



SICK LEAVE GUIDE

Who Is Eligible?

State employees at agencies and higher education institutions are entitled to sick leave without a deduction in salary for the following:

- When sickness, injury, or pregnancy and confinement prevent an employee from performing his or her job;
- When the employee needs to care for and assist a member of the employee's immediate family who is sick; or
- To attend educational activities such as parent-teacher conference sessions and other school functions for the employee's children.

Employees of higher education institutions must be employed to work at least 20 hours per week for a period of at least 4.5 months to be eligible for sick leave. In addition, students employed in positions that require student status as a condition of employment are not eligible for sick leave.

Implementation

Full-time employees accrue sick leave at a rate of eight hours for each month of state employment. Part-time employees accrue sick leave on a proportionate basis.

An employee is entitled to be credited for one month's sick leave for each month of employment with the State beginning on the first day of employment and on the first calendar day of each succeeding month of state employment. An employee who is on leave on the first day of a month may not use sick leave that is accrued for that month until after the employee physically returns to work.

An employee who is employed during any part of a calendar month accrues sick leave for the entire month.

What's the Purpose?

Sick leave is a benefit to state employees that allows for an absence from work with pay and can be used when an employee is prevented from performing his or her job due to sickness, injury, or pregnancy and confinement.

Need Additional Help?

Human Resources Management Statutes Inventory is available at <http://www.hr.sao.texas.gov>.

State Auditor's Office's State Classification Team at (512) 936-9500.

State agency employees and their supervisors should direct questions to their agency human resources department.

The State Auditor's Office is authorized to provide uniform interpretations of certain vacation and leave provisions in Texas Government Code, Chapter 661, which governs the administration of sick leave. We have provided this guide on sick leave for informational purposes only. State agencies and higher education institutions should consult with their legal counsel to ensure compliance with all applicable federal and state laws and regulations.

Administrative Detail

Notification Requirements

An employee on sick leave should notify the employee's supervisor at the earliest practical time. To be eligible to take accrued sick leave for more than three working days, an employee must provide to the administrative head of the agency a doctor's certification showing the cause or nature of the condition or another written statement of the facts concerning the condition that is acceptable to the administrative head. The administrative head of an agency has the discretion to require a doctor's certification or other written statement of facts when sick leave of three or fewer work days are taken.

A faculty member at a higher education institution must submit appropriate leave forms for all sick leave the faculty member takes if the absence occurs during the normal workday for regular employees, even if no classes are missed.

Immediate Family Member Defined

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 also may be used to care for immediate family members who do not reside in the same household only for a documented medical condition; in that instance only, "immediate family" is interpreted as a spouse, parent, or child.

Transferring and Restoring Sick Leave

An employee's sick leave balance should be transferred if the employee transfers directly from one state agency to another state agency and the employee's employment with the State is uninterrupted.

An employee's sick leave balance should be restored if the employee separated from state employment due to a formal reduction in force and the employee is re-employed by the State within 12 months after the end of the month in which the employee separated from state employment.

An employee's sick leave balance should be restored if the employee is re-employed by the same state agency or higher education institution within 12 months after the end of the month in which the employee separated from state employment, but only if there has been a break in employment of at least 30 calendar days.

An employee's sick leave balance should be restored if the employee is re-employed by a different state agency or higher education institution within 12 months after the end of the month

Leave Policies

State agencies and higher education institutions are required to adopt a policy governing leave for employees under Texas Government Code, Chapter 661.

The policy must provide guidelines to establish under what circumstances an employee may be entitled to, or granted, each type of leave provided by Texas Government Code, Chapter 661.

An agency or higher education institution must post the policy on its Web site in a location easily accessible by its employees and the public.

Source: Texas Government Code, Section 661.252.

in which the employee separated from state employment.

Employees Retirement System (ERS) retirees who return to state employment will not have their sick leave balances restored. There is no statutory provision that allows a retiring employee to store or bank accumulated sick leave for use after retirement.

An employee who returns to state employment following military service is entitled to have his or her sick leave balance restored and will be credited for sick leave accruals for the period of the employee's military leave absence.

Military Leave and Its Relation to Sick Leave

While employees are out on military leave, they continue to accrue sick leave (as well as vacation leave). Provided that an employee does not separate from state employment, the employee's sick leave balance should remain in the timekeeping records; however, the time is not credited until the employee returns to state employment. When the timekeeping records reflect that the employee who is on military leave exceeds the maximum hours to be carried forward from one fiscal year to another, the employee's leave records should be administered in accordance with the same authority and in the same manner as if the employee was not serving on active duty.

Sick Leave for Educational Activities

An employee is entitled to 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. That total is per fiscal year and not per child. 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.

The employee must give reasonable notice of his or her intention to use that leave.

Sick Leave Pool

State agencies are required to establish a sick leave pool program. Each agency has discretion to adopt rules and procedures related to the operation of its sick leave pool in accordance with Texas Government Code, Section 661.002.

An employee may contribute one or more days of the employee's accrued sick leave. Hours donated will be deducted from the donor's sick leave balance.

When an employee retires, he or she may designate the number of accrued sick leave hours to be used for retirement credit and the number of the retiring employee's accrued sick leave hours to be donated on retirement to the sick leave pool.

Agencies need to ensure that employees who retire fully understand that, if they donate sick leave hours for the sick leave pool, then those hours cannot be used for retirement credit purposes.

Exceptions to the Amount of Sick Leave Granted (Extended Sick Leave)

Each state agency and higher education institution may grant exceptions to the amount of sick leave an employee may take. That is often referred to as “extended sick leave.”

State agencies and higher education institutions that grant extended sick leave are required to have an extended sick leave policy. All agencies and higher education institutions are required to provide a copy of such policies to the State Auditor’s Office upon request. Such policies also must be made available to all agency and higher education institution employees.

The State Auditor’s Office has advised that all forms of appropriate paid leave should be exhausted prior to granting extended sick leave.

Questions and Answers

1. Question: Is an employee required to exhaust sick leave prior to taking a leave of absence without pay?

Answer: With the exception of certain leave situations such as disciplinary suspensions, active military duty, and leave covered by workers’ compensation benefits, all accumulated paid leave entitlements must be used before going on a leave without pay status. The employee must be eligible for sick leave as provided for in the sick leave provisions. See Texas Government Code, Section 661.909(c).

2. Question: An employee resigned but remains on the payroll while exhausting his annual leave. The employee has called in sick. Is my agency required to grant this employee sick leave?

Answer: The employee may not use or accrue sick leave while remaining on the State’s payroll to exhaust the employee’s accrued vacation time. See Texas Government Code, Section 661.067.

3. Question: An employee took sick leave but I do not believe the employee was sick. As the employee’s supervisor, may I require the employee to provide documentation?

Answer: The administrative head of an agency has the discretion to require documentation of an illness for any length of employee absence. See Texas Government Code, Section 661.202(g).

4. Question: May an employee use vacation or compensatory leave instead of sick leave, even though the employee has a sufficient sick leave balance?

Answer: Nothing in statute prohibits the employee from using earned vacation leave for any purpose as determined by the employee and if it is allowed by the agency’s or higher education institution’s policy.

5. Question: In what increments may full-time and part-time state employees contribute accrued sick leave to a sick leave pool?

Answer: Texas Government Code, Section 661.003 provides, in part:

(a) An employee may contribute one or more days of the employee's accrued sick leave.

(c) A retiring employee may designate the number of the retiring employee's accrued sick leave hours to be used for retirement credit and the number of the retiring employee's accrued sick leave hours to be donated on retirement to the sick leave pool.

The most logical reading of those provisions is that "days" refers to an eight-hour work day, while "hours" refers to any hourly fraction of a work day. Texas Government Code, Section 658.005(a), states that the normal office hours for a state agency are from 8:00 a.m. to 5:00 p.m., Monday through Friday.

Part-time employees should be allowed to contribute accrued sick leave on a proportionate basis because their work day and leave accruals are proportional to a full-time employee's (for example, an employee who works 20 hours per week may contribute accrued sick leave in increments of four hours). See Texas Government Code, Sections 661.003, 661.202(c), and 658.005.

6. Question: If an employee becomes ill when on vacation, should part or all of the vacation time be changed to sick leave?

Answer: If an employee becomes ill while on vacation, he or she is eligible to use sick leave for the time that he or she is actually ill, provided that the employee would otherwise be eligible for sick leave.

Texas Government Code, Section 661.202, states that an employee, without deduction in salary, is entitled to sick leave when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty. If an employee would otherwise be entitled to sick leave, then the fact that such sick leave is requested while on annual leave should not affect the employee's entitlement. The only exception is in the case of a terminating state employee who is allowed to remain on an agency's payroll to exhaust the employee's accrued vacation time. In such cases, an employee may not use accrued sick leave once the employee has begun exhausting accrued vacation time. See Texas Government Code, Sections 661.067 and 661.202.

7. Question: May an adopting parent use his or her sick leave for the adoption of a child under three years of age?

Answer: A state employee may use sick leave for the adoption of a child under three years of age.

Attorney General Opinion No. JM-1203 states:

...a state employee who adopts a child under three years of age is to be treated as if he or she had undergone pregnancy and childbirth. Therefore, an employee who adopts a child under three years of age may use the amount of sick leave that would be necessary to recover from pregnancy and childbirth.

8. Question: Can a state employee who is exhausting his or her leave as a result of a worker's compensation claim use the leave hours he or she accrues before he or she physically returns to work?

Answer: State employees who are exhausting their leave as a result of a worker's compensation claim are prohibited from using sick and annual leave hours that accrue after the first day of the month in which they become incapacitated, unless they physically return to work. See Texas Government Code, Sections 661.152(e) and (j) and 661.202(b) and (k).

9. Question: Should an employee be granted sick leave for the time necessary to provide care as the result of a documented medical condition of his or her mother-in-law who does not live with the employee?

Answer: The parent-in-law of an employee who does not reside in the same household as the employee is not treated the same as the parent of the employee for purposes of granting sick leave.

According to Texas Government Code, Section 661.202(d), sick leave with pay may be taken when the employee is needed to care for and assist a member of his or her immediate family who is actually ill. For purposes related to sick leave, immediate family is defined as those individuals who reside in the same household as the employee and are related by kinship, adoption, or marriage.

According to Texas Government Code, Section 661.202(e), 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.

Thus, the language in the Texas Government Code allows a state employee to use sick leave to care for his or her parent who does not reside in the employee's household, but it prevents a state employee from using sick leave to care for a parent-in-law who does not reside in the employee's household.

10. Question: Is a retired state employee who returns to state employment eligible for sick leave accruals?

Answer: According to Texas Government Code, Section 661.202(c), a full-time employee accrues sick leave at the rate of eight hours for each month of state employment. A part-time employee accrues sick leave on a proportionate basis. Nothing in statute prohibits return-to-work retirees from also accruing sick leave.

11. Question: Are part-time employees eligible to use sick leave for educational activities under Texas Government Code, Section 661.206 on a proportionate basis?

Answer: Texas Government Code, Section 661.206(b) specifically states that an employee may use up to 8 hours each fiscal year to attend educational activities of the employee's children who are in prekindergarten through 12th grade. Unlike other areas of statute, there is no provision that limits the number of hours proportionately for part-time employees.

12. Question: An employee left state employment with a sick leave balance. Can that employee donate the remaining sick leave to the sick leave pool a month after the employee left state employment if the employee does not plan to return to state employment?

Answer: Only state employees can donate their accrued sick leave to the sick leave pool. In the scenario described, the employee is no longer a state employee and therefore is not authorized under Texas Government Code, Section 661.003 to donate the balance of sick leave that remained after they left state employment.

13. Question: Does sick leave from an independent school district transfer to a state agency or an institution of higher education?

Answer: No, independent school districts are not included in the definitions in Texas Government Code, Section 661.001.