

THIRD COURT OF APPEALS



TIME AND LEAVE POLICY

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TIME AND LEAVE POLICY

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TIME AND LEAVE POLICY

General

This policy outlines leave benefits and reporting requirements for Court employees. Each state agency is required to keep a record of its employees' accrual and use of annual and sick leave; and account for whether leave taken is for sick leave, annual leave, other paid leave, leave without pay, or other absence. To the extent that any terms herein conflict with state law, state law controls.

Definition of Terms

- A. **FLSA (Fair Labor Standards Act)** - is the federal law that establishes overtime pay and recordkeeping standards affecting full-time and part-time workers in the private and governmental sectors. Court employees may find their FLSA status on their monthly earning statements.
- B. **FLSA Exempt Employee** – an employee who is not subject to (i.e., is exempt from) the provisions of the FLSA.
- C. **FLSA Non-Exempt Employee** – an employee who is subject to (i.e. is **not** exempt from) the provisions of the FLSA.
- D. **Member of an employee's family** – the following persons are considered to be members of an employee's immediate family: 1) an individual who resides in the same household as the employee and is related by kinship, adoption, or marriage; (2) a foster child who resides in the same household as the employee; and 3) a minor child of the employee, whether or not living in the same household.

Work Time

An employee is expected to report to work at the appointed time and work all of his or her scheduled hours.

Notice of Absences from Work

When an employee is unable to report for work and prior approval for the absence has not been obtained, the employee is to, at the earliest practicable time, notify (or have someone else notify) his or her supervisor that the employee is unable to report for duty.

Work Hours

- A. **Standard Workweek** - The standard workweek for full-time employees is 40 hours. The workweek is 12:00 a.m. Saturday through 11:59 p.m. Friday.

- B. **Office Hours** - The Clerk's Office shall remain open to the public from 8:00 a.m. to 5:00 p.m. Monday through Friday. The Clerk of the Court is responsible for establishing work schedules for the Clerk's Office. Each judge may establish regular work hours for his or her chambers.
- C. **Flex Time** - Non-exempt employees may make up (Flex) not more than two hours of leave within a week, and must make up that time within the same week. All other time must be deducted from accrued employee leave.

Other Activities Considered Work Time

In addition to time spent performing regular job duties, the following activities are considered work time:

- A. **Travel Time** - Travel time is considered hours worked when the employee is in transit on official travel status out of town to attend or return from work-related training, conferences, or meetings, except for bona fide meal periods, when sleeping, or when free to pursue personal activities. (Travel time between the employee's home and regular duty station is not considered work time.)
- B. **Training Time** - Participation in required training programs is considered hours worked. Voluntary training is considered hours worked only when the Court chooses to recognize such hours.
- C. **Breaks** - An employee is allowed two paid work breaks of up to 15 minutes each.

Employee Break and Meal Periods

- A. **Lunch** - Employees are entitled to one hour for lunch. In order to provide public access to the Court, the Clerk of the Court is responsible for establishing lunch schedules for the Clerk's Office. Each employee should take a minimum of one-half hour for lunch except in extraordinary circumstances.
- B. **Breaks** - Breaks are not required by law. However, Court employees may take one 15 minute break in both the morning and afternoon as the work schedule permits. Breaks may not be:
- Combined into one 30 minute break;
 - Carried and accumulated from one day to the next;
 - Added to the lunch period;
 - Taken at the end of the work day
 - Accrued as leave not taken; or
 - Used to make up prior absences

Leave Granted at the 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.

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 Court. 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.

Time Reporting and CAPPS

(See Texas Government Code 661.908)

- A. **Leave Request Form Required** - All Court employees are required to document their leave by completing the Court's Leave Request Form. For timekeeping purposes, all leave is to be rounded to quarter-hour (15 minute) increments.
- B. **Leave Request Form Due** - Employees should submit a Leave Request Form to their supervisor for signature by the end of each month. All Court employees must receive prior approval from their supervisors for all leave, unless it is for sick leave.
- C. **Entering Leave in CAPPS** - The Court's Human Resource Department is responsible for entering time in CAPPS.

Overtime and Compensatory Time

(See Texas Government Code 659.015)

- A. **FLSA Exempt & Non-exempt Employees** - Overtime eligibility is governed under the provisions of the FLSA. Eligibility is not based on an employee's classification title or pay group, but on the employee's functional job. FLSA exempt employees are ineligible to earn overtime compensation. FLSA non-exempt employees are eligible to earn

overtime. The Human Resources Department is responsible for determining the FLSA designation for each employee.

- B. Prior Approval to Earn Compensatory Time or Overtime - Generally overtime is not authorized.** A non-exempt employee's work schedule should be adjusted to ensure that the employee does not exceed 40 hours. This is also referred to as flexing your time. For example, an employee who must work 2 extra hours on Tuesday could leave 2 hours early on Friday so as not to exceed 40 hours that week. However, a non-exempt employee must be compensated for overtime even if it was not approved in advance. An employee who works unauthorized overtime will be counseled or disciplined just as with any other violation of Court policy.

If overtime is required, before earning compensatory time or overtime, employees must obtain approval from their supervisor.

- C. Earning Overtime -** Non-exempt employees earn overtime for time worked in excess of 40 hours in a week. To earn overtime, the 40 hours must be time actually worked. Paid time off, such as holidays, vacation and sick leave, etc., do not count as time worked for calculating overtime. For example, a non-exempt employee who actually works 44 hours during one work week earns 4 hours of overtime.
- D. Earning Compensatory Time -** Non-exempt employees earn straight compensatory time when paid hours exceed 40 in a work week but the employee has actually worked less than 40 hours. Once the total of actual hours worked reaches 40, the employee begins earning overtime.
- E. Overtime Compensation -** The Court compensates non-exempt employees for overtime by granting them paid time off at the rate of 1.5 hours for each overtime hour they earn. Paid time off for overtime should be used as the employee's next scheduled leave. Exempt employees do not earn overtime.

Holidays

(See Texas Government Code 662.001)

- A. 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.
- B. Eligibility –** Employees are entitled to paid day off from work on a specified holiday if:
- the holiday does not fall on a Saturday or Sunday; and
 - the employee is not on Leave Without Pay.

- C. **Skeleton Crew Days** – The Court will have a sufficient number of employees on duty during a state holiday (skeleton crew day) to conduct the public business of the Court 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 report the number of hours worked on the Court’s Leave Request Form to receive credit for this time.
- D. **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.
- E. **Holiday Before Work Begins or After Work Ends** – An individual must be a state employee on the workday before and after a designated holiday in order to be paid for that holiday, unless the holiday falls on the first or last workday of the month.
- F. **Part-time Employees** – Part-time employees are entitled to the same holidays with pay (on a prorated basis) as granted to full-time employees.

Annual Vacation Leave

(See Texas Government Code 661.152)

- A. **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.
- B. **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 1st. The schedule is based on full-time employment.

Vacation Accrual Rates for Full-Time Employees

Length of State Service	Hours Accrued Per Month	Days Accrued Per Year	Allowable Carry-Over (Hours)
Less than 2 years	8	12	180
At least 2 but less than 5 years	9	13.5	244
At least 5 but less than 10 years	10	15	268
At least 10 but less than 15 years	11	16.5	292
At least 15 but less than 20 years	13	19.5	340
At least 20 but less than 25 years>	15	22.5	388
At least 25 but less than 30 years	17	25.5	436
At least 30 but less than 35 years	19	28.5	484
At least 35 years or more	21	31.5	532

Sick Leave

(See Texas Government Code 661.202)

- A. **General** - Employees accrue sick leave at the rate of eight hours per month or a fraction of a month. Sick leave may be used immediately upon employment when an employee is prevented from performing his or her job due to sickness, injury, pregnancy or confinement. It may also be used to care for an employee's immediate family member who is ill. Sick leave may be taken for a health care appointment for the employee or for members of the immediate family.

An absence of more than three consecutive days requires the employee to provide a doctor's certification or an acceptable written statement of facts showing the nature of the illness.

- B. **Parent-Teacher Conference Leave** - An employee may use up to eight hours of sick leave each fiscal year to attend parent-teacher conference sessions for the employee's children who are in pre-kindergarten through twelfth grade. The employee must give reasonable notice of his or her intention to use this leave.

- C. **Transfer of Sick Leave** – If an employee makes a direct transfer to another state agency without a break in service, the sick leave balance will transfer to the receiving agency. If there is a break in service, but the employee is re-employed by the State within 12 months, the employee may be entitled to restoration of sick leave balances
- D. **Unused Sick Leave Balance** – Once an employee terminates employment with the State, the employee is not entitled to payment for any sick leave balance.
- E. **Sick Leave Upon Death** – In the event of employee death, one-half of the sick leave balance or 336 hours of sick leave, whichever is less, is paid to the employee's estate if the employee was continuously employed at least six months at the time of death.

Sick Leave Pool

(See Texas Government Code 661.002)

- A. **General** - The Court has established a Sick Leave Pool to certain Court employees who have exhausted all paid leave due to a catastrophic injury or illness. Catastrophic is defined as a severe condition or combination of conditions affecting the mental or physical health of the employee or the employee's immediate family that requires the services of a licensed practitioner for a prolonged period of time, and that forces the employee to exhaust all time earned by that employee and to lose compensation from the state. Conditions qualifying for sick leave pool are generally of a life threatening nature.
- B. **Employee Leave Exhausted** - An employee may apply to use sick leave from the Court Sick Leave Pool provided the catastrophic illness or injury will exhaust all leave, including:
- Sick;
 - Annual (if available); and
 - Compensatory.
- C. **Eligibility for Sick Leave Pool** - An employee may draw from the sick leave pool only with the approval of the Court. Supporting documentation from a medical practitioner must be submitted to the Court containing sufficient information to allow the Court to evaluate the employee's eligibility.

An employee may not receive sick leave in excess of one-third of the total time in the pool or 90 days, whichever is less. Employees have no right to Sick Leave Pool and the granting of it is discretionary.

Individual Sick Leave Contributions

(See Texas Government Code 661.207)

Court employees may donate any amount of their accrued sick leave to another employee of the court. However, the receiving employee must first expend all of their own accrued leave and any sick leave pool amounts that are available to them.

Family and Medical Leave

(See Texas Government Code 661.912)

- A. **Overview** - The Family and Medical Leave Act (FMLA) allows eligible employees to take unpaid leave, or to substitute appropriate paid leave, for an FMLA qualifying event without fear of being terminated from their jobs or being forced into a lower job upon their return.
- B. **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 adoption 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 employees' own serious health conditions
- C. **Notice and Certification** - If the need for family and medical leave is foreseeable, an employee seeking to use family and medical leave is required to provide a 30-day advanced notice of the need for the leave. If notice cannot be provided 30 days in advance, the employee should notify the Clerk of the Court as soon as practicable.
- An employee requesting leave for the employee's serious health condition or the serious health condition of the employee's spouse, child or parent must submit a medical certification from a physician within 15 days of a leave request. The medical certification should describe the serious health condition, the reason the condition necessitates the employee's absence from work and the anticipated duration of the employee's absence from work.
- D. **Return to Work** - At the end of an employee's approved leave, they will be required to present a fitness-for-duty certification from their doctor releasing them to return to all job duties and responsibilities. If certification is not received, the employee's return to work may be delayed until certification is provided.

Emergency Leave

(See Texas Government Code 661.902)

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.

- A. **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.

- B. **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.
- C. **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.
- D. **Approval** - Approval for emergency leave can only be granted or denied by the Chief Justice.
- E. **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

Jury Service

(See Texas Government Code 659.005)

An employee is entitled to serve on a jury without a deduction in salary, including a deduction for any fee or compensation the employee receives for jury service.

Parental Leave

(See Texas Government Code 661.913)

- A. **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.
- B. **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.
- C. **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)

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.

Voting

(See Texas Election Code 276.004)

On a day in which an election is held throughout the State, employees will be allowed sufficient time off, without deduction from pay or leave time, to vote. Prior scheduling with the supervisor is required. Two (2) hours is the generally accepted maximum time allowed.

Military Leave

(See Texas Government Code 661.903, 661.904)

- A. **Fifteen Working Days** – An employee who is a member of the State Military Forces or a member of reserve components of the United States Armed Forces will be granted a leave of absence up to a total of 15 working days per Federal Fiscal Year (October 1 - September 30) without any loss of salary, or any other leave to which the employee is entitled. The 15 days need not be consecutive and are to be applied to work days when the employee is engaged in training or duty, or the travel time to and from the location.
- B. **National Emergency** – An employee called to active duty during national emergency by a reserve branch of the United States Armed Forces will be granted a leave of absence. After exhausting the 15 working days with pay for that federal fiscal year, the leave will be without pay (LWOP). The employee will accrue months of service while on LWOP, but will not accrue vacation or sick leave. The employee will be credited with his/her vacation and sick leave balances upon return to work
- C. **National Guard Duty** – An employee who is called to active duty as a member of the National Guard by the Governor because of an emergency is entitled to receive emergency leave without loss of military or annual leave. Such leave will be provided with full pay. This leave is not limited and does not count against military leave or annual leave.
- D. **Contact Human Resources** – Human Resources should be consulted during any situation regarding military leave. The employee must provide a Leave Form and a copy of the military orders for the time away from work.

Volunteer Firefighters/Emergency Medical Service Training Leave

(See Texas Government Code 661.905)

- A. **Training Schools** – An employee who is a volunteer firefighter or an emergency medical service volunteer will be granted leave with full pay to attend training schools conducted by a state agency or institution of higher learning. Before an employee may use this leave, a Leave Form must be completed, along with adequate documentation of the proposed training. An employee is entitled to a maximum of five (5) working days of leave in a fiscal year. This leave is in addition to other leave to which the employee is entitled.

- B. **Called to Duty** – An employee who is a volunteer firefighter or an emergency medical service volunteer and is called to duty during working hours is entitled to emergency leave at the discretion of the administrative director. It is expected that such service will not be a continuous disruption in the office.

Donation of Blood

(See Texas Government Code 661.917)

An employee may request sufficient time off, not to exceed 4 times in a fiscal year, to donate blood. An employee must present sufficient documentation upon return to the supervisor to validate absence for blood donation.

Leave for Organ or Bone Marrow Donation

(See Texas Government Code 661.916)

An employee is entitled to paid leave of absence while serving as a bone marrow or organ donor. Organ donors may receive up to 30 workdays in a fiscal year. Bone marrow donors may receive up to 5 workdays in a fiscal year.

Leave for Employees who are Disabled

(See Texas Government Code 661.910)

An employee with a disability, as defined by Section 121.002 of the Human Resources Code, shall be granted up to 10 working days of paid leave each fiscal year for the purpose of attending a training program to acquaint the employee with an assistance dog to be used by the employee. This leave is in addition to other leave entitlements.

Approved Leave Without Pay

(See Texas Government Code 661.909)

- A. **Leave Without Pay Defined** – Approved Leave Without Pay (LWOP) is the 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.

- B. **Request from Employee** – Employees requesting Leave Without Pay must submit their request in writing to their supervisor. If approved by the supervisor and the Chief Justice, the request will be forwarded to Human Resources. The request must include a start date and an ending date. The request must also include the reason for the request, and, if for medical reasons, it must include a doctor’s statement and any other detailed justification that adequately explains the reasons for the request.
- C. **Review by Administration** – All requests for Leave Without Pay will be reviewed for approval by the Chief Justice. Approval of the request is not automatic. The requested leave time may be 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.
- D. **Return to Work** – Although approval of Leave Without Pay constitutes a guarantee of employment upon return, such a guarantee is subject to fiscal constraints. Upon return to duty, the employee may be placed anywhere in the agency, and his/her salary level is not guaranteed. Employees are expected to return to work immediately upon the expiration of the approved dates for Leave Without Pay, unless they have requested and received approval for an extension.
- E. **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.
- F. **Exhausting Available Paid Leave** – All available accumulated paid leave entitlements must be exhausted before granting Leave Without Pay, with the exception of leave as a result of disciplinary actions, active military duty, or Workers’ Compensation. Sick leave must be exhausted before going on leave without pay status only if the leave is for a reason for which the employee is eligible for sick leave.
- G. **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 (unless accepted under provisions of the FMLA). 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 for purposes related to longevity pay or to the rate of accrual of vacation leave; or continuous state service for purposes related to merit salary provisions or vacation leave.
- H. **Exceptions to Policy** – The administrative director may grant exceptions to these provisions when it is deemed to be in the best interest of the State, such as when the leave is to work for another state governmental entity under an interagency agreement, or for educational purposes.

Leave Balances Upon Separation

(See Texas Government Code 661.062)

- A. **Sick Leave (see Sick Leave section for more information)** - Employees who separate from state employment may donate their unused sick leave to the sick leave pool. *Texas Gov't Code 661.091.*

Employees who separate from state employment under a formal reduction in force are entitled to have their sick leave balances restored if they are re-employed by the State within 12 months. *Texas Gov't Code 661.205 (a).*

- B. **Annual Vacation Leave (see Annual Vacation Leave section for more information)** - Employees who become re-employed with the State within 30 calendar days of separation will have their vacation leave balances transferred to the new agency. *Texas Gov't Code 661.152(k).*

Employees who do not become re-employed with the State will be paid for their unused vacation time in a lump sum payment after they have been off payroll for at least 30 days. *Texas Gov't Code 661.062.*

- C. **Compensatory Time (see Earning Compensatory Time section for more information)** - Compensatory time does not transfer to another state agency and is not paid out upon separation. *Texas Gov't Code 662.0071.*

- D. **State Agency Transfers** - Employees who transfer directly to another Texas state agency without a break in service are eligible to have their vacation and sick leave balances transferred