

# Ninth Court of Appeals

## Leave Policy

### General Policy Information

#### Purpose

This policy outlines leave requirements for Ninth Court of Appeals' employees. Each state agency/court is required to keep a record of its employees' accruals of vacation leave, sick leave; and comp leave; and account for whether leave taken is for vacation leave, sick leave, comp leave, other paid leave, or leave without pay.

#### Work Time

An employee is expected to report to work at the appointed time and work all of his or her scheduled hours. The standard workweek for full-time employees is 40 hours and part-time is 20 hours. The workweek is Monday through Friday.

#### Employee Time

Each employee receives a system generated Employee Monthly Time and Leave Report that shows the employee's current leave balances reported to the State. Leave balances are calculated from the Monthly Comp & Leave Report w/ Request for Leave Time form submitted and approved for each employee.

All time and leave is maintained in the State's time and leave system in CAPPs. All employees are required to complete a Monthly Comp & Leave Report so their leave time taken and compensatory time earned can be entered in CAPPs. CAPPs is an exception-based leave system. For timekeeping purposes, all leave is to be rounded to quarter-hour (15 minute) increments.

All employees must receive prior approval from their supervisors for all leave. Supervisors must designate approval in writing on the Request for Leave Time form.

#### Discretion of Supervisors

Before requesting leave, employees should ensure that they have adequate leave balances and that their absence will not interfere with the performance of their job duties. Leave approval is not automatic. While every attempt is made to accommodate employees' timely leave requests, supervisors have the authority and responsibility to use their discretion to ensure that adequate staff remains on duty to perform the work of the Court.

When advance approval is not possible, the employee must notify the supervisor as soon as possible of the dates and reasons for the absence. Unless extenuating circumstances exist, employees are expected to notify their supervisors of absences no later than one hour after their scheduled starting time.

## Excessive Absenteeism or Tardiness

Absenteeism or tardiness is excessive when an employee is unable to adequately perform his/her job, or when the normal day-to-day work activities of the office are disrupted due to excessive and/or unscheduled absences or tardiness by the employee. Excessive absenteeism or tardiness may be grounds for disciplinary actions, up to and including termination.

## Unauthorized Absence

An employee who fails to report to or remain at work, or who fails to return to work upon expiration of approved leave, may be considered to have abandoned his or her position with the agency. Such an employee will be expected to produce a satisfactory explanation for the unauthorized absence. An employee who is absent from work for three or more consecutive days without contacting his or her supervisor will be deemed to have abandoned his or her job at the close of the third day. Unauthorized absence(s) may be grounds for disciplinary actions, up to and including termination.

## Compensatory Time

(See Texas Government Code 659.015, 659.016, 659.022, 659.023)

Comp time provides an employee with one hour of paid time off for each comp hour worked. An employee's personal residence shall not be deemed to be the employee's regular place of business or duty point for the purpose of earning compensatory time. Comp time is credited as one hour earned for each hour worked up to 8 hours per Work Holiday.

## Approval to Earn Comp Time

All employees must have prior written approval from their supervisor before earning comp time. Prior written approval is not required before earning work holiday comp time.

An employee's work schedule may be adjusted to ensure that the employee does not exceed 40 hours. For example, an employee who must work 2 extra hours on Tuesday can be required to leave 2 hours early on Friday so as not to exceed 40 hours that week.

## Use of Accrued Comp Time Before Lapsing

Comp time must be used within twelve (12) months of when it is earned or it will be forfeited. Comp time is not transferable to another state agency and will not be paid when an employee separates from the agency.

## Holidays

(See Texas Government Code 662.003)

Types of Holidays – There are three types of holidays to which an employee is entitled: national, state, and optional. Eligible employees are entitled to a paid day off from work on national and state holidays as specified by the Legislature.

Eligibility – Employees are entitled to paid day off from work on a specified holiday if:

- the Jefferson County Courthouse is closed,
- the holiday does not fall on a Saturday or Sunday, and
- the employee is not on Leave Without Pay

Skeleton Crew Days – The Court will have a sufficient number of employees on duty during a Work Holiday (legal holidays the office is open) to conduct the public business except for those state holidays which fall on a Saturday or Sunday, the Friday after Thanksgiving Day, and December 24th and 26th. Supervisors may use their discretion in determining staffing requirements on skeleton crew days. Employees who must work on a national or state holiday will accrue holiday compensatory time and will be allowed time off during the 12-month period following the date of the holiday worked. Employees who work on skeleton crew days must enter the number of hours worked on their Monthly Comp & Leave Report to receive credit for this time.

Optional Holidays – An employee is entitled to paid leave to observe an optional holiday (Cesar Chavez Day, Rosh Hashanah, Yom Kippur, or Good Friday) if he/she agrees to relinquish a state holiday (skeleton crew day) during that same fiscal year. If the employee fails to work a skeleton crew day in the same fiscal year, a day of vacation leave will be charged instead. If no vacation leave is available, he or she will lose one day of pay.

## **Annual Vacation Leave**

(See Texas Government Code 661.152)

Eligibility – An employee is eligible to take annual vacation leave with pay after meeting the specified requirements:

- an employee with no previous State employment may take annual leave after completing six (6) full months of continuous employment with the Court; or
- an employee with previous state employment who has completed six (6) full months or more of continuous state employment and whose vacation balance has been transferred from the other state agency is eligible to take the accrued annual leave upon employment; or
- an employee with previous State employment who has a break in service of at least 30 days and has completed six (6) full months or more of continuous State employment may take annual leave as it is earned upon re-employment.

Rate of Accrual and Allowable Carry Forward – The schedule below shows rates of annual leave accrual for various lengths of State employment and the maximum number of hours an employee may carry forward each fiscal year beginning on September 1<sup>st</sup>. The schedule is based on full-time employment.

Schedule of Vacation Leave Accruals for Full-Time Employees			
Length of Service	Hours Accrued per Month	Days Accrued per Year	Allowable Carryover (Hours)
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	15.0	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 years or more	21	31.5	532

Employees accrue vacation from their first day of employment. They end this accrual on their last day of duty. Duty day means an employee’s last physical date on the job. An employee may not accrue vacation time while exhausting vacation time for termination purposes.

An employee in a leave-without-pay (LWOP) status for a full calendar month does not accrue vacation leave for that month. An employee on paid or unpaid leave which extends into a subsequent month does not earn accrued leave until he/she returns to work.

Excess Balances – Excess annual leave balances above the amount that can be carried forward will be credited to the employee’s sick leave balances on the first day of the new fiscal year.

Higher Accrual Effective Date – Credit for the higher rate of accrual as shown on the above schedule 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. If the employee’s anniversary date falls after the first calendar day of the month, the increase will occur on the first calendar day of the following month.

Part-time Employees – The number of hours accrued and the amount of maximum carry forward allowed for part-time employees will be on a proportionate basis.

## Sick Leave

(See Texas Government Code 661.202)

Sick Leave Accrual – Each employee accrues paid sick leave beginning on the first day of employment and ending on the last duty day of state employment. Duty day means an employee’s last physical day on the job. An employee will be credited with his/her full accrual for each full or fraction of a month worked.

Full-time employees accrue sick leave at the rate of eight (8) hours per month. Part-time employees accrue sick leave at a rate in proportion to that of a full-time employee. Sick leave accumulates with the unused amount carried forward each month, and there is no limitation on the amount which may be accrued. An employee in a leave status on the first day of the month may not use sick leave accrued for that month until after the employee returns to work.

Use of Sick Leave – An employee is eligible to use sick leave immediately upon employment with the agency. Sick leave may be taken when sickness, injury, or pregnancy and confinement prevent the employee’s performance of duty or when the employee is needed to care and assist a member of his/her immediate family who is sick. An employee’s use of sick leave for family members not residing in that employee’s household is strictly limited to the time necessary to provide care and assistance to the spouse, child or parent of the employee that needs such care and assistance as a direct result of a documented medical condition.

Timely Notification – An employee who must be absent from work because of sickness, injury, or pregnancy and confinement must notify his/her supervisor at the earliest possible time. If the absence is going to be for more than one day, the employee must notify the supervisor of his/her status each morning, unless other arrangements are made.

Absence for More Than Three Days – When an employee is off work due to sickness, injury, pregnancy, confinement, etc. for more than three (3) consecutive work days, he/she must submit with the leave form a doctor’s statement showing the cause or nature of the illness, or some other written statement of the facts concerning the illness, acceptable to the employee’s supervisor.

Excessive Use of Sick Leave – Excessive use of sick leave may be evident when an employee uses sick leave as it is accrued and/or totally runs out of leave (unless due to a bona fide serious health condition as specified under the Family and Medical Leave Act), resulting in leave without pay status.

## **Family and Medical Leave Act**

(See Texas Government Code 661.912)

Purpose – The Family and Medical Leave Act (FMLA) requires the agency to provide eligible employees up to twelve (12) weeks per year off work for the birth, adoption, or foster care of a child, or because the employee or a spouse, parent, or child of the employee has a serious illness. State law requires employees to utilize all sick and annual paid leave while taking leave pursuant to this provision, unless they are receiving temporary disability or workers’ compensation benefits.

Eligibility – For purposes of the FMLA, an eligible employee is one who has been employed by the State for at least 12 months, and who has worked at least 1,250 hours during the preceding 12 months. When calculating the required 12 months of State employment for FMLA eligibility, all State employment will be counted and it need not be continuous. The 1,250 hours refers to hours actually worked and does not include any paid time off.

Conditions – An eligible employee is entitled to a total of 12 work weeks of leave during a rolling 12-month period which begins on the date an employee uses any FMLA leave. FMLA leave may be used for:

- the birth of a son or daughter, and to care for the newborn child;

- the placement of a child with the employee for adoption or foster care;
- the care of the employee's spouse, child, or parent with a serious health condition; or
- a serious health condition that makes the employee unable to perform the functions of his/her job.

Serious Health Condition – A serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves either inpatient care in a hospital, hospice, or residential medical care facility or continuing treatment by a licensed health care provider.

12-Week Maximum – Under FMLA, the maximum combination of paid and unpaid leave will be limited to 12 weeks. Any extension beyond this time period must be requested and approved under provisions of the agency Leave Without Pay policy. Failure of the employee to report back to work at the end of the prescribed period, without prior written approval from the Chief Justice, will be considered leave without pay. Unauthorized absence is grounds for disciplinary action, up to and including termination.

Paid Leave/Unpaid Leave – The FMLA does not entitle an employee to paid leave in addition to other types of paid leave already accrued by the employee. Eligible employees must use all appropriate paid leave, annual and sick, while taking Family Medical Leave. State compensatory time, holiday time, and administrative leave that are benefits of the State may be counted toward the entitlement. Federal law does not permit FLSA compensatory time to be used concurrently with Family Medical Leave. If an employee elects to use FLSA Compensatory time while out on Family Medical Leave, that time is not counted toward the 12-week entitlement. After all paid leave is exhausted, employee will be on unpaid leave for the remainder of their Family Medical Leave.

Planned Medical Treatment – When the need for leave is foreseeable, based on planned medical treatment for the employee or family member, the employee must make a reasonable effort to schedule the treatment so as not to unduly interrupt the operations of the employer, subject to the approval of the health care provider providing the planned care. The employee should provide 30 days notice, or if not possible, as much notice as is practicable.

Intermittent Leaves and Reduced Schedules – Leave for the illness of the employee or family member may be taken intermittently or on a reduced schedule when medically necessary. Leave for childbirth or placement for adoption or foster care may be taken intermittently or on a reduced work schedule only with the agreement of the human resources director.

Reinstatement – An eligible employee who takes FMLA leave is entitled to be restored to his or her former position, or to an equivalent position with equivalent pay, and other terms and conditions of employment.

Benefit Rights – The taking of leave under FMLA may not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. Nothing in the Act, however, entitles an employee to any right, benefit, or position other than one to which the employee would have been entitled had the leave not been taken.

Insurance – The agency will maintain any group health coverage for the employee on leave on the same terms as if the employee were at work for the duration of the leave. An employee on unpaid leave for an entire calendar month is responsible for paying his/her portion of the insurance premium and the State will pay its portion.

An employee who is granted an approved leave of absence under this policy may continue his or her group insurance coverage by arranging with Human Resources to pay his or her portion of the premium contributions during the period of unpaid absence. Employees will be required to continue to pay their share of group health benefit costs during the period of leave under the law.

If an employee elects not to return to work upon completion of an approved unpaid leave of absence, the agency may recover from the employee the cost of any premiums paid by the State to maintain the employee's coverage, unless the failure to return to work was for reasons beyond the employee's control or due to the continuation, recurrence, or onset of a serious health condition.

Certification of Serious Health Condition – An employee requesting leave under FMLA because of his/her or a family member's serious health condition will be required to provide certification from the health care provider treating the condition. The health care provider should provide detailed information regarding the condition of the employee or family member, and also give an estimate of the amount of time needed for the employee's recovery or the amount of time the employee is needed to care for the family member. If intermittent leave or a reduced leave schedule is requested, the health care provider should also state the dates and duration of planned medical treatment.

Return to Work – An employee who has been absent due to a serious health condition must provide certification from the health care provider that he/she is able to resume work.

Notice of Birth or Placement of a Child – In the case of FMLA leave for the birth or placement of a child for adoption or foster care, an employee should provide 30 days advance notice before the date on which the leave would begin, if possible. If the employee is unable to provide such notice, he or she must provide as much notice as is practicable.

Court Designation – When the Court has been notified of absences indicating that a serious medical condition may exist, the Clerk of the Court will ask for sufficient information to determine whether the employee is entitled to FMLA leave. If so, the Court will make a preliminary designation of qualification and will notify the employee. The employee will be asked to provide medical certification of the nature of the illness or injury and whether it qualifies as a serious medical condition.

Returning to Work Following an Injury or Illness – The Court will make every reasonable effort to provide suitable return-to-work opportunities for an employee who is unable to perform his or her regular duties following a work-related injury or illness. This may include modifying the employee's regular job or, if available, providing temporary alternate work depending on the employee's physical abilities. An employee must obtain a valid return-to-work release from a qualified physician and interact with his or her supervisor and Human Resources to determine the capacity in which he or she may return to work.

## Parental Leave

(See Texas Government Code 661.913)

12 Week Maximum – Employees with fewer than 12 months of state service or less than 1,250 hours in the 12 months immediately preceding the start of leave are entitled to a parental leave of absence, not to exceed 12 weeks, for the birth of a natural child or the adoption or placement in foster care of a child under three years of age. This period begins with the date of birth, or the first day the adoptive or foster child is formally placed in the home. The

employee must use all available accrued leave before going on leave without pay while taking the parental leave.

Notification – An employee anticipating using parental leave should notify his/her supervisor and Human Resources at the earliest possible opportunity in order to allow ample time to plan for covering duties for the duration of the absence.

FMLA Provisions – Parental leave is only available for employees who are not eligible for FMLA leave.

## Foster Parent Leave

(See Texas Government Code 661.906)

Policy – Any State employee who is a foster parent to a child under the conservatorship of the Department of Family and Protective Services is entitled to a leave of absence with full pay for the purpose of attending staff meetings held by the DFPS 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.

## Emergency Leave

(See Texas Government Code 661.902 & 661.923)

The Chief Justice may grant emergency leave for a reason other than a reason described under section 661.902(a) of the Government Code, which provides emergency leave because of a death in the employee's family.

The Chief Justice shall grant emergency leave if

- 1) the employee requests the leave; *and*
- 2) the Chief Justice determines the employee has shown good cause for taking emergency leave; *and*
- 3) the Chief Justice believes in good faith that the employee being granted the leave intends to return to the employee's position upon expiration of the leave granted.

By October 1 of each year, the Clerk of the Court shall report to the Comptroller the name and position of each Court employee granted more than 32 hours of emergency leave during the previous state fiscal year, the reason for the granting of such leave, and the total number of hours of emergency leave granted to the employee in the state fiscal year.

**Emergency Leave due to Death in the Family** – Employees are eligible for Emergency Leave due to a death in the employee's family. The employee's family is defined as the employee's spouse, and the employee's or spouse's parents, children, brothers, sisters, grandparents, and grandchildren. For the purpose of this policy, the term sibling includes an employee's stepbrother or stepsister. The employee, however, is not eligible for this leave if the employee is in an unpaid absence status at the time emergency leave is to commence. [Tex. Gov't Code § 661.902(a)]

**Emergency Leave due to Inclement Weather or Observance of a Holiday** - The Chief Justice may grant emergency leave because the Court is closed due to weather conditions or in observance of a holiday. [Tex. Gov't Code § 661.902(c)]

**Emergency Leave During Court Investigation** – The Chief Justice may grant emergency leave to a Court employee who is the subject of an investigation being conducted by the Court. The Court employee who is subject to an agency investigation is ineligible to receive leave for that reason under any other provision of Subchapter Z, Chapter 661 of the Government Code. Not later than the last day of each quarter, the Court shall report to the State Auditor and the Legislative Budget Board each Court employee who has been granted 168 hours or more of leave under this provision during the fiscal quarter. The report must include a brief statement as to the reason each such employee remains on leave. [Tex. Gov't Code § 661.923]

The Chief Justice of the Court may also grant emergency leave to a Court employee who is the victim of, or a witness to, an act or event that is the subject of a Court investigation.

**GUIDELINES AND PROCEDURES FOR EMERGENCY LEAVE:**

- a. The Chief Justice determines good cause.
- b. Sick leave and vacation leave accruals will continue during an employee's use of emergency leave.
- c. A recipient's approval for emergency leave does not prevent the employer from exercising its right to terminate the employee.
- d. The recipient of emergency leave is not to work elsewhere while on emergency leave.
- e. If the employee does not utilize the full grant of the emergency leave, then any remaining unused emergency leave expires upon the employee's return to work.
- f. An employee will not be granted compensation for any unused emergency leave.

## Voting

(See Texas Government Code 661.914)

The Court encourages all employees to exercise their right to vote in all elections and, pursuant to state statute, will allow an employee sufficient time off, without a deduction in salary or accrued leave, to vote in each national, state, and local election.

## Jury Duty

(See Texas Government Code 659.005)

An employee will receive time off with pay to serve on a jury. After receiving a jury summons, an employee should notify his/her supervisor as soon as possible and provide a copy of the jury summons. When the employee returns to work following jury duty, the employee should attach the proof of jury service received from the trial court to the Monthly Comp & Leave Report.

## **Military Leave**

(See Texas Government Code 431.005, 431.017, 661.903, 661.904)

Paid leave is granted for various types of military service.

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

(See Texas Government Code 661.924)

A veteran who is eligible for health benefits under a program administered by the Veterans Health Administration of the United States Department of Veterans Affairs is eligible to be granted up to 15 days of leave each fiscal year to obtain medical (including physical rehabilitation) or mental health care. The Chief justice may grant additional days as deemed appropriate.

## **Donation of Blood**

(See Texas Government Code 661.917)

Donation of Blood – An employee may request sufficient time off, not to exceed 4 times in a fiscal year, to donate blood with prior written supervisor approval. An employee must present sufficient documentation upon return to the supervisor to validate absence for blood donation.

## **Approved Leave Without Pay**

(See Texas Government Code 661.909)

Leave Without Pay (LWOP) is an approved temporary absence from duty of an employee who intends to return to work. During the length of the absence, which cannot exceed 12 months, pay is suspended. All available accumulated paid leave entitlements must be exhausted before granting Leave Without Pay.

Employees requesting Leave Without Pay must submit their request in writing to their supervisor. If approved by the supervisor, all requests for Leave Without Pay will be reviewed by the Chief Justice for final determination. Approval of the request is not automatic. The requested leave time may be approved, disapproved or adjusted to meet the business needs of the Court. If the request is disapproved or adjusted, and the employee is unable or declines to remain on the job, the agency may take appropriate action to terminate employment.

Leave Accruals and Insurance Premium – If an absence covers an entire calendar month, the employee does not accrue any vacation or sick leave. The employee is also responsible for payment of his/her insurance premiums. A full or partial calendar month during which an employee is on leave without pay does not constitute a break in continuity of employment. Except for an employee returning from military leave without pay, a full calendar month during which an employee is on leave without pay is not counted in computing total state service credit.

Failure to Return to Work – Failure to return to work from Leave Without Pay on the approved return date will be considered abandonment of position, and the agency may take appropriate action to terminate employment.