

Human Resources Policy Manual

Family and Medical Leave Act

The State Preservation Board (SPB) is required to comply with the Federal Family Medical Leave Act (FMLA) of 1993. SPB reserves the right to designate FMLA leave as needed to any eligible employee and requires employees to use all eligible, available benefit time as qualifying FMLA time toward the 12 week limit. The FMLA entitles eligible employees to take up to 12 weeks of paid and/or unpaid, job-protected leave in a 12-month period based on the employee's rolling 12 month calendar for:

- The birth and/or care of an employee's newborn child.
- The placement of a child for adoption or foster care.
- To care for an immediate family member (spouse, child, or parent) with a serious health condition.
- To take medical leave when the employee is unable to work because of his/her own serious health condition.

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Eligible Employees:

To be eligible for FMLA, an employee must have worked for the State of Texas for at least twelve months and have completed 1,250 hours over the 12 months prior to the commencement of the leave. The rolling 12-month period, which is defined as consecutive months, during which an eligible employee may take up to 12 weeks of unpaid leave will be calculated going forward from the starting date of the FMLA event/leave.

Spouses employed by the same agency are limited in the amount of FMLA leave they may take to a combined total of 12 weeks (or 26 weeks if leave is to care for a covered military member with a serious injury of illness).

Procedure:

- An eligible employee who wishes to take FMLA leave must provide his/her supervisor with 30 days advance notice when the leave is foreseeable. Once FMLA is requested, the employee will receive an information packet containing the certification forms and information on the rights and duties of the FMLA for both the employee and the agency.
- The eligible employee must submit medical certification or military certification to support a request for leave. Health and dental benefits will continue during the FMLA period, even after the employee has exhausted all available benefit time, provided the employee makes his/her regular, monthly contributions to the plan. Once the paid leave is exhausted, the employee is financially responsible for his or her portion of any insurance payments. Failure to pay premiums

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may result in lapse of coverage. Contact Staff Services for specific details on continuing benefits while on leave.

- Employees returning from FMLA within the 12 or 26 (for Military Caregiver Leave) week period will be restored to their original job, or to an equivalent job with equivalent pay and benefits.
- Employees returning from a medical FMLA will be required to present medical certification of fitness for duty. Failure to provide a medical certificate of fitness for duty may result in a denial of job reinstatement until medical certificate release is provided.
- Employees may not earn additional paid time off while on FMLA. Any benefit time accrued while on FMLA will be credited to the employee upon their return to work.
- An employee does not need to use FMLA leave in one block of time. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.
- FMLA may be taken in increments as small as one hour.

Contact Staff Services if you have any questions regarding your rights under FMLA.

FMLA will always begin with paid time off until all available benefit time is used. After exhausting paid FMLA leave, non-paid FMLA leave will continue until the conclusion of the protected 12 or 26 (for Military Caregiver Leave) week time limit. Following the conclusion of protected leave, the SPB Leave of Absence policy will apply.

Medical Certification

The medical Certification of Health Care Provider serves as a "doctor's note" to certify the reason and expected duration of the extended medical leave in writing. All requests for medical leaves must be accompanied by a doctor's statement verifying the serious health condition or pregnancy and the employee's estimated date of return to work. Further, SPB requires written medical verification of the ability to resume work and a list of restrictions that would directly relate to the employee's ability to perform the job, if applicable.

Military Family Leave Entitlements

The National Defense Authorization Act (NDAA), Public Law 110-181, amended the FMLA to allow eligible employees, who are family members of covered military members, to take up to 12 weeks of job-protected leave in the applicable 12-month period for any "qualifying exigency" arising out of the active duty or call to active duty status of the covered military member. The NDAA also amended the FMLA to allow eligible employees to take up to 26 weeks of job-protected leave in a "single 12-month period" to care for a covered military member with a serious injury or illness. These two new types of FMLA leave are known as the Military Family Leave Entitlements.

Eligible Family Members Defined

A covered military member is the employee's spouse, son, daughter or parent who is on active duty or call to active duty status. Son or daughter means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis. Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. This term does not include parents "in law." Military Caregiver leave is available to an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member with a serious injury or illness.

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Military Certification

The Certification of Qualifying Exigency and/or Certification for Serious Injury or Illness of Covered Service-member serves to certify the reason and expected duration of the military leave in writing. All requests for FMLA leave for Military Exigency or Military Illness/Injury of a Service-member must be accompanied by timely, complete, and sufficient documentation to certify the qualifying event.

Leave Types and Duration

Eligible employees may take Military Family Member leave (FMLA) for either (or both) of the following reasons:

Qualifying Exigency Leave

A "qualifying exigency" ****** arising out of a covered family member's active duty or call to active duty in the Armed Forces in support of a contingency operation. Under the terms of the statute, qualifying exigency leave is available to a family member of a military member in the National Guard or Reserves; it does not extend to family members of military members in the Regular Armed Forces.

**** Exigency is defined as the state of affairs that makes urgent demands.**

Qualifying Exigencies include:

- Issues arising from a covered military member's short notice deployment.
- Military events and related activities such as official ceremonies, programs, or events that relate to the active duty or call to active duty status of a covered military member.
- Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member.
- Making or updating financial and legal arrangements to address a covered military member's absence.
- Attending counseling, the need for which arises from the active duty or call to active duty status of the covered military member.
- Taking up to five days of leave to spend time with a covered military member who is on short-term, temporary rest and recuperation leave during deployment.
- Attending to certain post-deployment activities, such as arrival ceremonies, reintegration briefings and other official ceremonies or programs sponsored by the military for a period of 90 day following the termination of the covered military member's active duty status.
- Any other event that the employee and employer agree is a qualifying exigency.

Leave Duration: Up to 12 work weeks of leave during any 12-month period for qualifying exigencies.

Military Caregiver Leave

To care for a covered service member during a single 12-month period. A covered military member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the military member medically unfit to perform his or her duties for which the military member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

Leave Duration: Up to 26 workweeks of leave during a single 12-month period to care for an ill or injured covered military member. (Leave may not exceed 26 weeks in a single 12-month period when it is combined with other FMLA-qualifying leave).

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Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Employee Responsibilities

Employees must provide 30 days advance notice to take FMLA leave when the need is foreseeable. When 30 days' notice is not possible, the employee must provide notice as soon as possible and must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether or not they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Prohibited Acts

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.
- Retaliate against a person who has filed a complaint, provided information, or testified in relation to a complaint.

If you believe you have been subjected to conduct that may violate the FMLA, contact the Senior Staff Services or the Director of Administration. If you have any questions or if you need further explanation of your rights under FMLA contact Staff Services. FMLA leave will always begin with paid time off until all available benefit time is used. After exhausting paid FMLA leave, non-paid FMLA leave will continue until the conclusion of the protected 12 or 26 week time limit, whichever is applicable. Following the conclusion of protected leave, the SPB Leave of Absence policy will apply.

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Uniformed Services Employment and Reemployment Rights Act (USERRA)

An SPB employee has the right under USERRA to be re-employed if the employee leaves a regular agency position to perform uniformed service in a branch of the U.S. military, if the employee:

1. Provides advance written notice to SPB's Staff Services Office;
2. Has five years or less of cumulative service in the uniformed services while employed by SPB;
3. Returns to work or applies for re-employment with the SPB in a timely* manner at the conclusion of military service; and
4. Has not been separated from military service with a disqualifying discharge or under other than honorable conditions.

**Time periods defined under USERRA.*

USERRA also prohibits discrimination and retaliation toward past or present members of uniformed services; those who have applied for membership in the uniformed services; and/or those who are obligated to serve in the uniformed service. If you leave SPB employment to perform military service and are enrolled in ERS health plan benefits, you also have the right to elect to continue your existing state agency health plan coverage for yourself and your covered dependents up to 24 months while in the military at your own expense.

Staff Services is available to provide any additional information and assistance regarding your rights and responsibilities under USERRA. USERRA posters are prominently displayed throughout the agency.

Other Military Leave

Employees who are members of the National Guard or of reserve components of the Armed Forces of the United States are permitted up to fifteen (15) working days of military training leave each calendar year without any loss of salary, annual leave, or sick leave. The 15 days need not be consecutive and may be applied to all working days when the employee is engaged in training or duty. An employee called to emergency duty by the Governor of Texas will be granted leave without pay, in addition to the 15 days allowed for training.

Employee Leave Requests and Supervisory Authorization

All employees are required to document approval of any request for leave (i.e., sick, annual, compensatory, overtime, etc.). Leave requests must be approved in advance by an employee's immediate supervisor. Use of annual or compensatory leave in excess of ten (10) consecutive work days must be approved in advance by the agency Executive Director. The request for leave in excess of 10 consecutive work days must be accompanied by documentation detailing the need for the extended leave and an outline of how the employee's job duties will be performed during the leave. Approval of any leave will be subject to operational staffing and other legitimate business needs. Extended leave requests for more than 10 consecutive work days are discouraged due to disruption to agency services that may result. An employee is not required to submit the request prior to taking unexpected sick or emergency leave. However, an employee must document the request on an agency leave or time reporting form on the day the employee returns to work.

A Division Director may require proof of proper use of sick leave at any time and may disallow sick leave use in absence of such proof. An employee who fails to report to work as scheduled, or who fails to return to work upon expiration of approved leave, may be considered to have abandoned his or her position with the agency and may be subject to disciplinary action up to and including termination.

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Occasionally, an event occurs that results in the evacuation of a facility and/or dismissal of employees from the worksite (for example, bomb threat, power outage, inclement weather). Employees who are on any type of leave when an event of this nature occurs will not be credited back for leave taken.

Longevity Pay

Longevity pay is provided for employees who are: full time state employees on the first workday of the month; are not on leave without pay on the first workday of the month; and have at least two years of lifetime service credit accrued by the last day of the preceding month. Eligible employees are paid \$20 per month for every two full years of lifetime service credit and will receive longevity pay increases after each additional three years of service, up to and including 42 years of service, a legislatively mandated cap. Payment begins upon completion of the employee's second year, or 24 full months.

Longevity Pay for Full-time Employees:	
Years of Service	Monthly Longevity Pay
Less than 2 years	\$0
Greater than 2 and less than 4 years	\$20
Greater than 4 and less than 6 years	\$40
Greater than 6 and less than 8 years	\$60
Greater than 8 and less than 10 years	\$80
Greater than 10 and less than 12 years	\$100
Greater than 12 and less than 14 years	\$120
Greater than 14 and less than 16 years	\$140
Greater than 16 and less than 18 years	\$160
Greater than 18 and less than 20 years	\$180
Greater than 20 and less than 22 years	\$200
Greater than 22 and less than 24 years	\$220
Greater than 24 and less than 26 years	\$240
Greater than 26 and less than 28 years	\$260
Greater than 28 and less than 30 years	\$280
Greater than 30 and less than 32 years	\$300
Greater than 32 and less than 34 years	\$320
Greater than 34 and less than 36 years	\$340
Greater than 36 and less than 38 years	\$360
Greater than 38 and less than 40 years	\$380
Greater than 40 and less than 42 years	\$400
Greater than 42 years	\$420

Annual Leave

State employees who have been employed for six (6) continuous months are entitled to annual leave with pay each year. Annual leave is:

- Accrued from the employee's first day of employment through his or her last day of work; and

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- Accrued beginning the first day of each month. Part-time employees accrue leave in proportion to the number of hours worked that month. An employee who leaves state employment after 6 months of continuous service is entitled to all annual leave accrued.

Unused

The net balance of unused accumulated leave may be carried from one fiscal year to the next, but the balance may not exceed legislatively mandated amounts. The following table indicates the allowable carryover hours for accrued annual leave. All hours in excess of the maximum allowable carryover remaining at the end of the fiscal year shall be credited to the employee's sick leave balance. The state's fiscal year begins on September 1st.

SCHEDULE OF ANNUAL (VACATION) LEAVE ACCRUALS FOR FULL-TIME EMPLOYEES

<i>Length of State Service</i>	<i>Leave Accrual per month</i>	<i>Maximum Carryover</i>
Less than 2 years	8	180
At least 2/ less than 5 years	9	244
At least 5/ less than 10 years	10	268
At least 10/ less than 15 years	11	292
At least 15/ less than 20 years	13	340
At least 20/ less than 25 years	15	388
At least 25/ less than 30 years	17	436
At least 30/ less than 35 years	19	484
At least 35 years or more	21	532

Sick Leave

Full time state employees accrue eight (8) hours of sick leave each month or fraction of a month of employment with the State. Sick leave for part-time employees is accrued in proportion to the number of hours worked each month. Unlike annual leave, there is no limit to the amount of sick leave that may be accrued or carried forward from one fiscal year to the next. Sick leave is accrued beginning the first day of each month.

Sick leave may be taken whenever injury, pregnancy, confinement, or illness of employee or member of the employee's immediate family prevents the employee's performance of duty. Immediate family includes those individuals related by kinship, adoption, or marriage who are living in the same household. Sick leave may also be used to provide care for an employee's spouse, child, or parent even if the family member does not live in the same household. Medical verification is required when using sick leave to care for an immediate family member who does not live in the same household.

Any employee who must be absent from duty because of illness is required to notify his or her supervisor within one (1) hour of his or her scheduled report to duty time and daily for as long as he or she is absent. Notification time may vary due to business needs and is at the discretion of the Division Director. If the reason for the absence is a documented FMLA-qualifying event or Workers' Compensation event, the

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immediate supervisor will coordinate with the Staff Services Office.

To be eligible for accumulated sick leave with pay for a continuous period of more than three working days, a doctor's statement showing the nature of the illness may be required by the employee's supervisor or Division Director, however, a Division Director may request satisfactory proof of the proper use of sick leave at any time. Abuse of sick leave or excessive absenteeism may result in disciplinary action up to and including termination.

Unused Sick Leave

Once an employee terminates employment with the state, the employee is not entitled to payment for any sick leave balance. If the employee gains employment with the state within twelve months, sick leave can be reinstated as allowed under state law. A resigning employee may contribute unused sick leave to the agency's sick leave pool.

Emergency Leave

Emergency leave due to bereavement shall be granted to an employee when there is a death in the employee's family. Employee's family is defined as employee's spouse, the employee's and the spouse's parents, children, brothers, sisters, grandparents, and grandchildren. Emergency leave due to bereavement is **up to** three (3) working days. Leave is granted without charge to either annual or sick leave. Under this policy, permission must be obtained from the supervisor. Documentation must be attached to the employee's timesheet for the time period that includes the emergency leave. Documentation is typically an obituary or funeral program.

Emergency leave may also be granted by the Executive Director when an employee or someone in the employee's immediate family is facing a life threatening illness. In very rare circumstances, other emergency leave may be granted at the discretion of the Executive Director. An employee must submit a Leave Request form, explaining the need for emergency leave. Additional supporting documentation may be requested. Paperwork should be submitted to Staff Services for initial review and sent to the Executive Director for final approval.

The Executive Director may not grant leave to an employee unless it is believed that the request is made in good faith and that the requesting employee intends to return to the agency upon the expiration of the Emergency leave.

An employee is not required to request emergency leave if the Executive Director grants Emergency leave to the agency due to weather conditions or in observance of a holiday. Emergency leave may also be granted for the following situation:

- Leave during an agency investigation. Whether subject of an agency investigation or the witness or victim of an act or event that is subject to investigation by the agency. Let it be noted that a state employee who is the subject of an investigation is ineligible to receive leave under any other provision.

The Agency will report no later than October 1 of each year to the Comptroller, the name and position of each employee granted more than 32 hours of emergency leave during the previous fiscal year and will report no later than the last day of each quarter of each fiscal year to the State Auditor's Office and the Legislative Budget Board the name of each employee, along with the reason why emergency leave was granted to any employee given 168 or more hours of within that fiscal quarter.

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Emergency Leave for Military Duty

The Executive Director or his or her designee, shall grant sufficient emergency leave as differential pay to a state employee on unpaid military leave if the employee's military pay is less than the employee's state gross pay. The combination of emergency leave and military pay may not exceed the employee's actual state gross pay. For purposes of this policy, military pay does not include money the employee receives:

1. For service in a combat zone;
2. As hardship pay; or
3. For being separated from the employee's family.

SPB will adopt any guidelines from the State Auditor's Office (SAO) relative to determining the amount of emergency leave to grant to an employee under this section. Should there be a discrepancy between SPB's policy and any subsequent guidance provided by the SAO, the SAO's guidance shall prevail.

Extended Sick Leave

If all leave balances are exhausted, an employee may request Extended Sick Leave benefits for a serious health condition of their own, or to care for an immediate family member who has a serious health condition. The definition of what constitutes a *serious health condition* is included in the Family Medical Leave Act policy and is the same for the purposes of this policy. If the condition meets the definition of "catastrophic," an employee must first request **Catastrophic Sick Leave Pool**.

The granting of Extended Sick Leave is discretionary and the final determination is made by the Executive Director. To be eligible for Extended Sick Leave, an employee must:

- Have worked for the agency for at least 12 months;
- Not have been granted extended sick leave within the last two years;
- Have exhausted all accrued leave;
- Be performing at a fully satisfactory level according to the employee's immediate supervisor and as reflected in the employee's personnel file;
- Have used Sick Leave in a responsible manner. Sick Leave consistently taken as it is earned, or failure to maintain Sick Leave balances without good cause or a pattern of abuse of leave time or inappropriate leave use is not considered responsible use.

If approved by the Executive Director, the length of Extended Sick Leave is determined by the employee's length of service with the agency as follows:

- 1-2 years employment - A total of 40 hours of Extended Sick leave may be granted (within a two-year period).
- 2-3 years employment - A total of 80 hours of Extended Sick leave may be granted (within a two-year period).
- 3-4 years employment - A total of 120 hours of Extended Sick Leave may be granted (within a two-year period).
- 4 or more years employment - A total of 160 hours of Extended Sick Leave may be granted (within a two-year period).

Written verification from a licensed practitioner of the injury or illness must be provided to Staff Services before an employee can be granted Extended Sick Leave. This verification must include the nature of the injury/illness, explanation of treatment required, and expected duration of treatment and recovery.

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Catastrophic Sick Leave Pool

An employee may apply to use leave from the agency's Catastrophic Sick Leave Pool if the employee has suffered a catastrophic illness or injury, or if they need time away from work to care of an immediate family member who has a catastrophic illness or injury. Employees must have exhausted all of their leave balances in order to be eligible for Sick Leave Pool benefits.

DEFINITIONS:

An immediate family member is (1) someone related by kinship, adoption, or marriage who lives in the same household; (2) foster children who reside in the same household; (3) minor children and those for which the employee has been appointed by the court as legal guardian, regardless of whether they live in the same household, if they require the employee's care and assistance for a documented medical condition.

Catastrophic is defined as "a severe condition or combination of conditions affecting the mental or physical health of the employee or the employee's immediate family that requires the services of a licensed practitioner for a prolonged period of time, and that forces the employee to exhaust all time earned and to lose compensation from the State."

A *licensed practitioner* is a physician who is practicing within the scope of his or her license.

A "severe condition", or combination of conditions is:

- A medically verified, life-threatening injury or illness; or
- A medically verified, debilitating injury or illness of an extreme magnitude.

Examples of illness/injuries generally considered severe enough to be catastrophic include, but are not limited to:

- Stroke with residual paralysis or weakness;
- Severe heart attack;
- Major surgery (for example, heart bypass surgery);
- Cancer-related surgery or treatments;
- Potentially fatal tumors; or
- Amputations.

Pregnancy, childbirth, (including cesarean deliveries) or related medical and elective surgeries will be considered elective or a temporary non-catastrophic medical condition and will not be qualified as "catastrophic" for purposes of this policy.

An employee may submit a Sick Leave Pool application to Staff Services requesting sick leave pool. The physician treating the employee or the employee's immediate family member for a catastrophic illness or injury must also provide information sufficient to conclude the illness or injury is life-threatening or debilitating and of an extreme magnitude. Staff Services can provide a letter or form for the employee to take to the doctor requesting the necessary information.

If approved to receive sick leave pool benefits, the amount of sick leave pool an employee may receive depends on: (1) years of service with the agency and (2) the number of hours of sick leave the employee contributed to the sick leave pool during the biennium, prior to the date the catastrophic illness or injury is diagnosed.

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The following table shows how many hours an employee may receive per catastrophic condition based on the number of hours contributed during the biennium:

Years of Service	0	8	16	24	32	Hours Contributed
0 – 5	40	240	320	400	480	Number of Hours Employee Can Receive
6 – 10	80	320	400	480	560	
Over 10	120	400	480	560	640	

*Exceptions can be made by the Executive Director at his or her discretion.

An eligible employee can be granted hours up to the amount shown above but may be granted less if the duration of the catastrophic illness or injury is less than the total number of hours an employee can receive.

Once a Sick Leave Pool request is approved, the number of hours granted may not exceed the lesser of one-third of the total amount of time in the pool or 90 days. An employee may reapply for additional Sick Leave Pool if necessary. Subsequent requests are subject to the same restrictions as the original request, including additional physician's statements provided to Staff Services. Eligible part-time employees will be awarded Sick Leave Pool in proportionate amounts.

Donations to the Sick Leave Pool

Donations are voluntary and can be made while a current employee or when separating from state employment through the agency's exit interview process. An employee donating to the sick leave pool must designate if they are donating leave for a specific employee. The recipient employee must be eligible at the time of the donation; if not, the donated sick leave will be either donated to the pool available to all eligible SPB employees or will be lost, depending on the designation of the donating employee.

Current full-time and part-time employees may donate sick leave hours to the sick leave pool in eight-hour increments.

- Sick leave donations are effective for the remainder of the biennium in which they were donated.
- For this reason, an employee who wishes to maintain their additional sick leave pool benefits must donate to the pool each biennium. The agency recommends employees donate in September, at the beginning of the biennium, to be sure the maximum number of hours an employee can receive will be available.

*An employee who exhausts leave balances due to a non-catastrophic illness may request the agency return the sick leave hours he or she donated to the sick leave pool during the same biennium in which the request is made. A written request to the benefits section is all that is required.

If an employee is retiring, he or she may designate the number of sick leave hours to be used for retirement credit, and the number of hours to be donated to the pool. Please note that sick leave hours

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donated are *not* included in the calculation of credible service for ERS purposes; the employee cannot receive credit for any sick leave hours previously donated to the sick leave pool.

An employee who resigns or is terminated may donate sick leave hours to the sick leave pool in eight-hour increments at separation.

Sick Leave Donations To Designated Employees

Effective September 01, 2015, Texas Government Code, Section 661.207, allows state employees to donate their accrued sick leave to another employee who:

- Is employed in the same state agency as the donor employee; and
- Has exhausted the employee's sick leave, including all other leave types, and any time the individual may be eligible to withdraw from Sick Leave Pool.

Current full-time and part-time employees may also donate sick leave to more than one recipient. If the donor is separating employment with SPB, the donation must occur prior to the effective date of their termination and the receiving employee must have exhausted all of their available time before the donating employee's date of termination. An employee must use the Sick Leave Donation form available from Staff Services, and allocate the donated time in hourly increments.

Once completed, the form must be submitted to the Staff Services Office. All Sick Leave Option donations will be reviewed by Staff Services to confirm eligibility.

Employees must exhaust all accrued leave, plus any extended sick leave and sick leave pool previously granted, before they are eligible to use the Donated Sick Leave Option. This includes sick leave, annual leave (if available), overtime, and compensatory time. If the employee meets the eligibility criteria, the employee will be notified by Staff Services, but will not be given the name of the donating employee(s). An employee may refuse to accept donated sick leave hours. Any donated hours that have been refused by an employee will not be transferred from the donating employee(s).

Upon approval, the donated hours will be credited to the individual employee and a corresponding amount shall be deducted from the donating employee's sick leave balance. The time shall be used in the same manner as sick leave earned by the employee in the course of employment. Employees who donate sick leave may not later request reinstatement of donated sick leave hours.

All sick leave donations must be voluntary. No employee will be rewarded or retaliated against based on his or her decision to donate. SPB employees may not directly solicit other employees for a donation of sick leave on behalf of themselves or others. Solicitation of Donated Sick Leave Option time under this section that is disruptive to the workplace is unacceptable and may lead to disciplinary action. The donor employee may not receive gifts or compensation in exchange for the donation.

An employee who receives donated sick leave may only use the leave when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty or when the employee is needed to care for and assist a member of the employee's immediate family who is sick.

An employee who voluntarily discloses medical information to his or her coworkers should understand that information may not be kept confidential; it may not be protected by any federal or state law and might be disclosed to other unintended recipients.

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Providing false or misleading information to obtain a Donated Sick Leave Option and/or other abuse may lead to the revocation of Sick Leave Option hours, an investigation and/or disciplinary action.

In the event an employee who receives donated sick leave separates employment with SPB, unused donated sick leave will not be restored to the donor. If the employee resigns from SPB, transfers to another agency, or dies, all unused donated sick leave will expire. Donated sick leave will not transfer to another agency and will not be paid to the deceased employee's estate.

An employee who separates from State of Texas employment and regains employment within 12 months will not be entitled to have their donated sick leave restored. Unused donated sick leave cannot be used by the employee as service credit in the Employee's Retirement System of Texas.

Job-related illnesses or injuries covered by Workers' Compensation do not qualify an employee for a Sick Leave Option.

Medical and Mental Health Care Leave for Certain Veterans

In order for an employee to utilize the Medical and Mental Health Care Leave for Certain Veterans, he or she must meet the following criteria:

- Must be a state employee; and
- Meet the definition of a veteran as outlined by Sec. 434.023(a); and
- Be eligible for health benefits administered by the Veterans Health Administration of the United States Department of Veteran Affairs.

Agency employees who meet the above criteria may be granted leave without a deduction in salary or loss of Vacation, Sick, earned Overtime, or Compensatory time to obtain medical or mental health care administered by the Veterans Health Administration of the United States Department of Veteran Affairs, including physical rehabilitation.

Leave, generally granted, shall not exceed 15 days **annually**. The Executive Director may grant additional days of leaves as previously described and as appropriate for the employee.

Volunteer Firefighter Leave

An employee who is a volunteer firefighter shall be granted leave (not charged against the employee's annual or sick leave) for up to five (5) working days to attend training schools conducted by state agencies. Paid leave will be granted to volunteer firefighters while they respond to emergency fire situations. In accordance with the current Appropriations Act, this leave will not be taken out of the employees sick leave or vacation time.

Red Cross Disaster Volunteer Leave

A state employee who is a certified disaster service volunteer of the American Red Cross or who is in training to become such a volunteer may, with the authorization of his or hersupervisor, be granted a leave to participate in specialized disaster relief services for the American Red Cross, upon the request of the American Red Cross and with the approval of the Governor's Office. The leave may not exceed 10 days each year and does not subject the employee to loss of pay, vacation time, sick leave or compensatory time.

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Leave Without Pay

Authorized Leave of Absence Without Pay (LWOP) is the **temporary** absence from duty of an employee who intends to return to work. All LWOP requests must be approved by the SPB Executive Director.

LWOP is generally only granted after an employee exhausts all benefits granted under: Extended Sick Leave, Sick Leave Pool, Family Medical Leave (FMLA) or legislatively mandated Parental Leave (as covered in the Employee Benefits Section of this handbook). An unpaid absence (with the exception of leave covered under Parental leave or FMLA) cannot exceed 60 days. Once Parental or FMLA leave is exhausted any additional unpaid absence cannot exceed 60 days.

The Executive Director may grant exceptions to these time limits if the employee is taking leave for a reason such as working for another state government entity under an interagency agreement or taking leave for educational purposes.

All accrued paid leave; overtime, compensatory time, annual leave and sick leave (if the leave is for medical reasons) must be exhausted except in instances of disciplinary suspension, workers' compensation or military situations before LWOP is granted.

Supervisors are responsible for monitoring employee leave balances closely and must contact the agency Payroll Coordinator and Staff Services immediately if an employee is in danger of exhausting all sources of paid leave and must be put on LWOP. Employees cannot use LWOP as a general leave type. LWOP that falls under the Extended Sick Leave, Sick Leave Pool, Family Medical Leave (FMLA) or legislatively mandated Parental Leave, Workers Compensation, disciplinary suspension or military leave will be coordinated with Staff Services, the immediate supervisor and employee. Staff Services will obtain all supporting documentation and forward to the Payroll Coordinator the LWOP Personnel Action Form (indicating LWOP start date, hours to be paid and leave code) along with a copy of the Leave Timesheet for processing prior to the payroll deadline.

New Hires not eligible for annual leave and potential employees with previous obligations must notify Staff Services and the Hiring Supervisor in writing with the reason and dates of leave during the hiring process to obtain written pre-approval from the SPB Executive Director prior to the position being offered.

Pre-approved LWOP granted by the Executive Director prior to the start date of a new employee must have the dates of leave requested on the new hire Personnel Action Form (PAF). The Hiring Supervisor will obtain all supporting documentation during the hiring process and forward a copy to the Payroll Coordinator for processing no later than the hire date.

Supervisors with New Hires ineligible for annual leave (and have unforeseen circumstances arise) and have not accrued any usable leave time (compensatory or holiday time) must contact Staff Services and Payroll immediately upon notification from the employee. The employee must request in writing the reason for and dates of the LWOP to obtain approval in writing from the agency Executive Director. The Supervisor will obtain all supporting documentation and forward the LWOP PAF and Leave Timesheet to the Payroll Coordinator for processing prior to the payroll due date.

An employee on LWOP on the first day of the month will not receive annual and sick leave accruals for that month. If the employee returns to work within the same month, the annual and sick leave accruals will be credited at that time. An employee who is out on LWOP for a full calendar month will not accrue sick or annual leave for that month.

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An employee will not be paid for a holiday if he/she is in unpaid leave status:

- Before and after the holiday, if the holiday falls mid-month.
- After the holiday if the holiday falls on the first workday of the month.
- Before the holiday if the holiday falls the last workday of the month.

An employee who is out on LWOP for a full calendar month will be responsible for paying any insurance premiums due for that month directly to the Employee Retirement System (ERS).

Subject to business constraints, approval of LWOP constitutes a guarantee of employment for the specified period of time.

Any full or partial calendar month of LWOP does not constitute a break in employment, but also does not count for purposes of state service credit, with the exception of an employee returning from military leave without pay. This time is also not included in the calculation of the number of continuous months of employment for purposes of merit increases and leave entitlement. (Texas Government Code, Section 661.909)

Jury Duty

If an employee is called for jury duty, the time missed from work is not charged against accumulated leave. Compensation or reimbursement of expenses received for jury duty will not affect the wages paid to the employee by the agency.

The following steps must be followed by employees to access the jury duty leave benefit:

1. Employee must inform immediate supervisor that a summons for jury duty has been received and report expected start date.
2. If duty exceeds one day, the employee shall contact supervisor with an approximate date of return.
3. Upon completion of duty, the employee shall complete a leave request form for jury duty and attach the original summons and the 'release' form, which may be obtained upon request from the court clerk. This form indicates the date and time of release from jury duty.
4. If you are required to be present in court for at least 3/4 of your workday (6 hours for a full time employee, not including lunch), you will not be required to report for work on that day.

Voting

Employees are allowed one hour off work to vote without deduction from pay or accumulated leave. Time off for voting must be scheduled and approved by the employee's supervisor.

Parental Leave

Employees are entitled to Parental Leave of Absence for the birth of a natural child or the adoption or foster care placement of a child under three years of age. The period of the leave must begin with the birth of the child or the first day the adoptive child is formally placed in the home. This leave is not to exceed 12 weeks and all accrued leave must be taken before the unpaid leave begins.

Employees with less than 12 months of state service or less than 1,250 hours of work in the 12 months immediately preceding the start of leave are eligible to take Parental Leave under this policy. Employees anticipating using parental leave should notify their supervisor at the earliest possible opportunity in

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order to allow sufficient time to plan for covering the employee's duties in his/her absence. Employees not eligible for parental leave may be eligible for leave under the provisions of the Family Medical Leave Act (FMLA).

Foster Parent Leave

A state employee who is a foster parent to a child under the conservatorship of the Texas Department of Family and Protective Services, is entitled to a leave of absence with full pay for the purpose of attending staffing meetings held by the DFPS regarding the employee's foster child. The employee may also attend, with a paid leave of absence, the Admission, Review, and Dismissal (ARD) meeting held by a school district regarding his or her foster child.

Child Educational Activities

An employee may use up to eight hours of sick leave each calendar year to attend educational activities for the employee's children who are in pre-kindergarten through 12th grade. Employees must give reasonable notice of intention to use sick leave to attend such educational activities.

Witness Duty

An employee called to appear in any judicial or legislative investigation will be granted leave as follows:

- If serving in an official capacity, leave will be granted without any reduction in salary;
- This leave is in addition to other leave to which the employee is entitled;
- If serving in a non-official capacity (i.e., testifying from personal knowledge), the employee must use available personal leave balances under applicable policies; and
- If subpoenaed in a private matter, an employee may request and may be granted Emergency Leave at the discretion of the Executive Director. The subpoena must be presented to the Division Manager and the appearance must be of short duration.

State Holidays

All state employees, including part-time and hourly workers, are entitled to designated state and federal holidays with pay. Holidays are designated and authorized by the Legislature and may change each year. Current holidays for are published on the Intranet and available in the Staff Services Office upon request.

Because of the nature of business conducted by the agency, certain divisions of the SPB must be staffed and employees may be required to work on holidays. It is the employee's responsibility to coordinate holiday time off with his/her supervisor. Holiday compensatory time is earned when an employee is required to work on a designated holiday. Holiday compensatory time must be taken within twelve months after it is earned or it will be forfeited.

When a national or state holiday falls on a weekend, the holiday will not be observed on another day. When two holidays fall on the same day, only one holiday will be observed.

Optional Holidays

A state employee is entitled to observe Rosh Hashanah, Yom Kippur, Cesar Chavez Day and/or Good Friday in lieu of any state holiday where a skeleton crew is required. This means that when one of these holidays is observed, another must be worked or some other type of leave must be taken to account for the paid time off.