

## TENTH COURT OF APPEALS LEAVE POLICIES

### Overview of State of Texas Employee Leave System

The employee leave system is considered an exception-based system of time keeping. 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.

It is Tenth Court of Appeals policy that every employee must request approval from his or her supervisor before being absent from work. Every employee has the responsibility to submit the request for leave to the Court's supervisory personnel designated to complete the necessary leave reports required by the State of Texas.

Exempt employees (all legal staff and the Clerk of the Court) must also submit a request for leave for any leave or sick time used. A legal staff's request for leave is submitted to the assigned justice.

The Chief Justice rules on request for leave for the Clerk of court and his/ her staff attorneys.

### Specific Types of State Leave

#### 1. Annual Leave

Annual leave, or paid vacation time, is accrued on a monthly basis and determined by length of service. Employees with less than two years of service accrue 8 hours of paid vacation time per month; employees with more than two years of service accrue 9 hours per month, and up to 21 hours a month for a 35+ year employee. An employee may carry certain amounts of annual leave time into a new fiscal year up to an established maximum that, if not used, automatically converts to sick leave. The monthly Employee Leave Summary states when an employee is reaching an automatic conversion point. Additional information may be found on the website for the Employees Retirement System of Texas, [www.ers.state.tx.us](http://www.ers.state.tx.us).

Although annual leave accrues from the first date of employment, vacation with pay may not be taken until an employee has been continuously employed for six months. An employee who has been continuously employed for six months and who then resigns, is dismissed, or otherwise separates from state employment is entitled to be paid for accrued and unused vacation time.

#### 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, 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 his or her supervisor 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, without violating the provisions of HIPPA, and 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 has the discretion to require a doctor's certificate, without violating the provisions of HIPPA, or an acceptable written statement of facts about the absence.

With reasonable advance notice to the employee's supervisor, an employee may use up to eight hours of sick leave each calendar year to attend parent-teacher conference sessions for the employee's child or children who are in pre-kindergarten through 12th grade.

For medical/dental appointments, a non-exempt employee should first request approval to be absent from work.

### **3. 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 per each hour worked in excess of 40 hours 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 Court's overtime policy only allows for the possibility of earning compensatory time off under specific circumstances; earning additional pay for overtime is not available.

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 12 months of the end of the work week in which it was earned, or the employee loses the time.

Compensatory time off for exempt employees is within the discretion of the judge to whom the exempt employee reports.

### **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 Court is officially closed on all national holidays, the Friday following Thanksgiving Day, December 24th and December 26th, when those days fall on a weekday. The Court is also closed on dates that are not designated as official State of Texas holidays when the State of Texas Comptroller's office is closed and on McLennan County holidays when the courthouse is officially closed.

Days designated as state holidays are considered Skeleton Crew Holidays. When the Court is open it 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.

Every year, the State designates some religious holidays such as Rosh Hashanah, Yom Kippur, and Good Friday that fall on weekdays 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.

In addition, the Chief Justice 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).

**3. Emergency Leave - Policy Guidelines for Emergency Leave Program (TEX. GOV'T CODE 661.252 & 661.902, 661.923) Effective: 9/1/17**

**Program Purpose**

Pursuant to Texas Government Code § 661.252, the following are guidelines to establish the circumstances under which an employee may be entitled to or granted emergency leave provided by Tex. Gov't Code Chapter 661. The Court leave provisions are incorporated herein by reference and the following supplement is provided:

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

The Chief Justice shall grant emergency leave if:

- the employee requests the leave; *and*
- the Chief Justice determines the employee has shown good cause for taking emergency leave; *and*
- 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.

Guidelines for emergency leave are provided below in this policy section.

Not later than October 1 of each year, the Chief Justice or the Chief Justice's designee 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:** The Chief Justice may grant reasonable time off with pay to a Court employee due to the death of the employee's spouse, child, parent, sibling, grandparent, or grandchild or a child, parent, sibling,

grandparent, or grandchild of the employee's spouse. 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 Agency 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 Texas 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.

**Medical and Mental Health Leave for Certain Veterans:** A Court employee who is a veteran as defined by section 434.023(a) of the Government Code and is eligible to receive health benefits under a program administered by the Veterans Health Administration (VHA) of the U.S. Department of Veterans Affairs may be granted emergency leave without loss of vacation time, sick leave, earned overtime credit, or state compensatory time to obtain medical or mental health care administered by VHA, including physical rehabilitation. Leave granted under this provision may not exceed 15 days each fiscal year, unless the Chief Justice determines it is appropriate to grant additional days of emergency leave. [TEX. GOV'T CODE § 661.924]

**Guidelines and Procedures for Emergency Leave:**

- The Chief Justice determines good cause.
- Sick leave and vacation leave accruals will continue during an employee's use of emergency leave.
- A recipient's approval for emergency leave does not prevent the employer from exercising its right to terminate the employee.
- The recipient of emergency leave is not to work elsewhere while on emergency leave.
- 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.

- An employee will not be granted compensation for any unused emergency leave.

**Jury Duty:** Time off with pay is allowed 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 Request for Leave and/or Weekly Time Sheet.

**Military Duty Leave:** Paid leave is granted for various types of military service.

### **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). General information is set out below.

### **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 FML must be returned to the same job, or a job with equivalent status, benefits, and pay.

### **Availability of FMLA Unpaid Leave**

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

- the birth and subsequent care of a newborn child;
- the placement of a child for adoption or foster care;
- the need to care for a spouse, child, or parent with a serious health condition;
- a serious health condition that makes the employee unable to work.

### **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.).

### **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.

## **STATE OF TEXAS AND THE FMLA**

### **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 (effective September 1, 1999) (Vernon 2004); General Appropriations Act, 75 Leg. R.S., ch. 1452, art. IX, '9(14)(a), 1997 Tex. Gen. Laws 5535, 6363.

### **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 FML leave, the State may recover the health care premiums it paid on behalf of the employee.

### **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.

## **TENTH COURT OF APPEALS AND THE FMLA**

### **Calendar Year Used to Calculate Eligibility**

The 12-week leave period is calculated forward starting on the first day designated as FMLA leave.

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

The Court must designate leave, paid or unpaid, as FMLA-qualifying and will provide notice to the employee of the designation. Once the 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 Court did not learn the reason until the employee's return to work.

### **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.

Whether the need for FMLA leave is foreseeable or not, the employee should provide information sufficient to make the 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 Court 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.

### **As Soon as Practicable**

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.

### **Medical Certification Required for Serious Health Condition**

For a serious health condition, the Court 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.

### **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 Court Administrator to pay his or her portion of the employee's health insurance premium.

### **Employee Sick Leave Pool Policy**

The Employee Sick Leave Pool (the Pool) consists of accrued sick leave which is voluntarily donated to the Pool by eligible employees of the Court. The Pool is intended to assist employees and their immediate families in dealing with a catastrophic illness or injury that forces them to exhaust all earned leave time or when the employee has exhausted all sick leave because of a previous donation of time to the Pool.

### **STATUTORY AUTHORITY**

Pursuant to the provisions of TEX. GOV'T CODE ANN. 661.001, 661.008 (Vernon 2004), the Employee Sick Leave Pool Policy is established for the Tenth Court of Appeals.

## DEFINITIONS

- **Employee** means an individual, other than a state officer, employed by a state agency.
- **Catastrophic** has been defined by the Employees Retirement System of Texas 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 earned leave time and to lose compensation from the State.
- **Licensed practitioner** means a practitioner, as defined in the Texas Insurance Code, who is practicing within the scope of his or her license.
- **Immediate family** means (1) an individual who resides in the same household as the employee and is related by kinship, adoption, or marriage; (2) a foster child of the employee who resides in the same household as the employee and who is under the conservatorship of the Department of Protective and Regulatory Services; (3) a minor child of the employee, regardless of whether the child lives in the same household. An employee may also apply for permission to withdraw time from the Pool for a spouse, child, or parent of the employee who is not included in the definition of *immediate family*, but who needs care and assistance as a direct result of a documented medical condition. Any such time requested and withdrawn is strictly limited to the time necessary to provide care and assistance for the documented medical condition.
- **Earned leave time** means all accrued sick, vacation, and compensatory time.
- **Pool Administrator** means the individual appointed by the governing body of a state agency to administer the agency's sick leave pool.

## ADMINISTRATION OF THE POOL

The Court Administrator will serve as the Pool Administrator and will develop mechanisms to transfer accrued sick leave into and out of the Pool; develop rules and procedures for operation of the Pool; and develop forms for contributing leave to, and using leave from, the Pool.

## GENERAL PROVISIONS:

- An employee of the Court, other than a state official, is eligible to use time contributed to the Pool, if the employee has exhausted all of the employee's earned leave time because of (1) a catastrophic illness or injury or (2) a previous donation of time to the Pool and, the employee will be forced to lose compensation from the State.
- An employee may not receive sick leave from the Pool in excess of one-third of the total time in the Pool or 90 days, whichever is less.
- An eligible employee may apply to the Pool Administrator for permission to withdraw leave time from the Pool for the employee's own catastrophic illness or injury, or for a catastrophic illness or injury of a member of the employee's immediate family.
- If the employee is seeking to withdraw time because of a catastrophic illness or injury, the employee must provide the Pool Administrator with a written statement from the licensed practitioner who is treating the employee or the employee's immediate family member. The statement must provide sufficient information regarding the illness or injury to enable the Pool Administrator to evaluate the employee's eligibility. If the Pool Administrator determines that the employee is eligible, the Pool Administrator shall (1) approve the transfer of time from the Pool to the employee and (2) credit the time to

the employee on the Court's leave records.

- An employee with a catastrophic illness or injury is not required to contribute to the Pool before the employee may apply to use Pool leave.
- An employee who uses leave from the Pool is not required to pay that leave time back to the Pool.
- If the employee is a contributing member of the Pool, the employee may apply to use the Pool for other than catastrophic illness or injury, when the employee has exhausted his or her sick leave balance in the same fiscal year. Such employee may receive credit for only the number of hours they have contributed to the Pool in the same fiscal year for absences other than those caused by catastrophic illness or injury.
- An employee must exhaust all earned leave time before the employee is eligible to use leave from the Pool. However, an employee who is off work due to an on-the-job injury or illness is not required to exhaust annual or compensatory leave before becoming eligible to use leave from the Pool.
- An employee who has terminated from the Court due to retirement may withdraw Pool contributions within 90 days of rehire to the Court. Such employee may receive credit for only the number of hours the employee has contributed to the Pool in the same fiscal year as retirement.
- An employee who is absent on time withdrawn from the Pool may use the time as sick leave earned by the employee, and the employee is treated for all purposes as if the employee were absent on earned sick leave.
- An employee's request to withdraw time from the Pool more than once during a fiscal year will be reviewed by the Pool Administrator on the facts and documentation submitted specific to the necessity for the multiple requests. The facts and documentation supporting the request will be submitted to the Clerk and the Chief Justice before a final decision is made to grant or deny the additional withdrawal of time.
- The estate of a deceased employee is not entitled to payment for unused time withdrawn by the employee from the Pool.

#### **CONTRIBUTING SICK LEAVE TO THE POOL**

- Contributions to the Pool are strictly voluntary on the part of each employee.
- Employees are encouraged to contribute to the Pool.
- An employee may contribute to the Pool one or more days of the employee's accrued sick leave. The Pool Administrator shall credit the Pool with the amount of time contributed by the employee and shall deduct a corresponding amount of time from the employee's earned sick leave as if the employee had used the time for personal purposes.
- A contribution to the Pool by an active employee must be in increments of eight hours, but a retiring employee may contribute accrued sick leave in increments of less than eight hours.
- A retiring employee may designate the number of the retiring employee's accrued sick leave hours to be used for retirement credit and the number of the retiring employee's accrued sick leave hours to be donated to the Pool.
- An employee who makes a contribution to the Pool may not stipulate who is to receive that contribution.