

5 LEAVES AND ABSENCES

Offices utilizing the Texas Model should coordinate all leave issues with the Integrated Service Area Manager and follow the policies and procedures established specifically for the Texas Model.

5.1 GENERAL LEAVE INFORMATION

- A. The Government Code serves as the basis for most agency leave and absence procedures.
- B. Except for unforeseen illness and injury, employees request all leave in advance. An employee who is absent from duty without authorization may be placed in absent without leave (AWOL) status for unauthorized absences and is subject to disciplinary action. All leave requests are entered online through the Employee Leave Information System (ELVIS). Leave is not authorized unless approved by the supervisor. Approval is completed through ELVIS.
- C. Leave is charged in quarter-hour (.25) increments. Resource materials and desk aids are available online on the HR webpage of the TWC Intranet.

5.2 APPROPRIATE USE OF LEAVE

- A. Management may not use vacation leave or sick leave balances as a criterion for any personnel action or require specific leave balances as a condition of employment. Supervisors can and should counsel employees regarding leave usage. It is important to remember that low leave balances are not absolute indicators of an employee's value to the agency. In counseling, supervisors should place emphasis on the reasons that caused the balances to be low, rather than the low balances themselves.
- B. No state law or agency policy requires employees to maintain specific leave balances as a condition of employment. Both vacation and sick leave are entitlements granted to state employees by law but use of such leave is subject to certain conditions. Supervisors should advise employees of the following conditions:
1. vacation and compensatory leave can only be granted with the approval of the employee's supervisor;
 2. the convenience and work of the agency is to be given first consideration when approving vacation and/or compensatory leave;
 3. use of sick leave does not require prior approval, but the employee is required to provide notice and justification to the supervisor (or designee if the supervisor is unavailable) prior to the employee's scheduled reporting time;

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

4. sick leave can only be taken during the employee's own illness or during the illness of the employee's immediate family;
 5. when vacation leave or any other form of paid leave is used as sick leave, the policies, and procedures applicable to the use of sick leave will apply (e.g., medical certification requirements and sick leave use restrictions); and
 6. for any absence based on medical need (illness or injury of the employee, or to care for a family member) of more than three consecutive workdays, certification from a health care provider of the need to miss work must be provided as soon as is practicable (generally no later than upon return to work).
 7. If the absence qualifies as FMLA leave, the FMLA medical certification and recertification requirements and deadlines will apply to the absence. If required medical certification is not provided, sick leave cannot be used to cover the absence and the period of absence will be unexcused.
- C. Failure to provide proper notice of absence, unless justified by compelling circumstances, results in the absence being unexcused, subjecting the employee to disciplinary action. Three consecutive days of unexcused absence is regarded as job abandonment and is grounds for termination of employment.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- D. Employees who take sick leave in violation of agency policy or state law are subject to disciplinary action.
- E. Supervisors should advise employees of the criteria established by state law and agency procedure concerning the appropriate use of leave and notify employees of the proper method of requesting vacation leave and of the requirement of notifying the supervisor prior to the scheduled reporting time when taking sick leave.
- F. Employees who take vacation leave or compensatory leave without approval of the supervisor are in violation of agency policy. Such action is not a leave problem – it is a discipline problem that should be handled by the supervisor through corrective and disciplinary action.
- G. Some examples of questionable leave usage are:
 - 1. “No-notice vacation” – the supervisor is notified at eight o’clock in the morning that the employee is taking vacation leave that day;
 - 2. “Eight-hour flu” – the employee calls in sick for exactly eight hours every month. The flu never lasts less than or more than the employee’s sick leave accrual for the month;
 - 3. “Monday/Friday syndrome” – the employee frequently calls in sick on Mondays or Fridays. A variation of this is the employee whose vacation leave request for Monday/Friday is denied and who then calls in sick; and

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

4. "Perpetual zero balance" – the employee uses sick leave as soon as it is accrued, rarely having a balance in excess of zero. This is usually seen with sick leave. It can also occur with vacation leave, but only with the supervisor's approval.
- H. When employees exhibit patterns of leave usage similar to the above examples, supervisors should evaluate each situation on its own merit. If excessive leave or abuse of leave disrupts job performance, then disciplinary action is appropriate. Employees who have been repeatedly counseled regarding misuse of leave entitlements, reprimanded (orally or in writing), or disciplined for misuse of leave, and who have not demonstrated improvement in behavior are candidates for dismissal.

5.3 LEAVE RECORDS

- A. Leave transactions and balances are maintained in the Employee Leave Information System (ELVIS). Supervisors and employees share responsibility for the accuracy of all leave records. Employees are responsible for entering their leave requests in a timely manner. Supervisors are responsible for approving, denying, changing, or canceling their employees' leave requests in a timely manner and as appropriate.
- B. In circumstances where the employee is unable to enter their leave request, the supervisor is responsible for entering the leave request for the employee.

5.4 VACATION LEAVE ACCRUAL

- A. Vacation leave accrual begins on the employee's first day of employment with the state and terminates on the last day of duty. Credit for one month's accrual is given for each month or fraction of a month of employment with the state and is posted to the employee's leave record on the first day of employment and on the first of each succeeding month of employment thereafter.
- B. Employees earn vacation leave based on length of state service and percent of work time in effect at the beginning of the month according to the following schedule:

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

Total Years of State Service	25% Work Time – Rate of Accrual per Month	50% Work Time – Rate of Accrual per Month	75% Work Time – Rate of Accrual per Month	100% Work Time – Rate of Accrual per Month	25% Work Time – Maximum Carryover at Fiscal Year End	50% Work Time – Maximum Carryover at Fiscal Year End	75% Work Time – Maximum Carryover at Fiscal Year End	100% Work Time – Maximum Carryover at Fiscal Year End
0 – less than 2	2.0	4.0	6.0	8.0	45	90	135	180
2 – less than 5	2.25	4.5	6.75	9.0	61	122	183	244
5 – less than 10	2.5	5.0	7.5	10.0	67	134	201	268
10 – less than 15	2.75	5.5	8.25	11.0	73	146	219	292
15 – less than 20	3.25	6.5	9.75	13.0	85	170	255	340
20 – less than 25	3.75	7.5	11.25	15.0	97	194	291	388
25 – less than 30	4.25	8.5	12.75	17.0	109	218	327	436

TEXAS WORKFORCE COMMISSION
PERSONNEL MANUAL
CHAPTER 5 - LEAVES AND ABSENCES

30 – less than 35	4.75	9.5	14.25	19.0	121	242	363	484
35 – and over	5.25	10.5	15.75	21.0	133	266	399	532

- C. Credit for the higher rate of vacation accrual begins on the first calendar day of the month if the employee’s longevity date anniversary falls on the first calendar day of the month; otherwise, the increase occurs on the first calendar day of the following month.
- D. Accumulated, unused vacation leave, not to exceed the allowed maximum, is carried over from the end of a fiscal year to the beginning of the next. Any vacation hours in excess of the maximum are credited to the employee’s sick leave balance on the first day of the new fiscal year.
- E. If the employee is on any type of paid leave that extends into the following month, the employee’s accrual of leave will not be 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.
- F. Employees transferring directly to TWC from another state agency receive credit for verified vacation leave balances as of the date of the transfer.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- G. During the 79th Regular Legislative Session, SB 1863 changed the provision by which return-to-work retirees accrue vacation.
1. An employee who retired from state employment before June 1, 2005, and returns to state employment, accrues leave based on total state service.
 2. An employee who retired from state employment on or after June 1, 2005, and returns to state employment before September 1, 2005, has split accrual rates. Accrual rates prior to September 1, 2005 will be calculated on total state service. Accrual rates beginning September 1, 2005 will be calculated on years of total state employment after the date the employee retired.
 3. An employee who retired from state service on or after June 1, 2005, and returns to state employment on or after September 1, 2005, will have vacation accruals calculated on years of total state employment after the date the employee retired.

5.5 VACATION LEAVE USAGE

- A. Employees must complete six months of continuous state service before they can use vacation leave. The six-month continuous state employment requirement must be met only once in a lifetime. Leave without pay of less than one full pay period is not considered a break in service for the purpose of calculating the six months of continuous state employment.
- B. Employees must obtain management approval before taking vacation leave. Employees enter vacation leave requests in ELVIS. Supervisors try to accommodate employee requests, but agency business receives first consideration.
- C. TWC pays employees for unused vacation leave upon separation from state employment providing they have six months of continuous state employment and have not been reemployed by the state in a position which accrues vacation leave for at least thirty calendar days. Payment is made approximately 45 days after the separation date. Employees who are reemployed by a state agency in a position which accrues vacation leave within a thirty-calendar day period from the date of separation shall have their previously accrued but unused vacation leave restored.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- D. Unused vacation leave may be added to state service and/or used to increase the monthly retirement annuity. Employees should refer to the ERS website for specific information regarding the use of unused vacation leave as it applies to their retirement plan.
- E. In case of an employee's death, the state pays the employee's estate for unused vacation leave based on the hourly wage in effect at the time of death.

5.6 SICK LEAVE ACCRUAL

- A. Sick leave accrual begins on the employee's first day of employment with the state and terminates on the last day of duty. Credit for one month's accrual is given for each month or fraction of a month of employment with the state and is posted to the employee's leave record on the first day of employment and on the first of each succeeding month of employment thereafter.
- B. Employees earn sick leave at the rate of 8 hours per month or fraction of a month of employment. Part-time employees earn sick leave at a percentage proportionate to the percent of work time in effect the first of the month, according to the following schedule:

TEXAS WORKFORCE COMMISSION
PERSONNEL MANUAL
CHAPTER 5 - LEAVES AND ABSENCES

Percentage of Work Time	Rate of Accrual – Hours per Month
25	2
50	4
75	6
100	8

- C. Unused sick leave carries over from one fiscal year to the next with no limit on the maximum balance. If an employee is in **unpaid** leave status on the first workday of a month, the sick leave accrual for that month is held in abeyance and cannot be used until the employee returns to active duty.

- D. Employees transferring directly to TWC from another state agency receive credit for verified sick leave balances as of the date of the transfer. Employees separated from employment with the state under a formal reduction in force (RIF) have their unused sick leave balance restored if reemployed by the state within 12 months after the end of the month following their separation. Employees separated for other reasons shall also have sick leave balances restored if:

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

1. Re-employed by the same agency within twelve months of separation provided there has been a break in service of at least thirty calendar days since separation; or
 2. Re-employed by another agency or institution other than the one from which the employee separated, within twelve months after the end of the month of separation.
- E. An employee that has a sick leave bonus balance must use the leave by August 31, 2021 or the leave will be lost.

5.7 SICK LEAVE USAGE

- A. Employees are eligible to take sick leave from the first day of employment when illness or injury prevent performance of duty or when needed to care for and assist immediate family members who are ill. For purposes relating to regular sick leave, immediate family is defined as: 1) individuals related by kinship, adoption, or marriage who reside in the same household, 2) minor children, whether living in the same household, and 3) foster children certified by the Texas Department of Family and Protective Services.
- B. The use of sick leave for family members not residing in the employee's household is strictly limited to the time necessary to provide care and assistance to a spouse, child of any age, or parent of the employee who needs such care and assistance as a direct result of a documented medical condition.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- C. A state employee may use the amount of sick leave that would be necessary to recover from pregnancy and childbirth for the adoption of a child under three years of age.
- D. A state employee, who is the parent of a child, may use their sick leave in conjunction with the child's birth only if the child is actually ill or to care for their spouse while she is recovering from labor and delivery.
- E. Up to eight hours of sick leave may be used each fiscal year to attend educational activities for the employee's child(ren).

See [Chapter 5, Parent Educational Activities Leave](#) section, for additional information on this type of sick leave usage.

- F. Employees who must be absent from duty because of personal or family illness/injury must notify their supervisor not later than the date and time they were due to report for duty. Employees must enter a sick leave request into the online leave system immediately upon returning to duty after using sick leave. Supervisors may enter sick leave usage for their employees online when appropriate.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- G. Certification of the need to miss work from a health care provider is required for any absence from work based on medical need (whether of the employee or a family member) covering a period of more than three consecutive workdays, regardless of whether sick leave or any other form of leave is used in connection with the absence. Medical certifications are to be kept in a special secured confidential file, to be kept separate from the employee's regular personnel file. No medical information should be entered online to the sick leave request page.
- H. Unused sick leave may be added to state service and/or used to increase the monthly retirement annuity. Employees should refer to the ERS website for specific information regarding the use of unused sick leave as it applies to their retirement plan.
- I. In case of an employee's death, the state pays the employee's estate one-half of all unused sick leave or 336 hours, whichever is less.
- J. Employees may donate unused sick leave to the agency sick leave pool when an employee separates from employment or at any time during the employee's period of employment.

5.7.1 DONATED SICK LEAVE

- A. The same sick leave usage policies outlined in the Sick Leave Usage section of the personnel manual apply to the donated sick leave program, unless otherwise specified below.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- B. Employees may donate sick leave in increments of one hour to another TWC employee who has exhausted all sick leave balances including potential sick leave pool hours.
- C. If an employee is approved for Extended Sick Leave, and/or Sick Leave Pool, those approved hours must be exhausted before the employee may receive and use donated sick leave hours.
- D. Sick leave may not be donated to an employee in another state agency.
- E. To donate sick leave to an employee who has exhausted all sick leave, use leave code DS in CAPPS Self Service under ELVIS/Leave Activity.
- F. An employee may not use donated sick leave until his/her sick leave balance is exhausted.
- G. To use donated sick leave, enter leave code DU in CAPPS Self Service under ELVIS/Leave Request.
- H. Donated sick leave may not be used towards ERS service credit by the receiving employee.
- I. Employees who donate sick leave hours may not recoup hours donated, may lose potential ERS service credit, and extend the time of eligibility for retirement.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- J. Donated sick leave may not be donated to another TWC employee or returned to the employee who donated it.
- K. Upon separation (whether by interagency transfer, resignation, retirement, involuntary separation, or death) of an employee with a balance of donated sick leave, the donated sick leave will be lost. In the event of an employee's death, donated sick leave will not be paid to the employee's estate.
- L. Employees should use discretion in connection with the donation of sick leave. All medical information, including another employee's use or exhaustion of sick leave, is confidential. An employee in need of sick leave donations may disclose the need to others but must not coerce donations nor disclose who has or has not made a donation of sick leave.
- M. Solicitation of sick leave donations is prohibited. No employee should be pressured to donate sick leave. Sick leave donation is strictly voluntary. Employees may not provide or receive payments, gifts, or anything of value in exchange for a sick leave donation.
- N. Management is prohibited from donating sick leave to employees they supervise.
- O. Donated sick leave cannot be used retroactively and can only be used the day it was donated or afterwards.

5.8 ABSENT WITHOUT LEAVE – NO JOB GUARANTEE

- A. Management may place an employee in AWOL status in situations involving disciplinary action even though the employee has not exhausted all leave. An FLSA-exempt employee may not be placed in AWOL status for less than one week for disciplinary reasons.
- B. A supervisor may approve a payroll deduction for an employee to be AWOL for a continuous period of not more than thirty (30) calendar days if the employee is absent from work due to personal or family illness or injury and has used all available forms of leave, including sick leave, vacation (if eligible), compensatory leave, holiday time, administrative leave, FLSA overtime, and all available paid or unpaid FMLA leave. The thirty-calendar day grace period for continuous periods of AWOL is not applicable to intermittent absences for which no leave is available. Intermittent AWOL absences tend to impose significant operational burdens, especially on short notice, and may result in corrective or disciplinary action.
- C. Supervisors may also approve a payroll deduction for an employee wanting time off for personal, non-illness/injury reasons if the employee has used all vacation (if eligible) and compensatory leave. The supervisor should consider the employee's workload, job performance, and the needs of the agency when deciding to grant a request for such a non-illness/injury absence.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- D. Based on fiscal constraints, individual circumstances, and past performance, management may allow the employee to return from AWOL status if a suitable position becomes available.
- E. Employees who are placed in absent without leave status during any portion of a month should be removed from the regular monthly payroll through submission of Form P-10 and will be paid on the supplemental payroll. Local management is responsible for notifying any employee with an absent without leave period during the month that they will not receive a paycheck until the supplemental payroll is generated.
- F. The supervisor may consider an employee who is repeatedly absent without leave to be abusing leave and take disciplinary action against the employee.
- G. Supervisors use Form P-10, Recommendation for Personnel Action and Form P-10a, Leave Change and Separation Checklist to document payroll deductions for absences without leave. Absences without leave must be entered into the online leave system using code LW. Form P-10b, Daily Time Report is auto-generated in CAPPs once timesheet has been certified.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- H. While an employee is absent without leave (AWOL), the state does not make the state contribution for insurance if the employee is out for an entire pay period. An employee is responsible for paying the entire health insurance premium while AWOL. Supervisors are responsible for sending the Group Insurance Unpaid Leave Notification Letter to the employee on AWOL. ([See appendix 4.1.](#)) A copy must be sent to the HR Employee Benefits Unit.
- I. Procedures for Reporting AWOL
1. Management must submit the P-10 placing an employee in absent without leave (AWOL) status immediately to HR via DocuSign when the effective date and time are established. All applicable attachments must accompany the P-10. The Employee Benefits Unit in HR must receive a copy of the *Group Insurance Unpaid Leave Notification* letter that was mailed to the employee regarding his/her benefit options while on AWOL. (Refer to [Appendix 4.1.](#)) If the effective date is later than the first few days of the month, management should submit the P-10 to HR via DocuSign so that salary overpayment is avoided. Form P-10b, Daily Time Report is auto-generated in CAPPS once timesheet has been certified.
 2. AWOL status should not exceed one month. If an employee does not return to active status, or move to another status such as Leave of Absence (LOA) at the end of the one-month period, the employee may be terminated from employment.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

3. Do not include an explanation of the reason for the AWOL on the P-10. [Form P-10a](#) should accompany the AWOL P-10 and should identify the reason for AWOL.
4. When the employee returns to work following a period of AWOL which encompasses more than one pay period (example: January 15th through February 10th), a P-10 should be prepared returning the employee from AWOL status. If the employee returns to work within the same month, it will not be necessary to submit a P-10 returning the employee from AWOL, the auto-generated P-10b will be used to restore the employee to the regular payroll.

5.9 ADMINISTRATIVE LEAVE

- A. The Executive Director may grant administrative leave to employees showing good cause or when such leave is in the best interest of agency operations. Examples of administrative leave are attendance at association conferences, special interest meetings, training not funded by the agency to maintain a license for public practice of a professional occupation, suspension with pay, and other reasons determined by the Executive Director to be appropriate and work related. With Executive Director approval, TWC may pay costs incurred with such activity, including travel and per diem.

- B. Employees request administrative leave by written memorandum to their immediate supervisor at least two weeks prior to the date of the activity. The memorandum should state the specific reason for the request and include the dates and times the employee will be away from regular duty. Management submits recommended requests through channels to the appropriate division director who makes a final recommendation to the Executive Director through HR. HR advises the requesting office of the decision. Administrative leave must be entered into the online leave system. This time automatically posts as other paid leave to the Daily Time Activity Report.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

5.9.1 PERFORMANCE LEAVE

- A. Employees who exhibit overall Outstanding or Exceptional performance as documented on a performance review or who exhibit outstanding performance on a major job function or project may be awarded paid leave in recognition of that performance. Outstanding performance in completing special assignments, providing excellent customer service, consistently going above and beyond what is normally expected, consistently volunteering to accept additional assignments, helping other staff during peak workload periods, etc., are other criteria which may also be considered.
- B. The total amount of performance leave that may be awarded to an employee may not exceed 24 hours in the fiscal year. This amount is prorated based upon an employee's percent of work time (i.e., 100%, 75%, 50%, or 25%).
- C. In accordance with State Statute, an employee may be granted up to 32 hours total Administrative Leave for outstanding performance during a fiscal year, which includes up to twenty-four hours of performance leave for the fiscal year. An additional eight hours of leave can be awarded for Star Awards.
- D. Performance leave may be carried over from one fiscal year to the next.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- E. Performance leave is not transferable to another state agency nor is it compensable.
- F. Supervisors must approve the use of performance leave in advance.

5.9.2 PERFORMANCE LEAVE ELIGIBILITY

- A. To be considered for performance leave, responsible management must ensure employees meet the following criteria:
 - 1. TWC employee other than a Commissioner or the Executive Director;
 - 2. Performance reviewed and documented including:
 - a) Performance reviewed and documented within the preceding twelve months with a rating of Outstanding or higher; or
 - b) Performance reviewed and documented within the preceding twelve months with a rating of Good **and** documented outstanding performance relating to a project/assignment above that expected or required.
 - 3. No disciplinary action within the preceding twelve months excluding any full calendar months of LOA or AWOL; and

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

4. Actively on the payroll on the first of the month in which the performance leave was requested.
- B. Receipt of a merit increase, one time merit payment, equity adjustment, or promotion does not affect an employee's eligibility to be awarded performance leave.
- C. Performance leave is awarded to the employee in the online leave system by HR. Employees receiving performance leave must enter usage into the online leave system using leave code PL. This time automatically posts as other paid leave to the Daily Time Activity Report.
- D. The Executive Director and Commissioners are not eligible for performance leave.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

5.9.3 AWARDING PERFORMANCE LEAVE

- A. Recommendations for awarding performance leave should be made on [Form P-53, Performance Leave Recommendation](#), through the appropriate supervisory/management channels to the Human Resources Department. The form must include the employee's name, employee identification number, job classification, department/location, date of last performance review, overall rating, position number, cost center number, suggested number of hours to be awarded, supervisor's name and information related to the employee's outstanding performance. HR will notify the department liaison of the approval/disapproval of the performance leave by the HR Director.

- B. [Form P-53, Performance Leave Recommendation](#), is used to document the justification for recommendation of performance leave, approve the request, and notify the employee of the award of performance leave. Requests to use awarded performance leave must be coordinated with the employee's supervisor in advance. Supervisors are responsible for maintaining the balance of an employee's performance leave.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

5.9.4 RECRUITMENT REFERRAL INCENTIVE LEAVE

- A. Employees who recruit or refer external job applicants who are hired for full-time positions at TWC are eligible to be awarded leave in recognition of their efforts in recruiting. Full-time employees will receive eight (8) hours of leave for each successful referral with a maximum of two successful referrals in a fiscal year.
- B. If a division director notifies HR that a specific position is "hard to fill" at the time a position is posted, employees who recruit or refer external job applicants are eligible to receive sixteen (16) hours of leave for each successful referral.
- C. The total amount of recruitment referral incentive leave awarded to an employee may not exceed 16 hours in the fiscal year. Part-time employees are eligible for recruitment referral leave prorated based upon an employee's percent of work time (i.e., 100%, 75%, 50%, or 25%).
- D. Recruitment referral incentive leave may be carried over from one fiscal year to the next.
- E. Recruitment referral incentive leave is not transferable to another state agency nor is it compensable. Supervisors must approve the use of recruitment leave in advance.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

5.9.5 RECRUITMENT REFERRAL INCENTIVE LEAVE ELIGIBILITY

All TWC employees are eligible for recruitment referral incentive awards with the following exceptions:

- A. employees within the Human Resources Department whose normal job duties include recruitment or oversight of these activities at the time of referral;
- B. employees whose regular job duties include recruitment, job placement, or oversight of these activities at the time of referral;
- C. directors, managers, and supervisors involved in the selection process or in the reporting chain responsible for the vacant position at the time of referral; and
- D. employees with a disciplinary action within 12 months of the referral date.

5.9.6 AWARDING RECRUITMENT REFERRAL INCENTIVE LEAVE

Recruitment referral incentive leave is awarded to a TWC employee who makes a successful referral for a regular or exempt position only after the following conditions have been met:

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- A. A [P-112 Recruitment Referral](#), is received in HR by close of business on the job posting's closing date. For "open until filled" postings, the closing date will be the date the selecting authority determines that applications will no longer be accepted. Referral forms that do not include the job posting number will be considered invalid. If a referred applicant applies for and is offered more than one position, the referring employee is only eligible for the one referral for which the applicant accepts the job offer. If more than one employee refers the same applicant, only the employee with the first documented referral submitted to HR is eligible for the award.
- B. Once the referred applicant has successfully completed new employee orientation, the HR Department will certify the referral eligibility and notify the referring employee's department head of the recruitment referral incentive leave award. Recruitment referral incentive leave is awarded to the employee in the online leave system by HR. Employees receiving recruitment referral incentive leave must enter usage into the online leave system using leave code RL. This time automatically posts as other paid leave to the Daily Time Activity Report.

5.10 VOLUNTEERS OF TEXAS VOLUNTARY ORGANIZATIONS ACTIVE IN DISASTER

- A. TWC may grant up to 10 workdays each state fiscal year, for members of the Texas Voluntary Organizations Active in Disaster to participate in disaster relief services with supervisor authorization, ; the services in which the employee participates are provided for a state of disaster declared by the governor; and the executive director approves the leave.
- B. Volunteers of Texas Voluntary Organizations Active in Disaster leave is entered into the online leave system using leave code RC. This time automatically posts as other paid leave to the Daily Time Activity Report.

5.11 COMPENSATORY LEAVE

- A. TWC tracks three kinds of compensatory leave: FLSA comp time, state comp time, and holiday comp time.
- B. FLSA comp time, at a time and one-half rate, is earned when an FLSA non-exempt employee physically works over forty hours in a workweek. State comp time, at an hour for hour rate, is earned when an FLSA nonexempt employee works forty hours or less, but the total of hours worked plus hours of paid leave (including holiday) exceeds forty hours in a workweek.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- C. Non-exempt part-time employees must be paid for hours worked over their designated hours, when designated hours are less than forty. They may not accrue state compensatory time.
- D. Full-time or part-time FLSA exempt employees, except Commissioners, may earn compensatory time when they are required by management to work, and the number of hours worked plus holiday or other paid leave taken exceeds the number of hours they are designated to work during the workweek.
- E. Holiday comp time is earned when any employee works on a holiday.
- F. Employees may earn compensatory time for hours worked at the employee's personal residence if the employee obtains advance approval of the Division Director; however, a division director is limited to approval of not more than five extra hours per workweek and ten extra hours per calendar month. Employees who have obtained appropriate supervisory approval in advance, may earn compensatory time for extra hours worked at the employee's assigned temporary work location.
- G. All full-time employees and part-time FLSA exempt employees may earn UC (Unscheduled Comp Time) when specifically directed by the agency, for instances such as, but not limited to, inclement weather or time off for non-official holidays. Part-time non-exempt employees and Commissioners may not earn UC.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- H. Employees that have an alternative work schedule may earn up to 8.0 hours of UC time when their scheduled day off is a holiday.
- I. UC entries are recorded in the online leave system and reflected in the Comp Time balance field.
- J. Employees must take state compensatory time within twelve months of when it is earned, or it is forfeited. Employees must be allowed to use compensatory time if it is requested in writing at least 90 days in advance of the date the compensatory time would otherwise lapse. TWC management must approve the request in writing or provide the employee with alternate date(s) on which the employee may use the compensatory time. Employees must take holiday compensatory time within twelve months of when it is earned. The employee and management must monitor holiday compensatory balances to ensure no holiday compensatory time is lost.
- K. Unused state or holiday compensatory time does not transfer to another agency, and unused state compensatory time is not paid at separation. Employees may be allowed to remain on the payroll to exhaust unused holiday compensatory leave. FLSA compensatory time is paid at separation; it does not transfer to another state agency unless the transfer is a direct result of the legislature's transfer of legal authority or duties from the first agency to the second agency.

5.12 EMERGENCY COMPENSATORY LEAVE

- A. FLSA exempt employees who are required, in the course and scope of their employment, to provide services for the benefit of the general public during emergency situations may earn Emergency Compensatory Time (EC) at an hour for hour rate. EC entries are recorded in the online leave system and reflected in the Emergency Comp balance field.
- B. Employees must take emergency compensatory time within eighteen months following the end of the workweek in which the compensatory time was earned, or it is forfeited. Emergency compensatory time taken is entered into the online leave system using code TE.
- C. Employees must be allowed to use emergency compensatory time if it is requested in writing at least 90 days in advance of the date the emergency compensatory time would otherwise lapse. TWC management must approve the request in writing or provide the employee with alternate date(s) on which the employee may use the emergency compensatory time.
- D. FLSA exempt employees may be paid for all, or part of the emergency compensatory hours accrued, at the employee's regular hourly salary rate, at the discretion of the Executive Director (or designee). The employee's emergency compensatory time balance shall be reduced by the number of hours the employee is paid.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- E. Unused emergency compensatory time does not transfer to another agency, and unused emergency compensatory time is not paid at separation. With management approval, employees may be allowed to remain on the payroll to exhaust unused emergency compensatory leave.

5.13 COURT APPEARANCE AND SUBPOENA

5.13.1 SITUATIONS REQUIRING THE USE OF ACCRUED LEAVE

An employee subpoenaed or required to appear in a civil, criminal, legislative, or administrative proceeding is required to do so on his/her own time if:

- A. A witness fee is accepted and/or
- B. The appearance is related to an action in which the employee is a party (e.g., Employee vs. Corporation) and which is not related to the employee's official duties or position as a state employee.

5.13.2 SITUATIONS NOT REQUIRING THE USE OF ACCRUED LEAVE

- A. Except as stated in Section 5.13.1, an employee subpoenaed to appear in a civil, criminal, legislative, or administrative proceeding during his/her regular work hours will **not** have this time charged against accrued leave.
- B. Work-Related Appearances

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

1. When an employee is subpoenaed or required to appear in a proceeding during regular working hours for the following reasons, the time (including appropriate travel time to and from the proceeding) will be treated as regular work time:
 - a) To testify in employee's official TWC capacity;
 - b) To bring TWC records for which employee is responsible;
 - c) To testify in an official capacity concerning actions occurring while employed with another state agency; and/or
 - d) To appear in a civil, criminal, legislative, or administrative proceeding as a witness, charging party, or as the charged individual.
2. Appearance and travel time outside regular working hours is treated as work time. This time is entered into the online leave system using leave activity code Extra Hours Worked (EH). Before saving the data entered, the hours must be assigned to the appropriate project/function code.

C. Non-Work-Related Appearances

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

1. When an employee is subpoenaed to appear as a witness due to an incident not related to his/her state employment, the time off during working hours (including appropriate travel time to and from the proceeding) is entered into the online leave system using leave code for Administrative Court Appearance / Subpoena (AC). This time automatically posts as other paid leave to the Daily Time Activity Report.
2. Appearance and travel time outside regular working hours is not treated as work time.

5.13.3 EMPLOYEE RESPONSIBILITY

An employee subpoenaed to appear in a civil, criminal, legislative, or administrative proceeding is responsible for providing supervision with advance notice and documentation substantiating the need to appear as a witness.

5.13.4 SUPERVISOR/MANAGER RESPONSIBILITY

Responsible management has the authority to approve Administrative Court Appearance / Subpoena (AC) leave. Management is responsible for ensuring that appropriate documentation is provided by the employee.

5.14 EMERGENCY LEAVE

- A. TWC allows employees emergency leave for up to three workdays for a death in the immediate family. The legislative definition of immediate family for purposes of emergency leave is limited to the following:

Employee's Immediate Family Includes:	Spouse's Immediate Family Includes:
Spouse	Parents
Parents	Brothers
Brothers	Sisters
Sisters	Grandparents
Grandparents	Grandchildren
Grandchildren	Children
Children	

- B. Emergency leave absences for the death of a family member listed above are entered in the online leave system.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- C. The Executive Director may also grant emergency leave for other reasons when an employee shows good cause. Management submits recommended emergency leave requests for other reasons through channels by memorandum to HR. HR advises the requesting office of the Executive Director's decision. Emergency leave granted for other reasons is entered in the online leave system using leave code EM. This time automatically posts as other paid leave to the Daily Time Activity Report.
- D. Leave is authorized permission for employees to be absent from their workstation, during their normal work schedule, for non-work reasons. Some examples of other paid leave include:
1. inclement weather and/or
 2. unscheduled time off granted by the Governor, legislature, or agency head.

5.15 SPECIAL LEAVE

Offices utilizing the Texas Model should coordinate all leave issues with the Integrated Service Area Manager and follow the policies and procedures established specifically for the Texas Model.

The Texas Workforce Commission provides three types of special leave to employees who meet each category's eligibility requirements. Special leave includes Extended Sick Leave (ESL), Sick Leave Pool (SLP), and Family Leave Pool (FLP). Each category of special leave follows the same general requirements

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

for the administration of special leave, and each category also follows its own specific requirements.

- A. The Executive Director or designee is the administrator of each category and approves or disapproves ESL, SLP and FLP requests.
- B. Employees that are within their first six months of employment with the state are not eligible to donate to the Sick or Family Leave Pools or receive SLP or FLP. See each individual category below for specific eligibility criteria.
- C. The Executive Director, TWC Commissioners, and temporary and emergency employees, are not eligible to receive ESL, SLP, or FLP.
- D. TWC administers available pool leave on a first-come, first-served basis. A part-time employee is granted SLP and FLP on a pro rata basis.

5.15.1 EXTENDED SICK LEAVE

- A. Extended Sick Leave (ESL) provides eligible employees with additional paid sick leave in documented cases where an employee's own illness or injury creates an extended period of incapacity and exhausts the employee's regularly accrued paid leave.
- B. Definitions:
 - 1. Serious illness or injury: a(n) injury/condition or combination of conditions affecting the mental or physical health of the employee or the employee's immediate family that requires

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

the services of a licensed medical practitioner for a prolonged period.

2. Extended or prolonged period: absent from work for five or more days.
 3. Definition of Incapacity: the inability to work or perform activities of daily living (e.g., bathing, dressing, toileting) due to a serious health condition, or treatment or recovery from a serious health condition.
- C. To be eligible for Extended Sick Leave, an employee must:
1. be unable to work due to illness, injury, or an extended period of incapacity,
 2. intend to return to TWC employment,
 3. have completed five years of state service,
 4. be meeting job performance requirements and observing work rules,
 5. have exhausted all other paid leave (sick, annual, compensatory, and FLSA overtime), and
 6. provide a properly completed Form P-65a, Certification of HealthCare Provider.
- D. Extended Sick Leave Maximum
1. The lifetime maximum amount of ESL that may be granted to an employee with over 10 years of state service is 528 hours.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

2. An eligible employee with five to ten years of state service is entitled to the lesser of:
 - a) 352 hours minus ESL previously used while employed by TWC; or
 - b) the employee's highest accumulated balance of sick leave during the past 24 months while employed by TWC, minus any previously used ESL while employed by TWC.

3. An eligible employee with 10 or more years of state service is entitled to the lesser of:
 - a) 528 hours minus ESL previously used while employed by TWC; or
 - b) the employee's highest accumulated balance of sick leave during the past 24 months while employed by TWC, minus any previously used ESL while employed by TWC.

4. An employee who served a waiting-period week prior to receiving ESL or SLP benefits during the period June 1, 1996, through Feb.28, 1999, is entitled to receive an additional 40 hours of ESL, if they become eligible for these leaves in the future.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- E. ESL may be used intermittently when approved by HR. An employee approved to use the leave intermittently must continue to exhaust any accrued annual and sick leave balances as they become available prior to using approved ESL.

5.15.2 SICK LEAVE POOL

- A. The Sick Leave Pool (SLP) provides eligible employee with additional paid sick leave in documented cases of a catastrophic illness of, or injury to, the employee or the employee's immediate family member.
- B. Definitions:
 - 1. Catastrophic illness or injury: a medically verified, life-threatening, or catastrophic injury or illness affecting the mental or physical health of the employee or the employee's immediate family that requires the services of a licensed medical practitioner without delay or for a prolonged period.
 - 2. Extended or prolonged period: absent from work for five or more days.
 - 3. Definition of Incapacity: the inability to work or perform activities of daily living (e.g., bathing, dressing, toileting) due to a serious health condition, or treatment or recovery from a serious health condition.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

4. Immediate family: those individuals related by kinship, adoption, marriage, or foster children certified as such by the Department of Family and Protective Services, who are living in the same household or if not in the same household are totally dependent upon the employee for personal care or services on a continuing basis.
- B. The TWC SLP Administrator reviews each request for SLP on an individual basis to determine whether the condition is considered catastrophic.
 - C. TWC does not consider certain medical conditions (with minor or no complications) to be severe enough to be categorized as catastrophic injuries or illnesses.
 - D. Examples of medical conditions not considered catastrophic include but are not limited to:
 1. pregnancy
 2. broken limb or sprains
 3. common cold or allergies
 4. back pain and/or injuries
 5. whiplash
 6. tendonitis
 7. carpal tunnel syndrome

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

8. migraine headaches
 9. fatigue and
 10. any conditions effectively managed by medication.
- E. Examples of illness/injuries generally considered to be catastrophic include but are not limited to:
1. stroke with residual paralysis or weakness
 2. severe heart attack
 3. kidney failure
 4. cancer and/or potentially fatal tumors
 5. amputations and/or
 6. life-threatening complications following a Cesarean surgery (for example, blood clots traveling to the lung, or severe hemorrhaging).
- F. Employees with a catastrophic illness or injury do not have to contribute to the SLP before using pool leave. An employee who contributes to the pool and then exhausts all accrued sick leave within the same fiscal year may retrieve that fiscal year contribution (if available) only if the employee's illness or injury is catastrophic in nature.
- G. Any unused balance of sick leave pool granted to an employee is returned to the pool if not used within

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

the month it is granted. The estate of a deceased employee is not entitled to payment for the unused balance of sick leave pool.

- H. To be eligible for Sick Leave Pool, an employee must:
1. be unable to work due to a catastrophic illness or injury to the employee or the employee's immediate family member,
 2. have exhausted all other paid leave (sick, annual, compensatory, and FLSA overtime),
 3. have retrieved and exhausted any available sick leave the employee contributed to the SLP during the fiscal year if the illness or injury is catastrophic in nature,
 4. have exhausted all ESL, if eligible, and
 5. provide a properly completed Form P-65a, Certification of Healthcare Provider for the employee's illness or injury or the Form P-65b, Certification of Healthcare Provider or Qualifying Exigency for a Family Service member.
- I. Sick Leave Pool Maximum. TWC may grant an eligible employee, regardless of tenure, the lesser of:
1. up to a maximum of one-third of the balance of the hours available in the pool at the time a

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

request that meets all requirements is received by the SLP Administrator; or

2. up to 176 hours per pay period.
 3. An employee may receive up to a career maximum of 720 sick leave pool hours.
 4. An employee who served a waiting-period week prior to receiving SLP benefits during the period June 1, 1996, through Feb. 28, 1999, is entitled to receive an additional 40 hours of SLP, if they become eligible for this leave in the future.
- J. When two or more employees within the agency have a common family member who suffers a catastrophic illness or injury, only one of the employees will be awarded leave from the sick leave 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.
- K. SLP cannot be used intermittently like the other two types of special leave.

5.15.3 FAMILY LEAVE POOL

- A. The Family Leave Pool (FLP) provides eligible employees with additional paid leave to help employees who have exhausted all other leave:

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

1. to bond with and care for their children during a child's first year following birth, adoption, foster placement, or guardianship;
2. to care for themselves or an immediate family member with a serious condition, illness, or injury, including pandemic-related illnesses; or
3. due to the previous donation of time to the FLP.

B. Definitions:

1. Serious illness or injury: a(n) injury/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 medical practitioner for a prolonged period.
2. Extended or prolonged period: absent from work for five or more days.
3. Definition of Incapacity: the inability to work or perform activities of daily living (e.g., bathing, dressing, toileting) due to a serious health condition, or treatment or recovery from a serious health condition.
4. Immediate family: those individuals related by kinship, adoption, marriage, or foster children certified as such by the Department of Family and Protective Services, who are living in the same household or if not in the same

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

household are totally dependent upon the employee for personal care or services on a continuing basis.

5. Pandemic-related illness: illnesses resulting from the Pandemic as identified by the Center for Disease control.
- C. Eligibility Requirements. A TWC employee is eligible to use time contributed to the family leave pool if they have:
1. exhausted all sick leave including: all available Extended Sick Leave and Sick Leave Pool if eligible, and any Donated Sick Leave; and
 2. exhausted all other paid leave: annual, compensatory, and FLSA overtime.
- D. Employees must also be experiencing one of these qualifying events:
1. Birth of a child;
 2. Placement of a foster child or adoption of a child under 18 years of age;
 3. Placement of any person 18 years of age or older requiring guardianship;
 4. A serious illness to an immediate family member or the employee, including a pandemic-related illness;

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

5. An extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member; or
 6. A previous donation of time to the pool.
- E. Employees must provide the following documentation for their specific qualifying event:
1. for employees who are unable to work due to the need to bond with and care for their children during a child's first year following birth, adoption, or foster placement:
 - a) birth notice, birth certificate, or hospital discharge paperwork;
 - b) adoption or foster placement documentation for child under 18 years of age; or
 - c) guardianship documents for any person 18 years of age or older.
 2. for the care of an employee or an employee's immediate family member during a serious medical condition, illness, or injury, including pandemic-related illnesses or complications:
 - a) FMLA forms P-65a, P-65b, or P-65c, or a doctor's note; or

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- b) essential caregiver designation, proof of closure of a school/daycare, or other appropriate documentation.
 - 3. for an employee who previously donated to the pool and has exhausted all other leave balances must provide proof of a previous donation to the FLP, if applicable. Proof can be provided via a review of the employee's ELVIS Leave History.
- F. Family Leave Pool maximum. TWC may grant an eligible employee, regardless of tenure, the lesser of:
- 1. up to a maximum of one-third of the balance of the hours available in the pool at the time of the request; or
 - 2. up to 176 hours per pay period.
 - 3. An employee may receive up to a career maximum of 720 family leave pool hours.
- G. FLP may be used intermittently when approved by HR. An employee approved to use FLP leave intermittently must continue to exhaust any accrued annual and sick leave balances, including any eligible ESL or SLP balances as they become available, prior to using approved FLP.

5.15.4 LEAVE POOL DONATIONS

- A. Sick Leave Pool Donations.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

1. Donations to the SLP are strictly voluntary. An employee may donate an unlimited number of accrued sick leave hours to the pool in eight-hour increments, except for retiring employees. Retiring employees may donate an unlimited number of accrued sick or vacation leave hours to the pool in increments of quarter hours.
 2. To donate to the SLP, the employee enters their sick leave pool donation into the online leave system using leave activity code SD. The employee may not designate the donation to benefit a particular person.
- B. Family Leave Pool Donations.
1. Donations to the Family Leave Pool are strictly voluntary. An employee may donate an unlimited number of accrued sick or vacation leave hours to the pool.
 2. To donate leave to the pool, the employee enters their sick or vacation leave pool donation into the online leave system using leave activity codes FV (Family Vacation Leave Donated to Pool) or FS (Family Sick Leave Donated to Pool). The employee may not designate the donation to benefit a particular person.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

3. Donations of leave to the FLP are non-taxable to the donor if the recipient uses the hours for the purposes of care of the employee or an immediate family member due to a serious medical condition, including a pandemic-related illness. Donations used for all other purposes are taxable to the donor.

Refer to [Special Leaves Desk Aid](#) for more information.

Additional resources for Leave can be found on the [Business Operations HR Resources SharePoint site](#) under the CAPPS/ELVIS section.

5.16 FAMILY AND MEDICAL LEAVE (FMLA)

Offices utilizing the Texas Model should coordinate all leave issues with the Integrated Service Area Manager and follow the policies and procedures established specifically for the Texas Model.

If managers need assistance throughout the FMLA process, HR Specialists are available through the [HR Help Desk Portal](#).

- A. TWC provides job-protected leave to eligible employees in accordance with the federal Family and Medical Leave Act (FMLA).
- B. The poster, "Employee Rights and Responsibilities Under the Family and Medical Leave Act," should be prominently displayed in all offices in an area accessible to all employees. There is no need to display this poster in public waiting areas.

5.16.1 DEFINITIONS OF TERMS USED

- A. A **serious health condition** under the Family and Medical Leave Act means an illness, injury, impairment, or physical or mental condition that involves one of the following:
 - 1. Hospital Care – inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility including any period of incapacity (inability to work, attend school, or perform daily activities due to the

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

serious health condition, treatment for the condition, or recovery from the condition) or any subsequent treatment in connection with inpatient care.

2. Absence Plus Treatment – a period of incapacity of more than three consecutive days and any subsequent treatment or period of incapacity related to the same condition that also involves:
 - a) treatment two or more times within 30 calendar days of the first day of incapacity by a health care provider, or a nurse or physician’s assistant under the direct supervision of the health care provider, or by a provider of health care services (e.g., a physical therapist) under the orders of, or on referral by, a health care provider or
 - b) treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment (e.g., prescription medicines or therapy) under the supervision of the health care provider.

The first (or only) treatment visit must occur within seven (7) days of the first period of incapacitation.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

3. Pregnancy – any period of incapacity due to pregnancy or for prenatal care.
4. Chronic Conditions Requiring Treatment – any period of incapacity due to a chronic serious health condition which: 1) requires periodic visits at least twice a year for treatment by a health care provider or nurse or physician’s assistant under the supervision of a health care provider, 2) continues over an extended period of time, including recurring episodes of a single underlying condition and 3) may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy).
5. Permanent/Long-term Conditions Requiring Supervision – a period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer’s, a severe stroke, or terminal stages of a disease.
6. Multiple Treatments (Non-Chronic Conditions) – any period of absence to receive multiple treatments, including any period of recovery from treatment, by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

accident or other injury or for a condition which would be expected to result in a period of incapacity of more than three consecutive days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation), severe arthritis (physical therapy), or kidney disease (dialysis).

7. Serious health conditions are evaluated on a case-by-case basis. Restorative dental or plastic surgery after an injury, removal of cancerous growths, or mental illness resulting from stress or allergies may be serious health conditions. Health conditions which are generally not considered serious include cosmetic treatments for acne and plastic surgery, food poisoning, the common cold, influenza, stomach virus, upset stomach, chest pains, carpal tunnel syndrome, gastroenteritis, routine dental and orthodontia problems, and periodontal disease, unless inpatient hospital care is required and/or complications develop.
8. Substance Abuse may be a serious health condition and meet the criteria for FMLA leave if the absences which meet the criteria are related to treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. Absences related to the use of the substance do not qualify for FMLA.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

9. Absences Related to Pregnancy and Chronic Serious Health Conditions may qualify under FMLA even if the individual does not see the doctor on each absence or is not absent for more than three days.
 - B. Treatment – includes but is not limited to examinations to determine if a serious health condition exists and evaluations of the condition. Routine examinations are not included. A regimen of continuing treatment includes a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition.
 - C. Health Care Provider – may include a Doctor of Medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor (limited to treatment consisting of manual manipulating of the spine to correct a subluxation as demonstrated by X-ray to exist), nurse practitioner, nurse midwife, clinical social worker, Christian Science practitioner, and other providers accepted by the health insurance provider. Any type of health care provider listed above who is authorized to practice in a country other than the United States is also acceptable.
 - D. Parent – designates a biological parent or an individual who stands or stood in the place of the parent to the employee.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- E. Child – means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in the place of the parents. The child must be under age 18 or age 18 or older and incapable of self-care because of a mental or physical disability.
- F. Key Employee – a salaried employee who is among the highest paid 10 percent of all the employees employed by the employer within 75 miles of the employee’s worksite.
- G. Qualified Exigency – issues directly arising from deployment or extended deployments; 1) short notice of deployment, 2) military events and related activities, 3) childcare and school activities, 4) financial and legal arrangements, 5) rest and recuperation, 6) post deployment activities, 7) counseling, and 8) additional duties.
- H. Covered Active Duty or Call to Covered Active Duty – duty under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation or deployment of a member with the Armed Forces to a foreign country under a call or order to active duty.
- I. Contingency Operation – a military operation that is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- J. Serious Injury or Illness (for purposes of Military Caregiver Leave only) – an injury or illness incurred by the covered service member in the line of duty; on covered active duty in the Armed Forces or a serious illness or injury that existed before the beginning of the member’s covered active duty and was aggravated by service in line of duty; and that may render the member medically unfit to perform the duties of the member’s office, grade, rank or rating; or a serious illness or injury that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

- K. Covered Service Member for Military Caregiver Leave – a member of the Armed Forces, including a member of the National Guard or Reserves who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability list, for a serious injury or illness or a veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- L. Outpatient Status – The status of a member of the Armed Forces assigned to:
 - 1. a military medical treatment facility as an outpatient; or
 - 2. a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

- M. Next of Kin – with respect to a covered service member, means the nearest blood relative of that service member.

- N. Service Eligibility Requirements
 - 1. To be eligible for FMLA leave, an employee must meet service eligibility requirements. The State of Texas is considered a single employer for FMLA purposes, and thus the service eligibility requirements can be met through prior service at TWC or at another state agency.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

2. An employee must have at least 12 months of total state service. If the employee had a break in state service that was longer than seven years, the service accrued prior to the break will not count toward the 12-month service requirement. The only potential exception is a break due to the employee's fulfillment of his/her National Guard or Reserve military service obligation.
3. An employee must have physically worked at least 1,250 hours during the 12-month period immediately prior to the beginning of FMLA leave.
 - a) Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), an employee returning from fulfilling his/her National Guard or Reserve military obligation shall be credited with the hours of state service that the employee would have performed if the employee had not been performing such military service. Accordingly, the hours that the employee would have worked for the state during the period of such military leave must be added to any hours the employee actually worked for the state during the previous 12-month period to determine if the employee meets the required 1,250 hours.

- b) Time taken for any leave other than military leave described above does not count toward the required 1,250 hours.

5.16.2 FMLA QUALIFYING REASONS

TWC must grant an eligible employee up to 12 weeks of paid and/or unpaid, job-protected leave during the 12-month rolling year calculating backwards, for any of the following reasons:

- A. birth of a child or care of the child after birth;

Sick leave may be used only for the period of absence the doctor certifies as medically necessary (e.g., for pre-natal visits, the birth of the child, and for recovery from childbirth). After the mother is no longer incapacitated due to childbirth, sick leave may be used only if the employee is eligible for FMLA leave due to the employee's own serious health condition or due to a medical need for the employee to care for a family member with a serious health condition (e.g., the employee's infant, spouse, parent, or other child has a serious health condition).

- B. placement of a child for adoption or foster care or care of the child after placement;

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

The state provides for parental leave for those employees who do not qualify for FMLA leave. Refer to [Parental Leave section](#) for detailed information on the subject. Employees who are eligible for FMLA leave must be placed on FMLA leave and not parental leave.

- C. care for the employee's spouse, child, or parent (not parent-in-law) with a serious health condition;
- D. a serious health condition that leaves the employee unable to perform the essential functions of the job;
or
- E. Military Exigency leave for employees whose spouse, son, daughter, or parent is on (or has been notified of an impending call to) "covered active duty" in the Armed Forces. A call to active duty for this purpose must be a federal call to active duty. State calls to active duty are not covered unless under order of the President of the United States in support of a contingency operation. For purposes of qualifying exigency leave, the son or daughter may be of any age.
 - 1. For members of a regular component of the Armed Forces, "covered active duty" means duty during deployment of the service member with the Armed Forces to a foreign country.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

2. For members of a Reserve component of the Armed Forces or a retired member of the regular Armed Forces or Reserves, "covered active duty" means duty during deployment of the service member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation.
3. A qualifying exigency is a non-medical activity that is directly related to the covered military member's active duty or call to active-duty status, and may include the following:
 - a) short-notice deployment (leave permitted up to seven days beginning on the date a covered military member is notified of an impending call or order to active duty in support of a contingency operation seven or less calendar days prior to the day of deployment);
 - b) military events and related activities;
 - c) childcare and school activities arising from the active duty or call to active duty (e.g., temporary, but not on-going, childcare arrangements; enrollment in a new school; parent-teacher conferences relating to the call to active duty);

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- d) financial and legal arrangements arising from the active duty or call to active duty;
 - e) attendance at a counseling session by a non-medical counselor (e.g., clergy member) arising from the active duty or call to active duty (includes counseling for the covered military member, employee, son, or daughter);
 - f) rest and recuperation (leave permitted of up to fifteen days for each instance when the military member is on short-term, temporary rest and recuperation leave during the period of deployment);
 - g) post-deployment military activities (e.g., attend arrival ceremonies); or
 - h) additional activities approved on a case-by-case basis by the Director of Business Operations (or designee).
- F. Military Caregiver leave is available to care for a covered service member who has been injured in the line of duty while on covered active duty, including veterans within five years of discharge (Military Caregiver Leave). Eligibility for Military Caregiver leave is limited to the spouse, son, daughter, parent, or next of kin of a covered service member.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

5.16.3 MAXIMUM AMOUNT OF FMLA LEAVE

- A. Pursuant to the Family and Medical Leave Act, TWC employees who meet the FMLA service eligibility requirements may take up to 12 weeks per FMLA year (a designated 12-month period) of paid and/or unpaid, job-protected leave for certain family and medical reasons.
 - 1. For full-time employees, the 12 weeks equates to 480 hours.
 - 2. For employees who work three-quarter time, the 12 weeks equates to 360 hours, for half-time to 240 hours and for quarter-time to 120 hours.

- B. Spouses who are eligible for FMLA leave and are both employed with the state are limited to a combined total of 12 weeks of FMLA leave during a 12-month period, if taken for birth or placement of a child. When spouses both use a portion of the total 12-week FMLA leave entitlement for the birth or placement of a child, each spouse is entitled to the difference between the total 12 weeks and the amount he or she has taken individually. For example, if each spouse took six weeks of leave to care for a healthy, newborn child, each could use an additional six weeks due to his/her own serious health condition, to care for a family member with a serious health condition, to deal with an exigency issue or other FMLA qualifying event.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- C. FMLA also provides up to 26 weeks per year of paid and/or unpaid, job protected leave to eligible employees during a single 12-month period for Military Caregiver Leave. The 26 weeks is measured forward from the date Military Caregiver leave begins and includes any regular FMLA leave taken during the same 12-month period. The number of eligible hours is proportionate to the percent of time the employee works.
- D. Spouses who are both employed by the state and who are both eligible for FMLA leave under Military Caregiver Leave are limited to a combined total of 26 weeks of FMLA leave during the applicable 12-month period.

5.16.4 JOB PROTECTION

- A. Except in situations where an employee's position is eliminated as a result of a formal reduction in force or staff realignment (refer to [Chapter 2, RIF Exceptions](#) section), TWC must restore employees returning from FMLA leave/leave of absence to their original or an equivalent position and pay with equivalent employment terms and conditions.
- B. An employee must not be retaliated against for using FMLA leave, but FMLA leave does not shield an employee from discipline or discharge for any form of misconduct or unsatisfactory performance.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- C. An employee considered to be a “key employee” may be denied reinstatement and maintenance of health benefits if TWC determines that substantial and grievous economic injury to TWC operations will result if the employee is reinstated from FMLA leave.

5.16.5 REQUIREMENTS FOR FMLA USAGE

- A. The restrictions and documentation requirements applicable to a period of FMLA leave vary according to the reason for the leave. The employee must provide required certifications no later than 15 calendar days after receipt of the [Form P-63, Family and Medical Leave Act \(FMLA\) Preliminary Designation](#), unless it is not practicable under the circumstances despite the employee’s reasonable, good-faith efforts to obtain the required certification in a timely manner. Additional time to provide a required certification may be allowed when justified due to special circumstances.
- B. All required certifications must be complete and sufficient. A certification is considered to be insufficient if it is vague, ambiguous, or non-responsive.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

1. If any required certification (including but not limited to any required medical certification, recertification, or fitness-for-duty certification upon release for return to work) is incomplete or insufficient, management will provide the employee written notice (either in the [Family and Medical Leave Designation Notice, Form P-64](#), or via other written notice) of what additional information is needed to make the certification complete and sufficient.
 - a) Upon receipt of the written notice indicating that the certification provided was incomplete or insufficient, it is the employee's responsibility to provide a new certification that is complete and sufficient.
 - b) Upon receipt of a [Form P-64](#) indicating that a certification is incomplete or insufficient, the employee will have seven calendar days to submit or have the health care provider submit the requested additional information (unless not practical to do so under the circumstances despite the employee's diligent, good faith efforts, in which case the employee must submit the requested additional information or authorize the health care provider to provide the information as soon as is practicable).

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

2. The provision regarding a seven-calendar-day period to resubmit complete or sufficient certification does not apply when the employee has failed to submit a required certification. It only applies when the certification submitted is incomplete or insufficient.
- C. Completed certification and recertification forms must be submitted to management for approval by the date due. If a required certification or recertification is not provided by the due date, any time missed will not be counted as FMLA leave. However, in consultation with the HR Employee Benefits unit, FMLA leave may be approved without supporting documentation when there is no reason to suspect fraud and the circumstances are such that it would be reasonable to not require new supporting documentation (e.g., an employee has an adequately documented lifetime or long-term health condition requiring treatment by a health care provider at least twice per year).
 - D. Birth or Placement of a Child

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

The employee must take leave for birth or placement of a child within 12 months after the date of birth or placement. FMLA leave may begin before birth in cases of prenatal care. If both spouses are employed by the state, they may take only 12 weeks combined leave under FMLA for the birth or placement of a child. Refer to [Employed by Same Employer](#) section for additional information on combined limits of FMLA usage. The state provides for parental leave for those employees who do not qualify for FMLA leave. Refer to [Parental Leave](#) section for detailed information on the subject.

E. Serious Health Condition

1. FMLA leave based on a serious health condition, whether of the employee or a family member, must be supported by medical certification from a health care provider of the need for leave. A new medical certification (a recertification) is required:
 - a) upon any significant change in the circumstances described in the initial or previous medical certification (e.g., upon any extension of the projected return to work date, any significant change in the severity of the condition, applicable work restrictions, diagnosis, etc.);

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- b) upon expiration of the minimum period of incapacitation indicated on the most recent certification (unless the employee is released for return to work at or before the minimum period of incapacitation indicated on the medical certification);
- c) within 30 days of the date of a previous medical certification that did not indicate a minimum period of incapacitation (unless the employee is released to return to work at or before the end of 30 days); and
- d) every twelve months (for long-term or chronic serious health conditions that result in a continuing or periodic need for FMLA leave, even if the minimum period of incapacitation in the previous medical certification is longer than six months).

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

2. The employee is expected to provide any required recertification on or before the expiration of the period covered by a previous certification. If recertification is not submitted on or before the expiration of the period covered by a previous certification, but the employee reports a continuing need for leave, management must notify the employee in writing that recertification is required, and such notice must allow the employee at least fifteen (15) calendar days from the date of receipt of the notice in which to provide the recertification.

F. Military – Qualifying Exigency Leave

When FMLA leave is due to a qualifying exigency, the employee must provide a completed Certification of Qualifying Exigency for Military Family Leave, Form P-65d. The first time the employee requests such leave, the employee must also provide written documentation confirming the covered military member's active duty or call to active-duty status in support of a contingency operation.

1. The employee will only be required to provide the written documentation confirming a covered military member's active duty or call to active-duty status in support of a contingency operation the first time the employee requests leave for this purpose.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

2. The employee will be required to provide a completed Certification of Qualifying Exigency for Military Family Leave, Form P-65d, whenever the leave is due to a reason unrelated to a previous qualifying exigency (e.g., the first request was for short-notice deployment and the second request is one year later for rest and recuperation).

G. Military – Military Caregiver Leave

When FMLA leave is to care for a covered service member with a serious injury or illness incurred in the line of duty, the employee must provide a completed Certification for Military Caregiver Leave, Form P-65c. The employee must provide the Form P-65c no later than fifteen (15) calendar days after receipt of the Family and Medical Leave Act (FMLA) Preliminary Designation, Form P-63, unless the employee is granted additional time due to special circumstances. Recertification is not required for Military Caregiver Leave.

H. Intermittent Leave or Reduced Schedule Leave

1. An eligible employee may take FMLA leave on an intermittent or reduced schedule basis only when the need for intermittent or reduced schedule leave is:

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- a) certified by a health care provider as medically necessary due to a serious health condition of the employee or the employee's spouse, son, daughter, or parent (e.g., for periodic medical treatments);
 - b) certified by a health care provider as medically necessary for Military Caregiver Leave; or
 - c) certified by the employee as necessary because of a qualifying exigency and supported by military orders.
2. If an employee needs intermittent or reduced schedule leave for planned medical treatment, the employee must make a reasonable effort to schedule the treatment so as not to unduly disrupt TWC operations. Intermittent leave may be used in increments as small as one-quarter hour.
 3. In consultation with the HR Employee Benefits Unit, management may require recertification of the need for intermittent leave prior to the expiration of a previous medical certification if the frequency and/or duration of intermittent leave use are significantly different than the estimated frequency and/or duration of leave use provided in the medical certification upon which the grant of intermittent leave is based.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

4. Supervisors are within the “need-to-know” group regarding the basis for FMLA leave (e.g., whether for employee or a particular family member) and the expected duration and frequency of intermittent leave, as necessary for the administration of FMLA intermittent leave. When an employee approved for intermittent FMLA leave provides notice of the need to miss work, the employee must provide specific notice that the absence is due to the FMLA qualifying reason on which intermittent leave was granted and must answer any reasonable questions as necessary for a determination of whether the absence qualifies for FMLA designation.
 5. Intermittent leave after the birth or placement of a child requires employer agreement. Management will consider the legitimate business needs of the agency on a case-by-case basis when deciding whether to allow intermittent leave after the birth or placement of a child. TWC reserves the right to refuse intermittent leave after birth or placement of a child.
- I. Paid Leave Designated as FMLA

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

An employee must use all available paid leave while on FMLA leave before using FMLA in unpaid status (with the exception of workers' compensation and disability benefits situations). This paid leave counts as FMLA leave. If FMLA eligibility criteria are met, all leave granted under the sick leave pool (if for the employee or the employee's spouse, child, or parent, but not parent-in-law) and all extended sick leave is designated as FMLA leave. Vacation leave taken for workers' compensation situations is counted as FMLA leave. Holidays that fall within the FMLA period are not counted as days of FMLA leave. FLSA compensatory leave and State compensatory leave are counted as FMLA leave. In the event an office closes for a week or more, the days business activities have ceased, do not count as FMLA leave.

- J. Workers' Compensation Benefit Payments – Effect on Use of Paid Leave
 - 1. Where FMLA leave is based on an occupational injury or illness for which the employee is eligible to receive workers' compensation wage replacement (lost time) benefits, the employee may not receive workers' compensation wage replacement and use vacation or sick leave at the same time.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

2. An employee who is receiving lost time benefits through workers' compensation is not required to use any form of paid leave while on FMLA leave but is permitted to use all forms of paid leave other than sick leave or vacation leave while also receiving workers' compensation wage replacement benefits. Refer to Workers' Compensation section for additional information.

K. Temporary Disability Benefit Payments – Effect on Use of Paid Leave

An employee who is receiving lost time benefits through disability insurance may be required by the insurance carrier to exhaust sick leave as a condition to being eligible for disability insurance lost time benefits. Under agency policy, however, an employee receiving disability insurance lost time benefits is allowed, but not required, to use any form of available paid leave while on FMLA leave.

L. Combined FMLA Leave Total

1. Employees entitled to 26 weeks of FMLA leave (Military Caregiver Leave), must use the FMLA leave during a single 12-month period. Any other type of FMLA leave would be included in the 26-week total.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

2. For example: An employee is eligible for Military Caregiver Leave and begins the 12-month period on April 1. This FMLA leave continues for 18 weeks. The employee then experiences a personal FMLA qualifying condition. The employee is only eligible for 8 weeks of FMLA leave for the personal condition.
- M. Necessary Paperwork for FMLA LOA
1. If an employee has exhausted all appropriate paid leave and the FMLA leave involves a period of unpaid leave, as soon as management has determined the start date and time of the FMLA leave of absence, management submit a [P-10, Recommendation for Personnel Action](#) via DocuSign, and complete the Leave Change Request in the [HR Help Desk Portal](#). The “nature of action” on the Form P-10 is “Leave of Absence” without any reference to the reason for the leave of absence.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

2. Management should use the Form P-10a to identify the reason for LOA and attach a separate memorandum of explanation describing the circumstances of the FMLA leave of absence, including any necessary detailed information. HR files the Form P-10a and this memorandum in the employee's special personnel file to comply with the Americans with Disabilities Act. Management follows the same procedure when the employee returns to work from FMLA LOA. The "nature of action" on the Form P-10 should read "Return from Leave of Absence."

N. Insurance

1. While an employee is on FMLA leave of absence (LOA), the state makes the state contribution. An employee who normally pays a portion of the insurance premium by payroll deduction must make these payments during the period of FMLA LOA. The state does not pay the employee's share of the health insurance premium while the employee is on FMLA LOA.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

2. State Office employees may contact HR using the [HR Help Desk Portal](#) to inquire about insurance while on unpaid leave; field office employees may contact their area benefits coordinator to inquire about insurance while on unpaid leave. Employees must make premium payments directly to ERS by the date designated by ERS.

Refer to [Forms P-63 and P-64](#).

3. If timely payment is not made, the employee's optional coverage is canceled, and health insurance is reduced to "employee only" coverage. Optional coverage is canceled if payment is not received at ERS by the 30th of each month.
4. If an employee does not return to work following FMLA leave for any reason other than the continuation, recurrence, or onset of a serious health condition which would entitle the employee to FMLA leave, or other circumstances beyond their control, the employee may be required to reimburse TWC for the state's portion of insurance premiums paid while on FMLA.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

5. If an employee whose coverage has been reduced to "employee only" due to non-payment of premium returns to work directly from FMLA LOA, the employee must notify HR using the [HR Help Desk Portal](#).
 6. If an employee whose coverage has been reduced to "employee only" returns to work directly from FMLA LOA, the coverage remains reduced until the first of the month following their return to work. The previously canceled coverage is reinstated effective the first of the month following the employee's return to work.
- O. Designation of Leave
1. TWC managers, with guidance from HR, designate leave taken as FMLA leave. On rare occasions when the supervisor does not learn the reason for the employee's absence until the employee returns or when the supervisor is not able to confirm that the reason is FMLA-related, management may declare the leave FMLA in writing to the employee as soon as practicable upon the employee's return to work. FMLA designation is based on information provided by the employee and the employee's health care provider on the Form P-65a, Form P-65b, Form P-65c, or Form P-65d, as applicable to the basis for the period of FMLA leave.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

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2. In a medical emergency when the employee cannot provide the information necessary to make the initial request, TWC may accept information provided by an employee's spokesperson (e.g., spouse, adult child, parent, etc.) Management should make a preliminary designation of FMLA using Form P-63, FMLA Preliminary Designation, and initiate the request for completion by the health care provider of the Form P-65a, Form P-65b, or Form P-65c (or by the employee on Form P-65d, for Military Exigency Leave). If the supervisor gives the initial preliminary determination of FMLA to the employee orally, the supervisor follows up with written notification, within five working days of the preliminary designation of FMLA leave using Form P-63. A copy of Form P-63 should be submitted using the [HR Help Desk Portal](#).

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

3. Upon receipt of any required documentation, or upon the deadline for submission of any required documentations, whichever is first, the supervisor makes a determination of whether the absence does or does not qualify as FMLA leave, or if additional information is needed. The determination is communicated to the employee using Form P-64, which should be mailed or otherwise provided to the employee within five days of the receipt of required documentation or the deadline for required documentation, whichever is earlier.
 - a) The supervisor bases the determination on the information furnished by the health care provider on the completed Form P-65a, Form P-65b, or Form P-65c, or by the employee on the completed Form P-65d, as applicable.
 - b) If the eligibility criteria for FMLA have been met, written notification should be mailed or otherwise provided to the employee, within five working days, using Form P-64, Notice of Family and Medical Leave Act Leave.

TEXAS WORKFORCE COMMISSION
PERSONNEL MANUAL
CHAPTER 5 - LEAVES AND ABSENCES

- c) If a required medical certification is unclear, or if authentication of the certification is believed to be needed, the supervisor should have HR contact the health care provider for clarification or authentication. Under no circumstances may the employee's immediate supervisor contact the health care provider. "Clarification" means contacting the health care provider to understand the handwriting or text, or to understand the meaning of a response; the health care provider may not be asked to provide information beyond that required by the applicable certification form.

- d) If a required medical certification is incomplete or insufficient, the supervisor must provide written notice to the employee using the appropriate section of Form P-64. The Form P-64 must be completed to specifically identify the information needed to make the certification complete and sufficient.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- e) If the medical certification or other required documentation fails to confirm the reason for the absence was an FMLA event, Form P-64 is completed to provide notice that FMLA leave is denied, and the reason for the denial.
- 4. If required certification (Form P-65a, Form P-65b, Form P-65c, or Form P-65d, or other certification providing all required information) is not provided, the final determination of whether the leave is or is not covered by FMLA must be made by management in consultation with HR.
- 5. [Appendix 5.16.1, FMLA Flowchart](#), provides step-by-step instructions for processing FMLA transactions.

5.16.6 PROCEDURE FOR FMLA LEAVE

- A. When the need for leave is foreseeable, the employee should provide thirty calendar days advance notice of the need to miss work. If thirty days advance notice cannot be provided, the employee must provide as much notice as is practicable under the circumstances.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

1. Supervisors have a duty of inquiry regarding the reason(s) for needing to miss work, and the employee must provide sufficient information regarding the need to miss work for a determination of whether a preliminary designation of FMLA leave should be issued. As a general rule, upon notice that an employee has or will miss work for more than three consecutive workdays, or if the absence otherwise is for a reason that may qualify for FMLA protection, the supervisor must contact the employee to gather information to determine whether a preliminary designation of FMLA leave should be issued. Specific medical information should not be asked.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

2. The supervisor should make the determination of whether to issue a [Form P-63](#) preliminary designation of FMLA leave as soon as possible after receipt of notice of an absence that may qualify for FMLA leave designation, and provide the preliminary designation notice to the employee within five business days, absent extenuating circumstances. The supervisor may make the determination after the employee has returned to work in those rare instances when the supervisor does not learn that the reason was FMLA-related or does not have enough information to make the determination until the employee has returned to work. In these cases, the supervisor must notify the employee in writing of a preliminary designation as soon as practicable.
3. If the supervisor gives the preliminary designation of FMLA to the employee orally, the supervisor follows up with written notification that the leave is preliminarily designated as FMLA, using the [Form P-63](#).

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

4. The supervisor saves copies of all FMLA documents issued to the employee, retaining the copies in the employee's special confidential personnel file, which must be kept in a locked or secure file that is separate from the regular personnel file. The supervisor submits copy of the completed [Form P-63](#) HR using the [HR Help Desk Portal](#).
5. When the employee gives advance notice of the need for FMLA leave, the supervisor explains the use of the FMLA forms being issued, as applicable ([Forms](#) P-63, P-64, P-65a, P-65b, P-65c, P-65d, and Form P-67, as appropriate). When the employee is unable to provide advance notice before commencement of the leave and is unavailable to meet regarding the forms, the [Form P-63](#) and the applicable certification [form](#) (P-65a, P-65b, P-65c, or P-65d) should be provided to the employee by mail to the employee's address of record.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- a) For FMLA leave based on the employee's own serious health condition, the employee provides the [Form P-65a](#), with the [Form P-14](#) attached, to the employee's health care provider for completion. The employee should make sure that the Form P-65a is fully completed and return the completed form to the supervisor.
- b) If the requested leave is to care for a family member with a serious health condition, the employee completes the employee sections of the Form P-65b and provides it to the health care provider for the family member for completion. The employee should make sure that the Form P-65b is fully completed and return the completed form to the supervisor.
- c) For Military Caregiver Leave, the employee completes the [Form P-65c](#) and gives it to the health care provider to complete the appropriate section. The employee should make sure that the Form P-65c is fully completed and return the completed form to the supervisor.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- d) The employee completes Form P-65d if the leave is for a qualifying exigency for a family service member, and returns the completed form to the supervisor, together with military orders or other documentation as required in the Form P-65d.
- 6. It is the employee's responsibility to make sure that any required certification (Forms P-65a, P-65b, P-65c, or P-65d) is returned to the supervisor no later than 15 calendar days after the employee's receipt of the Form P-63. The supervisor gives a copy to the employee and retains originals in a special confidential file.
 - 7. Upon receipt of any required certification (Forms P-65a, P-65b, P-65c, or P-65d) the supervisor promptly determines whether there is a need for clarification or authentication of the required certification, or whether the certification is complete and sufficient.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

8. If a required medical certification is unclear, or if authentication of the certification is believed to be needed, the supervisor has HR contact the health care provider for clarification or authentication. Under no circumstances may the employee's immediate supervisor contact the health care provider. "Clarification" means contacting the health care provider to understand the handwriting or text, or to understand the meaning of a response; the health care provider may not be asked to provide information beyond that required by the applicable certification form.
9. If a required medical certification is incomplete or insufficient, the supervisor provides written notice to the employee using the appropriate section of Form P-64. The Form P-64 must be completed to specifically identify the information needed to make the certification complete and sufficient. The employee must be provided at least seven (7) calendar days from receipt of the Form P-64 in which to provide a new or amended certification that is complete and sufficient. Upon receipt of the new or amended certification the supervisor must again determine whether the absence qualifies as FMLA leave and provide notice of the determination by issuing another Form P-64.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

10. If any form of medical certification is provided at the time of the request for leave (or prior to the issuance of the Form P-63, Preliminary Designation notice), a complete Form P-64 should be issued to the employee at the same time as the Form P-63 is issued. For example, if the employee provides a doctor's note indicating that the employee is under the doctor's care and needs to remain off work until some future date, but fails to provide sufficient information for a determination of whether the time missed qualifies for FMLA protection, the Form P-64 would be completed to indicate that the certification provided is incomplete, the information needed for completeness is identified in the form, and the Form P-64 is issued to the employee at the same time as the Form P-63.
11. Once a complete and sufficient medical certification or other required documentation is received, if the medical certification or other required documentation fails to confirm the reason for the absence was an FMLA event, Form P-64 is completed to provide notice that FMLA leave is denied, and the reason for the denial.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

12. If the eligibility criteria for FMLA leave are met, the FMLA leave designation is finalized by issuance to the employee of Form P-64, completed to indicate that FMLA leave is approved.
13. The supervisor retains copies of any Form P-64 issued to the employee, and all certifications and supporting documentation, retaining the copies in the employee's special confidential personnel file. Copies of all Forms P-64 and all Forms P-65a, P-65b, P-65c, or P-65d are to be submitted to HR using the [HR Help Desk Portal](#).
14. The supervisor should document any communications with the employee while on FMLA leave using Form P-55. Any Form P-55 containing medical information or reference to FMLA leave should be retained in the employee's special confidential personnel file, which must be kept in a locked or secure file that is separate from the regular personnel file.
15. When the employee establishes a date to return to work from FMLA leave because of the employee's own personal injury or illness, the supervisor completes the supervisor's section of Form P-67 and gives the employee the form and a copy of the employee's Essential Job Functions (Form P-14). The supervisor advises the employee to submit the completed Form P-

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

67 before returning to work and that it must show the employee can perform the essential job functions with or without accommodation. If the employee is taking FMLA leave due to childbirth, adoption, foster care placement, a family member's serious illness, an exigency issue, or military caregiver leave, the Form P-67 is not required. If during the leave period, the employee tells the supervisor that he/she does not intend to return to work, the supervisor should request written notice of this. Upon receipt of the written notification, TWC can discontinue FMLA and terminate the employment relationship.

16. The employee gives the [Form P-67](#) and a copy of the [Essential Job Functions \(Form P-14\)](#) to his/her health care provider to complete.
 - B. The employee furnishes the completed Form P-67 to the supervisor before returning to work.
 - C. [Appendix 5.16.1, FMLA Flowchart](#), may be used as a guide to FMLA leave administration.
 - D. Other Supervisory Responsibilities Related to FMLA Leave Administration
 1. Management retains all original forms and records related to FMLA at the employee's assigned work location, filing them in the employee's special personnel file and not in the

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

regular personnel file. Special personnel files should be kept in a secure area.

2. If a determination as to whether an employee is considered a "key employee" is needed, a request for a determination must be submitted to HR using the [HR Help Desk Portal](#), immediately upon receipt of the need for FMLA leave by the employee.
3. When an employee is on FMLA leave of absence (LOA), the employee's supervisor is responsible for notifying the employee regarding health insurance. The supervisor should contact HR or area benefits coordinator to obtain information needed in order to notify the employee, in writing, of the employee's insurance premium amount, to whom the payment is to be made, and the address to which the premium is to be mailed. The supervisor should submit a copy of the notification to HR using the [HR Help Desk Portal](#).

See [Forms](#) P-63 and P-64.

4. When an employee keys FMLA leave into the online leave system, the employee's supervisor is responsible for ensuring the leave is marked as FMLA by checking the FMLA box prior to approving the leave request. The entire leave request should not be marked as FMLA unless

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

all hours in the leave request are covered by FMLA. Once an employee exhausts FMLA leave, a separate entry for leave hours no longer protected by FMLA is entered into the online leave system. This may require multiple leave requests to accurately reflect hours that are covered. Code "LA" should be used when keying FMLA leave.

5. The employee or supervisor may get an error message when making a leave request as FMLA. The error may be because an FMLA record does not exist for the employee, or the leave request is outside of the approved FMLA begin and end dates. Supervisors should verify the FMLA documentation for the employee. The error message will not prevent the leave request from being processed.
6. The FMLA job guarantee ends after twelve weeks, or 26 weeks if the leave is Military Caregiver Leave. If the employee is on FMLA leave of absence (LOA) and unable to return to work at the end of the FMLA LOA, the supervisor completes a Form P-10 changing the employee to absent without leave (AWOL) status and submits to the HR department using the [HR Help Desk Portal](#) for review and approval prior to issuance.
7. If the employee does not return to work within 30 days of being placed in AWOL status, the

supervisor must contact the OGC HR Legal department to discuss future employment with TWC. The supervisor is required to make a determination based on the information provided by the employee regarding future employment within 30 days of the employee being placed in AWOL status. At no time should a determination to dismiss an employee be made prior to consulting OGC HR Legal. Should the decision to dismiss an employee be made, a sample letter notifying the employee of the decision is provided in [Appendix 5.16.4](#).

5.17 RETURN TO WORK AND TRANSITIONAL DUTY PROGRAM

TWC's return to work and transitional duty program provides a mechanism to encourage employees to return to work as soon as possible after injury or illness. TWC's return to work and transitional duty program reduces an employee's time away from work and, if a job-related injury or illness exists, ultimately reduces workers' compensation indemnity benefits paid by the state.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

5.17.1 POLICY

- A. A safe and healthful workplace is a primary concern of TWC. TWC strives to provide a safe and healthful environment in which to work and conduct business. However, despite the best accident prevention and health and safety measures that can be implemented, accidents, injuries, and illnesses still occur.
- B. It is the policy of TWC to provide a return to work and transitional duty program as the means to return employees to meaningful, productive employment following a job-related or non-job-related injury or illness. In order to provide the highest level of quality service to the people we serve, it is necessary for every employee of TWC to be available for work, ready, and capable of performing the duties and responsibilities for which the employee was hired.

5.17.2 DEFINITIONS

The following definitions apply to TWC's return to work policy and procedure:

- A. **Full Duty:** Performance of all duties and tasks of the position for which the employee is employed. Full duty entails performing all essential and non-essential functions of the employee's regular job.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- B. Health Care Provider: Includes a Doctor of Medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as shown to exist by an X-ray), nurse practitioner, nurse midwife, clinical social worker, Christian Science practitioner, and other providers accepted by the health insurance provider. In cases involving a work-related injury, health care provider means "treating doctor" as defined by the Workers' Compensation Act, unless Family and Medical Leave Act (FMLA) or the Americans with Disabilities Act (ADA) applies.

- C. Transitional Duty Assignment: Performance of essential job functions that have been limited or changed (modified duty) or performance of the essential functions for a job other than the position for which the employee is employed (alternate duty) for a limited amount of time by an employee within the medical constraints and limitations imposed by the health care provider.

5.17.3 PROCEDURES

- A. General Administration
 - 1. OGC HR Legal, in coordination with Human Resources, develops, implements, and coordinates the return to work and transitional duty program.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

2. OGC HR Legal, in coordination with Human Resources, develops return to work and transitional duty policies and procedures and coordinates activities and management of the transitional duty program.
- B. Roles and Responsibilities
1. Employee's responsibilities:
 - a) report on-the-job injury or illness to supervision within 24 hours, unless circumstances prevent;
 - b) communicate as directed by supervision when absent due to an injury or illness sustained on or off the job;
 - c) seek follow-up treatments or therapy as directed by the health care provider;
 - d) submit completed documentation (e.g., workers' compensation forms, Family and Medical Leave Act paperwork, etc.) to supervision as directed when absent due to an injury or illness sustained on or off the job or when seeking follow-up treatments or therapy;

TEXAS WORKFORCE COMMISSION
PERSONNEL MANUAL
CHAPTER 5 - LEAVES AND ABSENCES

- e) submit completed [Form P-65a, Certification of Health Care Provider](#) to supervision immediately following the health care provider's certification of the medical facts relating to the employee's injury or illness;
- f) provide medical recertification upon any extension or change of restrictions;
- g) submit completed [Form P-67, Return to Work Status Form](#) to immediate supervision immediately following the health care provider's certification that the employee may perform work of any kind;
- h) submit completed [Form P-67, Return to Work Status Form](#) to immediate supervision prior to reporting for duty in a transitional duty assignment following each follow-up visit to or treatment by a health care provider;

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- i) request reasonable accommodation, if needed to perform job duties, by submitting a Request for Reasonable Accommodation (Form P-14a) and appropriate medical documentation through appropriate channels. It is the employee's responsibility to inform supervision that a disability under the Americans with Disabilities Act (ADA) exists and that a reasonable accommodation is necessary to perform the essential functions of the employee's position (refer to Reasonable Accommodation section);
- j) provide Human Resources with additional information or clarification from health care provider when requested;
- k) seek second opinion from the health care provider when ordered to do so by the Texas Department of Insurance, Division of Workers' Compensation; and
- l) cooperate in an internal investigation requested by Human Resources or Texas Department of Insurance, Division of Workers' Compensation. Failure to cooperate fully may result in disciplinary action up to and including dismissal.

2. Supervisor's/Management's responsibilities:

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- a) notify the Workers' Compensation Coordinator IMMEDIATELY when an employee starts to lose time due to an on-the-job injury or illness or when the employee returns to work following an on-the-job injury or illness. Failure to report immediately may result in agency penalties or fines (refer to Workers' Compensation section);
- b) identify, document, and maintain the essential functions for all positions on the [Form P-14, Essential Job Functions Worksheet](#) (refer to [Essential Job Functions Analysis](#) section);
- c) review and update job descriptions in CAPPS during the Performance Planning & Review process (refer to [Performance Planning and Review](#) section);
- d) provide employee with appropriate assistance, information, directions, and documents following receipt of notification of an employee's injury or illness or request for accommodation (refer to [Workers' Compensation](#), [Family and Medical Leave Act \(FMLA\)](#), and/or [Reasonable Accommodation](#) sections);

TEXAS WORKFORCE COMMISSION
PERSONNEL MANUAL
CHAPTER 5 - LEAVES AND ABSENCES

- e) communicate with Human Resources immediately upon receipt of an employee's [Form P-67, Return to Work Status Form](#) recommending a transitional duty assignment and/or accommodation(s). (Transmit all documents to the Director of Human Resources, or designee, at 512-475-1105);
- f) forward any [Form P-14a, Request for Reasonable Accommodation](#) and medical documentation to the [HR Help Desk Portal](#) for review and final decision by the ADA Monitoring Committee (refer to [Reasonable Accommodation](#) section);
- g) confer with Human Resources to determine the availability and suitability of a transitional duty assignment and/or reasonable accommodation;
- h) provide employee with the ADA Monitoring Committee's decision relating to a request for accommodation;
- i) advise employee of the disposition of the health care provider's recommendation for a transitional duty assignment; and

TEXAS WORKFORCE COMMISSION
PERSONNEL MANUAL
CHAPTER 5 - LEAVES AND ABSENCES

- j) when appropriate, provide employee with bona fide offer of transitional duty assignment after consulting with and securing approval from Human Resources.
3. Human Resources responsibilities:
- a) review information submitted by employees and supervisors following the health care provider's certification that the employee may perform a transitional duty assignment. Such information may include medical documentation, [Form P-65a, Certification of Health Care Provider](#), [Form P-67, Return to Work Status Form](#), [Form P-14a, Request for Reasonable Accommodation](#), and other information relating to medical condition and fitness for duty;
 - b) coordinate all workers' compensation communications through the TWC HR Workers' Compensation Coordinator to the State Office of Risk Management, Workers' Compensation Division;
 - c) refer Request for [Form P-14a, Request for Reasonable Accommodation](#) to the ADA Monitoring Committee for review and final decision;

TEXAS WORKFORCE COMMISSION
PERSONNEL MANUAL
CHAPTER 5 - LEAVES AND ABSENCES

- d) request employees to provide further information or clarification from health care providers when necessary;
- e) request internal investigation if determined appropriate;
- f) assess [Form P-67, Return to Work Status Form](#) and/or [Form P-14a, Request for Reasonable Accommodation](#) to determine if employees can return to work with or without accommodation and in what capacity;
- g) confer with responsible management to determine availability and suitability of a transitional duty assignment or accommodation;

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- h) determine if a transitional duty assignment is appropriate and available (return to work may be denied by Human Resources based on, but not limited to, the following: the employee's inability to physically or mentally perform the essential functions of the employee's position or an alternate duty position with or without accommodation; the health care provider's assessment and recommendations as they relate to the essential job functions; or the employee possesses a "direct threat" of substantial harm to his/her own health or safety or the health and/or safety of others, which cannot be eliminated or adequately reduced by reasonable accommodation); and
- i) monitor employees' progress in transitional duty assignments and make modifications, if appropriate.

C. Transitional Duty Assignments

1. If an employee is certified by a health care provider to return to work, but in less than full duty, OGC HR Legal, in coordination with Human Resources, may offer a transitional duty assignment position to the employee if feasible based on business necessity.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

2. OGC HR Legal, in coordination with Human Resources and responsible management identify transitional duty assignments to facilitate an employee's return to work based on the business necessity of the employee's original essential job functions and whether those functions can be suitably modified, the availability and suitability of an alternate duty assignment, the employee's entitlement to FMLA leave, or other appropriate factors.
3. A transitional duty assignment may last up to four weeks. An extension of up to four weeks may be considered and approved by Human Resources based on relevant factors and business necessity; such extension may result in the employee's reclassification and salary reduction.
4. Following approval of a transitional duty assignment by Human Resources, responsible management provides a "bona fide offer of transitional duty assignment" letter to the employee.
5. No later than the fourth week of transitional duty, responsible management coordinates with the employee for one of the following options based on the employee's entitlements and fitness for duty as certified by the health care provider on the [Form P-67, Return to Work Status Form](#):

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- a) return to regular duty with a full medical release;
- b) return to regular duty with accommodation(s) under the ADA policy;
- c) extend the transitional duty assignment;
- d) use accrued leave or other appropriate leave benefits (extended sick leave, sick leave pool, and Family and Medical Leave Act leave); or
- e) enter absent without leave (AWOL) status with no job guarantee for a maximum of 30 days.

D. Bona Fide Offer of Transitional Duty Assignment

1. Based on the availability of a suitable transitional duty assignment, a bona fide offer of transitional duty assignment may be extended to any employee returning to work with restrictions.
2. A bona fide offer of transitional duty assignment may be extended when the employee has not returned to work, but:
 - a) the health care provider notifies the agency of the employee's release to perform work of any kind;

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- b) the workers' compensation coordinator receives notice of the employee's release to perform work of any kind; or
 - c) the employee's ability to perform work of any kind is identified from other sources.
3. The transitional duty assignment notification letter, which is prepared by responsible management and provided to the employee following Human Resources review and approval, includes the following information:
- a) duties of the assignment;
 - b) physical requirements of the assignment;
 - c) wages/salary for the assignment;
 - d) location of the assignment;
 - e) duration of the assignment;
 - f) deadline for employee's acceptance/refusal decision (one business day following offer); and
 - g) person to contact if the employee has questions regarding the transitional duty assignment, job modifications, or questions regarding workers' compensation, the Family and Medical Leave Act, or the Americans with Disabilities Act.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

4. If the employee accepts the bona fide offer of transitional duty assignment, the employee agrees to perform the duties of the transitional duty assignment for the term of the assignment or until the employee is able to return to full duty, whichever is sooner.
5. An employee may refuse a bona fide offer of transitional duty assignment; however, if the employee refuses the offer, Human Resources notifies the employee of the following:
 - a) if applicable, workers' compensation benefits may be denied or stopped; and
 - b) depending on the employee's workers' compensation sick leave election and/or FMLA status, the employee may have to use personal sick leave or other leave; or
 - c) the employee may be placed in FMLA leave of absence status, if qualified; or
 - d) the employee may be placed in absent without leave (AWOL) status with no job guarantee; or
 - e) the employee may be released from employment.

E. Inability to Return to Full-Duty Status

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

Depending on business necessity, if an employee is unable to return to full duty with or without accommodation at the conclusion of the transitional duty assignment(s) or when all sick leave and Family and Medical Leave Act options are exhausted:

1. supervision may:
 - a) recommend approval of a Leave of Absence (LOA) with a job guarantee;
 - b) place the employee in absent without leave (AWOL) status with no job guarantee for a maximum of 30 days; or
 - c) recommend dismissal; and
 2. if the employee is not released to return to full-duty status at the conclusion of an approved LOA period or the AWOL period, the employment relationship may be terminated, and the employee's original position of employment may be filled.
- F. Workers' Compensation, Americans with Disabilities Act (ADA), and Family and Medical Leave Act (FMLA) Disclaimers
1. It is a violation of the return to work and transitional duty policy for any employee of TWC to discharge or in any other manner discriminate against an employee of this agency because the employee:

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- a) files a workers' compensation claim in good faith;
 - b) hires a lawyer to represent the employee in a workers' compensation claim;
 - c) institutes or causes to be instituted in good faith a proceeding under the Texas Workers' Compensation Act; or
 - d) testifies or is about to testify in a proceeding under the Texas Workers' Compensation Act.
2. It is a violation of the return to work and transitional duty policy for any employee of TWC to discharge or in any other manner discriminate against an employee of this agency because the employee:
- a) objects to any practice made unlawful by the FMLA or ADA; or
 - b) files any charges or institutes or causes to be instituted any proceeding under or related to the FMLA or ADA.
3. The return to work and transitional duty program shall not be construed as recognition by TWC, its management or its employees, that any employee who participates in the program has a disability as defined by the ADA.

5.18 FOSTER PARENT LEAVE

- A. The state allows foster parents of a child under the conservatorship of the Department of Family and Protective Services (DFPS) paid time off to attend:
 - 1. DFPS meetings or training regarding the child or
 - 2. Admission, Review and Dismissal meetings held by a school district regarding the child.
- B. Employees seeking to become foster parents may not use foster parent leave but may be eligible to use FMLA leave for certain activities associated with seeking to become a foster parent.
- C. Foster parent leave is entered into the online leave system using code FP. This time automatically posts as other paid leave to the Daily Time Activity Report.

5.19 JURY DUTY

- A. An employee who receives a summons to serve on a grand or petit jury must provide prompt notice of the summons and appearance date and provide documentary evidence of the period of jury service.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- B. TWC grants employees summoned to serve on a grand or petit jury paid time off for such duty. Employees may keep any fee or compensation received for the jury service. Jury duty leave is entered into the online leave system using code JS. This time automatically posts as other paid leave to the Daily Time Activity Report. Retaliation, including discharge, threat of discharge, or intimidation, or coercion of employees participating in jury duty is strictly prohibited.
- C. If an employee serves on jury duty on a skeleton holiday, the employee earns holiday compensatory time. In this situation, the amount of time served on jury duty is entered into the online leave system as leave activity using code HE. The employee should add a comment to identify this time as Jury Service.
- D. An employee who is called to jury duty while using accrued annual leave may substitute jury duty time for annual leave.

5.20 LEAVE OF ABSENCE (LOA)

Offices utilizing the Texas Model should coordinate all leave issues with the Integrated Service Area Manager and follow the policies and procedures established specifically for the Texas Model.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- A. After exhausting all vacation and compensatory leave, an employee with regular status may request an unpaid leave of absence (LOA). An unpaid LOA may not exceed twelve months. The employee must exhaust all sick leave if the LOA is for personal or family illness or injury. The employee requests the LOA by memorandum to the immediate supervisor. The Executive Director approves a request for LOA, and a supervisor does not recommend approval of an LOA unless the supervisor can recommend the employee for the leave without reservation and is willing to guarantee a job in the same cost center, classification, and at the same salary the employee held before going on leave. The supervisor's recommendation proceeds through management channels to HR, which forwards it to the Executive Director for a decision.
- B. FMLA LOA procedures are somewhat different; refer to the FMLA section in this manual.
- C. TWC may withdraw the guarantee if:
 - 1. the employee is subsequently scheduled for separation because of a reduction in force;
 - 2. it is subsequently discovered that the employee's performance did not meet requirements or the employee's conduct before being granted the LOA makes the employee ineligible to return; or

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

3. the employee engages in conduct while on LOA that would interfere with the performance of duties, operations of the office, or the goals and objectives of TWC.
- D. The supervisor must appropriately document any of these situations and obtain approvals necessary to process an adverse disciplinary action.
 - E. An office recommending approval of LOA must submit a memorandum and a [P-10 Recommendation for Personnel Action](#) to HR using the [HR Help Desk Portal](#) for processing.
 - F. When an employee requests an LOA, the supervisor considers:
 1. if the request would exceed the twelve-month limit on LOA;
 2. the employee's length of service;
 3. the quality of the employee's work (the supervisor does not recommend a request unless the employee's performance is satisfactory);
 4. the number of employees on leave at the same time; and
 5. TWC's needs and other factors pertinent to TWC operations.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- G. While an employee is on leave of absence (LOA) other than FMLA, the state does not make the state contribution for insurance. An employee is responsible for paying the entire health insurance premium while on LOA. Supervisors are responsible for sending the Group Insurance Unpaid Leave Notification Letter to the employee on LOA. (See [appendix 4.1.](#)) A copy must be submitted using the [HR Help Desk Portal](#).
- H. Supervisors use the [P-10 Recommendation for Personnel Action](#), Leave Change Request in the [HR Help Desk Portal](#), and auto-generated P-10b, Daily Time Report, to document payroll deductions for a period of Leave of Absence. Leaves of absence must be entered into the online leave system using code LA.
- I. When the employee returns to work, any unused sick leave the employee had when the employee went on leave is still available and should be restored.
- J. An employee may not withdraw retirement contributions while on LOA. TWC may dismiss from employment an employee who does not return to work, does not contact the supervisor, or whom TWC staff are unable to contact at the end of the LOA. Discuss exceptions for mitigating circumstances with the Director of Business Operations (or designee).
- K. Management may waive the eligibility criteria for LOA when:

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

1. the State Office of Risk Management, Workers' Compensation Division, determines that the absence from work results from an on-the-job injury or illness; or
2. the absence from work results from an FMLA qualifying event.

5.21 MILITARY LEAVE

Offices utilizing the Texas Model should coordinate all leave issues with the Integrated Service Area Manager and follow the policies and procedures established specifically for the Texas Model.

- A. Employees are eligible for the types of military leave listed below. Employees should furnish a copy of their military orders or a written statement from the appropriate military official as evidence of such duty. The orders or statement must clearly identify the type of duty in order to determine which type of military leave is applicable.
- B. If an employee is unable to provide a copy of the military orders or a written statement because military necessity prevents the giving of notice or the giving of notice is otherwise impossible or unreasonable, the employee must notify his/her supervisor immediately, and provide a copy of the military orders once such orders are available.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- C. An employee who is authorized by proper authority to report for military training, military school, active military duty, or urban search and rescue training or duty is entitled to a maximum of 22 workdays of paid military leave in a federal fiscal year (October 1 – September 30), 7 workdays must be used in one fiscal year, as granted. The 22 days need not be consecutive. If a holiday occurs while an employee is on such military leave, the employee receives holiday pay, and the holiday pay is not counted against the 22 days.
- D. Employees are entitled to carry forward from one federal fiscal year to the next the net balance of unused accumulated leave that does not exceed 45 workdays.
- E. Employees may review the accumulated balance of unused military leave at any time using the Employee Self Service feature in CAPPs.
- F. After exhausting paid military leave for active military duty, military training, military school, or urban search and rescue training or duty, the employee may use accrued compensatory leave, vacation or leave of absence (or a combination) for the remainder of the training or school period. TWC management may require a non-exempt employee to use FLSA compensatory leave before using vacation leave.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- G. To facilitate participation in military duties by state employees, TWC will adjust the work schedule of any employee who is a member of the National Guard, the state military forces, or any reserve component of the armed forces so that two of the employee's non-workdays per month coincide with two days of military duty to be performed by the employee. In addition, an employee will be afforded enough time off from TWC prior to starting military training, military school, active military duty or urban search and rescue training or duty in order to travel to the duty location and arrive fit to perform the military service.

- H. Employees are encouraged to contact HR using the [HR Help Desk Portal](#) to determine the impact on their employee benefits.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

5.21.1 STATE EMERGENCY (CALLED BY THE GOVERNOR)

- A. TWC grants military leave with full pay to state military forces and National Guard members called to active duty by the Governor because of a state emergency. This time is not limited and does not count against military training leave or vacation leave. An employee who falls under this category of military service will remain on the payroll and receive monthly leave accruals for the duration of the call-up.
- B. Leave accruals gained during the period of active military service cannot be used until the employee physically returns to work at TWC. If the employee does not return to work following military leave, he/she will only be compensated for the vacation and FLSA leave accrued prior to the start of military leave. Vacation leave can only be paid if the employee has had six months of continuous state service prior to being called to active military duty.
- C. State Emergency leave is entered into the online leave system using code MS and will automatically post to the Daily Time Activity Report as other paid leave.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

5.21.2 DECLARED EMERGENCY (FEDERAL ACTIVE DUTY)

- A. A state 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. This time does not count against military leave or vacation leave.
- B. Leave accruals gained during the period of active service cannot be used until the employee physically returns to work at TWC. If the employee does not return to work following leave, he/she will only be compensated for the vacation and FLSA leave accrued prior to the start of leave. Vacation leave can only be paid if the employee has had six months of continuous state service prior to being called to active duty.
- C. Declared Emergency (Federal Active Duty) leave is entered into the online leave system using code ME and will automatically post to the Daily Time Activity Report as other paid leave.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

5.21.3 URBAN SEARCH AND RESCUE LEAVE

- A. An employee who is a member of the state military forces, a reserve component of the armed forces, or a member of a state or federally authorized Urban Search and Rescue Team who is ordered by proper authority to engage in authorized training or duty, is entitled to paid time off up to fifteen (15) working days in a federal fiscal year (October 1 – September 30). The 15 days need not be consecutive. If a holiday occurs while an employee is on Urban Search and Rescue leave, the employee receives holiday pay, and the holiday pay is not counted against the 15 days. Employees should furnish a copy of their military orders or a written statement from the appropriate military official as evidence of such duty.
- B. Employees are entitled to carry forward from one federal fiscal year to the next the net balance of unused accumulated leave that does not exceed 45 workdays.
- C. Leave accruals gained during the period of active service cannot be used until the employee physically returns to work at TWC. If the employee does not return to work following leave, he/she will only be compensated for the vacation and FLSA leave accrued prior to the start of leave. Vacation leave can only be paid if the employee has had six months of continuous state service prior to being called to active military duty.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- D. Urban Search and Rescue leave is entered into the online leave system using code US and will automatically post to the Daily Time Activity Report as other paid leave.

5.21.4 ACTIVE MILITARY DUTY (OTHER THAN STATE EMERGENCY)

- A. State law allows an employee called to active military duty to use 15 days of military leave. If active duty continues past the 15 days, the agency has chosen to grant an appropriate amount of emergency leave to make up any pay difference between the employee's gross state pay and his/her gross military pay. If the employee's gross military pay equals or exceeds the employee's gross state pay, one hour per month of paid emergency leave will be granted to ensure retirement credit will continue during the period of active military duty. This will also ensure that vacation and sick leave accruals can be credited for the time spent in active military service when the employee returns to work at TWC.
- B. Determining Eligibility for an Emergency Leave Grant

A TWC employee called to active duty is eligible for emergency leave if his/her total gross military pay is less than his/her gross state salary. For purposes of determining emergency leave, combat zone pay, hardship duty pay, and family separation pay will not be included in the calculation of gross military pay.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

C. Calculating Emergency Leave Amounts

An employee who has been activated will be contacted by his/her supervisor to provide a copy of the Military Leave and Earnings Statement (LES) each month that emergency leave is to be granted. The amount of emergency leave granted might change during the period of active duty because of a promotion, change in entitlements or an increase in military pay. The total amount of military entitlement will be the figure used to determine whether an employee will be granted emergency leave.

Calculation: Military Base Pay + Basic Housing Allowance + Basic Allowance for Subsistence = Military Pay Total Entitlement

Military Base Pay	+	Basic Housing Allowance	+	Basic Allowance for Subsistence	=	Military Pay Total Entitlement
(Field 20 of LES)	+	\$650.50	+	\$200.00	=	\$2,350.50
\$1,500.00						

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

If emergency leave is warranted, TWC will compute the number of emergency leave hours by dividing the monthly state salary by the number of standard work hours to determine the hourly rate for the month. TWC will then divide the difference in pay by the hourly rate for the month to determine the number of emergency leave hours and round down to the nearest whole hour of leave. The number of hours may not be an exact dollar match, but it will be as close as possible to the employee's gross state salary.

Calculation: Monthly State Base Pay divided by Standard Work Hours of a Month = Hourly Rate

Monthly State Base Pay	/	Standard Work Hours of a Month	=	Hourly Rate
\$2,693.00	/	168.00 (Dec. standard)	=	\$16.03
\$2,693.00	/	184.00 (Jan. standard)	=	\$14.63

Calculation: State Base Pay + Longevity Pay + BRP = State Gross Pay

State Base Pay	+	Longevity	+	BRP	=	State Gross Pay
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TEXAS WORKFORCE COMMISSION
PERSONNEL MANUAL
CHAPTER 5 - LEAVES AND ABSENCES

$$\mathbf{\$2,693.00} + \$40.00 + \$85.58 = \$2,818.58$$

Calculation: State Gross Pay – Military Total Entitlements =
Differential Pay divided by the Hourly Rate = Emergency Leave
Hours

State Gross Pay	-	Military Total Entitlements (Field 20 on LES)	=	Differential Pay	/	Hourly Rate	=	Emergency Leave Hours
\$2,818.58	-	\$2,350.50	=	\$468.08	/	\$16.03	=	29.20 hours of Emergency Leave in December rounded down to the nearest whole hour of 29

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

D. Leave Entitlements

Employees who meet the eligibility requirements will be credited with sick and vacation leave accruals for the time spent in military service. The accruals will not be reflected in ELVIS or be available for use until the employee physically returns to work at TWC. Should the employee not return to work with TWC following military service, he/she will not be entitled to compensation for leave accrued while on military status.

E. Health, Life and Disability Insurance while on Active Military Duty

1. Granting emergency leave to an employee on active military duty makes the employee eligible for the state paid portion of insurance benefits. If the pay is insufficient to cover the employee/dependent premium deductions, the employee may either pay the out-of-pocket portion by personal check or reduce the coverage.
2. Activation in military service is considered a Qualifying Life Event and coverage may be dropped until the employee returns to state government service if he/she chooses. When the employee returns, he/she may continue the insurance options held prior to military service without going through Evidence of Insurability (EOI).

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

3. An employee may choose to keep the health insurance through ERS while being covered under the military's insurance carrier. During the time the employee is covered under both plans, the military insurance carrier will be considered the primary coverage and the insurance selected through the ERS will be considered secondary.
4. An employee may wish to discontinue any Accidental Death & Dismemberment (AD&D) or short-term and long-term disability coverage since these benefits are not payable if the employee is injured or dies while on active military duty. However, if the employee has employee and family AD&D coverage and discontinues it while on active military duty, the family's coverage will also be discontinued.
5. Life insurance is not affected by acts of war or military duty. If an employee is killed while in the line of active military duty, the state's life insurance will appropriately compensate the named beneficiaries at the current level of life insurance coverage. Additionally, ERS has adopted a rule that will allow an employee meeting the eligibility requirements to continue optional life and dependent life insurance even if health insurance coverage has been dropped.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

6. Additional information regarding health and life insurance benefits continuation during military leave may be viewed online at:
www.ers.state.tx.us.

F. Texa\$aver Accounts During Active Military Duty

If an activated employee has a Texa\$aver account, he/she may wish to review current deferrals to decide if he/she wishes to keep them at the same level, reduce or cancel deferrals during this period. This may be done on the Texa\$aver web site at www.texasaver.com or by calling Empower Retirement, at (800) 634-5091. An activated employee should contact Empower Retirement immediately about a loan deferral if one is needed. If Empower Retirement is notified, the normal loan processing can be suspended. Empower Retirement will be able to extend the normal five-year payback for the period of time the participant is in military duty under the Soldiers and Sailors Civil Relief Act (SSCRA).

G. Military Service Credited Toward Retirement

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

1. An employee called to active duty and granted Emergency Leave will benefit by receiving ERS service credit for the time spent in active military service without having to buy the time. The emergency leave grant will suffice as notification to the ERS that an employee is in active military service and qualifies for the benefit.
2. The employee must still have the retirement contribution deducted from his/her state pay and credited to the ERS for retirement.

H. Supplemental Pay for Economic Hardship

Members of the Texas National Guard who are called to active duty to serve the state or the United States may be eligible to receive supplemental pay when the active-duty service imposes an economic hardship. The adjutant general determines whether a member is eligible to receive supplemental pay and the amount of supplemental pay.

5.21.5 AUTHORIZED MILITARY TRAINING OR MILITARY SCHOOL

- A. Military training, attendance in military school or any other duty assignment not already discussed in this policy does not qualify an employee to receive Emergency Leave or to remain on the regular payroll.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- B. An employee who is authorized by proper authority to report for military training or military school is entitled to a maximum of 15 workdays of paid leave in a federal fiscal year. The 15 days need not be consecutive. If a holiday occurs while an employee is on such military leave, the employee receives holiday pay, and the holiday pay is not counted against the 15 days.
- C. Employees are entitled to carry forward from one federal fiscal year to the next the net balance of unused accumulated leave that does not exceed 45 workdays.
- D. After exhausting paid military leave for training or school, the employee may use accrued compensatory leave, vacation, or AWOL (or a combination) for the remainder of the training or school period. TWC management may require a non-exempt employee to use FLSA compensatory leave before using vacation leave.

5.21.6 DURATION OF SERVICE FOR ACTIVE-DUTY MILITARY LEAVE

Generally, the cumulative length of service that causes an employee to be absent from a position may not exceed five years according to the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Section 4312(c). There are exceptions to this five-year limitation which must be evaluated on a case-by-case basis.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

5.21.7 RETURNING TO WORK FOLLOWING MILITARY LEAVE

A. Time Limits for Returning

Time limits for returning to work generally depend on the duration of an employee's military service.

1. Service of 1 to 30 days or for Fitness Exam – An employee must report to work by the beginning of the first regularly scheduled workday that falls eight hours after the end of the calendar day on which his/her duty ends.
2. Service of 31 to 180 days – An employee must contact his/her supervisor no later than 14 days after completion of the military service.
3. Service of 181 or more days – An employee must contact his/her supervisor no later than 90 days after completion of the military service.
4. Disability incurred or aggravated – The deadlines for returning to work or contacting the supervisor are extended up to two years for employees who are hospitalized or convalescing because of a disability incurred or aggravated during the period of military service.

B. Veterans' Employment Restoration Entitlements

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

1. An employee who goes on leave of absence with TWC to enter active military service is entitled to be re-employed:
 - a) by the agency;
 - b) in the same department and office in which the employee was employed at the time of induction or enlistment in, or order to, active military service; and
 - c) in the same position held or a position of similar seniority, status and pay.
2. This provision applies if the veteran is still physically and mentally qualified to perform the required duties, was honorably discharged within five years of beginning military service and contacts his/her supervisor within the established time limits for reporting back to work following discharge. Some temporary employees and Commissioners may not be eligible for the purposes of post military service reemployment.
3. An employee who is restored to a position upon returning from military service is considered to have been on leave of absence during his or her time of federal or state military service.

C. Reemployment under Changed Circumstances

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

TWC is not required to reemploy a person if work circumstances have changed so much that reemployment would be impossible or unreasonable.

D. Documentation upon Returning to Employment

TWC may require a returning veteran who was absent for a period of service of 31 days or more to provide readily available documentation showing contact was made with the veteran's supervisor in accordance with established time limits, the five-year limit was not exceeded, and the type of separation from service.

E. Discharge Following Reemployment

A reemployed veteran may not be discharged from the position without cause under the following time limits:

1. for one year after the date of reemployment if the employee served 181 days or more; or,
2. for six months after the date of reemployment if the employee served 31 to 180 days.

5.21.8 STATE MILITARY SERVICE PROTECTION

Pursuant to Texas Government Code 431.006, an employee who is a member of the state military forces of Texas or of another state may not be dismissed from employment because the employee is ordered to authorized training or duty by a proper authority. Employees must provide written or actual notice of intent to return to employment as soon as is practicable following release from duty. Such employees will be returned to the same employment held when ordered to training or duty, and will not be subjected to loss of time, efficiency rating, vacation time, or any benefit of employment during or because of the absence.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

5.21.9 SUPERVISORY RESPONSIBILITIES

When notified that an employee is being called to active military service, the supervisor must contact HR as soon as practicable. In addition, the following documents must be completed and/or collected from the employee and submitted through the [HR Help Desk Portal](#):

- A. the Active Military Duty Contact Information Sheet – Form P-113;
- B. a copy of the employee’s military orders;
- C. a copy of the employee’s Military Leave and Earnings Statement (LES) for each month of active military service (used for calculating Emergency Leave amounts); and
- D. [P-10 Recommendation for Personnel Action](#) indicating Military LOA accompanied by the Leave Change Request in the [HR Help Desk Portal](#).

5.21.10 EMPLOYEE’S RESPONSIBILITY

- A. Furnish the supervisor with military orders as soon as possible.
- B. Complete the Active Military Duty Contact Information Sheet.
- C. Contact HR for information regarding insurance and benefits as soon as practicable.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- D. Furnish copies of the LES for each month of active military duty.

Timely contact with the supervisor following return from active duty

5.21.11 ONLINE LEAVE SYSTEM ENTRIES AND DAILY TIME ACTIVITY REPORT COMPLETION

- A. Military leave with pay for a state emergency is entered into the online leave system using the Military State code (MS).
- B. Military LOA for a national emergency is entered into the online leave system using code LA.
- C. If intermittent vacation or compensatory time is used, it is entered into the online leave system using the appropriate code.
- D. Military leave for authorized training, school, or duty other than for a state or national emergency is entered into the online leave system using code ML.
- E. The supervisor is to certify the Daily Time Activity Report showing one hour of Other Paid Leave and the remaining hours of the month in the LOA category.
- F. The supervisor then submits a copy of the Daily Time Activity Report using the [HR Help Desk Portal](#).
- G. HR will make adjustments to the online leave system if needed.

- H. HR will notify the department if the Daily Time Activity Report needs to be re-certified.

5.22 OTHER PAID LEAVE

Medical and Mental Health Care Leave

- A. An employee who is a veteran and eligible for health benefits under a program administered by the Veterans Health Administration of the United States Department of Veteran Affairs (VA) may be granted up to 15 days (120 hours) each fiscal year to obtain medical or mental health care administered by the VA or an entity contracted by the VA to provide those services.
- B. Medical or mental health care includes in-person or online appointments, physical rehabilitation services, physical or psychotherapy appointments, in-patient surgery and hospital stays.
- C. It does not include recovery time outside of a hospital setting before receiving a doctor's permission to return to work.

The Executive Director may grant additional hours of leave if it is determined that it is appropriate for the employee. The Executive Director will consider if the request for additional hours is in the best interest of the agency.

5.23 PARENTAL LEAVE

- A. Parental leave is a legislatively mandated state employee benefit available to certain employees (mothers and fathers) for the birth of a natural child or the adoption or foster care placement of a child under three years of age. Parental leave guarantees the employee's job for a period of up to 12 weeks. To be eligible for parental leave, an employee must either have less than 12 months of state service or have worked less than 1250 hours in the 12-month period immediately preceding the commencement of such leave. However, the employee must use all available, applicable paid vacation and sick leave while taking leave for this event.

- B. The 12-week period of parental leave begins with the date of birth or the first day the adoptive or foster child is formally placed in the home. Employees must use all available applicable paid vacation and sick leave (including extended sick leave and sick leave pool) before going on parental leave of absence (LOA). The employee may use sick leave when appropriate, i.e., personal use by the mother for recuperation from childbirth, care by the spouse for the mother's recuperation from childbirth, or parental care due to the illness of the newborn or adoptive child.

- C. FMLA leave requires the agency to pay the state's portion of the eligible employee's insurance coverage for any full month of unpaid leave. Parental leave does not allow this payment; an employee on parental leave must pay the employee's and the state's portion of the insurance premium for any full month of unpaid leave. Supervisors are responsible for sending the Group Insurance Unpaid Leave Notification Letter to the employee.

See [Appendix 4.1](#).

- D. Because parental leave is legislatively mandated, the parental LOA is automatic and does not require administrative approval, after the employee has used all available applicable paid vacation and sick leave.
- E. Unless the employee is targeted to be laid off due to a staff modification or reduction in force, TWC must restore employees returning from parental leave/leave of absence to their original or an equivalent position and pay with equivalent employment terms and conditions.

Management must prepare and submit a [P-10 Recommendation for Personnel Action](#) via DocuSign as soon as the parental leave of absence is to start. The "nature of action" on the P-10 is "Leave of Absence" without any reference to the reason. Form P-10a should accompany the P-10 stating the reason for the LOA. The supervisor should follow the same procedure for a P-10 and P-10a when the employee returns to work from parental LOA. The "nature of action" on the P-10 should read "Return from Leave of Absence."

5.24 PARENT EDUCATIONAL ACTIVITIES LEAVE

An employee who is a parent of, or stands in parental relation to, a child who is a student attending a grade from pre-kindergarten through 12th grade may use up to eight hours of sick leave each fiscal year to attend educational activities for the employee's child(ren). The employee is required to give management reasonable advance notice of the activity date and time. This leave is entered into the online leave system using the Parent Educational Activities (SC) leave code. This time automatically posts as sick leave to the Daily Time Activity Report.

5.25 ASSISTANCE DOG TRAINING FOR DISABLED

- A. A disabled employee is entitled to paid time off up to 10 workdays in a fiscal year for the purpose of attending a training program to acquaint the employee with an assistance dog to be used by the employee.
- B. Assistance dog training leave is entered into the online leave system using code SE. This time automatically posts as other paid leave to the Daily Time Activity Report

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

5.26 SICK LEAVE POOL

Refer to [Extended Sick Leave and Sick Leave Pool](#) section.

5.27 VOLUNTEER LEAVE

A. Fire Fighter Leave

1. Volunteer firefighters are entitled up to five paid workdays per fiscal year to attend fire service training conducted by a state agency or institution of higher education.
2. Up to 10 working days per fiscal year may also be granted for firefighters to respond to emergency fire situations.
3. Appropriate documentation must be submitted prior to taking leave.
4. Fire Fighter leave is entered into the online leave system using code FF and automatically posts as other paid leave to the Daily Time Activity Report.

B. Emergency Medical Services Leave

1. Emergency medical services volunteers are entitled to paid time off up to five workdays per fiscal year to attend medical emergency services training conducted by a state agency or institution of higher education.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

2. Up to 10 working days per fiscal year may also be granted for emergency medical services volunteers to respond to emergency medical situations.
3. Appropriate documentation must be submitted prior to taking leave.
4. Emergency medical services leave is entered into the online leave system using code MT, and automatically posts as other paid leave to the Daily Time Activity Report.

C. Search and Rescue Workers Leave

1. Search and rescue volunteers are entitled to paid time off up to five workdays per fiscal year to attend search and rescue training conducted by a state agency or institution of higher education.
2. Up to 10 working days per fiscal year may also be granted for search and rescue situations.
3. Appropriate documentation must be submitted prior to taking leave.
4. Search and Rescue leave is entered into the online leave system using code RS, and automatically posts as other paid leave to the Daily Time Activity Report.

D. Court Appointed Special Advocate (CASA) Leave

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

1. An employee may be granted leave not to exceed five hours each month to participate in mandatory training or perform volunteer services for Court Appointed Special Advocates.
2. CASA leave is entered into the online leave system using code AD, and automatically posts as other paid leave to the Daily Time Activity Report.

5.28 AMATEUR RADIO OPERATOR LEAVE

- A. An employee who holds an amateur radio station license issued by the Federal Communications Commission may be granted up to 10 working days in a fiscal year to participate in specialized disaster relief services. The employee must receive supervisory authorization and must have approval from the governor before taking the leave.
- B. Amateur radio operator leave is entered into the online leave system using code RO and will automatically post as other paid leave to the Daily Time Activity Report.

5.29 RESERVE LAW ENFORCEMENT OFFICER LEAVE

A state employee who is a reserve law enforcement officer is entitled to paid time off up to five workdays per fiscal biennium to attend required training. Reserve Law Enforcement Leave is entered into the online leave system using code RT. This time automatically posts as other paid leave to the Daily Time Activity Report.

5.30 VOTING TIME

- A. TWC grants employees up to one hour of paid time off to vote in each national, state, or local election, either on Election Day or during early voting. To ensure orderly operations, supervisors coordinate and schedule in advance time off for voting.
- B. Voting time is entered into the online leave system using AV. This time automatically posts as other paid leave to the Daily Time Activity Report.

5.31 ORGAN DONATION LEAVE

- A. An employee is entitled to paid time off up to 30 working days regardless of work schedule in a fiscal year to serve as an organ donor. The employee must coordinate this leave with his or her supervisor before the leave is taken. Medical documentation must be provided before the employee begins the leave and Form P-67; Return to Work Status Form must be submitted upon the employee's return to work.
- B. Organ donation leave is entered into the online leave system using code DO. This time automatically posts as other paid leave to the Daily Time Activity Report.

5.32 BONE MARROW LEAVE

- A. An employee is entitled to paid time off up to five working days regardless of work schedule in a fiscal year to serve as a bone marrow donor. The employee must coordinate this leave with his or her supervisor before the leave is taken. Medical documentation must be provided before the employee begins the leave and Form P-67; Return to Work Status Form must be submitted upon the employee's return to work.
- B. Bone marrow donation leave is entered into the online leave system using code DM. This time automatically posts as other paid leave to the Daily Time Activity Report.

5.33 BLOOD DONATION LEAVE

- A. An employee may use up to two hours of paid leave four times per fiscal year to donate blood. This includes blood drives sponsored by TWC and driving time to and from blood donation facilities. The employee must coordinate this leave with his or her supervisor before the leave is taken and must provide proof the employee donated blood during the time off. If the employee does not provide proof that he or she donated blood during the time off, the time will be deducted from the employee's salary or accrued leave, whichever the employee chooses.
- B. Blood donation leave is entered into the online leave system using code DB. This time automatically posts as other paid leave to the Daily Time Activity Report.

5.34 HOLIDAYS

- A. The legislature establishes official holidays as shown below. TWC grants official holidays to all employees proportionate with their percent of work time and regardless of work schedule. For example, a full-time employee receives eight hours of paid holiday time and a half-time employee receives four hours of paid holiday time for the same holiday.

- B. An individual must be a state employee in paid status on the workday before and the workday after a state or national holiday in order to be paid for that holiday unless the holiday falls on the employee's first or last workday of the month.

TEXAS WORKFORCE COMMISSION
PERSONNEL MANUAL
CHAPTER 5 - LEAVES AND ABSENCES

State Holiday Schedule

Holiday	Day of the Month or Date
New Year's Day	January 1
Martin Luther King, Jr., Day	Third Monday in January
Presidents' Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November
Additional Thanksgiving Day	Day after Thanksgiving
Christmas Eve Day	December 24
Christmas Day	December 25
Additional Christmas Day	December 26

Skeleton Holidays

Holiday	Date
Confederate Heroes Day	January 19
Texas Independence Day	March 2
San Jacinto Day	April 21
Emancipation Day	June 19
Lyndon Baines Johnson Day	August 27

- C. Offices remain open on dates known as “skeleton holidays.” TWC allows employees working on a skeleton holiday compensatory time off during the twelve-month period following the date of the holiday worked.

Optional Holidays

Holiday	Day of the Month or Date
Rosh Hashanah	Varies
Yom Kippur	Varies
Good Friday	Varies
Cesar Chavez Day	March 31

Optional holidays may be taken in lieu of any other skeleton holiday falling on a weekday other than a day on which a statewide election is held.

- D. An employee desiring to observe one of these optional holidays must make arrangements with management in advance.

TEXAS WORKFORCE COMMISSION

PERSONNEL MANUAL

CHAPTER 5 - LEAVES AND ABSENCES

- E. If the optional holiday is taken prior to working a skeleton holiday, the employee must designate a specific official skeleton holiday to be worked later. The official skeleton holiday must be worked within the same fiscal year as the holiday taken. No entries in the online leave system are required.
- F. Employees can take vacation or compensatory leave, if eligible, if they desire to observe these substitute holidays without working a skeleton holiday. Vacation and compensatory leave must be approved in advance, and the appropriate entries must be entered in the online leave system.
- G. After the last official skeleton holiday but before the end of the current fiscal year, or at the time of termination, supervisors must verify that all employees who took substitute holidays have made up the time by working an official skeleton holiday. Employees who have failed to make up time for a substitute holiday taken will have either their salary or leave balance adjusted accordingly. Leave adjustments must be made in the month in which the official skeleton holiday was observed.

5.35 FAMILY LEAVE POOL

Agency provides family leave in accordance with state law.