

# Texas State Board of Pharmacy Leave Policy

## Attendance

### Time Sheet

Regular and punctual attendance is an essential function of each employee's position at TSBP. All employees shall maintain a monthly time sheet. Actual time worked, holiday/paid absence taken, totaled hours, and overtime or compensatory time earned must be appropriately filled in. Applicable authorization for leave or overtime/compensation time earned must be documented by the Team Leader. Time exception entries (sick, annual, etc.) must be recorded by the employee in the Centralized Accounting and Payroll Personnel System (CAPPS) by Monday for the previous work week. Time certifications for the preceding month are due on the first day of the following month and no later than the 10th day of the month. For example, time certifications for the month of January are due on February 1st.

### Attendance Required

To the extent possible, appointments and other outside-of-work commitments should be scheduled so they do not conflict with important work events (deadlines, presentations, meetings, etc.). If you need to miss work, an employee should give as much notice of an absence as possible and should request leave as soon as a future absence is planned. Last-minute notice of long-planned absences may result in the absence being unexcused. Failure to maintain acceptable attendance at work could result in disciplinary action, up to and including immediate termination from employment. Each situation of absenteeism is evaluated on a case-by-case basis. See Chapter 5: "Abuse of Time" for additional information.

### Prior Approval for Non-Sick Leave

TSBP policy requires employees to obtain prior approval to use annual leave, overtime and comp time, as such leave is granted at the convenience of the agency.

### Prior Approval for Sick Leave

When the use of sick leave is foreseeable, such as in the case of a scheduled doctor or dental visit or scheduled surgery, the employee must request prior approval. See Chapter 8: "Sick Leave" for additional information.

### Voluntary Resignation

An employee is considered to have voluntarily resigned if he/she fails to report to work without notification for three or more days.

## Annual Leave

### Introduction

All employees of the TSBP are required to be in attendance at work to perform job functions unless:

1. leave is approved in advance; or
2. absence is for a medical reason in compliance with TSBP policy and relevant state and federal law.

**Annual Leave Accrual**

Employees accrue annual leave from the first day of employment through the last day of attendance at work, unless the employee is on leave without pay for the full calendar month.

**Carry Forward Set By Legislature**

The amount of time an employee accrues on the first day of each month and the amount that can be carried forward into the next fiscal year is set by the State Legislature.

**Annual Leave Accrual Rate**

The following schedule shows the rate of annual leave accrual for various lengths of state employment and the maximum number of hours an employee may carry forward each fiscal year. The schedule is based on full time employment.

Schedule of Vacation Leave Accruals for Full-Time Employees		
Length of Service	Hours Accrued Per Month	Allowable Carryover (hours) from One Fiscal Year to the Next
Less than 2 years	8	180
At least 2, but less than 5	9	244
At least 5, but less than 10	10	268
At least 10, but less than 15	11	292
At least 15, but less than 20	13	340
At least 20, but less than 25	15	388
At least 25, but less than 30	17	436
At least 30, but less than 35	19	484
At least 35	21	532

Annual leave accruals for return-to-work retirees are based on retirement and rehire dates. See the Texas Human Resources Management Statutes Inventory for additional information. Return-to-work retirees are not required to re-establish the six-month continuous service requirement in order to take annual leave with pay.

**Annual Leave Accrual for Part-Time Employees**

A part-time employee accrues annual leave at a rate proportionate with a regular full-time employee. The amount carried forward into the next fiscal year is also proportionate with that of a regular full-time employee.

### Excess Annual Leave Converted to Sick Leave

Excess annual leave beyond the amount that can be carried forward is credited to an employee's accrued sick leave balance effective the first day of the next fiscal year.

### Holidays Not Charged

Any state holiday that falls within a time period when an employee is on annual leave should not be charged against accrued annual leave.

Note: An employee who is on a leave without pay status will not be paid for a state holiday that falls within that period.

### Transfer of Months of Service Time

An employee who transfers from one state agency to another without a break in employment should contact Human Resources and request that a verification of the total months of service and/or that unused annual leave be transferred to the receiving agency.

The receiving agency sets the annual leave accrual rate according to the verified total months of service. If the transfer is effective on the first day of the month, the receiving agency will credit the annual leave accrual for that month.

### Termination

When an employee completes six months or more of continuous employment, then terminates employment with the TSBP, any unused annual leave will be paid, provided that the employee is not employed by another state agency within 30 days of the date of separation.

In the discretion of the Executive Director, the employee may be paid a lump sum payment for accrued annual leave, or the employee may remain on the payroll to exhaust accrued annual leave.

### Service Credit for Unused Annual Leave

An employee who retires directly from state employment is eligible to receive one month of creditable service for each 160-hour increment of accrued annual leave remaining at the end of employment

### Estate

The estate of a deceased employee is entitled to payment for all accrued, unused annual leave.

## Annual Leave - New Hire

### Introduction

A new hire is eligible to take annual leave after meeting the following requirements.

### No Previous State Employment

A new hire with no previous state employment may take annual leave after completing six months of uninterrupted employment with the TSBP.

### Previous State Employment with No Break in Service

A new hire with previous state employment who has no break in service and who has completed six months or more of continuous state employment may take annual leave upon the first day of employment, if an annual leave balance has been transferred from the other state agency.

### Previous State Employment with a Break in Service

An employee with previous state employment who has a break in service and who has completed six months or more of continuous state employment may take annual leave as it is accrued upon re-employment.

### Credit Accrued During Six Month Period

Annual leave may not be granted until the employee has had continuous employment with the state for six months, although credit is accrued during that period. The six-month continuous state employment requirement must be met only once during an employee's career with the state.

### Sick Leave

#### Eligibility

State employees are entitled to sick leave subject to the following provisions:

- Sick leave may be used when an employee is prevented from performing his or her job due to sickness, injury, pregnancy, or confinement. It may also be used to care for an immediate family member who is ill. "Immediate family" is defined as individuals related by kinship, adoption, or marriage that live in the same household; foster children who reside in the same household; and minor children regardless of whether they live in the same household. Sick leave may be used to care for immediate family members who do not reside in the same household only because of a documented medical condition. In this instance only, "immediate family" is interpreted as spouse, parent, or child.
- While out on vacation leave, an employee may instead use sick leave, provided the employee would otherwise be eligible for sick leave.
- An employee who is the legal guardian of a child by court appointment may use sick leave to care for the child.
- Sick leave may be used for the adoption of a child under the age of three.

### Family Medical Leave Act

The Family and Medical Leave Act (FMLA) allows eligible employees of a covered employer to take job-protected leave for up to a total of 12 work weeks in any 12-month period for the birth, adoption, or foster care of a child, or because the employee or a spouse, parent, or child of the employee has a serious health condition." Refer to Chapter 08: Leave Benefits, Section FMLA for specific policies regarding Requests for Leave under the FMLA.

### Employee Responsibility

When the use of sick leave is foreseeable, such as in the case of a scheduled doctor or dental visit or scheduled surgery, the employee must request prior approval.

When the need for leave is unforeseeable, employees are required to provide timely notice as directed by the Team Leader on each day of the absence. Timely notice is defined as within one hour of the employee's designated work time, or in cases of emergency, as soon as practicable under the facts and circumstances of the particular case.

An employee may have another individual call the employee's supervisor only if the employee is absolutely unable to do so personally.

The TSBP may, as needed, require medical documentation for absence due to illness.

Sick leave taken in excess of three consecutive workdays must be explained in writing. If an employee is absent for three consecutive workdays without notifying his or her Team Leader the employee may be dismissed for job abandonment.

#### Sick Leave Accrual

An employee accrues sick leave from the first day of employment through the last day of duty, i.e., the last day the employee actually worked.

A full-time employee accrues eight hours of sick leave on the first day of each month (proportionately for part-time employees). There is no limitation on the amount of sick leave to be carried forward into the next fiscal year.

If an employee is on leave without pay status on the first day of the month, the employee will not receive the sick leave accrual for that month. If the employee returns to work within the same month, the sick leave accrual will be credited at that time.

Employees employed by multiple agencies cannot accrue sick leave at a rate that exceeds that of a full-time, 40-hour-per-week employee.

#### Transfer of Sick Leave

When an employee transfers from one state agency to another without a break in service, the employee should contact Human Resources and request that the unused sick leave be transferred to the receiving agency. Once the transfer is effective, the receiving agency will credit the sick leave accrual.

#### Termination

Once an employee terminates employment with the state, the employee is not entitled to payment for any sick leave accrual.

#### Sick Leave Restored

Employees who separate from state employment as a result of 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 separated for reasons other than a formal reduction in force and re-employed by the same state agency may have their sick leave balances restored only if:

- The employee is re-employed by the same state agency or institution of higher education within 12 months after the end of the month in which the employee separates from state employment, but only if there has been a break in employment with the State of at least 30 calendar days; or
- The employee is re-employed by a different state agency or institution of higher education within 12 months after the end of the month in which the employee separates from state employment.

An employee who is restored to state employment following military service is entitled to have his or her sick leave balance restored.

Retirees who return to state employment will not have their sick balances restored.

### Retirement Benefit

An employee who retires directly from state employment is eligible to receive additional benefits as a result of the unused accumulated sick leave remaining to his or her credit at the end of employment. One month of creditable service shall be given for each 160-hour increment of unused sick leave.

### Estate

A deceased employee's estate is entitled to payment for one-half the accumulated sick leave or 336 hours, whichever is less, provided the employee had six months of continuous service at the time of death.

### Sick Leave Pool

#### Introduction

In accordance with Texas Government Code, Section 661. LEAVE, Subchapter A. STATE EMPLOYEE SICK LEAVE POOL, the TSBP has established a program to allow an employee to voluntarily transfer sick leave time earned to a *SICK LEAVE POOL*. This pool is intended to benefit the TSBP employee or an employee's immediate family (as previously defined under Chapter 07) who suffers a catastrophic injury or illness. The employee who would not otherwise have enough leave time to cover the absence from work is able to draw time from the pool and therefore, not be required to go on leave without pay.

#### Contribution to Sick Leave Pool

To contribute time to the sick leave pool, an employee must submit an application to the pool administrator. The pool administrator is defined as the Human Resources Supervisor. An employee may transfer to the pool one or more days of accrued sick leave time. There is no maximum limit to the amount an employee may contribute. A retiring employee may designate the number of accrued sick leave hours, in increments of 20 days, or 160 hours for one month of service credit, to be used for retirement credit and the number of hours to be donated on retirement to the sick leave pool.

#### Eligibility for Use

1. An employee is eligible to use time contributed to the sick leave pool of the TSBP if the employee, or the employee's immediate family, has a catastrophic illness or injury and has exhausted his or her leave because of such catastrophic illness or injury.
2. An employee may also withdraw previously donated time to the sick leave pool (within the current biennium) if the employee has exhausted all of the employee's leave. The employee, in this case, would not have to suffer catastrophic illness or injury in order to have his or her time returned.

#### Catastrophic Injury or Illness

The definition of catastrophic injury or illness is:

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. Licensed practitioner means a practitioner, as defined in the Texas Insurance Code, who is practicing within the scope of his or her license. Immediate family is defined as those individuals related by kinship, adoption, marriage, or foster children who are so certified by the Texas Department of Protective and Regulatory Services 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.

Generally, an injury or illness has to be considered by a physician or a licensed practitioner to be “catastrophic.” Examples of physical health conditions that may be considered catastrophic are cancer, brain tumors, heart attacks, strokes, acquired immune deficiency syndrome, or cerebral aneurysms. Examples of mental health conditions that may be considered catastrophic are major depression, bipolar disorder, schizophrenia, or other psychotic disorders.

Examples of conditions not usually covered unless accompanied by a catastrophic condition or a complication include gynecological problems and conditions, hysterectomies, most surgeries, carpal tunnel syndrome, allergies, bronchitis, most broken bones and orthopedic surgeries, angina, pregnancy and childbirth, and post-partum recovery. However, if complications arise from any of these conditions and a practitioner prohibits an employee from work activities for a period of at least 3 continuous weeks, these conditions may be considered catastrophic after the 3-week period ends.

### Requests

Requests for sick leave pool benefits may be initiated by the employee or Team Leader by submitting a completed *Sick Leave Pool Request*, which can be obtained from Human Resources. The request must include a physician's statement or a *Certification of Physician or Practitioner Form (FMLA)* that describes the illness or injury.

Requests are forwarded to the Sick Leave Pool Administrator. The request will be reviewed by a committee consisting of the following members: Executive Director, General Counsel and Human Resources. The Committee will take into consideration the recommendation of the Team Leader in determining whether to approve or deny the request. Sick leave pool requests are considered on a first-come, first-served basis. The Committee, in consultation with the pool administrator, determines the amount of time that an employee may withdraw from the pool.

If the Committee determines that the employee is eligible and the request is approved, the pool administrator (1) approves the transfer of time from the pool to the employee, and (2) credits the time to the employee. The cumulative amount awarded to an employee cannot exceed one-third of the balance of hours in the pool, or 90 days, whichever is less.

### Second Medical Opinion

When applying for sick leave pool, a second medical opinion may be required at the discretion of the TSBP. The employee is responsible for any charges incurred for a second medical opinion. Approval will be dependent upon the receipt of the second opinion and a determination that the medical opinions support the request.

### Retirement

Retiring employees cannot receive credit for any sick leave hours previously donated to the sick leave pool in order to receive retirement service credit.

## Extended Sick Leave

### Introduction

When all leave balances are exhausted, extended sick leave allows a qualifying employee with a catastrophic illness or injury to remain on paid leave.

### Eligibility

To be eligible for extended sick leave, an employee must:

1. first use the sick leave pool, if eligible;
2. be continuously employed by the TSBP in a classified position for 1 year;
3. have used sick leave in the past in a responsible manner. Sick leave consistently depleted as it is accrued, or failure to maintain sick leave balances without good cause, or a pattern of being sick on Mondays, Fridays, or days immediately before or after a holiday may be evidence of unacceptable use of sick leave;
4. currently be performing job duties at a satisfactory level according to the Team Leader, and as reflected in the employee's performance evaluations on file; and
5. indicate intention to return to work.

Extended Sick Leave shall not be granted for the following reasons:

1. Family member's illness;
2. Absence of an employee not planning to return to work;
3. An illness that does not keep the employee away from work for more than five workdays; or
4. As a substitute or supplement to workers' compensation benefits.

### Exhaustion of Leave Balances

All leave balances must be exhausted prior to using extended sick leave.

### Catastrophic Illness or Injury

The definition of catastrophic injury or illness is defined in Chapter 8: Sick Leave Pool.

### Second Medical Opinion

When applying for extended sick leave, a second medical opinion may be required at the discretion of the TSBP. The employee is responsible for any charges incurred for a second medical opinion. Approval will be dependent upon the receipt of the second opinion and a determination that the medical opinions support the request.

### Request/Approval Process

Requests for extended sick leave may be initiated by the employee submitting a memo to his or her Team Leader. The request must include a physician's statement or a *Certification of Physician or Practitioner (FMLA) Form* that describes the illness or injury. The Team Leader is responsible for evaluating the request to determine its merits and the employee's eligibility. If recommending approval, the Team Leader shall forward the request, along with applicable *Employee Leave Summaries* and *Personnel*

*Evaluations*, to the Executive Director for final determination. The Team Leader then informs the employee whether the request is approved or denied.

An employee may not receive more than 120 hours of extended sick leave in a 12-month period.

### Sick Leave Donation

#### Policy

Under Section 661.207 of the Texas Government Code, an employee may donate any amount of the employee's accrued sick leave to another TSBP employee, who has exhausted his or her own sick leave.

#### Donating Sick Leave

- Donor must be a TSBP employee
- Sick leave donation(s) are strictly voluntary
- An employee may not receive remuneration or benefit in exchange for sick leave donation(s)
- An employee donating sick leave loses all ownership of and access to sick leave hours they choose to donate, including use for retirement service credit
- Sick leave donation(s) may not be made to an individual in the donating employee's chain-of-command

#### Receiving Donated Sick Leave

- Recipient must be a TSBP employee
- To be eligible for receipt, an employee must first exhaust all the employee's sick leave (including any time the individual may be eligible to withdraw from the sick leave pool)
- An employee may not provide remuneration or benefit in exchange for a sick leave donation
- An employee receiving donated sick leave may only use the donated sick leave as provided by Sections 661.202(d) and (e) of the Government Code, which state in relevant part:

“(d) Sick leave with pay 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 sick. For purposes of taking regular sick leave with pay, the following persons are considered to be members of the employee's immediate family:

- (1) an individual who resides in the same household as the employee and is related to the employee by kinship, adoption, or marriage;
- (2) a foster child of the employee who resides in the same household as the employee and who is under the conservatorship of the Department of Protective and Regulatory Services; and
- (3) a minor child of the employee, regardless of whether the child lives in the same household.

(e) An employee's use of sick leave to care for and assist members of the employee's family who are not described by Subsection (d) is strictly limited to the time necessary to provide care and assistance to a spouse, child, or parent of the employee who needs the care and assistance as a direct result of a documented medical condition.”

- An employee receiving donated sick leave shall not receive service credit in the Employees Retirement System of Texas for any Sick Leave Option time donated to the employee that is unused on the last day of the employee’s employment.

### Prohibited Acts

Coercion to solicit donations (including on behalf of others) is prohibited. Coercion includes but is not limited to: contacts that exert pressure, play on people’s emotions, or leave a feeling of guilt or lack of compassion for not donating. Such conduct is disruptive to the workplace and may result in corrective disciplinary action.

Falsification, misrepresentation, or fraud in applying for or obtaining sick leave donation(s) constitute unprofessional conduct and will result in corrective disciplinary action, up to and including termination.

Any employee who receives donated sick leave may only use this leave for sick leave purposes that occur on or after the date the qualified donor employee submits the donated sick leave authorization form.

### Paid Parental Leave (Texas Government Code, Section 661.9125)

#### Introduction

The 88th Legislature enacted legislation providing eligible state employees paid parental leave if the employee takes leave under the Family and Medical Leave Act for the birth of a child, birth of a child by the employee’s spouse, birth of a child by a gestational surrogate, or adoption of a child. This requirement took effect September 1, 2023.

#### Receiving Paid Parental Leave

As defined by Texas Government Code, Section 661.9125(1), employees of state agencies, who are a member of the Employees Retirement System of Texas or are employed by a board, commission, department, or other agency in the executive branch of state government, except for an institution of higher education as defined by Texas Education Code, Section 61.003, are entitled to paid parental leave if they qualify and take leave under the Family and Medical Leave Act for the:

- Birth of a child;
- Birth of a child by the employee’s spouse;
- Birth of a child by a gestational surrogate; or
- Adoption of a child.

For the birth of a child, a state employee who takes family and medical leave is entitled to 40 days of paid leave.

For the birth of a child by the employee's spouse, birth of a child by a gestational surrogate, or adoption of a child, a state employee who takes family and medical leave is entitled to 20 days of paid leave.

Employees are **not** required to use all available paid vacation and sick leave before the employee is entitled to take paid parental leave.

## Family Medical Leave Act (FMLA)

### Introduction

The Family and Medical Leave Act (FMLA) allows "eligible employees of a covered employer to take job-protected leave for up to a total of 12 work weeks in any 12-month period for the birth, adoption, or foster care of a child, or because the employee or a spouse, parent, or child of the employee has a serious health condition." FML leave is initiated either by the employee requesting it or by the employer designating it as FML leave.

### Basic FMLA Leave

An employee who has been employed by the State of Texas for at least 12 months (it does not have to be continuous service) and who has actually worked at least 1,250 hours during the 12-month period immediately preceding the commencement of leave, is entitled to job-protected leave pursuant to the Federal Family and Medical Leave Act (FMLA).

An eligible employee is entitled to a total of 12 work weeks of accrued paid leave or unpaid leave during a rolling 12-month period, measured backward from the date an employee uses any FMLA leave for any of the following reasons:

1. To care for the employee's son or daughter during the first 12 months following birth;
2. To care for a child during the first 12 months following placement with the employee for adoption or foster care;
3. To care for a spouse, son, daughter, or parent ("covered relation") with a serious health condition;
4. For incapacity due to the employee's pregnancy, prenatal medical or childbirth; *or*
5. Because of the employee's own serious health condition that renders the employee unable to perform an essential function of his or her position.

The twelve-month period of entitlement for leave for the birth or placement of a child expires 12 months after the birth or placement.

The employee must first use all available and applicable paid annual and sick leave while taking leave under this section, except that an employee who is receiving temporary disability benefits or workers' compensation benefits is not required to first use applicable paid annual or sick leave while receiving those benefits. If an employee has exhausted all available paid leave, FML leave will be classified as unpaid leave.

### Military Family

There are two types of Military Family Leave available.

(1) Qualifying exigency leave:

Employees meeting the eligibility requirements described above may be entitled to use up to 12 weeks of their Basic FMLA Leave for a qualifying exigency while the employee's spouse, son, daughter, or parent (the military member or member) is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty).

For Regular Armed Forces members, "covered active duty or call to covered active duty status" means duty during the deployment of the member with the Armed Forces to a foreign country (outside of the United States, the District of Columbia, or any territory or possession of the United States, including international waters).

For a member of the Reserve components of the Armed Forces (members of the National Guard and Reserves), "covered active duty or call to covered active duty status" means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation.

Qualifying exigencies may include:

- Short-notice deployment (seven or less calendar days)
- Attending certain military events and related activities
- Childcare or school activities
- Addressing certain financial and legal arrangements
- Periods of rest and recuperation for the military member (up to 15 calendar days of leave, dependent on orders)
- Attending certain counseling sessions
- Attending post-deployment activities (available for up to 90 days after the termination of the covered military member's covered active duty status, and to address issues arising from death of military member)
- Attending to parental care needs arising from covered active duty or call to duty (arrange for alternative care for a parent of a military member, provide urgent or immediate care, admit or transfer to a care facility, or attend non-routine caregiver meetings with care facility staff)
- Other activities arising out of the military member's covered active duty or call to active duty and agreed upon by the company and the employee.

(2) Leave to care for a covered service member:

There is also a special leave entitlement that permits employees who meet the eligibility requirements for FMLA leave to take up to 26 weeks of leave during a single 12-month period if the employee is the spouse, son, daughter, parent, or next of kin caring for a covered military

service member or veteran recovering from a serious injury or illness, as defined by FMLA's regulations.

For a current member of the Armed Forces, including a member of the National Guard or Reserves, the member must be undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status; or is otherwise on the temporary disability retired list, for a serious injury or illness.

For a covered veteran, he or she must be undergoing medical treatment, recuperation or therapy for a serious injury or illness. *Covered veteran* means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

An eligible employee must begin leave to care for a covered veteran within five years of the veteran's active duty service, but the single 12-month period may extend beyond the five-year period.

### Serious Health Condition

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

1. Inpatient care in a hospital, hospice or residential medical care facility, including any period of incapacity (defined as an inability to work, attend school or perform other regular daily activities due to the serious health condition), or any subsequent treatment in connection with such inpatient care; or
2. Continuing treatment by a health care provider as defined by the FMLA. This includes any one of the following:
  - (a) incapacity of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
    - 1) treatment two or more times by a health care provider, or
    - 2) treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider.
  - (b) any incapacity due to pregnancy (including all prenatal care);
  - (c) incapacity due to a *chronic serious health condition* which requires periodic visits to a health care provider, continues over an extended period, and causes episodic rather than a continuing period of incapacity (e.g., asthma, diabetes).
  - (d) incapacity which is *permanent or long-term* due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of a health care provider (e.g., Alzheimer's Disease, severe stroke, terminal cancer).
  - (e) absence to receive multiple treatments for restorative surgery after an injury or for a condition which would result in incapacitation of more than three days if not treated (e.g.,

chemotherapy for cancer, physical therapy for severe arthritis, or dialysis for kidney disease).

Conditions requiring only brief treatment and recovery, or elective cosmetic treatment are not *serious health conditions* (e.g., flu, colds).

#### Health Care Provider

FMLA defines "health care provider" as a doctor of medicine or osteopathy who is authorized to practice medicine or surgery in the state or any other person determined by the Secretary of Labor to be capable of providing health care services.

*Note:* If an employee has any questions regarding the FMLA definition of "health care provider", he or she should contact Human Resources.

#### Notification from Employee

If the need to use FML leave is foreseeable (such as an expected birth or planned medical treatment), the employee must notify the TSBP at least 30 days *in advance* of the need for leave by submitting a TSBP Form *Request for Family Medical Leave of Absence* (obtained from Human Resources). If an employee fails to give at least 30 days notice when the need for FML leave is foreseeable, TSBP may delay the taking of FML leave for up to 30 days.

When the need for leave is unforeseeable, the employee is required to provide timely notice as directed by the Team Leader on each day of the absence. Timely notice is defined as within one hour of the employee's designated work time, or in cases of emergency, as soon as practicable under the facts and circumstances of the particular case. The employee must provide FML qualifying reasons for the requested leave, or leave may be denied.

An employee may have another individual call the employee's supervisor only if the employee is absolutely unable to do so personally.

#### Designation/Notifying Employee

After giving notification of the need for FML leave, the employee will receive notice regarding whether the leave request is granted and/or whether the leave has been designated FML leave.

#### Medical Certification

An employee must provide medical certification from a health care provider, as defined by the FMLA, when FML leave involves a *serious health condition*. The certification must contain such information as the date on which the health condition commenced, the probable duration of the condition, and the appropriate medical facts regarding the condition. A *Certification of Physician or Practitioner Form* (U.S. Department of Labor Form WH-380) may be used for this purpose. If for the employee's serious health condition, the certification must state that the employee is unable to perform one or more of the employee's essential job functions. If for the serious health condition of a spouse, child or parent, the certification must include an estimate of the amount of time the employee will be needed to provide care.

For purposes of confirmation of family relationship, the TSBP may require the employee to provide reasonable documentation or statement of family relationship.

The above-mentioned Medical Certification (from a health care provider) must be provided within 15 calendar days or as soon as possible, if circumstances beyond the employee's control prevent him/her from providing the certification within 15 days.

Updated or additional medical certifications may be required under other circumstances as permitted by the FMLA.

An employee returning to work following FML leave for the employee's own serious health condition may be required to provide certification from a health care provider stating the employee's ability to resume work (i.e., "fitness-for-duty" report).

A delay in submitting the requested certification means FML leave may be canceled or delayed until the appropriate certification is submitted. Failure to provide the requested medical certification means the absence is *not qualifying FML leave* and may subject the employee to disciplinary action. Failure to provide a requested "fitness-for-duty" report means employment restoration may be denied or delayed until submitted.

#### Recertification

Where the minimum duration of an employee's medical condition is more than 30 days, the employee may be requested to provide a recertification of the employee's medical condition, as frequently as every 30 days.

Recertification will not be required on that medical condition until the minimum period has run unless:

1. the health condition is chronic;
2. the employee's circumstances have changed materially; or
3. the TSBP has reason to believe the employee's absence is no longer due to the health condition.

#### Intermittent Leave Reduced Work Schedule

Under certain circumstances, FML leave may be taken intermittently or on a reduced work schedule under certain circumstances. If needed, the employee must consult with the Team Leader and make reasonable effort to schedule such leave to minimize disruption at work. Military Family Leave due to qualifying exigencies may also be taken on an intermittent basis. An employee may be placed in an equivalent alternate position to better accommodate intermittent leave or a reduced work schedule.

Leave may not be taken on an intermittent basis when used to care for the employee's own child during the first year following birth, or to care for a child placed with the employee for foster care or adoption, unless both the employer and employee agree to such intermittent leave.

#### Additional Certifications

To request intermittent leave or leave on a reduced leave schedule, the employee must provide the following additional information from the health care provider:

1. For leave for the employee, the employee must provide: (a) a statement of medical necessity for his or her intermittent leave or reduced leave schedule, and the expected duration of the

schedule, and (b) a listing of the dates of his or her planned medical treatment and the duration of the treatment(s); and

2. For leave to care for a child, spouse, or parent, the employee must provide (1) a statement attesting to the necessity of intermittent leave or reduced leave for the employee to provide care to assist in the person's recovery, and (2) an estimate of the expected duration and schedule of his or her intermittent or reduced leave.

### Health Insurance

During FML leave, the State of Texas continues the employee's health coverage under the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period, regardless of pay status. Any share of health plan premiums which had been paid by the employee prior to FML leave must continue to be paid by the employee during the FML leave period. If premiums are increased or decreased, the employee will be required to pay the new rates.

If the employee elects not to return to work upon completion of an approved FML leave of absence, the TSBP may recover from the employee the cost of any premiums paid to maintain the employee's coverage, unless the failure to return to work was for reasons beyond the employee's control.

### Job Status/Reinstatement

An employee on FML leave is not entitled to:

1. accrue state service credit for any full calendar months of leave without pay taken;
2. accrue vacation or sick leave for any full calendar months of leave without pay taken;
3. include any full calendar months of leave without pay in calculating the minimum number of continuous months of employment set in the General Appropriations Act under the merit increase provisions, longevity pay, and the employee vacation and leave provisions.

While on FML leave, an employee's position may be filled by a temporary employee. Upon return from FML leave, the employee may be restored to an equivalent alternative position different from the one held when leave commenced.

*Exception:* Job restoration may be denied to "key employees" as defined by the FMLA if such denial is necessary to prevent substantial and grievous injury to the operations of the TSBP.

An employee must provide reasonable notice if able to return from FML leave earlier than originally scheduled. An employee on FML leave must report monthly to the TSBP on the employee's status and intent to return to work. Failure of the employee to report back to work at the end of the prescribed period, without prior written approval from the Team Leader or the employee's designee, will be considered abandonment of position and the employee will be formally terminated from the TSBP.

### Record Keeping

Human Resources will be responsible for maintaining records related to FML leave requested and/or used by staff and ensuring that the maximum amount allowable is not exceeded.

The above policy is a summation of the Family and Medical Leave Act of 1993 and is not intended to represent the entirety of the Act. If you need further information on any portion of the Act, please contact Human Resources.

## Miscellaneous Leave

### Introduction

The following types of leave are available to employees under certain conditions. These types of leave may be paid or unpaid. Any questions regarding these categories of leave should be directed to Human Resources.

### Administrative Leave for Outstanding Performance

Administrative leave with pay may be used to reward an employee whose job performance and productivity are consistently above that normally expected or required as documented on a performance appraisal.

In addition, if the employee becomes the subject of disciplinary action, other than a documented oral or written warning, during the evaluation period, the employee is not eligible for administrative leave.

The amount of administrative leave granted may not exceed 32 hours during any fiscal year. The State Auditor's Classification Office has opined that executive directors of state agencies are not eligible for administrative leave for outstanding performance.

### Amateur Radio Operator Leave

A state employee with an amateur radio station licensed issued by the Federal

Communications Commission may be granted leave not to exceed 10 days each fiscal year to participate in specialized disaster relief services without a deduction in salary or loss of vacation or sick leave, overtime leave, or state compensatory time. The amateur radio operator leave should be authorized by the Executive Director and with the approval of the governor.

The number of amateur radio operators eligible for this type of leave may not exceed 350 state employees at any one time during a fiscal year. The Texas Division of Emergency Management is responsible for coordinating the establishment and maintenance of the list of employees eligible for this leave.

### Assistance Dog Training

A state employee with a disability as defined by Texas Human Resources Code, Section 121,002, will be granted paid leave of absence not to exceed 10 working days in a fiscal year to attend a training program to acquaint the employee with an assistance dog that the employee will use.

### Blood Donation

Each employee is allowed sufficient time off, without a deduction in salary or accrued leave, to donate blood. An employee may not receive time off under this section unless the employee obtains approval from his or her supervisor before taking time off. On returning to work after taking time off under this section an employee shall provide his or team leader with proof that the employee donated blood during the time off. If an employee fails to provide proof that the employee donated blood during the time off, the agency shall deduct the period for which the employee was granted off from the employee's accrued leave. An employee may receive time off under this section not more than four times in a fiscal year.

### 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.

An employee may not receive time off under this section unless the employee obtains approval from his or her supervisor before taking time off. On returning to work after taking time off under this section, an employee shall provide his or team leader with proof that the employee used the leave for the intended purpose. If an employee fails to provide such proof, the agency shall deduct the period for which the employee was granted off from the employee's accrued leave.

The leave of absence provide by this section may not exceed:

- Five 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.

### Certified American Red Cross Activities

Any state employee who is a certified disaster service volunteer of the American Red Cross, or who is in training to become such a volunteer, may be granted paid leave - without a deduction in salary or loss of vacation, sick leave, overtime leave, or state compensatory time - not to exceed ten days each fiscal year to participate in specialized disaster relief services of the American Red Cross. The employee must have supervisory authorization in addition to a request from the American Red Cross and the approval of the Governor's Office. The pool of certified disaster volunteers must not exceed 350 participants at one time during a fiscal year. The Texas Division of Emergency Management shall coordinate the establishment and maintenance of the list of eligible employees.

### Compliance with a Subpoena

An employee may not discharge, discipline, or penalize an employee for complying with a subpoena to appear in a civil, criminal, legislative, or administrative proceeding. Any organization that violates this may be found in contempt of court or subject to a monetary penalty, depending upon the issuing authority.

Agencies should use their own discretion in instances of unofficial testimony to decide whether such an absence is considered good cause for emergency leave.

### Emergency Leave

Emergency leave is granted for the death of a family member. Family is defined as individuals related to the employee or the spouse as follows: parents, brothers, sisters, grandparents, grandchildren, and children. Normal emergency leave due to bereavement is three days and is considered "paid leave status".

The Executive Director may grant emergency leave for other reasons when, in the employee's discretion, the employee shows good cause.

### Foster Parent Leave

A state 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 leave of absence with full pay for the purpose of attending meetings held by the Department regarding the employee's foster child. In addition, the

employee may use this entitlement to attend admission, review, and dismissal meetings held by a school district regarding the foster child.

#### Jury Service

Leave for court and jury duty will be allowed for anyone summoned by the federal, state, or local courts to serve as a juror. The time served will be considered leave with pay.

When a jury summons is received, the employee must inform his or her Team Leader within 2 business days. A copy of the summons notice must be delivered to the employee's supervisor who will then forward the document to the Payroll Officer.

An employee may retain any jury payments received. If a holiday occurs during the court or jury duty, up to eight hours of holiday compensatory leave will be granted.

#### Parental Leave

Employees who do not qualify for family and medical leave (and thus do not qualify for paid parental leave) are eligible for an unpaid parental leave of absence not to exceed 12 weeks for the birth of a child or the adoption or foster care placement of a child under the age of 3. This entitlement provides up to 12 weeks (480 hours) of unpaid leave.

While taking unpaid parental leave, the employee must first use all available and applicable paid vacation and sick leave; the remainder of the leave is unpaid. Unpaid 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.

Because eligibility time requirements are different for parental leave (less than 12 months of state service) and family and medical leave [12 months (1,250 hours) or more of state service], an employee can meet requirements for only one of these entitlements.

Circumstances can exist that would allow an employee to take parental leave, return to duty, and subsequently be eligible for FMLA leave. The employee could then take FMLA leave for the birth, adoption, or foster placement of a child or for another reason.

#### Sick Leave for 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. The employee must give reasonable notice of his or her intention to use this leave. Educational activities are school-sponsored activities, including parent-teacher conferences, tutoring, volunteer programs, field trips, classroom programs, school committee meetings, academic competitions, and athletic, music, or theater programs.

#### Voting Time Off

Employers shall allow sufficient time off to employees, without a deduction in salary or accrued leave, to vote in each national, state, or local election if there is not sufficient time to vote outside regular working hours. State law does not differentiate between regular and runoff elections. The agency has determined that two hours will be the guideline in determining "sufficient time off" to vote.

Early voting enables an employee to vote (before or after work, including the weekends) prior to an election. If an employee has been unable to vote during the early voting period, time off to vote on Election Day is clearly allowed.

### Volunteer Firefighters and Emergency Medical Services Training Leave

Volunteer firefighters and emergency medical services volunteers shall be granted a paid leave of absence not to exceed five working days each fiscal year for attending training schools conducted by state or local agencies. This leave of absence may also be granted to volunteer firefighters or emergency medical services volunteers, for the purpose of responding to emergency fire or medical situations.

## Compensatory Time/Overtime General Guidelines and Policies

### Introduction

Employees may be credited with compensatory (comp) time or overtime for time worked in addition to normal work hours. The determination of whether an employee earns comp time or overtime depends on whether the employee is exempt or non-exempt from certain provisions of the Fair Labor Standards Act (FLSA).

### Comp Time Credit

Comp time is credited as one hour for each additional hour worked.

### Overtime Credit

Overtime is credited as 1.5 hours for each additional hour worked.

### Prohibition Holiday/Comp Time

Telecommuting employees may not accrue compensatory or holiday time for work done at their personal residence unless the employee obtains advance approval from the Executive Director or Team Leader. Note: prior approval does not apply to skeleton holidays.

Field personnel who have a formal designated duty point, may not accrue compensatory or holiday time for work done at that duty point unless the employee obtains advance approval from the Executive Director or Team Leader. Note: prior approval does not apply to skeleton holidays.

Personnel who are on travel status, may accrue compensatory or holiday time for work done during travel status, with the prior approval of their Team Leader. Note: prior approval does not apply to skeleton holidays.

### Authorization for Extra Time Worked

An employee may not work overtime and/or comp time unless that overtime and/or comp time has been authorized in advance by the employee's Team Leader or the Executive Director.

### Established Work Week

The work week is defined as seven consecutive 24-hour periods beginning at 12:00 a.m. Sunday and ending at 11:59 p.m. on the following Saturday.

### Scheduled Work Week

The scheduled work week is defined as the 40 hours an employee has been directed to work by the employee's supervisor during a work week.

### Determination of Time Earned

The determination of whether an employee earned comp time or overtime during the work week must be made by the employee and Team Leader at the end of the work week and recorded by the employee on the monthly time sheet.

### Comp Time Use

Comp time must be used within the twelve months following the end of the work week when the comp time was earned. An employee will not be paid for the unused comp time.

### Overtime Carried

An employee may accumulate overtime credit up to 240 hours (i.e., 160 straight work time hours). There is no time limit in which an employee must use the accumulated overtime credit. The employee must be paid for any overtime in excess of 240 hours (i.e., 160 straight work time hours).

### Not Transferable

If an employee transfers to another state agency with or without a break in service, unused comp time is not transferable and will not be paid. Any accumulated overtime balance will be paid.

### Termination

Employees are *not* paid for unused comp time at the time of termination of employment

Employees *are* paid for overtime balance at the time of termination from employment.

### Estate

The estate of a deceased employee may not be paid for accrued comp time. The estate will be paid for an employee's unused overtime.

## Exempt Employee Compensation

### Introduction

Exempt employees are those employees who are **not** covered by the overtime provisions of the Fair Labor Standards Act (FLSA). Exempt employees are **not** eligible to earn overtime. They are eligible to earn comp time **only**.

### Comp Time Approval

TSBP's policy is to allow a maximum of five hours compensatory time that may be worked in a work week, before approval is required. All compensatory time that is anticipated to exceed five hours in a work week must have prior approval by the employee's Team Leader or the Executive Director before the compensatory time is awarded.

### Comp Time Circumstances

FLSA exempt employees may earn compensatory time in the following circumstances:

1. Working on a paid holiday; and/or
2. Working any week in which the total number of hours worked, holiday and other leave taken exceeds 40 hours. For example, if Monday is a holiday (8 hours), regular hours worked Tuesday through Friday (32 hours), and the employee works three hours of extra time Friday (35 hours), the employee is credited with three hours of comp time.

## FLSA Exempt Employees Defined

Exempt employees are those not subject to the provisions of FLSA and are as follows:

1. Executive Director
2. Directors
3. Managers
4. General Counsel and other Attorneys

## Non-Exempt Employee Compensation

### Introduction

Non-exempt employees are those employees who are covered by the overtime provisions of the Fair Labor Standards Act (FLSA). Non-exempt employees are eligible to earn comp time and/or overtime, depending on the circumstances.

### Approval for Comp Time and Overtime

Comp time and overtime may not be worked unless prior approval is obtained from the employee's Team Leader or the Executive Director.

Employees who fail to comply with the prior written approval requirement may be subject to disciplinary action, up to and including termination from employment.

### Overtime Accrual Example

Non-exempt employees may earn overtime if that employee works more than 40 hours in one week. See Example #1 at the end of this section.

### Comp Time Accrual Example

Non-exempt employees may earn state comp time if that employee works no more than 40 hours in one week, but time recorded exceeds 40 hours because of paid leave or holiday. See Example #2 at the end of this section.

### Combination of FLSA Overtime and Comp Time

Non-exempt employees may earn both overtime and comp time if that employee works more than 40 hours in one week and time recorded exceeds the total number of hours actually worked because of paid leave or holidays. See Example #3 at the end of this section.

### Overtime Compensation

Non-exempt employees must be compensated for overtime by one of the following:

1. time off at the rate of 1.5 hours for each hour of overtime earned; or
2. payment at the rate of 1.5 times the regular rate of pay for overtime earned.

TSBP's policy is to require an employee to take FLSA overtime as time off work, rather than be compensated through wages. It is also TSBP's policy to require an employee working overtime to take an equivalent amount of time off during the same work week, if at all possible, to avoid working more than 40 hours in a week and to reduce the amount of FLSA overtime accrued. Upon termination of employment, a non-exempt employee who has accrued compensatory time off in lieu of overtime compensation shall be paid for the unused compensatory time at a rate not less than the higher of: (A)

the average rate received by such employee during the last three years of the employee’s employment, or (B) the final regular rate received by the employee.

How do I Actually Calculate the Hours?

*Overtime Accrual Examples for State Employees*

**Example 1: FLSA Overtime Only** - A nonexempt employee **works more** than 40 hours in one week.

Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Hours   Recorded	Total Hours Worked	Difference				
NS	8-W	8-W	8-W	8-W	8-W	8-W	48	48	0				
							Hours in a work week	<u>-40</u>					
NS=Not Scheduled							Difference	8	X 1.5 = 12				
W=Worked							<u>State Comp Time Balance</u>						
PL=Paid Leave (e.g., holiday)							Beginning	Earned	Taken	Ending			
<u>FLSA Comp Time Balance</u>							Balance			Balance			
Beginning	Earned	Taken	Ending				Beginning	Earned	Taken	Ending			
Balance			Balance				Balance			Balance			
0	+	12	-	0	=	12	0	+	0	-	0	=	0

**Example 2: State Comp Time Only** - A nonexempt employee **works no more** than 40 hours in one week but time recorded exceeds 40 hours because of paid leave or holiday.

Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Hours   Recorded	Total Hours Worked	Difference				
NS	8-W	8-W	8-PL	8-W	8-W	10-W	50	42	8				
							Hours in a work week	<u>-40</u>					
NS=Not Scheduled							Difference	2	X 1.5 = 3				
W=Worked							<u>State Comp Time Balance</u>						
PL=Paid Leave (e.g., holiday)							Beginning	Earned	Taken	Ending			
<u>FLSA Comp Time Balance</u>							Balance			Balance			
Beginning	Earned	Taken	Ending				Beginning	Earned	Taken	Ending			
Balance			Balance				Balance			Balance			
0	+	3	-	0	=	3	0	+	8	-	0	=	8

**Example 3: Combination of FLSA Overtime and State Comp Time-** A nonexempt employee **works more than 40 hours** in one week and time recorded exceeds total number of hours worked because of paid leave or holidays.

Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Hours   Recorded	Total Hours Worked	Difference				
NS	8-W	8-W	8-PL	8-W	8-W	8-W	48	40	8				
NS=Not Scheduled W=Worked PL=Paid Leave (e.g. holiday)							Hours in a work week	<u>-40</u>					
<u>FLSA Comp Time Balance</u>							Difference	0	X 1.5	= 0			
<u>State Comp Time Balance</u>							Beginning Balance	Earned	Taken	Ending Balance			
0	+	0	-	0	=	0	0	+	8	-	0	=	8

## Abuse of Time

### Introduction

An employee's earned accrued leave should normally meet any need of the employee to be absent from work. Such accrued leave includes annual leave, overtime, compensatory time, and sick leave.

### Supervisor Responsibility

Supervisors should monitor leave balances and not approve leave when such approval would result in a burden on the team. Managing leave is an important part of a manager's responsibility.

### Other Conduct Indicating Leave Abuse

Other conduct which may indicate an abuse of leave includes, but is not limited to:

1. Use of leave without pay; or
2. Frequent, unscheduled absences on Fridays and Mondays or frequent, unscheduled absences before or following a holiday.

The term “frequent” means 3 or more instances in a 12-month period of any of the above conduct.

### Consequences of Violation of Policy

Violation of any portion of the above policy constitutes good cause for corrective action, up to and including termination of employment.

## Military Leave & Employee Rights

### Military Leave Overview

Both state and federal law provide employment and re-employment rights to individuals who are called to military service. These laws provide income and job protection, as well as a means for employees to secure time off when called to military service.

### *The Uniformed Services Employment and Reemployment Rights Act (USERRA)*

The Uniformed Services Employment and Reemployment Rights Act (USERRA) is the federal law intended to ensure that persons are not disadvantaged in their civilian careers because of their current or past service in the U.S. Armed Forces, the U.S. Armed Forces' Reserves (Reserves), the National Guard, or other uniformed services. USERRA prohibits an employer from denying initial employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of an individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

State agencies and institutions of higher education that have qualifying service members must provide the service members the following:

- Prompt job reinstatement.
- Accumulation of seniority, including pension plan benefits.
- Reinstatement of health insurance.
- Training/retraining of job skills, including accommodations for the disabled.
- Protection against discrimination.

In addition, USERRA provides protection for disabled veterans, requiring employers to make reasonable efforts to accommodate the disability.

The U.S. Department of Labor's Veterans' Employment and Training Service (VETS) administers USERRA and all questions should be directed to that office. Contact and additional information about USERRA is available at <http://www.dol.gov/vets>

### *Military Leave Entitlement and Eligibility*

State employees who are members of the State's military forces, a reserve branch of the U.S. Armed Forces, or a state or federally authorized urban search and rescue team are entitled to 15 workdays in each fiscal year without loss of pay or benefits to accommodate authorized training or duty for the State's military forces, a reserve branch of the U.S. Armed Forces, or a state or federally authorized urban search and rescue team.

The 15 days of paid leave need not be consecutive. These days are considered business days, not calendar days. In addition, if the employee does not use the 15 days of military leave in a fiscal year, the employee is entitled to carry forward from one fiscal year to the next fiscal year the net balance of the unused accumulated leave not to exceed 45 workdays.

State agencies and institutions of higher education are required to adjust the work schedule of an employee who is a member of the Texas National Guard or a reserve branch of the U.S. Armed Forces so that two of the employee's days off each month coincide with two days of military duty.

An employee called to active duty during a national emergency to serve in a reserve component of the U.S. Armed Forces under Title 10 or Title 32 of the United States Code is entitled to an unpaid leave of absence. 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 while on military leave.

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.

A state employee called to federal active duty for the purpose of providing assistance to civil authorities in a declared emergency or for training for that purpose is entitled to receive paid emergency leave for not more than 22 workdays without loss of military leave or vacation leave.

A member of the state military forces who is ordered to active state duty by the governor or by another proper authority under Texas law is entitled to the same benefits and protections provided:

- To persons performing service in the uniformed services in accordance with Title 38, United States Code, Sections 4301–4313 and Sections 4316–4319, as that law existed on April 1, 2003; and
- To persons in the military service of the United States in accordance with Title 50, United States Code, Appendix Sections 501–536, 560, and 580–594, as that law existed on April 1, 2003

### Military Family Leave Entitlements

The Family and Medical Leave Act (FMLA) allows eligible employees to take up to 12 weeks of job-protected leave in the applicable 12-month period for any “qualifying exigency” arising out of the active duty or call to active duty status of a spouse, son, daughter, or parent.

In addition, the FMLA also allows eligible employees to take up to 26 weeks of job-protected leave in a single 12-month period to care for a covered service member with a serious injury or illness. Those two types of FMLA leave are known as the “military family leave entitlements.”

### Paid Leave and State Service

Employees called to active duty during a national emergency to serve in a reserve component of the U.S. Armed Forces under Title 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.

State agencies and institutions of higher education must provide written notice regarding the number of workdays of paid leave to which state employees who are members of the State’s military forces, a reserve branch of the U.S. Armed Forces, or a state or federally authorized urban search and rescue team are entitled to each fiscal year and, if applicable, the number of workdays of paid leave that can be carried forward each fiscal year.

Additionally, state agencies and institutions of higher education must, upon the request of a state employee who is a member of the State’s military forces, a reserve branch of the U.S. Armed Forces, or a

state or federally authorized urban search and rescue team, provide to that employee a statement that contains:

- The number of workdays for which the employee claimed as paid leave under Texas Government Code, Section 437.202 (a), in that fiscal year,
- The net balance of unused accumulated paid leave for that fiscal year that the employee is entitled to carry forward to the next fiscal year, and
- The net balances of all unused accumulated paid leave under Texas Government Code, Section 437.202, to which the employee is entitled.

### Notice of Military Leave

USERRA requires that service members provide advance written or verbal notice to their employers for all military duty unless giving notice is impossible, unreasonable, or precluded by military necessity.

### Military Pay Differentials

The executive officer of a state agency or institution of higher education must grant sufficient emergency leave to provide a pay differential if an employee's military pay is less than the employee's state gross pay. The combination of military pay and emergency leave may not exceed the employee's actual state gross pay. Pay received while assigned to a combat zone, hardship duty pay, and family separation pay is excluded when computing military differential pay.

The state agency or institution of higher education should inform activated state employees of the agency's or institution's intent to use emergency leave to supplement their military pay to raise it to a rate comparable to the state pay received prior to activation.

Only state employees called to active duty in support of a national emergency or Homeland Security mission (under United States Code, Title 10 or Title 32) and whose military pay is less than their gross state pay are eligible for differential pay. Service members involved in routine military training or who are attending military schools are not entitled to this differential pay.

If emergency leave is granted to state employees activated for military duty, those employees will accrue sick leave and vacation leave each month they receive pay from the state agency or institution of higher education. The sick and vacation leave will be accrued but not posted until the employee returns to full employment with the state agency.

### Determining Eligibility

To determine eligibility, state agencies and institutions of higher education should request a copy of the employees' Military Leave and Earnings Statement each month that emergency leave is going to be granted to look at the total entitlement of military pay received by the service members. The service members' pay may change during the period of active duty because of a promotion or change in entitlements; any increase in pay may reduce or cease the need for state military differential pay.

### Returning Service Members

A state employee who (1) is a member of the state military forces, a reserve component of the U.S. Armed Forces, or a member of a state or federally authorized urban search and rescue team and (2) who is ordered to duty by the proper authority is entitled, when relieved from duty, to be restored to the position that the employee held when ordered to duty or to a position of similar seniority, status, and pay.

USERRA also requires that reasonable efforts (such as training or retraining) be made to enable returning service members to refresh or upgrade their skills to help them qualify for reemployment.

Under state and federal law, to be eligible for reemployment, the employee must be discharged, separated, or released from active military service under honorable conditions no later than five years after induction, enlistment, or call to duty. In addition, under state law, the employee must be physically and mentally qualified to perform the duties of the job. If an employee is unable to perform the duties of the previous job due to a service-related disability, the veteran is entitled to be restored to a position that he or she can perform with similar or the nearest possible seniority, status, and pay.

Veterans whose employment has been restored may not be dismissed without cause within a year of their reinstatement.

#### [Applications for Reemployment](#)

Under state law, eligible veterans must apply for reinstatement within 90 days after discharge or release from service. The application must be made in writing to the head of the state agency or institution of higher education and must include evidence of discharge under honorable conditions.

#### [Entitlement to Retirement or Other Benefits](#)

An individual reemployed is considered to have been on furlough or leave of absence during the time that the individual was in military service. As such, the employee may participate in retirement or other benefits to which a public employee is or may be entitled.