specific situation. Individual cases must be analyzed and decided by the Bureau of Labor Standards (BLS).*

## Introduction

These Frequently Asked Questions come from public webinar sessions, stakeholder meetings, and conversations among the Maine Department of Labor staff. The answers below are intended to clarify the Rules, the law, and the expectations for compliance for municipalities.

**Please note** that this document is meant to be referenced alongside our general [Detailed Frequently Asked Questions document](#) and other resources. These questions and answers are specific to municipalities but do not provide a comprehensive overview of the Earned Paid Leave law requirements.

If have any questions after reviewing both FAQ documents, please contact us at 207-623-7900 or [mdol@maine.gov](mailto:mdol@maine.gov).

## Collective Bargaining Agreements and Preexisting Policies

1. **Question:** My understanding is that until a current collective bargaining agreement term ends, the contract takes precedent. New contracts negotiated after 1/1/2021 must include Earned Paid Leave as a benefit going forward. Does the term “new contract” include both newly implemented contracts and renegotiated contracts?

**Answer:** Yes. The contract takes precedent until its expiration date. All new and renegotiated contracts will need to comply with the Earned Paid Leave law.

2. **Question:** Is it correct that if a municipal employer provides an employee with paid time off benefits, either through a collective bargaining agreement or policy, in excess of what this law provides and that meets the requirements of Earned Paid Leave (such as notice, rollover, use, accrual, and the base rate for first 40 hours), the employer does NOT have provide this benefit in addition to the leave currently offered?

**Answer:** Correct. If the current policy meets the minimum standards of this law, then no additional benefits are required. Please reference our General FAQ document for a detailed overview of how to verify that an existing policy meets the requirements of the Earned Paid Leave law.

3. **Question:** In a situation where a new full-time union employee is provided with 8 personal hours upon hire, 8 hours of sick time at the beginning of each month, and 40 hours of vacation upon reaching 6 months of employment, they receive far more paid time off in a calendar year than is required by the new law, **however**, they cannot use those hours for any reason, as the union contract usually specifies what the different accrual types may be used for.

When I spoke to an MDOL employee a month ago, I was told that even though the amount is greater than required, it will not comply because of the contract accrual use restrictions. If this is true, it will in-effect require

employers to use divided accrual buckets to make significant contract changes upon renegotiation. How do we address this in the next round of contract negotiations?

**Answer:** Correct. The example above does not meet the requirements of the Earned Paid Leave law. A new employee that works 40 hours per week would accrue approximately 17 hours of EPL in the first 120 calendar days, which they can use for any reason.

In the example above, the employee would only have 8 hours of personal leave that could be used for any reason, and approximately 32 hours of sick time. It's not until the employee works 6 months that this arrangement would actually meet the requirements of the Earned Paid Leave law.

If there is a CBA in effect as of January 1, 2021, these union employees will be exempt from the Earned Paid Leave law until the CBA expires. The current accrual rates do not meet the minimum requirements of this law. Any subsequent contract will need to comply with the minimum amount and minimum accrual rate requirements of the Earned Paid Leave law. Please reference our General FAQ document for a detailed overview of how to verify that a future CBA meets the requirements of the Earned Paid Leave law.

## On-Call and Per Diem Employees

4. **Question:** If a municipal employer has an on-call employee, such as a camera operator or a library substitute, who is continuously employed but works only as needed (a few hours per week/month or intermittently) does the employer still provide this benefit?

**Answer:** Yes. They will accrue 1 hour of Earned Paid Leave for every 40 hours worked.

5. **Question:** How would you handle a long-term substitute teacher as well as a regular substitute who only works from time to time? How would we account for those hours?

**Answer:** A good business practice would be to keep daily time records. If you do not keep daily time records, what is their pay based on? Their pay will need to be converted to an hourly rate and that amount will be their base rate of pay.

6. **Question:** How do we calculate the number of days employed to know when an on-call or per-diem employee is eligible to use their accrued Earned Paid Leave?

**Answer:** The number of days employed does not equate to the number of days worked. The first day the employee performs any work is the start date. 120 calendar days from that date is when the employee is eligible to use any accrued Earned Paid Leave.

7. **Question:** Road Employees only work as are needed do not have a specific schedule. How is Earned Paid Leave used if they only work when needed?

**Answer:** If a per diem employee needs to leave early or can't make a shift that they signed up for or that they are called in for, then they should be able to use their accrued Earned Paid Leave.

8. **Question:** Could on-call municipal employees who report to work only as needed during snowstorms to plow roads be excluded under Subsection 17 of [26 M.R.S. §1043, 11\(F\)\(17\)\(i\)\(iv\)](#)?

**Answer:** No, that particular exemption is for emergencies. An emergency is considered an unforeseen event. Snowstorms in Maine are not considered unforeseen events.

## Firefighters

9. **Question:** Municipalities have call firefighters who are considered volunteers, but are paid via a stipend, or per call and/or per hour for training. How does this law apply to these workers since they are on call and not regularly scheduled for work?

**Answer:** If the amounts paid to the firefighters qualify under the exemptions available, then they would not be reported as wages and the Call Firefighters and Volunteers would not be entitled to Earned Paid Leave. The exemptions can be found under **26 M.R.S. 1043 (11)(F)(17)(i)(iv)**:

*(iv) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;*

This exemption does not include every fire, storm, snow, earthquake, or flood. This applies to specific unforeseen emergencies. Snowstorms in Maine are not considered unforeseen emergencies. Likewise, controlled fires or training events are not considered emergencies.

Certain volunteers are also exempt under **26 M.R.S. 1043 (11)(F)(35)**:

“Service performed by an individual who volunteers for an employer or governmental entity if the volunteer:

Performs hours of service for the employer or governmental entity for civic, charitable, or humanitarian reasons, without promise, expectation, or receipt of compensation for services rendered. Although a volunteer may receive no compensation, a volunteer may be paid expenses, reasonable benefits, or a nominal fee to perform such services;

Offers services freely and without pressure or coercion, direct or implied, from an employer; and is not otherwise employed by the same employer or governmental entity to perform the same type of services as those for which the individual proposes to volunteer.

For purposes of this subparagraph, "governmental entity" has the same meaning as in section 1221, subsection 10.

If you have questions regarding a specific payment agreement, please contact the Unemployment Tax Division at 207-621-5120 and they can review the specific facts and circumstances to determine if the exemption applies.

10. **Question:** How do we track hours worked if it is totally up to the volunteer firefighter whether they respond to the fire call or not? Is a volunteer firefighter able to say, "I am not responding to this fire, but would like to be paid for accrued Earned Paid Leave."? As a payroll person, how do I track this?

**Answer:** If the volunteer firefighters are only paid when they respond to a fire, see exemption in **26 M.R.S. 1043 (11)(F)(17)(i)(iv)**.

Otherwise, does the pay they receive meet the exemption in **26 M.R.S. 1043 (11)(F)(35)**?

If the firefighters don't meet one of the exemptions identified in 1043 (11)(F)(17) or 1043 (11)(F)(35), then they are entitled to Earned Paid Leave and you will need to devise a system to track the hours worked. They will accrue 1 hour of Earned Paid Leave for every 40 hours worked and they will be entitled to use their accrued leave for any reason.

If the volunteer firefighters are compensated for services rendered, then the arrangement more closely resembles an employment situation and the firefighters may meet the threshold of a covered employee.

If you are unsure whether your volunteer firefighters meet one of the exemptions listed above, please call the Unemployment Tax Division at 621-5120 and they can review your specific facts and circumstances to determine if the exemptions apply.

11. **Question:** Per diem fire-rescue workers only sign up for shifts that they can attend. Some work one shift per week, some only once per month. How is Earned Paid Leave used for doctor's appointments etc.?

**Answer:** If a per diem employee needs to leave a shift early or cannot make a shift that they signed up for, then they should be able to use their accrued Earned Paid Leave.

The employee would be entitled to use their accrued EPL if they need to arrive late for a shift or leave early for an emergency, illness, or sudden necessity.

## Election Workers and Temporary Employees

12. **Question:** If a municipal employer has a temporary, non-seasonal employee who is employed fewer than 120 calendar days, such as an election worker who typically works once or twice a year for one or a few days each time, does the employer still provide this benefit?

**Answer:** An Election Worker is not considered a covered employee if they are paid less than \$1,000 in a calendar year. See 26 M.R.S. §1043(11)(F)(17)(i)

If an election worker is paid more than \$1,000 in a calendar year then they are a covered employee and would be entitled to Earned Paid Leave. They would start accruing leave on their first date of employment as of January 1, 2021.

13. **Question:** How would a temporary employee who is an election worker use this benefit in this circumstance, as they will never reach the 120 days employed?

**Answer:** An election worker is exempt from Eared Paid Leave if they are paid less than \$1,000 in a calendar year. If they are paid more than \$1,000 in a calendar year, they are eligible for Earned Paid Leave and would start accruing leave from day one. However, an employer does not need to permit them to use their accrued Earned Paid Leave until they have been employed for 120 days.

If they were hired at the beginning of the election season and the season is less than 120 days, the municipality does not need to permit them to use any leave that they may have accrued. If they return the following election year, within 12 months, any accrued and unpaid Earned Paid Leave must carry over.

14. **Question:** So, if an election worker has exceeded the threshold of earning \$1,000 and they work an election in November and then return in June, would we count their employment period as starting in November- as it crosses over to another calendar year?

**Answer:** Yes. The threshold for being employed 120 days during a one-year period before the employer is required to permit the use of accrued Earned Paid Leave is not restricted to a calendar year.

## Seasonal Employees

15. **Question:** Does the waiting period hinge on their non-seasonal capacity?

**Answer:** The 120-day period starts from day one of employment, whether it is seasonal or non-seasonal. However, the employee would not accrue Earned Paid Leave during the established seasonal period.

16. **Question:** Municipalities hire seasonal employees, such as snow removal or lawn mowing. Even though the municipality itself is not seasonal, typically the law has been interpreted to allow municipal employers to count such employees as seasonal. Is that the way we can understand seasonal in this law's context – i.e., these workers would not be provided this leave?

**Answer:** The Unemployment Insurance Commission determines that certain industries are seasonal. Snow removal and lawn mowing are not recognized as seasonal industries by the commission. Therefore, Earned Paid Leave would apply to these workers.

Please reference the [seasonal industries](#) on our website.

17. **Question:** The Department of Recreation operates year-round, including the established seasonal period. Is all time considered covered employment or only time outside of that seasonal period? We have seasonal employees in the department who work outside of the established seasonal period. Some have breaks between the work periods and some do not. What time worked is covered under the Earned Paid Leave law and how do we count it?

**Answer:** When the employee is working within a seasonal industry and within the established seasonal dates the employee is not accruing Earned Paid Leave. The employee will accrue Earned Paid Leave for all hours worked outside of the established seasonal period. Work outside of the seasonal period would be reported as nonseasonal wages and the employee would only accrue Earned Paid Leave during the non-seasonal period.

18. **Question:** Many of our seasonal staff start in mid-May to train and be ready for the summer season and stay through Indigenous Peoples' Day.

Unemployment states that the established season is 6/15 - 9/15.

Does this mean that our seasonal staff (lifeguards, reserve police, parking enforcement, etc.) will accrue Earned Paid Leave from May to June 15, stop accruing and then accrue from 9/15-until they term?

**Answer:** If the service is not connected with the seasonal part of the business, all the wages for that service should be reportable in season and out of season. In most cases, reserve police and parking enforcement are not included in an established seasonal industry.

A lifeguard that works for a summer rec program as part of an established seasonal industry with established seasonal dates will not accrue Earned Paid Leave during the established seasonal dates.

## Other Municipal Employees

19. **Question:** Municipal Officers are paid a stipend on a per month basis (or even per meeting or per year). They do not work in the municipal offices. They only attend meetings every other week like a planning board. Would these employees be entitled? If so, how would you compute the time?

**Answer:** If the Municipal Officers are elected, they would be exempt from the Earned Paid Leave law.

If the Municipal Officers are considered employees according to the Employment Security Act, then they would be entitled to Earned Paid Leave. Do the officers only work when attending meetings? Or, do they work outside of the meetings?

If they only work during the meetings, you would divide the stipend by the number of meeting hours to which it applies to get the hourly rate. If they perform work as an officer outside of the meetings, then you would divide the stipend by the number of hours worked during the specific time frame to which the stipend applies.

20. **Question:** What about for board members that are not elected? I am curious about board members that only work once or twice a month and receive a per meeting stipend (i.e., planning board)?

**Answer:** If a board member meets the exemption in 26 M.R.S. 1043 (11)(F)(17)(i)(v) then Earned Paid Leave will not apply.

*(v) In a position that, under or pursuant to the laws of this State, is designated as a major nontenured policy-making or advisory position or a policy-making or advisory position the performance of the duties of which ordinarily does not require more than 8 hours per week.*

21. **Question:** How would you handle an Animal Control Officer that is paid a bi-weekly stipend?

**Answer:** If this is not an elected position and they get the same stipend amount each biweekly period, then you will divide that amount by the amount of time they worked in the bi-weekly period immediately before using Earned Paid Leave. That will give you their hourly rate. This is the amount that will need to be paid for each hour of Earned Paid Leave used in that subsequent week.



## Separation of Employment

22. **Question:** Are there any requirements for the payout of Earned Paid Leave upon separation of employment?

**Answer:** The answer will depend on other factors.

If you currently have a vacation policy that states the unused balance of vacation time will be paid at the time of separation (and you don't have a separate Earned Paid Leave policy) then you will be required to pay the unused vacation and Earned Paid Leave balances.

If you have a vacation policy that states the unused vacation balance is not paid at the time of separation, then the Earned Paid Leave balance will not need to be paid.

You can establish a separate policy for each type of paid time off that you offer, and each policy can have a different result as it relates to what will happen to any unused balance of time.

It would be a good business practice to create an Earned Paid Leave policy so there is no misunderstanding. The policy should include a section regarding:

**Notice requirements** that clearly states the minimum amount of advance notice that you require an employee to provide when requesting planned time off (cannot exceed 4 weeks advance notice) and notice as soon as practicable when the employee needs time off for an emergency, illness, or sudden necessity.

**A section on the Minimum amount of Earned Paid Leave** that can be used (i.e., one-hour increments, ½ hour increments, 15-minute increments, etc.). Cannot be more than 1-hour increments.

**A section on the Payout or No Cash Value** of unused Earned Paid Leave balance at the time of separation.

23. **Question:** Do we still need to track that accrued time in case employees are hired back in some other capacity, or as they, over time, will continue to accrue modest amounts of leave if they work year after year?

**Answer:** Yes, you would have to track the amount that they accrued, and they would be able to use it in another capacity. If the employee has a balance of accrued Earned Paid Leave that wasn't paid at the time of separation and the employee returns to work for the same employer within 12 months, the balance of accrued unpaid Earned Paid Leave would be available for that employee as long as 120 days have passed from their first date of employment to the start of their employment in any subsequent position.