



DONATION OF SICK LEAVE

Implementation of House Bill 1771 (84th Legislature)

Overview

The passage of House Bill 1771 (84th Legislature) added Texas Government Code, Section 661.207, Donation of Sick Leave. That bill is effective September 1, 2015, and it applies to situations existing on or after that date.

Texas Government Code, Section 661.207, allows state employees to voluntarily transfer their accrued sick leave to another state employee within the same agency. Specifically, Texas Government Code, Section 661.207(a), authorizes an employee to donate "any amount" of his or her accrued sick leave to another employee who:

- (1) is employed in the same state agency as the donor employee; and
- (2) has exhausted the employee's sick leave, including any time the individual may be eligible to withdraw from a sick leave pool.

Texas Government Code, Section 661.207(b), prohibits an employee from providing or receiving remuneration or a gift in exchange for donated sick leave under that section of the Texas Government Code.

Additionally, Texas Government Code, Section 661.207(c), prohibits an employee who receives donated sick leave under this section from:

- (1) using sick leave donated to the employee under this section except as provided by Sections 661.202(d) and (e); or
- (2) notwithstanding any other law, receive service credit in the Employees Retirement System of Texas for any sick leave donated to the employee under this section that is unused on the last day of that employee's employment.

"Immediate family" is defined as individuals related by kinship, adoption, or marriage who live in the same household; foster children who reside in the same household; and minor children, regardless of whether they live in the same household. Sick leave also may be used to care for immediate family members who do not reside in the same household only for a documented medical condition. In that instance only, "immediate family" is interpreted as spouse, parent, or child.

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

Questions and Answers

1. Question: Can an employee donate ANY amount of sick leave and designate it to another employee in the same agency? Can an agency develop a policy to limit the amount that can be donated?

Answer: The language in Texas Government Code, Section 661.207, does not limit the amount of sick leave an employee can donate to another employee if the receiving employee is eligible to receive the donated sick leave and works in the same state agency. Therefore, an employee can donate any amount up to the amount of earned sick leave the employee has accrued.

2. Question: Can donated sick leave also be used to care for the employee's family members?

Answer: Texas Government Code, Section 661.207(c), prohibits an employee who receives the donated sick leave from using that sick leave except as provided by Texas Government Code, Sections 661.202(d) and 661.202(e). Those sections allow for the use of sick leave to care for certain family members who qualify (as specified by those sections of the Texas Government Code).

3. Question: Can the agency limit the amount of donated sick leave an employee can use?

Answer: Texas Government Code, Section 661.207(c), prohibits an employee who receives the donated leave from using that leave except as provided by Texas Government Code, Sections 661.202(d) and 661.202(e). None of those sections set a limit on the amount that can be used. See also question number 8.

4. Question: If the employee who received the sick leave donation transfers to a different agency, can the donated sick leave transfer with him or her?

Answer: Texas Government Code, Section 661.207(c), prohibits an employee who receives the donated sick leave from using that donated sick leave except as provided by Texas Government Code, Sections 661.202(d) and 661.20 (e). The transfer of sick leave is in Texas Government Code, Section 661.204; therefore, it is the State Auditor's Office's interpretation that under the statutory language in Texas Government Code, Section 661.207, the donated sick leave cannot be transferred to another agency.

5. Question: When an employee dies, his or her estate is paid for one-half of his or her sick leave up to 360 hours (or some amount). If an employee receives donated sick leave and dies, does the donated sick leave get paid to the employee's estate (within the limits of the law)?

Answer: Texas Government Code, Section 661.207(c), prohibits an employee who receives the donated sick leave from using that donated sick leave except as provided by Texas Government Code, Sections 661.202(d) and 661.202(e). The payment of sick leave to the employee's estate is in Texas Government Code, Section 661.034; therefore, it is the State Auditor's Office's interpretation that

payment to the estate for sick leave donated under Texas Government Code, Section 661.207, is not authorized.

6. Question: Can an employee qualify for donated sick leave even though the employee has not applied for the sick leave pool or has applied for and was denied sick leave from the sick leave pool?

Answer: Texas Government Code, Section 661.207(a)(2), requires that, prior to an employee receiving donated sick leave hours, the employee must have exhausted any sick leave pool hours for which the employee may be eligible.

7. Question: If an employee leaves an agency and later comes back to the agency within 12 months, is the sick leave that was donated to that employee restored?

Answer: Texas Government Code, Section 661.207(c), prohibits an employee who receives the donated sick leave from using that donated sick leave, except as provided by Texas Government Code, Sections 661.202(d) and 661.202(e). The restoration of sick leave is under Texas Government Code, Section 661.205; therefore, it is the State Auditor's Office's interpretation that donated sick leave would not be restored.

8. Question: Can sick leave received from a donation be taken under the federal Family and Medical Leave Act (FMLA) as FMLA hours, just as accrued sick leave can count toward FMLA hours?

Answer: Yes, if the donated sick leave is being used for an FMLA qualifying event.

9. Question: After an employee donates his or her sick leave, can the donated sick leave be returned to the accrued balance of the employee who donated that sick leave if the receiving employee leaves the agency or no longer needs the donated sick leave?

Answer: After sick leave is transferred from the balance of one employee to the balance of another employee, there is nothing in Texas Government Code, Section 661.207, that grants authority to transfer that donated sick leave back to the donating employee.

10. Question: Can the use of donated sick leave be used for sick leave that is not medically documented?

Answer: Texas Government Code, Section 661.207(c), prohibits an employee who receives the donated sick leave from using that donated sick leave except as provided by Texas Government Code, Sections 661.202(d) and 661.202(e). The new statute does not address medical documentation; however, there is a reference to documentation in Texas Government Code, Section 661.202(e). Prior to requesting documentation for any reason other than the reasons listed in Texas Government Code, Section 661.202(e), an agency should discuss questions regarding medical documentation with its general counsel.

11. Question: Does the donated sick leave expire?

Answer: Nothing in Texas Government Code, Section 661.207, provides for the expiration of donated sick leave.

12. Question: Does the donating employee need to have a minimum sick leave balance available to donate?

Answer: Texas Government Code, Section 661.207, does not stipulate that a minimum sick leave balance by the donating employee is required prior to the sick leave being donated.

13. Question: Will the receiving employee know who donated the sick leave and/or how much sick leave was donated to him or her? Can the donation be anonymous?

Answer: That is left to agency discretion.

14. Question: Can the unused donated sick hours go to the sick leave pool upon the receiving employee's separation or death?

Answer: In accordance with Texas Government Code, Section 661.003, only sick leave earned by an employee can be transferred to the sick leave pool.

15. Question: Can an employee refuse to accept donated sick hours?

Answer: That is left to agency discretion.

16. Question: Does Texas Government Code, Section 661.207, apply to higher education institutions?

Answer: Yes.

17. Question: Are there any tax implications related to donating or receiving sick leave?

Answer: There may be tax implications related to donating or receiving sick leave. To properly understand the effect of any tax implications, the employee should consult with his or her tax attorney.

Helpful Related Resources

Texas Human Resources Management Statutes Inventory:

<http://www.hr.sao.texas.gov/Statutes/Inventory.html>

House Bill 1771 (84th Legislature):

<http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=84R&Bill=HB1771>

State Auditor's Office Leave Interpretation Letters:

<http://www.hr.sao.texas.gov/Statutes/LeaveInterpretations.aspx>

State Auditor's Office Sick Leave Guide:

<http://www.hr.sao.texas.gov/Statutes/Guides.html>

Texas Government Code:

<http://www.statutes.legis.state.tx.us/>