



Frequently Asked Questions and Answers on Earned Paid Leave (Schools)

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 the listening sessions held in the Fall of 2019, public comments received on the proposed Rules, public webinar sessions in 2020, posted FAQs, and conversations among Maine Department of Labor staff. The answers below are intended to clarify the Rules, the law, and the expectations for compliance for schools.

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 schools 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.

Covered School Employees

1. **Question:** Does Maine's Earned Paid Leave law apply to coaches, substitutes, Ed Techs, and part-time school staff?

Answer: Yes, the Earned Paid Leave law does apply to substitutes, Ed Techs, and part-time staff. Whether or not it applies to coaches will depend on whether a coach is deemed an employee in accordance with Title 26 §1043. School districts with questions should reach out to the UI Tax Division at 207-621-5120 for guidance specifically related to coaches.

2. **Question:** How would you handle a long-term substitute teacher as well as a regular substitute who only works from time to time? Do schools need to provide Earned Paid Leave and how would we account for those hours?

Answer: Yes, a substitute teacher will accrue 1 hour of Earned Paid Leave for every 40 hours worked.

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.

3. **Question:** How is the base rate of pay calculated for a per diem worker like a substitute teacher?

Answer: The base rate of pay is determined by looking at the most recent week worked by a per diem employee. The total earnings from that week, divided by the total hours worked will establish the base rate of pay.

4. **Question:** Since substitutes are only called to work when needed, how do you count 120 calendar days? If they work 40 hours in January 2021 but hadn't worked at all since the first week of school in Sept 2020, have they still met the 120-day threshold?

Answer: The law requires that employers permit the use of accrued Earned Paid Leave after 120 days of employment. 120 days employed does not equate to 120 days worked.

Employees who have already been employed for 120 days as of January 1st, 2021 are eligible to use their Earned Paid Leave as it is accrued. If 120 days have elapsed since the substitute teacher's first day of employment, then that substitute teacher will be eligible to use their Earned Paid Leave as it is accrued.

5. **Question:** How does Earned Paid Leave apply to coaches who are only hired for one athletic season? Do they qualify as seasonal employees?

Answer: A coach who is only hired for one athletic season does not qualify as a seasonal employee. Please see our General FAQ document for more information on seasonal exemptions. School districts with questions about whether a coach is deemed an employee in accordance with Title 26 §1043 should reach out to the UI Tax Division at 207-621-5120 for guidance.

A coach who is deemed an employee would be covered by Earned Paid Leave. An employee would accrue 1 hour of leave for every 40 hours worked and would be eligible to use their accrued leave after 120 days of employment

Collective Bargaining Agreements and Preexisting Policies

6. **Question:** Schools often have employees who are covered under a collective bargaining agreement (CBA), as well as employees who receive PTO through a standard leave policy. Does the CBA policy need to be identical to the standard policy in terms of handling Earned Paid Leave? For example, could we front-load Earned Paid Leave under the CBA, but not under the standard leave policy?

Answer: If each policy meets the minimum standard set by Maine's Earned Paid Leave law and an employee does not lose what they would have accrued as a benefit, a standard policy and a CBA do not need to be identical. It is at the discretion of the employer or CBA (where applicable) to front-load Earned Paid Leave.

7. **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.

8. **Question:** Is it correct that if a school 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.

Cash Out

9. **Question:** For coaches and substitutes, PTO is a "bonus" because they will not take time off during the season but will want to cash out their PTO at the end of the season. Can we treat Earned Paid Leave the same way?

Answer: The option to cash out Earned Paid Leave may be offered by an employer, but it cannot be mandatory. An employee may decide to cash out their accrued balance of Earned Paid Leave at the end of the season or school year, but must be permitted to roll over unused, accrued Earned Paid Leave if they would prefer to do so.

Accrual

10. **Question:** Does a school staff member accrue Earned Paid Leave when they are off during the summer months?

Answer: An employee only accrues Earned Paid Leave when they are physically working.

11. **Question:** If an employee holds multiple positions, would they accrue Earned Paid Leave under each position? For example, if an employee teaches classes, coaches, and is an advisor for a student club, would they accrue 1 hour of leave for every 40 hours worked in each position?

Answer: Earned Paid Leave is accrued through hours worked for a single employer regardless of the number of positions held by the employee. If a covered employee holds multiple positions for one employer, that employee would accrue 1 hour of Earned Paid Leave for every 40 hours worked for that single employer.

- 12. Question:** How should we handle an employee who works for a municipality and also works for the school department if both are under the same EIN? Would their time worked be calculated separately? In everything but their W2, they are treated as separate employees.

Answer: While an employee may work for multiple departments, in this case, they would still be working for the same employer. Earned Paid Leave is accrued through hours worked for a single employer regardless of the number of positions held by the employee. If a covered employee holds multiple positions for one employer, that employee would accrue 1 hour of Earned Paid Leave for every 40 hours worked for that single employer.

- 13. Employer Question:** We have adjunct instructors which are part-time exempt employees. Can we use the IRS hours equivalence like we do for ACA as a basis for their hours worked?

Answer: If there is no actual record of hours worked and the employee does not dispute the standard, then the IRS standard would be acceptable.

Scheduling and Use of Leave

- 14. Question:** How does Earned Paid Leave apply if a teacher or another school employee does not come in for work? Are we able to require accrued Earned Paid Leave to be used in these situations and can we reprimand employees for multiple, unscheduled absences?

Answer: If an employee is late or fails to report to work, an employer may require the employee to use their Earned Paid Leave in one-hour increments. An employer can reprimand an employee for performance issues, such as failing to follow the policies outlined by the employer or CBA (where applicable). An employer cannot, however, reprimand an employee because they used Earned Paid Leave if the employee is complying with notice requirements.

15. Question: How do schools avoid too many teachers taking planned time off at the same time? Can we create blackout dates to avoid being short-staffed?

Answer: While each individual request needs to be judged under the undue hardship standard, you may want to consider identifying times of the year, month, or week that leave may be restricted due to operational needs, other than leave for an emergency, illness, or sudden necessity. Employers must be able to prove undue hardship if they deny the use of leave for any reason.

Undue hardship is defined in the Rules as: A significant impact on the operation of the business or significant expenses, considering the financial resources of the employer, the size of the workforce, and the nature of the industry. This language is a summation of an already existing definition of “undue hardship” currently used in our Rules Governing Employment Leave for Victims of Violence.

The law permits employers to require 4 weeks advanced notice for planned employee absence, as well as restrict planned leave for specific times of the year where employee absence would cause undue hardship to their business.

A written policy outlining when planned leave is restricted for use, as well as how much notice employees are required to give is the best method to ensure that a school is in compliance with this part of the Earned Paid Leave law.