

STATEMENT OF SCOPE

Department of Administration

Rule No.: ER 18

Relating to: Absences

Rule Type: Permanent and Emergency

1. Finding/nature of emergency (Emergency Rule only):

Wisconsin is currently experiencing unprecedented, near exponential growth of the COVID-19 pandemic. This has been driven by new factors not present before, primarily significant increase in spread since the beginning of the K-12 and collegiate school years on or about September 1. According to the Department of Health Services, numerous cases involving students and staff have been reported at schools across the state, pushing thousands into quarantine or isolation and forcing some districts to close buildings, move to online learning, at least temporarily, and delay re-opening plans. A rule change is therefore needed to provide state agencies with additional flexibilities to address employee absences caused by these new circumstances. A permanent rule, however, will not be promulgated in time to respond to the current situation. An emergency rule is therefore needed to provide flexibilities for state employees who may need to be absent from employment due to the COVID-19 pandemic and will ensure flexibilities are available through at least the remainder of the calendar year. If employees who have 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 cause unnecessary economic stress given the potential availability of paid leave already earned, and jeopardize the health and safety of these employees and their families. While the emergency rule is in effect, the department may promulgate absence flexibilities under a permanent rule in the event another pandemic is declared, or the duration of the COVID-19 pandemic exceeds the length of the emergency rule.

2. Detailed description of the objective of the proposed rule:

The objective of the proposed rule is to amend ER 18 in order to create flexibilities to address the needs of employees when circumstances require their absence from employment during the COVID-19 pandemic and in the event of another pandemic.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Chapter ER 18 of the Wisconsin Administrative Code contains the current rules governing absences for state employees, including rules that permit 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, in some situations, prior approval is currently required for any use beyond 5 working days. The proposed rule under this statement of scope will provide modifications to the rules governing absences to provide employees greater flexibility to use earned leave during the COVID-19 pandemic. Flexibilities that the Division of Personnel Management will consider adopting under this rule may include, but are not limited to, a 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, and limited exceptions to the requirement for "prior approval" to use sick leave longer than 5 working days.

The permanent rule may also provide absence flexibilities in the event a future pandemic is declared. Without a rule change, the Department will continue to administer the rules governing employee absences as they exist in ER 18.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 227.11(2)(a), Wis. Stats., reads: (2) Rule-making authority is expressly conferred on an agency as follows:

(a) Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.

Section 230.04 (1), Stats., reads: (1) The administrator is charged with the effective administration of this chapter. All powers and duties, necessary to that end, which are not exclusively vested by statute in the commission, the division of equal rights, the director or appointing authorities, are reserved to the administrator.

Section 230.04 (5), Stats, reads: (5) The administrator shall promulgate rules on all matters relating to the administration of the division and the performance of the duties assigned to the administrator, except on matters relating to those provisions of subch. II for which responsibility is specifically charged to the director.

Section 230.35 (2), Stats, reads in part: (2) Leave of absence with pay owing to sickness and leave of absence without pay, other than annual leave and leave under s. 103.10, shall be regulated by the rules of the administrator, except that unused sick leave shall accumulate from year to year.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule :

The amount of time needed for rule development by Department staff and the amount of other resources necessary are indeterminate.

6. List with description of all entities that may be affected by the proposed rule :

The rule revisions will affect state employees covered by the rules, and agencies and appointing authorities who implement and/or make decisions based on them.

7. Summary 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 and in effect through December 31, 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 or after the federal leave options have expired.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

These rule revisions are not likely to have a significant economic impact on small businesses. The economic impact of these proposed rule revisions will be dependent on the actual usage by state employees.

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