Section

12

**12.0. TIME AND LEAVE POLICY**

**12.1. Time and Leave Records (Updated September 2017)**

All time worked or leave taken must be accurately recorded by all Department employees. The Department records all time worked and leave taken in the Centralized Accounting and Payroll/Personnel System (CAPPS). All time reports will be stored electronically in CAPPS.

1. Weekly Time Reporting

**Employees are responsible for entering all time worked and leave taken in CAPPS and submitting**  (by selecting the E-Sign and Submit button) **a weekly time report by no later than each Tuesday of the following workweek.**

**Supervisors are responsible for reviewing and approving** (by selecting the E-Sign & Approve button) **employee’s weekly time reports by no later than each Wednesday of the following workweek.**

2. Entering Time

Time shall be entered by the employee into CAPPS as actual hours to the nearest quarter hour. The procedure for rounding off time actually worked and leave time taken is as follows:

|  |  |
| --- | --- |
| 0-7 minutes = | Disregard |
| 8-22 minutes = | 15 minutes or .25 hour |
| 23-37 minutes = | 30 minutes or .5 hour |
| 38-52 minutes = | 45 minutes or .75 hour |
| 53-67 minutes (1 hour 7 min.) | 1 hour |

Periods of less than eight (8) minutes of time need not be computed for overtime purposes if they do not occur frequently. The employee should be allowed time off during the same day or workweek. Overtime is limited to only those hours necessary and approved by the supervisor.

Periods of less than eight (8) minutes of tardiness should not require the use of leave if tardiness does not occur frequently. The employee should make up for the time he/she is tardy, the same day or workweek. This policy does not excuse excessive tardiness and employees may be disciplined accordingly.

3. Employee Labor Account Codes (LACs)

Employees who are paid by **federal funds,** and/or are directed by their supervisor to allocate time in this manner, will allocate his/her time manually based on the assigned LACs for the division. When the supervisor approves the CAPPS timesheet on a weekly basis, they will approve that the hours allocated to the assigned LACs have been entered correctly by the employee. At the end of each month, the employee will certify that the monthly time sheet is correct by doing so in the CAPPS screen found at Employee Self-Service/My Time & Leave/Employee Time Certification. Employees may not use Labor Account Codes not previously authorized by Payroll staff, and changes to LACs used must be coordinated with Payroll.

4. Requesting Leave

An employee is required to obtain prior approval for all leave taken **(except sick leave)**  through submitting an email request to their supervisor. If the supervisor denies the request for leave, the supervisor must provide a reasonable explanation for denial of leave and must be based on the needs of the Department. If the leave requested is utilized, it should be entered in CAPPS as part of the weekly time entry for the week in which the leave is taken.

**12.2. Annual (Vacation) Leave**

1. Annual Leave Accruals

Employees earn vacation entitlement beginning with their first day of employment with the State and terminating on their last day of duty, which is an employee’s last physical day on the job. Employees will accumulate vacation leave credit for each month or fraction of a month of employment with the State; however, an employee who is on leave the first day of the month must return to duty before being eligible to use leave accrued for that month.

Part-time employees accrue vacation time at a rate in proportion to that of regular full-time employees and the maximum carryover will also be proportionate.

Employees may carry the net balance of unused accumulated leave from one fiscal year to the next, but may not exceed the maximum hours for carryover listed in the chart below. All hours of unused accumulated vacation leave which are lapsed at the end of a fiscal year may be credited to the employee's sick leave balance as of the first day of the next fiscal year. **The fiscal year begins September 1 and ends August 31.**

|  |  |  |  |
| --- | --- | --- | --- |
| **Total State Employment** | **Hours Accrued Per Month** | **Days Accrued Per Year** | **Maximum\* for a Full-Time Employee** |
| Less than 2 years | 8 | 12.0 | 180 |
| At least 2 but less than 5 years | 9 | 13.5 | 244 |
| At least 5 but less than 10 years | 10 | 15 | 268 |
| At least 10 but less than 15 years | 11 | 16.5 | 292 |
| At least 15 but less than 20 years | 13 | 19.5 | 340 |
| At least 20 but less than 25 years | 15 | 22.5 | 388 |
| At least 25 but less than 30 years | 17 | 25.5 | 436 |
| At least 30 but less than 35 years | 19 | 28.5 | 484 |
| At least 35 or more | 21 | 31.5 | 532 |

2. Annual Leave Utilization

An employee who has been employed for six (6) continuous months with the Department (or who has six (6) months prior continuous state employment) is entitled to utilize vacation leave with pay each fiscal year.

Employees must receive prior approval from his/her supervisor before taking annual leave. An employee who takes leave without prior approval is subject to disciplinary action.

3. Annual Leave and Employee Separations

Employees are entitled to be paid for the accrued balance of the employee’s annual leave as of the date of separation, if the employee is not transferring to another state agency. Employees who transfer directly to another state agency will have their annual leave balances transferred. Employees, who are re-employed by the State in a position which accrues annual leave during the thirty (30) day period immediately following the date of separation from the Department, will not be paid for their annual leave accruals.

Departing employees that have not completed six (6) continuous months of employment with the State are not eligible to use or be paid for their annual leave.

**Request to Remain on Payroll:** An employee who resigns from the Department may make a request to temporarily remain on the payroll in order to exhaust certain accrued benefits. For more details, visit section 5.16, Separation from Employment. The employee will not receive any accruals to his/her leave balances during this period.

4. Annual Leave Accruals for Retirees

A state employee who retired from state employment on or before May 31, 2005, and who returned to state employment before or after September 1, 2005, is entitled to receive vacation accruals based on total state service.

A state employee who retired from state employment on or after June 1, 2005, and who returned to state employment before September 1, 2005, calculation is based on split accruals. A state employee who retired from state employment on or after June 1, 2005, and who returns to state employment September 1, 2005 or after, accruals are based on state service since retirement.

**Note:** Return-to-work retirees are not required to re-establish the six (6) months continuous service requirement in order to take annual leave with pay.

**12.3. Sick Leave**

1. Sick Leave Accruals

A state employee is entitled to accrue sick leave without reduction in salary. Sick leave entitlement shall be earned at the rate of eight (8) hours for each month or fraction of a month of employment with the State. As with annual leave, sick leave for part-time employees is accrued in proportion to that of full-time employees. 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 accrual will terminate on the last day of duty which means the employee’s last physical day on the job.

2. Sick Leave Utilization

Sick leave with pay may be taken when sick leave or pre-authorized balances of ESL, SLP, and/or DSL (further explained below) are available and sickness, injury or pregnancy, and confinement prevents the employee's performance of duty or when the employee is needed to care and assist a member of her/his immediate family who is actually ill.

For purposes relating to regular sick leave, immediate family is defined as those individuals related by kinship, adoption, or marriage that live in the same household; foster children who are so certified by the Texas Department of Family and Protective Services who are living in the same household. An employee's use of sick leave for immediate family members, not residing in that employee's household, is strictly limited to the time necessary to provide care and assistance to a spouse, parent, or child of the employee that needs such care and assistance as a direct result of a documented medical condition.

3. Notification of Absence

**Employees are responsible for notifying his/her supervisor by no later than 15 minutes after the regularly scheduled time of arrival if he/she will be absent from work due to illness.** If a notification of absence policy other than 15 minutes after the regularly scheduled time of arrival has been established by the employee’s supervisor then the employee should adhere to that policy. If the supervisor is not available, the employee should leave a voice message and for his/her supervisor. The employee should also leave a message with the person next in charge of the division, if applicable, or one of their co-workers.

4. Sick Leave Documentation

To be eligible for accumulated sick leave with pay for a continuous period of more than three (3) working days, an employee must provide a medical statement showing the cause or nature of the illness or some other written statement of the facts concerning the illness, to his/her supervisor. The supervisor should forward the documentation to Human Resources for inclusion in the employee's time and leave file.

For illnesses resulting in an absence of three (3) working days or less, the supervisor has the discretion to require documentation of the illness.

5. Sick Leave and Employee Separations

There is no authority to pay out an employee’s accrued unused sick leave balance upon separation of employment.

**a. Formal Reduction:** An employee who separates from the Department under a formal reduction-in-force is entitled to have their sick leave balances restored if they are re-employed by the State within 12 months of the effective separation date.

**b. Interagency Transfer:** An employee who transfers to another state agency with no break in service will have his/her unused sick leave hours transferred.

**c. Other:** An employee separated for other reasons shall also have his/her sick leave balance restored only if:

* The employee is re-employed by the same state agency within 12 months after the end of the month in which the employee separates from state employment, and if there has been a break in employment with the state of at least 30 calendar days; or
* The employee is re-employed by a different state agency within 12 months after the end of the month in which the employee separates from state employment.

**d. Military Service:** An employee who is restored to state employment following military service is entitled to have his/her sick leave balance restored.

**e. Return to Work Retirees:** Return to work retirees will not have their sick leave balances restored.

6. Donation of Sick Leave Hours (DSL) **(Effective 9/1/15)**

1. Donating Hours to An Employee

An employee may donate a portion of their unused sick leave to another employee who:

* Is a Department employee; and
* Has exhausted the employee’s sick leave, including any time the employee may be eligible to withdraw from the Sick Leave Pool or any Extended Sick Leave granted.
* All donations of sick leave are voluntary.
* An employee shall not provide or receive remuneration or a gift in exchange for a sick leave donation.
* An employee who receives donated sick leave must use donated leave as outlined in section 12.3, Sick Leave.
* Solicitations for the donation of sick leave hours shall be conducted in a manner that is not disruptive or coercive.
* An employee may not receive service credit in the Employees Retirement System of Texas for any sick leave donated to the employee that is unused on their last day of employment.

b. Donating Employee Responsibilities

An employee who wishes to donate accrued sick leave to another Department employee shall:

* Complete a Sick Leave Donation Form and submit the form to the Time and Leave Administrator;
* Acknowledge that donations of sick leave are final and shall not be changed or modified once the donation is made; and
* Acknowledge that donated sick leave hours shall not be refunded.

c. Receiving Employee Responsibilities

* An employee receiving donated sick leave shall have exhausted all accrued sick leave, including any time the employee may be eligible to withdraw from the Sick Leave Pool or any granted Extended Sick Leave, prior to receipt of any donated hours.
* An employee is not allowed to donate their donated sick leave hours.

**12.4. Extended Sick Leave (ESL)**

1. Policy

The Department may provide ESL to employees who have exhausted all of his/her accrued sick, annual, compensatory, holiday, and overtime leave balances under certain conditions.

Employees have no right to ESL. ESL may be granted *on a case by case basis in* exceptional circumstances, at the discretion of the Executive Director for personal illness or injury, or illness or injury of immediate family members (not including pregnancy). Paid ESL may also be considered for illness or injuries that are not catastrophic or severe (thus making the employee ineligible for sick leave pool hours), but will cause the employee to be off from work.

2. Definitions

**Employee:** An employee of the Department who has worked for at least 12 months **and** has worked at least 1,250 hours within one (1) year and who has exhausted all accrued leave which includes sick, annual, compensatory, holiday, and overtime leave to which the employee is otherwise entitled.

**Immediate Family Member:** An individual who is a spouse, son, daughter, or parent. Individuals must be related by kinship, adoption, or marriage, as well as foster children certified by the Texas Department of Family and Protective and Regulatory Services.

3. Eligibility

ESL may be awarded to an employee, when the following eligibility criteria are met:

* is a full-time regular employee;

has worked for the Department for at least 12 months **and** have worked at least 1,250 hours within one (1) year preceding the request;

* possesses good job performance(i.e. nothing lower than standard rating);
* is not on any type of disciplinary action;
* has exhausted all accumulated sick, annual, overtime, holiday, compensatory, and sick leave pool hours (if eligible);
* has utilized sick leave hours in a responsible manner (sick leave consistently taken as it is earned, failure to maintain sick leave balances without good cause, a pattern of being sick on Mondays and Fridays, or days immediately before or after a holiday, may not be accepted as responsible use);
* the employee’s immediate family member has an illness or injury that requires the care of a healthcare provider and the employee must provide care for that family member;

has submitted an original certified healthcare provider signed statement containing a description of the illness or other incapacitating condition, which should include a prognosis and estimated length of absence;

has submitted the family medical leave certification form if the request is for an FMLA qualifying event as defined in Section 12.10; and

* has indicated intention and ability to return to work.

4. Amount of ESL Qualifying Hours

Employees will be awarded ESL hours based on the following state service time the employee has at the time of the request:

**Less than 5 Years:** Employees who have less than 5 years of state service and who meet ESL criteria will qualify for a number of ESL hours equal to the highest accumulation of sick leave hours within the past 12 months of service, not to exceed a maximum of 176 hours.

**5 but less than 10 Years:** Employees who have 5 but less than 10 years of state service and who meet ESL criteria will qualify for a number of ESL: hours equal to the highest accumulation of sick leave hours within the past 12 months of service, not to exceed a maximum of 352 hours.

**10 or more Years:** Employees who have 10 or more years of state service and who meet ESL criteria will qualify for a number of ESL hours equal to the highest accumulation of sickleave hours within the past 12 months of service, not to exceed a maximum of 528 hours of leave.

The maximum amount of ESL hours that may be granted to an employee is 528 hours.

5. Procedure for Requesting ESL

An employee must complete the Request for Extended Sick Leave Form. This form is available in Human Resources.

The completed form must be accompanied by an original health care provider's certification outlining the following:

* the injury or illness of the employee or member of the employee's immediate family;
* the treatment required;
* the expected duration of the injury or illness and;
* the anticipated date of the employee's return to work.

The form must be submitted to Human Resources for review and approval. Human Resources will review the form for completion and will determine the amount of ESL qualifying hours the employee is eligible to received based on years of state service.

Human Resources will notify the employee with the amount of hours the employee is eligible to receive prior to forwarding the request for approval.

6. Review and Approval Process

The Manager of Human Resources or his/her designee shall review the ESL request to ensure the employee meets the eligibility criteria and will make a recommendation based on this criteria and will forward the request to Legal Services and the appropriate Deputy Executive Director.

The request will then be forwarded to the Executive Director for review. The Executive Director, or designee, shall consider the recommendations made by the Manager of Human Resources, Legal Services, and the Deputy Executive Director including the following criteria, in making a decision:

* + - extent and seriousness of the injury or illness of the employee or immediate family member;
    - the quality of the employee's work performance as reported on the most recent employee performance evaluation; and
    - the employee's sick leave utilization history.

After reviewing the request, the Executive Director may:

* + - approve the request in whole or in part;
    - approve the request with such stipulations as the Executive Director may consider appropriate; or
    - deny the request.

Human Resources will inform the employee of the Executive Director’s decision.

1. Awaiting ESL Approval

In cases where an employee is absent from work and is awaiting approval for a request for ESL hours and the employee has exhausted all leave balances, the employee will be placed in a leave-without pay status pending the request. If the request is approved the employee will be reimbursed for the leave-without-pay hours based on the amount of ESL hours approved.

The Executive Director is the only person who may make exceptions to this policy.

**12.5. Sick Leave Pool (SLP)**

1. Policy

The Department has established a sick leave pool to provide a source of additional sick leave to employees who have exhausted all accrued paid leave as authorized by Texas Government Code, Sections 661.001-661.009. The absence may be due to the employee’s own or other immediate family member’s catastrophic illness or injury. If the absence is for an immediate family member’s illness or injury, it must be because the employee is required to actively participate in providing medical services or convalescent care to the family member.

2. Definitions

For the purpose of this policy, the following definitions will apply:

**Catastrophic Illness or Injury:** A severe condition or combination of conditions affecting the mental health and/or physical health of the employee or a member of 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 leave time earned by that employee and to lose compensation from the State.

**Employee:** A regular employee of the Department who has worked for at least 12 months **and** has worked at least 1,250 hours within one (1) year and who has exhausted all accrued leave which includes sick, annual, compensatory, holiday, and overtime leave to which the employee is otherwise entitled.

**Immediate Family:** Individuals who are related by kinship, adoption, or marriage, as well as stepchildren and foster children certified by the Texas Department of Family and Protective Services who are living in the same household, or if not in the same household are totally dependent upon the employee for personal care or services on a continuing basis. For family members not residing in the employee’s household, this is interpreted strictly to be limited to the time necessary to actively participate in providing medical care and assistance to a spouse, child, or parent of the employee who needs such medical care and assistance as a direct result of a documented medical condition.

**Licensed Practitioner:** A practitioner, as defined in the Texas Insurance Code, who is practicing within the scope of his/her license.

**Pool Administrator:** The person appointed to administer the sick leave pool.

**Sick Leave Pool:** The accumulated sick leave donated by employees for utilization in accordance with this policy.

3. SLP Administration

The sick leave pool is administered by Human Resources through the Manager of Human Resources. Responsibilities include:

* Providing information to employees about the provisions and guidelines of the pool.
* Processing requests for use of sick leave pool from employees, along with any necessary paperwork or information to facilitate the Manager of Human Resources to determine a decision for approval or denial of the request.
* Informing the employee of the decision and any restrictions that apply to the decision.
* Monitoring the approved employee’s use of this leave, and submission of additional information, if applicable.
* Monitoring the sick leave pool record of accumulated time.
* Encouraging and processing voluntary donations to the sick leave pool by employees.

4. Use of Sick Leave from the Pool

* Requests to use sick leave pool hours will be considered on a first-come, first-served basis.
* An employee may request sick leave pool hours more than once within a fiscal year.
* If the employee is not medically able to submit the required form and information, a family member or the employee’s supervisor may submit the form on the employee’s behalf.
* The maximum time available to an employee from the sick leave pool in a fiscal year is up to one-third of the sick leave pool balance of hours or ninety (90) workdays (720 hours), whichever is less. This maximum amount of time available to an employee applies for one single catastrophic illness/injury or any combination of catastrophic illnesses/injuries.
* Any unused balance of sick leave pool hours granted to an employee will be returned to the sick leave pool.
* An employee may make multiple requests for sick leave pool hours for the same illness or injuries until the total hours granted equals the maximum hours allowed.
* The employee may use awarded sick leave pool hours in the same manner as sick leave hours earned by the employee in the course of employment with the Department.
* An employee with a catastrophic illness or injury is not required to contribute to the sick leave pool before he/she can use sick leave pool hours.
* An employee on pool leave for a full calendar month will not have accrued annual or sick leave credited until the employee physically returns to work following pool leave.
* An employee absent on assigned sick leave pool is treated for all purposes as if the employee was absent on earned sick leave time.
* An employee who is granted sick leave pool hours is not required to reimburse those hours to the sick leave pool.
* If an employee terminates employment with the Department while using time from the sick leave pool, the paid time granted for the sick leave pool ends with termination.
* The employee will not be paid for any time granted by the sick leave pool but not used while an employee of the Department.
* The estate of a deceased employee is not entitled to payment for unused sick leave pool hours acquired by that employee from the Department sick leave pool.

5. Contribution of Time to the SLP

To contribute hours to the sick leave pool an employee must complete the Sick Leave Transfer Form and submit the form to the Pool Administrator. An employee who makes a contribution to the sick leave pool may not stipulate who is to receive his/her contribution.

An employee may contribute one or more days of his/her accrued sick leave hours to the sick leave pool in eight (8) hour increments.

The Pool Administrator will credit the sick leave pool with the amount of hours contributed by the employee and shall deduct a corresponding amount of hours from the amount to which that employee is entitled as if employee has used the time for his/her personal sick leave.

Contributions to the sick leave pool are strictly voluntary.

**Separating Employees:** An employee leaving state employment may contribute one or more days of his/her earned accrued sick leave time.

6. Applying for SLP

An employee is entitled to request hours in the sick leave pool for:

* A certified catastrophic illness or injury of the employee or a member of the employee’s immediate family;
* 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.

An employee who would like to request sick leave pool hours must complete the Request for Sick Leave Pool Form.

The Sick Leave Pool Administrator will review the request and will determine if the employee meets the following eligibility criteria at the time of the request:

Eligibility criteria

* is a full-time, regular employee;
* has worked for the Department or the State for at least 12 months **and** have worked at least 1,250 hours within one (1) year preceding the request;
* possess good job performance (i.e. nothing lower than performance rating of 3);
* is not on any type of disciplinary action;
* has exhausted all accumulated sick, annual, overtime, holiday, and compensatory leave;
* has utilized sick leave hours in a responsible manner (sick leave consistently taken as it is earned, failure to maintain sick leave balances without good cause, a pattern of being sick on Mondays and Fridays, or days immediately before or after a holiday, may not be accepted as responsible use);
* has submitted an original certified healthcare provider signed statement containing a description of the illness or other incapacitating condition, which should include a prognosis and estimated length of absence; and
* has submitted the Family Medical Leave Act (FMLA) certification form when the request is an FMLA qualifying event, defined in Section 12.10.

7. Awaiting SLP Approval

In cases where an employee is absent from work and is awaiting approval for a request for sick leave pool hours and the employee has exhausted all leave balances, the employee will be placed in a leave-without pay status pending the request. If the request is approved the employee will be reimbursed for the leave-without-pay hours based on the amount of sick leave pool hours approved.

8. Review and Approval Process

The Manager of Human Resources or his/her designee shall review the SLP request to ensure the employee meets the eligibility criteria and will make a recommendation based on whether or not the employee meets the eligibility criteria.

Upon a recommendation by the Manager of Human Resources or his/her designee, the request will be forwarded to the Executive Director for review and approval. The Executive Director may:

* approve the request in whole or in part;
* approve the request with such stipulations as the Executive Director may consider appropriate; or
* deny the request.

The Executive Director is the final authority to approve or deny SLP requests.

The Pool Administrator will inform the employee of the Executive Director's decision.

**12.6.** **Leave-of Absence (also known as "leave-without-pay")**

Approval for a leave of absence (leave-without-pay, or LWOP) may be granted when the leave is in the mutual interest of the Department and the employee.

The following provisions will apply to a leave of absence:

* The leave must be fully justified and may not exceed 12 months.
* Except for disciplinary suspensions, active military duty, and workers compensation situations, all accumulated paid leave entitlements must be exhausted before granting such leaves with additional provision that sick leave must be exhausted in those cases where the employee is eligible to take sick leave, as provided in the sick leave policy.
* Subject to fiscal constraints, an approval of leave-without-pay guarantees the employee's re-employment at the end of the leave-without-pay status at the same classification but not necessarily the same position.
* Employees do not earn annual or sick leave for the month the employee is on leave-without-pay, unless they work any portion of that month. An employee does not accrue state service (longevity) for any full calendar leave-without-pay months.
* An employee on leave-without-pay (except FMLA, workers’ compensation, and active duty military leave) is required to pay his/her entire insurance premiums by the 15th of each month. If insurance premiums are not paid by the end of the month, the employee and dependent insurance coverage and all optional coverage will be canceled. An employee will not be eligible for continuation of insurance under COBRA if his/her insurance coverage is canceled.

1. Requesting a Leave of Absence

An employee wishing to be in a leave-without pay status for an extended period of time must submit a request in writing to the Executive Director with details pertaining to the reason for the request, the date, and hour for leave to commence, and date and hour of the return to work.

The Executive Director will review the request and will either deny or approve the request and may determine stipulations to the request.

The original approved request should be forwarded to Human Resources. Human Resources will prepare a PAF for the leave-without-pay and will submit a copy to the Payroll Officer.

2. Return from a Leave of Absence

The employee’s supervisor should notify Human Resources immediately upon the employee’s return from leave-without pay status. Human Resources will prepare a PAF to place the employee back on payroll and will submit a copy to the Payroll Officer.

3. Approval of Leave-without-Pay (Less than 3 days)

Supervisors may approve leave-without-pay of three (3) working days or less; however, in all cases the supervisor must brief the Division Director. **The Executive Director must approve all leave-without-pay absences of more than three (3) days.** An employee is not entitled to leave-without-pay solely due to the employee’s use of all paid leave entitlements.

The Executive Director may allow for exceptions to these provisions.

4. Leave-without-Pay (No Leave Accruals)

When an employee is absent from work and does not have enough accrued leave to cover the hours he/she is absent this leave is considered leave-without-pay.

In all instances, the employee’s immediate supervisor should immediately inform Human Resources verbally or via email when an employee is absent and has no accrued leave balances to cover the time the employee is absent.

The supervisor should state the exact date and hour the employee ran out of leave.

Human Resources will immediately notify the Payroll Officer of the leave-without pay and will prepare a PAF and submit a copy to the Payroll Officer.

In instances where an employee is paid for hours and the employee did not have enough accrued leave to cover those hours, the Payroll Officer will notify the employee that he/she has the option to pay the Department back for those hours by personal check or the employee can have the hours deducted from his/her next paycheck.

When an employee has exhausted all leave balances to cover absences this will result in the employee going into a LWOP status for payroll purposes. An employee that goes into a LWOP pay status may result in the cancellation of any direct deposit of pay for the month in which the employee goes into a LWOP status.

An employee is not entitled to leave-without-pay solely due to the employee’s use of all paid leave entitlements. Disciplinary action may be taken when an employee continually goes into a leave-without pay status due to not having any leave accruals.

**12.7. Payment of Accrued Leave of Deceased Employees**

The estate of an employee who dies while employed by the Department is entitled to payment for all of the employee's accumulated vacation leave and for one-half of accumulated sick leave or for 336 hours, whichever is less. The payment is calculated at the rate paid to the employee at the time of his/her death. If the deceased employee was subject to FLSA (non-exempt), the estate will also be paid for accumulated FLSA overtime hours.

**12.8. 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.

|  |  |
| --- | --- |
| **Holiday** | **Date** |
| New Year’s Day | January 1 |
| **\*Confederate Heroes Day** | January 19 |
| Martin Luther King, Jr. Day | Third Monday in January |
| President’s Day | Third Monday in February |
| **\*Texas Independence Day** | March 2 |
| **\*San Jacinto Day** | April 21 |
| Memorial Day | Last Monday in May |
| **\*Emancipation Day** | June 19 |
| Independence Day | July 4 |
| **\*Lyndon B. Johnson's Birthday** | August 27 |
| Labor Day | First Monday in September |
| Veteran's Day | November 11 |
| Thanksgiving Holidays | Fourth Thursday in November and the following Friday |
| Christmas Holidays | December 24, 25, and 26 |

**(\*) Indicates a skeleton crew day. Employees may observe Rosh Hashanah; Yom Kippur; Cesar Chavez and/or Good Friday in lieu of any holiday or holidays on which the Department is required to be open and staffed.**

An employee is eligible to a paid day off for a holiday if:

* The holiday does not fall on a weekend.
* The employee is not on leave-without-pay (LWOP).

Holidays falling on Saturdays or Sundays are not observed by closing state offices on the preceding or following work days, except when specific additional days are authorized for a holiday period. ***Skeleton crews are required for all non-federal holidays. It shall be the responsibility of the Division Director to carry on activities for the Department, unless another division employee is designated.***

All hours worked on an observed holiday will accrue as holiday compensatory time. Holiday compensatory hours must be taken within 12 months following the date that the hours were earned or the hours will be lost. At the discretion of the Executive Director, terminating employees may or may not be granted approval to use holiday compensatory hours.

To be paid for a holiday that falls in mid-month (other than the first or last workday of the month), an employee must be a state employee (the legal definition of which is someone who is employed by the State and not on leave-without-pay) on the day before and after the holiday. If the holiday falls on the first workday of a month, the employee must be a state employee on the day immediately after the holiday to be paid. If the holiday falls on the last workday of the month, the employee must be a state employee on the day immediately before the holiday to be paid.

In situations, where an employee works before or after the holiday and takes a partial leave-without-pay for a day, the employee will receive credit for working the entire day if the employee works any part of the day.

**12.9. Emergency Leave (Updated September 2017)**

1. Bereavement Leave

An employee shall be granted up to four (4) days or 32 hours of emergency leave by the Executive Director due to the death in the employee’s family which includes:

* employee’s spouse;
* employee’s or spouse’s parents, brothers, sisters, children, grandparents, and grandchildren.

2. Requests for Emergency Leave other than Bereavement Leave

The Executive Director may also grant emergency leave for other reasons determined as good cause.

Emergency leave is not charged to sick, vacation, or other leave balances.

An employee may request emergency leave by completing an Emergency Leave Request Form. The request must be routed by the employee for approval signatures. Once the request has been routed for signatures the original form must be forwarded to Human Resources. Human Resources will inform the employee if the request has been approved or denied. The Executive Director will not grant emergency leave to an employee the Director believes in good-faith does not intend to return to employment following the leave period.

3. The employee will be able to enter the approved emergency leave hours into CAPPS once they receive the notification from Human Resources.

**12.10. Family Medical Leave Act (FMLA)**

1. Definitions

**12-month period:** A "rolling" period measured backward from the date an employee uses any leave designated as FMLA. For example, each time an employee takes FMLA the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months.

**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 form performing the functions of his/her job or prevents a qualified family member from participating in school or daily activities.

**Serious Health Condition (Continuing Treatment)**

To qualify for a serious health condition (incapacitation) under FMLA the employee must

* have been out more than three (3) full consecutive calendar days;
* have required in-person treatment by a health care provider at least once within seven (7) days of the first day of incapacity; and
* requires either:
* a regimen of continuing treatment initiated by the healthcare provider during first treatment or
* a second in-person visit to the health care provider for treatment (the necessity of which is determined by the health care provider) within 30 days of the first day of incapacity.

**Serious Health Condition (Chronic Conditions):** A chronic condition is one that:

* requires visits for treatment by a health care provider at least twice a year;
* continues over an extended period of time (including recurring episodes of a condition); and
* may cause episodic incapacity rather than a continuing period of incapacity.

**Prenatal Care:**  The employee husband of a pregnant spouse is entitled to FMLA leave to care for the pregnant spouse who has severe morning sickness or other prenatal complications (and may need physical care) and to accompany her to prenatal doctors’ appointments (and may need to be driven or need psychological care). Such leave is not available to a non-spouse father of the child such as a fiancé or boyfriend.

**Needed to Care For:** An employee may take leave to care for a family member if there is a need to provide physical and/or psychological care. The employee does not need to be the only individual or family member available to provide the care nor is the employee required to provide actual care (e.g. someone else is providing in-patient or home care) as long as the employee is providing at least psychological comfort and reassurance.

**Health Care Provider:** Physician assistants who are authorized to practice under state law qualify as health care providers and all medical para-professionals who fall within the definition of “health care provider” (nurse practitioners, nurse mid-wives, clinical social workers, and physician assistants) must be performing within the scope of their practice as defined under state laws.

**Related to Family Relationships under Military Leave:** This includes “parent of a covered service member,” “son or daughter of a covered service member,” “next of kin of a covered service member,” and “son or daughter on active duty or call to active duty status.”

**Qualifying Exigency under Military Leave:** A qualifying exigency is a non-medical activity that is directly related to the covered military member’s active duty or call to active duty status. For an activity to qualify as an exigency, it must fall within one of seven categories of activities or be mutually agreed to by the employer and employee. The seven categories of qualifying exigencies are:

* short-notice deployment (leave permitted up to seven (7) days if the military member receives seven (7) or less days’ notice of a call to active duty),
* military events and related activities,
* certain temporary childcare arrangements and school activities (but not ongoing childcare),
* financial and legal arrangements,
* counseling by a non-medical counselor (such as a member of the clergy),
* rest and recuperation (leave permitted up to five days when the military member is on temporary rest and recuperation leave), and
* post-deployment military activities.

**Active Duty or Call to Active Duty Status:** For purposes of exigency leave, the term “active duty or call to active duty status” means duty under a federal call or order to active duty (not a State call to active duty unless by order of the President of the United States) in support of a contingency operations pursuant to specific enumerated provisions. Such active duty or call/order to active duty is only made to members of the National Guard or Reserve components or a retired member of the Regular Armed Forces or Reserve. Therefore, an employee may not take exigency leave if the service member is a member of the Regular Armed Forces.

**Covered Service Member:** For purposes of military caregiver leave, a covered service member is a current member of the Regular Armed Forces, National Guard, or Reserve. This includes those on the temporary disability retired list (TDLR), but not including former members or members on the permanent disability retired list. Generally, a former member of the military whose injury or illness manifests itself after the member’s discharge from the military service (except for those on the TDRL) is not a covered service member. The service member must be receiving medical treatment or oversight by a Department of Defense or Veterans Affairs health care provider or by a Department of Defense TRICARE network or non-network authorized private health care provider.

2. Responsibilities

**Supervisors are responsible for**:

* **Immediately notifying Human Resources when an employee has been out more than three (3) full consecutive working days;**
* Providing information to Human Resources if the employee is unable to do so;
* Entering and signing the employee’s time sheets while the employee is on leave; and
* Requesting sick leave pool in the employee’s absence, if eligible.

**Employees are responsible for**:

* Providing at least 30 days’ advance notice or as soon as practicable (normally the same business day or next business day if off work) when the employee has a need for FMLA;
* Completing the FMLA request form prior to going on leave;
* Providing a Certification Healthcare Provider form from his/her physician to Human Resources;
* Informing his/her supervisor and Human Resources of any changes in time of leave or new developments;
* Providing a return to work note from his/her health care provider to Human Resources upon return to work.

3. Policy

**a. Basic Leave Entitlement:** Employees who have worked for the Department or the State of Texas for at least 12 months **and** have worked at least 1,250 hours within one (1) year preceding his/her FMLA are eligible for up to 12 weeks of job protected leave during any 12 month period for a qualifying FMLA event to include:

* For incapacity due to pregnancy, prenatal medical care of child birth; (an employee who is the father of a child may use sick leave in conjunction with the child’s birth only if the child is ill or to care for his spouse while she is recovering from labor and delivery);
* To care for a child after birth;
* Adoption of a child (however, sick leave may be used in conjunction with FMLA when a child under the age of three is adopted only if the child is actually sick at the time of adoption.);
* Placement of a foster child;
* To care for the employee’s spouse, son, daughter, or parent who has a serious health condition;
* Employees own serious health condition that makes the employee unable to perform his or her job functions.

A husband and wife employed by the Department are permitted a combined total of 12 weeks of leave during a 12 month period. The right to take leave under FMLA applies equally to male and female employees. Circumstances may require that FMLA begin before the actual date of birth of the child for prenatal care or if the mother's condition makes her unable to work.

An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during a family and medical leave period.

**b. Employee Notice Requirements:** If the need for FMLA is foreseeable, such as for the expected birth or adoption of a child or planned medical treatment for a serious health condition, the employee must give the Department thirty (30) days written notice of the anticipated leave by completing the FMLA Request Form. If a thirty (30) day notice is not practicable, the employee must give notice as soon as practicable (meaning the same day or next business day, if off work).

If the need for FMLA is unforeseeable, the employee must notify his/her supervisor no later than 8:15 AM of the need to be absent from work. **Failure to provide timely notice will result in any absences during the delay as non-FMLA absences.**

**c. Eligibility Notice:** Once Human Resources has determined if an employee is eligible for FMLA the employee will receive a Notice of Eligibility of Rights and Responsibilities (Notice). The employee is required to have the Healthcare Provider Certification Form completed and must be submitted to Human Resources no later than fifteen (15) days from the date the FMLA notice is received. If the certification is not submitted within fifteen (15) days from the time of receipt, FMLA may be denied.

After receipt of the healthcare provider form, Human Resources will review the certification and determine whether the leave requested is covered under FMLA and will send a designation notice to the employee. If the certification form is submitted to Human Resources and is not complete and insufficient, Human Resources will inform the employee of what additional information is needed. The employee will have seven (7) days to cure the deficiencies. If the employee does not provide this information within the cure period, leave may be denied.

**d. Request for Recertification:** Human Resources may request recertification every six (6) months or at any time, if an extension to FMLA is needed.

**e. Use of Leave:** An employee must use all vacation, sick, and holiday leave while on FMLA. An employee, at his/her option, may take his/her FLSA overtime prior to the commencement of the 12 weeks of FMLA. FMLA (paid leave) runs concurrently with the employee’s vacation, sick, and holiday leave.

An employee on FMLA is not entitled to accrue state service credit for any minimum number of continuous months of leave-without-pay while on FMLA and shall not accrue vacation leave, sick leave, or credit for state service (longevity). Any full calendar month (i.e., from the first day of a month through the last day of a month, inclusive) in which an employee is on leave-without-pay, shall not be counted in the calculation of total state service for purposes of longevity pay or vacation leave entitlements. No employee shall accrue vacation or sick leave for such month. Further, any such full calendar month of leave-without-pay shall not constitute a break in continuity of employment but shall not be included in the calculation of the minimum number of continuous months of employment. Once an employee physically returns to work from FMLA his/her leave accruals will be reinstated.

**f. Insurance Benefits while on FMLA:** While on FMLA employees are entitled to the state contribution for insurance coverage.

Employees on FMLA who are in a leave-without-pay status are responsible for his/her insurance premium payments and will be notified by ERS about making premium payments.

Employees who have not had his/her insurance coverages canceled and who terminate employment at the end of FMLA are eligible to continue coverage for 18 months under COBRA. If an employees insurance coverages are canceled while under FMLA (e.g., non-payment of premium), the employee will not be eligible for COBRA. COBRA allows for continuation of dental and health coverage only.

Employees who apply for FMLA and are receiving worker’s compensation benefits cannot be required to use his/her paid vacation and/or sick leave prior or during the FMLA absence.

4. Military Family Medical Leave

Eligible employees are entitled to up to 12 weeks of leave because of “any 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.

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 is entitled to up to 26 weeks of leave in a single 12-month period to care for the service member.

**12.11. Parental Leave**

1. 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 Texas Department of Family and Protective Services regarding the child under the foster care of the employee, or to attend the Admission, Review, and Dismissal (ARD) meeting held by a school district regarding the child under the foster care of the employee.

2. State Parental Leave

Employees with less than 12 months of state service or who have worked less than 1,250 hours in the 12-month period immediately preceding the commencement of leave are eligible to take a parental leave of absence, not to exceed 12 weeks, provided the employee uses all available applicable paid vacation and sick leave while taking leave. The leave authorized by this policy is limited to, and begins with the date of, the birth of a natural child or the adoption or foster care placement of a child under three years of age. Sick leave may only be taken if the child is actually sick.

Eligibility time requirements are different for parental leave (less than 12 months of state service) and family and medical leave (12 months [1,250 hours] or more of state service). An employee can only meet the requirements for parental leave or FMLA, but not both at the same time. Circumstances can exist that would allow an employee to take parental leave, return to duty, and subsequently be eligible for FMLA. The employee could then take FMLA for the birth, adoption, or foster placement of a child or for another reason.

**12.12. Military Leave**

An employee who is called to active duty or authorized military training is entitled to a leave of absence not to exceed fifteen (15) working days in any one federal fiscal year (October 1 through September 30) without loss of time, efficiency rating, vacation time or salary. Employees are eligible for military leave to accommodate:

* Authorized training or duty for the state’s military forces, a reserve branch of the U.S. Armed Forces, or state or federally authorized urban search and rescue team.
* National emergency evacuation for members of a reserve branch of the U.S. Armed Forces.

The fifteen (15) days of paid leave does not have to be consecutive. These days are considered business days, not calendar days. After exhausting the fifteen (15) days, the employee may use accrued annual leave or be placed on leave–without-pay status (or a combination of the two) for the remainder of the active duty period. An employee will not be required to use his/her leave prior to going on a leave-without-pay status.

An employee who is a member of the state military forces, a reserve component of the U.S. Armed Forces, or a member of the state or federally authorized urban search and rescue team and who is ordered to duty by the proper authority is entitled, when relieved from duty, to be restored to the position that the employee held when ordered to duty.

An employee who is deployed for military purposes is entitled to an unpaid leave of absence with no loss of years of service accrual and will return to their former position or a position with similar seniority, status, and pay upon return to duty.

An employee who is a member of the Texas National Guard or U.S. Armed Forces Reserve will have their work schedule adjusted to ensure that two (2) of the days off each month for duty are such that they coincide with two days of military duty.

An employee who is a member of the National Guard or any reserve branch of the U.S. Armed Forces called to federal active duty during a national emergency is entitled to an unpaid leave of absence after exhausting the fifteen (15) days of paid military leave. The employee will retain any accrued sick or annual leave. The employee will not earn sick or annual leave during this period. The employee will accrue state service credit. The employee may use any accrued annual, compensatory, or overtime leave to maintain employee benefits. Additionally, the employee may continue to accrue service credit with ERS by receiving at least one (1) hour of state pay during each month of active military service. The employee may use a combination of paid leave to qualify for state pay.

**12.13. Medical and Mental Health Care Leave for Certain Veterans (Effective September 1, 2017)**

A state employee who is a veteran, as defined by Texas Government Code, Section 434.023 (a), and who is eligible for health benefits under a program administered by the Veterans Health Administration of the U.S. Department of Veterans Affairs, may be granted leave without a deduction in salary or loss of vacation and sick leave, earned overtime, or state compensatory time, to obtain medical or mental health care (including physical rehabilitation) administered by the Veterans Health Administration of the U.S. Department of Veterans Affairs. Leave granted for this reason may not exceed 15 days each fiscal year unless the agency’s administrative head determines that additional days of this leave is appropriate for the employee.

**12.14. Volunteer Firefighter’s and Emergency Medical Services Training Leave**

An employee who is a volunteer firefighter or emergency medical service volunteer shall be granted leave up to five (5) working days to attend training schools conducted by state agencies or institutions of higher education. There shall be no deduction from pay or from leave balances.

An employee must submit a memo to his/her supervisor and Division Director to request leave to attend training and must provide the dates of the training.

The Department may grant emergency leave to a volunteer firefighter or an emergency medical services volunteer for the purpose of responding to emergencies.

**12.15. Jury Service, Witness Fees, and Court Appearances**

An employee is entitled to serve on a jury without any deduction from wages or leave time. Any fee or compensation for jury service need not be accounted for by the employee to the State.

Employees called to appear in an official capacity in any judicial action or legislative investigations are not entitled to any witness fees. However, if the appearance is not in an official capacity, but is for the purpose of testifying from personal knowledge, an employee may accept any customary witness fees. In this latter case, the appearance must be made on the employee's own time. The prohibitions relating to witness fees do not extend to any mileage or per diem allowance paid to the state employee or official for expenses incurred while serving as a witness as long as there is no double reimbursement to the employee for expenses.

Employees absent from work due to jury duty must provide a copy of the jury completion notice to their immediate supervisor for review and a copy to Human Resources to be included in his/her time and leave file.

**12.16. Compliance with a Subpoena**

An employee testifying in an official capacity is considered to be on “special assignment,” and would not be required to use his/her own leave to be absent from work. An employee who testifies as an expert witness is authorized to use emergency leave for his/her absence. An employer may not take action against an employee for complying with a subpoena to appear in a civil, criminal, legislative, or administrative proceeding.

**12.17. Leave during Agency Investigation (Effective September 1, 2017)**

The Executive Director may grant paid leave to a state employee who is the subject of an investigation being conducted by the Agency or a victim of, or witness to, an act or event that is the subject of an investigation being conducted by the Agency.

An employee granted leave in accordance with this policy is required to participate in good-faith in any investigation being conducted by the Agency and may be contacted by TDHCA during the leave period to provide information regarding the investigation.

**12.18. Leave for Certified American Red Cross Activities**

A state employee who is a certified disaster service volunteer of the American Red Cross (or who is training to become such a volunteer) will be granted leave of up to ten (10) days each year to participate in specialized disaster relief services. The employee must have supervisory authorization in addition to a request from the American Red Cross and the approval of the Governor's Office. If the above conditions are met, the employee will not lose pay, vacation time, sick leave, earned FLSA overtime, and/or compensatory time during such leave.

**12.19. Leave for Reserve Law Enforcement Officers (Updated August 2013)**

A state employee who is a reserve law enforcement officer as defined in Section 1701.001, Occupations Code, is entitled to a leave of absence without a deduction in salary to attend training required under Section 1701.351 Occupations Code. Leave without deduction in salary under this section may not exceed five working days every fiscal biennium.

**12.20. Administrative Leave for Outstanding Performance (Updated March 2017)**

The Executive Director is authorized to grant administrative leave with pay to an employee as an award for outstanding performance as documented on an employee’s performance evaluation. The aggregate amount of leave granted to an employee may not exceed 32 hours in a fiscal year.

A supervisor may make a recommendation to request administrative leave with pay for an employee by providing a memo to the Manager of Human Resources that includes:

* the recommended number of administrative leave hours to be awarded to the employee;
* a justification provided in the memo describing the employee’s outstanding performance that serves as the basis for the request;
* confirmation that the employee has a current (within the last 12 months) Performance Evaluation on file in Human Resources;
* The employee must have a current overall rating of 3 or 4; and
* The employee must not have received any disciplinary action (verbal counseling, written counseling, or suspension), been placed on a PIP, or have had any disciplinary or PIP actions within the last 12 months.

As part of the Employee of Excellence Program, the Executive Director may award 8 hours of administrative leave with pay to each employee selected as an Employee of Excellence for the quarter subject to compliance with these requirements.

**12.21. Educational Activities (Updated September 2013)**

An employee may use up to eight (8) hours of sick leave each fiscal year to attend educational activities of the employee's children who are in pre-kindergarten through 12th grade. The employee must provide prior notice to his/her supervisor when scheduling this type of leave.

Educational activity means a school-sponsored activity, including parent-teacher conference, tutoring, a volunteer program, a field trip, a classroom program, a school committee meeting, an academic competition, and an athletic, music, or theater program.

**12.22. Organ, Bone Marrow, or Blood Donation Leave**

1. Organ Donation

An employee may receive up to thirty (30) days paid leave of absence in a fiscal year for donation of an organ. A physician’s original signed statement is required and must be submitted to Human Resources. The request will be routed through the approval process.

2. Bone Marrow Donation

An employee may take up to five (5) days paid leave of absence in a fiscal year for donation of bone marrow. A physician’s original signed statement is required and must be submitted to Human Resources. The request will be routed through the approval process.

3. Blood Donation

An employee may take time off with pay to make blood donations not more than four (4) times per fiscal year. Ordinarily, this should not exceed one hour. Employees should coordinate blood donation leave with their immediate supervisor. Documentation is required and must be submitted to Human Resources.

**12.23. Amateur Radio Operator Leave**

An employee with an amateur radio station license issued by the Federal Communications Commission may be granted leave not to exceed ten (10) days each fiscal year to participate in specialized disaster relief services without a deduction in salary or loss of annual, sick, FLSA, or state compensatory time. The amateur radio operator leave should be authorized by the employee’s supervisor and with the approval of the governor.