



# **TCEQ Leave Benefits**

September 1, 2019

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In accordance with SB 73 (85th Legislative Session), state agencies must publish leave policies adopted under Chapter 661 of the Government Code on the agency's Internet website in a location easily accessible by the agency's employees and the public. TCEQ's leave policies are outlined below.

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## Section 1. Policy Introduction

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### Policy

Employees of the Texas Commission on Environmental Quality (TCEQ) are required to report hours worked and leave taken accurately, and to abide by agency leave policies and procedures.

It is the employee's responsibility to ensure that hours worked and leave taken are accurately reported on his or her time sheet. It is also the employee's responsibility to manage his or her leave in accordance with agency policies and to ensure that supervisor approval is received prior to using leave. A deliberate misrepresentation of hours worked, leave taken, or an unauthorized absence will result in disciplinary action up to and including discharge from employment.

Employees are responsible for completing and submitting time sheets prior to taking leave. In the event that the employee is unable to do so, it is the supervisor's responsibility to complete and submit time sheets in a timely manner.

It is the supervisor's responsibility to review time sheets to ensure accurate reporting of time worked and leave taken. Supervisors must coordinate employee time off in order to ensure adequate staffing to conduct agency business. Supervisors are also responsible for assisting employees with proper management of their leave.

### Definitions

A **full-time employee** is assigned to work 40 hours within an established work week of seven consecutive days.

A **part-time employee** is assigned to work less than 40 hours within an established work week of seven consecutive days. Part-time employees are paid and receive leave benefits in proportion to the percentage of hours worked.

The agency's **standard work week** begins at 12:01 a.m. on Saturday and ends at 12:00 midnight on the following Friday.

The agency's **fiscal year** begins September 1 and ends August 31.

An employee's **qualifying period** is the first six months of employment with the agency.

### Unauthorized Use of Leave

Except where noted in this Chapter, an employee must obtain prior approval from his or her supervisor in order to use leave. An employee who takes leave without receiving prior approval, or is absent and fails to notify his or her supervisor, is considered to be on unauthorized leave.

In the event of an emergency, such as illness or injury in which the employee is unable to contact the supervisor, it is the employee's responsibility to notify or cause notice to his or her supervisor concerning the absence as soon as possible.

### Mismanagement of Leave

TCEQ encourages employees to maintain a reasonable leave balance. In general, a

reasonable leave balance is a minimum of 40 hours of all accrued leave types. However, division management may adopt additional leave usage and balance requirements to ensure that the business needs of the agency are met. Supervisors are responsible for communicating these guidelines to employees when discussing appropriate leave management.

Mismanagement of leave may include, but is not limited to:

- repeated use of leave without prior approval;
- repeated absences on the first or last day of the workweek, or part of these days;
- repeated absences on days of peak workload;
- repeated unauthorized absences prior to or following a holiday;
- maintaining a low or zero paid leave balance; and/or
- repeated use of leave without pay.

Mismanagement of leave will lead to counseling, additional requirements for authorization for use of leave (including the denial or delay of the use of accrued leave), and/or disciplinary action, up to and including discharge from employment.

### **Abandonment of Position**

An employee who is absent from work without authorization and who does not notify his or her supervisor within three working days will be considered to have abandoned his or her position. Abandonment is cause for immediate termination without notice and the opportunity to appeal.

### **Notification and Self-Disclosure of Arrests or Criminal Charges**

An employee who is or will be late or absent from work because of an arrest or criminal law proceeding must notify his or her supervisor no later than thirty (30) minutes before the time due at work, or within 48 hours of the incident, whichever is earlier.

Upon reporting to work, an employee is responsible for disclosing the nature of the criminal proceeding to his or her supervisor. The "Self-Disclosure Form for Arrests or Criminal Charges" found in Agency Internal Forms on the Sharenet may be used for this disclosure.

### **Confidentiality of Medical Records**

The TCEQ will not disclose personal medical information without the employee's knowledge and consent, except as provided by law to an officer or employee of an entity who has a need for the information in the performance of official duty.

Health Care Providers' certificates and/or documents, identifying the specific illness or disability of an employee or family member, are confidential information.

Any person who obtains or releases personal medical information on an employee or family member without authorization has violated agency policy and will be subject to disciplinary action, up to and including termination. Additionally, civil and criminal suits may be brought by the affected employee against the employee who illegally disclosed the confidential information.

### **Where to Refer Questions**

Employees may direct questions concerning recording leave to their timekeeper. If

necessary, the division timekeeper may consult with the Payroll/Travel and Employee Time Unit in the Financial Administration Division.

**Authority**

Texas Government Code, Chapter 661  
Fair Labor Standards Act (FLSA)

**Effective Date**

March 24, 1998

**Revised Date**

July 17, 2016

## Section 2. Holidays

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### Policy

The Texas Commission on Environmental Quality (TCEQ) grants all employees time off with pay on days designated or authorized by the state legislature as official holidays.

A list of official holidays for state employees is posted on the Sharenet.

Holidays falling on Saturday or Sunday are not observed.

If a state holiday and a national holiday fall on the same day, the national holiday will be observed.

The maximum holiday leave granted for a national or state holiday is 8 hours. Employees with alternative work schedules are required to use other accrued leave to complete their normally scheduled work day.

Part-time employees are entitled to observe holidays. The amount of holiday leave granted is in proportion to the number of hours normally scheduled to work for the week.

### Overview

**If a holiday falls on the first work day of a month,** the employee must be in a paid status on the first work day after the holiday in order to be paid for the holiday.

**If a holiday falls within the month,** the employee must be in a paid status on the work day before and the work day after the holiday in order to be paid for the holiday.

**If a holiday falls on the last work day of a month,** the employee must be in a paid status the day before the holiday in order to be paid for the holiday.

**If an employee is on FMLA leave during a full work week and a holiday falls within the week,** the holiday will be counted towards the FMLA leave entitlement.

### Optional Holidays

An employee is entitled to observe Cesar Chavez Day, Rosh Hashanah, Yom Kippur, and/or Good Friday with prior supervisor approval. The employee must work on a “skeleton crew” on another state holiday during the same fiscal year for each of these optional holidays observed by the employee.

An employee who observes an optional holiday in lieu of any future state holiday, but is unable to be paid for the future state holiday, becomes indebted to the state for the compensation paid on the substitute holiday.

### Staffing on State Holidays

A state agency must have sufficient staff on duty on state holidays (skeleton crew holidays) to conduct agency business. Management may require an employee to work on those days.

It is the responsibility of each manager to ensure that sufficient staff is present to conduct agency business.

## **Holidays During Legislative Session**

If a holiday falls on a day when the legislature is in session, sufficient staff must be available to conduct agency business, as determined by the Executive Director.

## **Working on Holidays**

A full-time employee who is required to work on a national or state holiday will receive holiday compensatory leave for those hours worked. This holiday leave must be used within the 12-month period following the date of the holiday, or it will expire.

A part-time employee who is required to work on a national or state holiday will receive proportional holiday compensatory leave for those hours worked. This holiday leave must be used within the 12-month period following the date of the holiday, or it will expire.

An employee must give reasonable notice and receive supervisor approval before taking holiday compensatory leave.

Employees working alternative work schedules should refer to OPP 15.02, *Alternative Work Hours*.

## **Transfers and Separations**

Any accrued holiday leave balance will expire if not taken prior to separation from TCEQ employment. Holiday leave balances will not be eligible for payment after the day of separation, nor will they be transferable to another state agency, unless the transfer is legislatively mandated.

If a state or national holiday occurs between the dates that a state employee transfers from one state agency or institution of higher education to another without a break in service, then the receiving entity is responsible for paying the employee for the holiday, regardless of whether the receiving entity recognizes the holiday.

## **Authority**

Texas Government Code, Chapter 662

## **Effective Date**

March 24, 1998

## **Revised Date**

August 1, 2018

## Section 3. Annual Leave

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### Policy

Agency employees are entitled to accrue annual leave with pay each month based on length of state employment.

Annual leave may be used when the employee has had six months of continuous employment with an eligible state agency or institution of higher education. Leave will be accrued and held in suspense until this requirement has been met.

Annual leave may not be used before it is accrued. An employee who is on leave status on the first work day of a month may not use the annual leave accrued for that month until the employee returns to duty.

An employee who is on leave without pay (LWOP) for a full calendar month will not accrue annual leave for that month.

### Authorization

Annual leave must be approved by the supervisor prior to taking the leave.

Supervisors shall require employees to use accrued FLSA and compensatory leave (state compensatory and/or holiday) before approving use of annual leave, in accordance with OPP 15.03, *Compensation for Extra Time Worked*.

Whenever possible, employees will be approved to take annual leave for the dates requested as long as the absence does not unduly disrupt business operations. Annual leave may also be delayed due to conduct or performance issues, including previous use of unauthorized leave or mismanagement of leave.

If an employee's request to take annual leave is not approved, the supervisor will explain the reason to the employee and work with the employee to determine alternative date(s) to use annual leave.

### Leave Accrual and Carry-Forward

An employee will accrue annual leave beginning on the first day of employment and ending on the last day of actual work. Credit for one month's accrual will be given for each month, or fraction of a month, of paid employment. Annual leave will be posted to the employee's leave record on the first day of employment and on the first work day of each month of employment thereafter.

An employee's total length of state employment determines the number of annual leave hours the employee may accrue each month and carry forward each fiscal year. Total state service includes:

- current and previous employment with the TCEQ;
- employment with a state college or university of higher education or state agency, and/or
- applicable military service (active duty military service is included in calculating the length of service for the time an employee is on active military leave).

**Service with a city, county, independent school district, or state junior college does not count toward state service credit.**

Annual leave hours accrued and the maximum hours which may be carried forward from one fiscal year to the next for full-time employees are shown below:

<b>Length of Service</b>	<b>Hours Accrued Per Month</b>	<b>Allowable Carryover (Hours)</b>
Less than 2 years	8	180
2 but less than 5 years	9	244
5 but less than 10 years	10	268
10 but less than 15 years	11	292
15 but less than 20 years	13	340
20 but less than 25 years	15	388
25 but less than 30 years	17	436
30 but less than 35 years	19	484
35 years or more	21	532

Credit for the higher rate of accrual as shown above will be given on the first calendar day of the month if the employee's anniversary date falls on the first calendar day of the month. Otherwise, the increase will occur on the first calendar day of the following month.

**At the end of each fiscal year, all hours of accumulated annual leave that is over the maximum carryover allowed will be credited to the employee's sick leave balance effective the first day of the next fiscal year.**

### **Part-Time Employees**

Part-time employees accrue annual leave in proportion to the hours scheduled to work. The maximum hours which can be carried forward from one fiscal year to the next will be based on the percent of time worked.

### **Return-to-Work Retirees**

Employees returning to state employment who retired from state employment on or after June 1, 2005, and who receive a state retirement annuity, accrue annual leave based only on the employee's length of service after the employee's retirement date.

Return-to-work retirees are not required to re-establish the six months continuous service in order to take annual leave with pay.

### **Holiday While on Annual Leave**

If a holiday occurs while an employee is on annual leave, the holiday should be recorded as holiday leave.

### **Separation from Employment**

An employee who separates from state employment is entitled to be paid for accrued but unused annual leave. An employee who has less than six months of continuous employment with the state is not entitled to be paid for any accrued annual leave.

Annual leave will be paid if the employee has not been reemployed by a state agency to a position which accrues annual leave within a period of thirty (30) calendar days from the date of separation from state employment.

An employee who is reemployed by a state agency to a position which accrues annual leave within a period of 30 calendar days from the date of separation from state employment shall have his or her previously accrued but unused annual leave restored.

### **Transfer of Leave Time**

An employee who is reemployed with another state agency within 30 days of separation will have his or her accrued annual leave transferred to the receiving agency.

An employee who transfers to another state agency without a break in service will have his or her accrued annual leave balance transferred to the receiving agency.

### **Retirement**

At the time of retirement, accrued annual leave can be converted to additional retirement service credit at the rate of one additional month for each 160 hours of accrued annual leave. Any remaining annual leave, less than 160 hours, will convert to one additional month. In addition, employees will be paid for this leave.

### **Death of an Employee**

Upon the death of an employee, all accrued annual leave will be paid to the estate of the employee, provided the employee has had six months of continuous state service.

### **Authority**

Texas Government Code, Chapter 661

### **Effective Date**

March 24, 1998

### **Revised Date**

February 22, 2018

## **Section 4. Sick Leave**

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### **Policy**

Agency employees may use sick leave beginning on the first day of employment for illnesses and other reasons as defined by state law.

An employee who will be absent from work because of illness must notify his or her supervisor as soon as possible and provide an anticipated return to work time or date. The employee must notify the supervisor each morning of absence, unless other arrangements are made.

Absences for an employee's own illness of more than three working days must be supported by a doctor's certificate or statement that indicates the dates of the illness, a return to work date, and any medically necessary work limitations. An employee's supervisor may request this certificate for absences of less than three days.

Sick leave may only be used for the permitted uses described in this policy. An employee may request sick leave absences be charged to another available leave accrual balance. Documentation may be required to support this request.

Absences due to illness may also qualify for other leave benefits. Employees may contact the Human Resources and Staff Services Division for assistance.

### **Accrual**

Employees accrue sick leave on the first day of state employment and on the first work day of each month of employment thereafter.

Full-time employees accrue sick leave at the rate of eight hours for each month (or fraction of a month) of employment. Part-time employees accrue sick leave in proportion to the hours scheduled to work.

An employee who is on leave status on the first work day of a month may not use that month's accrual until the employee returns to duty. An employee who is on unpaid leave for a full calendar month will not accrue sick leave for that month.

There is no limit to the amount of sick leave an employee may accrue.

### **Permitted Uses Due to Illness**

An employee may use sick leave:

- if unable to perform the job duties due to his or her own illness, injury, pregnancy or confinement;
- to care or assist an immediate family due to illness;
- to care or assist his or her spouse, child, or parent who does not reside in the same household and has a documented medical condition.

*Immediate family* is defined as individuals related by kinship, adoption, or marriage who live in the same household; foster children who reside in the same household and are under the conservatorship of the State of Texas; and minor children, regardless of whether they live in the same household.

## **Other Permitted Uses**

Adoption of a Child - Sick leave may be used in connection with an employee's adoption of a child under the age of three.

Educational Activities - A full-time employee may use up to eight hours of accrued sick leave each fiscal year to attend a school sponsored activity for his or her child who is in pre-kindergarten through 12th grade. Employees must give reasonable notice of intention to use sick leave to attend educational activities.

## **Medical and Mental Health Care Leave for Veterans**

An employee who has served in the United States (U.S.) Armed Forces or the Texas National Guard may be granted up to 15 days of additional paid leave each fiscal year to obtain medical or mental health care administered by the U.S. Veterans Health Administration (VHA).

## **Holiday While On Sick Leave**

If a holiday occurs while the employee is on sick leave, the holiday should be recorded as holiday leave.

## **Sick Leave Donations**

An employee may donate any amount of accrued sick leave to an eligible TCEQ employee. An employee may not provide or receive anything of value in exchange for a sick leave donation.

To be eligible to receive donated sick leave, an employee must have a severe illness, or an immediate family member with such an illness, requiring the use of continuous leave. Before receiving a donation, the employee must provide a current medical certification and exhaust all available sick leave, including any available extended sick leave and/or sick leave pool hours.

Donated sick leave may be used only for the employee's own severe illness or the severe illness of an immediate family member. Donated sick leave cannot be used for state retirement service credit. Donated hours cannot be returned to the donating employee or donated to another TCEQ employee.

## **Separation from Employment**

Accrued sick leave hours are not paid when employees separate from state employment. A separating employee may not use paid sick leave to extend the final date of separation from employment.

An employee separated from TCEQ shall have his or her sick leave balance restored if:

- reemployed by the TCEQ within 12 months of separation, provided there has been a break in service of at least 30 calendar days since separation; or
- reemployed by any Texas state agency within 12 months of separation.

## **Retirement**

At the time of retirement, sick leave can be converted to additional retirement service credit at the rate of one additional month for each 160 hours of accrued sick leave. Any remaining sick leave, less than 160 hours, will convert to one additional month.

**Death of Employee**

Upon the death of an employee, 336 hours or one half of accrued sick leave, whichever is less, will be paid to the estate of the employee.

**Authority**

Texas Government Code, Chapter 661

**Effective Date**

March 24, 1998

**Revised Date**

September 1, 2017

## Section 5. Extended Sick Leave

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### Policy

Extended sick leave is an additional paid leave that may be granted for an employee's own serious health condition.

Extended sick leave may be granted for a reduced work schedule immediately following a consecutive absence and used after any suspended accruals have been exhausted. Extended sick leave is not available for intermittent absences.

The total hours of extended sick leave granted is established by this policy and is based on the medical certification provided by the employee's health care provider. The lifetime maximum hours granted is 480 hours. Part-time employees may be granted a proportionate amount of extended sick leave.

Extended sick leave granted to an employee will be included in the employee's 12-week FMLA leave entitlement, if eligible.

### Eligibility

An employee may be granted extended sick leave if the following criteria are met:

- the absence is supported by medical documentation;
- the condition required the employee to exhaust his or her leave accruals;
- the period of incapacity was for more than three consecutive, full calendar days;
- prior to the onset of the condition, the employee properly managed his or her leave in accordance with agency policy;
- the employee's current performance evaluation indicates that performance meets or exceeds standards;
- the employee has not received any written disciplinary action and/or has not been on a Performance Improvement Plan (PIP) in the past 12 months; and
- the employee has been continuously employed with the TCEQ for at least one year, based on last date of hire.

### Maximum Allowable Extended Sick Leave

The maximum amounts of extended sick leave which may be granted to an employee during a 12-month period, regardless of the number of occurrences or types of illnesses, are as follows:

<b>TCEQ Continuous Employment</b>	<b>Maximum</b>
1 year but less than 3 years	40 hours
3 years but less than 4 years	80 hours
4 years but less than 5 years	120 hours
5 years or more	160 hours

The amount of extended sick leave hours granted includes any holiday or other eligible agency-granted leave that occurs while the employee is on extended sick leave.

## **Leave Accrual While On Extended Sick Leave**

The sick and annual leave accruals of an employee who is on extended sick leave on the first working day of a month will be held in suspense until the employee returns to duty.

## **Return To Work Certification**

The employee must obtain a Return to Work Certification from the health care provider stating that the employee is able to resume work. The certification must be provided to the Human Resources and Staff Services (HRSS) Division prior to reporting back to work. An employee who fails to provide this certification to HRSS will not be permitted to return to work, and may be disciplined for such failure.

## **Authority**

Texas Government Code, Section 661.202 (i)

## **Effective Date**

March 24, 1998

## **Revised Date**

October 16, 2018

## **Section 6. Sick Leave Pool**

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### **Policy**

All employees of the TCEQ may be granted sick leave pool for prolonged absences due to a catastrophic illness or injury incurred by the employee or an immediate family member. Employees must exhaust all available accrued leave balances before they are eligible to use leave from the pool.

The Commissioners and Executive Director are excluded from participating.

Sick leave pool may not be granted to an employee who is receiving workers' compensation benefits.

Employees are not required to contribute to the pool before they can use sick leave pool.

The amount of sick leave pool hours granted includes any holiday or other eligible agency-granted leave that occurs while the employee is using sick leave pool.

Part-time employees may be granted a proportionate amount of sick leave pool.

### **Administration Of The Sick Leave Pool**

The Director of the Human Resources and Staff Services (HRSS) Division is the sick leave Pool Administrator.

The Pool Administrator will review each special leave request for sick leave pool on an individual basis to determine whether the condition is severe enough to be considered catastrophic.

The total amount of leave granted during a 12-month period cannot exceed one-third of the balance of hours in the pool, or 720 hours, whichever is less.

An employee may be required to provide recertification of the need for continued use of sick leave pool every 30 calendar days, or as deemed necessary by the Pool Administrator.

### **Definitions**

**Catastrophic Injury or Illness** 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 leave time earned by that employee and to lose compensation from the state for the employee. TCEQ generally defines catastrophic injuries or illnesses as immediate life threatening conditions.

**Licensed Practitioner** means a practitioner who is practicing within the scope of his or her license.

**Immediate Family** is defined as individuals related by kinship, adoption, or marriage that reside in the same household; foster children, as certified by the Health and Human Services Commission, who reside in the same household; and minor children, regardless of whether they live in the same household. Sick leave pool may be used to care for immediate family members who do not reside in the same household only if the time taken is necessary to provide care for a documented medical condition. In

this instance only, “immediate family” refers to spouse, child, or parent. This provision for using sick leave pool does not extend to an employee’s parent-in-law.

**Minor Child** is defined as a child under 18 years of age, or a child 18 years of age or older who is incapable of self-care because of mental or physical disability (as defined by the Americans with Disabilities Act). This includes a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person who stands in loco parentis (in place of the parent.)

### **Leave Accrual While Using Sick Leave Pool**

Employees who are in a paid status for any period of time during the month in which they begin or end their sick leave pool will receive full credit for both sick and annual leave. The sick and annual leave accruals of an employee who is using sick leave pool on the first working day of a month will be held in suspense until the employee returns to duty.

### **Unused Balances**

Any unused sick leave pool returns to the pool upon the employee’s return to work or separation of employment with the state.

### **Return To Work Certification**

In cases of medical leave taken for the employee’s own serious health condition, the employee must obtain a Return to Work Certification from their health care provider stating that the employee is able to resume work. The certification must be provided to HRSS prior to reporting back to work. An employee who fails to provide this certification to HRSS will not be permitted to return to work and may be disciplined for such failure.

An employee using sick leave pool to care for a family member must notify HRSS when he or she has returned to work.

### **Contributing Sick Leave To The Pool**

Employees may voluntarily contribute one or more days of the employee’s accrued sick leave to the pool at any time.

Employees will be encouraged to contribute to the pool upon separation from state employment.

Employees may donate sick leave to a designated recipient under OPP 9.04, Sick Leave.

### **Authority**

Texas Government Code, Section 661.001, et seq.

### **Effective Date**

March 24, 1998

### **Revised Date**

June 22, 2018

## **Section 7. Bereavement and Other Emergency Leave**

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### **Policy**

Employees are entitled to receive emergency leave with pay because of a death in the employee's family and to attend the funeral of a current TCEQ employee or retiree.

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

### **Leave for Bereavement**

An employee may receive up to 40 hours of emergency leave with pay for a death in the employee's family. Part-time employees may receive a proportionate number of hours of emergency leave. The employee's family includes:

- the employee's spouse
- the employee's or spouse's (including current step-family and in-law relations):
  - child
  - parent
  - sibling
  - grandparent
  - grandchild
  - great grandparent
  - great great grandparent
  - great grandchild
  - great great grandchild
- the employee's foster parent, or any other person who served in a full-time parental capacity to the employee.

An employee may request emergency leave for bereavement by notifying his or her supervisor of the family member's death and scheduling the leave with the supervisor. Bereavement leave may be used intermittently. The employee must make reasonable efforts to schedule leave in a manner that minimizes disruption at work.

Employees may be granted up to two hours of emergency leave to attend the funeral of a current TCEQ employee or retiree. Employees must use other accrued leave for time needed in excess of two hours. Supervisors must ensure that adequate office coverage is maintained at all times.

### **Agency Closures**

The Executive Director or designee may grant emergency leave due to weather conditions or in observance of a holiday. Employees are not required to request emergency leave for agency closures due to weather conditions or holidays.

Employees on leave on the day for which emergency leave is granted due to weather conditions will not receive emergency leave.

### **Other Emergencies**

The Executive Director may grant an individual employee's request for emergency leave when in his or her determination, the employee shows good cause for such

leave. The Executive Director must believe in good faith that the employee intends to return to their position at the expiration of the emergency leave.

**Authority**

Texas Government Code, Section 661.902

**Effective Date**

March 24, 1998

**Revised Date**

September 1, 2017

**Section 8. (Policy Eliminated)**

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## **Section 9. Administrative Leave for Outstanding Performance**

### **Policy**

In accordance with the TCEQ Employee Recognition Program, administrative leave for outstanding performance may be awarded up to, but may not to exceed, 32 working hours per employee during a fiscal year.

This benefit is to be used judiciously and should not be automatically awarded each time outstanding performance is documented. The amount of administrative leave should also be reflective of individual performance and accomplishments.

Particular consideration should also be given to those employees whose outstanding performance cannot be recognized with merit increases, as well as those employees with a consistent record of outstanding performance.

### **Eligibility**

The employee who is being considered for administrative leave for outstanding performance must:

- be a regular full-time employee;
- have been employed by the TCEQ for a period of at least one year;
- have received an overall rating of at least “Met Requirements” on a current performance appraisal (within 12 months);
- not have received any disciplinary action, been placed on a Performance Improvement Plan within the preceding 12 months, or have any disciplinary action or Performance Improvement Plan pending; and
- be recommended by the employee’s supervisor.

### **Approval**

**Agency-Level Awards:** Either the Executive Director or the Chairman (for the Commissioner’s cluster) must approve requests for administrative leave for overall outstanding performance.

**Division Level Awards:** Approval must be obtained from Human Resources and Staff Services and by the nominated employee’s Division Director.

All approvals for the leave must be received prior to awarding the leave to the employee.

The employee and supervisor should agree to the time the leave will be taken. Leave that is awarded must be used within 90 days.

### **Authority**

Texas Government Code, Chapter 661

### **Effective Date**

March 24, 1998

### **Revised Date**

February 22, 2018

## **Section 10. Miscellaneous Leave**

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### **Jury Duty**

State employees who are summoned to jury duty will be granted paid leave.

An employee summoned for jury duty is not required to account for any fee or compensation received for jury service.

If there is sufficient time before or after the period of jury duty, the employee should report to work.

### **Witness Duty**

An employee summoned to appear in his or her official capacity in any judicial action or legislative investigation may neither accept nor receive any witness fees for such a governmental appearance. The employee's appearance is considered work time and no leave need be taken.

This prohibition against accepting compensation does not extend to any mileage or per diem allowance tendered to the employee for expenses incurred while serving as a witness. If the employee accepts the expenses, the employee may not apply for reimbursement of those same expenses from the Agency. In no instance should there be double reimbursement for expenses.

If a state employee is summoned to appear not in an official capacity of the agency, but to testify from personal knowledge concerning matters related to the inquiry, the employee may accept any customary witness fees and must use his or her accrued leave for the absence from work.

Any state employee appearing as an expert witness on his or her own accord and not an official capacity may accept compensation for the appearance. However, the employee must use accrued leave to appear.

In all cases, employees are responsible for providing notice and a copy of the subpoena or other summons for appearance to his or her supervisor(s).

### **Voting – Local, State and Federal Elections**

Full-time employees in a paid status who are normally scheduled to work the day of the election will be granted up to two hours of leave without deduction from pay or accrued leave time to vote. Employees must coordinate and receive approval from his or her supervisor(s) prior to using leave to vote.

Part-time employees will not receive time off to vote.

Employees selected as election inspectors will receive leave as determined by the Secretary of State. Employees must request and receive approval in advance from his or her supervisor prior to using leave for this purpose.

### **Volunteer Fire Fighters, Emergency Medical Services Volunteers and Search and Rescue Volunteers**

State employees who volunteer as fire fighters, emergency medical services providers, or search and rescue volunteers will be granted paid leave to attend training

conducted by state agencies, provided such leave does not exceed 40 hours in any one fiscal year.

Volunteer fire fighters, emergency medical services volunteers, or search and rescue volunteers may receive paid leave to respond to emergency fire, medical, or search and rescue situations. No deductions will be made to annual or sick leave.

### **Assistance Dog Training**

A state employee who is disabled is entitled to leave with full pay for the purpose of attending a training program to acquaint the employee with a dog to be used by the employee.

This leave may not exceed 80 working hours in a fiscal year.

### **Red Cross Disaster Service Volunteer**

With the supervisor's authorization, any 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 be granted leave not to exceed ten days each fiscal year to participate in specialized disaster relief services for the American Red Cross. This leave will be granted upon request of the American Red Cross and with approval of the Governor's office, without loss of pay, or accrued leave.

### **Court Appointed Special Advocates (CASA) Volunteer**

With the supervisor's authorization, a state employee may be granted leave not to exceed five hours each month to participate in mandatory training or perform volunteer services for CASA. This leave will be granted without loss of pay or accrued leave.

### **Foster Parent Leave**

A state employee, who is a foster parent to a child under the conservatorship of the Department of Family and Protective Services, is entitled to leave with full pay for the purpose of attending:

- staff meetings held by the Department of Family and Protective Services regarding the child under the foster care of the employee; or
- the Admission, Review, and Dismissal (ARD) meeting held by a school district regarding the child under the foster care of the employee.

### **Employee Transfers**

An employee who transfers offices (region to region, central office to region or vice-versa) may receive up to 16 hours of leave by the receiving office's Division Director. If granted, the leave must be taken after the effective date of the transfer.

If time off is needed prior to the effective date of the transfer, the employee must use his or her own leave accruals.

### **Employee Interviews**

Employees may be granted up to two hours of leave in which to interview for positions within the agency. For interviews within the agency requiring travel, employees may be granted no more than eight hours of leave in which to interview.

## **Organ or Bone Marrow Donors**

Leave is available to employees who serve as bone marrow or organ donors. The maximum leave that may be granted is:

- five working days in a fiscal year to serve as a bone marrow donor; or
- 30 working days in a fiscal year to serve as an organ donor.

## **Blood Donors**

Employees may receive one hour of leave up to four times per fiscal year to donate blood. Employees must request and receive approval in advance from his or her supervisor(s) prior to using leave for this purpose. Leave may be denied or rescheduled to meet the business needs of the agency.

On returning to work, the employee shall provide the employee's supervisor with proof that the employee donated blood during the time off. If an employee fails to provide proof, the agency shall deduct the period for which the employee was granted time off from the employee's accrued leave.

## **Authority**

Texas Government Code, Chapter 661

Texas Government Code, Chapter 659

Texas Civil Practices and Remedies Code, Chapter 122

## **Effective Date**

March 24, 1998

## **Revised Date**

September 1, 2019

## Section 11. Military Leave

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### Policy

TCEQ employees are eligible for military leave for the following types of military service:

- authorized training or duty for members of the state military forces and members of any of the reserve components of the United States (U.S.) Armed Forces;
- authorized training or duty for members of a state or federally authorized Urban Search and Rescue Team;
- call to active duty in the state military forces by the Governor; and
- national emergency active duty for a member of the reserve branch of the U.S. Armed Forces.

An employee ordered to active military service, whether in a reserved component of the U.S. Armed Forces or the state military forces, is entitled to the benefits and protections provided by the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Soldiers' and Sailors' Civil Relief Act (SSCRA) of 1940.

TCEQ will provide a statement of the employee's state compensatory time balances to an employee activated to military service in a reserve component of the U.S. Armed Forces. TCEQ will accommodate the employee's request to use that time before it expires.

### Authorized Training or Duty

A state employee who is a member of the state military forces, any of the reserve components of the U.S. Armed Forces, or a state or federally authorized Urban Search and Rescue Team engaged in authorized training or duty is entitled to a paid leave of absence from the employee's duties without loss of time, efficiency rating, or annual leave time.

"State military forces" means the Texas National Guard, the Texas State Guard, and any other active militia or military force organized under state law.

This leave may not exceed 15 workdays (120 consecutive or non-consecutive working hours) in a federal fiscal year (October 1 to September 30). Any unused accumulated leave may be carried forward from one federal fiscal year to the next, not to exceed 45 workdays.

The employee may elect to use any combination of FLSA overtime, state compensatory time, holiday time, accrued annual, and/or leave without pay, after exhausting the 15 workdays of military leave for the remainder of the employee's active duty period.

### Call to National Emergency Active Duty

An employee called to active duty during a national emergency by a reserve branch of the U.S. Armed Forces under Title 10 or 32, United States Code, will be granted unpaid military leave. The employee will accrue state service credit while on such leave, but does not accrue annual or sick leave for any full calendar month when on leave without pay status. However, the employee retains any previously accrued sick or annual leave and will be credited with those leave balances upon return.

The employee may elect to use all or part of his or her accrued leave (except sick leave) to maintain benefits for the employee or the employee's dependents while the employee is on military duty.

The employee may also elect to use one hour per month of accrued leave (including annual, state comp time, FLSA overtime, military leave or approved agency differential pay but not sick leave) to continue to accrue service credit with the Employees Retirement System.

TCEQ will grant sufficient emergency leave as differential pay to a state employee on unpaid military leave if the employee's military gross pays is less than the employee's state gross pay. The combination of the emergency leave and military pay may not exceed the employee's actual state gross pay.

### **Call to Texas State Military Forces Active Duty**

A state employee who is a member of the Texas state military forces called to active duty by the Governor because of a state emergency will be granted paid emergency leave without loss of military or annual leave.

### **Call to Federal Military Forces Active Duty**

A state employee who is a member of the National Guard who is called to active duty by civil authorities to provide assistance in a declared emergency or for training for that purpose will be granted paid emergency leave for not more than 22 workdays without loss of military or annual leave.

This leave is separate from that described under the "Authorized Training or Duty" section of this OPP.

### **Adjustment of Schedule**

Employees who are members of the state military forces or any reserve component of the U.S. Armed Forces will have their work scheduled so that two of the employees' non-work days each month coincide with the required two days of military duty.

### **Return From Military Leave**

A state employee who is a member of the state military forces or a reserve component of the U.S. Armed Forces, or a member of a state or federally authorized Urban Search and Rescue Team and who is ordered to duty by a proper authority is entitled, when relieved from duty, to be restored to the position that the employee held when ordered to duty.

TCEQ will reemploy employees returning from active military service in accordance with USERRA. To be eligible for restoration of employment, the employee must have:

- been previously employed by the agency in a capacity other than as a temporary, elected official, or one serving under an appointment that requires confirmation by the Senate;
- been honorably discharged;
- applied for restoration within 90 days after leaving military service; and
- been absent from state employment for not more than five years, except as provided by USERRA.

An employee eligible for restoration of employment as described above must be reemployed in the same position or one similar in seniority, status, and pay if the employee is able to perform such duties, with or without reasonable accommodation.

If the returning employee is no longer qualified to perform the former duties, but is qualified for another position, the employee will be reemployed in that position.

A returning employee will be considered as having been on leave of absence and is entitled to state service credit (for purposes of longevity pay and annual leave accrual) for the time spent in the military. However, the employee does not accrue annual or sick leave while on active duty and not in the actual employment of the state.

**Authority**

Texas Government Code, Chapter 431

Texas Government Code, Chapter 437

Uniformed Services Employment and Reemployment Rights Act (USERRA)

**Effective Date**

March 24, 1998

**Revised Date**

September 1, 2017

## Section 12. Family and Medical Leave

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### Policy

Eligible employees are entitled to up to 12 weeks of unpaid leave in a rolling 12-month period for the following qualifying events:

- the birth of the employee's child and to bond with the newborn child within one year of birth;
- the placement of a child with the employee for adoption or foster care and to bond with the newly placed child within one year of placement;
- to care for a spouse, child, or parent who has a serious health condition; and/or
- a serious health condition that makes the employee unable to perform his or her job.

Eligible employees may also use FMLA leave for the following military-related absences:

- **Qualified Exigency Leave:** Up to 12 weeks unpaid leave to address certain qualifying exigencies for an employee's spouse, child, or parent who is on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation; and
- **Military Caregiver Leave:** Up to 26 weeks of FMLA leave in a 12-month period to care for a covered service member injured while on active duty.

Employees are expected to cooperate with all requests for information regarding whether absences are FMLA qualifying, the timing and duration of, and other circumstances regarding the use of leave. The agency will review the employee's eligibility and provide information about the employee's rights and responsibilities under the policy. The agency will determine whether an event qualifies as FMLA leave and will notify the employee of the designation. The HRSS Director may designate absences as FMLA and Non-FMLA on a case by case basis.

The FMLA designation ensures that the employee is entitled to return to the same job or an equivalent position with equivalent pay and benefits.

Employees are required to use all accrued leave balances while on leave for FMLA qualifying reasons. Sick leave may only be used as authorized by OPP 9.04 Sick Leave.

### Eligibility

Employees who have been employed by the State of Texas for at least 12 months, and have physically worked at least 1,250 hours (based on FLSA hours-worked principles) during the preceding 12-month period, are eligible for FMLA leave.

### Employee Responsibilities

Employees must provide 30 days advance notice to his or her supervisor and to Human Resources and Staff Services (HRSS) of a FMLA qualifying event if the need for leave is foreseeable, such as planned surgery or an expected due date. If leave is required because of a medical emergency or other unforeseeable event, the employee must provide his or her supervisor with notice as soon as feasible (i.e., within 1 to 2 business days) and comply with other normal call-in procedures.

Employees are required to provide a medical certification for leave requests for:

- the employee's own serious health condition;
- care of a family member's serious health condition; and
- care of an injured service member.

Documentation is also required for other qualifying events, such as adoption and foster care placement, and to establish the nature of the family member's military service and the existence of a qualifying exigency.

Additional medical opinions, authentication, and/or recertification may be required to support the FMLA leave. If any required documentation is not returned, the employee's leave request, the continuation of leave, or job restoration following the leave may be denied.

### **How Leave is Taken**

FMLA leave may be used for a continuous period of absence from work, or when medically necessary for a serious health condition, intermittently or on a reduced work schedule. The employee must make reasonable efforts to schedule leave for planned medical treatment in a manner that minimizes disruption at work. The employee may be temporarily transferred to another job to better accommodate the planned leave.

Leave due to qualifying military exigencies may also be taken on an intermittent basis.

Leave for the birth, adoption, or foster care placement of a child must be completed within the 12-month period beginning on the date of birth or placement of the child. Intermittent or a reduced work schedule following the arrival of the child is discretionary and must be approved by the employee's supervisor and Division Director.

Employees on FMLA leave seeking to work at home, even temporarily, must be otherwise eligible for telework and obtain approval in accordance with OPP 15.04 Telework Program. Additional documentation may be required to support the request.

### **Return from FMLA Leave**

Upon return from FMLA leave, an employee is entitled to be returned to the same position or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee, however, has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the leave period.

In cases of medical leave taken for the employee's own serious health condition, the employee must obtain a Return to Work Certification from the health care provider stating that the employee is able to resume work. The certification must be provided to HRSS prior to reporting back to work. An employee who fails to provide this certification to HRSS will not be permitted to return to work, and may be disciplined for such failure.

When FMLA leave is to care for a family member, the employee must notify HRSS of his or her return from leave.

If an employee's planned return to work date changes during the FMLA leave, the employee is responsible for providing reasonable notice (i.e., two business days) to HRSS.

### **Failure to Return from FMLA Leave/ Exhaustion of FMLA Leave**

The failure of an employee to return to work from his or her FMLA leave will be considered a voluntary resignation and may not be appealed. Employees who exhaust FMLA and are unable to return to work at the end of their leave must contact the ADA Coordinator for consideration of additional leave beyond FMLA.

Employees may be resigned unless they are approved for additional leave in accordance with OPP 12.04 *Americans with Disabilities Act*. This additional agency granted leave may be paid and/or unpaid and must be approved in writing by the employee's management, up to and including the Deputy Director.

### **Benefits While on FMLA Leave**

An employee on a designated FMLA leave is entitled to continuing coverage under the group health insurance plan, and the state will continue to pay the standard contribution to the health insurance premium. Employees are responsible for continuing to pay their share of health plan premiums while on FMLA leave.

If a payroll deduction cannot be made because the employee's net pay is not sufficient, or because the employee is on unpaid leave for a full calendar month, the employee must submit payment for the employee's portion of the insurance premium.

If the employee fails to return to work after the expiration of FMLA leave, the employee may be required to reimburse the State of Texas for the state-paid portion of the health insurance premium unless the reason the employee fails to return is due to the presence of a serious health condition which prevents the employee from performing his or her job, or due to circumstances beyond the employee's control.

An employee is not entitled to accrue annual or sick leave while on unpaid FMLA leave when **unpaid leave is for a full calendar month**.

A full calendar month of unpaid FMLA leave will not constitute a break in state service. However, any full calendar month of unpaid FMLA leave will not be counted in the calculation of total state service for purposes of longevity pay or annual leave entitlements.

An employee on unpaid FMLA leave for any full calendar month will not receive retirement credit for that month.

### **Employee Protection**

TCEQ will not discriminate against, interfere with an employee's rights, nor retaliate against an employee in violation of the FMLA. Employees may report alleged violations of this policy to the Employee Relations Coordinator or the Human Resources and Staff Services Division Director. All complaints are promptly and confidentially investigated in accordance with OPP 12.15 Anti-Discrimination and Harassment Policy.

**Authority**

Family and Medical Leave Act  
Texas Government Code, §661.912

**Effective Date**

March 24, 1998

**Revised Date**

November 2, 2018

## **Section 13. Parental Leave**

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### **Policy**

An employee who is not eligible for Family and Medical Leave (FMLA) under OPP 9.12 is entitled to up to 12 weeks of parental leave for the birth of a natural child or the adoption or foster care placement of a child under three years of age. Parental leave is not available for any other purpose. In order to be paid while on parental leave, employees must use all available accrued leave balances.

### **Eligibility**

Eligible employees may utilize parental leave, not to exceed 12 weeks (480 hours) for the birth of a natural child or the adoption or foster care placement of a child under three years of age. Under no circumstances will an employee be granted both parental leave and FMLA for the same event.

This leave 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.

### **Use of Paid Leave Accruals**

The employee must use all accrued leave or leave without pay for this period.

Sick leave may only be used as authorized by OPP 9.04 Sick Leave.

### **Leave Accrual and Retention While on Parental Leave**

Employees who are on parental leave on the first working day of the month will receive full credit for both sick and annual leave. However, accruals will be suspended until the employee returns to duty.

Employees on unpaid parental leave for a full calendar month will not accrue any sick or annual leave for that month.

For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as parental leave has no effect. The week is counted as a week of parental leave.

### **State Service**

A full calendar month of unpaid parental leave will not constitute a break in state service. However, any full calendar month of unpaid parental leave will not be counted in the calculation of total state service for purposes of longevity pay or annual leave entitlements.

An employee on unpaid parental leave for a full calendar month will not receive retirement credit for that month.

### **Return to Work Certification**

Upon return to duty after parental leave for birth of a child, the employee must submit a "Return to Work Certification." If the employee is unable to provide the Certification document, if applicable, within one working day of returning to duty, the employee must not be permitted to work.

**Failure to Return From Leave**

The failure of an employee to return to work from his or her parental leave will be considered a voluntary resignation and may not be appealed.

**Authority**

Texas Government Code, Chapter 661

**Effective Date**

March 24, 1998

**Revised Date**

February 22, 2018

## **Section 14. Leave Without Pay (LWOP)**

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### **Policy**

Leave without pay occurs when an employee is absent, with or without authorization, and has exhausted his or her accrued leave balances. The agency strongly discourages LWOP and may take disciplinary action to correct an employee's failure to properly manage his or her leave. An employee on unapproved leave without pay is not guaranteed continued employment.

This policy does not apply to leave without pay covering periods of unpaid Family and Medical Leave, unpaid parental leave, and/or unpaid active military leave.

### **Criteria**

Except for disciplinary suspension, unpaid leave for active military duty and unpaid leave for workers' compensation, all accrued FLSA overtime, compensatory, holiday time and annual leave must be exhausted prior to taking any LWOP.

Sick leave must be exhausted only in those cases where the employee is eligible to take sick leave. Refer to the OPP 9.04, *Sick Leave* for more information concerning uses of sick leave.

LWOP may be authorized for disciplinary reasons. In this event, OPP 11.02, *Disciplinary Action* must be followed.

### **Authorization**

LWOP may be approved for the shortest time period possible and will not exceed a total of 12 continuous months. Subject to fiscal constraints, approval of LWOP pursuant to this policy constitutes a guarantee of employment for the approved specified period. In certain circumstances, LWOP may be approved for other reasons in accordance with the guidelines outlined in this policy.

Deputy Directors must review and approve all uses of leave without pay prior to an employee being on leave. If an employee seeks approval for leave without pay for more than 3 months, the Executive Director must approve the leave after reviewing the recommendation of the Human Resources and Staff Services Division.

Executive Director may grant an exception to the 12 month limitation for extended LWOP for special circumstances including, but not limited to, the following:

- interagency agreement; or
- to continue education which would be of benefit to the agency.

### **State Service**

An employee who is on LWOP for an entire calendar month does not accrue state service credit for the month.

An employee who is on LWOP for less than an entire calendar month accrues state service credit for the month if the employee otherwise qualifies to accrue credit.

This guarantee applies to a job at the same salary as the one held by the employee at the beginning of the LWOP. The employee is not guaranteed a return to the same position held prior to the granting of LWOP, nor is the employee guaranteed that the

available position will be in the same division or section to which the employee was assigned prior to the LWOP period.

### **Failure to Return To Work**

An employee who does not return to work, does not contact his or her supervisor, or whom agency staff are unable to contact at the end of the LWOP period, will be considered to have abandoned his or her position and subject to immediate termination from employment without notice and the opportunity to appeal.

### **Authority**

Family and Medical Leave Act  
Texas Government Code, Chapter 661  
Texas Government Code, Section 659.085

### **Effective Date**

March 24, 1998

### **Revised Date**

February 22, 2018