

STATE AUDITOR'S OFFICE
LEAVE INTERPRETATION 97-05¹

TO: Human Resources Directors

DATE: October 29, 1996

SUBJECT: Whether annual leave should be changed to sick leave when an employee becomes ill when on vacation.

Question:

If an employee becomes ill when on vacation, should part or all of the vacation time be changed to sick leave?

Does the severity of the condition make a difference? If the time should be changed, may we require medical documentation for the entire sick leave time or only the sick leave time of more than three days?

Answer:

If an employee becomes ill while on vacation, he or she is eligible to use sick leave for the time that he or she is actually ill, provided that the employee would otherwise be eligible for sick leave. Medical documentation for such illness shall be required when sick leave in excess of three days is taken, unless the administrative head of the agency requires a doctor's certificate for sick leave taken for a continuous period of three or fewer days.

Texas Government Code, Section 661.202, states that an employee, without deduction in salary, is **entitled** to sick leave when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty. (Emphasis added).

If an employee would otherwise be entitled to sick leave, then the fact that such sick leave is requested while on annual leave should not affect the employee's entitlement. The only exception is in the case of a terminating state employee who is allowed to remain on an agency's payroll to exhaust the employee's accrued vacation time. In such cases, an employee may not use accrued sick leave once the employee has begun exhausting accrued vacation time (Texas Government Code, Section 661.067).

The severity of the condition then, as posed in the second question, makes a difference in determining sick leave eligibility only inasmuch as it would have had the employee not been on vacation. Whether the employee is entitled to use sick leave should be determined in accordance with the agency's or higher education institution's policies and procedures regarding sick leave, as well as the sick leave provisions contained within the Texas Government Code. Unless an

agency or higher education institution is able to establish that an employee would not otherwise be entitled to use sick leave, the employee is entitled to its use, whether or not he or she was on vacation leave when the illness occurred.

In reference to the sick leave documentation requirements, Texas Government Code, Section 661.202 (g), states that to be eligible for accumulated sick leave with pay during a continuous period of more than three working days, an employee absent due to illness shall send to the administrative head of the employing agency a doctor's certificate showing the cause or nature of the illness, or another written statement of the facts concerning the illness that is acceptable to the administrative head. The administrative head of an agency may also require a doctor's certificate or other written statement for sick leave taken during a continuous period of three or fewer working days.

¹This is an updated version of this State Auditor's Office Leave Interpretation. It was update in 2011 to primarily reflect statutory changes. The previous version can be found at http://www.hr.sao.state.tx.us/Statutes/LI97-05_old.html