

**ORDER OF THE
DEPARTMENT OF ADMINISTRATION, DIVISION OF PERSONNEL
MANAGEMENT**

The scope statement for this rule, SS [027-20](#), was approved by the Governor on April 24, 2020, published in [Register No. 772B](#), on April 27, 2020, and approved by Department of Administration, Division of Personnel Management on May 7, 2020. This emergency rule was approved by the Governor on May 7, 2020.

The Wisconsin Department of Administration, Division of Personnel Management hereby adopts the following emergency rule to amend s. ER 10.02 (4); and to create ss. ER 10.02 (5) and ER 18.03 (4) (cm); relating to Limited Term Employment and Absence provisions.

**Analysis Prepared by the Department of Administration, Division of Personnel
Management**

FINDING OF EMERGENCY

The Department of Administration, Division of Personnel Management (DPM) finds that an emergency exists and that promulgation of the attached emergency rule pursuant to Wis. Stat. s. 227.24 (1) (a) is necessary for the immediate preservation of the public peace, health, safety, and welfare. Therefore, DPM proposes to provide necessary leave options for employees who need to be out of work in order to suppress and control the spread of the infectious coronavirus disease (“COVID-19”) or to care for children while schools are closed and other child care providers are unavailable.

DPM has determined that modifying its rules to allow paid time off for limited-term employees (“LTEs”) and to relax restrictions on the use of accrued sick leave during the COVID-19 global pandemic is necessary to protect the public health, safety and welfare. If LTEs are forced to choose between following state public health guidance related to COVID-19 and losing their next paycheck, many will have no choice but to put themselves and their communities at risk by continuing to come to work in those circumstances. If parents who have sick leave available are unable to use that leave to stay home to care for their children while schools and childcare facilities are closed, they may be forced to eventually take leave without pay, which could jeopardize the health and safety of these employees and their families. In order to effectively encourage employees to comply with all applicable guidance from the Wisconsin Department of Health Services and the CDC, immediate modification of provisions of this administrative rule are necessary.

Similar policies were originally adopted pursuant to the Governor’s suspension of provisions of chs. ER 10 and ER 18 under the authority of Executive Order #72. However, because the impacts of the COVID-19 pandemic are likely to remain beyond the expiration of the emergency declaration, revising chs. ER 10 and ER 18 through the emergency rulemaking process is necessary to protect the health, safety, and welfare of state employees as described above.

1. Citations to statutes interpreted:

Sections 230.04, 230.26, and 230.35, Stats.

2. Statutory authority:

Sections 227.11 (2), 230.04 (1), 230.04 (5), and 230.35 (2), Stats.

3. Explanation of the agency's statutory authority to promulgate the rule under the statutes cited:

The Department of Administration, Division of Personnel Management is responsible for the promulgation of rules relating to the administration of the division and the effective operation of subch. II of ch. 230 of the Wisconsin Statutes. The proposed rule changes are authorized by Wis. Stat. ss. 230.04 (1), and 230.04 (5), being necessary for performance of duties assigned to the administrator and necessary for the effective operation of subch. II of ch. 230 of the Wisconsin Statutes. Paragraphs (a) and (b) of Wisconsin Stat. s. 227.11 (2) also authorize the department to prescribe forms and procedures and promulgate rules interpreting the provisions of ch. 230 to the extent necessary to effectuate the purpose of the statute.

In addition to the authority provided in ss. 230.04 (1), 230.04 (5) and 227.11(2), Wis. Stats., the administrator has additional statutory authority to promulgate rules on the use of sick leave under s. 230.35 (2), Wis. Stats.

4. Related statutes or rules:

N/A

5. Brief plain language summary of the proposed rule:

ER 10

Currently, ch. ER 10 prohibits LTEs from receiving pay except for "actual hours worked." The emergency rule creates a new limited exception that allows state agencies to approve LTEs to stay home without loss of pay during the COVID-19 global pandemic. For the exception to apply, the reason for absence must specifically be related to the pandemic, such as a situation where the employee's continued presence at the worksite compromises the safety or security of the employee, other persons, the public or the worksite.

ER 18

Currently, ch. ER 18 limits the authorization for employees to use accrued sick leave to care for immediate family members only when the family member is ill or injured and in need of emergency medical care. Additionally, prior approval is currently required for any use beyond 5 working days. The emergency rule creates a new limited exception that allows employees to use sick leave for the care of individuals who require the employee's general care, regardless of

whether they are sick or not, for the necessary period of time without requiring prior appointing authority approval. For the exceptions to apply, the reason for care must specifically be related to the COVID-19 global pandemic, and use of sick leave under this exception may not exceed the period of time required for the confinement of the immediate family member requiring care or the closure of schools or unavailability of child care due to the pandemic.

6. Summary of, and preliminary comparison with, any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

The Families First Coronavirus Response Act (FFCRA) provided federal Emergency Paid Sick Leave (EPSL) and Expanded FMLA leave (EFMLA) for state employees beginning April 1, 2020. These leave provisions are in addition to any leave programs offered by the state. The emergency rules being proposed are intended to work in conjunction with these federal leave provisions and to provide coverage where gaps in the federal leave may occur.

7. Comparison with similar rules in Illinois, Iowa, Michigan, and Minnesota:

At this time the department was unable to identify any similar administrative rules in Illinois, Iowa, Michigan, and Minnesota that have been drafted or implemented in response to COVID-19. Additionally, the department was unable to identify any related pending or passed legislation. Due to the evolving nature of the current situation, it is not possible to determine whether adjacent states will implement comparable rules relating to absences of state employees at this time. All states, as required by the FFCRA, have implemented EPSL and EFMLA for employees to provide for paid time off for employees related to COVID-19 reasons, including to care for a child due to school or daycare closures.

8. Summary of the factual data and analytical methodologies that the agency used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:

The Department considered actions by the federal government passing the FFCRA. The proposed changes are also based on similar policies already in place due to the Governor's suspension of provisions of chs. ER 10 and ER 18 under the authority of Executive Order #72. However, because the impacts of the COVID-19 pandemic are likely to remain beyond the expiration of the emergency declaration, revising chs. ER 10 and ER 18 through the emergency rulemaking process is necessary to protect the health, safety, and welfare of state employees. The department also held a public hearing on the scope statement on May 6, 2020 in which no members of the public participated nor submitted comments for consideration.

9. Effect on small business:

The rule has no effect on small businesses.

10. Any analysis and supporting documents used in support of the agency's determination of the rule's effect on small business or in preparation of economic impact report:

The proposed rule has no effect on small businesses because only governmental employers and their employees are governed by ch. 230, Wis. Stats., as administered by the Department of Administration, Division of Personnel Management.

11. Agency Contact Person:

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RULE TEXT

SECTION 1. ER 10.02 (4) is amended to read:

ER 10.02 (4) Limited term employees shall be paid only for actual hours worked except as otherwise provided in sub. (5), in the compensation plan, or for voting time pursuant to ss. 6.76 and 230.35 (4) (e), Stats., in accordance with s. ER 18.11.

SECTION 2. ER 10.02 (5) is created to read:

ER 10.02 (5) During the 2019 novel coronavirus pandemic, for any reason that is specifically related to the 2019 novel coronavirus pandemic, the administrator may provide paid administrative leave to such employees in the same manner that is available to permanent and project employees. Any paid hours under this subsection will count toward total hour limits provided under s. ER 10.01.

SECTION 3. ER 18.03 (4) (cm) is created to read:

ER 18.03 (4) (cm) During the 2019 novel coronavirus pandemic, for temporary care of members of the immediate family for a limited period of time for a reason that is specifically related to the 2019 novel coronavirus pandemic. Such reasons may include when the immediate family member has been exposed to a contagious disease which requires the individual's confinement, or when the employee lacks needed child care because schools or other places of care are closed or unavailable as a result of the 2019 coronavirus pandemic. Use of sick leave for these purposes is limited to the period of time required for confinement, closure, or unavailability. An appointing authority may require documentation to justify the granting of sick leave under this subsection.

SECTION 4: EFFECTIVE DATE. This emergency rule shall take effect upon publication in the official state newspaper.

Dated this 7th day of May, 2020.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DIVISION OF PERSONNEL MANAGEMENT

Malika S. Evanco