



Ohio Administrative Code Rule 123:1-46-05 Leave donation program.

Effective: July 1, 2021

(A) Definitions. As used in this rule:

- (1) "Immediate family" has the same meaning as set forth in rule 123:1-47-01 of the Administrative Code.
- (2) "New sick leave" means sick leave an employee has accrued pursuant to section 124.382 of the Revised Code on or after November 15, 1981. "New sick leave" does not include emergency paid sick leave or expanded family and medical leave available pursuant to the Families First Coronavirus Response Act, Pub. L. No. 116-127 (2020).
- (3) "Paid leave" means new sick leave, personal leave or vacation leave. For purposes of this rule, "paid leave" does not include emergency paid sick leave or expanded family and medical leave available pursuant to the Families First Coronavirus Response Act, Pub. L. No. 116-127 (2020). Except as provided in paragraph (E) of this rule, "paid leave" does not include compensatory time.

(B) Employees eligible to receive donated paid leave. An employee is eligible to receive donated paid leave if the employee:

- (1) Is paid by warrant of the director of budget and management;
- (2) Is employed by the same agency, board, or commission as the employee who is donating the paid leave;
- (3) Is eligible to accrue and use sick leave when in active pay status;
- (4) Has no available accrued leave;
- (5) Has a need for the paid leave due to the serious illness or injury of the employee or a member of



the employee's immediate family; and

(6) Has applied for and not yet been approved for any state-paid leave, workers' compensation, or benefits program which is available to the employee. If the employee is not eligible for any such program, then this requirement is not applicable and does not impact the employee's eligibility to receive donated paid leave. An employee who has applied for these programs may use donated paid leave to satisfy the waiting period for any such benefits, if applicable. After the waiting period, donated paid leave may be used up to an amount equal to the benefit for which the employee has applied (e.g., sixty-seven per cent for disability benefits) while the employee's application is pending approval. If the employee's application for any state-paid leave is approved, the employee shall not use donated leave to supplement the approved state-paid leave.

(C) Employees eligible to donate paid leave. An employee is eligible to donate paid leave if the donating employee:

(1) Is paid by warrant of the director of budget and management;

(2) Is employed by the same agency, board, or commission as the employee receiving the donated paid leave;

(3) Voluntarily elects to donate paid leave and does so with the understanding that the donated paid leave will not be returned;

(4) Donates a minimum of eight hours of paid leave;

(5) Retains a combined leave balance of at least eighty hours after the donated paid leave is deducted from the donating employee's leave balances;

(6) Donates new sick leave, if the employee is donating sick leave; and

(7) Certifies, in writing, the following:

(a) The name of the eligible employee for whom the donated paid leave is intended;



- (b) The pay period(s) to which the offer to donate leave is applicable;
 - (c) The type of paid leave and the number of hours to be donated, with the minimum number of such hours being eight;
 - (d) That the donating employee will retain a minimum combined leave balance of at least eighty hours after the donated paid leave hours have been deducted from the donating employee's balances; and
 - (e) That the leave is being donated by the employee voluntarily and that the employee understands that the donated paid leave will not be returned.
- (D) General principles.
- (1) Donated paid leave shall be administered on a pay period by pay period basis. Appointing authorities shall only deduct the maximum amount specified by the donating employee from the donating employee's leave balance, but under no circumstance shall an appointing authority deduct more from the donating employee's leave balance than the amount of leave that is necessary to bring the receiving employee up to the maximum number of hours the receiving employee is scheduled to work in the pay period. Banking of donated leave is not allowed. Leave accrued by an employee while using donated paid leave shall be used, if necessary, as soon as it is available before additional donated paid leave may be received and used by the employee.
 - (2) If an appointing authority receives more than one offer to donate leave to a qualifying employee for any pay period, the appointing authority shall process the offers in the order they are received.
 - (3) An eligible employee shall receive no more than eight hundred hours of donated leave from all sources combined in any calendar year period.
 - (4) Appointing authorities shall ensure that no employees are forced or coerced into donating paid leave. Leave donations are to be entirely voluntary on the part of the donating employee.



(5) Appointing authorities shall respect an employee's right to privacy. However, appointing authorities may, with the permission of the employee who is in need of donated paid leave, inform its employees of an employee's critical need for leave. Appointing authorities shall not directly solicit donated paid leave from its employees.

(6) Employees using donated paid leave are in active pay status and shall accrue leave and be entitled to any benefits to which they would otherwise be entitled. Donated paid leave shall never be converted to a cash benefit.

(7) Donated paid leave shall not count toward the probationary period of an employee who receives donated paid leave during the employee's probationary period.

(E) Statewide paid leave donation bank.

(1) Structure

(a) The department of administrative services will establish a statewide paid leave donation bank for participating agencies. For purposes of the statewide paid leave donation bank, a "participating agency" is an agency, board or commission under the purview of the governor, that has not received an exemption as provided in paragraph (E)(2) of this rule.

(b) The statewide paid leave donation bank will be administered by the department of administrative services as determined by the director. The director may establish procedures to administer this rule.

(c) A participating agency with an existing intra-agency leave donation program established in accordance with paragraphs (A) to (D) of this rule may continue to administer their existing program.

(2) Exemptions from the statewide paid leave donation bank. An agency may request an exemption to be excluded from the statewide paid leave donation bank and to administer an alternative leave donation system. Such request will be submitted to the director in writing and contain sufficient information regarding the proposed alternative leave donation system to enable the director to conduct an appropriate evaluation.



Agencies that are exempt from participating in the statewide paid leave donation bank may still utilize any of the standards established by this rule to administer their alternative leave donation systems.

An agency may request an exemption from the statewide paid leave donation bank at any time. Any leave donated by the agency's employees to the statewide paid leave donation bank prior to the director's approval of the agency's exemption request will not be returned to the agency or the donating employee. Such leave will remain in the statewide paid leave donation bank to be available for use by employees of participating agencies.

(3) Employees eligible to receive donated paid leave from the statewide paid leave donation bank.

An employee is eligible to receive donated paid leave from the statewide paid leave donation bank if the employee:

- (a) Is paid by warrant of the director of budget and management;
- (b) Is employed by a participating agency;
- (c) Is eligible to accrue and use sick leave pursuant to section 124.382 of the Revised Code when in active pay status;
- (d) Has no available paid leave;
- (e) Has exhausted, or is otherwise ineligible for, emergency paid sick leave or expanded family and medical leave provided in the Families First Coronavirus Response Act, Pub. L. No. 116-127 (2020);
- (f) Has a need for paid leave due to a serious illness, properly ordered quarantine, or serious injury of the employee or a member of the employee's immediate family; and
- (g) Has applied for and not yet been approved for any state-paid leave, workers' compensation, or benefits program which is available to the employee. If the employee is not eligible for any such



program, then this paragraph is not applicable and does not impact the employee's eligibility to receive donated paid leave. An employee who has applied to these programs may use donated leave to satisfy the waiting period for any such benefits, if applicable. After the waiting period, donated paid leave may be used to an amount equal to the benefit for which the employee has applied (e.g., sixty-seven per cent for disability benefits) while the employee's application is pending approval. An employee ceases to be eligible to use donated leave during the time period such employee is receiving any state-paid leave.

(4) Employees eligible to donate paid leave to the statewide paid leave donation bank.

An employee is eligible to donate leave if the employee:

- (a) Is paid by warrant of the director of budget and management;
- (b) Is employed by a participating agency;
- (c) Voluntarily elects to donate paid leave and does so with the understanding that the donated paid leave will not be returned;
- (d) Donates a minimum of eight hours of paid leave;
- (e) Retains a combined paid leave balance of at least eighty hours after the donated paid leave is deducted from the donating employee's paid leave balances;
- (f) Donates new sick leave, if the employee is donating sick leave; and
- (g) Certifies in writing the following:
 - (i) The type of leave and the number of hours to be donated, with the minimum number of such hours being eight;
 - (ii) That the donating employee will retain a minimum combined paid leave balance of at least eighty hours after the donated leave hours have been deducted from the employee's paid leave balances;



- (iii) The understanding that the donated paid leave will be deducted from the employee's paid leave balances upon receipt by the department of administrative services of the paid leave donation form from the donating employee's appointing authority; and
 - (iv) The understanding that once the donated paid leave has been deducted from the employee's paid leave balances it will not be returned and the leave is being donated by the employee voluntarily.
- (5) How to donate paid leave to the statewide paid leave donation bank.
- (a) An eligible employee desiring to donate paid leave to the statewide paid leave donation bank will use a paid leave donation form supplied by their participating agency employer to make such a donation.
 - (b) Upon receipt of a properly completed paid leave donation form, the participating agency will take the following actions:
 - (i) Verify that the employee is eligible to donate paid leave pursuant to this rule; and
 - (ii) For donation requests that are verified, submit the properly completed paid leave donation form and confirmation of its verification to the department of administrative services for processing.
 - (c) Upon receipt by the department of administrative services of a properly verified paid leave donation form from a participating agency, the department of administrative services will take the actions necessary to deduct the appropriate amount of paid leave time from the donating employee's leave balances and add that time to the statewide paid leave donation bank.
- (6) How to apply for donated leave from the statewide paid leave donation bank.
- (a) An eligible employee desiring to receive donated paid leave from the statewide paid leave donation bank will use the paid leave donation form supplied by their participating agency employer to make such a request for donated paid leave.



(b) Upon receipt of a properly completed paid leave request form, the participating agency will take the following actions:

(i) Verify that the employee is eligible to receive donated paid leave pursuant to this rule; and

(ii) For paid leave requests that are verified, submit the properly completed paid leave request form and confirmation of its verification to the department of administrative services for processing.

(c) Upon receipt by the department of administrative services of a properly verified paid leave request form, the department of administrative services will take actions necessary to add the appropriate amount of paid leave time to the requesting employee's new sick leave balance and deduct that time from the statewide paid leave donation bank balance.

(7) General principals.

(a) Paid leave accrued by an employee while using donated paid leave from the statewide paid leave donation bank will be used, if necessary, as soon as it is available to the employee before additional donated paid leave may be received and used by the employee.

(b) An eligible employee can receive no more than eight hundred hours of donated leave from the statewide paid leave donation bank in any calendar year period.

(c) The participating agency will take precautions so that no employees are forced or coerced into donating paid leave to the statewide paid leave donation bank. Leave donations are to be entirely voluntary on the part of the donating employee.

(d) A participating agency may make its employees aware of the statewide paid leave donation bank and its purposes, but will not directly solicit its employees to donate. Except as necessary to administer this rule a participating agency will not disclose the identity of the employee who is in need of donated leave.

(e) Employees using donated paid leave are in active pay status and will accrue leaves and be entitled to any benefits to which they would otherwise be entitled. Donated paid leave has no cash value.



(f) Donated paid leave is not counted towards the completion of the probationary period of an employee who receives donated paid leave during the employee's probationary period.

(g) All requests for receipt of donated paid leave from the statewide paid leave donation bank will be processed by the department of administrative services on a first-come, first-served basis and are subject to the limits of the available balance of the statewide paid leave donation bank.

(h) Emergency paid sick leave and expanded family and medical leave available pursuant to the Families First Coronavirus Response Act, Pub. L. No. 116-127 (2020), cannot be donated.

(i) Compensatory time is considered "paid leave" only for purposes of the statewide paid leave donation bank under this rule. Compensatory time can be donated to the statewide paid leave donation bank only by overtime exempt employees. Employees who are overtime eligible cannot donate compensatory time to the statewide paid leave donation bank. Overtime eligible employees may use compensatory time donated to the statewide paid leave donation bank.