

## Cal/OSHA Emergency Temporary Standards (ETS) Exclusion Pay FAQs

The following FAQs were submitted by campuses as a result of the release of the Emergency Temporary Standards (ETS) and Teamsters and CSUEU MOUs. Note that some questions submitted by campuses were answered in the information provided in technical letter [HR/Salary 2021-01](#). Additional FAQs regarding exclusion pay can be viewed on the Department of Industrial Relations website at <https://www.dir.ca.gov/dosh/coronavirus/COVID19FAQs.html#exclusions>.

### General Questions

1. Is exclusion pay essentially keeping someone on active pay status without utilizing their sick, vacation, etc.?

Exclusion pay is a continuation of pay for employees who are able and available to work but are being excluded from work due to an exposure to COVID-19 at the work site and must quarantine, as prescribed by the California Department of Public Health (CDPH). Exclusion pay includes all pay employees would have received had they not been excluded from the work site, including but not limited to shift differential and stipends. The ETS states that employees are to exhaust employer provided sick leave benefits (COVID related or personal) before exclusion pay; except where noted by collective bargaining agreements or CSU policy. To date, CSUEU (Units 2, 5, 7, and 9) and Teamsters (Unit 6) have an MOU that differs from what the ETS require and non-represented employees through policy. For more detailed information on exclusion pay, refer to [HR/Salary 2021-01](#).

2. When does exclusion pay start?

Exclusion pay became effective November 20, 2020 and will expire on May 29, 2021 unless extended and is applicable to employees who meet the considerations listed below. Note that the Teamsters (Unit 6) and CSUEU (Units 2, 5, 7, 9) Memorandum of Understandings (MOU) that expanded on the Exclusion Pay provisions provided in the Cal/OSHA ETS became effective January 1, 2021. In order for an employee to be eligible for exclusion pay the following considerations apply:

- Employees who are able to telework during the required quarantine are ineligible for exclusion pay.
- Employees represented by CSUEU and Teamsters and non-represented employees who are exposed at the work site and must quarantine, are eligible for exclusion pay immediately. All other employee groups must use employer provided sick leave benefits (COVID related or personal) first. Exclusion pay would be afforded when sick leave is unavailable or exhausted.
- Wherein exposure is unknown, employees may use employer provided sick leave benefits (COVID related or personal). Exclusion pay would be afforded when sick leave is unavailable or exhausted.
- Employees whose exposure occurred outside work are ineligible for exclusion pay.
- Employees already receiving lost wages through workers' compensation are ineligible for exclusion pay.

Also, please refer to technical letter [HR/Salary 2021-01](#) for further information.

### Tracking and Reporting

3. Is there a limit to the amount of exclusion pay an employee may be entitled to receive?

No. There is no limit to the amount an employee may receive; however, the CSU is following current guidelines prescribed by the CDPH for excluding employees with COVID-19 exposure from the work site for 10 calendar days after the last known COVID-19 exposure with a COVID-19 case.

4. How do we report or track exclusion pay?

As stated in technical letter [HR/Salary 2021-01](#), campuses must track exclusion pay in PeopleSoft. Exclusion pay is not tracked as a paid leave in Absence Management, but rather keyed in PeopleSoft as an Action/Reason code in Job Data. If employees are determined to be eligible for this leave, campuses are required to create a row in PeopleSoft. Processing instructions can be found in the referenced technical letter.

5. Will there be forms/templates provided by the CO (similar to CPAL, FFCRA)?

As exclusion pay is not something that an employee can request, there is no need for forms to be completed or kept on file. Campuses must ensure the use of exclusion pay is documented in PeopleSoft. See [HR/Salary 2021-01](#).

### Use and Eligibility for other Leave Programs

6. At what point does it become workers' compensation and is handed over for their determination?

Pursuant to guidance of [SB 1159](#), workers' compensation coordinators should work with Sedgwick (CSU WC claims administrator) to report COVID-19 claims wherein exposure occurred, presumptively or otherwise, at the workplace. The campus is responsible for reporting positive cases, filing claims for COVID-19 exposure where the employee returns the claim form or there is a confirmed workplace exposure and positive COVID -19 test. Sedgwick is responsible for:

- Determining if there is an "outbreak" based on information reported by the campus in the Sedgwick Portal, which is separate and independent of the claim reporting system;
- Determining if the employee has the benefit of a presumption and whether the claim is work-related once reported in Sedgwick's claim system; and
- Determining whether a COVID claim meets the criteria for industrial causation. Workers' compensation coordinators should contact Sedgwick for additional information and guidance. Since passage of SB 1159, Sedgwick and CSU's workers' compensation claims consultant, Alliant, have been conducting training and providing instruction to campuses on these new requirements. Please see technical letter [HR/Salary 2021-02](#) and see attachment B and C for said training materials.
  - In order to be eligible for Workers' Compensation, there must be a positive test. In order to be eligible for Temporary Total Disability benefits (or IDL), there must be a doctor's note precluding the employee from work. Unless the injured worker's claims falls under one of the presumptions (the Executive Order, or the Outbreak presumption), the waiting period would apply. The entitlement to benefits isn't dependent upon symptoms, but rather, the existence of a doctor's note finding them disabled. Of course, all of this is also dependent upon our investigation and compensability determination.

Exclusion pay may not be used for an employee approved to receive workers' compensation benefits, including the waiting period. Note: Employees who test positive but are asymptomatic may not be eligible for workers' compensation. In this situation, an employee would be eligible for exclusion pay.

7. Would Federal Medical Leave Act (FMLA) apply?

FMLA would not be applicable as COVID-19 is considered a virus much like the flu and is not a qualifying reason under FMLA. However, COVID-19 will qualify as a serious health condition if it results in in-patient care or continuing treatment or supervision of a health care provider. It may also qualify as a serious health condition if it leads to conditions such as pneumonia.

## Student Employee Eligibility

8. Does exclusion pay apply to student assistants?

Exclusion pay could apply to student employees if they meet the eligibility. Cal/OSHA includes all employees. Exclusion pay would apply if the student was exposed to COVID-19 at work and they were “able and available” for work. Since they do not accrue sick leave, they would be eligible for exclusion pay right away for the days they were normally scheduled to work.

9. Are student employees who are a part of the federal work-study (FWS) program eligible to receive exclusion pay?

The campus may choose to continue to pay students who are unable to continue working in a FWS position due to a COVID-19 related disruption during the academic year only if all of the following conditions are met and they are not able to telecommute or work remotely.

- The student was enrolled at an eligible institution and received a FWS award for the award period during which a COVID-related disruption occurred;
- The student had already begun working and earning funds in the FWS position for that award period before the COVID-related disruption occurred; **and**
- The student was prevented from fulfilling his or her FWS obligation for all or part of the award period due to a COVID-19 related disruption, such as: 1) when a campus closes and/or must temporarily cease providing instruction due to COVID-19; 2) when a campus moves classes from ground-based classes to online classes due to COVID-19; 3) when an FWS student is employed by an employer that temporarily or permanently closes as a result of COVID-19; 4) **when a student is quarantined due to COVID-19 and unable to travel to campus or his, her, or their jobsite;** or 5) when other such disruptions occur due to COVID-19.