



# Chapter 2: Benefits, Leave and Compensation

## B. Employee Leave

Effective February 5, 2018  
Revised September 24, 2021

HHS employees are entitled to:

- a paid day off from work on national, state, and optional holidays that are observed by HHS;
- paid vacation and sick leave hours as part of their compensation, subject to accrual eligibility and usage requirements; and
- other paid leave for special circumstances.

With the exception of sick leave for illness, employees must give reasonable notice before using paid leave. The supervisor and employee must agree to the time off.

Employees must use the consolidated timesheet in CAPPs to accurately report and account for all absences from work with paid leave, an authorized holiday, or unpaid leave. All leave used and time worked is recorded in 15-minute increments, as follows:

0 to 7 minutes	=	disregard, if infrequent
8 to 22 minutes	=	15 minutes or .25 hour
23 to 37 minutes	=	30 minutes or .5 hour
38 to 52 minutes	=	45 minutes or .75 hour
53 to 67 minutes	=	1 hour

Related Policies:

- B.1. Holidays
- B.2. Vacation Leave
- B.3. Sick Leave
- B.4. Extended Sick Leave
- B.5. Sick Leave Pool
- B.6. Family and Medical Leave Act (FMLA)

- B.7. Parental Leave
- B.8. Other Leave Types
- B.9. Leave Balances at Separation

## **B.1. Holidays**

Effective February 5, 2018

HHS employees are entitled to paid days off from work on national and state holidays observed by the state; however, according to the agency's needs, an employee may be required to work on a holiday.

An employee is eligible for a paid day off for a holiday if the:

- holiday does not fall on a weekend; and
- employee is on paid leave.

If a holiday occurs while an employee is on paid leave, the holiday time is substituted and the time is not deducted from the employee's vacation or sick leave balances.

HHS must have enough employees on duty to conduct public business on the following state holidays, unless the holiday falls on a weekend:

- Confederate Heroes Day
- Texas Independence Day
- San Jacinto Day
- Emancipation Day
- Lyndon Baines Johnson Day

Employees who are required to work on national or state holidays observed by the state are entitled to compensatory time off during the 12-month period following the holiday worked. The amount of compensatory time accrued is equal to the amount of holiday time worked, not to exceed eight hours.

Certain positions at certain agencies may be paid for each hour worked on a holiday when taking regular compensatory time would disrupt normal business functions.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2 B.1., Holidays.

Related Policies:

- Optional Holidays
- Holidays and New Hires

- Holidays and Employee Separations
- Holidays and Employee Transfers

## **Optional Holidays**

Effective February 5, 2018

An employee who works for a state agency is entitled to observe the following optional holidays (Rosh Hashanah, Yom Kippur, Good Friday, and Cesar Chavez Day), if the:

- optional holiday does not fall on a Saturday or Sunday;
- employee agrees to work on a state holiday during the same fiscal year; and
- General Appropriations Act does not prohibit state agencies from observing the holiday.

## **Holidays and New Hires**

Effective February 5, 2018

If a new employee works the first scheduled workday of a calendar month, the effective date of hire is the first day of the calendar month, even when an observed holiday occurs before the employee actually reports to work.

## **Holidays and Employee Separations**

Effective February 5, 2018

An employee who stops working on the last workday of a calendar month must be paid for an observed holiday that occurs after the last workday of the month, if the holiday occurs within the same month and does not fall on a Saturday or Sunday.

## **Holidays and Employee Transfers**

Effective February 5, 2018

If a state or national holiday falls between the dates that an employee transfers from one state agency to another without a break in service, the receiving agency compensates the employee for the holiday.

## B.2. Vacation Leave

Effective February 5, 2018

Related Policies:

- Vacation Leave Accruals and Use
- Vacation Leave and Return-to-Work Retirees
- Vacation Leave and Separation

### Vacation Leave Accruals and Use

Effective February 5, 2018  
Revised November 27, 2018

HHS employees receive vacation leave (also known as annual leave) as part of their compensation. An employee begins to accrue vacation leave on the first day of employment and on the first calendar day of each succeeding month of state employment. An employee who is employed by the state during any part of a calendar month (at any time during the employee's lifetime) accrues vacation leave for the entire calendar month.

Vacation leave accrual is based on length of service (actual days, months, and years of total state employment) and status (full time, part time, return-to-work retiree, etc.). Employees must be employed by the state for six continuous months (at any time during the employee's lifetime) before they can use vacation leave.

An employee on any type of paid leave that extends into the following month will not have his or her accruals posted until the employee returns to duty, which means the employee may not take vacation leave accrued for that month until the employee returns to work. An employee forfeits this accrual if he or she does not return to duty.

The following table provides the rate of vacation leave accrual and the maximum number of vacation leave hours that a full-time employee can carry forward into the next fiscal year. The accrual and maximum carryover rates for part-time employees are prorated based on the number of hours worked.

<b>Total Years of State Service</b>	<b>Hours Accrued Per Month</b>	<b>Maximum Hours To Carry Forward</b>
Less than 2 years	8	180
at least 2 but less than 5	9	244
At least 5 but less than 10	10	268

At least 10 but less than 15	11	292
At least 15 but less than 20	13	340
At least 20 but less than 25	15	388
At least 25 but less than 30	17	436
At least 30 but less than 35	19	484
35 or more	21	532

Any unused vacation leave that exceeds the maximum carry-over to the next fiscal year is converted to sick leave. An employee may not be advanced leave.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.2., Vacation Leave Accruals and Use.

## Vacation Leave and Return-to-Work Retirees

Effective February 5, 2018

Vacation leave accruals for return-to-work retirees are based on retirement and rehire dates. Rehired retirees who retired from state employment on or after June 1, 2005, and who are receiving a state retirement annuity, will accrue vacation leave based **only** on service earned after their retirement date. The maximum hours that may be carried forward into the next fiscal year are based **only** on service earned after their retirement date.

Rehired retirees who retired from state employment before June 1, 2005, accrue vacation leave based on total state service. The maximum hours that may be carried forward into the next fiscal year are based on their total years of state service.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.2., Vacation Leave and Return-to-Work Retirees.

## Vacation Leave and Separation

Effective February 5, 2018

Employees who separate from state employment may be entitled to a lump sum payment for their remaining vacation leave balance. To be eligible for this lump sum payment, an employee must:

- have been continuously employed by the state for six months;
- separate from employment; and
- not be re-employed by a state agency within 30 calendar days from the date of separation.

Accruals of vacation leave end on an employee's last day of duty, which is the last day that the employee is physically present for work.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.2., Vacation Leave and Separation.

### **B.3. Sick Leave**

Effective February 5, 2018  
Revised November 27, 2018

Related Policies:

- Sick Leave Accruals and Use
- Employee Donated Sick Leave
- Sick Leave and Separation
- Sick Leave and Re-Employment

### **Sick Leave Accruals and Use**

Effective February 5, 2018  
Revised May 6, 2022

Sick leave is a benefit to state employees that allows for a paid absence from work under certain conditions.

Full-time employees earn eight hours of sick leave per month beginning on the first day of employment and ending on the last day the employee is physically present for work. Part-time and hourly employees accrue sick leave on a prorated basis.

Sick leave is credited to an employee's leave record on the first day of state employment and on the first duty day of each succeeding month. An employee who is on leave the first day of the month may not use that month's sick leave accrual until he or she returns to duty.

An employee may use accrued sick leave immediately upon employment:

- for a personal illness or injury;
- for appointments with physicians, dentists, opticians, nurse practitioners, or physician assistants for examination or treatment;
- for pregnancy and confinement by a physician due to complications with pregnancy;
- to care for an immediate family member or other eligible family member who is ill or injured; or
- for the adoption of a child under the age of three.

**Note:** Sick leave hours from the Family Leave Pool may be used for additional reasons. For additional information, see *Human Resources Policy Manual*, Chapter 2, B.5., Family Leave Pool, and *Human Resources Guidance Handbook*, Chapter 2, B.5., Family Leave Pool.

For sick leave purposes, immediate family includes the following:

- individuals related by kinship, adoption, or marriage who reside in the employee's household;
- foster children certified by Texas Department of Family and Protective Services (DFPS) who reside in the employee's household; and
- the employee's minor children, whether or not living in the employee's household.

In addition, an employee may use his or her sick leave to care for a spouse, child, or parent who does not reside in the employee's household, and that use of sick leave is strictly limited to the time necessary to provide such care.

The supervisor may request documentation of the family member's medical condition from the employee before approving sick leave.

An employee who will be absent from work must notify his or her supervisor as soon as possible. An absence of more than three consecutive working days requires the employee to provide the supervisor the treating health care provider's certification or written statement of the facts surrounding the absence and the nature of the illness.

Employees may also 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.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.3., Sick Leave Accruals and Use.

## Employee Donated Sick Leave

Effective February 5, 2018  
Revised October 16, 2020

An employee may donate any amount of the employee's accrued sick leave, in whole hour increments, to another employee who:

- is employed in the same state agency as the donor employee; and
- has no current balance of sick leave, extended sick leave or leave from the sick leave pool. **Note:** To be eligible to receive donated sick leave, the recipient employee does not have to apply for or be awarded extended sick leave or leave from the sick leave pool.

An employee who receives donated sick leave may only use this leave for sick leave purposes, as defined by Texas Government Code, Chapter 661.202(d) and (e), and as described in *Human Resources Guidance Handbook*, Chapter 2, B.3., Employee Donated Sick Leave, that occurs on or after the date the donor employee submits a request through CAPPs Employee Self-Service or completes Form HR0515, Employee Donated Sick Leave.

Donations of sick leave are strictly voluntary. Any attempt to coerce, solicit, offer, or otherwise persuade an employee to donate sick leave is prohibited. Employees must not solicit, offer, provide or receive any compensation, gift, or other benefit in exchange for a sick leave donation.

## Sick Leave and Separation

Effective February 5, 2018  
Revised May 6, 2022

Employees who separate from state employment have several options on how sick leave is handled:

- An employee may transfer accrued sick leave when transferring employment from one state agency to another, if employment is uninterrupted.
- Employees can donate all or a portion of unused sick leave to the sick leave pool, family leave pool or to another eligible employee upon separation.

For sick leave accrual, the last duty day of an employee who separates from employment for any reason is the last day that the employee is physically present for work.

If the separation is due to death, the estate of a deceased employee is entitled to payment for half of the employee's accumulated sick leave, or 336 hours, whichever is less, provided that the requirements in the Texas Government Code, Chapter 661, Subchapter B, are satisfied.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.3., Sick Leave and Separation.

## **Sick Leave and Re-Employment**

Effective November 27, 2018  
Revised May 6, 2022

A former state employee rehired after more than 12 months off the payroll will not have his or her sick leave balance restored under any circumstance.

Sick leave may be restored to a rehired state employee who did not donate unused sick leave balances to the sick leave pool, family leave pool or to another HHS employee at time of separation as follows:

- An employee who separates under a formal reduction-in-force has sick leave balance restored if re-employed by any state agency within 12 months of separation.
- An employee who separates not under a formal reduction-in-force (except for retirement) has sick leave balance restored if re-employed by:
  - the same state agency within 12 months after separation, but only if there has been a break in employment with the state of at least 30 calendar days; or
  - a different state agency within 12 months after separation.
- An employee who separates due to retirement will not have sick leave balances restored.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.3., Sick Leave and Re-Employment.

### **B.4. Extended Sick Leave**

Effective February 5, 2018  
Revised December 12, 2022

Extended sick leave is additional paid leave for an employee's own serious health condition, above and beyond the sick leave actually earned by an employee,

authorized at the discretion of the HHS Executive Commissioner or the DSHS Commissioner.

Eligible employees may request extended sick leave for the employee's own serious health condition that would require a prolonged absence of the employee from duty. When an employee's condition qualifies, the employee should request and exhaust extended sick leave before requesting leave from the sick leave pool. When an illness or injury prevents an employee from personally filing a request for extended sick leave, the request may be initiated by an immediate family member or the employee's supervisor.

Extended sick leave can only be used for an employee's own serious health condition, not the employee's family members. The leave is prorated for part-time employees.

To be eligible for extended sick leave for illnesses or injuries, employees must:

- have a minimum of five years of current HHS employment, with no break in service;
- not have an active written warning in the Performance and Conduct Management System,
- have exhausted all other paid leave; and
- have provided an acceptable certificate of a serious health condition from an attending physician or licensed practitioner.

The maximum hours of extended sick leave allowed per years of current HHS employment, with no break in service:

- **Service Category 1** (less than five years of HHS service) – not eligible.
- **Service Category 2** (five years or more of HHS service) – up to 160 hours (lifetime benefit).

Extended sick leave awards are prorated for part-time employees.

Before returning to work following the use of extended sick leave, an employee must provide the supervisor with Form HR0307, Report of Medical Status/Health Care Provider's Release to Work, completed by the employee's treating physician. The supervisor is responsible for providing the employee with Form HR0307 with Page 1 and Page 2 completed, a job description, and a list of physical requirements for the employee's job.

**Exception:** If the employee is on Family and Medical Leave Act (FMLA) leave, the employee completes Form HR0512, Fitness for Duty Certification, instead of Form HR0307.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.4., Extended Sick Leave.

## **B.5. Leave Pools**

Effective May 6, 2022

Related Policies:

- Sick Leave Pool
- Family Leave Pool

### **Sick Leave Pool**

Effective February 5, 2018

Revised May 6, 2022

The HHS sick leave pool is a program that allows employees to transfer accrued sick leave to the sick leave pool for use by eligible employees. The sick leave pool helps employees and their immediate family members during times of catastrophic illness or injury. A catastrophic illness or injury is defined as a life-threatening disease or condition from which the likelihood of death is probable unless the course of the disease or condition is interrupted. Donations to the sick leave pool are strictly voluntary.

All employees, except for HHS Commissioners, may apply for leave from the sick leave pool if they, or an immediate family member, suffer a catastrophic illness or injury.

To be eligible for leave from the sick leave pool, the employee must:

- exhaust all other paid leave;
- not have an active written warning in the Performance and Conduct Management System; and
- provide an acceptable certificate of a catastrophic illness or injury from an attending physician or licensed practitioner.

When the catastrophic illness or injury prevents an employee from personally filing a request, the request may be initiated by an immediate family member or the employee's supervisor.

The maximum request from the sick leave pool depends on whether the employee is full time, part time, or hourly. Eligible full-time employees can request up to a

maximum lifetime benefit of 160 hours from the sick leave pool. Sick leave pool hours are prorated for part-time employees.

Before returning to work following the use of sick leave pool leave for an employee's own catastrophic illness or injury, the employee must provide the supervisor with Form HR0307, Report of Medical Status/Physician's Release to Work, completed by the employee's treating physician. The supervisor is responsible for providing the employee with Form HR0307 with Page 1 and Page 2 completed, a job description, and a list of physical requirements for the employee's job.

**Note:** If the employee is on Family and Medical Leave Act (FMLA) leave for his or her own catastrophic illness or injury, the employee completes Form HR0512, Fitness for Duty Certification, instead of Form HR0307. For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.5., Sick Leave Pool.

## Family Leave Pool

Effective May 6, 2022  
Revised December 12, 2022

The HHS family leave pool is a program that allows employees to transfer eight or more hours of accrued sick and/or vacation leave to the family leave pool. The family leave pool provides eligible state employees more flexibility in bonding with and caring for a child during the first year following birth, adoption, or foster placement; for the employee's own serious illness or to care for a seriously ill family member, including pandemic-related illnesses or complications caused by a pandemic. Donations to the family leave pool are strictly voluntary.

**Note:** Until an adequate number of donated sick and vacation hours are available in the family leave pool, employees are currently restricted from requesting hours from the pool. The Payroll, Time, Labor and Leave department will announce in the Connection when there are enough hours available in the family leave pool for employees to request hours from the pool.

All employees may apply for leave from the family leave pool if they have exhausted eligible compensatory, discretionary, sick, and vacation leave because of:

- the birth of a child;
- the placement of a foster child or adoption of a child under 18 years of age;
- the placement of any person 18 years of age or older requiring guardianship;

- a serious illness to an immediate family member or the employee, including a pandemic-related illness;
- an extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member; or
- a previous donation of time to the pool.

Eligible employees may be awarded a lifetime maximum of 160 hours from the family leave pool. Family leave pool hours are prorated for part-time employees. Employees who previously donated to the family leave pool can only receive up to the amount of hours previously donated if no other condition applies. The maximum request from the family leave pool depends on whether the employee is full time, part time or hourly. **Note:** Unused time received by the employee from the family leave pool will not be paid to the estate of a deceased employee.

An employee who receives leave from the family leave pool may use the time as sick leave earned and will be treated for all purposes as if absent on earned sick leave.

Before returning to work following the use of family leave pool leave for an employee's own serious illness or injury, the employee must provide the supervisor with Form HR0307, Report of Medical Status/Health Care Provider's Release to Work, completed by the employee's treating physician. The supervisor is responsible for providing the employee with Form HR0307 (with Page 1 and Page 2 completed), a job description, and a list of physical requirements for the employee's job.

**Note:** If the employee is on Family and Medical Leave Act (FMLA) leave for his or her own serious illness or injury, the employee completes Form HR0512, Fitness for Duty Certification, instead of Form HR0307.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2.B.5, Family Leave Pool.

## **B.6. Family and Medical Leave Act (FMLA)**

Effective February 5, 2018  
Revised September 1, 2023

The Family and Medical Leave Act (FMLA) allows eligible HHS employees to take up to 12 weeks of job-protected accrued paid or unpaid leave during a 12-month period for an FMLA qualifying reason. For more information on determining the eligibility period, see Chapter 2, B.6., Determining the 12-Month Eligibility Period.

An eligible employee who is the spouse, child, parent, or nearest blood relative of a member or an honorably discharged veteran of the Armed Forces is entitled to take up to 26 weeks of job-protected accrued paid or unpaid leave during a 12-month period to care for the servicemember or honorably discharged veteran.

The amount of leave a part-time employee is entitled to take is determined on a pro rata (proportional) basis.

FMLA leave may be used for any of the following qualifying reasons:

- Birth of the employee's child and care of the infant. For the definition of "child," see Chapter 2, B.6., FMLA Definitions;
- Placement of a child with the employee for adoption or foster care and the care of the newly placed child;
- Care of a spouse, child, or parent (includes an individual who stood in loco parentis [in the role of a parent]) to an employee if that individual has a serious health condition. For the definition of "spouse," "parent" and "serious health condition," see Chapter 2, B.6., FMLA Definitions;
- Employee's own serious health condition that makes the employee unable to perform the essential functions of his or her job;
- A qualifying exigency arising from the employee's spouse, child or parent being deployed or being notified of impending deployment to a foreign country. For more information, see Chapter 2, B.6., FMLA for a Qualifying Exigency; or
- To care for a servicemember or an honorably discharged veteran who suffered a serious injury or illness. For more information, see Chapter 2, B.6., Military Caregiver Leave for a Veteran under FMLA, to care for a servicemember.

**Note:** If the leave is for the birth and care of a child, or placement for adoption or foster care, it must conclude within 12 months of the birth or placement of the child.

See *Human Resources Guidance Handbook*, Chapter 2, B.6., Employee Notice, Employer Notice and Certification, and the Manager's FMLA Checklist, for information on what actions must be taken when FMLA is requested:

- for the employee's or family member's serious health condition, birth of a child or child placement;
- for a qualifying exigency arising from the employee's spouse, child or parent being deployed or being notified of impending deployment to a foreign country; or
- to care for a servicemember or an honorably discharged veteran.

Employees who do not qualify for FMLA leave may be entitled to parental leave. For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.6., Policy.

Related Policies:

- Both Spouses Employed by the Same State Agency
- Certification
- Determining the 12-Month Eligibility Period
- Eligibility
- Employee Notice
- Employer Notice
- FMLA Definitions
- FMLA Designation
- FMLA for a Qualifying Exigency
- FMLA Paid Parental Leave
- Job Restoration
- Maintenance of Health Benefits
- Military Caregiver Leave for a Veteran under FMLA
- Use of Leave

## **Both Spouses Employed by the Same State Agency**

Effective January 16, 2019

If both spouses are employed by the same state agency and both are eligible for FMLA leave, they are entitled to a **combined** total of:

- 12 weeks of leave during any rolling 12-month period when the qualifying reason is the:
  - birth of the employees' child and care of the infant;
  - placement of a child with the employees for adoption or foster care and the care of the newly placed child; or
- 26 weeks of leave during a 12-month period when the qualifying reason is the qualifying military illness or injury of the employees' child, parent, or nearest blood relative.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.6., Both Spouses Employed by the Same State Agency.

## Certification

Effective February 5, 2018

Revised January 16, 2019

An employee must provide the supervisor with medical certification by the employee's health care provider to support a request for FMLA leave in the following situations:

- to care for the employee's spouse, child, or parent who has a serious health condition;
- to care for the employee's spouse, child, parent, or nearest blood relative who is a member of the Armed Forces, and who is rendered medically unfit to perform the duties of the member's office, grade, rank, or rating; or
- to care for the employee's own serious health condition, which renders the employee unable to perform the essential functions of the job.

If the supervisor receives incomplete and insufficient medical certification, see *Human Resources Guidance Handbook*, Chapter 2, B.6., Employee Notice, Employer Notice and Certification.

If the supervisor receives complete and sufficient medical certification but reasonably doubts the validity of the certification, the agency may require the employee to obtain a second certification from a health care provider selected by the agency, at the agency's expense.

For a list of acceptable health care providers, see Chapter 2, B.6., FMLA Definitions.

For additional information, see the Manager's FMLA Checklist.

## Determining the 12-Month Eligibility Period

Effective February 5, 2018

Revised January 16, 2019

With the exception of military caregiver leave, the 12-month eligibility period for FMLA leave is measured backward from the date on which an employee uses any FMLA leave. This is referred to as a rolling 12-month period.

The single 12-month period for military caregiver leave begins on the first day the employee takes leave for this reason and ends 12 months later.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.6., Determining the 12-Month Eligibility Period, and the Manager's FMLA Checklist.

## Eligibility

Effective January 16, 2019

A full-time or part-time employee is eligible to take FMLA leave if the employee has:

- a total of at least 12 months of state service; and
- physically worked at least 1,250 hours in the rolling 12-month period immediately before the beginning of leave. **Note:** Any paid leave or holidays taken are not counted as hours physically worked.

When calculating these 12 months of state service, employment prior to a break in service of seven or more years is not counted, unless the break is due to service covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA).

For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.6., Eligibility, and Manager's FMLA Checklist.

## Employee Notice

Effective February 5, 2018  
Revised January 16, 2019

Under FMLA, employees must let the agency know that they need leave. The employee's spouse, family member, or other responsible party may also provide notice if the employee is personally unable to do so.

Ordinarily, the employee must provide at least 30 days advance notice when the need for leave is foreseeable.

Examples of foreseeable needs include:

- an expected birth;
- placement for adoption or foster care; or
- planned medical treatment.

If 30 days advance notice is not possible, such as for a medical emergency, notice of the employee's need for leave must be given as soon as practicable, ordinarily within two business days.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.6., Employee Notice, Employer Notice and Certification, and the Manager's FMLA Checklist.

## Employer Notice

Effective February 5, 2018  
Revised January 16, 2019

Supervisors are responsible for notifying an employee within five business days of receiving the leave request whether or not the employee is eligible for FMLA leave. Supervisors notify an employee by using Form WH-381, Notice of Eligibility and Rights and Responsibilities.

Each agency must post notices explaining FMLA provisions and procedures for filing complaints with the Department of Labor's Wage and Hour Division.

The notices must be posted where employees and applicants for employment can readily see them.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.6., Employee Notice, Employer Notice and Certification, and the Manager's FMLA Checklist.

## FMLA Definitions

Effective January 16, 2019

**Child** – An individual who is either under age 18 or age 18 or older and incapable of self-care because of mental or physical disability, and is the:

- employee's biological, adopted, or foster child;
- employee's stepchild;
- employee's legal ward; or
- child for whom the employee stands in loco parentis (in the role of parent).

Exceptions: For purposes of a qualifying exigency or military caregiver leave, a child could be any age.

**Health Care Provider** – Broadly defined to include:

- doctors of medicine or osteopathy;
- physician's assistants;
- podiatrists;
- dentists;
- optometrists;
- chiropractors (limited to treatment consisting of manual manipulations of the spine to correct a subluxation as demonstrated by x-ray);
- nurse practitioners;
- nurse midwives;
- clinical psychologists;
- clinical social workers;
- Christian Scientist practitioners (listed with the First Church of Christ, Scientist, in Boston, Massachusetts); and
- any other health care provider approved under the Uniform Group Insurance Plan or other relevant health care plan or program.

With the exception of the Christian Scientist practitioners, health care providers must be authorized to practice by the state in which they practice.

Health care providers who practice in a country other than the United States may be included in the FMLA definition of a health care provider if they are:

- authorized to practice in accordance with the law of that country; and
- performing within the scope of his or her practice as defined under such law.

**Inpatient Care** – An overnight stay in a hospital, hospice, or residential medical care facility. It also includes any period of incapacity or any subsequent treatment in connection with such inpatient care.

**Parent** – Includes:

- biological parents;
- adoptive parents;
- foster parents;
- step-parents;
- individuals who have legal guardianship; and
- individuals who stood in loco parentis (in the role of parent).

**Serious Health Condition** – Any illness, injury, impairment, or physical or mental condition that involves **either** any period of incapacity or treatment connected with inpatient care **or** continuing treatment by a health care provider that includes any period of incapacity due to:

- a health condition lasting more than three consecutive full calendar days involving treatment of two or more times within 30 days of the first day of incapacity (unless extenuating circumstances exist) by, or under the supervision of, a health care provider or treatment by a health care provider on at least one occasion with a regimen of continuing treatment. The first visit to the health care provider for a period of incapacity plus treatment must be within seven days of the first day of incapacity. **Note:** Extenuating circumstances are circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider. For example, it would be considered an extenuating circumstance if no appointments were available during that time period;
- pregnancy, including severe morning sickness, or time needed for prenatal care;
- a chronic serious health condition, which is one that continues over an extended period of time, requires periodic visits to a health care provider (at least twice a year) and may cause episodic periods (rather than a continuing period of incapacity, such as asthma, diabetes, or epilepsy);
- a permanent or long-term condition for which treatment may not be effective, if the employee is under the supervision of a health care provider (but is not necessarily undergoing active treatment), such as when the employee has suffered a severe stroke or is in the terminal stages of cancer; or
- any period of absence to receive multiple treatments by, or under the orders of, a health care provider either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity for more than three consecutive full calendar days if left untreated, such as dialysis for kidney disease or chemotherapy for cancer.

**Spouse** – A spouse includes an individual in an opposite-sex, same-sex, or common law marriage.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.6., FMLA Definitions.

## **FMLA Designation**

Effective January 16, 2019

The supervisor, in consultation with Human Resources (Employee Relations), is responsible for determining whether any request for leave, paid or unpaid, meets the requirements for FMLA leave.

It is not necessary for an employee to identify an absence or the need for leave specifically as FMLA leave.

The supervisor determines an employee's eligibility for FMLA leave whenever the employee requests any type of leave, paid or unpaid, for one of the following reasons:

- birth of the employee's child and care of the infant;
- placement of a child with the employee for adoption or foster care and the care of the newly placed child;
- care of the employee's spouse, child, parent, or nearest blood relative who is a member or an honorably discharged veteran of the Armed Forces, and who may be rendered medically unfit to perform the duties of the member's office, grade, rank, or rating;
- a qualifying exigency arising from the employee's spouse, child or parent being deployed or being notified of impending deployment to a foreign country; or
- the health condition of the employee or the employee's spouse, child, or parent causes the employee to be absent for more than three consecutive full calendar days.

The supervisor places an employee with a qualifying reason on FMLA leave immediately after determining the employee's eligibility, without waiting until after all paid leaves are used. For more information on FMLA eligibility and qualifying reasons, see Chapter 2, B.6, Family and Medical Leave Act (FMLA).

A supervisor may designate leave as FMLA qualified after leave is used if:

- an employee on leave unexpectedly experiences an FMLA leave event and requests an extension of leave, in which case all leave after the qualifying reason may be counted against the employee's FMLA leave entitlement;
- the supervisor is unaware until the employee returns from leave that the reason for the absence was an FMLA qualifying reason; or
- the supervisor is unable to confirm that the leave qualifies as FMLA leave, the employee returns from leave or does not provide requested medical certification, and the supervisor subsequently confirms that the absence qualifies as FMLA leave.

In all cases where leave would qualify for FMLA protections, an employer and employee can mutually agree that leave be retroactively designated as FMLA.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.6., FMLA Designation, and the Manager's FMLA Checklist.

## **FMLA for a Qualifying Exigency**

Effective January 16, 2019

An eligible employee is entitled to take up to 12 weeks of job-protected accrued paid or unpaid leave during a 12-month period for a qualifying exigency if the employee is the spouse, child or parent of a military member which includes:

- a member of the Regular Armed Forces who has been deployed to a foreign country, or has been notified of impending deployment to a foreign country; or
- a member of the reserve components of the Armed Forces (National Guard and Reserves) who has been deployed to a foreign country, or has been notified of impending deployment to a foreign country under a call or order to active duty in support of a contingency operation.

For the definition of “parent,” “child,” and “spouse,” see Chapter 2, B.6., FMLA Definitions.

Acceptable qualifying exigency situations include:

- Short-notice Deployment. Leave could be used to address any issue that arises from the fact that a military member is notified of an impending call or order to covered active duty in support of a contingency operation seven or less calendar days prior to the date of deployment. **Note:** Leave taken for this purpose can be used for a period of seven calendar days beginning on the date a military member is notified of an impending call or order to covered active duty in support of a contingency operation.
- Military Events and Related Activities. Leave could be used to attend:
  - any official ceremony, program, or event sponsored by the military that is related to the covered active duty or call to covered active duty status of a military member; and
  - family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty status of a military member.
- Childcare and School Activities. Leave could be used to:
  - arrange for alternative childcare when the covered active duty or call to covered active duty status of a military member necessitates a change in the existing childcare arrangement for a child;
  - provide childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the covered active duty or call to covered active duty status of a military member;
  - enroll in or transfer to a new school or daycare facility a child, when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of a military member; and
  - attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors for a child,

when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of a military member.

- Financial and Legal Arrangements. Leave could be used to:
  - make or update financial or legal arrangements to address the military member's absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and
  - act as the military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the military member's covered active duty status.
- Counseling. Leave could be used to attend counseling provided by someone other than a health care provider for oneself, for the military member, or for a child of the covered military member, provided that the need for counseling arises from the covered active duty or call to covered active duty status of a military member.
- Rest and Recuperation. Leave could be used to spend time with a military member who is on short-term, temporary, rest and recuperation leave during the period of deployment.

**Note:** Eligible employees may take up to 15 days of leave for each instance of rest and recuperation.

- Post-deployment Activities. Leave could be used to:
  - attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the military member's covered active duty status; and
  - address issues that arise from the death of a military member while on covered active duty status, such as meeting and recovering the body of the military member and making funeral arrangements.
- Parental Care. Leave could be used to:
  - arrange for alternative care for a parent of the military member when the parent is incapable of self-care and the covered active duty or call to covered active duty status of the military member necessitates a change in the existing care arrangement for the parent;
  - provide care for a parent of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the parent is incapable of self-care and the need to provide such care arises from the covered active duty or call to covered active duty status of the military member;

- admit to or transfer to a care facility a parent of the military member when admittance or transfer is necessitated by the covered active duty or call to covered active duty status of the military member; and
- attend meetings with staff at a care facility, such as meetings with hospice or social service providers for a parent of the military member, when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of the military member but not for routine or regular meetings.
- Additional Activities. Leave could be used to address other events, which arise out of the military member's covered active duty or call to covered active duty status, provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.6., FMLA for a Qualifying Exigency, and Manager's FMLA Checklist.

## **FMLA Paid Parental Leave**

Effective September 1, 2023

FMLA paid parental leave is a paid leave available to employees who take FMLA for:

- the birth of a child by the employee or the employee's spouse;
- the birth of a child by a gestational surrogate; or
- the adoption of a child.

An employee who takes FMLA paid parental leave for the birth of a child is entitled to up to working 40 days (up to 320 hours) of paid leave, while an employee is entitled to up to working 20 days (up to 160 hours) of FMLA paid parental leave for:

- the birth of a child by the employee's spouse;
- the birth of a child by a gestational surrogate; or
- the adoption of a child.

The employee is not required to use all available paid vacation and sick leave before the employee uses FMLA paid parental leave.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2.B.6. FMLA Paid Parental Leave.

## Job Restoration

Effective February 5, 2018

Revised January 16, 2019

The FMLA generally requires employers to reinstate employees to the same or an equivalent position on return from leave. **Note:** In some cases, a serious health condition may also qualify as a disability under the Americans with Disabilities Act (ADA). If so, an employee may request a reasonable accommodation, or a position for which he or she qualifies, even if at a different salary, shift, or pattern.

Under the FMLA, an employee may be denied reinstatement at the end of leave if the:

- agency can show an employee would not otherwise have been employed at the time reinstatement is requested, such as when the position is eliminated during a reduction-in-force; or
- employee is unable to perform an essential function of the position, with or without reasonable accommodation, because of a physical or mental condition, including the continuation of a serious health condition.

Under the FMLA, an employee may refuse an offer of a modified or alternate-duty assignment until the employee's FMLA covered leave expires.

If an employee is unable to return to work due to the employee's own, or qualifying family member's, serious health condition after exhausting the FMLA leave entitlement, the employee, depending on business need:

- may exhaust any remaining accrued paid leave; or
- may be dismissed.

If the employee's supervisor determines neither option above addresses the employee's particular situation or needs, the supervisor should contact his or her assigned Human Resources (Employee Relations) specialist to discuss available options. For information about the use of unpaid leave, see Chapter 2, B.8. Unpaid Leave.

If an employee gives unequivocal notice of intent not to return to work, the agency's obligations to maintain health benefits (subject to COBRA requirements) and to restore the employee to employment cease under the FMLA.

These obligations continue if an employee indicates a desire to return to work.

Before returning to work following FMLA leave for the employee's own serious health condition, the employee must provide the supervisor with Form HR0512,

Fitness for Duty Certification, and DWC 73, Work Status Report, (if for a workers' compensation-related injury or occupational illness) completed by the employee's treating health care provider. The supervisor is responsible for providing the employee with Form HR0512, and Form HR0702, Position Description (with a completed job description and a list of physical requirements for the employee's job). The health care provider will provide the employee with DWC 73 (if for a workers' compensation-related injury or occupational illness).

For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.6., Job Restoration, and the Manager's FMLA Checklist.

## **Maintenance of Health Benefits**

Effective February 5, 2018

Revised January 16, 2019

An employee on an unpaid leave of absence while on FMLA leave is entitled to have the employee's individual health benefits maintained while on leave, as if the employee had continued to work. If the employee paid part of the premium(s) prior to taking leave (i.e., coverage for spouse, children, or family), the employee continues to pay that part during the leave period, or the additional coverage will end. The employee may choose to reduce his or her level of coverage to Employee Only and avoid the need to pay premiums while on FMLA leave.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.6., Maintenance of Health Benefits.

## **Military Caregiver Leave for a Veteran under FMLA**

Effective January 16, 2019

Eligible employees who are the spouse, child, parent, or nearest blood relative of a servicemember or an honorably discharged veteran of the Armed Forces (including a member of the National Guard or Reserves) are entitled to take up to 26 weeks of job-protected accrued paid or unpaid leave during a single 12-month period to care for:

- a current servicemember of the Armed Forces (including a member of the National Guard or Reserves) who is:
  - receiving medical treatment, recuperation, or therapy;
  - in outpatient status; or
  - on the temporary disability retired list for a serious injury or illness.

For this purpose, a serious injury or illness is one that is incurred by a servicemember in the line of duty on active duty that may cause the servicemember to be medically unfit to perform the duties of his or her office, grade, rank, or rating. A serious injury or illness also includes injuries or illnesses that existed before the servicemember's active duty and that were aggravated by service in the line of duty on active duty; or

- a veteran of the Armed Forces (including the National Guard or Reserves) discharged or released under conditions other than dishonorable, within the five-year period before the employee first takes military caregiver leave to care for the veteran and who is undergoing medical treatment, recuperation, or therapy for a qualifying serious injury or illness.

For this purpose, a serious injury or illness means an injury or illness that was incurred by the veteran in the line of duty on active duty in the Armed Forces or that existed before the veteran's active duty and was aggravated by service in the line of duty on active duty, and that is either:

- a continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating;
- a physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and the need for military caregiver leave is related to that condition;
- a physical or mental condition that substantially impairs the veteran's ability to work because of a disability or disabilities related to military service, or would do so absent treatment; or
- an injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

An employee may take leave for this purpose up to five years after the veteran was discharged or released from the military. **Note:** The period between October 28, 2009, and March 8, 2013, does not count when determining whether the five-year period has expired.

The length of such leave, when combined with other FMLA qualifying leave, is limited to 26 weeks during a single 12-month period. For example, during the 12-month period, an employee could:

- claim up to 12 weeks of FMLA leave for the birth of a child, and later claim up to an additional 14 weeks of FMLA leave for a qualifying military illness or injury; or
- claim 26 weeks of leave to care for a sibling with a qualifying military illness or injury, but not later claim 12 weeks of FMLA leave for the birth of a child.

The single 12-month period for military caregiver leave begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the rolling 12-month period established by the agency for other FMLA leave reasons. See Chapter 2.B.6., Determining the 12-Month Eligibility Period for more information.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.6., Military Caregiver Leave for a Veteran under FMLA, and the Manager's FMLA Checklist.

## Use of Leave

Effective February 5, 2018  
Revised September 1, 2023

Employees are required to use all applicable accrued paid leave concurrently with FMLA leave. The use of sick leave (including extended sick leave, sick leave pool leave and family leave pool leave) under this policy is limited to those situations that meet the definition/criteria for the use of sick leave, extended sick leave, sick leave pool leave or family leave pool leave. For more information, see Chapter 2, B.3., Sick Leave Accruals and Use; Chapter 2, B.4., Extended Sick Leave; and Chapter 2, B.5., Leave Pools. **Note:** Employees who are on FMLA leave and receiving workers' compensation benefits are not required to first exhaust vacation leave or sick leave while receiving those benefits. Employees receiving temporary disability benefit payments should visit [https://reedgrouptipp.com/benefits-short-term-disability-overview/\(link is external\)](https://reedgrouptipp.com/benefits-short-term-disability-overview/(link%20is%20external)) for more information.

Whenever the reason for an employee's absence qualifies for FMLA leave, FMLA leave runs concurrently with the employee's accrued paid leave, such as:

- sick leave;
- vacation leave;
- state compensatory leave;
- FLSA overtime;
- leave from the sick leave pool;
- leave from the family leave pool;
- extended sick leave;
- FMLA paid parental leave; and
- leave associated with workers' compensation.

Employees who exhaust all applicable accrued paid leave while on FMLA leave will be placed on unpaid leave for the remainder of the FMLA entitlement period. For more information on the approval of unpaid leave while on FMLA leave, see Chapter 2, B.8., Unpaid Leave.

Employees who use FMLA paid parental leave for the birth or adoption of a child are not required to use their current leave balances (e.g., vacation, sick, FLSA overtime, state compensatory time, administrative leave, special leave, etc.) before using FMLA paid parental leave.

Unused FMLA paid parental leave hours may be available to an employee who transfers to another state agency.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.6., Use of Leave, and the Manager's FMLA Checklist.

## **B.7. Parental Leave**

Effective February 5, 2018

Revised May 6, 2022

Employees who are not eligible for Family and Medical Leave Act (FMLA) leave are entitled to take up to 12 weeks of accrued paid or unpaid leave for the:

- birth of the employee's child and care of the infant; and/or
- placement of a child under three years old with the employee for adoption or foster care and the care of the newly placed child.

An employee is eligible to take parental leave if the employee has:

- a total of less than 12 months of state service; or
- worked fewer than 1,250 hours in the 12 months immediately preceding the leave.

Employees are required to use all applicable accrued paid leave while taking the 12 weeks of parental leave. Sick leave is limited to those situations that clearly fall within the definition of sick leave.

**Note:** Employees who are receiving workers' compensation benefits, and who are otherwise eligible to use parental leave, are not required to first exhaust vacation leave or sick leave while receiving those benefits. Employees receiving temporary disability benefit payments should visit <https://reedgrouptipp.com/benefits-short-term-disability-overview/> for more information. (link is external)

Employees who exhaust all applicable accrued paid leave while on parental leave will be eligible to apply for leave from the family leave pool or to be placed on unpaid leave for the remainder of the parental leave period. For more information on the Family Leave Pool, see Chapter 2, B.5., Leave Pools. For more information

on the approval of unpaid leave while on parental leave, see Chapter 2, B.8., Unpaid Leave.

Parental leave begins with, and ends 12 weeks after, the date of the:

- birth of a natural child; or
- adoption or foster care placement of a child under three years of age.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.7., Parental Leave.

## **B.8. Other Leave Types**

Effective February 5, 2018

Revised April 5, 2023

In addition to vacation and sick leave, employees receive paid leave in specific situations, described in the policy sections below.

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Related Policies:

- Administrative Leave for Outstanding Performance
- Emergency Leave
- Educational Leave
- Unpaid Leave
- Mental Health Leave for Peace Officers

### **Administrative Leave for Outstanding Performance**

Effective February 5, 2018

An employee may be granted paid administrative leave for outstanding performance, not to exceed 32 hours in a fiscal year.

Administrative leave may be granted for a single act of outstanding performance, or for the outstanding performance of a task, as long as the reason is documented. Administrative leave may not be granted for the purpose of keeping a departing or departed employee on the payroll (i.e., as severance or part of a settlement).

Employees may carry administrative leave from one fiscal year to the next in the same biennium.

The HHS Executive Commissioner must approve carrying administrative leave not used at the end of the biennium into the next biennium.

Employees separating from employment may use administrative leave only to the end of the month in which they last physically worked.

For additional information, see *Human Resources Guidance Handbook*, Chapter 2, B.8., Administrative Leave for Outstanding Performance.

## Emergency Leave

Effective February 5, 2018  
Revised September 1, 2023

An employee may be granted emergency leave for a death in the family or for other reasons when good cause exists if the HHS Executive Commissioner or the DSHS Commissioner believes in good faith that the employee receiving the leave intends to return to work upon expiration of the emergency leave.

Emergency leave may not be authorized for the purpose of keeping a departing or departed employee on the payroll (i.e., as severance or part of a settlement).

There are three categories of approval authorities for emergency leave:

- **Category 1** – requires First-Line Supervisor or appropriate management designee approval.
- **Category 2** – requires HHS Executive Commissioner, DSHS Commissioner, the appropriate Deputy Executive Commissioner or equivalent, or designee approval.
- **Category 3** – only the HHS Executive Commissioner or designee may approve.

### **Category 1. Requires the First-Line Supervisor or appropriate management designee approval for the reasons listed below.**

Unless a designee is specifically referenced in the applicable section below, only the HHS Executive Commissioner may grant leave in excess of the limitation set for each of these reasons.

<b>Reason for Leave</b>	<b>Description</b>
<b>Family Death</b>	An employee is entitled to up to 24 work hours of emergency leave for a death in the employee's family. This leave is prorated for part-time employees.

	<p>An employee’s family is defined as the employee’s spouse, as well as the employee’s and spouse’s parents, children, brothers, sisters, grandparents, and grandchildren. A parent includes an individual who stood in loco parentis (role of parent) to an employee. <b>Note:</b> No distinction is made between step and non-step/biological family relationships.</p> <p><i>See Human Resources Guidance Handbook, Chapter 2, B.8., Other Leave Types, Family Death.</i></p>
<b>Jury and Grand Jury Duty</b>	<p>Employees are granted a paid leave of absence to cover the time needed to serve for jury duty or grand jury duty.</p> <p>The time absent for jury duty or grand jury duty must be supported by the summons, if less than one day, or a statement from the court if one day or more.</p> <p><i>See Human Resources Guidance Handbook, Chapter 2, B.8., Other Leave Types, Jury Duty.</i></p>
<b>Voting</b>	<p>Employees are allowed sufficient time off to vote, without a deduction in salary or leave.</p> <p><i>See Human Resources Guidance Handbook, Chapter 2, B.8., Other Leave Types, Voting.</i></p>
<b>Military Leave Entitlements and Eligibility</b>	<p>If a member of the National Guard is called to active duty by the governor because of a state emergency, the employee:</p> <ul style="list-style-type: none"> <li>• is entitled to receive unlimited leave with full salary (paid emergency leave);</li> <li>• earns vacation and sick leave during that time; and</li> <li>• does not have to use vacation leave or the 15 workdays of paid military leave.</li> </ul> <p>A state employee who is called to active duty or authorized training for the state’s military forces, a reserve branch of the U.S. Armed Forces, or a state or federally authorized urban search and rescue team, is entitled to a leave of absence of 15 workdays in each federal fiscal year (October 1 – September 30) without loss of pay or benefits. The 15 days need not be consecutive. After exhausting the 15 days, the employee may use applicable accrued paid leave or be placed in a leave without pay status (or a combination of the two) for the remainder of the active-duty period.</p> <p>If an employee is a member of the National Guard and is called to federal active duty to provide assistance to civil authorities in a declared emergency or training for that purpose, the employee is entitled to additional paid emergency leave of up to 22 workdays without loss of other military leave or vacation leave.</p>

	<p>An employee called to active duty during a national emergency may be entitled to differential pay. Differential pay is a form of emergency leave granted to an employee if the employee's military gross pay is less than the employee's state gross pay.</p> <p>If an employee is called to state active duty by the governor or another appropriate authority in response to a disaster, the employee is entitled to a paid leave of absence for each day of active duty during the disaster not to exceed seven workdays in a state fiscal year. The employee earns vacation and sick leave during that time. The leave is earned behind the scenes and populates the balance when the employee physically returns to work.</p> <p>Employees on unpaid military leave are entitled to one hour per month of emergency leave to receive service credit with the Employees Retirement System of Texas.</p> <p><u>See Human Resources Guidance Handbook, Chapter 2, B.8., Other Leave Types, Military Leave Entitlements and Eligibility.</u></p>
<p><b>Medical and Mental Health Care Leave for Certain Veterans</b></p>	<p>In consultation with the HHS Human Resources Veterans Liaison, a state employee may be granted paid time off 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, if the employee is:</p> <ul style="list-style-type: none"> <li>• a veteran, as defined by Texas Government Code, Section 434.023(a); and</li> <li>• eligible for health benefits under a program administered by the Veterans Health Administration of the U.S. Department of Veterans Affairs.</li> </ul> <p>Eligible employees must submit acceptable documentation and can receive no more than 15 workdays of this leave each fiscal year, unless the HHS Executive Commissioner, the DSHS Commissioner, or <u>designee</u> determines additional days of leave are appropriate for the employee.</p> <p><u>See Human Resources Guidance Handbook, Chapter 2, B.8., Other Leave Types.</u></p>
<p><b>Foster Parents</b></p>	<p>A state employee who is a foster parent to a child under the conservatorship of the Texas Department of Family and Protective Services (DFPS) is entitled to a paid leave of absence for the purpose of attending:</p> <ul style="list-style-type: none"> <li>• meetings held by DFPS regarding the child under the foster care of the employee; or</li> </ul>

	<ul style="list-style-type: none"> <li>an admission, review, or dismissal meeting held by a school district regarding the child under the foster care of the employee.</li> </ul> <p>See <i>Human Resources Guidance Handbook, Chapter 2, B.8., Other Leave Types, Foster Parents.</i></p>
<b>Volunteer Firefighters</b>	<p>Training: A state employee who is a volunteer firefighter is entitled to a paid leave of absence, not to exceed five working days in a fiscal year, to attend fire service training conducted by a state agency or institution of higher education.</p> <p>This provision also applies to members of state hospital or state supported living center fire brigades, as well as local volunteer fire departments.</p> <p>Responding to Emergency Situations: The HHS Executive Commissioner, DSHS Commissioner, or <u>designee</u> may grant paid leave to a volunteer firefighter to respond to emergency situations. This leave is not charged against the employee's vacation or sick leave accruals.</p> <p>For additional policies that apply to state hospital and state supported living center employees, see <u>Appendix A, Facilities, Fire Prevention Pay.</u></p>
<b>Search and Rescue Volunteers</b>	<p>A state employee who is a search and rescue volunteer is entitled to a paid leave of absence, not to exceed five working days in a fiscal year, to attend search and rescue training conducted by a state agency or institution of higher education.</p> <p>The HHS Executive Commissioner, DSHS Commissioner, or designee (first-line supervisor or appropriate management designee) may grant paid leave to a search and rescue volunteer to respond to emergency search and rescue situations. This leave is not charged against the employee's vacation or sick leave accruals.</p>
<b>Emergency Medical Services Volunteers</b>	<p>Training: A state employee who is an emergency medical services volunteer is entitled to a paid leave of absence, not to exceed five working days in a fiscal year, to attend medical emergency services training conducted by a state agency or institution of higher learning.</p> <p>Responding to Emergency Medical Situations: The HHS Executive Commissioner, DSHS Commissioner, or <u>designee</u> may grant paid leave to an emergency medical services volunteer to respond to emergency medical situations. This leave is not charged against the employee's vacation or sick leave accruals.</p>
<b>Assistance Dog Training</b>	<p>A state employee with a disability, as defined by the Human Resources Code, §121.002, is entitled to a paid leave of absence of up to ten working days per fiscal year to attend a training program to acquaint the employee with an assistance dog that</p>

	<p>the employee will use. This leave may not exceed ten working days in a fiscal year.</p>
<b>Reserve Law Enforcement Officers</b>	<p>A state employee who is a reserve law enforcement officer is entitled to a paid leave of absence, not to exceed five working days in a fiscal year, to attend required continuing education training courses. Reserve law enforcement officers eligible for this leave include:</p> <ul style="list-style-type: none"> <li>• reserve deputy sheriffs;</li> <li>• reserve deputy constables; and</li> <li>• reserve policy officers.</li> </ul> <p>This leave is not charged against the employee's accrued leave balances.</p>
<b>Blood Donation</b>	<p>An employee may receive time off, not to exceed four times in a fiscal year, to donate blood, with approval from the supervisor. Immediately after returning, the employee must provide proof to the supervisor of having donated blood during the requested time off.</p> <p><i>See Human Resources Guidance Handbook, Chapter 2, B.8., Other Leave Types, Blood Donation.</i></p>
<b>Bone Marrow or Organ Donation</b>	<p>An employee is given time off with pay to donate:</p> <ul style="list-style-type: none"> <li>• bone marrow (maximum of five working days in a fiscal year); or</li> <li>• an organ (maximum of 30 working days in a fiscal year).</li> </ul> <p>The employee must submit documentation sufficient and acceptable to the agency to qualify for this leave.</p> <p><i>See Human Resources Guidance Handbook, Chapter 2, B.8., Other Leave Types, Bone Marrow or Organ Donation.</i></p>
<b>Disciplinary Action Rebuttal</b>	<p>An employee may be granted one to two full days of paid leave to prepare and submit a rebuttal, in writing, to respond to the information that constitutes the cause for possible disciplinary action against the employee.</p> <p><b>Note: Only the HHS Executive Commissioner or designee may grant leave in excess of the limitation set for this reason.</b></p> <p><i>See Human Resources Guidance Handbook, Chapter 2, B.8., Other Leave Types, Disciplinary Action Rebuttal Leave.</i></p> <p><i>See Chapter 1, F.2., Notice and Rebuttal.</i></p>
<b>Court Appointed Special Advocate (CASA) Leave</b>	<p>CASA is an organization that trains and organizes volunteers who are appointed by judges to oversee and advocate for abused and neglected children as they move through the legal</p>

	<p>and social services system. An employee may be granted up to five hours off with pay each month to participate in mandatory training or to perform volunteer services for CASA.</p> <p><i>See Human Resources Guidance Handbook, Chapter 2, B.8., Other Leave Types, Court Appointed Special Advocate Leave.</i></p>
<b>Wellness Leave</b>	<p>An employee may be awarded eight hours of wellness leave (emergency leave) per fiscal year as a participation incentive if he or she completes an agency approved Health Risk Assessment (HRA) and receives a routine physical examination.</p> <p><i>See Human Resources Guidance Handbook, Chapter 2, B.8., Other Leave Types, Wellness Leave.</i></p>
<b>Volunteers of Texas Voluntary Organizations Active in Disaster</b>	<p>A state employee who participates in disaster relief services as a volunteer of an organization that is a member of the Texas Voluntary Organizations Active in Disaster may be granted up to ten working days of paid leave each fiscal year to participate in specialized disaster relief services.</p> <p>This leave is not charged against the employee's accrued leave balances if:</p> <ul style="list-style-type: none"> <li>• the employee's supervisor authorizes the leave; and</li> <li>• the services in which the employee participates are provided for a state of disaster declared by the governor.</li> </ul>

**Category 2. Requires HHS Executive Commissioner, DSHS Commissioner, or the appropriate Deputy Executive Commissioner or equivalent, or designee approval for the reasons listed below.**

Unless a designee is specifically referenced in the applicable section below, only the HHS Executive Commissioner may grant leave in excess of the limitation set for each of these reasons.

<b>Reason for Leave</b>	<b>Description</b>
<b>Temporary Removal and Investigation</b>	<p>Pending the outcome of an investigation of an incident that may result in disciplinary action, an employee may be placed on emergency leave for a period reasonably needed to investigate the incident, but not to exceed ten working days if the employee is:</p> <ul style="list-style-type: none"> <li>• the subject of the investigation being conducted; or</li> </ul>

	<ul style="list-style-type: none"> <li>• a victim of, or witness to, the act or event that is the subject of the investigation.</li> </ul> <p>After ten days, the employee must use applicable accrued paid leave. When paid leave is exhausted, the employee is placed on leave without pay.</p> <p>As an alternative, the HHS Executive Commissioner, the DSHS Commissioner, the appropriate Deputy Executive Commissioner, or <u>designee</u> may temporarily reassign the employee to another position or location within the agency.</p>
<p><b>Temporary Removal Pending Outcome of Arrest or Indictment</b></p>	<p>An employee may be placed on emergency leave for up to ten working days if he or she is in a position that requires self-reporting, and either:</p> <ul style="list-style-type: none"> <li>• the employee submits <u>Form HR0202A</u>, Criminal Offense Self-Reporting for; or</li> <li>• a criminal background check reveals a pending arrest or indictment.</li> </ul> <p>The supervisor obtains approval for the emergency leave from the designated approval authority and records the leave on the employee's time sheet.</p> <p>If the employee has not obtained a dismissal, acquittal, or similar outcome to the arrest or indictment (that does not involve a plea of guilty or nolo contendere) after being placed on emergency leave for ten working days, the employee must use applicable accrued paid leave.</p> <p>When paid leave is exhausted, the employee is placed on unpaid leave.</p> <p><u>See <i>Human Resources Guidance Handbook, Chapter 2, B.9., Facilities Only, Temporary Removal Pending Outcome of Arrest or Indictment.</i></u></p>
<p><b>Medical Condition or Physical Capacity</b></p>	<p>With the approval of the HHS Executive Commissioner, DSHS, Commissioner, the appropriate Deputy Executive Commissioner, or <u>designee</u>, an employee may be placed on up to ten working days of emergency leave, pending an investigation of the employee's medical condition, or the employee's submission of required medical documentation, when:</p> <ul style="list-style-type: none"> <li>• an employee's medical condition or physical incapacity presents a contraindication to continued employment; or</li> <li>• the employee's supervisor has reason to believe that the employee's medical condition or physical incapacity presents a contraindication to continued employment.</li> </ul>

	<p><b>Note: Only the HHS Executive Commissioner or <u>designee</u> may grant leave in excess of the limitation set for this reason.</b></p>
<b>Reasonable Suspicion Testing</b>	<p>With the approval of the HHS Executive Commissioner, DSHS, Commissioner, the appropriate Deputy Executive Commissioner, or <u>designee</u>, an employee may be placed on emergency leave for up to three working days to wait for the results of a reasonable suspicion alcohol or controlled substance test.</p> <p><b>Note: Only the HHS Executive Commissioner or <u>designee</u> may grant leave in excess of the limitation set for this reason.</b></p>
<b>Witness Leave</b>	<p>Under specific conditions, an employee, who is subpoenaed or summoned to appear, may be granted up to two working days of emergency leave to serve as a witness in a civil or criminal court proceeding.</p> <p>An employee's time when called to appear in a court proceeding as an official representative of the agency is accounted for as time worked.</p> <p>An employee testifying as an expert witness, but not as an official representative of the agency, must use accrued leave or compensatory time whenever the employee will be paid for those services.</p> <p>An employee subpoenaed to testify in court proceedings or summoned to appear on matters that are not directly related to the agency's business may receive emergency leave for the absence provided that the employee:</p> <ul style="list-style-type: none"> <li>• is not the plaintiff, defendant, or named party in the litigation;</li> <li>• does not receive a fee for the testimony; and</li> <li>• provides a copy of the subpoena to the supervisor for authorization of paid leave.</li> </ul> <p>Eligible employees are granted emergency leave for witness duty under the same conditions as jury and grand jury duty.</p> <p>Employees in an unofficial capacity and on personal leave (subpoenaed or not) may accept fees for witness duty.</p>
<b>On-Call Duty</b>	<p>An employee may be authorized up to two working days of emergency leave per month to offset all or part of the time an employee spends performing on-call responsibilities. On-call duty</p>

	<p>is most often performed at an employee's personal residence. Emergency leave cannot be accrued.</p> <p>See <i>Human Resources Guidance Handbook, Chapter 2, B.8., Other Leave Types, On-Call Duty.</i></p>
<b>Employees Affected by a Reduction-in-Force</b>	<p>With the approval of the HHS Executive Commissioner, DSHS, Commissioner, the appropriate Deputy Executive Commissioner, or <u>designee</u>, an employee affected by a reduction-in-force will receive up to a total of 16 hours of emergency leave for job interviews. The employee's leave records will reflect the use of emergency leave when used for this purpose, and the employee's supervisor/manager has approval authority for the use of this leave.</p>

**Category 3. Only the HHS Executive Commissioner or designee may approve leave for the reasons listed below, and only the HHS Executive Commissioner may grant emergency leave in excess of the limitation set for each of these reasons, or for all other business reasons.**

<b>Reason for Leave</b>	<b>Description</b>
<b>Business Continuity Staffing</b>	<p>The HHS Executive Commissioner, the DSHS Commissioner, or <u>designee</u> may authorize emergency leave for HHS agency employees:</p> <ul style="list-style-type: none"> <li>• whose functions are being transitioned to a private vendor; and</li> <li>• who have been identified as essential during periods of transition and outsourcing.</li> </ul>
<b>Severe Weather</b>	<p>The HHS Executive Commissioner designated the System Support Services Deputy Executive Commissioner the authority to authorize emergency leave to employees affected by office closures or restricted access to HHS work locations, such as during electrical outage or other emergency situations. The System Support Services Deputy Executive Commissioner may authorize emergency leave only for the time necessary to reopen the work locations or to find alternate work sites for the affected employees.</p> <p>If the employee's duty station is closed because of severe weather, the employee is granted emergency leave unless the employee is:</p> <ul style="list-style-type: none"> <li>• on leave or a scheduled day off;</li> <li>• temporarily on assignment to an office that is open; or</li> </ul>

	<ul style="list-style-type: none"> <li>• teleworking on that day.</li> </ul> <p><i>See Human Resources Guidance Handbook, Chapter 2, B.8., Other Leave Types, Severe Weather.</i></p>
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## Educational Leave

Effective February 5, 2018

Revised August 1, 2018

Texas Government Code, Chapter 656, State Employees Training Act, authorizes state agencies to use public funds to provide training and education to employees when such programs are related to the employee's duties or prospective duties.

To support employee training and education, the HHS Executive Commissioner, the DSHS Commissioner, or designee may provide educational leave to release eligible employees from regular work duties without loss of pay or benefits to attend training or education at a vocational school, technical school, college, or university. This training or education must:

- relate to current or prospective job duties; and
- benefit HHS by increasing employee knowledge, understanding and skills needed to achieve HHS goals and objectives.

This leave is considered a temporary change in the employee's work duties.

To be eligible for educational leave, an employee must:

- successfully complete their probationary period;
- not have an active written warning in the Performance and Conduct Management System;
- have not received a disciplinary action in the last 12 months; and
- be performing the job at a level that is at least what is normally expected or required, as reflected on their most recent performance evaluation.

The HHS Executive Commissioner, the DSHS Commissioner, or designee may waive these eligibility criteria when the training or education addresses a critical shortage skill or occupation. See Chapter 2, E.3.; Critical Shortage Occupations.

An employee should request educational leave as far in advance as possible, but no later than 20 working days before the course is scheduled to begin. The employee requests educational leave by completing Form HR0509, Request for Educational Leave. In addition, an employee is required to sign Form HR0514, Employment Obligation Agreement, prior to receiving training when:

- the employee will receive training that is paid for by the agency; and
- during the training period, the employee will not perform regular work duties for three or more months.

An employee who incurs an obligation to the agency may be required to:

- work for the agency following the training at least one month for each month of the training period; or
- pay the agency for all of the costs associated with the training that were paid during the training period, including any amounts of the employee's salary that were paid and that were not accounted for as paid vacation or state compensatory leave.

These obligations may be waived if the HHS Executive Commissioner finds that a waiver is in the best interest of the HHS agency, or warranted because of an extreme personal hardship suffered by the employee. Extreme personal hardship may include changes to employment status outside the employee's control, such as a reduction in force.

**Note:** Depending on eligibility requirements, an employee may also request tuition reimbursement and an academic stipend. See A.6., Tuition Reimbursement, Appendix A, Facilities, Academic Stipend, and *Human Resources Guidance Handbook*, Chapter 2, B.8., Unpaid Leave.

Educational leave is **not necessary** for:

- required training programs;
- workshops, seminars, or conferences;
- programs at the Governor's Center for Management Development;
- courses provided under an agreement with another state, local, or federal department, agency or institution, including a state-supported college or university;
- Adult Protective Services Professional Education Program (DFPS only);
- Title IV-E Training Program (DFPS only);
- DSHS Preventive Medicine – Public Health Residency Program (DSHS only);  
or
- Board Certified Behavior Analyst (BCBA) Program (HHSC only).

## Unpaid Leave

Effective February 5, 2018  
Revised August 1, 2018

Unpaid leave for less than one month is defined as leave without pay (LWOP). Unpaid leave for one or more full months is defined as a leave of absence (LOA). LWOP and LOA are approved unpaid absences from work. An employee who does not work the required hours, or does not account for hours not worked with some form of paid leave or authorized holiday, may be granted LWOP.

Subject to fiscal constraints, authorization of unpaid leave constitutes a guarantee of employment at the conclusion of the specified leave period.

Repeated unauthorized use of unpaid leave by an employee is considered an inappropriate use of leave, and may result in disciplinary action.

If applicable, paid leave must be used before going on unpaid leave status, except:

- military leave without pay;
- leave covered by workers' compensation benefits;
- disciplinary suspensions; and
- blood donation.

Sick leave must be used only if the employee is taking leave for a reason in which sick leave is appropriate.

Employees may request unpaid leave by submitting a request to their supervisors using the leave request screen on the consolidated timesheet in CAPPs.

If an unpaid leave request is for less than one month, the employee's supervisor can approve the leave. If an employee has exhausted FMLA leave, but has not been cleared to return to work, the supervisor may approve less than one month of additional unpaid leave. If the unpaid leave request is for one or more months, the HHS Executive Commissioner, the DSHS Commissioner, or designee must approve the leave.

**Exception:** If an employee on FMLA or parental leave has exhausted his or her accrued paid leave, the employee's supervisor can approve unpaid leave requests of one or more months, as needed, to cover the entire period of FMLA and/or parental leave.

**Note:** After an unpaid LOA of one month or more has been approved, the supervisor must process the leave by completing the Request Leave of Absence screen under Manager Self-Service in CAPPs. See [Human Resources Guidance Handbook](#), Chapter 2, B.8., Unpaid Leave.

## **Full Months of Unpaid Leave and State Service Calculation**

A full calendar month during which an employee is on an unpaid LOA is not counted in calculating:

- total state service for longevity pay or vacation leave accrual; or
- continuous state service for merit salary provisions or vacation leave.

This provision does not apply to members of the state military forces or reserve branches of the armed forces of the United States who were called to active duty, and who are returning to employment from an unpaid military LOA.

An employee who is in an unpaid LOA status for the entire month will not accrue vacation or sick leave for that month, unless he or she is on active duty with the state or federal military.

A full or partial calendar month during which an employee is on unpaid leave does not constitute a break in state employment.

## **Unpaid Leave and Other Leave/Benefit Provisions**

An employee who is on unpaid leave is not eligible for emergency leave.

An employee on FMLA or parental leave who has exhausted applicable accrued paid leave is placed on unpaid leave for the remainder of the 12-week period of FMLA or parental leave.

An employee on approved unpaid leave may maintain group insurance by paying the total monthly premium, with the exception of cases involving FMLA.

See *Human Resources Guidance Handbook*, Chapter 2, B.8., Unpaid Leave.

## **Mental Health Leave for Peace Officers**

Effective April 05, 2023

An Office of Inspector General (OIG) peace officer may be granted paid time off, with supervisory approval, without a deduction in salary or loss of vacation and sick leave, earned overtime, or state compensatory time to account for absences taken in response to a traumatic event that occurred in the scope of the peace officer's employment.

Notes:

- Eligible employees request use of this leave from their direct supervisor up to 15 workdays (120 hours) of this leave per traumatic event. If a peace officer exhausts the 15 workdays of mental health leave provided per traumatic event, the appropriate division chief or designee may grant additional mental health leave as deemed appropriate under the circumstances. Mental health leave for peace officers is prorated for part-time employees. Leave requests are treated as a priority matter, and a decision is made within one business day of the direct supervisor becoming aware of the request.
- Any request for mental health leave is treated as strictly confidential by all parties involved and will not be discussed or disclosed outside the peace officer's immediate chain of command and as necessary to facilitate the use of the leave. Any breach of this confidentiality will be subject to disciplinary action, up to and including dismissal.
- Clearance from a health care provider will be required to return to duty after the use of this leave. An employee must provide the supervisor with Form HR0307, Report of Medical Status/Health Care Provider's Release to Work, completed by a health care provider who treats mental health conditions. The supervisor is responsible for providing the employee with Form HR0307 with Page 1 and Page 2 completed, a job description, and a list of physical requirements for the employee's job.
- Confidentiality may be waived by the peace officer seeking mental health leave. Confidentiality may be waived under circumstances which indicate the officer is a danger to themselves or others. When necessary, OIG management confers with health care providers, law enforcement personnel or other necessary personnel.

See *Human Resources Guidance Handbook*, Chapter 2, B.8., Other Leave Types.

## **B.9. Leave Balances at Separation**

Effective September 24, 2021

For information on how leave balances are handled upon separation, visit *Human Resources Guidance Handbook*, Chapter 1.G., Separations from Employment.