Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and Division of Personnel
Chapter 5—Working Hours, Holidays and Leaves of Absence

EMERGENCY RULE

1 CSR 20-5.030 Borrowed Leave

PURPOSE: This rule provides for borrowed leave use and availability in response to Coronavirus Disease 2019 (COVID-19).

EMERGENCY STATEMENT: This emergency rule establishes the availability and eligibility requirements of the new borrowed leave program within state agencies subject to section 36.350, RSMo. The borrowed leave program will allow state employees impacted by COVID-19 to take additional sick leave beyond their existing balances. The COVID-19 pandemic poses an immediate danger to the public health, safety, and welfare, and emergency action is required to address this danger by allowing state employees without leave balances to take leave from the first moment they are sick free of immediate adverse economic consequences, which will help protect the co-workers of employees who might otherwise report to work while sick as well as the public and help to disrupt the spread of COVID-19. In addition to the foregoing, the emergency rule will help to preserve the compelling governmental interests of retaining employees, keeping employees and the public safe, and maximizing government responsiveness and efficiency during the COVID-19 pandemic. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The board believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed April 16, 2020, becomes effective April 30, 2020, and expires October 30, 2020.

(1) Scope. This rule establishes the availability and eligibility requirements of borrowed leave within state agencies subject to section 36.350, RSMo, notwithstanding any other rule in this chapter to the contrary. The board expects that section (2) of this rule will be rescinded when the availability of borrowed leave in response to the COVID-19 pandemic is no longer necessary.

(2) Borrowed Leave.
   (A) State agencies may permit employees who have exhausted their sick leave balance to borrow against future sick leave accruals in circumstances caused directly or indirectly by COVID-19 as specified in this rule.
   (B) Borrowed leave may be approved by state agencies in accordance with a written interagency memorandum issued by the Commissioner of the Office of Administration. The board does not anticipate that this memorandum will substantially affect the legal rights of, or procedures available to, the public or any segment thereof, because it only impacts the internal management of state agencies. In response to the exigencies created by the COVID-19 pandemic, the memorandum may describe any of the following:
      1. The circumstances in which borrowed leave may be approved;
      2. The amount of borrowed leave available, which may vary by circumstance;
      3. Documentation requirements applicable to borrowed leave, which may vary by circumstance;
      4. Additional requirements applicable upon taking threshold amounts of borrowed leave;
   5. The procedure by which borrowed leave will be repaid while the employee remains in state service;
   6. The establishment of ShareLeave programs by which eligible employees may donate leave hours to assist recipient employees in the repayment of borrowed leave; and
   7. Any other procedures or requirements incident to the administration of leave as the Commissioner believes to be appropriate and necessary to address the emergency created by the COVID-19 pandemic.

(3) Repayment of Borrowed Leave. Employees approved to borrow against future sick leave accruals must repay the borrowed leave in full. In addition to repaying borrowed leave with sick leave, the interagency memorandum may specify that other accumulated time may be used by employees and, in the event of separation must be used, to repay borrowed leave. In the event an employee separates from state service prior to full repayment of borrowed leave, the remaining balance will be deducted from the employee’s compensation warrants in accordance with subdivision (4) of subsection 2 of section 33.103, RSMo, and guidelines established pursuant thereto. To the extent the employee’s compensation warrants are insufficient to fully repay their borrowed leave balance, collection of the remaining balance is authorized.


PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.