



Memorandum

To: State of Colorado HR Directors
From: Ramona Gomoll, Statewide Chief Human Resources Officer
Date: May 15, 2020
Re: State Personnel Board Rules and Director's Procedures, Rule 5-4.(A), Accrued Paid Leave Due to a Declared Emergency

Rule 5-4.(A) was promulgated through [emergency rulemaking](#) effective April 1, 2020, due to the impact of the COVID-19 pandemic on the continuity of the State's essential operations and required staffing levels in order to obtain safe and effective results.

The intent of adopting rule 5-4.(A) was to provide employees who were unable to take time off due to business necessity, denied or cancelled leave the opportunity to take time off in the future or to receive pay for the hours earned that they were unable to use through no fault of their own. Essentially, workers who were not given a reasonable opportunity to use annual leave would have the option to roll over up to eighty (80) hours over the maximum accrual allotment to the next fiscal year on July 1 to use at a later time during the subsequent fiscal year.

Through meetings held and questions received, concerns were raised about the limitation of the declaration if it were to end prior to June 30, 2020, as it could have an impact on your budgets and create shortfalls due to payouts to employees that were unable to take leave for business reasons.

Based on the aforementioned feedback, comments, and questions received in regard to Rule 5-4.(A), DHR staff proposed alternative language for agencies to consider. Comments received will be reviewed and considered in the emergency rulemaking session on June 5, 2020. This date could change and become immediate in the event the declared emergency is lifted prior to June 5, 2020 which at this time, appears to be unlikely.

Until the emergency rule and proposed permanent rule is adopted, this document serves twofold: a review of the guidance, interpretation, and application of Rule 5-4.; and guidance, interpretation, and the application of rule 5-4.(A) as adopted on April 1, 2020. In addition, [Background Information](#) in regard to Rule 5-4.(A) is provided for reference.

Current Rule 5-4. Guidance and Interpretation

Based on business necessity, an appointing authority has discretion to determine periods when annual leave will not be granted or when it must be taken. Such periods must be communicated to all affected employees. If the department cancels approved annual leave and the employee is not allowed a reasonable opportunity to use the leave before it is subject to forfeiture at the end of the fiscal year, the department must pay any forfeited hours by the end of the fiscal year.

Additional guidance and interpretation of this rule is located in the [Technical Guidance - Time Off and Leave](#).



Current Emergency Rule 5-4.(A)

A. During the declaration of a state of emergency by the Governor, as defined in the Colorado Disaster Emergency Act, when leave was denied or the employee was not given reasonable opportunity to use the requested leave, annual leave up to eighty (80) hours over the maximum accrual allotment may be carried over at the discretion of the department and employee. The over accrued annual leave amount will roll over to the next fiscal year on July 1 and is available to the employee to use. This amount will not carry over for a second fiscal year. Accrued annual leave in excess of the eighty (80) hours over the maximum accrual allotment that the department cancelled shall be paid out to the employee. (04/01/2020)

The interpretation of the current emergency rule, adopted April 1, 2020, is outlined below:

- If the employee could not request leave due to business necessity and was not given reasonable opportunity to use it, the annual leave up to eighty (80) hours over the maximum accrual allotment may be either carried over or paid out.
- If leave was denied or cancelled and the employee was not given reasonable opportunity to use the requested leave, at the agency's and employee's discretion, annual leave up to eighty (80) hours over the maximum accrual allotment may be carried over if it is not paid out. "At the agency's and employee's discretion" indicates that agencies are encouraged to consider the employee's wishes when deciding whether leave will be rolled over or paid out. Though business need and budget must ultimately be the deciding factor, a best practice would be to honor the employee's wishes whenever possible.
- If the department cancels approved annual leave that results in the employee's annual leave balance being more than 80 hours over the maximum accrual allotment, the over accrued hours must be paid out.
- In such circumstances identified above, for employees terminating employment for any reason on or prior to June 30, 2020, the annual leave hours over the maximum accrual allotment must be processed before the separation.

Supervisors should do their best to encourage employees to schedule and take leave, even if travel is not an option. Employees could utilize leave in small increments, such as half days, on a recurring basis. Should employees find themselves on the verge of losing leave, donating it to the department's leave sharing program's bank, if applicable, is an option that at least ensures someone in need can use the time. This rule does not apply to employees who choose not to take annual leave for reasons not directed by the business due to business necessity.

EMERGENCY RULE 5-4.(A)
Background Information

Original Basis, Purpose, and Justification for Emergency Rule, effective April 1, 2020

5-4. Annual leave is for an employee's personal needs and use is subject to the approval of the appointing authority. The appointing authority may establish periods when annual leave will not be allowed, or shall be taken, based on business necessity. These periods cannot create a situation where the employee does not have a reasonable opportunity to use requested leave that will be subject to forfeiture. If the department cancels approved leave that results in forfeiture, the forfeited hours shall be paid before the end of the fiscal year. (5/1/10)

A. During the declaration of a state of emergency by the Governor, as defined in the Colorado Disaster Emergency Act, when leave was denied or the employee was not given reasonable opportunity to use the requested leave, annual leave up to eighty (80) hours over the maximum accrual allotment may be carried over at the discretion of the department and employee. The over accrued annual leave amount will roll over to the next fiscal year on July 1 and is available to the employee to use. This amount will not carry over for a second fiscal year. Accrued annual leave in excess of the eighty (80) hours over the maximum accrual allotment that the department cancelled shall be paid out to the employee. (04/01/2020)

Proposed Changes to Rule 5-4.(A), May 1, 2020

5-4.(A) ~~During~~**Due to** the declaration of a state of emergency by the Governor, as defined in the Colorado Disaster Emergency Act, when **annual leave is not taken because of business necessity, it** was denied or **cancelled by the department, and** the employee was not given reasonable opportunity to use the requested leave; annual leave up to eighty (80) hours over the maximum accrual allotment **may is to be carried over**~~at the discretion of the department and employee if the department does not pay it out by the end of the fiscal year.~~ The over accrued annual leave amount will roll over to the next fiscal year on July 1 and **is will be** available to the employee to use. This amount will not carry over for a second fiscal year. Accrued annual leave in excess of **the** eighty (80) hours over the maximum accrual allotment **not taken because of business necessity, or denied or cancelled by the department** ~~that the department cancelled~~ shall be paid out to the employee **at the end of the fiscal year in which it was accrued.** ~~(04/01/2020)~~