



## Section III – Employee Benefits

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### Employee Assistance Program

#### Description of Services

The Employee Assistance Program (EAP) is designed to help employees deal with life's stresses and a variety of personal problems that can develop from them. The EAP can assist employees dealing with personal problems arising from things, such as family and marital distress, alcohol problems, drug abuse, legal entanglements, financial troubles, and depression or anxiety. The EAP offers confidential services at no cost to employees and their families. Additional information regarding EAP may be obtained from the program specialist or the employee’s manager.

A manager may refer an employee to the EAP through the program specialist in consultation with the general counsel. When a manager wishes to make a referral to the EAP, the manager should contact the program specialist to arrange a procedural referral. The program specialist will make an appointment for the employee with an EAP counselor. The manager will be informed if the employee keeps the appointment. The manager will not be informed regarding the substance of the employee's discussions with the employee assistance program counselor.



A manager may also contact the program specialist or designee to request group counseling from the EAP in the event of an employee's death, severe illness of a co-worker, a reduction-in-force, or similar situation.

An employee is not required to use leave time if the program specialist, general counsel or the employee's manager refers, suggests, or supports an employee's visit to the EAP. In all other circumstances, the employee must use the appropriate leave time. An employee may also schedule visits to the EAP during lunchtime or after the employee's work hours.

### **Contact Information**

For more information or an appointment contact:

Alliance Work Partners  
800-343-3822 (toll free) or 512-328-1144  
[www.alliancewp.com](http://www.alliancewp.com)

### **Wellness**

OIEC promotes wellness of employees by encouraging employees to participate in agency-sponsored and statewide employee wellness programs and events.

### **Exercise time**

OIEC encourages fitness by allowing employees to take up to thirty (30) minutes to exercise, three (3) times per week. Tex. Gov't Code §664.061. Subject to business needs and manager approval, full-time employees may use up to thirty-minute increments of work time to exercise three times per week. Part-time employees are allowed work time to exercise pro rata.

Exercise time does not accumulate and may not be combined with another day or applied to a different week.

Employees must schedule exercise time so that it does not conflict with job duties or division priorities. To participate in the exercise time program, an employee must submit a request form, proposed schedule, and participation agreement to the employee's manager. The manager must approve the request and schedule before the employee may begin using work time to exercise. If a manager denies an employee's request, the manager must explain the business need for the denial in writing. Exercise schedules may be modified on a case-by-case basis with prior approval, and are always subject to modification or cancellation by the manager based on business needs, including the absence of other employees or work performance. Where appropriate, managers are encouraged to permit an employee to reschedule exercise time for the week or to permit the use of flexible work schedules to accommodate exercise time when feasible. Employees must submit a signed monthly report to their manager to document their actual use of exercise time for the month.

Employees are encouraged to consult a physician before beginning a new exercise program. Employees are expected to maintain proper hygiene and appropriate dress in the workplace.

OIEC may terminate the exercise time program at any time.



## **Retirement Programs**

### **Retirement Membership**

When an employee has five years or 60 months of creditable service with the State of Texas, the employee is considered vested. This allows an individual to qualify for a lifetime retirement annuity. The annuity can begin at the age of 60 or at any time after that as long as the individual no longer works for the state and is a member of Employees Retirement System (ERS) meaning retirement contributions have not been withdrawn.

Service retirement benefits are different based on membership status in the ERS effective September 1, 2009.

Information regarding retirement benefits is subject to change. Contact the TDI benefits coordinator or ERS for the most current information.

ERS contact information:  
Employees Retirement System of Texas  
1800 Brazos Street, P. O. Box 13207  
Austin, Texas 78711-3207  
(512) 867-7711 or (877) 275-4377  
[www.ers.state.tx.us](http://www.ers.state.tx.us)

### **Refund of Contributions**

Upon separation from state employment, a member may apply for a refund of contributions plus accrued interest, roll the funds into a qualified plan under federal guidelines, or leave contributions with ERS. Refunded contributions may be subject to federal income tax and/or withdrawal penalties at the time of refund. Members are not required to withdraw their retirement contributions when state employment ends. A refund of retirement contributions cancels membership in ERS and terminates all rights to benefits. Failure to apply for disbursement of retirement funds within five years after the last month of state employment will result in the transfer of contributions to a non-interest bearing account. For more information, contact the TDI benefits coordinator or ERS.

### **Retirement from State Service**

An employee who intends to retire from state service should notify the program specialist and his or her manager in writing no later than 14 working days prior to the expected retirement date.

Employees planning to retire should submit the Application for Retirement Benefits to ERS. This form can be obtained on the ERS website or by requesting the form directly from ERS. Employees can fax the Application for Retirement Benefits to ERS at (512) 867-7438 or mail it to the ERS address above.

Retirement benefits are established by state law. An employee who has worked for the state for a minimum of five years and kept retirement contributions on account with the ERS is eligible to receive an annuity at age 60. An employee may also qualify for retirement through the Rule of 80—when age plus years of service equal 80. To receive group insurance benefits at retirement an



employee must have worked for the state for at least 10 years and be age 65 or retire under the Rule of 80.

Employees who first started working for the state on or after September 1, 2009, have different retirement benefits. The key points of this retirement plan are: unused leave may not be used as service credit to meet retirement eligibility; benefits will be based on the highest 48 months instead of the highest 36 months of salary; and the vesting rules change to age 65 with 10 years of service.

Additionally, employees who are newly hired to the state on or after September 1, 2013, will have different retirement eligibility rules. The primary points of this retirement plan are: employees must still meet the Rule of 80 but must work until age 62 or have a 5 percent reduction in their annuity amount for each year they retire before age 62; benefits will be based on the highest 60 months of salary; unused sick leave can be used to increase annuity; and unused vacation leave can either be paid in a lump sum or can be counted toward annuity calculation (but cannot be used for both reasons).

There is no mandatory retirement age for state employees. Members of ERS may not accrue or establish more than 50 years of service credit. For more information, please contact the program specialist or ERS directly.

### **Sick/Annual Leave Credit Toward Retirement (for employees hired by the state prior to September 1, 2013)**

An employee who retires as an active (contributing) member of ERS is eligible to receive one month of service credit for each 160 hours or fraction of 160 hours of both unused sick and annual leave credited at the time of retirement. This service may be used to satisfy requirements for retirement, group insurance eligibility as a retiree, and to increase annuity benefits. An employee may receive service credit for annual leave even if the employee receives a lump sum payment for the balance upon retirement.

In the event of the employee's death this entitlement also applies to the designated beneficiary. Beneficiaries may use the employee's accumulated annual and sick leave to qualify for making a death benefit plan selection.

Retired state employees who return to state employment are eligible to accrue annual leave. The accrual rate is based upon the date of the retiree's return to active state employment. Contact the program specialist for additional information.

There is no statutory provision that allows a retiring employee to store or bank accumulated annual or sick leave for use after retirement. Retirees who return to state employment will not have their sick leave balances restored.

### **Retirement Service Credit Purchase Option**

An employee with at least 10 years (120 months) of actual service credit may purchase Additional Service Credit (ASC) from ERS. The cost of each month of credit would be based on the actuarial present value of the purchased credit. Usually, ASC must be purchased in increments of one year; however, if the employee can use ASC to establish eligibility for an immediate retirement, he or



she may purchase the necessary months rather than the full one-year increment. ASC is designed to be revenue neutral to the retirement system.

Questions regarding service credit purchases must be directed to ERS at [www.ers.state.tx.us](http://www.ers.state.tx.us)

## **Additional Tax Savings Plans**

### **Tax Sheltered Savings Plans**

[Deferred compensation plans](#) are optional programs that allow employees to defer income until retirement. A deferred compensation plan is offered in addition to a retirement, pension, or benefit system established by law. The deferral of compensation does not reduce retirement, pension or other benefits provided by law unless the reduction is required by federal law.

The Employees Retirement System of Texas (ERS) has established 401(k) and 457 plans collectively known as the [TexaSaver](#) program. Effective January 1, 2008, new state employees are automatically enrolled in a deferred compensation plan unless they notify their agencies that they wish to opt out of the plan.

Effective January 1, 2012, state employees are allowed to have their 401k or 457 accounts within TexaSaver funded with post-tax deductions, also known as Roth 401k and Roth 457 plans. The employee must:

- Establish a TexaSaver account with the account administrator.
- Determine if the account will be funded through pre-tax deductions, post-tax deductions or both.
- Determine the percentage or amount to be withheld as payroll deduction.

The employee may stop the deduction at any time by notifying the TDI benefits coordinator and ERS in writing.

For additional information, visit [www.texasaver.com](http://www.texasaver.com).

*References Tex. Gov't. Code § 609.001 et seq.*

## **Workers' Compensation**

### **Eligibility**

An employee with an injury that arises out of and in the course and scope of employment for which compensation is payable under the Texas Workers' Compensation Act will be entitled to compensation in accordance with state law.

An employee on leave due to a workers' compensation injury may be eligible for Family and Medical Leave. For more information, please refer to the Leave Programs segment of this section of the Employee Manual.



## **Notice of Injury**

An employee who has sustained an injury for which the employee believes he or she is entitled to compensation under the Texas Workers' Compensation Act should immediately notify the employee's manager. This notification should be made as soon as practicable and no later than 30 days after the injury occurs in order to receive workers' compensation benefits. Within 24 hours of receiving notice of an injury, the manager must notify OIEC's program specialist of the injury.

## **Medical Treatment**

State employees are covered under a certified Workers' Compensation Health Care Network. Injured employees are required to select and seek treatment from approved network doctors. To avoid out-of-pocket expenses, employees must ensure that they receive medical care from a treating doctor on the approved list of doctors in the network.

## **OIEC Employees Requesting Ombudsman Assistance**

An OIEC employee seeking assistance from the OIEC Ombudsman Program for the employee's own workers' compensation dispute is required to complete the OMB-02 form (*OIEC Assistance Request*). The OMB-02 form should be submitted to the director of their program area. An OIEC employee requesting assistance on his or her own behalf will be assisted by an ombudsman in a field office outside of employee's duty station.

Employees using OIEC ombudsman services are prohibited from working on his or her own workers' compensation files or those of friends or relatives. Employees assigned to assist a fellow employee with a workers' compensation dispute are prohibited from discussing the claim with anyone outside of their direct management team and those with a business "need to know."

## **Safety Organization and Responsibilities**

### **Public Counsel**

The public counsel of OIEC is responsible for the establishment, implementation, and monitoring of OIEC's Occupational Safety & Health Plan (OSHP). To accomplish this, the public counsel of OIEC will do the following:

1. Appoint the agency's risk manager to handle OIEC safety issues and report directly to the deputy public counsel.
2. Ensure that the safety of employees is an integral part of all operations and is considered in the planning and decision-making processes.
3. Provide an adequate budget to carry out the OSHP.
4. Hold employees and managers at all levels accountable for implementing the OIEC OSHP and for the safety performance of employees.
5. Personally encourage all employees to actively support the OSHP.
6. Monitor specific measurable goals and objectives to reduce the frequency and severity of injury-producing employee occupational accidents illnesses.
7. Designate appropriate safety staff to support and manage the OIEC OSHP.



## Risk Manager

The risk manager is responsible for establishing the OIEC OSHP and to provide a source of technical knowledge, assistance, support, and guidance to managers. To accomplish this, the risk manager will do the following:

1. Draft, distribute, review annually, and revise as necessary the OIEC OSHP policy.
2. Ensure that a safety orientation briefing is presented to all new employees on OIEC OSHP.
3. Review purchasing documentation to evaluate whether the equipment, supplies, and purchased materials include safety factors.
4. Promote safety awareness through the distribution of accident prevention materials such as posters, newsletters, e-mail messages, and other forms of communications in a timely manner.
5. Coordinate with the state risk manager on safety issues and concerns of a broader nature.
6. Maintain a copy of all on-the-job accident reports that result in employee injuries.
7. Help ensure all accidents are investigated as quickly as possible and collect statements from witnesses.
8. Monitor accidents and injuries for each program, division, or section.
9. Keep all levels of management informed of safety issues.
10. Propose any additional programs or new methods necessary to ensure the safety and health of OIEC employees.
11. Conduct scheduled and random safety inspections as necessary and inform managers of results.

## Claims Coordinator

The claims coordinator is responsible for receiving notices of injury from employees and serves as the liaison between an injured employee and the State Office of Risk Management (SORM). The claims coordinator is responsible for submitting the required injury reports and notices to SORM.

When OIEC receives notice that an employee has been injured, the claims coordinator immediately contacts the injured employee and his/her manager. The claims coordinator periodically keeps in touch with the injured employee and their manager to obtain additional information or to verify the status of the employee.

The claims coordinator is responsible for obtaining the appropriate information and forms so that the SORM adjuster can properly process the claim. There are various forms that the claims coordinator must provide to ensure that the SORM adjuster can manage the claim appropriately and remain in compliance with the law and DWC rules.

- A. Critical forms for Medical Only Claims, the claims coordinator must submit to the SORM adjuster:
1. Employer's First Report of Injury or Illness (DWC-1S)
  2. Employee's Report of Injury (SORM-29)
  3. Witness Statement (SORM-74)
  4. Authorization for Release of Information (SORM-16)



B. Additional forms that must be submitted to the SORM adjuster for Lost Time Claims:

1. Employee's Election Regarding Utilization of Sick Leave (SORM-80)
2. Employer's Wage Statement (DWC-3)
3. Supplemental Report of Injury (DWC-6)
4. Employee Leave Information (SORM-90)

TDI's benefits coordinator serves as OIEC's claims coordinator as part of our administrative attachment

### **Directors**

All directors are entrusted with the safety and health of employees in their area of responsibility. They are responsible for not exceeding the OIEC accident frequency rate goal within their programs, and are responsible for the success and implementation of the OIEC OSHP within his/her area of responsibility. To accomplish this, each director will do the following:

1. Personally emphasize employee safety at every reasonable opportunity.
2. Personally observe operations and work areas on an on-going basis to identify and require correction of unsafe behavior or conditions.
3. Encourage all employees to attend or participate in some form of safety and health training on at least a yearly basis.
4. Monitor the program's accident experience through communications with managers and the risk manager, and take appropriate action to prevent recurrence of accidents.
5. Take appropriate disciplinary action when safety policies, procedures, or standards are not followed.
6. Implement the OIEC Return-To-Work Program. This program will allow injured employees to return to work at the earliest possible date in a full duty, limited duty, or an alternative duty capacity.
7. Investigate accidents as soon as possible after occurrence.
8. Hold employees accountable for their safety performance and considering it in their employee performance review.

### **Managers**

Managers are entrusted with the safety and health of their employees and share responsibility for the success and implementation of the OIEC OSHP. To accomplish this, managers will do the following:

1. Manage employee safety and health performance concurrently with all aspects of the employee's job.
2. Set the example by personally participating in all aspects of the OIEC OSHP.
3. Encourage all employees to attend some form of safety and health training on a yearly basis.
4. Conduct a new employee safety orientation briefing for all new employees.
5. Personally observe the operation of the staff's work area on a continuous basis to identify and require that unsafe behavior or conditions be corrected.



6. Investigate all accidents in cooperation with the Risk Manager, to identify the cause, complete the required reporting forms, and take appropriate actions to implement preventive measures.
7. Hold employees responsible and accountable for safe behavior in their work activities.
8. Consider employees' safety performance when completing performance reviews.
9. Emphasize and address safety and health issues or concerns at staff meetings and in other communication opportunities with employees.

## **Employees**

Each employee is responsible for providing his/her own safety to the maximum extent possible. To accomplish this, each employee will do the following:

1. Attend safety and health training on a yearly basis.
2. Report safety hazards in the employee's work area or throughout the building, that cannot immediately be corrected, to his or her manager.
3. Report for work in a condition that will allow safe accomplishment of the job.
4. Inform the employee's manager when the employee cannot safely perform his or her job, e.g., if he or she becomes ill, suffers an injury, or takes a prescription or nonprescription medication that can impact his or her performance.
5. Inform the employee's manager immediately if the employee is involved in or observes an on-the-job accident, or if he or she becomes ill at work.

## **Return-to-Work Program Policy**

The intent of the Return-to-Work Program is to allow employees with injuries or illnesses, both job-related and non-job related, to return to work as quickly as possible in a meaningful and productive capacity. Participation in the program will be handled on a case-by-case basis in consultation with the employee's physician. It is the employee's responsibility to make all reasonable effort to return to work at the earliest possible time to full duty or alternatively to a light- or restricted-duty capacity.

This Return-to-Work Program is not intended to circumvent any provisions of the Texas Workers' Compensation Act or the Americans with Disabilities Act Amendments Act (ADAAA).

## **Disability and Death Benefits Permanent Disability**

Information regarding death and disability benefits is subject to change. Contact ERS for the most current information. An employee who becomes mentally or physically incapacitated and is unable to return to work may be eligible for disability retirement benefits if the incapacity is likely to be permanent.

## **Non-Occupational Disability**

To receive non-occupational disability retirement benefits, the employee must have at least 10 years of service credit and be actively employed by the state at the time of submitting the application for retirement.



## Occupational Disability

To receive occupational disability retirement benefits, the employee's disability must have been the direct result of a risk or hazard inherent to the duty performed in the employee's state employment. There is no age or length of service requirement for occupational disability retirement benefits.

## Death Benefits

An employee with at least 10 years of service credit must select a death benefit plan, which will pay a benefit annuity to a person designated by the employee upon the employee's death.

*References Tex. Gov't. Code § 813.201; § 813.301 et seq.; § 813.401 et seq.; and § 813.501 et seq.*

## Holidays

### National and State Holidays

An employee is entitled to a paid day off from work on each recognized national or state holiday that does not fall on a Saturday or Sunday, excluding optional holidays.

In accordance with Texas Government Code § 662.004, OIEC must have enough employees on duty during a state holiday to conduct the agency's public business. Exceptions apply if the holiday falls on a Saturday or Sunday, is the Friday after Thanksgiving Day, or is the 24th or 26th day of December. Employees may be required to work on state or national holidays for business necessity reasons as determined by OIEC management.

### Eligibility

To be paid for a holiday that falls on a day other than the first or last work day of the month, the employee must be a state employee the day before and the day after the holiday. This includes the use of paid leave. An employee on leave-without-pay status will not be paid for a holiday.

### Observed Holidays

The Texas Legislature establishes the official state holidays. The following are the currently recognized national and state holidays:

#### National Holidays:

- New Year's Day – the first day of January
- Martin Luther King, Jr. Day – the third Monday in January
- President's Day – the third Monday in February
- Memorial Day – the last Monday in May
- Independence Day – the fourth day of July
- Labor Day – the first Monday in September
- Veterans Day – the 11th day of November
- Thanksgiving Day – the fourth Thursday in November
- Christmas Day – the 25th day of December



### State Holidays:

- Confederate Heroes Day – the 19th day of January
- Texas Independence Day – the second day of March
- San Jacinto Day – the 21st day of April
- Emancipation Day in Texas – the 19th day of June
- Lyndon Baines Johnson Day – the 27th of August
- the Friday after Thanksgiving Day
- the 24th day of December
- the 26th day of December

### **Substitute/Optional Holidays**

An employee is entitled to a paid day off on each optional holiday that does not fall on a Saturday or Sunday if the employee agrees to work a state holiday that does not fall on a Saturday or Sunday during the remainder of the same fiscal year. An employee is entitled to a paid day off on each day of an optional holiday that extends for more than one day if the employee agrees to work an equivalent number of state holidays. The employee may not agree to work the Friday after Thanksgiving or the 24th or 26th day of December.

Optional holidays include Rosh Hashanah, Yom Kippur, Good Friday, and Cesar Chavez Day.

### **Holiday Time for Work on a Holiday**

An employee who is required to work on a national or state holiday is entitled to compensatory holiday time off if taken during the 12 months after the holiday.

### **Manager Approval Required**

An employee must obtain his or her manager's approval before working on a holiday. If an employee is required to work on a holiday and is unable to obtain prior approval from his or her manager, the employee must obtain the approval as soon after the holiday as possible.

### **Use of Holiday Time**

An employee must give reasonable notice of his or her intention to use the holiday time but is not required to say how the holiday time will be used.

### **Part-Time Employees**

The holiday time earned for part-time employees is determined on a basis proportionate to their hours worked.

### **Employee Transfers**

Holiday time for work on a holiday usually does not transfer to another state agency unless the employee's transfer is the result of (1) the Legislature transferring authority or duties from one agency to another or (2) a requirement of the State Council on Competitive Government to bid a commercially available service that the state agency previously performed.



If a state or national holiday occurs between the dates that a state employee separates from one state agency and begins employment with another state agency without a break in service, the agency to which the employee transfers is responsible for paying the employee the holiday regardless of whether that agency recognizes the holiday.

*References Tex. Gov't. Code § 662.001 et seq.*

## **Leave Programs**

### **Introduction**

All employees of OIEC are required to report hours worked and leave taken accurately and abide by OIEC leave policies and procedures. A misrepresentation of hours worked, leave taken, or unauthorized absence may result in disciplinary action up to and including termination of employment.

Managers must coordinate employee leave time to ensure adequate staffing to meet the needs of OIEC customers whenever possible. All leave taken must be accurately recorded on a monthly basis in the leave accounting system.

### **Use of Paid Leave**

An employee's accrued paid leave will normally accommodate any need of the employee to be absent from work. Such accrued leave includes annual leave, overtime leave, state compensatory time, holiday time, and sick leave, if appropriate.

### **Approval of Leave**

Employees must obtain prior approval to use their annual leave, overtime leave, state compensatory time, or holiday time. When the use of sick leave is foreseeable, such as in the case of a scheduled doctor or dental appointment or scheduled treatment, the employee must obtain prior manager approval. Managers are responsible for monitoring an employee's use of leave.

Among the reasons that leave may be denied are the following:

- Disruption of the functions of the program area or office.
- Failure to provide adequate notice so other employees may complete critical assignments.
- Lack of sufficient accrued leave balances.
- Other reasons determined by managers that are consistent with OIEC policy and state/federal law.

## **Annual Leave**

### **Accrual of Annual Leave**

An employee will accrue annual leave beginning on the first day of employment with the state. An employee must have six months of continuous state service to be eligible to use his or her accrued annual leave. Credit for one month's accrual will be given for each month or fraction of a month of paid employment. Annual leave is posted to each employee's leave record on the first day of employment and on the first working day of each month of employment thereafter.



An employee who retired on or after June 1, 2005, and returns to state employment earns vacation leave based on state employment only from the date the employee returned to employment.

Annual leave with pay is granted to state employees based on length of state employment in accordance with following schedule:

Full-time employees with total state employment of:	Hours accrued per month (full-time)	Maximum hours that may be carried forward from one fiscal year to the next:*
Less than 2 years	8	180
At least 2 but less than 5 years	9	244
At least 5 but less than 10 years	10	268
At least 10 but less than 15 years	11	292
At least 15 but less than 20 years	13	340
At least 20 but less than 25 years	15	388
At least 25 years but less than 30 years	17	436
At least 30 years but less than 35 years	19	484
At least 35 years or more	21	532

\*Hours that exceed the maximum at the end of the fiscal year will be converted to sick leave hours.

### **Part-time Employees**

Hourly and part-time employees earn annual leave in proportion to the scheduled hours worked.

### **Accrual While on Leave**

If an employee is in paid leave status on the first working day of a month, the accrual for that month will be held in suspense and cannot be used unless and until the employee physically returns to duty. If an employee is on leave without pay for a full calendar month, he or she will not accrue annual leave for that month. Separating employees do not earn leave after their last day physically at work performing their work duties.

### **Using Annual Leave**

An employee must obtain prior approval from his or her manager to use annual leave. Whenever possible an employee will be approved to take annual leave for the dates requested. However, leave requests may be denied when the absence will unduly disrupt business operation and/or for business necessity reasons. Annual leave cannot be used before it is accrued.



## **Holiday While on Annual Leave**

In computing annual leave time taken, time during which an employee is excused from work because of a holiday will not be charged against the employee's annual leave.

## **Separation from Employment and Exhaustion of Leave**

An employee who resigns, is dismissed, or is separated from state employment is entitled to be paid for accrued and unused annual leave unless:

- Employee has not had six (6) months of continuous employment with the state; and
- Individual has not been re-employed by a state agency to a position that accrues annual leave within a period of 30 calendar days from the date of separation from state employment.

An individual who is re-employed by a state agency to a position that accrues vacation time within a period of 30 calendar days from the date of separation from the state employment will have his or her previously accrued but unused annual leave restored.

With the approval of the public counsel, an employee voluntarily separating from OIEC may be allowed to extend the termination date by remaining on the payroll to exhaust applicable leave. Separating employees will not accrue any additional leave after their last physical day at work.

## **Direct Transfer to Another State Agency**

If an employee is transferring directly to or from another state agency without a break in service, unused annual leave cannot be paid. It must be transferred to the receiving agency.

## **Death of Employee**

The state shall pay to a deceased employee's estate the balance of all unused annual leave duly accrued provided the employee has had six months of continuous state service.

*References Tex. Gov't. Code § 661.152 et seq., § 661.062, § 661.033.*

## **Sick Leave**

### **Accrual**

An employee will earn sick leave beginning on the first day of employment with the state and terminating on the last day of duty. Credit for one month's accrual will be given for each month or fraction of a month of paid employment. Sick leave will be posted to each employee's leave record on the first day of employment and on the first working day of each month of employment thereafter.

An employee who is on leave the first day of the month may not use the sick leave that accrues for that month until after a return to duty. Sick leave cannot be used before it is accrued.

Sick leave accumulates with the unused amount of sick leave carried forward each month. There is no limit to the amount of sick leave an employee can accrue.



Full-time employees. Sick leave entitlement will be earned at the rate of eight (8) hours for each month or fraction of a month employment.

Part-time employees. Sick leave entitlement will be earned in proportion to the percent of time worked.

### **Use of Sick Leave**

An employee is eligible to use sick leave from the first day of employment with the state. Sick leave may be taken when sickness, injury or pregnancy and confinement prevent the employee's performance of duty or when the employee is needed to care for and assist a member of the employee's immediate family who is actually ill. *Tex. Gov't Code §661.202.*

### **Definition of "Immediate Family"**

For purposes relating to regular sick leave, immediate family is defined as those individuals who reside in the same household and are related by kinship, adoption or marriage, as well as foster children certified by a state agency. Minor children of the employee, whether or not living in the same household, will be considered immediate family for purposes of regular sick leave.

### **Definition of "Child"**

Child includes biological children, adoptive children and foster children.

### **Leave for family not residing with employee – Documentation required.**

An employee's use of sick leave for family members not residing in that employee's household is strictly limited to the time necessary to provide care and assistance to a spouse, child or parent of the employee who needs such care and assistance as a direct result of a documented medical condition. *Tex. Gov't Code §661.202(d), (e).*

### **Use of Sick Leave for Parent-Teacher Conferences**

An employee may use up to eight hours of sick leave each calendar year to attend parent-teacher conference sessions for the employee's children who are in pre-kindergarten through 12th grade. Employees must give reasonable notice of intention to use sick leave to attend such conferences.

### **Holiday While on Sick Leave**

In computing sick leave taken, time during which an employee is excused from work because of a holiday will not be charged against the employee's sick leave.

### **Doctor's Statement: Family and Medical Leave Act**

To be eligible to use sick leave for a period of more than three continuous working days, an employee must provide a doctor's certification or a written statement of facts showing the cause or nature of the illness or injury. The doctor's certification should specify if there are any medically necessary restrictions on the employee's duties. If the employee is unable to return to work, the doctor's certificate should specify the date when the employee will be able to return to work.

OIEC may charge any absence of more than three continuous work days due to a "serious health condition" as defined by the Family and Medical Leave Act (FMLA), against an employee's



FMLA entitlement. See the Family and Medical Leave policy in this section of the Employee Manual.

### **Approval of Sick Leave**

Upon return to duty after sick leave, the employee shall, without delay, submit a request for the use of sick leave to the appropriate approving authority for his or her consideration. *Tex. Gov't Code §661.202.*

When the use of sick leave is foreseeable, such as in the case of a scheduled doctor's visit or scheduled surgery, the employee must request prior approval. If the use of sick leave is not foreseeable, employees are required to notify their manager at least thirty (30) minutes prior to approved scheduled work time.

### **Abuse of Sick Leave**

OIEC recognizes that absence because of illness can be unavoidable but encourages employees to accumulate a reasonable sick leave balance for use in the event of a serious or long-term illness. If a pattern of leave abuse occurs, a doctor's statement may be required for each incident of sick leave taken. Abuse of leave privileges will constitute grounds for disciplinary action up to and including termination of employment.

### **When All Accrued Sick Leave Exhausted**

When an employee has used all accrued sick leave, the employee may request further absences be charged to earn Fair Labor Standards Act (FLSA) overtime, state compensatory time, annual leave, and/or holiday time.

When all leave balances have been exhausted, the employee may request:

- Paid leave from the catastrophic Sick Leave Pool,
- Unpaid Family and Medical Leave, or
- Leave without pay.

### **Transfer of Sick Leave**

An employee will transfer sick leave when he or she transfers from employment in one state agency to another provided that no break in service occurs.

### **Separation from Employment**

An employee who separates from employment will not be paid for remaining sick leave. Additionally, separating employees cannot use sick leave following their last physical day of work.

### **Restoration of Sick Leave**

Reduction in Force: An employee separated from employment with the state under a formal reduction in force will have his or her sick leave balance restored if re-employed by the state within 12 months of termination provided that there has been a break in service of at least one month since the termination date.



Separation for Other Reasons: An employee separated for other reasons will have his or her sick leave balance restored if:

- Re-employed by OIEC within 12 months of termination provided there has been a break in service of at least 30 calendar days since termination; or
- Re-employed by the state with an agency or institution other than OIEC within 12 months of termination.

Retirement: Retirees who return to state employment will not have their sick leave balances restored. There is no statutory provision that allows a retiring employee to store or bank accumulated annual or sick leave for use after retirement.

## **Retirement**

An employee who retires from state service based on service or disability will receive one month of service credit for each 160 hours or portion thereof of unused sick leave. *See* the Retirement Programs Policy in this section of the Employee Manual for additional information.

## **Death of Employee**

The estate of a deceased employee is entitled to payment for one half of accumulated sick leave or for 336 hours of sick leave, whichever is less, provided that the employee had continuous employment with the state for at least six months at the time of death.

## **Sick Leave Pool Introduction**

The Sick Leave Pool (the "Pool") has been established to benefit OIEC employees and their immediate family members who suffer a catastrophic illness or injury. The Pool is intended to alleviate a hardship caused to an employee and the employee's immediate family if a catastrophic illness or injury forces the employee to exhaust all leave earned by that employee and to lose compensation from OIEC. The program allows employees to voluntarily contribute sick leave time to the Pool.

*References 28 Texas Administrative Code § 276.4.*

## **Definitions**

A "catastrophic illness or injury" is defined by ERS 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 leave time earned by that employee and to lose compensation from the state for the employee."

"Immediate family" is defined as those individuals related by kinship, adoption, or marriage or foster children who are so certified by the Texas Department of Family and Protective Services and who are living in the same household or if not in the same household are totally dependent upon the employee for personal care or services on a continuing basis.



“Licensed practitioner” means a practitioner as defined in the Texas Insurance Code and who is practicing within the scope of his or her license.

The Sick Leave Pool Administrator is the deputy public counsel.

### **Eligibility**

All OIEC employees except the public counsel are eligible to request leave from the Pool if they meet the following criteria:

- Because of a catastrophic injury or illness the employee has exhausted all the leave time to which that employee is otherwise entitled; or
- Because of a catastrophic injury or illness of a member of the employee’s immediate family the employee has exhausted all the leave time to which that employee is otherwise entitled.
- Employee is not receiving workers’ compensation income benefits.
- Employee must have been employed with OIEC for at least 12 months.
- Employee has maintained a satisfactory job performance as documented in a current performance review and did not receive a rating of 2.0 or below.
- Maximum number of hours requested cannot exceed one-third of the total time in the Pool or 90 days (720 hours), whichever is less.

### **Requests**

Requests for leave from the Sick Leave Pool must be submitted on [Form ER-10, Catastrophic Sick/Extended Sick/Emergency Leave Request Form](#), in a confidential manner to the program specialist. All requests for Pool leave regardless of whether the illness or injury pertains to an employee or an eligible family member must be accompanied by:

- Statement from the licensed practitioner that gives the diagnosis, prognosis, treatment plan, and anticipated return-to-work date for the employee. (Additional medical documentation from the licensed practitioner is required if the employee continues to use and/or need Pool benefits past the stated return-to-work date.)
- FMLA forms as requested by the public counsel.

The employee and his or her manager will be informed in writing by the public counsel whether the request is approved or denied and the amount of time granted.

### **Conditions**

During an employee’s use of the Pool leave, the employee must keep his or her manager updated on the absence and any changes in leave status. The manager in turn must update the director regarding the employee’s status. Any Pool leave granted to an employee that is not used for the qualifying illness or injury will be forfeited by the employee and returned to the Pool.

An employee may be granted Pool leave for only one illness or injury in a 12-month period in order to assist as many OIEC employees as possible. The 12-month period begins at the time the Pool leave is granted. An employee may request and be granted additional time from the Pool within the 12-month period only if:



1. Request is for the same illness or injury.
2. Employee continues to meet the eligibility requirements.
3. Employee will not exceed the maximum amount of leave available per employee.

In the event an employee dies while using Sick Leave Pool benefits, his or her beneficiaries and/or estate are not entitled to payment for any unused Pool leave.

In the event an employee terminates employment while using Sick Leave Pool benefits, the employee will be paid for Pool leave only until the last day of OIEC employment (i.e., last day worked, last day of notice).

An employee continues to accrue annual and sick leave while on Pool leave unless the employee does not return to work; however, if an employee is on any type of paid leave that extends into subsequent months, any annual and sick leave accrued for those months will not be posted until the date of his or her return to work. A holiday that falls during the leave period is not counted as part of the Pool leave.

If an employee is using Pool leave on an intermittent basis, any accrued leave that is earned must be taken before Pool leave is used.

An employee is not required to have contributed to the Pool to be eligible to request leave from the Pool, and an employee who receives Pool leave is not required to pay back the leave.

### **Contributions**

- An employee who wants to donate sick leave to the Pool must complete [Form ER-09, Sick Leave Donation Form](#), and forward it to the program specialist.
- Contributions to the Sick Leave Pool are voluntary.
- An employee must make contributions in eight-hour increments.
- Employee contributions will not be accepted if, after the transfer of leave to the Pool, the employee's sick leave balance would be below 40 hours.
- A terminating employee may contribute his or her full sick leave balance.
- An employee contributing to the Pool may not designate who is to receive the contribution. This is to be distinguished from donating sick leave to another employee as discussed in the next section of this manual.
- Donations to the Pool cannot be retrieved once they have been made.

Employees are encouraged to contribute to the Pool each fiscal year, upon retirement, or upon separation from state employment. A retiring employee may designate the number of accrued sick leave hours to be used for retirement credit and the number of accrued sick leave hours to be donated on retirement to the Sick Leave Pool.

*References Tex. Gov't. Code § 661.001 et seq.*

### **Donating Sick Leave to Another OIEC Employee**

Employees may donate any portion of their accrued sick leave to another OIEC employee. To be eligible to receive the donated sick leave, the recipient of the sick leave must have exhausted their sick leave, including any time the individual may be eligible to withdraw from a sick leave pool.



The employee who donates the leave may not receive any remuneration or gift in exchange for the sick leave donation.

An employee who wants to donate sick leave to an OIEC employee must complete [Form ER-09, Sick Leave Donation Form](#), and forward it to the program specialist.

The recipient may use the donated sick leave in accordance with the existing rules for use of sick leave but may not receive service credit in ERS for the donated sick leave that remains unused on the last day of the employee's employment. No portion of the donated sick leave may be paid to a deceased employee's estate.

**References** Tex. Gov't. Code § 661.207.

## **Extended Sick Leave Policy**

Exceptions to the amount of sick leave an employee may take may be authorized by the public counsel. Exceptions will be authorized on an individual basis after a review of the merits of each particular case.

### **Eligibility**

To be eligible for extended sick leave an employee must have been employed by OIEC in a full-time regular position for two continuous years immediately prior to the time for which extended sick leave is requested. Temporary and hourly employees are not eligible for extended sick leave.

### **Exhaustion of Leave Balances**

All leave balances must be exhausted prior to using extended sick leave. An employee requesting extended sick leave must have used sick leave appropriately for a reasonable period of time prior to requesting extended sick leave.

### **Catastrophic Illness**

Extended sick leave may be granted if an employee has exhausted leave time due to a catastrophic illness of the employee. A catastrophic illness is a severe condition or combination of conditions affecting the mental or physical health of the employee that requires the services of a licensed practitioner for a prolonged period of time and that forces the employee to exhaust all leave time earned by that employee and to lose compensation from the state for the employee.

For example, a catastrophic illness may include but is not limited to the following: cancer, major depression, organ transplants, open heart surgery, heart attacks, strokes, some degenerative conditions, and any other life-threatening illnesses or injuries. Temporary disabilities and routine and/or elective surgeries with no complications are not considered by OIEC to be catastrophic illnesses. Extended sick leave may not be granted for the illness of an employee's family member.

### **Meeting Job Expectations**

To be eligible to use extended sick leave, an employee must be performing satisfactorily (meeting job expectations) as reflected in the employee's most recent performance review. If the employee



has not received a performance review in the 12-months preceding the request for extended sick leave, the employee's manager will be required to conduct a performance review before the request for extended sick leave will be considered.

### **Procedure for Requesting Extended Sick Leave**

Extended sick leave may be requested by completing the Catastrophic Sick/Extended Sick/Emergency Leave Request Form (ER-10) and attaching a written memorandum from the employee or the employee's manager. The memorandum must include:

1. Reason for the request.
2. Amount of other leave already used because of the illness or injury.
3. Amount of extended sick leave requested.
4. Statement from a health care provider justifying the need for extended sick leave.

All requests for extended sick leave must be approved by the public counsel.

An employee may not receive more than 168 hours of extended sick leave in a 12-month period.

*References Tex. Gov't. Code § 661.202(i)*

### **Family and Medical Leave Policy**

The Family Medical Leave Act ensures that employees are able to take extended leaves of absence from work for certain medical or family issues. In most instances, Family and Medical Leave runs concurrently with the employee's accrued leave. The leave can be paid or unpaid depending on the employee's available leave.

#### **Eligibility**

An employee who has been employed for at least 12 months by the state, and who has worked for at least 1,250 hours of service for the state in the 12 months prior to the leave, shall be entitled to up to 12 weeks of paid or unpaid leave for one or more of the following reasons:

1. Birth of a son or daughter and in order to care for such son or daughter.
2. Placement of a son or daughter with the employee for adoption or foster care.
3. Care for the employee's spouse, son, daughter, or parent, if the employee's spouse, son, daughter, or parent has a serious health condition.
4. Serious health condition that makes the employee unable to perform the functions of the employee's position.
5. Qualifying exigency arising out of 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. Examples of qualifying exigency include: short-term deployment, military events and related activities, childcare duties and school activities, financial and legal arrangements, counseling, and rest and recuperation,
6. Care for a covered service member with a serious injury or illness.



**References** 29 C.F.R. § 825.112(a).

### **Leave Used for FMLA**

An employee may use paid leave or unpaid leave during an FMLA absence.

Annual leave, sick leave, administrative leave, compensatory time, and holiday compensatory time can be counted towards an employee's 12- week FMLA entitlement.

**References** 29 C.F.R. § 827.207.

### **Expiration of Eligibility for Birth or Adoption**

An employee's entitlement to leave under one (1) or two (2) above shall expire at the end of the 12-month period beginning on the date of the birth or placement of the son or daughter.

**References** 29 C.F.R. § 825.201(b).

An employee may request to take FMLA leave intermittently or on a reduced-leave schedule for the birth, adoption, or foster-care placement of a child. Approval of the employee's manager and director is required.

### **Husband and Wife Eligibility**

A husband and wife who are eligible for family medical leave and are both employed by OIEC are eligible for a combined total of 12 weeks of such leave during any 12-month period as described above.

**References** 29 C.F.R. § 825.201(b) and 825.123(a)(3).

### **Eligibility Due to Illness/Injury Covered by Workers' Compensation**

An employee may be eligible for family medical leave while on leave as a result of an illness or injury covered by workers' compensation benefits. See the Workers' Compensation Section of this manual for information regarding leave related to workers' compensation.

**References** *Tex. Gov't. Code* § 661.912.

#### **"Serious Health Condition" Defined**

"Serious health condition" shall mean an illness, injury, impairment, or physical or mental condition that involves (A) inpatient care in a hospital, hospice, or residential medical care facility; or (B) continuing treatment by a health care provider as that term is defined in the "Family and Medical Leave" section of this manual.

**References** 29 C.F.R. § 825.113.

#### **"Son or Daughter" Defined**

"Son or daughter" means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in the position of a parent who is:



- Under 18 years of age.
- 18 years of age or older and incapable of self-care because of a mental or physical disability.

*References* 29 C.F.R. § 825.122.

### **Twelve-Month Calculation**

OIEC utilizes a rolling 12-month period to calculate eligibility for FMLA. Each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months.

*References* 29 C.F.R. § 825.200(b).

This method of calculation is applied to determine FMLA eligibility in all cases with the exception of military caregiver leave, in which case a qualifying employee is granted up to a total of 26 workweeks of unpaid leave during a "single 12-month period" to care for a service member.

*References* 29 C.F.R. § 825.200(f).

### **Notice of Leave**

The employee shall provide their manager and the program specialist with notice not less than 30-days before the family or medical leave under this section is to begin of the employee's intention to take such leave, except that if the date of treatment requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable.

*References* 29 C.F.R. §§ 823.302 and 823.303.

### **Use of Leave Time**

The employee shall use accrued sick leave and annual leave while taking family or medical leave or parental leave; however, an employee who is receiving temporary disability benefit payments or workers' compensation benefits is not required to use paid vacation or sick leave while on medical leave. The remaining period of the leave shall be without pay, unless the employee otherwise qualifies for and is granted sick leave from the sick leave pool or extended sick leave.

*References* *Tex. Gov't. Code* §§ 661.912(b), 661.913(b).

### **Designation of Leave and Medical Certification**

OIEC will designate an employee's leave as family and medical leave upon learning the reason for the leave. An employee's 12 weeks of leave will begin the first day that the employee takes leave under this "Family and Medical Leave" section of this manual. An employee may not receive more than 12 weeks of family and medical leave in a 12-month period even if multiple qualifying events occur.

*References* 29 C.F.R. § 825.301.



### **Intermittent Leave or Reduced-Leave Schedule**

When medically necessary, an employee may take medical leave intermittently or on a reduced leave schedule in order to care for the spouse or a son, daughter or parent with a serious health condition, or because of the employees' own serious health condition.

If an employee requests intermittent leave or leave on a reduced leave schedule and the leave is foreseeable based on planned medical treatment, the employee may be transferred temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits, and better accommodates recurring periods of leave than the regular employment position of the employee.

**References** 29 C.F.R. § 825.202.

### **"Reduced Leave Schedule" Defined**

"Reduced leave schedule" shall mean a leave schedule that reduces the usual number of hours per work week, or hours per workday, of an employee.

**References** 29 C.F.R. § 825.202.

### **Scheduling Treatment**

When an employee takes family or medical leave under this section, the employee shall make a reasonable effort to schedule the treatment so as not to unduly disrupt the operations of OIEC, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse or parent of the employee, as appropriate.

**References** 29 C.F.R. § 825.203.

### **Certification**

In the event of family medical leave for the birth of a child or a serious health condition of the employee or a covered family member, OIEC may require that a request for family or medical leave under this section be supported by a certification issued by the health care provider of the eligible employee or of the son, daughter, spouse, or parent of the employee, as appropriate. The employee shall provide, in a timely manner, a copy of such certification to the TDI benefits coordinator. The certification shall be in a form prescribed by OIEC in accordance with the Family and Medical Leave Act.

**References** 29 C.F.R. § 825.306.

In the event of family medical leave due to a qualifying exigency, OIEC may require the employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the covered military member's active duty service. This information is only required once unless the need arises for leave out of a different active duty or a call to active duty status of the same military member or another covered member.



**References 29 C.F.R. § 825.309.**

When leave is taken to care for a covered service member with a serious injury or illness, an employer may require an employee to obtain a certification completed by an authorized health care provider of the covered service member. For purposes of leave taken to care for a covered service member, any one of the following health care providers may complete such a certification: (1) A United States Department of Defense ("DOD") health care provider; (2) A United States Department of Veterans Affairs ("VA") health care provider; (3) A DOD TRICARE network authorized private health care provider; or (4) A DOD non-network TRICARE authorized private health care provider.

**References 29 C.F.R. § 825.310.**

See Military Leave Section for FMLA related to military service.

**"Health Care Provider" Defined**

"Health care provider" shall mean (1) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices; (2) podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct sublimation as demonstrated by X-ray to exist) authorized to practice in the state in which they practice and performing within the scope of their practice as defined under state law; (3) nurse practitioners and nurse-midwives who are authorized to practice under state law of the state in which they practice and who are performing within the scope of their practice as defined under state law; (4) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; (5) any health care provider in the State of Texas Group Benefit Plan; and (6) a health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

**References 29 C.F.R. § 825.125.**

**Status Reports**

Employees on FMLA leave are expected to supply periodic status reports to TDI benefit coordinator and the employee's manager. Refer to the "Return to Work" section of the OIEC Employee Manual for more information.

**Group Insurance**

During a period of FMLA leave, an employee will be entitled to continuing coverage under the group health insurance plan. In all instances while an employee is on FMLA leave, the State of Texas will continue to pay its normal contribution to the health insurance premium.

Employee-paid portions of group insurance premiums are deducted from the employee's pay (if net pay is sufficient to cover costs) for an employee on unpaid FMLA leave for a portion of the month. If a payroll deduction cannot be made because the employee's net pay is not sufficient or because the employee is on unpaid leave for a full calendar month, the employee must submit



payment for his or her portion of the insurance premium. In this event, the employee will receive instructions from the TDI benefits coordinator.

Failure of an employee to submit monthly insurance premiums when due may result in cancellation of all group insurance coverage except for employee-only health coverage. However, under the FMLA, an employee can restore insurance upon return to duty without any preexisting conditions or evidence of insurability requirements.

### **Job Restoration**

An employee eligible for FMLA leave will be restored to his or her position or to a position with equivalent pay, benefits, and other terms and conditions of employment.

OIEC cannot guarantee that an employee will be returned to his or her former position. A determination as to whether a position is an "equivalent position" will be made by OIEC.

If the employee is unable to perform the essential functions of his or her position because of a physical or mental condition, including the continuation of a serious health condition, OIEC's obligations will be governed by the Americans with Disabilities Act Amendments Act.

### **Return from FMLA Leave**

If an employee wants to return to work prior to the expiration of an FMLA leave period granted, notification should be given to the employee's manager at least two working days prior to the employee's planned return, if practical.

In cases of medical leave taken for the employee's own serious health condition, the employee must obtain certification from the health care provider that he or she is able to resume work. An employee will not be permitted to return to work until a release from the attending physician is submitted to the employee's manager and the program specialist.

### **Failure to Return from Leave**

A manager, after coordination with the general counsel, may consider the failure of an employee to return to work upon the expiration of an FMLA leave as a resignation unless an extension is agreed upon and approved in writing by agency management.

If the employee fails to return to work after the expiration of the FMLA leave, the employee will be required to reimburse the State of Texas for the state-paid portion of the health insurance premium unless the reason the employee fails to return is the presence of a serious health condition that prevents the employee from performing his or her job or to circumstances beyond the employee's control.

***References*** *Family and Medical Leave Act of 1993; Tex. Gov't. Code § 661.912 Military Family and Medical Leave.*



## Eligibility

Under the FMLA, eligible employees are entitled to up to 12 weeks of leave because of "any qualifying exigency" arising out of an employee's spouse, son, daughter, or parent on active duty or notification of an impending call to an active-duty status in support of a contingency operation.

In addition, an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member recovering from a serious injury sustained in the line of duty while on active duty is entitled to up to 26 weeks of leave in a single 12-month period to care for the service member.

*References National Defense Authorization Act for Fiscal Year 2008 (NDAA), Public Law 110-181, section 585(a).*

## Differential Pay

The public counsel shall grant sufficient emergency leave as differential pay to a state employee on unpaid military leave if the employee's military pay is less than the employee's state gross pay. The combination of emergency leave and military pay may not exceed the employee's actual state gross pay.

Military pay does not include money the employee receives for service in a combat zone, as hardship pay, or for being separated from the employee's family.

*References TEX. GOV'T CODE §661.9041.*

## Parental Leave of Absence

### Eligibility

A state employee is eligible for a Parental Leave of Absence when the employee:

- Has been employed for fewer than 12 months by the state, or
- Has worked fewer than 1,250 hours during the 12-month period preceding the beginning of leave, and
- Is not eligible for leave under the FMLA policy.

### Use of Leave

Parental Leave of Absence is limited to and begins on the date of:

- Birth of a natural child of the employee, or
- Adoption by or foster-care placement with the employee of a child younger than three years of age.

A Parental Leave of Absence will not exceed 12 weeks. While on a Parental Leave of Absence, employees must use all available and applicable annual and sick leave. The remainder of the Parental Leave is unpaid.



After all paid leave is exhausted, the employee is responsible for paying both the state and employee-paid portions of the health insurance coverage while on leave without pay.

Contact the program specialist for additional information.

**References** *Tex. Gov't. Code § 661.913.*

## **Miscellaneous Leave**

### **Introduction**

Employees will be granted leave for the reasons listed herein. For scheduling purposes, an employee should notify his or her manager at the earliest possible opportunity when taking any of these types of leaves. Prior notification will assist managers in coordinating leave within the program.

### **Emergency Leave: Qualified Purposes**

1. **Death in the Employee's Family.** With the public counsel's approval, an employee shall be granted up to three (3) days of leave in the event of a death in the employee's family.
2. **Funeral of a Coworker.** With the public counsel's approval, an employee shall be granted up to four hours (4) of leave to attend the funeral of a coworker.
3. **Natural Disasters.** The public counsel may grant paid leave for natural disasters, such as hurricanes and tornadoes.
4. **Emergency Closures.** The public counsel may grant paid leave for emergency closures of field offices or facilities.
  - a. If the agency is declared officially closed by the public counsel, all non-essential employees will be granted emergency leave for the hours they were scheduled to work during the declared closure.
  - b. Closures of individual field offices may result in the grant of emergency leave which will be determined by the public counsel.
  - c. An employee who is on accrued leave during an emergency closure shall have the accrued leave changed to emergency leave.
5. **Other Emergency Leave.** An employee shall be granted up to three (3) days leave with the public counsel's approval under the following circumstances:
  - a. Leave shall be granted to an employee when the employee is needed to care for and assist a person other than a member of the employee's family, as defined in this policy, who is a resident of the employee's household and who is sick or has a documented medical condition. If the situation is covered under the Family and Medical Leave Act (FMLA), the employee should contact the program specialist. The FMLA will run concurrently with the emergency leave, as applicable.
  - b. Leave shall be granted to an employee because of the death of a person other than a member of the employee's family, as defined in this policy, who is a resident of the employee's household.



c. Leave shall be granted to an employee for the purpose of arranging and providing alternative child care for a child who is not a member of the employee’s family as defined in this policy but who resides with the employee and for whom the employee has been properly designated as an emergency contact at a licensed child care facility or a public or private school.

d. Leave shall be granted to an employee in order to assist any person who is not a member of the employee’s family as defined in this policy but is a resident of the employee’s household in arranging for and receiving health care services, including but not limited to mental health care services.

e. Leave shall be granted under exigent circumstances to an employee who holds power of attorney, including but not limited to power of attorney for health care, on behalf of any resident of the employee’s household who is not a member of the employee’s family as defined in this policy for the purpose of fulfilling any duties created by the power of attorney designation.

### Emergency Leave for Death

Emergency leave will be granted to an employee because of a death in the employee's family. The death of the family members listed in the following chart shall constitute adequate need for emergency leave. TEX. GOV'T CODE §661.902(a). An employee will be allowed emergency leave for the death of a family member in accordance with the following:

<b>MAXIMUM HOURS</b>	<b>RELATIONSHIP TO EMPLOYEE</b>
24 hours (with an additional 16 hours for travel in excess of 300 miles each way from an employee's workstation)	Employee's spouse, parent, child, brother, sister, grandparent, grandchild, daughter-in-law, son-in-law, sister-in-law, brother-in-law, foster parent, foster child, step-child, step-brother, step-sister, step-parent, step-grandparent, step-grandchild; employee's spouse's parent, child, brother, sister, grandparent, grandchild, foster parent, foster child, step-child, step-sister, step-brother, step-parent, step-grandparent, step-grandchild.
8 hours (with an additional 16 hours for travel in excess of 300 miles each way from an employee's workstation)	Employee's or the employee's spouse's great-grandparent, aunt, uncle, niece, nephew, cousin, great-aunt, great-uncle, great-niece, great-nephew.
4 hours	Current OIEC or DWC employee or a current fellow employee’s immediate family member. For this purpose immediate family member is defined as parent, child, spouse, or sibling.
4 hours	Former OIEC employee.

Part-time, temporary, and hourly employees will be allowed emergency leave on a proportional basis.



All requests for emergency leave must be filed on the [Form ER-10, Catastrophic Sick/Extended Sick/Emergency Leave Request Form](#), and require manager, director and public counsel approval. Note: A copy of the obituary or the funeral program must be attached to the ER-10 when emergency time is requested in relation to a death.

### **Emergency Leave for Other Reasons**

Emergency leave may be granted for other reasons as determined by the public counsel. Emergency leave may be granted for good cause.

### **Administrative Leave for Outstanding Performance**

Administrative leave may be granted as a reward for outstanding performance as documented by a current performance review. The total amount of leave granted may not exceed 32 hours per employee during a fiscal year. Requests for Administrative Leave for Outstanding Performance should be submitted on [Form ER-04](#) to the program specialist. The public counsel is the approval authority for administrative leave for outstanding performance.

### **Voting**

OIEC will allow each employee sufficient time off on Election Day, without deduction in salary or accrued leave, to vote in each national, state, or local election. Time off to vote must be coordinated with the employee's manager, and all sections must be staffed sufficiently throughout the day to conduct public business. Employees must report time used for voting as emergency leave on their monthly time report.

*References Tex. Gov't Code § 661.914.*

### **Jury Duty**

An employee will be excused from work with pay to perform jury duty. Employees must submit documentation of jury duty service to their manager. Any fee or compensation for jury service need not be accounted for by the employee to the state.

### **Witness Duty**

Employees appearing as witnesses may accept witness fees only as authorized by the Appropriations Act:

- Any state official or employee summoned to appear in his or her official capacity in any judicial action or legislative investigation may neither accept nor receive any witness fees for such a governmental appearance.
- This prohibition against accepting compensation will not extend to any mileage or per diem allowance tendered to the state employee or official for expenses incurred while serving as a witness unless the employee has also made a claim for such expenses against the state. In no instance should there be double reimbursement for expenses.
- If a state employee is summoned to appear not in an official capacity but to testify from personal knowledge concerning matters related to the inquiry (e.g. expert witness), then the employee will be entitled to any customary witness fees. The employee must use



annual leave, state compensatory time, overtime leave, or leave without pay to comply with the subpoena.

- Any state employee or official appearing as a witness on his or her own accord will be entitled to accept compensation for his or her appearance. The employee must use his or her accrued leave to appear.

If an employee is served a subpoena to appear as a witness in an action that is work related, the employee must immediately provide a copy of the subpoena to his or her manager. The manager must immediately forward the subpoena to the public counsel. The employee may be authorized to appear as a witness on state time. The public counsel will determine the appropriate type of leave to be taken.

### **Military Leave**

Employees are eligible for three types of leave for military service:

- Authorized training or duty for members of the state military forces and members of any of the reserve components of the U.S. Armed Forces.
- Call to National Guard active duty by the Governor.
- National emergency active duty for a member of a reserve branch of the U.S. Armed Forces.

### **Authorized Training or Duty**

An employee who is a member of an active military reserve unit is entitled to a leave of absence for authorized training or other duty not to exceed 15 working days in any federal fiscal year (October through September) without loss of pay or benefits. The 15 working days need not be consecutive. These days are to be "working" days, not "calendar" days. In addition, if the employee does not use the 15 days of military leave in a federal fiscal year, the employee is entitled to carry the balance forward to the next federal fiscal year, not to exceed 45 work days. Days taken beyond the paid leave of absence will be handled using annual leave, compensatory time, or leave without pay. The employee may choose but is not required to use all or some portion of another form of paid leave before he or she chooses to go on leave without pay.

### **Call to National Guard Active Duty by Governor**

A state employee who is a member of the National Guard called to active duty by the Governor of Texas because of a state emergency will be granted emergency leave without the loss of military or annual leave. Such leave will be provided with full pay in accordance with state law. Employees should notify their manager of the need for this leave as soon as possible.

### **Call to National Emergency Duty**

An employee called to active duty during a national emergency to serve in a reserve component of the armed forces of the United States under Title 10 or 32, United States Code, is entitled to an unpaid leave of absence.



Employees continue to accrue state service credit for purposes of longevity pay while on military duty. In addition, employees called to active duty during a national emergency accrue vacation and sick leave whether the absence is paid or unpaid.

**References** *Tex. Gov't. Code § 661.904.*

Employees called to active duty may retain any accrued vacation or sick leave and are entitled to be credited with their leave balances on return to state employment from military duty.

Employees may use any accrued vacation leave, earned compensatory leave, or overtime leave in whole or in part, to maintain benefits for the employee or the employee's dependents while the employee is on military duty.

Before a state employee leaves for military service, a TDI benefit coordinator will review issues relating to maintaining state health insurance coverage during the employee's military duty, including what the employee needs to do to maintain state health insurance coverage, how health insurance coverage is affected by paid or unpaid leave, and how to pay any premium required for the insurance coverage.

Employees activated for military service 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, including state compensatory leave, overtime leave, annual leave, military leave, or approved agency differential pay, to qualify for the state pay.

**References** *Tex. Gov't. Code § 661.904.*

Employees continue to accrue state service credit for purposes of longevity pay while on military duty. In addition, employees called to active duty during a national emergency accrue vacation and sick leave whether the absence is paid or unpaid.

**References** *Tex. Gov't. Code § 661.904.*

### **Volunteer Firefighters and Emergency Medical Services Volunteer Leave**

Employees who are volunteer firefighters or emergency medical services volunteers will be granted a leave of absence with pay to attend fire service or emergency medical services training conducted by a state agency or institution of higher education. The leave may not exceed five working days per fiscal year. An employee who is a volunteer firefighter or an emergency medical services volunteer will also be granted leave with full pay for the purpose of responding to emergency fire or medical situations. The employee should report the time used for this purpose on his or her monthly time report. Employees should notify their manager of the need for this leave as soon as possible.

### **Disaster Service Volunteer**

Any employee who is a certified disaster service volunteer of the American Red Cross or who is training to become such a volunteer may be granted leave of up to 10 days each year to participate in specialized disaster relief services for the American Red Cross. The leave must be authorized



by the public counsel and will be granted upon request of the American Red Cross and with approval of the Governor's Office without loss of pay, annual leave, sick leave, FLSA overtime, and/or state compensatory time.

### **Assistance Dog Training for Employees with a Disability**

A state employee with a disability, as defined by Section 121.002 of the Human Resources Code, is entitled to a leave of absence without a deduction in salary for the purpose of attending a training program to acquaint the employee with an assistance dog to be used by that employee. The leave may not exceed 10 days per fiscal year. Employees should notify their manager of the need for this leave as soon as possible.

### **Foster Parent Training Leave and Court-Appointed Special Advocate (CASA) Volunteers**

An employee who is a foster parent to a child in the conservatorship of the Texas Department of Family and Protective Services (DFPS) is authorized paid time off to attend staff meetings held by DFPS regarding the child or to attend the Admission, Review and Dismissal (ARD) meeting held by a school district when it involves a foster child placed with the employee.

An employee may be provided up to five (5) hours of paid leave per month to participate in training or to perform volunteer services as a Court-Appointed Special Advocate.

### **Organ or Bone Marrow Donor Leave**

OIEC will allow employees five (5) working days per fiscal year to serve as a bone marrow donor or 30 days per fiscal year to serve as an organ donor.

*References Tex. Gov't. Code § 661.916*

### **Blood Donation Leave**

OIEC will allow employees sufficient time off to donate blood without a deduction in salary or accrued leave provided the employee obtains prior manager approval. An employee is entitled to time off four times in a fiscal year.

*References Tex. Gov't. Code § 661.917*

### **Inclement Weather**

In the event of inclement weather conditions, OIEC or TDI may provide information at the following telephone number: 512-804-4239 (804-ICEY) for Austin weather conditions, or 512-804-4157 for field office locations, or with local media.

*References TEX. GOVT. CODE § 661.901 et seq.*

### **Leave Without Pay Policy**

An absence resulting in leave without pay (LWOP) will be considered an unexcused absence unless the employee obtained prior approval of his or her director. Failure to obtain prior approval may subject the employee to disciplinary action up to and including termination of employment.



Use of leave without pay is strongly discouraged and should be reserved for exceptional circumstances. A pattern of consistent or unauthorized leave without pay will result in disciplinary action up to and including termination of employment. (*See also* the OIEC Unauthorized Absence Policy in Section V of this Employee Manual.)

OIEC will not grant leave without pay for longer than 12 calendar months except when prior approval is given by the Public Counsel for leave without pay due to interagency agreements, educational purposes, or military service. This 12-month limitation includes leave resulting from workers' compensation injuries.

### **Requests for Leave without Pay**

An employee requesting approval for leave without pay must forward the request in writing through his or her manager to the director. The director will consult with the public counsel before making a decision on the request. If LWOP is approved, the director will advise the program specialist regarding the reason for requesting the leave and the exact date the employee expects to return to work

### **Exhaustion of Paid Leave**

Except as noted below, an employee granted leave without pay status must exhaust all accrued leave, state compensatory time, and holiday time prior to entering leave without pay status.

Vacation leave and sick leave, if appropriate, must be exhausted prior to entering leave without pay except in cases of disciplinary suspension, leave covered by workers' compensation benefits, or active military duty situations.

If leave without pay is illness related the employee must also exhaust all accrued sick leave. Any exceptions to this rule are included in the Family and Medical Leave Policy in this section of the Employee Manual.

### **No Accrual of Benefits**

Any full calendar month in which an employee is on leave without pay will not be counted when calculating state service credit, longevity pay, or vacation leave entitlements (except in the case of an employee returning to state employment from military leave without pay). No employee will accrue vacation or sick leave for that month.

An employee will not be paid for a holiday if he or she is in an unpaid leave status for the entire work day:

- Before and after the holiday if the holiday falls mid-month
- After the holiday if the holiday falls on the first work day of the month
- Before the holiday if the holiday falls the last work day of the month

If the employee is in unpaid leave status on the first working day of the month, accruals for annual and sick leave will not be posted to the employee's leave balances. Applicable annual and sick leave accruals will be posted when the employee physically returns to work. The newly posted



accruals may not be used retroactively but may be used for a future absence in accordance with agency leave policies.

### **Manager Responsibilities**

- review employee's leave balances
- encourage employees to maintain sufficient leave balances
- notify the program specialist immediately upon determining that leave balances have been exhausted
- The program specialist will notify the director and the public counsel of any employee in unpaid leave status

A manager's failure to report any instance of leave without pay, either approved or unauthorized, may result in disciplinary action.

### **Employee Responsibilities**

- monitor leave balances
- contact the program specialist to make payment arrangements of health insurance premiums in the event that leave without pay causes pay to be insufficient for the deduction of health insurance premiums

### **Payroll Information**

Any leave without pay incurred after the regular payroll has closed (the date varies) will cause the employee's paycheck to be canceled and reissued on a supplemental payroll, which will cause a delay in receiving the check. For more information regarding payroll, *See* the Wage and Salary Administration Policy in Section IV of this Manual.

An employee's direct deposit authorization will be stopped upon the first occurrence of leave without pay. Employees who incur leave without pay will have their paychecks processed on a supplemental payroll for the two months following the leave without pay occurrence to ensure no overpayments are made.

If an employee receives a paycheck for more pay than he or she is entitled to due to unreported leave without pay or an unexcused absence, the employee is responsible for reimbursement of the funds. It is the responsibility of the employee to bring an overpayment to the attention of the program specialist.

***References*** *Tex. Gov't. Code § 661.909.*