



Texas Department of Motor Vehicles

HELPING TEXANS GO. HELPING TEXAS GROW.

TxDMV Leave Policies

November 1, 2017

In accordance with Senate Bill 73, 85th Legislature, Regular Session, state agencies must publish leave policies adopted under Texas Government Code, Chapter 661, on the agency's Internet website in a location easily accessible by the agency's employees and the public.

Texas Department of Motor Vehicles leave policies are provided below.

Section 1 Vacation Leave

Reference

- Texas Government Code, § 661.033 Payment for Vacation and Sick Leave
- Texas Government Code, § 661.152, Entitlement to Annual Vacation Leave

Purpose of Policy

To provide guidelines for accruing and using paid vacation leave.

Vacation Leave Accrual

Employees begin to accrue vacation leave on their first day of employment and stop accruing vacation leave in the month of the last day of duty (last physical day on the job).

The amount of vacation leave accrued by an employee is based on length of creditable state service, payroll and employment status in effect on the first day of the month. Part time employees accrue vacation leave proportionate to the number of hours appointed.

Credit for vacation leave is given for each month or fraction of a month of state employment. The employee receives this credit on the first day the employee has physically worked in a month. If the employee is on any type of paid leave that extends into the following month the accrual will not be credited until the employee returns to duty. An employee forfeits this accrual if they terminate employment.

Credit for the higher rate of vacation accrual will be given on the first calendar day of the month when the employee's anniversary falls on that day. Otherwise the increase in vacation leave accrual will be given on the first calendar day of the following month.

Employees may carry vacation leave accruals forward from one fiscal year to the next based on the maximums authorized by the state legislature.

Vacation leave hours in excess of the maximum allowable carryover remaining at the end of a fiscal year are credited to the employee's sick leave balance.

Vacation leave accruals and maximum carryover amounts are provided in the table below.

Table 8-1 Vacation Leave Accrual and Carryover for Full-time Employees

State Service Time	Hours Accrued Each Month	Maximum Carryover to new Fiscal Year
Less than 2 years	8	180
At least 2 but less than 5 years	9	244
At least 5 but less than 10 years	10	268
At least 10 but less than 15 years	11	292
At least 15 but less than 20 years	13	340
At least 20 but less than 25 years	15	388
At least 25 but less than 30 years	17	436
At least 30 but less than 35 years	19	484
At least 35 years or more	21	532

Vacation Leave Accruals for Return-to-Work Retirees

Vacation leave accruals for return-to-work retirees are based on retirement and rehire dates. An employee returning to state employment who retired from state employment on or after June 1, 2005, and who receives a state retirement annuity accrues vacation leave based on the employee's length of service earned after the employee's hire date as a return-to-work retiree. Return-to-work retirees are not required to re-establish the six months continuous service in order to use accrued vacation leave.

Vacation Leave Use

Vacation leave must be accrued before it may be used and may not be taken until the employee has been continuously employed with the state for six continuous months. An employee who terminates from state employment for any reason during that six month period is not eligible for any accruals during that period. Full calendar months of leave without pay will not be included in the calculation of the number of continuous months of state employment for purposes of vacation leave use.

Note: Banked FLSA overtime hours must be used prior to vacation leave.

Authorized Absence

Employees will observe assigned working hours and must request approval from their supervisor when planning to be absent from work or for unplanned extenuating circumstances.

Unauthorized Absence

An unauthorized absence occurs when the employee's supervisor (or designee) has not been properly notified that an employee will be late or absent. Unauthorized absences may result in disciplinary action up to and including termination.

Employees who are absent for three consecutive days without notifying their supervisor will be presumed to have abandoned their position and may be administratively separated.

Vacation Leave and Employee Transfers

An employee who terminates from one state agency and is re-employed by another state agency within 30 calendar days will have his or her vacation leave balance transferred to the new agency.

Vacation Leave and Employee Separations

State agency employees with six months of continuous state employment are entitled to be paid for the accrued balance of the employee's vacation leave as of the date of separation as long as the employee is not reemployed by the state during the 30 day period immediately following the date of separation. The vacation leave balance will be paid in a lump-sum after 30 calendar days have lapsed since the date of separation.

An employee who is voluntarily separating from the department may, with division director approval, remain on the payroll to exhaust accrued vacation leave not to exceed the last day of the month in which the employee was physically on duty. The employee may not use sick leave, or accrue sick or vacation leave while exhausting vacation leave.

Upon separation lump-sum payments for the remaining balance of vacation leave will include payment for designated holidays the employee would have observed prior to the separation date.

Employees whose employment ends due to an involuntary termination or who resign in lieu of involuntary termination will be paid in a lump-sum for accrued but unused vacation leave if the employee has at least six months of continuous state service. The vacation leave balance will be paid after 30 calendar days have lapsed since the date of termination.

In the case of employee death, the agency will pay the employee's estate for unused vacation leave based on the employee's hourly rate in effect on the date of death.

Section 2 Sick Leave

Reference

- Texas Labor Code, § 501.021, Workers' Compensation Coverage for Employees
- Texas Government Code, § 661.033 Payment for Vacation and Sick Leave
- Texas Government Code, § 661.202, Entitlement of Sick Leave

Purpose of Policy

To provide employees with guidelines for accruing and using paid sick leave.

Sick Leave Accrual

Employees are entitled to paid sick leave. Credit for sick leave is given for each month or fraction of a month of employment. The employee receives this credit on the first day the employee has physically worked in a month. Full-time employees accrue sick leave at the rate of eight hours per month. Part-time employees accrue sick leave proportionate to the number of hours appointed.

Sick leave must be accrued before it may be used. There is no limit to the number of hours an employee may have in their sick leave balance.

Sick Leave Use

Sick leave may be used when an employee is prevented from performing his or her job due to:

- Their own illness or injury;
- Their own medical, dental or counseling appointments or rehabilitation treatments;
- Illness or injury including medical and dental appointments of the employee's immediate family who reside in the same household;
- The care of a child, parent or spouse not residing in the employee's household and who needs assistance as a direct result of a documented medical condition;

- Adoption of a child under age three, for up to six weeks immediately following the adoption;
- Illness or injury including medical and dental appointments of a child to whom the employee is the legal guardian of by court appointment; or
- Educational activities of the employee's children.

"Immediate family" is defined as individuals related by kinship, adoption or marriage who live in the same household, foster children who reside in the same household and minor children regardless of whether they live in the same household.

An employee who has been approved to remain on the payroll to run out their accrued vacation leave after giving notice of their intent to leave employment may not use sick leave.

Sick Leave Use and FLSA Overtime

An employee may use sick leave or other leave in the following order to cover absences as defined under Sick Leave Use.

1st FLSA overtime

2nd Vacation, compensatory or administrative leave

If an employee exhausts all sick leave the department will require the use of FLSA overtime hours prior to use of vacation, compensatory or administrative leave.

Sick Leave Notification

An employee who will be absent from work must notify his or her supervisor or designee at the earliest possible time. Supervisors will establish and communicate absence notification procedures.

The executive director has delegated authority to the immediate supervisor to request from an employee a doctor's certification or written statement of the facts surrounding the absence of more than three consecutive work days.

A supervisor may request a health care provider's certification or written statement of the facts surrounding the absence of less than three consecutive work days when there are concerns of misuse or abuse of sick leave. Abuse of sick leave benefits is grounds for disciplinary action up to and including termination of employment.

On-the-Job Injuries and Sick Leave

Employees who are unable to perform their jobs as a result of on-the-job injuries may elect to use sick leave and/or other paid leave.

An employee may elect to use accrued sick leave before receiving income benefits under workers' compensation. If an employee elects to use sick leave, the employee is not entitled to income benefits under workers' compensation until the employee has exhausted the employee's accrued sick leave.

Transferring and Restoring Sick Leave

Employees transferring directly to the department from another state agency receive credit for verified sick leave balances as of the date of the transfer.

Employees terminated from employment with the state under a formal reduction in force (RIF) have their unused sick leave balance restored if reemployed by the state within 12 months after the end of the month following their termination.

Employees terminated for other reasons will also have sick leave balances restored if:

- Re-employed by the same agency within 12 months of termination provided there has been a break in service of at least 30 calendar days since termination.
- Re-employed by another state agency other than the one from which the employee terminated within 12 months after the end of the month of termination.

Termination from Department Employment and Payment to Deceased Employee's Estate

In the case of death the department will pay the employee's estate half of the accrued sick leave in the employee's balance or 336 hours, whichever is less. The payment is based on the employee's hourly rate at the time of death.

Use of Sick Leave for Child's Educational Activities

An employee who is the parent of a student in pre-kindergarten through 12th grade may use up to eight hours of sick leave each fiscal year to attend educational activities for the employee's children. Reasonable advance notice of the employee's intention to use accrued sick leave to attend an educational activity is required.

When sick leave is used for an educational activity, the supervisor completes a Sick Leave for Educational Activity (Form 1959), obtains the employee's signature and submits to Finance and Administrative Services' Payroll Office for entry into CAPPs HR/PR.

Educational activity is defined as activities sponsored by a school, including parent-teacher conferences, tutoring, volunteer programs, field trips, classroom programs, school committee meetings, academic competitions, and athletic, music, or theater programs.

Donated Sick Leave

An employee may donate any amount of their accrued sick leave to another eligible employee in the agency. To be eligible to receive a donation of sick leave hours from another employee, an employee must have exhausted their sick leave and any extended sick leave or sick leave pool hours they have been awarded.

The donated leave may not be used for retirement service credit and may not be returned once it is donated to another employee.

Donating Sick Leave

Employees donating sick leave must complete a Donated Sick Leave (Form 2360) and may not:

- Request the sick leave be returned once donated;
- Use the donated sick leave for ERS retirement service credit;
- Solicit or receive any form of benefit for the donation; and
- Discuss the medical situation or confidential information of another employee or the employee's family member.

Using Donated Sick Leave

The employee receiving donated sick leave may use the donated sick leave for:

- Their own illness or injury;
- Their own medical, dental or counseling appointments or rehabilitation treatments;
- Illness or injury, including medical and dental appointments of the employee's immediate family who reside in the same household;
- The care of a child, parent or spouse not residing in the employee's household who needs care and assistance as a direct result of a documented medical condition;
- A foster child of the employee who resides in the same household as the employee and who is under the conservatorship of the Department of Family and Protective Services; or
- A minor child of the employee regardless of whether the child lives in the same household.

Unused Donated Sick Leave

Unused donated sick leave will lapse upon termination and may not be:

- Used for retirement service credit;
- Re-instated if the employee is re-hired;
- Transferred to another state agency;
- Returned to the donating employee;
- Transferred to another employee; or
- Transferred to the agency's sick leave pool.

Abuse of Sick Leave

Abuse of sick leave occurs when an employee has used sick leave hours for purposes other than those defined under sick leave use.

Section 3 Extended Sick Leave

Reference

- Texas Government Code, § 661.202 Entitlement to Sick Leave

Purpose of Policy

To provide employees paid extended sick leave (ESL) in the event of a serious health condition.

The employee's illness or injury must be a serious health condition as defined by the Family and Medical Leave Act (FMLA) regardless of whether or not the employee qualifies for Family and Medical Leave (FML). The agency uses the U.S. Department of Labor's Certification of Health Care Provider for Employee's Serious Health Condition (Form WH-380-E) for purposes of documenting FMLA and extended sick leave eligibility.

Extended Sick Leave Eligibility

To be eligible for extended sick leave an employee must have:

- At least one year of continuous agency service;
- Exhausted all other paid leave;
- Not abused sick leave;
- Managed leave in accordance with agency policies;
- No active corrective or disciplinary actions;
- Performance evaluation overall rating of achieves expectations or above; and
- Notified their supervisor of their request for extended sick leave (the employee is not required to discuss the nature of illness or injury).

Extended Sick Leave Required Documentation

The employee must submit to Human Resources a completed:

- ESL/SLP/FML Multi-Purpose Leave (Form 1768), and
- Certification of Health Care Provider for Employee's Serious Health Condition (Form WH-380-E) from an attending health care provider.

Recertification is required every 30 calendar days for extended sick leave hours.

If the employee fails to cooperate with recertification requirements, the request may be denied.

For extended sick leave purposes a health care provider is defined as a medical doctor (MD) or a doctor of osteopathy (DO) who is licensed and authorized to practice in this country or in a country other than the United States in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under applicable law.

Applications related to severe psychological conditions must be certified by a licensed psychiatrist.

Maximum Amount Granted

The maximum lifetime benefit of extended sick leave is based on the employee's continuous years of service with the agency.

At least 1 year but less than 3 years = 40 hours

At least 3 years but less than 4 years = 80 hours

At least 4 years but less than 5 years = 120 hours

Five or more years = 160 hours

The number of hours awarded will be based on the Certification of Health Care Provider. ESL hours may be revoked for documented cases of abuse of this or any department policy or if the employee no longer remains eligible for ESL.

ESL may be granted in a block of time and used intermittently on an as needed basis.

Extended Sick Leave and Family and Medical Leave

Extended sick leave hours are counted against the 12 weeks allowed in a fiscal year if the employee is eligible for FML.

Order of Leave Use

The employee must exhaust all accrued leave before using extended sick leave.

Extended Sick Leave Use

Extended sick leave may only be used for approved purposes as documented in the Certification of Health Care Provider for Employee's Serious Health Condition (Form WH-380-E). Abuse of extended sick leave hours may result in removal of unused hours or disciplinary action up to and including termination.

Return of Unused Extended Sick Leave Hours

Human Resources will notify Finance and Administrative Services Division to remove unused extended sick leave hours when the employee:

- Is fully released by the health care provider;
- Has died;
- Is found to be abusing extended sick leave hours;
- Fails to cooperate with a medical records review;
- Terminates employment;
- Retires; or
- No longer meets eligibility criteria.

Note: The estate of a deceased employee is not entitled to receive payment for unused extended sick leave.

Avoiding Pay Loss

Requests for extended sick leave should be submitted to Human Resources at least 10 workdays before the employee's accrued leave is exhausted.

If a request for extended sick leave is disapproved or if the request has not been approved before payroll, the employee may be placed in leave without pay status.

If the request is approved, Human Resources will notify:

- The employee;
- Payroll; and
- The immediate supervisor.

Note: There is no guarantee of approval when requesting extended sick leave.

Leave Accrual During Extended Sick Leave

Employees on extended sick leave continue to earn vacation leave and sick leave. Accrued leave is not credited to the employee's leave balances until the employee returns to duty.

Termination and Extended Sick Leave

Employees who separate from employment while on extended sick leave are not entitled to any unused extended sick leave hours.

Release to Return to Work

In order to return to work following the use of extended sick leave hours the employee must provide Human Resources with a completed and signed fitness-for-duty, Medical Release to Return to Work (Form 1771).

Human Resources will notify the supervisor of any job restrictions listed on a health care provider's release or Medical Release to Return to Work (Form 1771).

Section 4 Sick Leave Pool

Reference

- Texas Labor Code, Title 5, § 501.044, Workers' Compensation, Effect of Sick Leave; Annual Leave
- Texas Administrative Code, Title 43, Part 10, Sick Leave Pool Program
- Texas Government Code, § 661.002, Sick Leave Pool

Purpose of Policy

To assist employees and their families if a catastrophic illness or injury causes the employee to exhaust their accrued paid leave.

The agency uses the U.S. Department of Labor's Certification of Health Care Provider for Employee's Serious Health Condition (Form WH-380-E) and Certification of Health Care Provider for Family Member's Serious Health Condition (Form WH-380-F) for purposes of documenting FMLA and sick leave pool eligibility. Additional information may be requested of a health care provider to determine sick leave pool eligibility when needed.

Sick Leave Pool Contributions

The Sick Leave Pool (SLP) is supported through employee contributions. Contributions to the sick leave pool must be in increments of eight hours, with the exception of retiring employees who may contribute any amount of unused sick leave hours. Employees wishing to donate sick leave to the pool submit a completed Sick Leave Pool Contribution/Withdrawal (Form 1769) to Human Resources. Donated sick leave may not be used for retirement service credit.

Employees making contributions to the pool may not designate leave usage to any specific individual or group of individuals.

Sick Leave Pool Eligibility

All employees except for the executive director may apply for leave from the sick leave pool if they or an immediate family member suffers a catastrophic illness or injury, provided the employee meets the eligibility criteria.

To be eligible for leave from the sick leave pool, the employee must have:

- Exhausted all other paid leave;
- Not have abused sick leave;
- Not have active corrective or disciplinary actions; and
- Notified their supervisor of their request for sick leave pool hours (the employee is not required to discuss the nature of illness or injury).

Sick Leave Pool Required Documentation

The employee must submit to Human Resources a completed:

- ESL/SLP/FML Multi-Purpose Leave (Form 1768)
- Certification of Health Care Provider for Employee's Serious Health Condition (Form WH-380-E) from the employee's attending health care provider; or
- Certification of Health Care Provider for Family Member's Serious Health Condition (Form WH-380-F) from the family member's attending health care provider.

Re-certification is required every 30 days for sick leave pool hours.

If the employee fails to cooperate with recertification requirements, the pool administrator may deny the request and require the unused portion of the sick leave pool award be returned to the leave pool.

For sick leave pool purposes a health care provider is defined as a medical doctor (MD) or a doctor of osteopathy (DO) who is licensed and authorized to practice in this country or in a country other than the United States in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under applicable law.

Applications related to severe psychological conditions must be certified by a licensed psychiatrist.

The Certification of Health Care Provider must be completed and signed by a medical doctor (MD), a doctor or osteopathy (DO) or a licensed psychiatrist, if applicable.

Sick Leave Pool Award

The executive director (or designee) approves sick leave pool awards.

The maximum number of hours that may be granted per catastrophic condition per employee is 720 hours (90 work days) or one third of the pool balance, whichever is less at the time a request is received. If there is a different but related physical catastrophic condition, an employee may receive a second grant of up to 720 hours (90 work days) or one-third of the pool balance, whichever is less at the time the request is received.

When the pool balance is below 720 hours, an employee may not be transferred more than 340 hours (approximately two months) per request, unless unpaid leave is incurred before the request is approved. If unpaid leave is incurred, the employee may not be transferred more than the sum of the unpaid leave and 340 hours.

Part-time employees are eligible to receive a Sick Leave Pool award at a rate proportional to number of hours appointed.

Approved sick leave pool requests will be sent to:

- The employee;
- Human Resources Division;
- Payroll; and
- Immediate supervisor.

Sick Leave Pool hours are only available for:

- A certified catastrophic illness of the employee or a member of the employee's immediate family regardless of the employee's contributions to the pool; or
- An illness or injury not defined as catastrophic if the employee has previously donated sick leave hours to the pool and the hours are available to be withdrawn.

There is no guarantee of approval when requesting sick leave pool.

Sick Leave Pool Use

Sick leave pool may only be used for approved purposes as documented in the Certification of Health Care Provider for Employee's Serious Health Condition (Form WH-380-E) or Certification of Health Care Provider for Family Member's Serious Health Condition (Form WH-380-F). Leave from the sick leave pool may be used continuously or intermittently. An employee who is awarded sick leave pool for intermittent use must use all accrued leave before using the sick leave pool award hours.

Abuse of sick leave pool hours may result in removal of unused hours or disciplinary action up to and including termination.

Catastrophic Illness or Injury

Catastrophic illness or injury is defined as:

A **severe physical condition** or **severe psychological condition** or combination of conditions affecting the mental or physical health of an employee or an employee's immediate family member and that forces the employee to exhaust all paid leave time earned by that employee.

- A **severe physical condition** is an illness or injury that will likely result in death or is life-threatening and may leave significant residual disability or causes the patient to be incapacitated for 12 continuous weeks or more for the current episode. Examples of a severe physical condition include but are not limited to terminal cancer, major burns, paralysis or coma.
- A **severe psychological condition** is a psychological illness that results in: a patient being suicidal or capable of harming themselves or others and requires five days or more inpatient hospitalization.

The Certification of Health Care Provider must include the following:

- Diagnosis and prognosis of the condition(s);
- Date the patient will be able to return to light or normal work duties; and
- Amount of time necessary for the employee to provide primary care, and a description of the specific care if the request is based on an illness or injury of the employee's immediate family member.

Human Resources may consult with the attending health care provider or their designee, as necessary. The department may require the employee to obtain a second opinion at the department's expense from a health care provider of the department's choosing but not under contract with the department.

If the first and second health care providers' opinions differ the department may require the employee to obtain certification from a third health care provider at the department's expense. Both the employee and the department must agree on the health care provider who will provide the third certification. This third health care provider may not be on contract with the department. The third opinion is binding.

Return of Unused Sick Leave Pool

Human Resources will notify Finance and Administrative Services Division to remove unused sick leave pool hours when:

- The employee or the employee's immediate family member is fully released by the health care provider;
- The employee or the employee's immediate family member has died;
- The employee is found to be abusing sick leave pool hours;
- The employee fails to cooperate with a medical records review;
- The employee terminates employment; or
- The employee retires.

Sick Leave Pool hours are not paid out at termination.

Note: The estate of a deceased employee is not entitled to receive payment for unused sick leave pool hours.

Sick Leave Pool - Avoiding Pay Loss

To avoid leave without pay, requests for sick leave pool should be submitted to Human Resources at least 10 workdays before the employee's accrued leave is exhausted.

Note: There is no guarantee of approval when requesting sick leave pool.

Sick Leave Pool and Family Medical Leave

Sick leave pool hours run concurrently with approved Family Medical Leave (FML) hours.

Leave Accrual During Sick Leave Pool Use

Employees on SLP leave continue to earn vacation leave and sick leave. Accrued leave is not credited to the employee's leave balances until the employee returns to duty.

Termination and Sick Leave Pool

Employees who terminate from employment while on SLP leave do not have accrued leave or any unused sick leave pool hours credited to them.

Release to Return to Work

In order to return to work following the use of sick leave pool hours for an employee's own catastrophic illness or injury, the employee must provide Human Resources with a completed and signed health care provider's release. If job restrictions are listed the health care provider must complete a fitness-for-duty, Medical Release to Return to Work (Form 1771).

Human Resources will notify the supervisor of any job restrictions listed on a health care provider's release or on a Medical Release to Return to Work (Form 1771).

Confidentiality of Medical Records

Records that contain information about an employee's medical condition are treated at all times to the extent allowed by law, as confidential. Human Resources maintains medical records in a file separate from the employee's personnel file. All transmittals must be clearly labeled as confidential and directed to the attention of the intended receiver.

Sick Leave Pool Contributions Returned

An employee's SLP contribution may be returned to the employee under the following conditions:

- The employee or a member of the employee's immediate family suffers an illness or injury (not necessarily catastrophic); and
- The employee's accrued sick leave has been exhausted.

The amount needed to be returned, is determined from the information provided by the health care provider. The maximum number of hours that may be returned may not exceed one-third of the total time in the sick leave pool or 90 days, whichever is less.

An employee who is planning to retire and who has contributed sick leave to the pool, may not have his or her contributions returned in order to receive a retirement credit.

Regardless of the number of requests, the number of hours that may be returned to an employee will not exceed the total number of hours he or she has contributed since the beginning of the program, November 1, 2009.

To request a withdrawal of donated SLP hours, the employee will complete a Sick Leave Pool Contribution/Withdrawal (Form 1769) and submit to Human Resources. Human Resources will verify all sick leave balances, the date and time all accrued sick leave was or will be exhausted and approve or deny the transfer of hours from the sick leave pool to the employee's personal sick leave account.

Section 5 Family and Medical Leave

Reference

- U.S. Family and Medical Leave Act, 29 C.F.R. 825
- U.S. Federal Pregnancy Discrimination Act of 1978
- Texas Government Code, §§ 661.912 - 661.913, Family and Medical Leave, Parental Leave

Purpose of Policy

To provide eligible employees unpaid, job-protected leave.

The Family Medical Leave Act (FMLA) entitles an eligible employee unpaid job-protected leave. The department will not deny or restrain an employee's rights under the FMLA, retaliate against or discharge an employee for using Family Medical Leave (FML) or retaliate against an employee who under the terms of the FMLA, files charges, begins a proceeding, gives any information in connection with an inquiry or proceeding or testifies in an inquiry or proceeding. The agency uses the U.S. Department of Labor forms for FMLA purposes. A list of the forms follow:

- WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition
- WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition
- WH-381 Notice of Eligibility and Rights & Responsibilities
- WH-382 Designation Notice
- WH-384 Certification of Qualifying Exigency for Military Family Leave
- WH-385 Certification for Serious injury or Illness of a Current Service Member for Military Family Leave
- WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave

Family Medical Leave Act Entitlements and Eligibility

The FMLA requires covered employers to provide eligible employees up to 12 weeks of unpaid, job protected leave during a 12 month period. The department uses the state fiscal year (September 1 through August 31) as the 12 month period.

To be eligible for FML, employees must have:

- At least 12 months of state service (need not be continuous); and
- Worked at least 1,250 hours for the state during the 12 months preceding the beginning of the leave.

FML may be used for the following reasons:

- A serious health condition that makes the employee unable to perform the employee's job;
- Pregnancy or birth of a child;
- The placement of a child with the employee for adoption or foster care;
- The care of a child, spouse, parent or stepparent who has a serious health condition;
- A military exigency;
- To care for a family member who is a covered service member with a serious injury or illness;
- To take military caregiver leave for a spouse; or
- To care for a stepchild regardless of whether the *in loco parentis* requirement of providing day-to-day care or financial support for the child is met.

The department is required to place eligible employees on FML. FML is not paid leave. The employee uses accrued leave and any extended sick leave or sick leave pool awarded to remain in pay status while on FML.

Family Medical Leave Act Military Exigencies

Eligible employees with a spouse, son, daughter or parent on active duty or called to active duty status as a member of the Armed Forces, including a member of the National Guard or Reserves in support of a contingency operation, may use their 12-week FMLA entitlement to address qualifying exigencies which may include:

- The care of a covered service member with a serious injury or illness;
- Attending certain military events;

- Arranging for alternative childcare;
- Addressing certain financial and legal arrangements;
- Attending certain counseling sessions; and
- Attending post-deployment reintegration briefings.

Family Medical Leave Act Caregiver of Service Member

An eligible employee is entitled to a total of 26 workweeks of FML to care for a covered service member with a serious injury or illness during a state fiscal year, 12-month period. The FMLA entitlement is to be applied on a per-covered-service member, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered service members or to care for the same service member with a subsequent serious injury or illness. However, no more than 26 workweeks of leave may be taken within any single 12-month period.

A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves who is on the temporary disability retired list and who has a serious injury or illness incurred while on active duty, for which they are undergoing medical treatment, recuperation, therapy or are otherwise in outpatient status.

Family Medical Leave Act Benefits and Protections

FMLA eligible employees are guaranteed job protection for the duration of their FMLA entitlement. In addition, while an employee is out on FML the department continues to pay the state-paid portion of their health insurance premium under the group health plan.

If FML interferes with the department's operations the department reserves the right to:

- Transfer an employee to a position with equivalent pay and benefits;
- Modify the employee's job without reducing the employee's rate of pay and benefits; or
- Otherwise change an employee's job duties without reducing the employee's pay or benefits for the duration of the employee's FML.

Family Medical Leave Act Approval

The employee is responsible for coordinating FMLA requests with Human Resources. Supervisors must notify Human Resources when an employee is absent for a period of more than 3 consecutive calendar days or the first day they learn the employee has a condition that may qualify for FMLA. Human Resources will send a Notice of Eligibility and Rights & Responsibilities (Form WH-381) to the employee.

Human Resources will use form WH-382 Designation Notice, to inform the employee of FMLA approval, denial, or need for additional information.

Family Medical Leave Act Required Documentation

If an employee wishes to assert their rights under the FMLA, the employee or employee's family member on behalf of the employee, must submit to Human Resources a completed ESL/SLP/FML Multi-Purpose Leave (Form 1768) and appropriate FMLA form.

FMLA forms for:

- Employee: WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition;
- Employee's family member: WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition;
- Military exigency: WH-384-R Certification of Qualifying Exigency for Military Family Leave;
- Employee's family service member: WH-385 Certification for Serious Injury or Illness of a Current Service Member; or
- Employee's veteran family member: WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave.

The employee must notify their immediate supervisor of their request for leave (the employee is not required to discuss the nature of illness or injury).

The immediate supervisor may ask if the leave is needed for self, spouse, child, or parent and the expected duration of leave.

The Certification of Health Care Provider form must be completed by a health care provider defined as:

- A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or
- Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice under State law;
- Nurse practitioners, nurse-midwives, and clinical social workers authorized to practice under State law and performing within the scope of their practice as defined under State law;
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts;
- Any health care provider recognized by the employer or the employer's group health plan's benefits manager; or
- A health care provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country.

Health care providers for FMLA related to a service member, veteran, or military exigency include:

- U.S. Department of Veterans Affairs health care provider;
- TRICARE network provider;
- Non-network TRICARE authorized private health care provider; or
- Providers as previously defined.

Human Resources must allow the employee at least 15 calendar days from the date requested to provide the certification. If the medical certification is not provided within 15 calendar days from the date requested FML may be denied, delayed or discontinued. Human Resources will provide the employee with a FMLA Designation Notice (Form WH-382)

If the employee does not provide the medical certification the leave is not considered FML and the job protections of the FMLA do not apply. The leave may be considered unauthorized and the employee could be subject to disciplinary action up to and including termination.

Contacting Health Care Providers

The supervisor is prohibited from contacting the employee's health care provider directly. In certain circumstances Human Resources may contact the employee's health care provider directly for the purposes of authentication and clarification of information.

Human Resources may consult with the attending health care provider or their designee, as necessary. Human Resources may require the employee to obtain a second opinion at the department's expense, from a health care provider of the department's choosing but not under contract with the department.

If the first and second health care provider's opinions differ, Human Resources may require the employee to obtain certification from a third health care provider at the department's expense. Both the employee and the department must agree on the health care provider who provides the third certification. This third health care provider may not be on contract with the department. The third opinion is binding.

Reporting and Recertifying Family Medical Leave Status

Human Resources may require employees on FML or parental leave to report periodically on their leave status and their intentions to return to work.

Human Resources will also request recertification of a medical condition every 30 days if the employee is requesting extended sick leave or hours from the sick leave pool. The department may require recertification at any time if:

- The employee requests an extension of leave;
- The circumstances described in the original certification have changed significantly; or
- The department receives information that casts doubt on the validity of a certification.

Employees will:

- Provide notice to the supervisor and Human Resources of the need for leave in advance or as soon as practicable;

- Provide Human Resources a medical certification from their health care provider;
- Advise if leave is to be taken intermittently or if they need to work a reduced schedule;
- Keep their supervisor informed of their intent to return to work at the conclusion of the leave; and
- Provide Human Resources a health care provider's release to return to work.

Family Medical Leave Act Single Employer

The state is considered a single employer for purposes of an employee meeting the eligibility requirements of working 1250 hours in the previous 12 month period.

Spouses who are both employed by the department and who are eligible to take FML for the birth of a child or placement of an adopted or foster child, may take no more than 12 work weeks between them during a fiscal year for the birth, adoption or placement. In cases involving a serious health condition, each may take up to 12 work weeks in a fiscal year for a maximum combined total of 24 work weeks.

Intermittent Family Medical Leave

Employees with a FMLA qualifying condition may need to take intermittent leave for themselves or their family members or to work a reduced schedule. There must be a medical need for intermittent leave or for a reduced work schedule.

Leave Accrual and Family Medical Leave

Accrual of sick and vacation will continue while an employee is on FML but it will not be credited to the employee's sick or vacation balance until the employee returns to duty.

Family Medical Leave Start and End Dates

Table 8-2 Start and End Dates for Family and Medical Leave

If the leave is granted for...	Then FML begins...	And FML must end...
the birth of a child and to care for the newborn child	at birth, or anytime before or after the birth, until the child's first birthday	when the amount of leave equals 12 work weeks (480 hours) in a fiscal year or at the end of the 12-month period beginning on the date of the birth.
the adoption or foster care placement of a child under age 18; or if over 18, the child must be incapable of self-care due to a mental or physical disability as defined by the Americans with Disabilities Act	the first day the child is placed in the employee's home, or before if leave is required to complete the placement process	when the amount of leave equals 12 work weeks (480 hours) in a fiscal year or at the end of the 12-month period beginning on the date of the placement.
the care of the employee's family member who has a serious health condition	when care is needed by the family member as outlined on the Certification of Health Care Provider (Form WH-380-F)	when the employee's family member no longer needs the care as indicated on the Certification of Health Care Provider form, or when the amount of leave equals 12 work weeks (480 hours) in a fiscal year, whichever occurs first.
a serious health condition that renders the employee unable to perform job duties	the first day of the employee's absence for an FMLA qualifying condition or the date that FMLA notification is sent to the employee	as indicated on the Certification of Health Care Provider form, or when the amount of leave equals 12 work weeks (480 hours) in a fiscal year, whichever occurs first.
a "qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation	the first day of the employee's absence for an FMLA qualifying exigency or the date that FMLA notification is sent to the employee	when the employee's family member is able to return to normal activities, or when the amount of leave equals 12 work weeks (480 hours) in a fiscal year.

Table 8-2 Start and End Dates for Family and Medical Leave

If the leave is granted for...	Then FML begins...	And FML must end...
an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty	the first day of the employee's absence to care for the covered service member or the date that FMLA notification is sent to the employee	as indicated on the Certification of Health Care Provider, or when the amount of leave equals 26 work weeks (1040 hours) in a fiscal year, whichever occurs first

Release to Return to Work

In order to return to work following the use of FML hours for an employee's own illness or injury, the employee must provide Human Resources with a completed and signed health care provider's release. If job restrictions are listed, the health care provider must complete a fitness for duty Medical Release to Return to Work (Form 1771).

Human Resources will notify the supervisor of any job restrictions listed on a health care provider's release.

Insurance Premiums

Employees who do not return to work following the use of FMLA leave may be required to reimburse the department for the share of health insurance premiums paid on their behalf.

Appeal Procedures

Employees who feel their rights under the FMLA have been violated may:

- Consult with the civil rights officer or Human Resources;
- File a complaint with the U.S. Secretary of Labor; or
- File a lawsuit pursuant to Section 107 of the FMLA.

State Parental Leave

Employees who do not qualify for FML are entitled to parental leave not to exceed 12 weeks for the birth of a child or the adoption or foster care placement of a child under the age of three. Parental leave begins on the date of the birth of the employee's natural child or the adoption by, or foster care placement with, the employee of a child younger than three years of age.

A parental leave of absence may not be taken intermittently, is not paid leave and does not provide the same job protection as the FMLA. Employees who have exhausted all applicable sick leave, vacation, compensatory or FLSA banked overtime may be placed on leave without pay during the 12 weeks. An employee on a leave of absence for a full calendar month is responsible for payment of their full insurance premium. Parental leave must be approved by the supervisor.

Section 6 Leave of Absence Without Pay

Reference

- Texas Government Code, § 661.909, Leave Without Pay; Leave of Absence

Purpose of Policy

To allow eligible employees to take a leave of absence without pay (LOA). A leave of absence without pay is for a time period of one full calendar month or more, not to exceed 12 calendar months. Subject to fiscal constraints or business needs, the employee will be returned to paid status upon conclusion of the specified LOA period. If LOA interferes with the department's operations, the department reserves the right to transfer the employee to a position with equivalent pay and benefits upon return from LOA.

Requesting a Leave of Absence Without Pay

Employees submit a request for LOA, which must include justification and duration, in writing to the employee's supervisor and division director for approval. Requests to extend LOA must be submitted through the same process and must also include a revised justification and duration.

The employee's supervisor submits the approved LOA in CAPPS HR/PR. A copy of the approved LOA request will be retained in the employee's personnel and leave accounting files.

Employees may request LOA for:

- Illness or injury;
- Interagency agreements in which department employees are allowed to work temporarily for another state agency; or
- Other reasons deemed appropriate by the division director.

An employee will be granted LOA if needed for approved:

- Workers' Compensation benefits leave;
- Reasonable accommodation under the ADA;
- Military leave for more than 15 work days;

- Family and Medical Leave (FML); or
- Parental leave.

Except in cases of disciplinary suspension, leave covered by workers' compensation benefits or active military duty, employees must use all accumulated leave balances prior to going on leave without pay. Sick leave may only be used for eligible sick leave purposes.

Leave of Absence Without Pay and State Service Credit

With the exception of LOA for military leave, the period of time an employee is on LOA will not be counted as total state service for purposes of longevity pay and vacation leave accruals, nor as continuous state service for purposes of merit salary increases, one-time merits, or vacation leave eligibility. LOA does not create a break in service for purposes of continuity of employment.

Leave of Absence Without Pay and Leave Accrual

An employee does not accrue vacation or sick leave while on LOA.

Leave of Absence Without Pay and Termination

Employees on LOA may be terminated from employment if they fail to:

- Return to work on the agreed-upon date;
- Return within 12 months; or
- Provide documentation related to their status when requested by their supervisor.

Release to Return to Work

In order to return to work following the use of LOA hours for an employee's own illness or injury, the employee must provide Human Resources with a completed and signed health care provider's release. If job restrictions are listed the health care provider must complete a fitness-for-duty, Medical Release to Return to Work (Form 1771).

Human Resources will notify the supervisor of any job restrictions listed on a health care provider's release.

Section 7 Emergency Leave

Reference

- Texas Government Code, § 661.902, Emergency Leave

Purpose of Policy

To allow employees paid time off for a death in the employee's family or for other good cause.

Emergency Leave - Death in Employee's Family

An employee may use 24 hours of emergency leave due to a death of the employee's spouse, child, parent, brother, sister, grandparent, or grandchild. Emergency leave may also be used for the death of the employee's spouse's child, parent, brother, sister, grandparent, or grandchild. The executive director has delegated the approval authority to the employee's supervisor for purposes of approving emergency leave due to a death in the employee's family as defined above.

Emergency Leave - Good Cause

The executive director may grant emergency leave to an employee if the employee requests the leave and the executive director determines the employee has shown good cause for taking emergency leave.

The executive director may not grant emergency leave to an employee unless the executive director believes in good faith that the employee being granted the emergency leave intends to return to the employee's position with the department on the expiration of the period of emergency leave.

An employee is not required to request emergency leave if the executive director grants the emergency leave because the agency is closed due to weather conditions or in observance of a holiday.

Good cause to grant emergency leave includes but is not limited to:

- Natural disasters;
- Fire or flood;

- Inclement weather;
- Personnel matters; or
- Incentives.

The number of emergency leave hours granted will be determined on a case-by-case basis. For natural disasters, fire, flood or inclement weather the number of emergency leave hours granted will be based on the nature and severity of the event or condition.

Reporting Requirement

The department will submit to the Comptroller of Public Accounts not later than October 1 of each year, the name and position of each employee of the agency who was granted more than 32 hours of emergency leave during the previous fiscal year including the reason for which the employee was granted emergency leave and the total number of hours of emergency leave granted in that fiscal year.

Emergency Leave During Investigation

The executive director may grant emergency leave to an employee who is the:

- Subject of an investigation being conducted by the department; or
- Victim of, or witness to, an act or event that is the subject of an investigation being conducted by the department.

The employee or employee's supervisor will enter emergency leave in the employee's CAPPS time sheet upon executive director approval of the emergency leave. No other type of leave is authorized when the employee is absent due to a department investigation.

Reporting Requirement

The department will submit to the State Auditor's Office and the Legislative Budget Board the name of any employee who has been granted, during a fiscal year quarter, 168 hours or more of emergency leave for purposes of a department investigation. The report must be submitted not later than the last day of the fiscal year quarter in which the emergency leave was granted.

Section 8 Temporary Military Leave

Reference

- Texas Attorney Opinion, No. MW-29, 6-29-79
- Texas Government Code, §437.202, Leave of Absence for Public Officers and Employees
- Texas Government Code, § 661.904, Military Leave During National Emergency
- Texas Government Code, § 661.909, Leave Without Pay; Leave of Absence
- U.S. Uniform Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. § 4301-4335

Purpose of Policy

To give eligible employees paid time off from work for authorized military training or duty.

Temporary Military Leave Entitlement

Full-time, part-time and temporary employees are entitled to a maximum of 15 work days (120 hours) not necessarily consecutive, of paid temporary military leave per federal fiscal year (October 1 through September 30) without loss of service time, efficiency rating, vacation time and salary for authorized training or duty as a member of the:

- Texas National Guard;
- Texas State Guard;
- U.S. Armed Forces Reserves; or
- State or federally authorized Urban Search and Rescue Team.

Full-time and temporary employees, including those on a compressed work week schedule (four 10-hour days) may take a maximum of eight leave hours per work day; for part-time employees, leave is limited to their normally scheduled hours per work day.

Employees authorized for military training or duty are entitled to carry forward the net balance of unused accumulated leave not to exceed 45 workdays, from one federal fiscal year to the next.

Employees record this leave on their time sheets. Employees must provide a copy of written orders to validate the authorized training or duty. This paid leave begins when active duty begins as documented on the written orders.

When temporary military leave extends beyond 15 work days and the employee chooses not to use their vacation or compensatory time, the employee will be placed on leave without pay.

Employees called to active military duty and their family members may be eligible for Family and Medical Leave (FML) under certain qualifying conditions.

Employment Termination

The department may not terminate the employment of an employee who is a member of the military when the employee is ordered to authorized training or duty by a proper authority.

The U.S. Uniform Employment and Reemployment Rights Act (USERRA) establishes the cumulative length of time that an individual may be absent from work for military duty and retain reemployment rights to five years. Exceptions to the five-year limit are:

- Initial enlistments lasting more than five years;
- Periodic National Guard and Reserve training duty; or
- Involuntary active duty extensions and recalls, especially during a time of national emergency.

USERRA clearly establishes that reemployment protection does not depend on the timing, frequency, duration, or nature of an individual's service as long as the basic eligibility criteria are met.

Section 9 Extended Military Leave

Reference

- U.S. Uniformed Services Employment and Reemployment Rights Act, (USERRA). 38 U.S.C., §§ 4301 - 4335
- Texas Office of the Attorney General, Opinion C-679 (1966)
- Texas State Auditor's Office Leave Interpretation, No. 98-06 (1998)
- Texas Government Code, § 431.005, Leave of Absence for Public Officers and Employees
- Texas Government Code, § 658.008, Members of National Guard or Reserve
- Texas Government Code, § 661.904, Military Leave During National Emergency
- Texas Government Code, §661.924, Medical and Mental Health Care Leave for Certain Veterans
- Texas Government Code, § 613.002, Reemployment Following Military Service

Purpose of Policy

To provide eligible employees time off from work to enter a branch of the United States Armed Forces or for an eligible employee who is an active reservist to attend training or when called to active duty for an extended period of time.

Extended Military Leave Conditions

Full and part-time employees are entitled to a maximum of 15 workdays (120 hours) not necessarily consecutive, of paid military leave per federal fiscal year (October 1 to September 30). Employees must provide Human Resources a copy of the military orders prior to deployment.

During this leave there is no loss of state service time, accrued vacation or sick leave balances, rate of pay or impact to employee performance evaluation rating, for authorized training or duty for the:

- Texas National Guard;
- Texas State Guard;
- U.S. Armed Forces Reserves; or

- State or federally authorized Urban Search and Rescue Team.

Employees authorized for military training or duty are entitled to carry forward the net balance of unused accumulated leave not to exceed 45 workdays from one federal year to the next.

Employees called to active duty who are not eligible for differential pay receive one hour of emergency leave each month during their absence after exhausting the 15 days of paid military leave to:

- Maintain an active employee status;
- Receive longevity and benefit replacement pay (BRP) payments, if applicable;
- Accrue vacation and sick leave hours; and
- Receive the state paid portion of insurance benefits.

Employees who are eligible for differential pay will receive the number of hours in emergency leave equal to the difference between their department pay and their military pay. Employees who are released from active duty and wait up to 90 calendar days before returning to work are not eligible for military leave or the one hour of emergency leave during that time. They are on unpaid leave status unless they use paid leave earned prior to deployment.

Emergency Federal Call to Active Duty

Employees called to federal active duty to provide assistance to civil authorities in a declared emergency or for training for that purpose are entitled to receive paid emergency leave for a maximum of 22 days without loss of vacation leave or applicable military leave benefits. This is separate and distinct from the 15-day maximum military training per federal fiscal year.

Eligibility for Re-Employment

The employee has the right to be re-employed if they leave the job to perform service in the uniformed service and:

- Provide the department advance written or verbal notice of service;
- Have five years or less of cumulative service in the uniformed services while with the department (exceptions exist);

- Return to work or apply for re-employment in a timely manner after conclusion of service; and
- Have not been separated from service with a disqualifying discharge or under other than honorable conditions.

An employee who is eligible to be re-employed must be restored to the job or in some cases, a comparable job and benefits they would have attained if the employee had not been absent due to military service.

Time Limits for Reporting Back to Work

The period an individual has to make application for re-employment or report back to work after military service is based on time spent on military duty.

For service of less than 31 days, the service member must return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel home plus an eight-hour rest period.

For service of more than 30 days but less than 181 days, the service member must submit an application for re-employment within 14 days of release from service.

For service of more than 180 days, an application for re-employment must be submitted within 90 days of release from service.

Employment Termination

The department may not terminate the employment of an employee who is a member of the military when the employee is ordered to authorized training or duty by a proper authority.

USERRA establishes the cumulative length of time that an individual may be absent from work for military duty and retain re-employment rights up to five years. Exceptions to the five-year limit are:

- Initial enlistments lasting more than five years;
- Periodic National Guard and Reserve training duty; or

- Involuntary active duty extensions and recalls, especially during a time of national emergency.

USERRA clearly establishes that re-employment protection does not depend on the timing, frequency, duration, or nature of an individual's service as long as the basic eligibility criteria are met.

Insurance Benefits

An employee on extended military leave has the right to elect to continue existing Group Benefits Plan coverage for up to 24 months while in the military and is responsible for payment of their portion of the insurance premium.

If the employee elects to discontinue coverage during military service they have the right to be reinstated in the Group Benefit Plan upon re-employment, generally without any waiting periods or exclusions.

Vacation and Sick Leave

Upon return from military status the employee is entitled to unused vacation and sick leave accrued before taking extended military leave or earned while in an emergency leave status (military leave purposes only).

The employee, at their request, must be permitted to use any vacation accrued before the beginning of their military service instead of leave without pay. Service members cannot be forced to use vacation time for military service.

Medical and Mental Health Care Leave for Certain Veterans

Medical and mental health care leave is provided to an employee who is:

- A veteran; and
- Eligible for health benefits under a program administered by the Veterans health Administration of the United States Department of Veterans Affairs.

An eligible employee may be granted leave without a deduction in salary or loss of vacation, sick, overtime or compensatory time to obtain medical or mental health care administered by the Veterans Health Administration of the United States Department of Veterans Affairs, including physical rehabilitation.

The amount of leave granted may not exceed 15 days each fiscal year unless the executive director deems appropriate to grant additional days.

Section 10 Miscellaneous Leave

Reference

- Texas Government Code, § 659.005, Witness Fees; Jury Service
- Texas Government Code, §§ 661.902 - 661.921, Miscellaneous Leave Provisions for State Employees
- Texas Government Code, § 664.061, Agency Wellness Policies
- Texas Office of the Attorney General, Opinion JM-785 (1987)
- Texas Office of the Attorney General, Opinion V-1532 (1952)

Purpose of Policy

To provide eligible employees paid leave for certain special circumstances.

Recording Miscellaneous Leave

Employees must enter the approved leave on their time sheets in CAPPs HR-PR and submit supporting documentation to the Finance and Administrative Services' Payroll office for entry into CAPPs HR/PR.

Administrative Leave for Outstanding Performance

Administrative leave for outstanding performance policy is provided in Chapter 12-Awards, Section 2-Administrative Leave for Outstanding Performance.

Amateur Radio Operator Leave

An employee who holds an amateur radio station license issued by the Federal Communications Commission may be granted up to 10 working days in a fiscal year to participate in specialized disaster relief services. The employee must receive supervisory authorization and must have approval from the Governor before taking the leave.

The number of amateur radio operators eligible for this type of leave may not exceed 350 state employees during a fiscal year. The Texas Division of Emergency Management is responsible for coordinating the establishment and maintenance of the list of employees eligible for this leave.

Call to Active Duty by Governor

Employees called to emergency active duty with the National Guard by the Governor of Texas or by other authority under the law of the state are entitled to a leave of absence with full pay and without loss of vacation leave or applicable military leave benefits. This is separate and distinct from the 15-day maximum military training per federal fiscal year.

Certified American Red Cross Disaster Activities (Ready Texans Program)

Employees certified as disaster service volunteers of the American Red Cross and those in training to become such volunteers may be granted up to 10 days of paid leave each fiscal year to participate in specialized disaster relief services of the American Red Cross. These individuals are known as Ready Texans.

This leave is granted if the employee is serving as a volunteer:

- At the request of the American Red Cross;
- With the executive director authorization; and
- With the Governor's approval.

Donating Blood

Employees are allowed sufficient time off up to four times per fiscal year, to donate blood at a blood donation center. Prior approval from the supervisor and written proof of the time used to donate blood are required. The time is entered in CAPPS HR-PR. If proof is not provided, state law requires the time to be deducted from either the employee's salary or accrued leave, as the employee chooses.

Department sponsored blood drives on campus do not require a time sheet entry or proof of donation. Time to donate blood during work hours must be scheduled with the employee's supervisor to ensure business operations are not affected.

Emergency Medical Services Volunteers

Emergency Medical Services volunteers are entitled to paid time off up to five work days per fiscal year to attend training conducted by state agencies.

Such employees may also be granted unlimited miscellaneous leave to respond to emergency medical situations as needed during normal work hours. Division directors may use their discretion in granting leave for emergency medical services. Written documentation from the emergency medical department may be required.

Inclement Weather Conditions

When the executive director determines that the health or safety of customers, partners or employees would be placed at risk, or conditions or events prevent performance of regular operations, closure of the department or a subsection of the department may be deemed necessary.

The executive director may grant employees paid emergency leave when an office is officially closed. The amount of emergency leave granted will be based on the number of hours an employee would have normally worked if the office had not been closed.

Employees who work during the official closure will not receive the emergency leave.

In the absence of official notification of delayed opening or office closure each employee must use their own judgment pertaining to their personal safety in traveling to and from work during inclement weather situations.

When an office is open, employees who choose not to work due to personal safety concerns must follow regular call-in procedures and use personal leave to cover their absence.

Jury Duty or Subpoena Leave

Employees called for jury duty or subpoenaed to appear in court as a witness are granted paid leave to meet such obligations provided they have no personal interest or connection in the case. However, if an employee is subpoenaed by the prosecution in a criminal case, paid leave may be granted even when a personal connection to the case exists.

The maximum amount of jury duty or subpoena leave allowed per day is eight hours. The maximum allowable per day for part-time employees is the number of hours in their normally scheduled workday, not to exceed eight hours. Employees may keep any fee or compensation received for jury service.

Leave for a Foster Parent

Employees who are foster parents to a child under the conservatorship of the Texas Department of Family and Protective Services (DFPS) may take paid leave for the time used to attend meetings held by DFPS regarding the foster child or to attend admission, review and dismissal meetings held by a school district regarding the foster child.

Organ or Bone Marrow Donors

Employees may take paid leave for organ or bone marrow donations. This paid leave is limited to five work days in a fiscal year for bone marrow donations and 30 work days in a fiscal year for organ donation.

Reserve Law Enforcement Officer Training

Employees who are reserve law enforcement officers may take paid leave to attend required training. This paid leave is limited to five work days every fiscal biennium.

Training Programs with Assistance Dogs

Employees with qualifying disabilities are granted paid leave to attend training programs to acquaint them with their assistance dog. Such leave may not exceed 10 work days per fiscal year.

Volunteer Court Appointed Special Advocates Leave (CASA)

An employee may take paid leave not to exceed five hours each month to participate in mandatory training or perform volunteer services for Court Appointed Special Advocates.

Volunteer Firefighter Training and Duty

Volunteer firefighters may take paid leave up to five work days per fiscal year to attend training schools conducted by state agencies. Employees may also be granted unlimited miscellaneous leave to respond to emergency fire calls as needed during normal work hours. Division directors may use their discretion in granting leave for fire fighting duty. Written documentation from the fire department may be required.

Voting

The agency must allow sufficient time off, without deduction in salary or accrued leave, for employees to vote in each national, state or local election if there is not sufficient time to vote outside regular working hours. Time off is not granted to employees during scheduled work hours for early voting.

Wellness Leave

Employees will be granted eight hours of paid leave time each 12 month period if they receive a physical examination and complete an online health risk assessment. The eight hours are documented on Wellness Leave Authorization (Form 2313) and submitted to Finance and Administrative Services' Payroll office for entry into CAPPS HR/PR. Wellness leave must be taken within the year (12-month period) from the date of the physical examination.

An employee may be granted 30 minutes during normal working hours for exercise three times each week. No time sheet entries are required for the 30 minute exercise periods.

Section 11 Holidays

Reference

- Texas Government Code, §§ 662.001 - 662.023, Holidays for State Employees

Purpose of Policy

To provide eligible employees paid leave for holidays observed by the State.

Holidays

The Texas Government Code identifies three types of holidays for state employees.

- National
- State
- Optional

State employees are entitled to a paid day off from work on national, state and optional holidays recognized by the State. An employee is eligible to paid holiday leave if:

- The holiday does not fall on a weekend; and
- The employee is in paid status.

Each division must have enough employees on duty on Minimal Staff Holidays (also known as Skeleton Crew days) to conduct public business during regular business hours. Employees must obtain supervisory approval before working on a national or state holiday.

Employees who work on a holiday will receive holiday compensatory time for the hours worked, calculated on an hour-for-hour basis (one hour earned for each hour worked), up to a maximum of 8 hours. Time worked greater than 8 hours is recorded as regular compensatory hours worked (in addition to recording the 8 hours of holiday compensatory time).

Holiday compensatory time must be taken during the 12-month period following the holiday or it will be lost.

Non-Standard Work Schedules

Employees on non-standard work schedules are entitled to the equivalent number of holidays as employees working standard schedules and will be paid for an official state holiday falling on Monday through Friday, whether or not they are scheduled to work that day.

Optional Holidays

Optional holidays include Rosh Hashanah, Yom Kippur, Good Friday and Cesar Chavez Day. Employees may choose to observe an optional holiday in exchange for working on a Minimal Staff Holiday when:

- The holiday does not fall on a weekend;
- They are approved by their supervisor to do so; and
- They have completed the Optional Holiday Agreement (Form 2102).

With their supervisor's approval the employee may work on a Minimal Staff Holiday first and then take the Optional or vice versa.

Eligibility for Holiday Pay

To be paid for a holiday that falls on a day other than the first or last workday of a month, the employee must be a state employee in paid status on the workday before and the workday after the holiday.

To be paid for a holiday that falls on the first workday of a month, the employee must be a state employee in paid status on the workday immediately after the holiday.

To be paid for a holiday that falls on the last workday of a month, the employee must be a state employee in paid status on the workday immediately before the holiday.

Transferring Employees

When a holiday falls between the dates when an employee is transferring from one state agency to another, the receiving agency is responsible for paying for the holiday.

Section 2 Administrative Leave for Outstanding Performance

Reference

- Texas Government Code, § 661.911, Administrative Leave

Purpose of Policy

To reward employees for outstanding job performance by granting administrative leave.

Administrative Leave for Outstanding Performance Award

Employees who exhibit overall outstanding performance may be awarded paid administrative leave in recognition of that performance. All department employees except the executive director are eligible for this award.

The supervisor and the supervisor's manager may approve a grant of administrative leave up to a maximum of 32 hours in a fiscal year.

The supervisor must provide documentation of the outstanding performance on Administrative Leave for Outstanding Performance (Form 1933). A copy of the approved Form 1933 must be submitted to Finance and Administrative Services' Payroll office for entry into CAPPs HR/PR.

Using Administrative Leave for Outstanding Performance

Administrative leave is taken at times agreed upon by the employee and supervisor. The use of administrative leave must be recorded on the employees's time sheet in CAPPs HR-PR.

Administrative leave must be used within the biennium in which the leave was awarded. The executive director may authorize the carryover of administrative leave to a new biennium. Employees must use all administrative leave before their last day on the payroll or it will be lost.