



# SICK LEAVE DONATION GUIDE

## Overview

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### What's the Purpose?

To provide a means for an employee to receive donated sick leave from another employee at the same agency when the receiving employee has exhausted his or her sick leave balance, including any donated sick leave for which the receiving employee may qualify.

### Need Additional Help?

Human Resources Management Statutes Inventory is available at <http://www.hr.sao.texas.gov>.

State Auditor's Office's State Classification Team at (512) 936-9500.

State agency employees and their supervisors should direct questions to their agency human resources department.

*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 and the donation of sick leave. We have provided this guide on sick leave donation 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.*

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.

Donated sick leave may be taxable to the donor. Please refer to the Office of the Comptroller of Public Accounts' Web site at <https://fmx.cpa.texas.gov/fmx/legis/donatesick/index.php> for information regarding any tax implications pertaining to donated sick leave.

## Questions and Answers

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**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 an 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 limits the amount that can be used. See also question number 8.

**4. Question:** If an employee who received a 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 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 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:** 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 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.

## Helpful Related Resources

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Texas Human Resources Management Statutes Inventory:  
<http://www.hr.sao.texas.gov/Resources/StatutesInventory/>

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/>