

# TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

## *Excerpt from Personnel Policy Manual*

### LEAVE BENEFITS

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#### **4. LEAVE BENEFITS**

##### **4.00 Purpose**

The purpose of this description of benefits is to inform each employee of the Board.

##### **4.01 Annual Leave Accrual**

Annual leave entitlement is earned from the first day of employment and terminates on the last day of employment.

- A.** Credit for one month's accrual is given for each month or fraction of a month of employment on the first day of employment and first day of each month.
- B.** 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.
- C.** A part time employee earns a proportional rate of annual leave entitlement depending on the number of hours actually worked per month rounded either up or down to the nearest whole number.
- D.** In computing leave time taken, holidays are **NOT** charged against vacation entitlement.

##### **4.02 Leave Request-Prior Approval**

Annual leave should be requested at least one week before it is requested to be taken.

All time off must be documented and approved by an employee's immediate supervisor. The *Leave Request and Authorization* form is to be filled out completely by the employee.

If an employee takes the leave time before it is approved, it is considered an unauthorized absence which could subject the employee to disciplinary action. More than one day of unauthorized absence could subject the employee to termination.

- A. Overtime leave must be taken first.**
- B.** Annual leave and compensatory time may not be taken without prior approval of supervisors.

#### **4.03 Annual Leave for Full-Time Employees**

A full-time employee earns annual leave at the following accrual rates:

<b>Years of Service</b>	<b>Hours Accrued Per Month</b>	<b>Allowable Carry Over</b>
Less than 2 years	08	180
2 but less than 5	09	244
5 but less than 10	10	268
10 but less than 15	11	292
15 but less than 20	13	340
20 but less than 25	15	388
25 but less than 30	17	436
30 but less than 35	19	484
At least 35 years or more	21	532

All hours in excess of the maximum allowable carry over left at the end of a fiscal year may be credited to the employee's sick leave balance as of the first day of the next fiscal year.

An employee hired on the first day of a month receives annual leave accrual increases on the first day of the month of their employment anniversary. Accrual increases for employment commencing on any day other than the first will be effective the month following the anniversary date.

When the first **working** day of a month falls on a date other than the first, the employee's date of employment is still considered the first day of the month for leave accrual purposes as well as for compensation.

#### **4.04 Annual Leave for Employee Who Leaves State Employment**

An employee, who resigns, is dismissed, or otherwise separates from employment is entitled to a lump sum payment for all annual leave time which they have accrued, provided the employee has continuous employment with the state for at least six months.

Upon the death of an employee, the Board will pay to the deceased's estate all accrued annual leave and one-half of accumulated sick leave or 336 hours, whichever is less.

#### **4.05 Sick Leave Accrual and Use**

##### **A. Accrual of sick leave:**

1. Full-time employees accrue sick-leave at the rate of eight hours per month or fraction of a month of employment.
2. Credit is given on the first day of employment and the first day of each month.

**4.04 Sick Leave Accrual and Use (continued)**

3. Sick-leave accrues from the first day of employment and terminates on the last day of duty.
4. Unused sick leave is carried forward each month.
5. A part-time employee accrues sick leave at a proportional rate to that of full-time employees.

**B. Use of Sick Leave:**

1. 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 their immediate family who is actually ill. For purposes relating to regular sick leave, immediate family is defined as those individuals who reside in the same household and are related by kinship, adoption, marriage, or foster children who are so certified by the Texas Department of Family and Protective Services. An employee's use of sick leave for family members who do not reside 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. Minor children of an employee, whether or not living in the same household, will be considered immediate family for the purposes of regular sick leave.
2. An employee who must be absent from duty because of illness shall notify their supervisor or cause the supervisor to be notified of that fact at the earliest practicable time.
3. Appointments with doctors, dentists, and other licensed medical specialists are considered legitimate claims against sick leave.
4. Upon return to duty the employee must complete and submit a *Leave Request and Authorization* form. An attending physician's statement is required for an absence of more than three consecutive working days. In lieu of the attending physician's statement an acceptable written explanation, prepared by the employee, may be submitted.

#### **4.05 Sick Leave Accrual and Use (continued)**

- C.** Abuse of sick leave may cause the following actions to be taken:
1. A physician's statement to be required for any period of absence.
  2. Possible termination of employment or other disciplinary action.
- D.** Upon the death of an employee, the Board will pay to the deceased's estate one-half the employee's accrued sick leave, not to exceed 336 hours.
- E.** An employee separated from employment with the state under a formal reduction-in-force shall have their sick leave balance restored if reemployed by the state within twelve months of termination. An employee separated for other reasons shall have their sick leave balance restored if they are reemployed by the state within twelve months of termination, *provided there has been a break in service of at least one month since termination.*

#### **4.06 Extended Sick Leave**

A regular employee may be granted extended sick leave in excess of the amount of sick leave that they have accrued.

- A.** Extended sick leave must be approved by the Executive Director and is granted only after the employee has exhausted all sick leave, earned compensatory time, and accrued annual leave.

The amount of Extended Sick Leave that may be granted will be determined on a case-by-case basis at the Executive Director's or his or her designee's discretion. In determining whether an employee is eligible for extended sick leave, the Executive Director or his or her designee may consider a number of factors including:

- Length of employment with the agency.
- Type or nature of the illness or disability.
- Current/past work performance.
- Past leave balances.
- Whether the employees intends to return to work.
- Who the leave is for (for example, self or family member).
- Whether the employee has used extended sick leave previously.

**4.06 Extended Sick Leave (continued)**

For Extended Sick Leave ONLY, family is defined as persons related by kinship or marriage.

- B.** Extended sick leave is shown on the employee's records as sick leave taken.
- C.** All subsequently earned annual and sick leave and compensatory time will be utilized to reduce the negative sick leave balance. Employees will be credited with full accrual for both vacation and sick leave for the month in which they are placed on extended sick leave when extended sick leave begins after the first of the month. If the employee did not work in that month but was on paid leave prior to beginning extended sick leave, accruals will be credited when the employee returns to work.
- D.** The final salary warrant of an employee who terminates employment with a negative sick leave balance will be reduced by the amount of negative sick leave balance.
- E.** If an employee is granted extended sick leave due to an on-the-job injury or illness and is also receiving workers' compensation benefits for the same period, the total payments will be coordinated so as not to exceed the employee's regular monthly salary prior to the injury or illness. Extended sick leave granted such an employee may not extend beyond six months from the date on which worker's compensation payments began.
- F.** An employee who voluntarily elects not to return to work with TSBPA following a period of extended sick leave will be required to reimburse TSBPA for the dollar amount of extended sick leave granted.

**4.07 Sick Leave Pool**

**A. Purpose**

The purpose of this Personnel Policy is to establish guidelines for the creation and operation of a sick leave pool to benefit certain state employees who suffer a catastrophic injury or illness.

**4.07 Sick Leave Pool (continued)**

**B. Definitions**

1. A 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 forces the employee to exhaust all leave time earned by that employee and to lose compensation from the State for the employee.
2. Licensed practitioner means a practitioner, as defined in the Texas Insurance Code, who is practicing within the scope of their license.
3. 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 and who are living in the same household as the employee or if not in the same household as the employee are totally dependent upon the employee for personal care or services on a continuing basis.

**C. Pool Administrator**

The Pool Administrator (Executive Director) will be responsible for developing mechanisms to transfer accrued sick leave into and out of the pool; developing rules and procedures for the operation of the pool; and developing forms for contributing leave to or using leave from the pool.

**D. Eligibility**

1. All Board employees including those on probationary, provisional, temporary, emergency, hourly or other types of appointments may apply to use sick leave from the sick leave pool. Exceptions are elected officers, including members and employees of the legislature; appointed officers; and Executive Directors of State agencies, all of whom are excluded for participating by Senate Bill 357.
2. Employees may use the sick leave pool for their own catastrophic illness or injury or for one in their immediate family, as defined above.

**4.07 Sick Leave Pool (continued)**

3. Employees may also use the sick leave pool if they contributed sick leave to the pool and then exhausted their sick leave balance in the same fiscal year. Such employees may receive only the number of hours they contributed to the sick leave pool during that fiscal year unless they suffer a catastrophic illness or injury.
4. Employees must exhaust all accrued leave, plus any extended sick leave granted them by the Board, before they are eligible to use leave from the pool. Exception: Employees who are off work due to an on-the-job injury or illness are not required to exhaust their annual or compensatory leave.
5. Employees on pool leave for a full calendar month accrue paid leave for that month, provided they return to work following the pool leave.
6. Employees with catastrophic illness or injuries are not required to contribute to the pool before they can use pool leave.
7. Employees who use pool leave are not required to pay back pool leave.

**E. Contributions**

1. Contributions to the pool are strictly voluntarily.
2. Active employees may contribute one or more days of sick leave to the pool each fiscal year, in increments of eight hours with the exception of retiring employees who may designate the number of hours to be donated.
3. Employees who make contributions to the pool may stipulate who is to receive their contributions. Employees of state agencies and institutions of higher education, as defined by Texas Government Code, Section 661.001, may donate any amount of the employee's accrued sick leave to another employee who: Is employed in the same agency as the donor employee, and has exhausted his or her sick leave, including any time he or she may be eligible to withdraw from a sick leave pool.

**4.07 Sick Leave Pool (continued)**

4. Employees will be encouraged to contribute to the pool at the time of their separation from state employment.
5. Employees who contribute leave to the pool cannot get it back unless they are eligible to use it.

**F. Withdrawal of Time**

1. Requests for pool leave will be forwarded to the Pool Administrator through appropriate supervisory channels, and will be considered by the Pool Administrator on a first-come, first-served basis.
2. If the employee is seeking permission to withdraw time because of a catastrophic illness or injury, the employee must provide the pool administrator with a written statement from the licensed practitioner who is treating the employee or the employee's immediate family member. The statement must provide sufficient information regarding the illness or injury to enable the pool administrator to evaluate the employee's eligibility.
3. The Pool Administrator will have five work days from the date he receives a request in which to approve all or part of the request, or deny the request.
4. The amount of pool leave granted for each catastrophic illness or injury will be determined by the Pool Administrator. The amount cannot exceed one-third of the balance of hours in the pool, or 90 days, whichever is less.
5. Any unused balance of pool leave granted to an employee returns to the pool. The estate of a deceased employee is not entitled to payment for unused pool leave.

**4.08 Donation of Sick Leave by State Employees**

An employee may donate any portion of their accrued sick leave to a fellow state employee who is employed by the same state agency. To be eligible to receive the donated sick leave, the recipient of the sick leave must be employed by the same agency and must have exhausted the employee's sick leave, including any time the individual may be eligible to withdraw from a sick leave pool. The employee who donates the leave may not receive any remuneration or gift in exchange for the sick leave donation.

#### **4.09 Family and Medical Leave Act**

##### **A. Purpose**

Employees who have been employed for twelve continuous months by the state, and have worked at least 1,250 hours during that period, are entitled to leave pursuant to the Family and Medical Leave Act provided that the employee utilizes all available applicable paid leave.

##### **B. Policy**

The Family and Medical Leave Act of 1993 (FMLA) as amended in subsequent years entitles eligible employees to take up to twelve weeks of job-protected leave each year for specified family and medical reasons. To take Family and Medical Leave, an employee must meet the eligibility requirements as defined in this policy.

1. Texas Government Code, Section 661.912 (b) provides that an employee must utilize all applicable leave entitlements while taking FML. The Department of Labor has determined that employees will not be able to use FLSA overtime as paid leave for the FML purposes; however, compensatory time may be used. All utilized leave counts towards the 12-week per year maximum allowance of the FMLA. The Board will use a rolling 12-month period to determine the employee's eligibility for leave under the Family and Medical Leave Act.

##### **C. FMLA Definitions**

1. *Board* - The Texas State Board of Public Accountancy.
2. *COBRA* - Consolidated Omnibus Budget Reconciliation Act of 1986. A federal law that allows an employee to retain the same level of health insurance after termination of employment provided all provisions of the Act are met.
3. *Employer* - The State of Texas, the Texas State Board of Public Accountancy or the Board.
4. *Employment Benefit* - All benefits provided are made available to employees by the Board including, but not limited to, the following benefits: Group Life Insurance, Health Insurance, Disability Insurance, Sick Leave, Annual Leave, Compensatory Leave, Retirement Benefits, and all other similar benefits described in the policies and procedures of the Texas State Board of Public Accountancy.

#### 4.09 Family and Medical Leave Act (continued)

##### C. FMLA Definitions (continued)

5. *ERS*: Employees Retirement System of Texas. The state agency that administers the Uniform Group Insurance program and Retirement program for state employees.
6. *Immediate Family Member* - The employee's spouse, child, or parent.
7. *Health Care Provider* - a) A doctor of medicine or osteopath who is authorized to practice medicine or surgery by the State in which the doctor practices; b) a podiatrist, clinical psychologist, optometrist and chiropractor authorized to practice in the State in which they practice and perform within the scope of their practice as defined under State Law; c) nurse practitioners and nurse/midwives who are authorized to practice under State Law of the State in which they practice and who are performing within the scope of their practice as defined under State Law and, d) a Christian Science practitioner listed with the First Church of Christ Scientist in Boston, Massachusetts.
8. *FLSA* - Fair Labor Standards Act - A federal law that requires employers to give employees in certain job categories one and one-half times the number of hours worked in excess of 40 hours in a work week.
9. *FML* - Family Medical Leave.
10. *FMLA* - Family Medical Leave Act of 1993 as amended.
11. *Parent* - The biological parent of an employee or an individual who stood in the place of a parent when the employee was a son or daughter.
12. *Parental Leave* - Authorized by Texas Government Code, Section 661.913, employees who do not qualify for FML are entitled to parental leave for the birth of a natural child or the adoption or foster care placement of a child under three years of age. This is not to be confused with the FMLA provisions.

Employees are entitled to a parental leave of absence, not to exceed 12 weeks, for the birth of a natural child or the adoption of a child under three years of age. This period **begins with the date of birth or the first day the adoptive child is formally placed in the home.**

#### 4.09 Family And Medical Leave Act (continued)

##### C. FMLA Definitions (continued)

The employee must use all available and applicable paid vacation and sick leave while taking the leave, with the remainder of the leave unpaid.

Under the Parental Leave provisions, the Board will not pay for the employee's group health insurance coverage for any full calendar months of leave without pay during such leave. Payment of insurance coverage by the employee will be as outlined in the Board's *Family Medical Leave Policy, Maintenance of Health Benefits*, section.

13. *Reduced Leave Schedule*- A leave schedule that reduces the usual number of hours per week, or hours per workday of an employee.
14. *Rolling 12 Month Period*- A rolling 12 month period measured backward from the last date any Family Medical Leave is used.
15. *Serious Health Condition*- An illness, injury, impairment, physical or mental condition that involves: (a) in-patient care in the hospital, hospice or residential medical care facility or continuing treatment by a health care provider; (b) Any period of incapacity requiring absence of more than three calendar days from work or other regular daily activities that also involves continuing treatment by, or under the supervision of, a health care provider; or (c) continuing treatment by, or under the supervision of, a health care provider for parental care or for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days.
16. *Son or Daughter*- A biological, adopted or foster child, a step-child, a legal ward or a child of a person standing in the place of a parent who is under 18 years of age, or 18 years of age and older, and incapable of self-care because of a physical or mental disability.
17. *UGIP*- The Uniform Group Insurance Program for state employees administered by the Employees Retirement System of Texas.

**4.09 Family and Medical Leave Act (continued)**

**D. Employee Eligibility**

To be eligible for FML benefits, an employee must have been employed by the State of Texas for at least twelve months and worked at least 1,250 hours during the past 12 month period. The 1,250 hours refers to hours actually worked and does not include any paid time off.

**E. Leave Entitlement**

Board employees will be entitled to a total of twelve work weeks leave during any twelve month period, when leave is taken under one or more of the following circumstances:

1. birth of a child of the employee, and to care for such child;
2. the placement of a child with an employee for adoption or foster care;
3. to care for the spouse, son, daughter, or parent of the employee who has a serious health condition; or
4. because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

Leave for a birth or adoption (including foster care placement) must conclude within twelve months of the birth or placement. This limitation *does not apply* to leave taken by either spouse to care for the other who is seriously ill and unable to work, to care for a child with a serious health condition or for their own serious illness.

**F. Birth or Adoption of a Child - Period of Time for Entitlement of Leave**

An employee's entitlement to leave shall expire twelve months after the date of the placement of a son or daughter.

This 12-month period begins with the first day the child is formally placed in the home. Such leave may not be taken intermittently or on a reduced leave schedule, unless Board and the employee agree otherwise.

#### 4.09 Family and Medical Leave Act (continued)

##### G. Intermittent Leave or Leave on a Reduced Leave Schedule

An employee may take leave under Section 825.117 of the FMLA intermittently or on a reduced leave schedule when medically necessary. If an employee requests intermittent leave or leave on a reduced leave schedule under this section, and the leave is foreseeable, based on planned medical treatment, the employee may be transferred temporarily to an available alternative position for which the employee is qualified, and has equivalent pay and benefits and better accommodates recurring periods of leave than the regular employment position of the employee.

##### H. Use of Leave Time

The employee shall use accrued leave, sick (if applicable) or annual time, until all of the leave is exhausted. If need be, the remaining period of leave will be leave without pay. Federal law prohibits the employee from using FLSA overtime to complete the twelve-week period under the FMLA. State compensatory time and FLSA compensatory time is available to the employee but cannot be charged against the 12-week period.

The following sections of the law and opinion are given for your information.

Texas Government Code, Section 661.152 (j) provides:

*An employee who is on paid leave on the first workday of a month may not take vacation leave accrued for that month until the employee has returned to duty.*

Also, see SAO Leave Interpretation 91-02 and Attorney General Opinion H-341.

Texas Government Code, Section 661.909 (f) and (g) provides:

*(f) Except for an employee who returns to state employment from military leave without pay under Section 661.904, a full calendar month during which an employee is on leave without pay is not counted in computing:*

#### 4.09 Family and Medical Leave Act (continued)

##### H. Use of Leave Time (continued)

- (1) *total state service for purposes related to longevity pay or to the rate of accrual of vacation leave: or*
- (2) *continuous state service for purposes related to merit salary provisions or vacation leave.*
- (g) *An employee does not accrue vacation or sick leave for a full calendar month during which the employee is on leave without pay.*

The employee will receive pay for holidays if in a *paid leave status*.

NOTE: *There are other sections of State and Federal law that may affect the above information. Each case will be determined on an individual basis.*

##### I. Procedures for Requesting Leave

1. The employee requesting FMLA leave must provide a thirty day advance written notice to the Executive Director through the appropriate supervisory channels when the need for FMLA is foreseeable. A certification of the request is required. See *Certification Requirements* section.
2. If the FML request is for a planned medical treatment, or any other type of intermittent time, the employee must schedule it so that it will not unduly disrupt the operation of the office, if possible, subject to the approval of the health care provider.
3. If the FML request is not foreseeable, and the employee is not able to give thirty days notice prior to taking FMLA leave, the employee must provide notice to the Executive Director through appropriate supervisory channels as soon as practicable, ordinarily within one or two business days of when the employee learns of the need for the leave. Verbal notice sufficient to inform the Board that the employee will be needing FMLA leave satisfies the FMLA notice requirement. The employee should comply with the Board's certification requirement within ten days of the beginning date of the FMLA leave.

#### 4.09 Family and Medical Leave Act (continued)

##### I. Procedures for Requesting Leave (continued)

4. When unforeseen events occur that require FMLA leave, employees must give notice as soon as practicable, ordinarily within one or two working days. Notice should be given either in person or by phone when medical emergencies are involved, and may be given by the employee's spouse or other family member if the employee is unable to do so due to a serious health condition. Written notice pursuant to the Board's established policy or practice cannot be required in the case of a medical emergency.
5. All other special circumstances will be evaluated on a case-by-case basis.
6. The Executive Director may waive FMLA leave notice or the Board's own notice requirements.
7. The Executive Director has thirty days to deny FMLA leave after notice is provided if an employee fails to satisfy the notice requirements. If the Board does choose to take action against an employee for failing to provide adequate notice, its policies and procedures shall be uniformly applied, although variation is permitted because of differing circumstances. The Executive Director shall make the final determination for special circumstances.
8. It is the employee's responsibility to make arrangements to pay any insurance premium above and beyond the state-paid portion of the insurance premium. *See Maintenance of Health Benefits section.*

##### J. Certification Requirements

A request for medical leave under this section shall be supported by certification by the health care provider of the eligible employee or immediate family member as appropriate. The employee shall present to the Executive Director a *Certification of Physician or Practitioner* form (U. S. Department of Labor form) which includes the following information:

1. a doctor's statement outlining the reason for FML, to include the type of injury or illness of the employee, spouse, child, parent, or other immediate family member;
2. the date the condition commenced or will commence;

**4.09 Family and Medical Leave Act (continued)**

**J. Certification Requirements (continued)**

3. the type of treatment required, and what type of health care provider will be providing the needed treatment;
4. the anticipated date of the employee's return to work; and,
5. notice that the employee is unable to perform his or her job function, or that the employee needs to care for an immediate family member for a specified period of time.

The Board may require, at the Board's expense, that the employee obtain a *second opinion* by a health care provider *designated by the Board* concerning any of the information included in the certification. If the second opinion differs from the opinion of the original certification, the Board may require, *at the expense of the Board*, that the employee obtain the opinion of a *third* health care provider designated or approved *jointly by the Board and the employee*. The opinion of the third health care provider concerning the information certified should be considered final and shall be binding on the Board and the employee.

**K. Reporting While on FMLA**

Employees taking leave under this Policy will be required to periodically report to the Board on the status and intent of the employee to return to work. This information should be reported to the employee's supervisor, Director of Administrative Services, or Executive Director giving a full status on the employee's intent to return to work and the existing condition of the employee. A family member, or other persons who have full knowledge and consent of the employee to do such reporting, may notify the Board if the employee is unable to comply with this provision.

#### 4.09 Family and Medical Leave Act (continued)

##### L. Maintenance of Health Benefits

1. During the time that an employee is on FMLA leave, the state will maintain the employee's state-paid portion of health insurance for such coverage that was in effect before the leave was taken, and on the same terms as if the employee had continued to work. The employee must pay for any family health, dental or life insurance which exceeds the state-paid portion. This payment will be made by payroll deduction if on leave with pay status or by check or money order from the employee if on leave without pay status. If on leave without pay status, it is the employee's responsibility to make arrangements to pay any insurance premium above and beyond the state-paid portion of the insurance premium.

The payments should be made by check or money order and made payable to the *Employees Group Insurance Fund*, and should be sent to the Board's payroll section by the fifth working day of the month when the employee is in a leave without pay status. No cash payments will be accepted. **If the employee fails to pay the premium additional amount, the insurance coverage will be terminated.** Upon return to work, the employee may reinstate the coverage to the pre-leave status.

ERS will automatically cancel disability coverages for employees reported on FMLA leave. Upon returning to work, disability coverages will be automatically reinstated without evidence of insurability or additional preexisting conditions exclusions.

2. Reinstating Coverage Cancelled While On FMLA Leave

Employees who had coverages canceled during FMLA leave and who return to work directly from FMLA leave may reinstate all coverages without evidence of insurability or additional preexisting conditions exclusions. *Employees in premium conversion must reinstate all coverages, unless they have an eligible change in family status.*

If the employee was participating in the Health Care Reimbursement program, all past deductions for health care reimbursement not paid because the employee was on leave without pay will be deducted from the employee's first warrant

**4.09 Family and Medical Leave Act (continued)**

**L. Maintenance of Health Benefits (continued)**

**3. Employees who Terminate Employment at the End of FMLA Leave**

Employees who have not had their coverages canceled and who terminate employment at the end of FMLA leave are eligible to continue coverage for 18 months under COBRA. If their coverages were canceled while on FMLA leave, they are not eligible for COBRA.

**4. Reimbursement of State-Paid Insurance Premiums by the Employee**

The Board is entitled to receive reimbursement of premiums paid for the employee if the employee terminates employment at the end of FMLA leave unless the reason the employee does not return to work is due to (1) the continuation, recurrence, or onset of a serious health condition that would entitle the employee to FMLA leave (either affecting the employee or an immediate family member), or (2) other circumstances beyond the control of the employee.

For example, an expectant mother who takes FMLA leave for the birth of her child and after 10 weeks of leave discovers that her baby has serious birth defects requiring immediate surgery, might find it impossible to return to work at the end of 12 weeks of leave; or, the employee's spouse is unexpectedly transferred more than 75 miles away from the employee's worksite. Circumstances beyond the control of the employee do not include such situations as where an employee desires to remain with a parent in a distant city even though the parent no longer needs the employee's care, or a mother decides not to return to work, choosing instead to remain at home with her newborn child.

If an employee fails to return to work at the end of the leave period because of a serious health condition, the Board may request that the employee furnish a medical certification from the health care provider of the employee or the employee's family member to support the employee's claim. And in the case of circumstances beyond the control of the employee, proof of the employee's claim, such as the spouse is unexpectedly transferred.

**4.09 Family and Medical Leave Act (continued)**

**L. Maintenance of Health Benefits (continued)**

If the employee fails to furnish the requested certification within 30 days of the Board's request, the employer may recover the health insurance premiums it paid during the period of **unpaid** leave. An employee who does not return to work for at least 30 calendar days is considered to have failed to return to work for this purpose.

**M. Job Restoration**

When the employee returns from FMLA leave, that employee will be restored to their original job, or to an equivalent position with equivalent pay, benefits and other employment terms and conditions. An employee who takes leave under this policy will not lose any employment benefits accrued prior to the date on which the leave commenced. When an employee takes Family Medical Leave, that employee will not accrue seniority or any other employment benefit during the period of leave, or be entitled to any right, benefit or position of employment other than which the employee would have been entitled, had the employee not taken leave under the policy

**NOTE:**

*An employee on FMLA leave is not entitled to accrue state service credit for any full calendar months of leave without pay taken while on FMLA leave and shall not accrue vacation or sick leave for such months of leave without pay. Further, any full calendar months of leave without pay shall not be included in the calculation of the six continuous months of employment set forth in Article IX of the Appropriations Act under the merit increase provisions and under employee vacations and leaves.*

#### **4.10 Emergency Leave**

##### **A. Death of an Employee’s Family Member**

Emergency leave in lieu of accrued annual leave shall be granted because of the death of a family member or coworker. “Family member” is defined as the employee’s spouse, as well as the employee’s and spouse’s parents, children, brothers, sisters, grandparents, and grandchildren.

The Executive Director may grant up to 24 hours of emergency leave to an employee following the death of a family member. Up to 40 hours may be granted if the funeral and/or memorial service is over 400 miles from the employee’s home.

Up to four hours of emergency leave may be granted to employees to allow them to attend the funeral of a current or former Board employee. Time is not granted for employees to attend services for relatives of current or former employees.

An employee must request emergency leave for death of a family member by submitting information necessary to verify the death and/or funeral services (e.g., an obituary, newspaper clipping, death certificate, funeral program, or contact information for the funeral home).

##### **B. Good Cause**

The Executive Director is authorized to grant emergency leave for other reasons, when in his judgment, the employee shows good cause.

The Executive Director shall report annually the following information to the comptroller no later than October 1 for each employee granted more than 32 hours of emergency leave during the previous state fiscal year.

- Employee name
- Employee position
- Reason for the emergency leave
- Total number of hours of emergency leave granted during the fiscal year

#### **4.11 Military Leave**

**Notification or Request for Military Leave.** The law requires all employees to provide their employers with advance notice of military service. Notice may be either written or oral. It may be provided by the employee or by an appropriate officer of the branch of the military in which the employee will be serving. However no notice is required if:

- A. Military necessity prevents the giving of notice; or
- B. Giving notice is otherwise impossible or unreasonable.

**Authorized Training or Duty:** A Board employee who is an armed forces reservist may be granted a maximum absence of fifteen days in a federal fiscal year for military training. The days absent need NOT be consecutive.

**Call to National Guard Active Duty by the Governor:** An employee who is called to active duty as a member of the National Guard by the Governor because of a state of emergency is entitled to receive emergency leave without loss of military or annual leave. Such leave shall be provided with full pay.

**Restoration of Employment:** An employee who is restored to a position upon returning from military service is considered to have been on furlough or leave of absence during their time of federal or state military service. The employee is entitled to participate in retirement and other benefits to which they may be entitled.

To be eligible for restoration to their previous employment upon returning from military service, the employee must have been honorably discharged no later than the fifth anniversary of the date of induction, enlisted, or call to active military service; and be physically and mentally qualified to perform the duties of that position.

**Call to National Duty, U.S. Armed Forces Reserve Branch:** An employee who is called to active duty during a national emergency by a reserve branch of the U.S. Armed Forces shall have a leave of absence. The employee shall accrue state service credit while on such leave but does not accrue vacation or sick leave. However, the employee retains any accrued sick or vacation leave and will be credited with those leave balances upon return.

The Attorney General has ruled that state employees returning to work following military service under restoration provisions are entitled to include time spent on active duty with longevity of employment (state service credit) for purposes of vacation and sick leave entitlement. Returning employees do not accrue vacation or sick leave while on active military duty and are not considered employed by the state.

#### **4.12 Volunteer Firemen and Emergency Medical Services Training Leave**

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

#### **4.13 Jury or Witness Duty**

Leave with full pay is granted to any employee summoned to serve as a juror in any court. The employee is not required to account to the Board for any fee or compensation received for jury service.

#### **4.14 Parental Leave**

An employee with less than twelve months of state service or less than 1,250 hours of work in the 12 months immediately preceding the start of leave is entitled to a parental leave of absence, not to exceed 12 weeks, if the employee uses all available paid and sick leave while taking the parental leave. Such parental leave may only be taken for the birth of a natural child or the adoption of a child under three years of age.

This leave period begins with the date of birth or the adoption or foster care placement. If a parental leave is of such length that it becomes necessary to fill the employee's position, every effort will be made to place the employee in a comparable position, providing they return to work within a reasonable time.

#### **4.15 Foster Parent Leave**

A Board employee, who is a foster parent to a child under the conservatorship of the Department of Family and Protective Services (DFPS) is entitled to a leave of absence with full pay for the purpose of attending meetings held by the DFPS regarding the employee's foster child. In addition, the employee may attend, with a paid leave of absence, the Admission, Review, and Dismissal (ARD) meeting held by a school district regarding their foster child.

#### **4.16 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.

#### **4.17 Leave Without Pay or Leave of Absence**

Except for disciplinary and workers' compensation situations, all accumulated paid leave entitlements must be exhausted before granting such leaves, with the additional provision that sick leave must be exhausted only in those cases where the employee is eligible to take sick leave.

Under certain circumstances, the Executive Director may grant leave without pay for a period of up to twelve (12) months.

Length of service benefits do NOT accrue to an employee on leave without pay, but no loss of benefits accrued prior to the time such leave is taken is incurred.

Subject to fiscal constraints, approval of such leaves constitutes a guarantee of employment for a specified period.

#### **4.18 Unscheduled Time Off**

When any leave is not approved in advance, this leave will be defined as unscheduled leave. Unscheduled leave creates a hardship on the employee's section when:

- A.** A supervisor has to expend an inordinate amount of time reallocating the absent employee's work to other staff members;
- B.** An undue hardship and burden is placed on the section employees because their workload is increased; and
- C.** A supervisor has to expend an inordinate amount of time documenting and counseling the employee.

#### **4.19 Transfer of Leave Benefits**

Continuous service in state employment is mandatory for the transfer of accrued annual and sick leave and other employee benefits. Therefore, an employee transferring to another state agency should coordinate closely with the Executive Director to insure, if possible, that the transfer is accomplished without loss of benefits.

#### **4.20 Holidays**

Each session of the state Legislature establishes the holiday schedule for state employees. The schedule for holidays will be posted in the Board office.

State employees are entitled to observe Rosh Hashanah, Yom Kippur, and Good Friday in lieu of any holiday(s) on which the agency is required to have skeleton crew.

Holidays are observed only on the dates specified. Holidays falling on Saturday or Sunday are NOT observed by closing the Board office on the preceding or following days. Circumstances occasionally may require an employee to work during a holiday period; compensation is provided for these occurrences on the basis of one hour off for one hour worked.

#### **4.21 Overtime and Compensatory Guidelines**

The Board provides for overtime in conformity with the provisions of the *Fair Labor Standards Act of 1937* (FLSA). An employee may be assigned to work overtime by their supervisor. An employee will accrue overtime in accordance with **the policies contained herein**.

- A.** Compensatory time or overtime must be authorized in advance by your supervisor and the executive director.
- B.** Compensatory time is earned at an equivalent rate as time worked.
- C.** An employee may take compensatory time off in lieu of annual or sick leave.
- D.** A request for compensatory time off must be approved in advance by the employee's supervisor. A *Leave Request and Authorization* form must be completed and turned in to the Executive Director.
- E.** The employee will NOT receive lump sum payment for this balance; therefore, every effort should be made to take accumulated time off at the earliest practical time.

**4.21 Overtime and Compensatory Guidelines (continued)**

- F. Compensatory time must be used within the twelve-month period following the end of the workweek in which the time was accrued, at a rate not to exceed equivalent time.
- G. No employee, whether or not subject to FLSA, may accrue state compensatory time during any week unless the combination of paid leave and hours worked exceeds 40 hours.

**4.22 Leave of Absence for Donors of Organs, Bone-Marrow or Blood**

An employee is authorized a leave of absence for the time necessary to serve as a bone-marrow or organ donor. The maximum time provided for a bone-marrow donor is five workdays per fiscal year, and the maximum time provided for an organ donor is 30 workdays per fiscal year.

An employee is also authorized sufficient time off to donate blood, without deduction in salary or accrued leave, up to four times per fiscal year. The employee must furnish proof to the employee's supervisor that the employee donated blood during the time off. If the employee fails to provide proof, the state agency shall deduct the period for which the employee was granted time off from the employee's salary or accrued leave, whichever the employee chooses.

**4.23 Abuse of Leave of Absence**

It is TSBPA's intent that employees who are on a leave of absence due to illness or other reasons not be allowed to return to work until they are able to return on a continuing part-time or full-time basis. It is an abuse of state benefits to allow an employee to return to work for only a day or a few days in a month in order to earn holiday time, leave accruals, and/or the state insurance contribution, and then return to non-pay status.

**4.24 Natural Disasters and Weather Difficulties**

The Executive Director may grant Emergency Leave under extenuating circumstances in the event of natural disasters and weather difficulties such as floods, severe thunderstorms, hurricanes, tornadoes, snow, and ice.

This time will ordinarily be limited to eight hours or less, unless the Executive Director approves an extension.

The Executive Director may make a determination on other reasons for emergency leaves and will grant an emergency leave, when in the Executive Director's determination, the employee shows good cause.

**4.24 Natural Disasters and Weather Difficulties (continued)**

Employees will contact the main office number to determine if the office will be open during a disaster or weather difficulties. The recorded message will indicate that the Executive Director has determined that the office should be closed.

**4.25 Subpoenaed Employees**

Employees subpoenaed or required to appear in Court or at an administrative hearing will not be charged leave time and will complete the Employee Time Record as for regular work time when the employee's appearance is for the following:

- A.** To testify in the employee's official TSBPA capacity.
- B.** To bring TSBPA records of which the employee is in charge.
- C.** To testify in an official capacity concerning actions occurring while employed with another state agency.
- D.** Employees cannot accept or receive any witness fees for their appearance in such circumstances.
- E.** Travel time to reach the place of the hearing will also be considered work time.
- F.** In all cases, the employee must inform the Executive Director and the General Counsel in advance of the times of such appearances and present appropriate documentation
- G.** Employees subpoenaed or required to appear in court will be charged leave if:
  - 1. They are called to testify from personal knowledge regarding the inquiry and not in an official capacity. In such situations, they are allowed to accept and receive any customary witness fees.
  - 2. They are called to appear as an expert witness, and they accept a witness fee.

#### **4.25 Subpoenaed Employees (continued)**

- H. An employer 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. Per Texas Labor Code Section 52.051.

#### **4.26 Certified American Red Cross Activities Leave**

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 a leave of absence not to exceed 10 days each year to participate in specialized disaster relief services. The employee must have supervisory authorization in addition to a request from the American Red Cross and the approval of the Governor's Office. If the above conditions are met, the employee will not lose pay, vacation time, sick leave, earned overtime, and/or compensatory time during such leave.

#### **4.27 Voting Time**

Employees will be allowed sufficient time off, away from their duties without deduction from pay or accumulated leave to vote in each national, state, or local election. (Government Code, Section 661.914)

#### **4.28 Administrative Leave**

Administrative leave with pay may be granted by the Executive Director as a reward for outstanding performance as documented by employee performance evaluations or other agency performance. Administrative leave granted may not exceed 32 hours during any fiscal year.

The Executive Director is authorized to grant administrative leave for other reason, when in his judgement, the employee shows good cause.

#### **4.29 Amateur Radio Operators for Disaster Relief**

An employee who holds an amateur radio station license 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 time, sick leave, or state compensatory time if the leave is taken with the approval of the Executive Director.

**4.29 Amateur Radio Operators for Disaster Relief (continued)**

The number of amateur radio operators who are eligible for leave under this section may not exceed 350 state employees at any one time during a state fiscal year. The division of emergency management in the governor's office shall coordinate the establishment and maintenance of the list of eligible employees.

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

An employee who is a person with a disability (Texas Human Resources Code, Section 121.002) is entitled to a leave of absence with full pay for the purpose of attending a training program to acquaint the employee with an assistance dog to be used by the employee. The leave of absence may not exceed 10 working days in a fiscal year and is in addition to other leave to which an employee is entitled. The employee continues to accrue vacation and sick leave while on leave.

**4.31 Court Appointed Special Advocates Volunteer (CASA) Leave**

An employee may be granted leave not to exceed five hours each month to participate in mandatory training or perform volunteer services for CASA without a deduction in salary or loss of vacation time, sick leave, earned overtime credit, or state compensatory time.

**4.32 Leave During Agency Investigation**

The Executive Director may grant leave without a deduction in salary to a state employee who is:

- The subject of an investigation being conducted by the agency, or
- A victim of, or witness to, an act or event that is the subject of an investigation being conducted by the agency. A state employee who is the subject of an investigation being conducted by the agency is ineligible to receive leave for that reason under any other provision of Texas Government Code, Chapter 661.

No later than the last day of each state fiscal year quarter, an agency must submit a report to the State Auditor's Office and the Legislative Budget Board that includes the name of each agency employee who is the subject of an investigation being conducted by the agency and who has been granted 168 hours or more of leave for that reason during that fiscal year quarter. The report must include, for each employee, a brief statement as to the reason that the employee was granted the leave.

**4.33 Medical and Mental Health Care Leave for Certain Veterans**

An employee who is a veteran, as defined by Texas Government Code, Section 434.023 (a), and who is eligible for health benefits under a program administered by the Veterans Health Administration of the U.S. Department of Veterans Affairs, may be granted leave without a deduction in salary or loss of vacation and sick leave, earned overtime, or state compensatory time, to obtain medical or mental health care (including physical rehabilitation) administered by the Veterans Health Administration of the U.S. Department of Veterans Affairs. Leave granted for this reason may not exceed 15 days each fiscal year unless the Executive Director determines that additional days of this leave is appropriate for the employee.