

# EILB Guidelines

## Effective November 2024

### **1. Purpose**

- 1.1. The Extended Illness Leave Bank (EILB) is a voluntary program that exists to help state employees who experience extended illnesses or injuries to continue their pay when they exhaust their paid leave. The program is subject to the eligibility criteria and other limitations as described in these regulations.

### **2. Scope of the Program**

- 2.1. This program applies to all eligible employees in the Executive Branch (see 4.1) of the Commonwealth of Massachusetts, including all entities that come under the direct oversight of the Governor, the Constitutional Offices, the Board of Higher Education, the state universities (including University of Massachusetts) and community colleges, and the Sheriff's Departments. Such entities shall be referred to as "Agency" or "Agencies" for the purpose of these regulations.
- 2.2. Employees of other independent agencies within the Executive Branch may participate in this program if their Agency Head notifies the Human Resources Division of their participation.
- 2.3. All those participating in the EILB program will be subject to these regulations.

### **3. Authority**

- 3.1. This program is administered by the Secretary of Administration and Finance pursuant to [M.G.L. Chapter 7, Section 4P](#).
- 3.2. The Chief Human Resources Officer (Personnel Administrator), Human Resources Division (HRD) is authorized by the Secretary of Administration and Finance to issue and amend these regulations and to decide all matters pertaining to the EILB, as long as such regulations and decisions are consistent with statutory requirements.
- 3.3. The Chief Human Resources Officer may delegate his/her program administration and approval authority under this section to an Agency head or his/her designee, based upon written procedures issued for such delegation.

### **4. Membership Eligibility**

- 4.1. In order to become members, employees must meet all of the following criteria:
  - 4.1.1. Employees must have worked full or part-time in a state agency as defined in Section 2 for at least 52 weeks as of the effective date of the enrollment period and be employed in an agency covered under Section 2 as of the date of enrollment. Employees who separated

from the service of a state agency as defined in Section 2 and are reinstated to or re-employed with a state agency as defined in Section 2 within thirty (30) calendar days may have their pre-termination service considered for EILB membership pursuant to this Section.

- 4.1.2. Intermittent employees, seasonal employees, 120-day employees, and contract employees are not eligible to enroll; and any service in such positions will not serve as a basis to meet the required service for membership described in 4.1.1.
- 4.1.3. Employees must have an acceptable attendance record as certified by their agency designee as of the date of their application to enroll.
- 4.1.4. Employees will not be eligible for membership if they have improperly used sick leave in the 12 months preceding their application.
- 4.1.5. No leave time utilized for the purposes of an FMLA leave, PFML leave, or leave as a reasonable accommodation will be considered in the review of the application for membership to the EILB.
- 4.1.6. On membership applications, the Agency Head must certify that each applicant for membership has an acceptable attendance record. This certification will mean that the agency has reviewed the total sick leave usage of each applicant, has determined that all absences due to sickness were sufficiently documented where appropriate, and that this documentation will be open to inspection at HRD's request.
- 4.1.7. Upon request by the agency or HRD, employees should be prepared to provide documentation to satisfy acceptable attendance records. Some examples of cases that would require close review are: a high total sick leave usage; a pattern of absences before or after holidays or on workdays immediately preceding or immediately following scheduled days off, regardless of whether or not total usage is high; or a history of written or oral warnings for sick leave misuse or abuse.
- 4.1.8. Employees must donate a minimum of one day of paid leave (sick, vacation and personal leave only) in order to join or renew their membership. The time donated can be a combination of different types of paid leave. One "day" is calculated by dividing the regularly scheduled total weekly hours by five. The Chief Human Resources Officer may increase or decrease this membership requirement with notice to the affected parties. The minimum donation must be made at least once each calendar year to maintain membership in the EILB for that calendar year.
- 4.1.9. The employee's membership application must have received the approval of his/her Supervisor and Agency Head or designee. For employees of agencies which have a Service Level Agreement (SLA) through the MassHR Employee Service Center (ESC), the Agency Head designee is the ESC for purposes of eligibility and enrollment in the EILB.

- 4.1.10. In cases where an employee's service to be considered for EILB membership under Section 2 was completed under the employment of one of the University of Massachusetts entities, the Agency EILB Coordinator shall retain responsibility for validating the employee's required service component for EILB membership pursuant to Section 4. In such cases, the Agency EILB Coordinator shall append written verification of service to the employee's application to the ESC for EILB membership.
- 4.2. Upon termination, employees are no longer eligible for membership in the EILB.

## **5. Enrollment**

- 5.1. There shall be at least two open enrollment periods during each calendar year, effective January 1 and July 1; HRD is responsible for communicating information about these enrollment periods to Agency Heads and agency EILB Coordinators.
- 5.2. Agency Heads (or designee) are responsible for communicating information about these enrollment periods in writing to all employees, including those on a leave of absence and obtaining written confirmation from new employees that they are aware of the availability of this program.
- 5.3. In extraordinary circumstances, during Open Enrollment only, the Agency Head may approve EILB membership for an employee who has no earned leave time to donate in order to enroll; in these cases, the employee must donate the amount of leave required by section 4.1.8 as soon as it is earned. Employees must meet all enrollment eligibility requirements of section 4.
- 5.4. Enrollment applications will not be accepted outside of an enrollment period except as approved by the Agency Head, the Cabinet Secretary, if applicable, and the Chief Human Resources Officer, and only when the employee:
  - 5.4.1. Meets all applicable EILB enrollment requirements as of the last date of the immediately preceding open enrollment period and
  - 5.4.2. Provides unequivocal documentation of a qualifying circumstance or event that prevented the employee from enrolling during the preceding enrollment period.
- 5.5 Exceptions will be granted only under the most critical circumstances.

## **6. Eligibility to Withdraw Time from the Bank**

- 6.1. In order to begin withdrawing time from the bank, an employee must have an approved job-protected leave, such as PFML leave, FMLA leave, or Catastrophic Leave, or (if those leaves have been exhausted), other agency-authorized unpaid leave of absence including leave approved as a reasonable

accommodation that covers the time period for which the employee is requesting EILB withdrawal.

6.2. The member must meet all of the following criteria. A member must:

- 6.2.1. submit medical certification demonstrating that they have an extended illness or injury.
- 6.2.2. have been on paid or unpaid leave due to this extended illness or injury for at least 20 consecutive workdays beginning no earlier than the 21st day following the effective date of enrollment (either January 1st or July 1st) for new EILB members who were not members during the previous calendar year.
- 6.2.3. have exhausted all earned and accrued paid leave, including vacation leave, sick leave, personal leave, compensatory time, donated legislative sick leave time, and bonus vacation days.
- 6.2.4. receive an approval of the withdrawal request from the member's authorized and required approvers. For Agencies under the direct oversight of the Governor within the Executive Branch, the required approvers are the Agency's manager of leaves of absence ("Leaves Manager") and either the Agency EILB Coordinator or their designee, with the Leaves Manager being the top level of approval. While approval by the Agency Head is not required, notification of an approved withdrawal request must be made to the Agency Head by the Leaves Manager, EILB coordinator, or their designee. For all other Agencies within the Executive Branch participating in the EILB, including Constitutional Offices, the Board of Higher Education, the state universities and community colleges, and the Sheriff's Departments, the required approver is the Agency Head, with the Agency Head being the top level of approval.
- 6.2.5. The Chief Human Resources Officer or his/her designee may delegate the approval authority for Agency withdrawal requests in accordance with section 3.3, above.
- 6.2.6. The Agency Head may waive the section 6.2.2 requirement when a member's disabling condition(s) recurs within 6 months of his/her return to work following a period of EILB withdrawal. In such cases, the medical certificate must provide clear documentation of the recurrence and direct relationship to the original illness or injury.

## **7. Limit of Benefits**

- 7.1. Members may not withdraw more than the statutory limit of 120 workdays in any two-year period.
- 7.2. This limit applies, even if the employee withdraws time for separate illnesses or

injuries during that two-year period.

- 7.3. The definition of “days” for part-time employees is prorated, as it is for other types of leave plans.
- 7.4. An Agency Head or Leaves Manager, whichever is applicable to the member’s application, may approve withdrawal for an employee who returns to work intermittently or on a part-time basis during the period of approved EILB withdrawal as part of a time-limited rehabilitation plan specified in the medical certificate.

## **8. Medical Certification**

- 8.1. Pursuant to 6.2.1 above, medical certification must be in writing using a Certification of Employees Serious Health Condition authorized by the Chief Human Resources Officer. The FMLA or PFML medical documentation that substantiated the FMLA or PFML leave or the medical documentation that substantiated the leave as a reasonable accommodation can be utilized to satisfy the medical certification requirements pursuant to 6.2.1. No withdrawal will be permitted without the submission of satisfactory medical documentation or validation of a continued extended illness.
- 8.2. Medical certification must be signed by a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or any other individual capable of providing health care services (“health care provider”) who is authorized to practice such health care services by the State in which the health care provider practices. Health care provider “capable of providing health care services” include only those specialties or services covered under the federal FMLA law and/or M.G.L. c. 175M.
- 8.3. Medical information pertaining to the member’s withdrawal application is confidential and will be maintained in a confidential file outside of the employee’s personnel file.

## **9. Coordination with Other Benefit Plans**

- 9.1. Employees who are eligible for workers’ compensation or other disability benefit payments are not eligible to withdraw benefits from the EILB.
  - 9.1.1. When employees have other short-term disability (STD) or long-term disability (LTD) plans and are also members of the EILB, they must demonstrate that they have applied for benefits under those plans before applying for withdrawal from the EILB. Where an employee is enrolled in LTD, and employee may withdraw from the EILB during the 90-day elimination period so long as all criteria under section 6 are met. See section 6.1 regarding withdrawal from EILB beyond the LTD policy’s 90-day elimination period. An employee must file an application with the LTD carrier as soon as possible upon learning that the duration of

their leave will exceed ninety (90) calendar days. Any delays in filing a claim for LTD benefits with the LTD carrier may delay the processing and/or approval of the employee's application for withdrawal from the EILB until such time that the employee furnishes proof of LTD denial and/or LTD ineligibility.

- 9.1.2. Legislative sick leave banks shall be the payer of last resort. Employees may not withdraw from legislative sick leave banks until they have exhausted or received denials from all other possible payers, including the EILB.
- 9.1.3. Where an employee utilizes EILB benefits and is later awarded workers' compensation benefits for the same time period, the workers' compensation benefits for this period shall be refunded to the state treasurer or spending agency of the Commonwealth. The payment by the industrial accident board for such period shall constitute a partial refund and the employee shall refund the remainder. The EILB shall be credited with the full sick leave credits for the period the employee was paid workers' compensation by the industrial accident board. Workers' compensation benefits cannot be supplemented with EILB.
- 9.1.4. Excluded from 9.1 are PFML payments pursuant to M.G.L. c. 175M. An application for paid leave benefits under M.G.L. c. 175M is at the employee's discretion. Employees are not required to file a claim or demonstrate ineligibility for benefit payments under M.G.L. c. 175M to be eligible for EILB. Employees who elect to use accrued paid leave or EILB during their extended illness shall not receive any paid leave benefits pursuant to M.G.L. c. 175M for the same a period of time. Leave pursuant to EILB will run concurrently with any available leave under M.G.L. c. 175M. Employees who receive payments under M.G.L. c. 175M and EILB during the same period of time will be responsible for repayment to the EILB and revocation of membership pursuant to 10.1.
- 9.2. Examples of disability plans are: public or private LTD plans and STD plans, Workers' Compensation, Sick Leave Reimbursement for injury due to auto accidents under MGL Chapter 93A, sick leave banks provided for by collective bargaining agreements.
- 9.3. Employees must be completely incapacitated from all forms of employment to be eligible to withdraw from the EILB except if working at their state job under 7.4. Members will certify in the application for withdrawal that they are not receiving wages or other form of remuneration from any other employer while withdrawing from the EILB.
- 9.4. Benefits under the EILB program may not be used to supplement or "top off" any PFML paid leave benefits pursuant to M.G.L. c. 175M.

## **10. Revocation of membership or time borrowed**

- 10.1. If at any time a member is found to have violated any of the requirements for membership or misused or misrepresented information to obtain a withdrawal, the member's Agency Head (or designee) may revoke that employee's membership and require the employee to compensate the Commonwealth for time used.

## **11. Other matters which require review and determination by the Chief Human Resources Officer or designee**

- 11.1. Policy/procedural questions, which are not expressly addressed by these regulations or ensuing policy/guidelines issued by the Human Resources Division must be referred to the Chief Human Resources Officer/designee for review and determination.