

# THIRTEENTH COURT OF APPEALS – LEAVE POLICY

## General Policy Information

This policy outlines leave benefits and reporting requirements for Thirteenth Court of Appeals' employees. All time and leave is entered, approved, and maintained in the State's time and leave system in CAPPs. 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 consistent with state and federal law.
- 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.

## Employee 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.

## 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

- A. **Entering Leave in CAPPs** - All Court employees are responsible for entering time in CAPPs and certifying their time in CAPPs. All Court employees must receive prior approval from their supervisors for all leave, unless it is for sick leave. For timekeeping purposes, all leave is to be rounded to quarter-hour (15 minute) increments.
  
- B. **CAPPs Certification Due** - Employees should have all time entered and certified in CAPPs no later than the 3rd working day of the month.

Reference: Texas Government Code, Section 661.908.

## Overtime and Compensatory Time

- 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.

Reference: Texas Government Code, Section 659.015.

## Holidays

- 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.

Reference: Texas Government Code, Section 662.001.

## Annual Leave

Employees must receive prior approval from their supervisor for annual leave.

Employees begin to accrue annual leave from their first day of employment. However, annual leave may not be taken until an employee has been continuously employed with a state agency for six months.

Annual leave accrual rates are the same for both hourly and salaried employees. Part-time employees are also eligible for annual leave, but their accrual rate and maximum annual leave carryover amounts are proportionate to the number of hours they work. For example, half-time employees earn and carry over annual leave at one-half the rate authorized for full-time employees.

An employee accrues annual leave and may carry annual leave forward from one fiscal year to the next in accordance with the schedule detailed below.

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

All annual leave hours in excess of the maximum allowable carryover remaining at the end of a fiscal year shall be credited to the employee's sick leave balance. In computing annual leave taken by an employee, absences due to holidays are not charged.

## Annual Leave and Employee Separations

Employees who transfer directly from one state agency to another will have their annual leave balances transferred. If an employee separates from employment and is re-employed within 30 calendar days by a state agency to a position that accrues annual leave, his or her annual leave balance will transfer to the new agency.

State agency employees are entitled to be paid for the accrued balance of their annual leave as of the date of separation, if they are not re-employed by the State in a position that accrues annual leave during the 30-day period immediately following the date of separation from state employment.

Reference: Texas Government Code, Section 661.152.

## Paid Parental Leave

See Texas Government Code 6661.9125

Employees who are eligible for leave under the Family Medical Leave Act (FMLA) are entitled to Paid Parental Leave for the birth or adoption of a child. An eligible employee is entitled to the following Paid Parental Leave amounts:

- a. 40 days paid leave for the birth of a child by an employee,
- b. 20 days paid leave for the birth of a child by the employee's spouse,
- c. 20 days paid leave for the birth of a child by gestational surrogate, or
- d. 20 days paid leave for the adoption of a child

In order for leave to be granted, an employee must apply and be approved for FMLA leave for the birth or adoption of the child. Leave can only be used once the baby is born or once the child is home. Paid parental leave can only be used up to the date of the FMLA leave expiration. Paid parental leave is used concurrently with FMLA leave and counts towards the maximum 480 hours an employee is entitled to under the FMLA.

## Sick Leave

An employee who must be absent from duty because of illness shall notify their supervisor of that fact at the earliest practicable time. Upon return to duty after a three-day or more sick leave, the employee shall submit a doctor's statement to their supervisor showing the cause or nature of the condition or another written statement of the facts concerning the condition that is acceptable to the employee's supervisor.

Thirteenth Court of Appeals employees shall earn sick leave subject to the following provisions:

- An employee accrues sick leave at a rate of eight hours per month (or proportionately for part-time employees).
- An employee accrues sick leave beginning on the first day of state 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 who is on leave the first day of the month may not use that month's accrual until he or she returns to duty.
- An employee may use sick leave while he or she is on annual leave.

Sick leave may be used when an employee is prevented from performing his or her job due to sickness, injury, pregnancy, or confinement. It also may be used to care for an immediate family member who is ill. An employee who is the legal guardian of a child by court appointment may use sick leave to care for the child. Sick leave also may be used for the adoption of a child under the age of three.

The Chief Justice may authorize exceptions to the amount of sick leave an employee may take. Such exceptions are authorized on an individual basis after a review of the merits of the particular circumstances.

### **Sick Leave and Employee Separations**

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.

Employees are not paid for unused sick leave upon termination. Sick leave may be:

- Contributed toward retirement credit if the employee retires based on service or a disability. (Note: Effective September 1, 2009, unused leave may not be used as service credit to meet retirement eligibility for employees who first start working for the State on or after September 1, 2009, and for former state employees who never contributed to the system, or withdrew all of their money from their ERS retirement account, then come back to work for the State on or after September 1, 2009.) Refer to ERS for more information.
- Donated to the sick leave pool.☐

Reference: Texas Government Code, Section 661.202.

### **Donation of Sick Leave**

The Thirteenth Court of Appeals allows an employee to voluntarily transfer any amount of his or her accrued sick leave to another Thirteenth Court of Appeals employee who has exhausted his or her sick leave, including any time the individual may be eligible to withdraw from a sick leave pool.

Donation of sick leave is taxable to the recipient when the sick leave is used.

Unlike accrued sick leave, donated sick leave is not eligible for transfer to another state agency or for payment to an estate upon death of the recipient.

An employee may not provide or receive remuneration or a gift in exchange for a sick leave donation.

An employee who receives donated sick leave may not:

- (1) use sick leave donated to the employee except as provided by Texas Government Code, Sections 661.202(d) and (e)(in case of the employee's own sickness or to care for an immediate family member who is sick); or
- (2) notwithstanding any other law, receive service credit in the Employees Retirement System of Texas for any sick leave donated to the employee under this section that is unused on the last day of that employee's employment.

Reference: Texas Government Code, Section 661.207.

## Sick Leave Pool

The Thirteenth Court of Appeals has adopted a Sick Leave Pool Policy that allows employees to voluntarily transfer sick leave to a sick leave pool. Any employee may contribute sick leave to the pool, and contributions are strictly voluntary. Contributions must be in increments of eight hours, with the exception of employees who are retiring, who may contribute any unused balance. The sick leave pool is intended to assist employees and their immediate families in dealing with catastrophic illnesses or injuries that force them to exhaust all accrued leave.

Rules and procedures for transferring accrued sick leave into and out of the pool are handled by the Pool Administrator. Requests for sick leave pool leave should be made on the Sick Leave Pool Application/Donation Form.

An employee may draw from the sick leave pool only with the approval of the Chief Justice. 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.

Reference: Texas Government Code, Section 661.002.

## Educational Activities

An employee may use up to eight hours of sick leave each fiscal year to attend educational activities of the employee's children who are in pre-kindergarten through 12th grade. Educational activities include school-sponsored activities such as parent-teacher conferences; tutoring; volunteer programs; field trips; classroom programs; school committee meetings; academic competitions; and athletic, music, or theater programs. The employee must give reasonable notice of his or her intention to use this leave. Part-time employees receive this leave on a proportionate basis.

Reference: Texas Government Code, Section 661.206.

## Emergency Leave

Emergency leave, without a deduction in salary, is available to an employee for a death in the employee's family upon request. In this instance only, 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.

The Chief Justice, or a designee, may grant emergency leave for other reasons determined to be for good cause upon request of an employee. The Chief Justice may grant an employee emergency leave for another reason other than a death in the family if the Chief Justice determines the employee has shown good cause for taking the emergency leave.

The Chief Justice, or a designee, may not grant emergency leave to an employee unless they believe in good faith that the employee being granted the emergency leave intends to return to the employee's position with the Thirteenth Court of Appeals on expiration of the period of emergency leave.

Reference: Texas Government Code, Section 661.902.



## Administrative Closures

Occasionally, the Chief Justice may administratively close the Court or provide for staff reduction due to weather conditions or circumstances as determined appropriate. In these instances, such time will not be charged against an employee's accumulated annual or sick leave.

Reference: Texas Government Code, Section 661.902.

## National Guard Emergency

A state employee called to state active duty as a member of the state military forces by the governor because of an emergency is entitled to receive emergency leave without loss of military or vacation leave. This leave will be provided without a deduction in salary. This time is not limited and does not count against the 15 days maximum military leave per fiscal year.

Reference: Texas Government Code, Section 661.903.

## Military Leave During National Emergency

Employees called to active duty during a national emergency to serve in a reserve component of the U.S. Armed Forces under Titles 10 or 32 of the United States Code are entitled to state service for longevity pay purposes, vacation leave accruals, and sick leave accruals while on an unpaid leave of absence.

This leave will be accrued but not posted until the employee returns to state employment. In addition, the employee retains his or her leave balances unless the employee chooses to use any accrued vacation leave, compensatory time, or overtime leave to maintain benefits for the employee or the employee's dependents while on military duty.

Additionally, the employee may continue to accrue service credit with the Employees Retirement System by receiving at least one hour of state pay during each month of active military service. The employee may use any combination of paid leave to qualify for state pay.

Reference: Texas Government Code, Section 661.904.

## Volunteer Firefighters and Emergency Medical Services Volunteers

Volunteer firefighters and emergency medical services volunteers are entitled to paid leave not to exceed five working days each fiscal year for attending training services conducted by a state agency or higher education institution. In addition, the Chief Justice may grant paid leave to a volunteer firefighter or an emergency medical services volunteer for the purpose of responding to emergency fire or medical situations.

Reference: Texas Government Code, Section 661.905.

## Foster Parent

An employee who is a foster parent to a child under the protection of the Department of Family and Protective Services (Department) is entitled to a paid leave of absence to attend staff meetings held by the Department regarding the foster child. In addition, the employee may attend, with a paid leave of absence, the admission, review, and dismissal meetings held by a school district regarding the foster child.

Reference: Texas Government Code, Section 661.906.

## Red Cross Disaster Service Volunteer

Employees who are certified disaster service volunteers of the American Red Cross or are in training to become such a volunteer may be granted a paid leave of absence not to exceed 10 days each fiscal year. The employee must have the approval of his or her supervisor and a formal request from the Red Cross. In addition, the approval of the governor's office is required. An employee on such leave will not lose pay, vacation time, sick leave, earned overtime, and/or compensatory time during this leave. The pool of certified disaster volunteers must not exceed 350 participants at any one time.

Reference: Texas Government Code, Section 661.907.

## Leave Without Pay

The Chief Justice may grant leave without pay (LWOP) to eligible employees.

Compensatory time, annual leave, and sick leave, if appropriate, must be exhausted prior to requesting LWOP except in instances of disciplinary suspension, leave covered by workers' compensation benefits, or active military duty situations.

Reference: Texas Government Code, Section 661.909.

## Assistance Dog Training for Employees with a Disability

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

Reference: Texas Government Code, Section 661.910.

## Administrative Leave for Outstanding Performance

The Thirteenth Court of Appeals recognizes employees whose performance exceeds the expectations or requirements for their current job duties. The Chief Justice may grant an employee administrative leave with pay for demonstrating outstanding performance. The total amount of leave granted may not exceed 32 hours during a fiscal year.

To be eligible, an employee recommended for administrative leave for outstanding performance (ALOP) shall:

- Have consistently exceeded performance standards as documented in the employee's most recent annual evaluation.
- Not have received a disciplinary action in the 12 months immediately preceding the recommendation for performance leave.

Employees who have not yet received an annual performance evaluation may be granted ALOP for completing significant training performance milestones.

Reference: Texas Government Code, Section 661.911.

## Family and Medical Leave

### **Family and Medical Leave Eligibility**

The Thirteenth Court of Appeals may grant an eligible employee up to 12 weeks of job-protected leave during a 12 month period. To be eligible for family and medical leave, an individual must have been employed by the State of Texas for at least 12 months and must have actually worked at least 1,250 hours during the 12-month period immediately preceding the commencement of family and medical leave.

### **Leave Requirements**

The Chief Justice may grant eligible employees up to a total of 12 weeks of job-protected leave during a 12-month period for one or more of the following reasons:

- The birth and subsequent care of a newborn child.
- The placement of a child with the employee for adoption or foster care or through a guardianship proceeding.
- The need to care for the employee's spouse, child, or parent with a serious health condition.
- A serious health condition that renders the employee unable to work.
- A qualifying exigency arising from the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.

The Chief Justice also may grant an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member who is recovering from a serious illness or injury sustained in the line of duty while on active duty up to 26 work weeks of leave in a single 12-month period. That military caregiver leave is available

during a single 12-month period during which an eligible employee is entitled to a combined total of 26 weeks of all types of family and medical leave.

Reference: Texas Government Code, Section 661.912.

## Parental Leave

Employees who do not qualify for family and medical leave because they have fewer than 12 months of total state service or because they have worked fewer than 1,250 hours in the 12-month period immediately preceding the commencement of leave are eligible to take a parental leave of absence, not to exceed 12 weeks, for the birth of a natural child or the adoption by or foster care placement of a child under 3 years of age.

Parental leave is limited to, and begins on the date of, the birth of the employee's natural child or the adoption by or foster care placement with the employee of a child younger than three years of age.

An employee must first use all available and applicable paid vacation and sick leave while taking parental leave prior to going on leave without pay. The use of sick leave is strictly limited to those situations clearly falling within the definition of sick leave contained in the Texas Government Code.

Reference: Texas Government Code, Section 661.913.

## Voting

Employees are allowed sufficient time off, without a deduction in salary or accrued leave, to vote in each national, state, or local election.

Reference: Texas Government Code, Section 661.914.

## Bone Marrow and Organ Donation

A state employee is entitled to a leave of absence without a deduction in salary for the time necessary to permit the employee to serve as a bone marrow or organ donor. The leave of absence may not exceed 5 working days in a fiscal year to serve as a bone marrow donor or 30 working days in a fiscal year to serve as an organ donor.

Reference: Texas Government Code, Section 661.916.

## Blood Donor

Employees are allowed sufficient time off, without a deduction in salary or accrued leave, to donate blood. An employee may receive time off not to exceed more than four times in a fiscal year.

Reference: Texas Government Code, Section 661.917.

## Amateur Radio Operators

An employee with an amateur radio station license issued by the Federal Communications Commission will be granted a paid leave of absence not to exceed 10 working days each fiscal year to participate in specialized disaster relief services. An employee on such leave will not lose pay, vacation time, sick leave, overtime leave,

or compensatory time. The amateur radio operator leave must be authorized by the employee's supervisor and must have the approval of the governor. The number of amateur radio operators eligible for this leave may not exceed 350 state employees at any one time.

Reference: Texas Government Code, Section 661.919.

### Court Appointed Special Advocates Volunteer (CASA)

An employee who is a court appointed special advocate (CASA) volunteer is entitled to leave not to exceed five hours each month. Leave is to be used to participate in mandatory CASA training or to perform CASA voluntary services. Employees will not be required to use accrued vacation and sick leave or earned overtime.

Reference: Texas Government Code, Section 661.921.

### Reserve Law Enforcement Officers

State employees who are reserve law enforcement officers as defined by Texas Occupations Code, Section 1701.001, are entitled to paid leave not to exceed five working days each fiscal biennium to attend training required by Texas Occupations Code, Section 1701.351.

Reference: Texas Government Code, Section 661.922.

### Leave During Agency Investigation

The Chief Justice may grant leave without a deduction in salary to a Thirteenth Court of Appeals employee who is the subject of an internal investigation being conducted by the Thirteenth Court of Appeals; or a victim of, or witness to, an act or event that is the subject of an internal investigation being conducted by the Thirteenth Court of Appeals.

Reference: Texas Government Code, Section 661.923.

### Medical and Mental Health Care Leave for Veterans

A state employee who is a veteran and eligible for health benefits under a program administered by the Veterans Health Administration of the United States Department of Veterans Affairs is entitled to leave without a deduction in salary or loss of vacation time, sick leave, earned overtime credit, or state compensatory time to obtain medical or mental health care administered by the Veterans Health Administration of the United States Department of Veterans Affairs, including physical rehabilitation.

The leave granted may not exceed 15 days each fiscal year. The Chief Justice may annually grant additional days of leave as they determine appropriate for the employee.

Reference: Texas Government Code, Section [661.924](#).