

OFFICE OF THE SECRETARY OF STATE

Policies and Procedures
Manual

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POLICIES AND PROCEDURES MANUAL**

SECTION 9: GENERAL AND MISCELLANEOUS LEAVE

9.0 AUTHORIZATION FOR LEAVE

All leave taken, with certain exceptions, must be approved in advance by the employee's manager/team leader. Exceptions are for the following:

- Unforeseeable sick leave (e.g., other than prearranged medical or dental appointments); and
- Some emergency leave situations.

If an employee must be absent from duty because of an exception listed above, the employee must notify the manager/team leader at the earliest possible time. (Failure to notify may result in disciplinary action.)

If an employee takes leave before it is approved, and no exception applies, such leave is considered an unauthorized absence and may subject the employee to disciplinary action.

A No-Call/No-Show of three (or more) consecutive workdays will be considered job abandonment and will result in involuntary termination of employment. (**See Job Abandonment Section 17.**) A “**NO CALL NO SHOW**” is anytime an employee is absent from his/her scheduled shift and fails to notify his/her supervisor that he/she will not be at work OR that he/she is leaving work.

Employees must submit a timesheet to the HRD on the last business day of the month. The Secretary of State is exempt from the Position Classification Plan and may approve his/her own timesheet and leave (except for emergency leave, extended sick leave, or leave without pay).

9.1 LEAVE SUMMARY

The Leave Summary is a report that lists an employee's leave accruals and leave balances. It also contains messages notifying employees when they have to use annual leave and compensatory time to avoid losing the accrued time. Leave summaries are accessible from the Employee Information System (EIS).

9.2 ANNUAL LEAVE

An employee employed for six (6) continuous months with the state is entitled to annual leave with pay each year. An employee earns annual leave beginning on the first day of employment with the state and each succeeding month thereafter, and terminating on the last day of duty. Employees who are on leave the first day of the month must return to duty before being eligible to use leave accrued for that month.

An employee who terminates state employment is entitled to payment of annual leave accrued, provided that the employee had been continuously employed with the state for at least six (6) months. However, if an employee terminates state employment and is

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re-employed within thirty (30) calendar days by another state agency that accrues annual leave, the employee's previously accrued but unused annual leave will be restored.

Employees may carry the net balance of unused accumulated annual leave from one fiscal year to the next but may not exceed the maximum cited in Table 2 below. The table below shows, for full-time employees, the rate of accrual of annual leave based on total state service credit and the maximum number of hours that may be carried forward each fiscal year. (The state's fiscal year begins on September 1st.) Part-time employees accrue annual leave on a proportionate basis. The maximum carryover will also be proportionate.

Table 1

Length of State Service (in years)	Monthly Rate of Accrual	Annual Hours of Accruals	Maximum Carryover*
Less than 2	8	96	180
Less than 5	9	108	244
Less than 10	10	120	268
Less than 15	11	132	292
Less than 20	13	156	340
Less than 25	15	180	388
Less than 30	17	204	436
Less than 35	19	228	484
Greater than or equal to 35	21	252	532

*Maximum carryover of hours that may be carried forward on September 1. Annual leave that exceeds the maximum carryover will be credited to the employee's sick leave balance at the end of the fiscal year.

Annual leave for employees who retired from state employment on or after June 1, 2005, will accrue annual leave based on the date of rehire. Return-to-work retirees are not required to re-establish the six-month continuous service requirement to use annual.

Employees must use accrued overtime before using annual leave.

9.3 SICK LEAVE

Sick leave entitlement shall be earned at the rate of eight (8) hours for each month or fraction of a month of full-time employment with the state. Sick leave for part-time employees is accrued on a proportionate basis. There is no limit to the amount of sick leave that may be accrued or carried forward from one fiscal year to the next. Sick leave accrues monthly beginning on the first day of employment and terminates on the last day of duty.

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An employee may use sick leave when prevented from performing his/her job because of illness, injury, or pregnancy or confinement. Employees who are on leave on the first day of the month may not use sick leave accrued for that month until after a return to duty. An employee may also use sick leave if he/she needs to care for an immediate family member who is actually ill.

“Immediate family” is defined as individuals related by kinship, adoption, or marriage who 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 only for a documented medical condition to care for immediate family members who do not reside in the same household. In this instance only, “immediate family” is interpreted as spouse, parent, or child.¹

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 (3). An employee’s use of sick leave for family members not residing in the 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. In such cases an employee is required to complete and submit a Sick Leave Affidavit (See Appendix A).

If an employee must be absent from duty because of illness, the employee should notify a manager/team leader at the earliest practicable time. To be eligible for sick leave with pay during a continuous period of more than three (3) business days, an employee must send the Secretary of State Human Resource Department a Healthcare Provider’s Statement (See Appendix A) or an acceptable written statement of facts, if permitted by the Human Resources Manager for similarly situated employees, showing the cause or nature of the illness. An “acceptable” written statement of facts would be one, for example, that explains that the employee has a condition, such as the flu, so common, recognizable, and non-threatening that consulting a doctor for diagnosis or treatment would be unnecessary. It is within the discretion of the Secretary of State/Deputy Secretary of State to require documentation concerning illnesses resulting in absences of three (3) working days or less. The Secretary of State delegates this authority to the section/division directors when leave records show a re-occurring leave pattern or other re-occurring leave during peak workloads.

In the case of a workers’ compensation injury or illness, an employee may be eligible to participate in the Agency’s Return to Work Program.

Employees who separate from state employment under a formal reduction in force are entitled to have their sick leave balances restored if they are re-employed by the state within 12 months.

¹ Texas Government Code, Section 661.202(e); and State Auditor’s Office Leave Interpretation Letter, No. 97-04 (1996)

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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, and 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.

9.4 SICK LEAVE POOL

Except for the Secretary of State, employees may apply for leave from the sick leave pool (Pool) for their own catastrophic injury or illness or for a member of their immediate family. Employees with a catastrophic injury or illness are eligible to apply to use the sick leave pool after exhausting all accrued leave. Employees must apply for and use the sick leave pool for which they are eligible prior to the application and use of any extended sick leave benefits.

A catastrophic illness or injury is defined by the Employees Retirement System 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.

Generally, an injury or illness has to be considered life-threatening by a physician or licensed practitioner to be classified as "catastrophic."

Examples of mental health conditions that may be considered catastrophic are major depression, bipolar disorder, schizophrenia, or other psychotic disorders.

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 conditions not usually covered unless accompanied by a catastrophic condition or a complication considered to be life-threatening include gynecological problems and conditions, hysterectomies, gall bladder surgery, surgery for a herniated disk, carpal tunnel syndrome, allergies, bronchitis, most broken bones and orthopedic surgeries, angina, pregnancy and childbirth, and post-partum recovery.

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

“Immediate family” is defined as those individuals related by kinship, adoption, or marriage and or foster children who are so certified by the Texas Health and Human Services Commission 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.

Contributing Sick Leave to the Sick Leave Pool

Contributions to the Pool are strictly voluntary and must be in increments of eight hours with the exception of retiring employees, who may contribute any unused balance. However, a retiring employee is advised that donations of 160 hours or more may affect retirement service credit or retirement eligibility.

Employees who make contributions to the Pool may not specify who may use the contributions. Employees are encouraged to contribute to the Pool at the time of their separation from state employment.

An Employee must submit a Sick Leave Pool Transfer form (see Appendix A) through his/her section/division director to be given to the Human Resources Manager designated as the “ Pool Administrator.” The amount of sick leave contributed shall be credited to the Pool and shall be deducted from the employee’s accrued sick leave balance.

Use of Sick Leave From the Pool

Employees with catastrophic illnesses or injuries are not required to contribute to the Pool before using leave from the Pool. Employees who use sick leave from the Pool are not required to repay the leave.

Employees absent on assigned sick leave from the Pool shall be treated for all purposes as though absent on earned sick leave.

The amount and frequency of the sick leave pool granted for each request will be determined by the Secretary of State and/or the Deputy Secretary of State. The number of hours of leave awarded from the Pool to an employee cannot exceed one-third of the balance of hours in the pool, or 90 workdays, whichever is less. Hours granted to part-time employees shall be on a pro rata basis.

Requests for sick leave from the Pool shall be considered on a first-come, first-served basis.

Any unused balance of sick leave from the Pool granted to an employee shall be returned to the Pool. The estate of a deceased employee is not entitled to payment for unused Pool leave.

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Application Procedures

1. To apply to use sick leave pool hours, an employee must submit a memorandum requesting leave from the Pool to the appropriate section/division director for approval. Additionally, the request must include:
 - The Health Care Providers Statement (Appendix A) outlining the injury or illness of the employee or member of immediate family;
 - The treatment required;
 - The requested number of hours;
 - Expected duration of the injury or illness; and
 - The anticipated date of return to work.

2. To have the application approved, the employee must:
 - Have sought approval to use sick leave from the Pool prior to exhausting all accrued leave;
 - Meet the criteria set forth by the Employees Retirement System;
 - Be a full-time or part-time regular employee;
 - Have exhausted all accrued leave;
 - Have shown a consistent effort to make appropriate and conservative use of sick leave benefits;
 - Provide re-certification of catastrophic illness or injury every thirty (30) calendar days; and
 - Intend to return to work with the Agency.

Upon receipt and approval of the request to use sick leave pool, the section/division director shall complete and forward the Application to Use Sick Leave Pool Hours and all documentation to the Human Resources Manager. The Human Resources Manager shall ensure that the request meets Agency policy and shall determine the exact amount of sick leave that an employee may use from the Pool and forward the application to the Secretary of State or the Deputy Secretary of State, who is the final approving authority. If the Secretary of State or the Deputy Secretary of State approves the application, the leave shall be credited to the employee, who may use the leave for the documented illness or injury.

The Secretary of State or Deputy Secretary of State shall consider each application on its own merits on an individual basis. The Secretary of State or the Deputy Secretary of State may make exceptions to the listed Pool requirements after review of the merits of an individual case.

9.5 EXTENDED SICK LEAVE

An employee who is temporarily unable to work due to illness or injury that necessitates the employee being off work for a period of time that exceeds two (2) work weeks and

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who has exhausted or will soon exhaust all accrued leave may be granted Extended Sick Leave. Requests for Extended Sick Leave will be based upon exceptional circumstances, will be fully justified, and will require approval by the Secretary of State or the Deputy Secretary of State. The granting of Extended Sick Leave is discretionary and will be approved only upon determination that it is in the best interest of the Agency. Extended Leave is not available for the illness or injury of an employee's immediate family member.

Each request shall be considered on its own merits and, if approved, the total leave granted for each illness or injury will be equal to the employee's cumulative leave balances as of September 1st of the current fiscal year, but will not exceed the following:

- Employees with five (5) years or less of state service – maximum of 176 hours
- Employees with over five (5) years of state service – maximum of 240 hours
- Employees with over twenty (20) years of state service – maximum of 360 hours

Hours granted to part-time employees shall be on a pro rata basis.

Eligibility

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

- Be a full-time or part-time regular employee;
- Have been continuously employed in state government for at least one (1) year;
- Be currently performing job duties at a satisfactory level according to the manager/team leader, and as reflected in the employee's performance evaluation on file in the Human Resources Department;
- Have exhausted all accrued leave;
- Use leave from the sick leave pool prior to applying for extended leave, if eligible;
- Have shown a consistent effort to make appropriate and conservative use of sick leave. Sick leave consistently depleted as it is accrued, failure to maintain sick leave balances without good cause, or a pattern of using sick leave on Mondays, Fridays, or days immediately before or after a holiday may be evidence of unacceptable use of sick leave;
- Provide re-certification of illness or injury every thirty (30) calendar days; and
- Intend to return to work with the Agency.

Application Procedures

To apply for extended sick leave, an employee must submit a memorandum requesting Extended Sick Leave to the appropriate section/division director for approval. Additionally, the request must include:

- The Health Care Providers Statement (See Appendix A) outlining the injury or illness of the employee;

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- The treatment required;
- The requested number of hours;
- Expected duration of the injury or illness; and
- The anticipated date of return to work.

Award of Extended Sick Leave

Upon receipt and approval of a request for Extended Sick Leave, the section/division director shall complete and forward the Application to Use Extended Sick Leave and all documentation to the Human Resources Manager. The Human Resources Manager shall ensure that the request for Extended Sick Leave meets Agency policy and shall determine the exact amount of extended sick leave that may be offered to the employee and forward the application to the Secretary of State or the Deputy Secretary of State for final approval. If the Secretary of State or the Deputy Secretary of State approves the application, the leave shall be credited to the employee, who may use the leave for the documented illness or injury.

The estate of a deceased employee is not entitled to payment for unused extended sick leave granted to the employee.

9.6 EMPLOYEE TO EMPLOYEE DONATED SICK LEAVE PROGRAM (TEX. GOV'T CODE. 661.207)

The Donated Sick Leave Program allows eligible staff to voluntarily donate their accrued sick leave to another employee in the event of a medical emergency. The donor and recipient must be employed within the same agency. A medical emergency is defined as a medical condition of the employee or an immediate family member that will require the prolonged absence of the employee from duty. Participation in this program is strictly voluntary.

“Immediate family” is defined as individuals related by kinship, adoption, or marriage who 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 only for a documented medical condition to care for immediate family members who do not reside in the same household. In this instance only, “immediate family” is interpreted as spouse, parent, or child.²

² Texas Government Code, Section 661.202(e); and State Auditor’s Office Leave Interpretation Letter, No. 97-04 (1996)

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GUIDELINES

- Donated Sick Leave (DSL) is to be used for a medical condition of the employee or a family member.
- Employees are not entitled to receive DSL under this program. Employees must submit a request for DSL and an Informed Consent Release authorization and must comply with the provisions of this program.
- Sick Leave (SL) accruals will continue during a Recipient's use of DSL; however, the SL will not be credited and available for use until after the Recipient returns to work.
- Recipient's qualification for DSL does not prevent the employer from exercising its right to terminate the employee under any federal or state law.
- Recipient may not be a direct or indirect supervisor of the donor.
- Donor is to designate the recipient of DSL.
- Donor may not be a direct or indirect supervisor of the recipient.
- Donor must certify that no solicitation and/or acceptance of any money, credit, gift, gratuity, thing of value or compensation of any kind has been provided, directly or indirectly, to the donor.
- Any unused DSL will not be returned to the donor. Recipient will have to establish another medical emergency before applying any unused DSL. Recipient will not be granted compensation for any unused DSL.
- Donation of leave must be in one (1)-hour increments.
- Recipient will not receive service credit in the Employees Retirement System (ERS) for any DSL that is unused on the last day of Recipient's employment.

AWARD PROCESS

Employees who would like to request DSL from their co-workers may request sick leave donations from their co-workers. Such requests should be informal and without pressure. Email notes and/or personal contact to selected individuals are appropriate; however, broad communications are not to be used. Email communications are not to contain the specifics of the medical condition.

A recipient is to complete a Recipient Request form and return it to Human Resources, where the request will be reviewed by the Director of HR or designee to confirm eligibility of circumstances. A recipient must provide medical certification to confirm the period of time for which leave is being requested and to confirm eligibility of circumstances. If the request for DSL is in connection with a family member's medical condition, then the recipient must also complete an Informed Consent Release.

A donor is to complete a Donor Request form and return it to Human Resources. The donor must certify that he/she is aware that the donation is irrevocable. The donor must also confirm that there is no solicitation and/or acceptance of any compensation of any

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kind. The donor will specify in writing the number of hours being donated. Human Resources will make the leave adjustments for the donor and recipient.

Executive Management may change this program without prior notice.

9.7 LEAVE WITHOUT PAY (LWP)

Leave without pay, except under the provisions of the FMLA, is not a right granted to employees, but is a privilege afforded in instances approved by an employee's section/division director.

Provisions

Employees may be granted LWP subject to the following provisions.

1. Except for disciplinary suspensions, active military duty, and workers' compensation situations, all accrued leave (including state compensatory and FLSA compensatory time balances) must be exhausted before such leave may be granted, with the additional provision that sick leave must be exhausted only in those cases where the employee is eligible to use sick leave, as provided in Section 9.3 above.
2. Deductions for LWP are calculated on a workday basis.
3. Employees on LWP for an entire calendar month, with the exception of those on leave in accordance with the FMLA, are responsible for paying 100 percent of the monthly health insurance premium. The HRD and the ERS will notify the employee in writing of the amount due and the due date.
4. Employees will not receive service credit, longevity pay, annual leave, or sick leave accruals for any full calendar month of LWP. Any full calendar month of LWP shall not constitute a break in employment, but shall not be included in the calculation of the minimum number of continuous months of state service required under merit raise, annual leave, or other leave provisions.
5. Employees who exhaust their military leave (See **Military Leave** below) are entitled to a leave of absence. Employees may elect to substitute all or some paid leave before going on LWP and shall continue to accrue state service credit for purposes of longevity pay, and accruing annual leave and sick leave and shall receive such credit upon return to state employment.
6. Such leave shall be limited in duration to twelve (12) months.
7. The Secretary of State or the Deputy Secretary of State may grant exceptions to these limitations for reasons determined appropriate including interagency agreements or educational purposes.

Notification/Implementation of Leave Without Pay Status

1. All LWP must be reported to the HRD by noon on or before the 15th of each month. Divisions/sections will be notified of exceptions to this policy when

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payroll deadlines require earlier submission. This notification shall be accomplished by the appropriate section/division director submitting to the HRD a copy of the original timesheet for the employee on LWP indicating all leave taken, including leave without pay, to date. Additionally, section/division directors must notify the HRD promptly, by memorandum or e-mail, when an employee has requested extended leave without pay.

2. Employees must follow established rules and provide proper documentation concerning annual leave and/or sick leave when being placed on LWP because of insufficient accrued leave.
3. Timesheets shall be submitted by noon on the last working day of the month indicating all leave taken for the entire pay period.

9.8 MILITARY LEAVE – See Section 13: Military Leave and Employment Rights

9.9 PARENTAL LEAVE

An employee who is not eligible for leave under the Family Medical Leave Act (FMLA) may be entitled to “Parental Leave” in lieu of leave under the FMLA.

“Parental Leave” is defined as a leave of absence which shall not exceed twelve (12) weeks for the birth of a child, adoption of a child or placement of a foster child under three (3) years of age. This leave begins with the date of birth, adoption, or foster care placement. Employees are required to use accrued leave while on Parental Leave and are placed on leave without pay for any remaining period. However, the use of sick leave during the twelve (12) week period or anytime exceeding the twelve (12) weeks is strictly limited to those situations falling within the definition of “sick leave” contained in this section. Time off exceeding the twelve (12) week period may be granted if approved by the section/division director.

9.10 MISCELLANEOUS LEAVE

- **Administrative Leave** - The Secretary State or the Deputy Secretary of State may grant a maximum of thirty-two (32) hours of administrative leave per fiscal year as a reward for outstanding performance as documented by employee performance appraisals.
- **Amateur Radio Operator** – An employee who holds an amateur radio station license issued by the Federal Communications Commission may be granted leave not to exceed ten (10) days each fiscal year to participate in specialized disaster relief services without a deduction in salary or loss of annual or sick leave, accrued overtime, or state compensatory time if the leave is taken with the authorization of the employee’s supervisor, and with the approval of the Governor.
- **Assistance Dog Training** - Employees with a disability as defined by Section 121.002, Texas Human Resources Code, will be granted leave not to exceed ten (10) days in a fiscal year to attend training necessary to provide the employee with an assistance dog to be used by the employee. Leave provided by this subsection is in

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addition to other leave to which the employee is entitled, and the employee will continue to accrue vacation and sick leave while on leave. To attend a training program, an employee must submit a memorandum to the section/division director for approval. The memorandum must contain the dates of the training.

- **Blood Donation** - Employees shall be allowed sufficient time off, without a deduction in salary or accrued leave, to donate blood. An employee may not receive time off to donate blood unless the employee obtains approval from his/her manager/team leader before taking time off. Upon returning to work, an employee shall provide the employee's manager/team leader with proof of the donation during the time off. If an employee fails to provide proof, the Agency shall deduct the period for which the employee was granted time off from the employee's salary or accrued leave, at the employee's option. An employee may receive time off under this section not more than four (4) times in a fiscal year.
- **Bone Marrow or Organ Donation** - Employees are entitled to leave of absence without a deduction in salary for the time necessary to serve as bone marrow or organ donors. The leave of absence provided by this section may not exceed:
 - Five (5) working days in a fiscal year to serve as a bone marrow donor; or
 - Thirty (30) working days in a fiscal year to serve as an organ donor.
- **Certified American Red Cross Activities** - Employees who are certified disaster service volunteers of the American Red Cross (ARC) or who are in training to become such a volunteer may be granted paid leave not to exceed ten (10) days each fiscal year to participate in specialized disaster relief services for the ARC. The employee must obtain approval from his/her supervisor and the Governor and receive a formal request from the ARC.
- **Court Appointed Special Advocates Volunteer** - Employees may be granted leave not to exceed five (5) hours each month to participate in mandatory training or perform volunteer services for Court Appointed Special Advocates without a deduction in salary or loss of annual leave, sick leave, earned overtime credit, or state compensatory time.
- **Emergency Leave** - The death of an employee's spouse or the employee's spouse's parent, brother, sister, grandparent, grandchild, or child (including present, but not former, stepchild) shall constitute adequate need for Emergency Leave. Such leave may be granted by the appropriate section/division director for the time required for funeral preparations, grieving, and to attend the funeral and shall not exceed three (3) non-consecutive working days unless the Secretary of State or the Deputy Secretary of State approve additional time. If requested by an employee, the Secretary of State or the Deputy Secretary of State may also grant emergency leave when he or she determines that the employee shows good cause for such leave. For an employee to be granted this type of emergency leave, the employee must submit the request in writing, must be in a paid status, and must intend to return to his/her current position in the agency on expiration of the period of emergency leave. An employee is not required to request emergency leave if the Secretary of State or the Deputy Secretary of State grants the emergency leave because the agency is closed due to weather conditions or in observance of a holiday.

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- **Foster Parent Leave** - An employee who is a foster parent to a child under the protection of the Texas Department of Family and Protective Services (DFPS) is entitled to paid leave of absence to attend staff meetings held by the DFPS regarding the foster child and to attend admission, review, and dismissal meetings held by a school district regarding the foster child.
- **Compliance with Subpoena** - Employees called to appear in an official capacity in any judicial action or legislative investigation shall neither accept nor receive any witness fees for such governmental appearance. However, if the appearance is not in an official capacity, but is for the purpose of testifying from personal knowledge, then an employee may accept any customary witness fees. In this latter case, the employee must use his/her accrued leave. The limitations relating to witness fees do not extend to any mileage or per diem allowance paid to the employee 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 shall there be double reimbursement for expenses.
- **Jury Service** - Employees called for jury service are granted paid leave for time served. Any compensation or reimbursement of expenses received for jury service shall not affect wages paid. Employees must submit and attach with timesheets proof of jury service from the court indicating actual time served. A jury summons is insufficient evidence of jury service.
- **Parent-Teacher Conference** – An employee may use sick leave each fiscal year to attend parent-teacher conference sessions for the employee’s children who are in pre-kindergarten through 12th grade. Full-time employees may use up to eight (8) hours of sick leave. Part-time employees may use a proportionate number of hours of sick leave. Employees must give reasonable notice of intention to use sick leave to attend such conferences.
- **Time Off to Vote** - Employees are entitled to sufficient time off with no deduction in salary to vote in each national, state, or local election on a uniform election day. However, employees are not entitled to time off during early voting.
- **Volunteer Firefighters’ Leave/Emergency Medical Services Training** -Employees who are volunteer firefighters or emergency medical services volunteers are entitled to paid leave not to exceed five (5) working days per fiscal year to attend training services conducted by state agencies or institutions of higher education. Additionally, the Agency will grant leave (not to be charged against the employee’s annual or sick leave) with full pay to volunteer firemen or emergency medical services volunteer for the purpose of responding to emergency fire or medical situations.

9.11 TRANSFER OF ACCRUED LEAVE

Annual Leave - Employees who transfer or are re-employed within 30 calendar days by another state agency to a position that accrues annual leave are entitled to transfer accrued annual leave.

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Sick Leave - Employees who terminate employment under a formal reduction in force are entitled to have their sick leave balances restored if they are re-employed by the State within 12 months.

Employees who terminated for reasons other than a formal reduction in force and who have subsequently been re-employed by the same state agency or institution of higher education 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 terminated employment and if there has been a break in employment with the state of at least 30 calendar days; or
- The employee is re-employed by another state agency or institution of higher education within 12 months after the end of the month in which the employee terminated employment.

“State Agency” refers to any state agency or institution included in the Appropriations Bill, regardless of the Article in which it appears. Contact the HRD for aid in establishing prior state service or in transferring annual and sick leave from such prior service.

9.12 CREDIT FOR ACCUMULATED ANNUAL LEAVE AND SICK LEAVE

Employees hired on or before August 31, 2009, who retire based on service or disability are entitled to service credit for accrued but unused annual leave and sick leave on the last day of employment. Employees are eligible to receive one (1) month of service credit for each 160 hours, or fraction thereof, of unused sick leave and annual leave. This service credit may be used to satisfy requirements for retirement, insurance eligibility, and to increase annuity benefits.

9.13 ABSENCE FROM WORK BECAUSE OF INCLEMENT WEATHER

If inclement weather is so severe that all or most employees of the Agency would be endangered by hazardous driving conditions either in arriving to work or in returning home from work at the regular time, the Secretary of State or the Deputy Secretary of State shall declare an emergency and shall permit employees to be absent from work without charge against any available leave or loss of pay. Under such circumstances, the Secretary of State or the Deputy Secretary of State shall issue a notice to the division directors who shall take the necessary action to notify all employees. Employees should contact the HRD at 463-8000 for a recorded message regarding agency closures. This absence shall be charged as Emergency Leave-Other (EO) and reported as a permitted absence.

If an employee decides not to report to work because of a determination that hazardous driving conditions prevent the employee from reporting to work or returning home at the regular time, then the employee shall notify a manager/team leader of such decision and

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shall request leave for that business day. The manager/team leader shall grant the employee's request for leave unless the manager/team leader determines that the employee's services are indispensable. Such absence from work shall be charged against accrued leave. An employee who does not have enough leave to cover the absence shall be placed on LWP for the period of time not covered by the employee's leave. Sick leave shall not be used unless the employee or the employee's immediate family is ill or injured.

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SECTION 10: HOLIDAYS

10.0 GENERAL

Employees are entitled to a paid day off from work on national, state, and optional holidays observed by the state. However, the Agency will remain open and have enough personnel to conduct business on state holidays.

If a holiday falls in mid-month (other than the first or last workday of the month), employees must be a state employee on the day before and the day after the holiday. If the holiday falls on the first workday of a month, employees must be a state employee on the day immediately after the holiday. If the holiday falls on the last workday of the month, employees must be a state employee on the day immediately before the holiday. For purposes of determining entitlement to a paid holiday, “state employee” is defined as being employed by the state and not on leave without pay.

Employees who work during a national holiday or a state holiday period shall be allowed holiday compensatory time off during the twelve-month period following the date of the holiday worked. Employees who telecommute do not earn holiday compensatory leave if they work on a holiday at home. (Compensatory time is subject to the provisions outlined in Section 6.)

An employee working a non-traditional schedule who works less than the entire fiscal year is entitled to paid holiday time off during the fiscal year equal to eight hours multiplied by the number of national and state holidays that occur during the time period worked by the employee.

NATIONAL HOLIDAYS

- the 1st day of January, “New Year’s Day”
- the 3rd Monday in January, “Martin Luther King, Jr., Day”
- the 3rd Monday in February, “Presidents’ Day”
- the last Monday in May, “Memorial Day”
- the 4th day of July, “Independence Day”
- the 1st Monday in September, “Labor Day”
- the 11th day of November, “Veterans Day”
- the 4th Thursday in November, “Thanksgiving Day”
- the 25th day of December, “Christmas Day”

STATE HOLIDAYS

- the 19th day of January, “Confederate Heroes Day”*
- the 2nd day of March, “Texas Independence Day”*
- the 21st day of April, “San Jacinto Day”*
- the 19th day of June, “Emancipation Day in Texas”*
- the 27th day of August, “Lyndon Baines Johnson Day”*

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- the Friday after Thanksgiving Day
- the 24th day of December
- the 26th day of December

*On these days, the Agency shall have enough personnel to conduct public business. However, this does not apply to a state holiday that falls on a Saturday or Sunday, on the Friday immediately following the fourth Thursday in November, on the 24th day of December, or on the 26th day of December.

Unless authorized by the Secretary of State or Deputy Secretary of State, the Agency will not close on another day when designated holidays fall on Saturday or Sunday.

10.1 OPTIONAL HOLIDAYS (SUBSTITUTE HOLIDAY LEAVE)

Employees are entitled to substitute Rosh Hashanah, Yom Kippur, Cesar Chavez Day, and Good Friday in lieu of any state holiday(s), during the same fiscal year in which the Agency is required to be open and staffed to conduct public business provided that the employee does not agree to give up the Friday after Thanksgiving Day, Christmas Eve, or December 26th. Employees cannot substitute optional holidays for a national holiday.

To request Substitute Holiday Leave (SHL), employees must obtain approval from the appropriate section/division director. Upon approval, an employee must annotate in the Justification column of the timesheet what state holiday the employee will work. For example, an employee that wants to observe Cesar Chavez Day will write “SHL (San Jacinto Day)” in the Justification column of the timesheet on Cesar Chavez Day.

The HRD shall maintain balances indicating hours worked/taken, but it shall be the responsibility of each division/section director to ensure that those employees work and/or take the requested holidays during the fiscal year. At the end of the fiscal year, the HRD shall purge all negative balances and make adjustments to leave balances or pay as required. Under no circumstances shall a negative balance be carried forward into the next fiscal year.

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SECTION 11: FAMILY AND MEDICAL LEAVE ACT (FMLA)

11.0 INTRODUCTION

The Family Medical Leave Act (FMLA) of 1993 entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons. Amendments to the FMLA by the National Defense Authorization Act for FY 2008 (NDAA), Public Law 110-181, expanded the FMLA to allow 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 fact that a covered military member is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. The NDAA also amended the FMLA to allow eligible employees to take up to 26 weeks of job-protected leave in a “single 12-month period” to care for a covered servicemember with a serious injury or illness.

11.1 EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee must:

- have worked for the Agency for a total of 12 months; and
- have worked at least 1,250 hours over the previous 12 months.

While the 12 months of employment need not be consecutive, employment periods prior to a break in service of seven years or more need not be counted unless the break is occasioned by the employee’s fulfillment of his or her National Guard or Reserve military obligation (as protected under the Uniformed Services Employment and Reemployment Rights Act (USERRA)).

11.2 LEAVE ENTITLEMENT

The Agency will grant an eligible employee up to a total of 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

- for the birth and care of a newborn child of the employee;
- for placement of a son or daughter for adoption or foster care with the employee;
- to care for a spouse, son, daughter, or parent with a serious health condition;
- to take medical leave when the employee is unable to work because of a serious health condition; or
- for qualifying exigencies arising out of the fact that the employee’s spouse, son, daughter, or parent is on active duty or call to active duty status as a member of the National Guard or Reserves in support of a contingency operation.

The 12 month period is determined by measuring backward from the date an employee uses FMLA leave. An employee is entitled to use up to 12 weeks of job-protected leave during a 12 month period. Under this policy, 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.

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The Agency will also grant an eligible employee who is a spouse, son, daughter, parent, or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness up to a total of 26 workweeks of unpaid leave during a “single 12-month period” to care for the servicemember.

Spouses employed by the same Agency are limited in the amount of family leave they may take for the birth and care of a newborn child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition to a combined total of 12 weeks (or 26 weeks if leave to care for a covered servicemember with a serious injury or illness is also used). Leave for birth and care, or placement for adoption or foster care, must conclude within 12 months of the birth or placement.

Under some circumstances, employees may take FMLA leave intermittently – taking leave in separate blocks of time for a single qualifying reason – or on a reduced leave schedule – reducing the employee’s usual weekly or daily work schedule. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the Agency’s operation. If FMLA leave is for birth and care, or placement for adoption or foster care, use of intermittent leave is subject to the Agency’s approval.

Employees must “substitute” (run concurrently) all accrued paid leave to cover some or all of the FMLA leave.

Note: It is the Agency’s right, not the employee’s right, to designate FMLA-qualifying leave as such. Therefore, any FMLA-qualifying leave taken by an eligible employee shall be so designated and thus counted against the employee’s total FMLA entitlement.

11.3 DEFINITIONS

“Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves either:

- Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; or
- Continuing treatment by a health care provider, including a period of incapacity lasting more than three consecutive, full calendar days and any subsequent treatment or period of incapacity relating to the same condition that also includes:
 - treatment two or more times by or under the supervision of a health care provider (i.e., in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); or
 - one treatment by a health care provider (i.e., an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (e.g., prescription medication, physical therapy); or

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- Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or
- Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; or
- A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or
- Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

11.4 MAINTENANCE OF HEALTH BENEFITS

The Agency will maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave. In some instances, the Agency may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

An employee does not earn state service credit, annual leave, or sick leave for any full calendar months of LWP while on family and medical leave.

11.5 JOB RESTORATION

Upon return from FMLA leave, an employee must be restored to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. An employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave, nor be counted against the employee under a "no fault" attendance policy. If a bonus or other payment, however, is based on the achievement of a specified goal such as hours worked or perfect attendance, and the employee has not met the goal due to FMLA leave, payment may be denied unless it is paid to an employee on equivalent leave status for a reason that does not qualify as FMLA leave. An employee has no greater right to restoration or to other benefits and conditions of employment than if the employee had been continuously employed.

An employee returning from FMLA-designated leave taken for his/her own *serious health condition* may be required to provide the Agency with certification (Return To Work Status) from a health care provider that the employee is able to resume work, unless the Human Resources Manager determines that a certification is not required for employees in that situation. For example, the Human Resources Manager may determine

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that employees returning to work from pregnancy leave need not provide certification that they are no longer pregnant.

11.6 NOTICE

Employee Notice

Employees seeking to use FMLA leave are required to provide a 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable less than 30 days in advance, the employee must provide notice as soon as practicable – generally, either the same or next business day. When the need for leave is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, employees must comply with the Agency’s usual and customary notice and procedural requirements for requesting leave.

Employees must provide sufficient information for the Agency to reasonably determine whether the FMLA may apply to the leave request. Depending on the situation, such information may include that the employee is incapacitated due to pregnancy, has been hospitalized overnight, is unable to perform the functions of the job, and/or that the employee or employee’s qualifying family member is under the continuing care of a health care provider.

When an employee seeks leave for a FMLA-qualifying reason for the first time, the employee need not expressly assert FMLA rights or even mention the FMLA. When an employee seeks leave, however, due to a FMLA-qualifying reason for which the Agency has previously provided the employee FMLA-protected leave, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave.

Employer Notice

Notices explaining rights and responsibilities under FMLA are posted in the HRD. Additionally, each new employee will receive the aforementioned notice during the New Hire Orientation.

When an employee requests FMLA leave or the Agency acquires knowledge that leave may be for a FMLA purpose, the Agency must notify the employee of his or her eligibility to take leave, and inform the employee of his/her rights and responsibilities under FMLA. When the Agency has enough information to determine that leave is being taken for a FMLA-qualifying reason, the Agency must notify the employee that the leave is designated and will be counted as FMLA leave.

11.7 CERTIFICATION

The Agency may require that an employee’s request for leave due to a serious health condition affecting the employee or a covered family member be supported by a certification from a health care provider. The Agency may require second or third

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medical opinions (at the Agency’s expense) and periodic recertification of a serious health condition. The Agency may use a health care provider or a member of the HRD staff – but not the employee’s direct supervisor – to authenticate or clarify a medical certification of a serious health condition. If reasonable safety concerns exist, the Agency may, under certain circumstances, require such a certification for employees returning from intermittent FMLA leave.

11.8 MILITARY FAMILY LEAVE ENTITLEMENTS

Military Caregiver Leave:

The Agency will grant up to a total of 26 workweeks of unpaid leave during a “single 12-month period” to an eligible employee who is a spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness to care for the servicemember. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is 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. A serious injury or illness is one that was incurred by a servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating. A covered servicemember is also a veteran who is undergoing medical treatment, recuperation, or therapy for serious injury or illness that occurred any time during the five years preceding the date of treatment. The “single 12-month period” for leave to care for a covered servicemember with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12 month period established by the Agency for other types of leave under the FMLA. An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the “single 12-month period.” (Only 12 of the 26 weeks total may be for a FMLA-qualifying reason other than to care for covered servicemember.)

Qualifying Exigency Leave:

The Agency will grant an eligible employee up to a total of 12 workweeks of unpaid leave during the normal 12-month period established by the Agency for FMLA leave for qualifying exigencies arising out of the fact that the employee’s spouse, son, daughter, or parent is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. Under the terms of the statute, qualifying exigency leave is available to a family member of a military member on active duty or in the National Guard or Reserves.

Qualifying Exigencies Include:

- Issues arising from a covered military member’s short notice deployment (i.e., deployment on seven or less days of notice) for a period of seven days from the date of notification;

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- Military events and related activities, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered military member;
- Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member;
- Making or updating financial and legal arrangements to address a covered military member's absence;
- Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member;
- Taking up to five days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment;
- Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered military member;
- Any other event that the employee and employer agree is a qualifying exigency.

FMLA leave may be taken intermittently whenever medically necessary to care for a covered servicemember with a serious injury or illness. FMLA leave also may be taken intermittently for a qualifying exigency arising out of the active duty status or call to active duty of a covered military member. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment as not to unduly disrupt the Agency's operation.

Certification Requirements:

An employee's request for military family leave must be supported by an appropriate certification. The Agency may require that:

- leave for a qualifying exigency be supported by a copy of the covered military member's active duty orders and certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought, including contact information if the leave involves meeting with a third party; or
- leave to care for a covered servicemember with a serious injury or illness be supported by a certification completed by an authorized health care provider or by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered service member's family.

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The Agency may authenticate or clarify a medical certification of a serious injury or illness, or an ITO or ITA. Additionally, the Agency may contact the individual or entity named in a certification of leave for a qualifying exigency for purposes of verifying the existence and nature of the meeting.

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Appendices
