

1 **CHAPTER 800. GENERAL ADMINISTRATION**

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3 **PROPOSED RULES TO BE PUBLISHED IN THE *TEXAS REGISTER*. THIS**
4 **DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO**
5 **FORMATTING CHANGES AS REQUIRED BY THE OFFICE OF SECRETARY OF**
6 **STATE.**

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8 **ON JANUARY 11, 2022**, THE TEXAS WORKFORCE COMMISSION APPROVED THE
9 PROPOSED RULES BELOW WITH PREAMBLE TO BE PUBLISHED IN THE *TEXAS*
10 *REGISTER*.

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12 Publication Date of the Proposal in the *Texas Register*: **January 28, 2022**
13 End of Comment Period: **February 28, 2022**

14
15 The Texas Workforce Commission (TWC) proposes the following new subchapter to Chapter
16 800, relating to General Administration:

17
18 Subchapter D. Employee Benefits, §800.150 and §800.151

19
20 **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

21 The purpose of proposed new Chapter 800, Subchapter D is to establish administrative rules
22 relating to the operation of TWC's sick and family leave pools.

23
24 Senate Bill 248 from the 73rd Texas Legislature, Regular Session (1993) (codified as Texas
25 Government Code, §§661.001 - 661.008), established the sick leave pool. The sick leave pool is
26 for eligible state employees who have exhausted their sick and personal leave to cover time-and-
27 leave absences for catastrophic and/or life-threatening illnesses and injuries for either the
28 employee or his or her approved family member.

29
30 House Bill (HB) 2063 from the 87th Texas Legislature, Regular Session (2021) (codified as
31 Texas Government Code, §§661.021 - 661.028), established the family leave pool. The family
32 leave pool provides eligible state employees more flexibility in bonding with and caring for
33 children during a child's first year following birth, adoption, or foster placement; and for caring
34 for a seriously ill family member of the employee, including pandemic-related illnesses or
35 complications caused by a pandemic.

36
37 **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

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39 **SUBCHAPTER D. EMPLOYEE BENEFITS**

40 TWC proposes new Subchapter D, as follows:

41
42 **§800.150. Sick Leave Pool**

43 New §800.150 provides eligible employees with additional paid sick leave in documented cases
44 of a catastrophic or life-threatening illness or injury to the employee or the employee's
45 immediate family member.

1
2 **§800.151. Family Leave Pool**

3 New §800.151 provides eligible employees with additional family leave if they have exhausted
4 all eligible compensatory, discretionary, sick, and vacation leave due to certain situations, and
5 have provided proper documentation for using the family leave pool in extenuating
6 circumstances, such as an ongoing pandemic that would include providing care for a family
7 member. The family leave pool further provides eligible employees with the ability to apply for
8 leave time and more flexibility in bonding with and caring for children during a child's first year
9 following birth, adoption, or foster placement; or caring for a seriously ill family member of the
10 employee, including pandemic-related illnesses or complications caused by a pandemic.

11
12 **PART III. IMPACT STATEMENTS**

13 Chris Nelson, Chief Financial Officer, determined that for each year of the first five years the
14 rules will be in effect, the following statements will apply:

15
16 There are no additional estimated costs to the state and to local governments expected as a result
17 of enforcing or administering the rules.

18
19 There are no estimated cost reductions to the state and to local governments as a result of
20 enforcing or administering the rules.

21
22 There are no estimated losses or increases in revenue to the state or to local governments as a
23 result of enforcing or administering the rules.

24
25 There are no foreseeable implications relating to costs or revenue of the state or local
26 governments as a result of enforcing or administering the rules.

27
28 There are no anticipated economic costs to individuals required to comply with the rules.

29
30 There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural
31 communities as a result of enforcing or administering the rules.

32
33 Based on the analyses required by Texas Government Code, §2001.024, TWC has determined
34 that the requirement to repeal or amend a rule, as required by Texas Government Code,
35 §2001.0045, does not apply to this rulemaking.

36
37 **Takings Impact Assessment**

38 Under Texas Government Code, §2007.002(5), "taking" means a governmental action that
39 affects private real property, in whole or in part or temporarily or permanently, in a manner that
40 requires the governmental entity to compensate the private real property owner as provided by
41 the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, Article I,
42 §17 or §19, or restricts or limits the owner's right to the property that would otherwise exist in
43 the absence of the governmental action, and is the producing cause of a reduction of at least 25
44 percent in the market value of the affected private real property, determined by comparing the
45 market value of the property as if the governmental action is not in effect and the market value of
46 the property determined as if the governmental action is in effect. TWC completed a Takings

1 Impact Analysis for the proposed rulemaking action under Texas Government Code, §2007.043.
2 The primary purpose of this proposed rulemaking action, as discussed elsewhere in this
3 preamble, is to establish administrative rules for TWC's sick and family leave pools.
4

5 The proposed rulemaking action will not create any additional burden on private real property or
6 affect private real property in a manner that would require compensation to private real property
7 owners under the US Constitution or the Texas Constitution. The proposal also will not affect
8 private real property in a manner that restricts or limits an owner's right to the property that
9 would otherwise exist in the absence of the governmental action. Therefore, the proposed
10 rulemaking will not cause a taking under Texas Government Code, Chapter 2007.
11

12 Government Growth Impact Statement

13 TWC has determined that during the first five years the rules will be in effect, they:

- 14 --will not create or eliminate a government program;
- 15 --will not require the creation or elimination of employee positions;
- 16 --will not require an increase or decrease in future legislative appropriations to TWC;
- 17 --will not require an increase or decrease in fees paid to TWC;
- 18 --will not create a new regulation;
- 19 --will not expand, limit, or eliminate an existing regulation;
- 20 --will not change the number of individuals subject to the rules; and
- 21 --will not positively or adversely affect the state's economy.

22 Economic Impact Statement and Regulatory Flexibility Analysis

23 TWC has determined that the rules will not have an adverse economic impact on small
24 businesses or rural communities, as the proposed rules place no requirements on small businesses
25 or rural communities.
26
27

28 Mariana Vega, Director, Labor Market Information, determined that there is not a significant
29 negative impact upon employment conditions in the state as a result of the rules.
30

31 Lowell Keig, Director, Business Operations, has determined that for each year of the first five
32 years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed
33 rules will be to increase employee retention by providing an additional safety net in case of a
34 catastrophic or life-threatening illness or injury to the employee or the employee's immediate
35 family member or in the bonding with and caring for children during a child's first year
36 following birth, adoption, or foster placement.
37

38 TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be
39 within TWC's legal authority to adopt.
40

41 **PART IV. PUBLIC COMMENT**

42 Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov
43 and must be received no later than February 28, 2022.
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2 **PART V. STATUTORY AUTHORITY**
3 The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide
4 TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the
5 effective administration of TWC services and activities.
6
7 The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

1 **CHAPTER 800. GENERAL ADMINISTRATION**

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3 **SUBCHAPTER D. EMPLOYEE BENEFITS**

4
5 **§800.150. Sick Leave Pool.**

- 6
7 (a) A sick leave pool is established to alleviate hardship caused to an employee and the
8 employee's immediate family if a catastrophic injury or illness forces the employee
9 to exhaust all eligible leave time earned by that employee and to lose compensation
10 time from the state.
- 11
12 (b) The Agency's Director of Human Resources is designated as the pool administrator.
- 13
14 (c) The pool administrator will recommend a policy, operating procedures, and forms
15 for the administration of this section for approval by the Agency's Executive
16 Director.
- 17
18 (d) Operation of the pool shall be consistent with Texas Government Code, Chapter
19 661.

20
21 **§800.151. Family Leave Pool.**

- 22
23 (a) A family leave pool is established to provide state employees more flexibility. It is
24 available to employees who have exhausted their eligible compensatory,
25 discretionary, sick, and vacation leave because of:
- 26
27 (1) the birth of a child;
- 28
29 (2) the placement of a foster child or adoption of a child under 18 years of age;
- 30
31 (3) the placement of any person 18 years of age or older requiring guardianship;
- 32
33 (4) a serious illness including pandemic-related illness;
- 34
35 (5) an extenuating circumstance created by an ongoing pandemic, including
36 providing essential care to a family member; or
- 37
38 (6) a previous donation to the pool.
- 39
40 (b) The Agency's Director of Human Resources is designated as the pool administrator.
- 41
42 (c) The pool administrator will recommend a policy, operating procedures, and forms
43 for the administration of this section for approval by the Agency's Executive
44 Director.
- 45

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(d) Operation of the pool shall be consistent with Texas Government Code, Chapter 661.