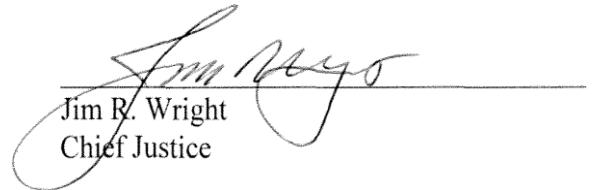




# **ELEVENTH COURT OF APPEALS**

## **EMPLOYEE LEAVE POLICY**

November 1, 2017



Jim R. Wright  
Chief Justice

This policy and procedure document applies to all employees of the Eleventh Court of Appeals.



# **ELEVENTH COURT OF APPEALS**

## **EMPLOYEE LEAVE POLICY**

### **General Policy Information**

This policy outlines leave benefits and reporting requirements for Eleventh Court of Appeals employees. Each court 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. This policy does not apply to elected officials or unpaid interns.

### **A. OVERVIEW OF STATE OF TEXAS EMPLOYEE LEAVE SYSTEM**

The employee leave system is considered an "exception-based system of time-keeping." That is, an employee automatically accrues certain types and amounts of leave time on a monthly basis, but is expected to report and account for any exception to the accrual. Each employee receives a monthly "Employee Leave Summary" that shows the employee's current leave balances reported to the state. Leave balances are calculated from the number of leave hours an employee has requested on the Request for Leave forms which apply to all employees.

It is Eleventh Court policy that every employee must request approval from the Clerk of Court before being absent from work and a corresponding Request for Leave form must be signed by the Clerk of Court. Every employee has the responsibility to submit the signed Request for Leave form to the Clerk of Court to complete the necessary leave reports required by the State of Texas.

When an employee does not work 40 hours in a work week, and the Court has not been officially closed on a work day, a signed Request for Leave form must be submitted to the Clerk of Court to establish the amount of time excepted from that 40-hour work week.

The Chief Justice is to sign Request for Leave forms for the Clerk of Court.

### **B. SPECIFIC TYPES OF STATE LEAVE**

#### **1. Annual Leave**

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 Eleventh Court of Appeals; 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. 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.

A Request for Leave form must be signed by the Clerk of Court in advance of the use of accrued vacation time or as soon as is practicable.

All annual leave should be requested by email to the Clerk of Court as soon as the employee schedules a vacation. This allows the dates to be entered on the Court calendar in order to prevent multiple absences on a given day.

## **2. Sick Leave**

A State employee accrues sick leave at the rate of 8 hours per month from the first day of employment. Unused accrued sick leave can be carried forward annually. Sick leave is available for an employee's illness, injury, pregnancy and confinement, and for when an employee must care for a member of his or her immediate family who is actually ill.

An employee who is absent from work due to an illness must notify the Clerk of Court at the earliest practicable time. To be eligible for accumulated sick leave, with pay, for a continuous period of more than three working days, an employee must provide a doctor's certification, or on the Request for Leave form, must provide an acceptable written statement of facts about the absence. For less than three continuous days of sick leave without a reduction in pay, the Chief Justice and/or Clerk of Court has the discretion to require a doctor's certificate or on the Request for Leave form, an acceptable written statement of facts about the absence.

For medical/dental appointments, an employee should first request approval to be absent from work, and then submit a Request for Leave form for the actual amount of time the employee was away from the office.

## **3. Emergency Leave**

Death in 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.

Leave During Agency Investigation – The administrative director may grant leave without a deduction in salary to an employee who is:

- The subject of an investigation being conducted by OCA; or
- A victim of, or witness to, an act or even that is the subject of an investigation being conducted by OCA.

The Eleventh Court of Appeals is required to report to the State Auditor's Office and the Legislative Budget Board each quarter if an employee is granted 168 hours or more leave for being the subject of an investigation.

Other Reasons – The Chief Justice or Clerk of Court may grant Emergency Leave to an employee for reasons other than bereavement if the employee shows good cause and the Chief Justice or Clerk of Court believes in good faith that the employee intends to return to work when the emergency leave ends. The granting of such leave is at the sole discretion of the Chief Justice or Clerk of Court, 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 or Clerk of Court may authorize emergency leave pay for not more than 6 months to an employee receiving workers' compensation benefits. Payment will not exceed the difference between the employee's basic monthly wage and the monthly amount of minimum benefits.

Requests – Requests for Emergency Leave should be submitted to the Clerk of Court for approval. The Eleventh Court of Appeals defines "reasonable time off" to mean not more than three (3) days away from the employee's workstation.

Approval – Approval for emergency leave can only be granted or denied by the Chief Justice or Clerk of Court.

Reporting – By October 1 of each year, the Clerk of Court 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 the emergency leave; and
- The total number of hours of emergency leave granted to the employee in that fiscal year.

#### **4. Foster Parent Leave**

Any Eleventh Court of Appeals 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.

#### **5. Jury Duty**

Time off with pay is allowed to serve on a jury. After receiving a jury summons, an employee should notify the Clerk of Court 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 Request for Leave and/or Weekly Time Sheet.

#### **6. Military Duty Leave**

Paid leave is granted for various types of military service.

#### **7. Parental Leave**

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.

#### **8. Voting**

The Eleventh 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. The Eleventh Court of Appeals defines “sufficient time off” in this instance to mean not more than one (1) hour away from the employee’s workstation.

## **9. Donation of Blood**

An employee is allowed sufficient time off with pay to donate blood up to four times in a fiscal year. The Eleventh Court of Appeals defines “sufficient time off” in this instance to mean not more than three (3) hours away from the employee’s desk.

Before an employee takes time off to donate blood, a request for the time off must be approved in writing by the Clerk of Court. On returning to work, an employee shall provide proof that the employee donated blood during the time off. If an employee fails to provide proof of the blood donation, the Eleventh Court shall deduct the amount of time for which the employee was granted time off from the employee’s salary or accrued leave, whichever the employee chooses. TEX. GOV’T CODE 661.917.

## **10. Employee Training/MCLE**

The time that an employee is allowed for attendance at training or minimum continuing legal education (MCLE) seminars is time for which the employee receives pay.

## **C. COMPENSATORY TIME**

### **1. Working More Than 40 Hours a Week**

The Fair Labor Standards Act applies to Texas employees. This means that a non-exempt employee is entitled to compensation for any hours worked in excess of 40 hours in one work week. Compensation may be in the form of either 1.5 hours credited per each hour worked in excess of 40 hours of compensatory time or, at the discretion of the employing state entity, pay at the rate of 1.5 times the regular pay in effect for the employee when the excess time was worked. The Eleventh Court’s overtime policy only allows for the possibility of earning compensatory time off under **specific pre-approved** circumstances; earning additional pay for overtime is not available.

An employee may only work 8 hours a day, unless the Chief Justice or Clerk of Court has approved a **prior written request** for work time in excess of 8 hours. Such written request must provide a detailed explanation of the reason(s) the employee finds it necessary to work longer than the usual work day, that is, why the employee has been unable to complete the work during the regular hours during the work week. When the employee claims compensatory time earned this way, the **pre-approved** authorization must be attached to the Request for Leave form.

Paid leave or holidays taken during a work week are not counted as hours worked in determining FLSA overtime hours. Any compensatory time earned must be used within twelve months of the end of the work week in which it was earned, or the employee loses the time. The Eleventh Court also requires an employee to exhaust any FLSA overtime hours before using annual leave.

Compensatory time off for exempt employees is within the discretion of the Chief Justice and/or Clerk of Court.

## **2. Working National or State Holidays**

For each fiscal year, the State of Texas publishes a list of three types of holidays: national, state, and optional. An employee is entitled to a paid day off from work for each national or state holiday that does not fall on a Saturday or Sunday, and if the employee is not on unpaid leave.

The Eleventh Court is officially closed on all national holidays, the Friday after Thanksgiving Day, and December 24th and December 26th, when those days fall on a weekday. Days designated as state holidays are considered Skeleton Crew Holidays when the Court is open and is required to have enough employees on duty to conduct its official business.

An employee who works a Skeleton Crew Holiday is entitled to compensatory time off during the 12-month period following the date worked. Employees are required to give reasonable advance notice when taking this compensatory time, although the reason for the request is not required. The Request for Leave form must state the date of the Skeleton Crew Holiday being claimed for comp time.

Every year, the State designates some religious holidays such as Rosh Hashanah, Yom Kippur, and Good Friday that fall on week days as Optional Holidays. An employee may substitute an Optional Holiday for a Skeleton Crew Holiday during the same fiscal year as the Optional Holiday worked. The Request for Leave form must state the Optional Holiday being substituted for the Skeleton Crew Holiday.

In addition, the Chief Justice and/or Clerk of Court may allow an employee to observe Cesar Chavez Day as a state holiday, instead of another state holiday that falls on a weekday when the agency must remain open for business at minimum staffing levels (i.e. a Skeleton Crew Holiday).

## **D. FAMILY AND MEDICAL LEAVE ACT (FMLA)**

The Department of Labor's [Fact Sheet 28](#) describes the rights and responsibilities of the employer and employee under the Family and Medical Leave Act (FMLA). Additional information may be found on the Department of Labor posters on bulletin boards in the break rooms. General information is set out below.

### **1. Purpose of FMLA**

FMLA requires an employer to provide an eligible employee with up to 12 workweeks of unpaid, job-protected leave during a 12-month period of time for certain family and medical reasons. An employee who takes FMLA must be returned to the same job, or a job with equivalent status, benefits, and pay.

### **2. Availability of FMLA Unpaid Leave**

An eligible employee may take a total of 12 weeks unpaid FMLA leave for:

- The birth of a son or daughter or placement of a son or daughter with the employee for adoption or foster care;
- To care for a spouse, son, daughter, or parent who has a serious health condition;
- For a serious health condition that makes the employee unable to perform the essential

- functions of his or her job; or
- For any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.

### **3. Serious Health Condition**

A serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves:

- inpatient care in a hospital, hospice, or residential care facility;
- the absence of more than three calendar days from work that also involves continuing treatment by a health care provider;
- any period of incapacity due to pregnancy, or for prenatal care;
- a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.);
- a period of incapacity that is permanent or long-term, due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases);
- any absences to receive multiple treatments that would likely result in incapacity for more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

### **4. Intermittent Leave or a Reduced Work Schedule**

FMLA permits the use of intermittent leave or work on a reduced schedule when:

- medically necessary to care for a seriously ill family member, or because of the employee's serious health condition or
- to care for a newborn or newly placed adopted or foster care child, if approved by the employer.

### **5. State of Texas and the FMLA**

#### **a. Use of Paid and Unpaid Leave**

A State of Texas employee is entitled to FMLA leave if the employee has a total of at least 12 months of state service and has worked at least 1,250 hours during the 12-month period immediately preceding the commencement of leave. A State employee is required to utilize all available paid vacation and sick leave while taking FMLA unpaid leave. Paid and unpaid leave are exhausted concurrently, not consecutively.

However, when an employee on FMLA leave is also receiving temporary disability benefits payments or workers' compensation benefits, the employee is not required to utilize paid vacation or sick leave concurrently with the FMLA leave. [TEX. GOV'T CODE ANN. 661.912](#) Family and Medical Leave Act.

#### **b. Health Insurance During FMLA Leave**

When all paid leave has been exhausted, the State will continue to pay its portion of the employee's premium for coverage under the group health plan. During the unpaid FMLA

leave period, the employee must pay his or her portion of the insurance premium above the state-paid portion. If an employee fails to return to work after taking FMLA leave, the State may recover the health care premiums it paid on behalf of the employee.

### **c. Effect of FMLA Leave**

Service credit, annual leave, or sick leave is not earned for any full calendar months of leave without pay while on FML. This time is also not included in the calculation of the number of continuous months of employment for purposes of merit increases and leave.

## **6. Eleventh Court of Appeals and the FMLA**

### **a. Method Used to Calculate Eligibility**

Eligibility for the 12-week leave period is calculated for the 12-month period measured forward from the date any employee's first FMLA leave begins.

### **b. Designation of Leave and Notice by Employer**

The Eleventh Court must designate leave, paid or unpaid, as FMLA-qualifying and will provide notice to the employee of the designation. Once the Eleventh Court has acquired knowledge that the leave is for an FMLA reason, the employee will be notified that any applicable accrued paid leave will be designated as FMLA leave, will be reported in the State's timekeeping system as FMLA leave, and the leave will be counted against the 12-week FMLA leave entitlement.

Notice of the designation should be provided to the employee within two business days. Leave cannot be retroactively designated as FMLA leave, unless the employee was absent for an FMLA reason and the Eleventh Court did not learn the reason until the employee's return to work.

### **c. Notice by the Employee**

When the need for FMLA leave is foreseeable, the employee is required to provide a written 30-day advance notice before the leave is to begin. The notice should include the anticipated timing and duration of the leave. Notice must also be provided as soon as practicable if the dates of the leave change, are extended, or were not initially known. When the need for FMLA leave is not foreseeable, notice must be provided "as soon as practicable" under the particular circumstances. As soon as practicable means under the particular circumstances, but, at the least, verbal notice should be provided within two business days of when the need for leave becomes known to the employee.

Whether the need for FMLA leave is foreseeable or not, the employee should provide information sufficient to make the Eleventh Court aware that the employee needs FMLA-qualifying leave, the anticipated timing and the duration. Failure to provide notice, with no reasonable excuse for the delay, may delay the taking of FMLA leave until at least 30 days after the date the employee provides the required notice.

The Eleventh Court of Appeals may inquire further, if it is necessary to have more information about the need for the leave. Any medical information the employee provides will be stored in the employee's confidential medical file and kept separate from the personnel file.

**d. Standard Leave Forms Required**

In addition to providing notice, an employee is required to complete the Eleventh Court of Appeals's standard leave forms and follow its procedures for taking leave.

**e. Medical Certification Required for Serious Health Condition**

For a serious health condition, the Eleventh Court of Appeals requires a medical certification confirming that such a condition exists. Once leave has been granted, the employee may be required to provide updated medical information on a periodic basis. To return to work when an absence was caused by a serious health condition, the employee must provide a "fitness-for-duty" certificate from the health care provider.

**f. Health Insurance**

Once the employee is on unpaid FMLA leave, to continue coverage under the State's group health plan, the employee must make arrangements with the Clerk of Court to pay his or her portion of the employee's health insurance premium.



## **ELEVENTH COURT OF APPEALS**

### **TIME AND LEAVE POLICY ACKNOWLEDGMENT**

I, \_\_\_\_\_, have read, understand and agree to abide by the Eleventh Court of Appeals Time and Leave Policy.

I understand and agree that if I violate any of the provisions of the Time and Leave Policy, I may be subject to disciplinary action up to and including termination.

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Signature

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Date

After signing, please return to Sherry Williamson.