

TWELFTH COURT OF APPEALS

LEAVE POLICY



EMERGENCY LEAVE

Death in Family

An employee is entitled to leave with pay for a death in the employee's family. An employee's family is defined as the employee's spouse, as well as the employee's and spouse's parents, children, brothers, sisters, grandparents, and grandchildren.

Other Reasons

The Chief Justice of the Court may grant emergency leave to an employee for reasons other than bereavement if the employee shows good cause and intends to return to work when the emergency leave ends. The granting of such leave is at the sole discretion of the Chief Justice and is granted only if it is determined to be in the best interest of the Court.

Emergency Leave and Workers Compensation

The Chief Justice may authorize emergency leave pay for not more than 6 months to an employee receiving worker's compensation benefits. Payment will not exceed the difference between the employee's base monthly wage and the monthly amount of minimum benefits. If payment is authorized, the Chief Justice must attach a statement of the reason for the authorization to its payroll voucher for the first payroll period affected by the leave.

Requests

All requests for Emergency Leave should be submitted to the Clerk who will coordinate the request and granting of emergency leave with the Chief Justice.

Approval

Approval for emergency leave can only be granted or denied by the Chief Justice.

Reporting

By October 1 of each year, the Clerk is required to report to the Comptroller's Office:

- The name and position of each employee who was granted more than 32 hours of emergency leave during the previous fiscal year,
- The reason for which the employee was granted emergency leave, and
- The total number of emergency leave hours granted to the employee in that fiscal year.

ADMINISTRATIVE LEAVE

Introduction

Under Section 661.911 of the Texas Government Code, the head of an agency may grant administrative leave with pay to employees for outstanding performance.

Requirements

Administrative leave may be granted to employees whose performance exceeds the expectations or requirements in their current job duties. An employee who has received discipline in the last 12 months is not exceeding in his or her job. Such an employee is eligible for administrative leave only if the division director can show that the employee has exhibited exceptional performance on a special project, one not part of the employee's day-to-day job duties. Merely participating in a special project is not sufficient. The employee must have had exceptional performance on the project and earned the leave on that basis. The aggregate amount of leave shall not exceed 32 hours in a fiscal year.

Timeframe

Administrative leave must be used within one year from the date it is granted. Further administrative leave may not be granted until administrative leave from the prior fiscal year is exhausted.

VOTING LEAVE

Pursuant to Section 661.914 of the Texas Government Code, employees shall be allowed up to one hour of time off, without deduction from pay or leave time accrued, to vote in each national, state, or local election.

PARENTAL LEAVE

Introduction

An employee is eligible for parental leave to take time off from work due to the birth of a child or the adoption or foster care placement of a child under the age of three if the employee is not eligible for FMLA leave.

Policy

Pursuant to Section 661.913 of the Texas Government Code, the Twelfth Court of Appeals will provide an employee who is not eligible for Family and Medical Leave up to 12 weeks of unpaid parental leave immediately following the birth of the employee's child or the date of the adoption or foster care placement of a child under three years of age.

Parental leave begins on the date of the birth of the employee's child or on the date of the adoption or foster care placement of a child younger than three years of age.

The employee cannot use parental leave after the end of the 12-week period immediately following the birth of the employee's child or the date of adoption or foster placement.

Parental leave may be used intermittently during this time only if approved in advance by the employee's management.

Substitution of Paid Leave

The employee must first use all available and applicable accrued sick leave and annual leave while taking parental leave prior to going into a leave without pay status.

FMLA Leave

An employee's FMLA leave entitlement when he or she meets the eligibility requirements will be determined by the Chief Justice without regard to the employee's use of parental leave.

PAID PARENTAL LEAVE

Eligibility

- Section 661.9125 of the Texas Government Code (paid parental leave for certain employees) applies only to a state employee who:

(1) is a member of the Employees Retirement System of Texas or is employed by a board, commission, department, or other agency in the executive branch of state government created by the constitution or a statute of this state, except for an institution of higher education as defined by Section 61.003, Education Code; and

(2) takes leave under Section 661.912 of the Texas Government Code (Family and Medical Leave Act - FMLA) for the: (A) birth of a child; (B) birth of a child by the employee's spouse; (C) birth of a child by a gestational surrogate; or (D) adoption of a child.

- A state employee is not required to use all available paid vacation and sick leave before the employee is entitled to take paid leave under Section 661.9125.

Paid Parental Leave Amounts

- A state employee is entitled to 40 days of paid leave for the birth of a child.
- A state employee is entitled to 20 days of paid leave for the (1) birth of a child by the employee's spouse, (2) birth of a child by a gestational surrogate, or (3) adoption of a child.
- An employee may use paid parental leave in 8-hour increments to account for the employee's absence from work due to the eligible events.

Limitations

- An employee must be on approved FMLA leave for an eligible reason to take paid parental leave.
- Leave may only be taken after the qualifying event and must be taken in a continuous block.
- Section 661.9125 does not entitle an employee to any leave in addition to leave taken under the FMLA.
- If the employee's FMLA leave for the eligible reason extends beyond the applicable 40-day or 20-day period of paid leave, the employee must use other accrued leave or leave without pay to account for that leave period.
- Section 661.9125 may not be construed to: (1) create an employment right; (2) confer a protected status; or (3) create a cause of action against the State of Texas.

Requesting Paid Parental Leave

To request paid parental leave, an employee must provide the following information to the Clerk of this Court:

- a Paid Parental Leave Form 70-275-I that indicates the proposed dates needed; and
- a completed FMLA form, if a current one is not already on file to support the need for the leave.

The Clerk of this Court will contact the employee and his/her supervisor, in writing, to indicate whether the request is approved or denied.

Outside Activities and Employment

An employee granted paid parental leave may not engage in any previously approved outside employment, business or activity while on paid parental leave without prior approval from his or her management after consultation with the Chief Justice.

Whether it is appropriate for an employee to continue with outside employment, business or other activities depends on the reason for the leave, the type of leave (regular, reduced schedule or intermittent), the duration of the leave and other factors.

FAMILY AND MEDICAL LEAVE

This policy incorporates the major provisions of the Family and Medical Leave Act of 1993 (FMLA). *Additionally, this policy has been amended to comply with "The Family and Medical Leave Act and National Defense Authorization Act as signed by President George W. Bush on January 28, 2008.* The law does not pre-empt state and local laws providing greater family leave rights. It does not modify or affect in any way any federal or state civil rights, including Title VII of the 1964 Civil Rights Act and the ADA.

Eligibility

Employees with 12 months of full-time employment and who have provided at least 1,250 hours of service during the 12 months before the leave are eligible to take up to 12 weeks of unpaid leave per year for the following reasons:

- the birth or placement for adoption or foster care of a child
- the serious health condition of a spouse, child, or parent (such health condition must meet the conditions of a serious health condition under the FMLA)
- an employee's own serious health condition

Additionally, employees (the employee must be either a spouse, son, daughter, parent, or next of kin) may qualify to take up to 26 workweeks for the following reasons:

- to care for a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness
- for any qualifying exigency (as the Secretary of Labor shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.

All of these provisions apply equally to male and female employees. A father, as well as a mother, can take family leave because of the birth or serious health condition of a child. A son, as well as a daughter, is eligible for leave to care for a parent. Employees will be required to use their paid vacation, personal, and sick leave for the first part of the 12-week period. The Court will provide only enough unpaid leave to total 12 weeks, or, when applicable, as provided for under the National Defense Authorization Act of 2008.

Certification and Notice

Employees must provide certification explaining their own serious health condition or that of a family member. It should detail the date on which the condition began; the probable duration of the condition; appropriate medical facts regarding the condition; a statement that the employee is needed to care for a spouse, parent, or child; a statement that the employee's own health condition makes it impossible for him or her to work.

If the Court is not satisfied with the certification, a second opinion may be required, at the Court's expense.

Employees must give 30 days' advance written notice to the Clerk of the need for leave for birth, adoption, or planned medical treatment when such leave is foreseeable.

Communications During Family or Medical Leave

All employees on family leave will be required to report periodically during the leave period on their status and intention to return to work. This communication will be made to the Clerk or one of the Justices, who will communicate with employees during the leave to determine the employee's intention to return to work. The Chief Justice should be informed immediately if the medical condition changes or the employee states that he or she will not be returning to work.

Married Employees

Married employees are limited to a combined total of 12 weeks of leave for the birth or adoption of a child or for the care of a sick parent.

Certification for Return to Work

All employees returning from medical leave caused by their own illness will be required to obtain written medical certification from their health care provider that they are able to resume work. This certification should be given to the Clerk on or before the first working day of the returning employee.

1. To be eligible for family leave, an employee must have been employed for at least 12 months and provided at least 1,250 hours of service during a 12-month period. Eligible employees are entitled to 12 unpaid workweeks of leave during any 12-month period for the following reasons:
 - a. For the birth or adoption of a child or assuming foster care of a child. Leave may be taken for birth or placement of a child only within 12 months of that birth or placement.
 - b. To care for a parent, spouse, son, or daughter who has a serious health condition.
 - c. Because of the employee's own serious health condition. If the condition is serious, the employee may be unable to work and must be given 12 weeks of medical leave. For less serious illness, the employee may be able to work on a part-time basis.
2. The right to take leave applies equally to male and female employees. A father, as well as a mother, can take family leave because of the birth, adoption, or serious health condition of his child. A son, as well as a daughter, is eligible for leave to care for a parent.
3. Employees must give 30 days advance notice of the need for leave for birth, adoption, or planned medical treatment when the need is foreseeable. Advance notice is not required in cases of medical emergency, such as premature births or sudden changes in health conditions. Notice is also waived for employees who are given short notice when adopting a child. If the employee is unable to give 30 days notice, her or she must provide as much notice as is practical.
4. Employees may be asked to supply certification justifying the leave and estimating the length of the absence. If the certification is for leave because of the employee's own serious health condition, it must state that the employee is unable to perform his or her job duties.
5. Leave may be taken intermittently or on a reduced-leave schedule if the Employee and the Court agree to such an arrangement. Leave taken in this manner does not reduce the 12 weeks of unpaid leave guaranteed by the family leave law.
6. Employees who are on a reduced work schedule may be temporarily transferred to jobs that are more suitable to reduced hours. They must receive equivalent pay and benefits.

7. Employees may be required to include any unused paid vacation, personal, or sick leave for any part of the 12-week mandated period. If paid leave is used by an employee, then the employer is required to provide only enough unpaid leave to total 12 weeks.
8. Married Employees working in the same company who wish to take leave to care for a newly arrived child or a sick parent are limited to a total of 12 weeks' leave, not 12 weeks each.
9. Whenever possible, employees will be returned to either the same positions they held before the leave or to equivalent jobs in terms of pay, benefits, and conditions of employment.
10. Managers and Supervisors have the right to contact employees who are on family leave to find out if they plan to return to work at the end of the leave.
11. On January 28, 2008, President Bush signed into law H.R. 4986, the National Defense Act for 2008 (NDAA), Pub. L. 110-181. Section 585 of the NDAA amends the Family and Medical Leave Act of 1993 to permit a “spouse, son, daughter, parent, or next of kin” to take up to 26 workweeks of leave to care for a “member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.”
12. The NDAA also permits an employee to take FMLA leave for “any qualifying exigency (as the Secretary of Labor shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation. An eligible employee may elect, or an employer may require the employee, to substitute any of the accrued paid vacation leave, personal leave, family leave, or medical or sick leave of the employee for leave provided for any part of the 26-week period of such leave.

The Family and Medical Leave Act of 1993, as amended.

Public Law 103-3

Enacted February 5, 1993

As Amended by Section 585 of the National Defense Authorization Act for FY 2008, Public Law [110-181]
(amended text in bold italics)

Enacted January 28, 2008

Full text may be found at: www.dol.gov/esa/whd/fmla/fmlaAmended.htm

Policy Reviewed/Revised/by the Court on April 10, 2024 by:

/s/James T. Worthen

James T. Worthen,
Chief Justice

/s/Brian Hoyle

Brian Hoyle,
Justice

/s/Greg Neeley

Greg Neeley,
Justice