

Section 8
Leave and Absences

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Section 8-01
Annual Leave
(Updated September 2017)

8-01.1 Eligibility

An employee of the state is eligible to take accrued annual leave with pay after completing six months of continuous state service. An employee with no previous state employment must complete six months of continuous employment with the state to be eligible to take paid annual leave. A new employee who has completed six months or more of continuous state employment prior to employment with the Department may take accrued annual leave upon re-employment.

8-01.2 Prior Approval

An employee must request and receive approval from her or his supervisor before taking annual leave. If an employee takes leave time before it is approved, it is considered an unauthorized absence.

8-01.3 Month of Service Accrual

Credit for one month's annual leave accrual is given for each month or fraction of a month of state employment and is posted on the first working day of employment and on the first working day of each succeeding month thereafter.

8-01.4 Break in Service During the First Six Months

If an employee is in an unpaid status for a full calendar month, the month will not count toward fulfilling the six-month continuous service requirement. The month of unpaid status will not cause the employee to start over the continuous months of state service calculation.

8-01.5 Annual Leave Accrual

When an employee has completed six months or more of continuous state service and then leaves state employment, she or he is eligible to take accrued annual leave or be paid for her or his unused annual leave balance.

If the employee is transferring directly to another state agency or institution of higher education, the accrued and unused leave (annual and sick leave) is transferred to the receiving agency. If an employee separates from state employment and is re-employed within 30 calendar days by a state agency or institution of higher education to a position that accrues annual leave, her or his annual leave balance will transfer to the new agency or institution.

Vacation accruals begin on the first day of employment, and terminate on the last day of duty. If an employee separates in the middle of the month she or he may choose, if eligible, to use annual leave through the end of the month of termination.

An employee must actually work during a month to receive accruals for that month. If an employee is on any type of paid or unpaid leave that extends into the following month, the accrual will not be posted until the employee returns to duty. If an employee does not return to duty, she or he forfeits this accrual.

8-01.6 Annual Leave for Part-Time Employees

Part-time employees are also eligible for paid annual leave; however, accruals are proportionate to their full-time equivalency (FTE). The maximum carryover at the end of the fiscal year is also proportionate to their FTE. For example, half-time (50%) employees earn and may carry over annual leave at one-half the rate authorized for full-time employees. When an employee's status changes from part-time to full-time status in the middle of the month, the employee's annual leave is based on her or his status as of the first day of the month. The new accrual rate begins on the first calendar day of the following month.

8-01.7 Schedule of Annual Leave Accruals for Full-Time Employees

Full-time employees accrue annual leave and may carry forward balances from one fiscal year to the next in accordance with the schedule below. Credit for the higher rate of accrual, as shown in the table, will be given on the first calendar day of the month if the anniversary date falls on the first calendar day of the month. Otherwise, the increase in vacation accrual will occur on the first calendar day of the following month.

Schedule of Annual Leave Accruals for Full-time Employees

Length of Service	Hours Accrued Per Month	Allowable Carryover/ Sept. 1st
0 but less than 2 years	8	180
2 but less than 5 years	9	244
5 but less than 10 years	10	268
10 but less than 15 years	11	292
15 but less than 20 years	13	340
20 but less than 25 years	15	388
25 but less than 30 years	17	436
30 but less than 35 years	19	484
35 years or more	21	532

If an employee's total annual leave balance exceeds the limits set in the preceding table for a particular fiscal year, the excess will be converted to sick leave on the first day of the next fiscal year (September 1).

8-01.8 Holidays

Any state holiday that falls within a time period when an employee is using annual leave should not be charged against accrued annual leave. This also includes any employee exhausting accrued leave at the time of termination.

8-01.9 Unscheduled Time Off

Occasionally, the Department may grant unscheduled time off, for example, because of weather conditions or power failures. If an employee is released from work due to these types of conditions, the release time is not charged to annual leave. See further discussion at 8-06 Emergency Leave.

8-01.10 Transfer of Months of Service and/or Leave Time

When an employee transfers from one state agency to another with or without a break in service, the receiving agency should request a verification of dates of service and/or unused leave to be transferred from the terminating agency. The receiving agency will then set the annual leave accrual rate according to the verified total months of service. If the transfer is effective on the first day of the month, the receiving agency will give the annual leave accrual beginning that month.

8-01.11 Termination

An employee who separates from state employment is entitled to be paid for accrued and unused annual leave, as long as the employee has had continuous employment for at least six months and provided that the employee has not been reemployed by another state agency within 30 days of such separation.

Employees not transferring to another state agency are entitled to a lump sum payment for unused annual leave. The employee may request to remain on the payroll through the end of the month of termination to use annual leave. Annual leave balances remaining at the end of the month of termination will be paid in a lump sum with the following month's payroll or the amount will be deposited into a TexaSaver 401(k) or 457 Plan account (see 8-01.13) at the request of the employee.

8-01.12 Estate

The estate of a deceased employee is entitled to payment for all of the employee's accumulated and unused annual leave.

8-01.13 Deposit of Lump Sum Annual Leave Payments into Deferred Savings Account

IRS regulations allow employees who separate from state employment the option to defer their unused annual leave lump sum payment and have it deposited into a TexaSaver 401(k) or 457 Plan account. Lump sum payments of annual leave to the TexaSaver 401(k) or 457 accounts are on a tax deferred basis. However, Social Security and Medicare taxes will be deducted from the lump sum payments.

An employee must have an established TexaSaver account or establish a new account (before the last day on payroll) for deposit of the lump sum deferred annual leave payments.

Separating employees may choose to deposit all their lump sum or deposit a partial amount and receive the remaining balance. Employees continue to have the option to be paid all their unused annual leave in a lump sum. Employees have until their last day of employment to opt for a deposit into their TexaSaver account; all decisions must be finalized by the separation date. Any deposits of lump sum payments into a TexaSaver account must be completed within two and one-half

months after separation. Maximum annual deferral limits apply as established by the IRS. Appropriate tax deductions will apply to each lump sum payment option.

Section 8-02
Sick Leave
(Updated September 2017)

8-02.1 Eligibility

Sick leave allows for a paid absence from work under certain conditions. There is no waiting period for use of accrued sick leave.

Sick leave with pay may be taken when an employee is prevented from performing duties because of sickness, injury, or pregnancy and confinement. Sick leave may also be taken if an employee needs to care for a member of his or her immediate family who is actually ill. Immediate family includes those individuals related by kinship, adoption, or marriage who live in the same household; foster children certified by the Texas Department Family and Protective Services who reside in the same household as the employee; and minor children of the employee regardless of whether the children live in the same household. Sick leave may be used to care for immediate family members who do not reside in the same household if there is a documented medical condition. In this instance, only, "immediate family" is interpreted as spouse, parent, or child. Appointments with medical doctors are considered legitimate claims against sick leave.

In addition, sick leave may be used for the adoption of a child under the age of three.

If an employee is on vacation and would otherwise be entitled to sick leave, then the fact that such sick leave is requested while on vacation leave does not affect the employee's entitlement to sick leave.

8-02.2 Employee's Responsibility

An employee who is absent from duty because of illness must notify his or her supervisor at the earliest practical time. If out more than one day, the employee should notify the supervisor of his or her status each morning unless other arrangements are made (e.g., an employee who is on maternity leave and plans to return on a specific date).

The employee must leave a phone number where he or she can be reached during the period of illness. An employee who cannot be reached must provide an adequate explanation of his or her whereabouts during the period of absence.

8-02.3 Approval

To be eligible for accumulated sick leave with pay for a continuous period of more than three working days, an employee must send to Human Resources a doctor's certification, or an acceptable written statement of facts, documenting the nature of the illness. If an illness results in the absence of three working days or less, the Commissioner has the discretion to require documentation of the illness.

8-02.4 Sick Leave Accrual

An employee accrues sick leave from the first day of employment through the last day of duty. As set by the State Legislature, the amount of time an employee accrues on the first day of each month is eight hours (based on full-time employment). There is no limit on the amount of time that can

be carried forward into the next fiscal year. Part-time employees accrue sick leave at a rate proportional to full-time status.

An employee who is on leave the first day of the month may not use that month's accrual until he or she returns to duty.

There is no authority to pay out an employee's accrued but unused sick leave balance upon termination.

8-02.5 Estate

The estate of a deceased employee is entitled to receive payment for one-half of the employee's sick leave balance or 336 hours, whichever is less. The amount paid to the estate will be based on the state employee's compensation rate at the time of his or her death. Longevity pay may not be included in the compensation.

8-02.6 Holidays

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

8-02.7 Transfer of Sick Leave Time

An employee's accrued sick leave balance will be transferred when an employee moves from employment in one state agency to another, provided the employment in the receiving agency occurs within 12 months of the separation date. The receiving agency will request that any unused sick leave be transferred from the employee's previous agency. If the transfer is effective on the first day of the month, the agencies will coordinate to ensure that the proper accrual is credited to the employee's balance.

Under certain conditions, an employee who is restored to state employment following military service is entitled to have his or her sick leave balance restored.

8-02.8 Retirement

An employee who retires based on service or a disability is entitled to apply unused sick leave to increase the retirement annuity and in some cases, depending on hire date, to increase service credit to reach retirement eligibility. The employee is entitled to a credit for accrued sick leave only when employed during the month that includes the effective date of the employee's retirement. Sick leave is creditable in the retirement system at the rate of one month of service credit for each 20 days, or 160 hours, and for each fraction thereof beyond 160 hours, of accumulated unused sick leave. Retiring employees may donate all or part of their sick leave balance to the Department's sick leave pool before the Department certifies any remaining hours to be used for service credit. A retiring employee may not store or bank accumulated sick leave for use after retirement if he or she returns to work with the State.

Section 8-03
Educational Activities Leave
(Reviewed September 2017 with no changes)

8-03.1 Eligibility

An employee may use up to eight hours of sick leave each fiscal year to attend educational activities for the employee's children who are in pre-kindergarten through 12th grade. Employees must give reasonable notice of her or his intention to use this leave. Part-time employees receive this leave on a proportional basis.

Educational activity means a school-sponsored activity, including parent-teacher conference, tutoring, a volunteer program, a field trip, a classroom program, a school committee meeting, an academic competition and an athletic, music or theater program.

Section 8-04
Sick Leave, Extended Leave, and Sick Leave Donation Procedures
(Updated September 2017)

8-04.1 Purpose

The Department has established a Sick Leave Pool (Pool) to benefit eligible employees who have exhausted all paid leave due to a catastrophic injury or illness of the employee or a member of the employee's immediate family. The Pool is intended to provide for the alleviation of the hardship caused to an employee and the employee's family if a catastrophic illness or injury forces the employee to exhaust all leave time earned by that employee and to lose compensation from the State.

8-04.2 Definitions

Catastrophic Illness or Injury - The Employees Retirement System of Texas has defined "catastrophic" in the following way:

- 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 (generally considered to be a period greater than thirty calendar days from the onset of the catastrophic injury/illness) and that forces the employee to exhaust all leave time and to lose compensation from the State.
- Licensed practitioner means practitioner, as defined in the Texas Insurance Code, who is practicing within the scope of his or her license.

The Department has further defined "catastrophic injury or illness" as a medically verified severe condition or combination of conditions caused by life-threatening injury or illness or a medically verified debilitating injury or illness of an extreme magnitude.

Examples of illness/injuries generally considered severe enough to be catastrophic include but are not limited to:

- Stroke with residual paralysis or weakness
- Severe heart attack
- Severe head trauma or major concussion
- Major surgery such as open heart surgery
- Cancer-related surgery or treatments
- Amputations

The Department does not consider certain incapacitating disabilities (with minor or no complications) to be severe enough to be categorized as catastrophic. Examples of illnesses/injuries not considered catastrophic include but are not limited to:

- Broken limb

- Cold/allergy
- Back injuries
- Child birth
- Whiplash
- Sprains
- Tendonitis
- Carpal tunnel syndrome

Texas Government Code defines immediate family as:

- An individual who resides in the same household as the employee and is related to the employee by kinship, adoption, or marriage. If not living in the same household, the individual is totally dependent upon the employee for personal care or services on a continuing basis.
- A foster child of the employee who resides in the same household as the employee and who is under the conservatorship of the Department of Family and Protective Services.
- A minor child of the employee, regardless of whether the child lives in the same household.

8-04.3 Eligibility

All employees may apply to use sick leave from the Pool. The following provisions apply.

- Employee must have completed at least five years of state service including one full year with the Department.
- Employee intends to return to employment with the Department following the use of time from the Pool.
- Employee must be meeting job performance standards and not be under a performance improvement plan.
- Employees may use Pool leave for their own catastrophic illness or injury or for one in their immediate family, as defined herein.
- Employees who contribute sick leave hours to the Pool and then exhaust their sick leave balance in the same fiscal year may be reimbursed the same number of hours they contributed to the Pool that fiscal year.
- Employees must exhaust all accrued leave before they are eligible to use leave from the Pool. This includes sick leave, annual leave (if available), and compensatory time. 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.
- Employees on Pool leave for a full calendar month accrue paid leave for that month, provided they return to work following the leave.
- Employees are not required to contribute to the Pool before they can use Pool leave.
- Employees who use Pool leave are not required to reimburse the Pool.

8-04.4 Donations of Sick Leave to the Pool or Directly to Another Employee

All contributions of sick leave hours are strictly voluntary.

The policies governing contributions of sick leave hours to the Pool are:

- Contributions of sick leave from active employees must be in increments of eight hours. The Pool will be credited with the amount of time contributed by that employee and a corresponding amount of time will be deducted from the amount to which that employee is entitled as if the employee had used the time for personal purposes.
- Separating employees may contribute accrued sick leave in increments of less than eight hours.
- Employees who contribute to the Pool may not stipulate that their donations be used only by a particular person.
- Employees who donate leave cannot later request reinstatement of donated sick leave hours (other than as described above).

An employee may donate any amount of the employee's accrued sick leave to an individual Department employee who has exhausted the employee's sick leave, including any time used from the Pool. The policies governing donations of sick leave hours to a named employee are:

An employee who donates individual sick leave:

- must only donate on a voluntary basis;
- shall not receive remuneration or a gift in exchange for a sick leave donation; and
- may not have the leave reinstated to their own account.

An employee who receives donated sick leave:

- shall not provide remuneration or a gift in exchange for a donation of sick leave;
- shall use donated sick leave only for purposes identified in this policy;
- shall not receive service credit in the Employees Retirement System of Texas for any time donated to the employee that is unused on the last day of the employee's employment;
- shall not receive notice from the Department of the identity of the donor; and
- may refuse a donation.

Because the donation of sick leave hours must be done voluntarily, solicitation of donations is strongly discouraged. Solicitation of sick leave time under this section, including solicitation on behalf of others, that is disruptive to the workplace is unacceptable and may lead to corrective or disciplinary action. Unacceptable solicitation includes contacts that exert pressure, play on people's emotions, or leave a feeling of guilt or lack of compassion for not donating. Under no circumstance will personal health information be divulged in the process of donation or acceptance of sick leave between individuals. Medical documentation of illness or injury will be required to confirm compliance with this policy.

To donate sick leave to an individual Department employee, a current employee must submit a memorandum to Human Resources. Donations may be made in any increment of hours. Upon receipt of the memorandum, Human Resources shall notify the receiving employee that a donation has been offered. If the donation is accepted, Human Resources shall credit the receiving employee with the donation and shall deduct a corresponding amount from the donating employee's sick leave balance.

8-04.5 Withdrawal of Sick Leave

An eligible employee may apply for permission to use time from the Pool by completing the "Sick Leave Pool Administration Form." This form is used for contributing to or requesting withdrawal from the Pool. In the event the employee is unable to make the request personally because of physical/medical constraints due to the catastrophic event, the immediate supervisor or Human Resources may initiate the request.

Requests should be made five working days prior to the date the leave is to become effective. All requests should be submitted directly to Human Resources. Requests will be considered on a first-come, first-served basis.

Each withdrawal request must be accompanied by a physician's statement which contains: the beginning date of the physical or mental condition; a description of the illness or injury; the prognosis for recovery; and the anticipated date the employee will be able to return to work. If the request is to care for an immediate family member, the physician's statement must contain the length of time the employee is required to assist the family member.

Human Resources will certify the employee's eligibility for withdrawing time from the pool. The amount of time that is available in the Pool and the exact amount of time an eligible employee may draw from the pool will also be determined. The maximum allowable withdrawals are as follows for catastrophic illness or injury on or after the effective date of this policy:

- An eligible employee with five to ten years of state service is eligible for the lesser of:
 - 1/3 of the Pool balance;
 - 400 hours minus any previously used Department Pool hours; or
 - The employee's highest accumulated balance of sick leave during the past 24 months while employed by the state.
- An eligible employee with ten years or more of state service is eligible for the lesser of:
 - 1/3 of the Pool balance;
 - 720 hours minus any previously used Department Pool hours; or
 - The employee's highest accumulated balance of sick leave during the past 24 months (for employees with ten – twenty years of state service) or past 36 months (for employees with over 20 years of state service) while employed by the state.

The lifetime maximum amount of Pool time that can be granted to an employee is the lesser of 720 hours or 1/3 of the Pool balance. A part-time employee is granted Pool leave on a pro rata basis.

When two or more employees within the Department have a common family member who suffers a catastrophic illness or injury, only one of the employees will be awarded leave from the Pool to care for that family member. Concurrent or consecutive requests from two or more employees to care for the same family member will not be accepted.

The employee may reapply for additional Pool leave if the amount previously granted is insufficient to cover the employee's absence provided the maximum amount allowable has not already been granted. Subsequent requests must be accompanied by a physician's statement which clearly indicates the amount of time needed exceeds the original amount granted.

All requests and recommendations for Pool leave will be approved or disapproved by the Commissioner. If the employee meets the eligibility criteria, the time approved will be credited to the employee, who may use the time in the same manner as sick leave earned by the employee in the course of employment. Human Resources will notify the employee whether the request has been approved or denied within seven days of receipt of the complete request package.

Holidays that occur during the use of Pool time are counted just like regular sick leave; if a person is sick on a holiday, the person receives "holiday pay" for that particular day, not "sick leave pay."

8-04.6 Timekeeping

It is the responsibility of the employee's Regional/Division Director to notify Human Resources when the employee returns to work. Employees on Pool leave for a full calendar month accrue paid leave for that month, provided they return to work following the leave. Employees will not be removed from Pool leave to exhaust these accruals.

Human Resources will keep track of all donations to the Pool and all hours provided to an employee for catastrophic illness or injury, and will reconcile the Pool leave account on a quarterly basis.

8-04.7 Estate

The estate of a deceased employee is not entitled to payment for unused Pool leave or directly donate sick leave. Any unused balance of leave granted to an employee returns to the Pool or to the donating employee.

8-04.8 Retirement

Retiring employees will not be credited with sick leave hours previously donated to the Pool or directly to another Department employee.

8-04.9 Extended Sick Leave

Under extenuating circumstances, an employee by letter to the Commissioner may request extended sick leave after the employee has exhausted all accrued leave including any Pool leave or donated sick leave. The Commissioner will make a determination based on the extenuating circumstances and may grant up to 160 hours extended paid sick leave to an employee. 160 hours is the lifetime maximum of extended sick leave an employee may be granted.
[Sick Leave Pool Administration Form](#)

Section 8-05
Family and Medical Leave
(Updated September 2017)

8-05.1 Purpose

The Family and Medical Leave Act (FMLA), entitles eligible employees up to twelve weeks of job-protected leave during any 12-month period for the following reasons:

- The birth and subsequent care of a newborn child;
- The placement of a child for adoption or foster care;
- The need to care for a spouse, child or parent with a serious health condition;
- A serious health condition which makes the employee unable to perform the functions of his or her job; or
- A qualifying exigency arising out of the fact that the employees' spouse, child or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.

In addition, eligible employees may take job-protected, unpaid or paid leave for up to 26 workweeks in a "single, 12-month period" to care for a covered service member with a serious illness or injury.

An employee on FMLA leave is also entitled to have health benefits maintained while on leave as if the employee had continued to work.

8-05.2 Eligibility

Employees who have been employed with the State for at least 12 months and who have worked at least 1,250 hours during the 12-month period immediately preceding the start of the leave may be eligible for FMLA leave. Eligible employees are entitled to 12 weeks of FMLA leave during a rolling 12-month period beginning with the date an employee's FMLA leave begins. This rolling 12-month period is measured backward from the date on which an employee uses any FMLA leave and changes daily.

A "single 12-month" period associated with Military Caregiver Leave begins on the first day that the eligible employee takes family and medical leave to care for a covered service member and ends 12 months after that date.

FMLA leave is available for the following situations:

- *Birth of a child or placement of an adopted or foster child.*

Both parents may take leave for the birth of a child or after placement as adoptive or foster parents. The leave must be taken before the end of the first 12 months following the date of birth or placement.

- *Serious health condition of the employee or the employee's spouse, child, or parent.*

A serious health condition is defined as one that involves inpatient care in a hospital or continuing treatment by a health care provider. This has been construed to cover conditions and illnesses that affect a person's ability to participate in everyday activities such as school or work. Examples include heart attacks, injuries caused by serious accidents, childbirth, and illnesses related to pregnancy.

- *Military family leave entitlements.*

8-05.3 Types of Leave Authorized

Eligible employees must first use all available and applicable paid sick leave, vacation and compensatory time while taking family and medical leave, with the exception of an employee who is receiving temporary disability benefits or workers' compensation benefits and is not required to use certain paid leave while receiving those benefits. Once accrued leave is exhausted, the employee may apply for sick leave pool if qualified, or may enter leave without pay status.

An employee on FMLA leave is not entitled to accrue state service credit or vacation or sick leave for any full calendar months of leave without pay. Further, any full calendar months of leave without pay are not included in the calculation of the minimum number of continuous month(s) of employment under the merit increase provisions and the employee vacation and leave provisions in Texas Government Code, Sections 659.255 and 661.152.

If an employee uses paid leave under circumstances which do not qualify as FMLA leave, the leave will not count against the 12 weeks of FMLA leave to which the employee is entitled. For example, paid sick leave used for a medical condition which is not a serious health condition does not count against the 12 weeks of FMLA leave entitlement.

Federal regulations provide guidance concerning holidays occurring while an employee is on FMLA leave. If an employee takes FMLA leave in one continuous block and a holiday or closing occurs during the employee's time off, the holiday or closing will count as part of the employee's FMLA leave entitlement.

An employee taking FMLA leave for the birth of a child or because of adoption or foster care may be allowed to take leave intermittently or by working a reduced workweek. FMLA leave may also be taken intermittently for qualifying exigencies under Military FMLA, to care for a seriously ill family member or because of the employee's own serious health condition, when medically necessary. Employees should make reasonable efforts to schedule leave for planned medical treatments so as not to unduly disrupt Department operations.

Example: An employee cannot work for eight weeks because of hospitalization due to a serious automobile accident. The physician releases the patient to work four hours a day for four weeks and rest and rehabilitation for the remaining part of each day.

Holidays, inclement weather days, shutdowns, etc., do not count against the FMLA leave entitlement for those who are taking intermittent FMLA or use FMLA to work a reduced schedule.

The employee and supervisor must make prior written arrangements for intermittent FMLA leave. Any change from a non-paid status to paid status, or vice versa, requires advance approval and notice to Human Resources. Completion of a Personnel Action Form (PAF) is necessary to make appropriate changes to Payroll.

8-05.4 Military Family Leave Entitlements under the Family Medical Leave Act (FMLA)

Military Caregiver Leave – Employees who are the spouse, parent, child, or next of kin to a service member who suffered a serious injury or illness on active duty in the Armed Forces, National Guard or Reserves may take up to 26 weeks of job-protected leave in “a single 12-month period” to care for a covered service member with a serious injury or illness.

Qualifying Exigency Leave – Eligible employees may take up to 12 weeks of job-protected leave in an applicable 12-month period for any qualifying exigency (or notification of an impending call or order to active duty) arising out of the covered active duty status of a spouse, child or parent. For example:

- Short notice deployment;
- Military events and related activities;
- Child care duties and school activities;
- Financial and legal arrangements;
- Counseling;
- Rest and recuperation;
- Post-deployment activities; or
- Additional activities not encompassed in the other categories, but agreed to by the employer and the employee.

Covered active duty under the FMLA means:

- In the case of a member of a regular component of the armed forces, duty during the deployment of the member with the armed forces to a foreign country; and
- In the case of a member of a reserve component of the armed forces, duty during the deployment of the member with the armed forces to a foreign country under a call or order to active duty under a provision of law referred to in Section 101(a)(13)(B) of Title 10, United States Code.

Additional information regarding Military Employment Rights is contained in Administrative Memorandum 2014.

8-05.5 Benefits

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. Upon return from FMLA leave, an employee will be restored to his or her original job, or to an equivalent job with equivalent status and pay, benefits, and other employment terms and conditions.

The Department may deny restoration of employment to “key employees”, as defined by the regulations, but may not deny the employee FMLA leave and the maintenance of health benefits. Denial of reinstatement must be necessary to prevent substantial and grievous economic injury to the Department’s operations.

Group health insurance coverage for an employee on FMLA leave will continue with the same terms as if the employee had continued to work. Employees must make arrangements with Human Resources to pay their share of health insurance premiums while on unpaid FMLA leave. Failure to pay health insurance premium within the designated period of time may result in cancellation of coverage effective at the end of the month when the premium was last paid in full. If the employee does not return to work at the expiration of an FMLA unpaid leave status, the employee may be required to reimburse the State for health insurance premiums paid on his or her behalf during the unpaid leave of absence.

8-05.6 Notice and Certification

An employee does not have the option of choosing whether or not to designate leave as FMLA leave for a qualifying event. It is the Department’s (Human Resources) responsibility to determine whether leave qualifies as FMLA.

Employees seeking to use FMLA leave may be required to provide:

- A 30-day advance notice of the need to take FMLA leave, when the need is foreseeable; otherwise the employee should notify their supervisor and Human Resources as soon as is practicable.
- Medical certifications supporting the need for leave due to a serious health condition affecting the employee or an immediate family member.
- If the FMLA leave is for the employee’s serious health condition, he or she *will be* required to provide a fitness-for-duty certification prior to returning to work, otherwise restoration to employment may be delayed. An employee who fails to return to work upon the completion of the 12 weeks of FMLA leave and who has exhausted all accrued leave may be subject to termination of employment.
- Military orders.

A request for FMLA leave for a serious health condition and a medical certification from a health care provider must be submitted to Human Resources. A medical certification must be received within 21 calendar days of notification (or as soon as practicable), otherwise the commencement/continuance of FMLA leave may be delayed or denied.

Additional documentation may be requested to confirm the family relationship. If the employee needs to request an extension to the FMLA leave originally requested, an updated medical

Section 8-06
Emergency Leave
(Updated September 2017)

8-06.1 Eligibility

An employee is entitled to leave with pay for a death in the employee's immediate family. An employee's immediate family is defined as the employee's spouse, as well as the employee's and spouse's parents, children, brothers, sisters, grandparents, and grandchildren. Emergency bereavement leave is limited to 24 hours unless the employee must travel out of state to attend to a death whereby an additional 16 hours may be requested.

In addition to granting emergency leave for bereavement, the Commissioner may grant emergency leave for:

- Weather closings;
- Observance of a holiday;
- Voting (up to one hour per election);
- A veteran to obtain medical or mental health care administered by the Veterans Health Administration of the United States Department of Veterans Affairs, including physical rehabilitation (not to exceed 15 days each fiscal year*); or
- Relief to a victim, subject, or witness to, an act or event that is subject to investigation by the agency.

*On a case by case need basis, the Commissioner may grant leave additional days.

8-06.2 Approval

A request for emergency leave must be made in writing or email and be sent to the employee's Division/Regional Director. After review, the Division/Regional Director will forward the request, along with his or her recommendation, to the Deputy Commissioner and Human Resources. Human Resources will notify the employee of the approval or denial of the request.

An employee's request for emergency leave is not required if the Commissioner grants the leave such as emergency leave related to weather conditions or observance of a holiday.

The Commissioner may only grant emergency leave if: (1) the employee has shown good cause for taking the leave, and (2) he believes in good faith that the employee intends to return to the agency at the expiration of the emergency leave.

Commissioner granted leave shall be taken as a block of time as granted and may not be taken incrementally over a period of time, unless otherwise authorized.

8-06-.3 Reporting

No later than October 1 of each year, the agency shall report to the Texas Comptroller of Public Accounts the name, position, reason, and number of hours for each employee who was granted more than 32 hours of emergency leave during the previous state fiscal year.

No later than the last day of each quarter of the fiscal year, the agency shall report to the State Auditor's Office and the Legislative Budget Board the name of each employee who has been granted 168 hours or more of emergency leave during that fiscal quarter. The report shall include, for each employee, a brief statement as to the reason the employee remains on leave.

certification must be submitted. When an employee seeks leave due to a previously approved qualifying reason, the employee must specifically reference either the qualifying reason for the leave or the need for family medical leave. The Department may request a second or third medical opinion at the Department's expense.

When leave is needed to care for an immediate family member or the employee's own illness and is for planned medical treatment, the employee must schedule treatment so that it will not unduly disrupt the Department's operation.

8-05.7 Procedures

An employee requesting to use FMLA leave should notify her or his supervisor and Human Resources. If a supervisor is aware of a condition that may qualify as FMLA leave or receives a request for FMLA she or he must notify Human Resources as soon as possible.

Upon notice of a condition or situation that may qualify an employee for FMLA leave, Human Resources will send appropriate information, instructions, and forms to the employee.

Division/Regional Directors have a responsibility for assisting in the Department's compliance with FMLA State and Federal requirements. Division/Regional Directors are responsible for notifying Human Resources immediately when an employee's absence may qualify for FMLA leave. The Division/Regional Director will coordinate any scheduling arrangements (particularly when intermittent leave is involved) and forward the request to Human Resources.

If an employee's FMLA leave extends into an unpaid leave of absence, it is the responsibility of the Division/Regional Director to notify Human Resources. Human Resources will prepare a Personnel Action Form (PAF) and submit the PAF to payroll.

When an employee returns to duty or if a change in leave status occurs, the employee and Division/Regional Director are responsible for ensuring that Human Resources is notified. Human Resources will complete a Personnel Action Form to ensure appropriate changes are submitted to payroll.

8-05.8 Concerns/Complaints

It is the intent of the Department to fully comply with the provisions of the FMLA and will expeditiously handle any question or concern. If an employee feels that his or her rights under FMLA have been violated, he or she should immediately bring it to the attention of the Director of Human Resources or the General Counsel. Employees are encouraged to seek resolution of complaints through the Department's internal processes. The Department of Labor (DOL) is the enforcement agency for the Family and Medical Leave Act.

[Family and Medical Leave Request Form](#)

[Health Care Provider Certification \(Employee\) Form](#)

[Health Care Provider Certification \(Family Member\) Form](#)

Section 8-07
Military Leave
(Updated September 2017)

8-07.1 Military Leave

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

If the employee does not use all 15 days of military leave in a fiscal year, the balance of days is carried forward to the next fiscal year, not to exceed 45 workdays. Work schedule adjustments will be made for employees who are members of the Texas National Guard or a reserve branch of the US Armed Forces so that two of the employee's days off each month coincide with two days of military duty.

An employee called to active duty during a national emergency to serve in a reserve component of the US Armed Forces under Title 10 or Title 32 of the United States Code is entitled to an unpaid leave of absence. While on this unpaid leave of absence the employee is entitled to state service for longevity pay purposes, vacation leave accruals and sick leave accruals. The accruals will be posted when the employee returns to state employment. The employee will continue to accrue service credit with the Employees Retirement System by receiving at least one hour of state pay during each month of active military service. The employee may choose to use all or a portion of paid leave during this time before going into an unpaid status. An employee called to state active duty by the governor because of an emergency is entitled to receive emergency leave without a loss of military or vacation leave or deduction in salary. An employee called to federal active duty for the purpose of providing assistance to civil authorities in a declared emergency or for training for that purpose is entitled to receive paid emergency leave for not more than 22 workdays without loss of military or vacation leave.

When reemployed the individual is considered to have been on a leave of absence while in military service and may participate in retirement or other benefits to which the employee would have otherwise been entitled.

8-07.2 Military Leave Entitlements

Refer to Section 8-05.4 for entitlements under the Family Medical Leave Act.

8-07.3 Additional Military Employment Rights

The Department's policy related to Military Employment Rights is contained in Administrative Memorandum 2014.

Section 8-08
Volunteer Firefighter & Emergency Medical Services Training Leave
(Updated September 2017)

8-08.1 Eligibility

An employee who is a volunteer firefighter or an emergency medical services volunteer will be granted a paid leave of absence not to exceed five working days each fiscal year for attending training schools conducted by state agencies or institutions of higher education. Also, a volunteer firefighter or an emergency medical services volunteer may be granted paid leave for the purpose of responding to emergency fire or medical situations.

8-08.2 Approval

Before an employee may use this leave, the employee shall inform his or her supervisor of enrollment in a training or plan to qualify the employee for firefighting or emergency medical service or that he or she is currently serving as a volunteer firefighter or emergency medical services volunteer. Prior approval for leave shall be obtained from the Commissioner and documentation may be required by Human Resources as an attachment to the monthly timesheet.

8-08.3 Holidays

Any state holiday that falls within the time period an employee is using this leave will not be charged to the total leave granted.

Section 8-09
Assistance Dog Training
(Updated September 2017)

8-09.1 Eligibility

An employee with a disability as defined by Texas Human Resources Code, Section 121.002, will be granted paid leave of absence not to exceed ten working days in a fiscal year to attend a training program to acquaint the employee with an assistance dog that the employee will use.

8-09.2 Approval

Before an employee may use this leave, he or she shall obtain approval from the Commissioner. Documentation may be required by Human Resources as an attachment to the monthly timesheet.

8-09.3 Holidays

Any state holiday that falls within the time period an employee is using this leave will not be charged to the total leave granted.

Section 8-10
Jury Duty or Compliance with a Subpoena
(Updated September 2017)

8-10.1 Eligibility**Jury Duty**

An employee is entitled to serve on a jury without any deduction from wages. This leave is in addition to other leave to which the employee is entitled.

Witness Duty

An employee called to appear in any judicial or legislative investigation will be granted leave as follows:

- If serving in an official capacity, leave will be granted without any reduction in wages. This leave is in addition to other leave to which the employee is entitled;
- If serving in an unofficial capacity, the appearance must be made on the employee's own time.

8-10.2 Approval

An employee may not be discharged, disciplined or penalized for complying with a subpoena to appear in a civil, criminal, legislative, or administrative proceeding. Before an employee may take jury or witness leave, a request for leave must be submitted to the supervisor for approval along with a copy of the jury summons or written witness summons or statement. A copy of the summons must also be attached to the timesheet.

8-10.3 Fees and/or Per Diem**Jury Duty**

Any fee or compensation for jury duty need not be accounted for to the State by the employee, and will not be deducted from his or her wages.

Witness Duty

An employee called to appear:

- In an official capacity is not entitled to any witness fees.
- In a private matter, may accept any customary witness fees;
- As an expert witness for a fee (must have outside employment approval – Personnel Policy 2-03).

Employees may receive per diem, expense reimbursements, and mileage allowances for serving as a witness in an official governmental capacity, as long as there is no double reimbursement to the employee for expenses.

Section 8-11
Leave of Absence Without Pay
(Updated September 2017)

8-11.1 Eligibility

Leave of absence without pay is the temporary absence from duty of an employee who intends to return to work. During this time of absence, which may not exceed 12 months, pay is suspended.

Except for disciplinary suspensions, worker's compensation, military situations, or when an exception is authorized by the Commissioner, all accumulated paid leave entitlements (overtime, compensatory time, and annual leave) must be exhausted before granting leave of absence without pay. In addition, sick leave must be exhausted in those cases where the employee is eligible to take sick leave as provided in the sick leave provisions.

8-11.2 Employee's Responsibility

An employee who will be on leave of absence without pay for a full month or more must contact the Human Resources Office to make arrangements to pay his or her insurance premiums.

8-11.3 Prior Approval

Leave of absence without pay can be authorized only by the Commissioner. A request for this type of leave is processed when:

1. An employee submits a request to his or her supervisor for leave of absence without pay;
2. The employee's supervisor sends a written request, indicating his or her approval or disapproval, to the Human Resources Manager;
3. The Human Resources Manager reviews the request and recommends approval or disapproval of the request and forwards it to the Commissioner; and
4. If the Commissioner approves the request, a Personnel Action Form (PAF) is prepared by the Human Resources Office.

8-11.4 Leave Accruals

If an employee is on leave of absence without pay on the first day of the month, the employee will not receive his or her annual and sick leave accruals for that month. Accruals will be credited at that time the employee returns to work.

8-11.5 Month of Service Accruals

Any full calendar month in which an employee is on leave without pay will not be counted in the calculation of total state service credit for the purposes of vacation accruals, longevity pay entitlement, or merit salary provisions, except in the case of an employee returning to state employment from military leave without pay.

If an employee is in an unpaid status for a full calendar month, the month will not count toward fulfilling the six-month continuous service requirement. The month of unpaid status will not cause the employee to start over the continuous months of state service calculation.

During an employee's six-month trial period, an interruption due to leave of absence without pay will affect the trial period ending date. The date will be readjusted at the time the employee returns to paid status.

8-11.6 Holidays

An employee who is on leave of absence without pay will not receive credit for any holiday that falls within this time period.

8-11.7 Unscheduled Time Off

Occasionally, the Department may grant unscheduled time off, for example, because of weather conditions. However, an employee in non-paid status will not receive credit for the unscheduled leave time.

8-11.8 Return From Leave of Absence

Upon returning from a leave of absence without pay, the employee will have priority consideration for a comparable job if his/her original job is not available.

Section 8-12
Unauthorized Absence
(Updated September 2017)

8-12.1 Definition

An unauthorized absence occurs when an employee:

- Fails to report to work;
- Fails to properly notify his or her supervisor of the absence; or
- Takes any leave time (except sick) without prior approval.

8-12.2 Employee's Responsibility

In the interest of planning and effective work allocation, supervisors must be informed concerning absences from work. Therefore, if an employee finds it necessary to be absent from work for any reason, the employee is required to notify his or her supervisor as soon as possible.

8-12.3 Disciplinary Action

An unauthorized absence may result in disciplinary action, including termination. If an employee takes unauthorized leave, the supervisor, with approval from the Commissioner and the Director of Human Resources, may disapprove the leave, note the number of hours on the monthly time sheet, and request the employee's salary be reduced for the unauthorized absence. Human Resources will document the total hours of unauthorized leave taken and the employee's pay for that month will be reduced for the unauthorized leave time.

Section 8-13
Fair Labor Standards Act (FLSA)
Overtime / Compensatory Time
(Updated September 2017)

8-13.1 Definition and Eligibility

Compensatory time is defined as the total number of hours worked and paid leave or paid holidays in excess of the regular 40-hour work week. This can be further defined as either "**State Compensatory Time**" or "**FLSA Overtime**."

State Compensatory Time is time worked on federal holidays or state holidays when minimum staffing is required. It is also time approved and worked by employees outside of regular work hours when the total time actually worked does not exceed 40 hours in an administrative workweek. State compensatory time can also be earned by FLSA exempt employees who work over 40 hours with approval. State Compensatory Time is earned at the rate of one hour for each hour worked above regular hours. All employees are eligible for State Compensatory Time.

FLSA Overtime is time worked by a non-exempt employee in excess of 40 hours in an administrative work week, exclusive of holidays or other types of leave. To earn FLSA Overtime the employee must be eligible under the provisions of the Fair Labor Standards Act (FLSA). FLSA Overtime is earned at the rate of one and one-half hours for every hour in excess of 40 hours worked in each administrative workweek. Employees subject to the FLSA are entitled to compensation for any hours worked in excess of 40 hours in one workweek by earning compensatory time off at a rate of 1.5 hours for each hour over 40 hours worked during a workweek.

An exempt employee is an employee who is considered exempt from the FLSA. A non-exempt employee is an employee covered by the minimum wage and overtime provisions of the FLSA. Determination of exempt or non-exempt status under FLSA is based on an employee's job duties and responsibilities.

8-13.2 Department Authorization

The earning and using of State Compensatory Time or FLSA Overtime must be specifically authorized in advance by the employee's supervisor. Supervisors are responsible for verifying and approving any accrual of compensatory time. Divisions/Regions are to minimize the need for employees to work hours more than regular work hours. Any FLSA Overtime that needs to be worked must have the advance written approval of the Division/Regional Director. Employees who ignore the advance approval requirement will be subject to disciplinary action.

Non-exempt employees are not allowed to donate time to the state or to work on their own time.

8-13.3 Meal Periods for Non-Exempt Employees

Non-exempt employees who spend meal periods at their desk must be relieved of all duty. If a non-exempt employee voluntarily eats or spends their designated lunch break at his or her desk and answers phones or performs other work, the employee is "working".

Unless prior management approval is obtained, non-exempt employees are not to perform work duties during meal periods. Absent approval, time worked will be compensated but considered unapproved, subjecting the employee to disciplinary action.

The Department requires all non-exempt employees to take at least a 30-minute meal period per day that is excluded as compensable time towards the workweek, for all approved schedules. A meal period is defined as that of a sufficient duration when the employee is completely relieved from duty.

The following conditions apply to meal periods for non-exempt employees:

- The meal period must be at least 30 minutes, but may be as long as one hour according to the employee's approved work schedule;
- The employee must be completely relieved of all duties during the period; and
- The employee must be free to leave the duty post (but not necessarily the premises or work-site).

To ensure that a non-exempt employee is relieved of all duty while eating in his or her work area, these guidelines should be followed:

1. Do not read/respond to department e-mail
2. Do not perform any Department administrative work
3. Do not answer the telephone
4. Post a sign at your desk that says "at lunch"
5. If approached by a co-worker, tell them you are on a lunch break and you will contact them when your break is over.

8-13.4 Compensatory Time Determination

The administrative workweek is defined as a fixed and regularly recurring period of 168 hours or seven consecutive 24-hour periods. The Department maintains two administrative workweeks, Friday noon until the following Friday noon and Saturday midnight until the following Saturday midnight. Each employee is assigned a specific administrative workweek based on his or her flex schedule.

The following determines how an employee earns compensatory time:

- All employees earn eight hours of State Compensatory Time for working a paid state or federal holiday so designated by the state.
- An exempt employee may be allowed to earn State Compensatory Time for hours worked in excess of 40 hours accumulated through a combination of paid leave taken, paid holidays or hours worked during a work week.
- A non-exempt employee who has not actually worked 40 hours in a workweek does not qualify for FLSA Overtime. The employee would, however, qualify for State

Compensatory Time for time approved and worked outside the regular work hours (i.e., working on a state holiday, such as San Jacinto Day).

- A non-exempt employee who may be required to actually work hours in excess of 40 hours in an administrative workweek is entitled to FLSA Overtime at the rate of one and one-half hours for each hour actually worked over 40 hours during the workweek.
- The final determination of whether an employee has earned the State Compensatory Time or FLSA Overtime will be made by the Human Resources Manager at the end of the administrative workweek. The following should be considered when determining the workweek, work time, and the types of compensatory time, if any, that may be earned:
 - Any paid leave, such as sick and annual leave, or holidays taken during the workweek are not counted as hours worked in determining FLSA Overtime earned for non-exempt employees.
 - Normal travel time from home to work is not work time. However, travel time is considered work time if:
 1. The employee receives a call outside regular work hours and is required to travel a substantial distance (i.e., at least a distance farther than that traveled by the employee in his/her daily trips to and from work) in order to perform a job away from the designated headquarters; or,
 2. When an employee who regularly works at one fixed location is given a special one day work assignment in another city.
 - If an employee travels and is required to stay overnight out of town, all time spent in such travel that occurs during the employee's regular work day is counted as work time. The time spent in a hotel, motel, or idle time is not counted as work time. Pre-authorized travel after hours on non-work days (i.e., to attend training) will be considered work time; however, only State Compensatory Time (straight time - hour for hour) may be granted to exempt employees and non-exempt employees who work less than 40 hours in the work week. Non-exempt employees will receive FLSA Overtime for every hour in excess of 40 hours worked in the workweek).

8-13.5 Requirements for Using Compensatory Time

Compensatory time should be taken as soon as possible after accrual but must be used within the 12 months following the end of the workweek in which it was earned, and may not be carried forward. If not taken within this time period, the employee loses this time. An employee may not be paid for State Compensatory Time earned.

An employee must be paid for any FLSA Overtime worked in excess of 240 hours. Employees must exhaust their FLSA Overtime balance before using annual leave. Division directors may submit a request to pay an employee for FLSA Overtime when it is not practicable to take the time off. Employees are paid for any remaining balance of FLSA Overtime upon termination from employment.

State Compensatory time does not transfer from one agency to another, nor is there a payment of compensatory time when an employee terminates employment. The estate of a deceased employee may not be paid for the employee's earned but unused compensatory time.

Section 8-14
Holidays
 (Updated September 2017)

8-14.1 Overview

All state employees, including part-time and hourly workers, are entitled to designated state and federal holidays with pay. Holidays, which are eight-hour days, are designated and authorized by the Legislature and may change each year. Employees who are in Leave Without Pay status before and after a holiday will not be paid for the holiday. Holiday schedules are posted on the Human Resources page of DOBIE.

8-14.2 Holidays Currently Authorized:

HOLIDAY	DATE
New Year's Day*	1st day of January
Confederate Heroes' Day#	19th day of January
M. L. King, Jr. Day*	3rd Monday in January
President's Day*	3rd Monday in February
Texas Independence Day#	2nd day of March
Cesar Chavez Day##	31st day of March
Good Friday##	Varies
San Jacinto Day#	21st day of April
Memorial Day*	Last Monday in May
Emancipation Day#	19th day of June
Independence Day*	4th day of July
Lyndon B. Johnson's Birthday#	27th day of August
Labor Day*	First Monday in September
Rosh Hashanah##	Varies
Yom Kippur##	Varies
Veteran's Day*	11th day of November
Thanksgiving Holidays*	4th Thursday of November and the following Friday
Christmas Holidays*	24th, 25th and 26th days of December

*National Holiday

#State Holiday - State agencies must remain open and maintain skeleton staffing

##A state employee is entitled to observe Rosh Hashanah, Yom Kippur, Good Friday, or Cesar Chavez Day in lieu of any state holiday where a skeleton crew is required.

8-14.3 Exception

Holidays falling on a Saturday or Sunday are not observed by closing state offices on the preceding or following work days except when specific additional days are authorized by the Legislature, the Governor, or the Commissioner for a holiday period.