



Guide to Sick, Parental, and Related Leave

October 2023

Overview

The State of Texas offers both paid and unpaid leave for employees to use when they need to be away from work for various reasons. It is important for employers and employees to understand those different types of leave to ensure that employees receive the leave they are entitled to and that they do so in accordance with applicable state and federal laws.

This guide provides information on sick leave and related leave types and attempts to answer relevant questions; however, this guide is not all-inclusive and will not answer all the questions that employers or employees may have regarding employee leave. Please see the [Sources of Additional Information](#) for guidance on obtaining further details.

Information on other leave types is available in the [Texas Human Resources Management Statutes Inventory](#).

Guide Contents

The State Auditor's Office is authorized to provide uniform interpretations of certain leave provisions in [Texas Government Code, Chapter 661](#), which governs the administration of vacation, sick, and other leave types.

Leave Provisions for Agencies and Higher Education Institutions. This guide provides an overview of certain leave provisions established in statute.

Leave Policies for University Systems. A governing board of a university system may adopt a comprehensive leave policy that applies to employees of the university system or any component institution of the system. This policy may combine vacation, sick, and holiday leave into a paid leave system that does not distinguish or separate the types of leave to be awarded and may award leave in an amount that the system's governing board determined to be appropriate and cost-effective.

This guide does not address any of those policies.

Source: [Texas Education Code, Section 51.961](#).



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Sick Leave

What Is Sick Leave? Sick leave is a benefit to state employees that allows for a paid absence from work under certain conditions:

- When sickness, injury, or pregnancy and confinement prevent an employee from performing his or her job;
- When the employee needs to care for and assist a member of the employee’s immediate family who is sick; **or**
- To attend educational activities of the employee’s children who are in pre-kindergarten through 12th grade. An employee may use up to eight hours of sick leave each fiscal year for these activities. That eight-hour total is per fiscal year and not per child. Educational activities are school-sponsored activities, including parent-teacher conferences; tutoring; volunteer programs; field trips; classroom programs; school committee meetings; academic competitions; and athletic, music, or theater programs.

Who Is Eligible? State employees at agencies and higher education institutions are entitled to sick leave without a deduction in salary. Note that employees of higher education institutions must be employed to work at least 20 hours per week for a period of at least 4.5 months to be eligible for sick leave. Student employees whose positions require student status as a condition of employment are **not** eligible for sick leave.

Immediate Family Member Definition - Individuals related by kinship, adoption, or marriage who live in the same household as the employee; foster children who reside in the same household; and minor children of the employee 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 when there is a documented medical condition; in that instance only, “immediate family” is interpreted as a spouse, parent, or child of the employee.

Accrual Rate - Full-time employees accrue sick leave at a rate of eight hours for each month of state employment. Part-time employees accrue sick leave on a

Leave Policy Availability

State agencies and higher education institutions are required to adopt a policy governing leave for employees under Texas Government Code, Chapter 661.

The entity must post the policy on its website in a location easily accessible by its employees and the public.

Source: [Texas Government Code, Section 661.252](#).

proportionate basis. An employee is entitled to be credited for one month's sick leave for each month of employment with the State beginning on the first day of employment and on the first calendar day of each succeeding month of state employment. An employee who is on leave on the first day of a month may not use sick leave that is accrued for that month until after the employee physically returns to work. An employee who is employed during any part of a calendar month accrues sick leave for the entire month.

Transferring and Restoring Sick Leave - An employee's sick leave balance should be transferred if the employee transfers directly from one state agency to another state agency and the employee's employment with the State is uninterrupted. An employee's sick leave balance should be restored if the employee:

- Separated from state employment due to a formal reduction in force and is re-employed by the State within 12 months after the end of the month in which the employee separated from state employment.
- Is re-employed by the same state agency or higher education institution within 12 months after the end of the month in which the employee separated from state employment, but only if there has been a break in employment of at least 30 calendar days.
- Is re-employed by a different state agency or higher education institution within 12 months after the end of the month the employee separated from state employment. Employees Retirement System retirees who return to state employment will not have their sick leave balances restored.

No statutory provision allows a retiring employee to store or bank accumulated sick leave for use after retirement. In addition, an employee who returns to state employment following military service is entitled to have his or her sick leave balance restored and will be credited for sick leave accruals for the period of the employee's military leave absence.



Frequently Asked Questions Related to Sick Leave

1. Is an employee required to exhaust sick leave prior to taking a leave of absence without pay?

With the exception of certain leave situations such as disciplinary suspensions, active military duty, and leave covered by workers' compensation benefits, all accumulated paid leave entitlements must be used before going on a leave-without-pay status. However, to use sick leave the employee must be eligible to use that leave as provided

for in the sick leave provisions in Texas Government Code, Chapter 661, Subchapter G, *General Provisions for Sick Leave for State Employees*.

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

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, if the employee would otherwise be eligible for sick leave.

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. If an employee would otherwise be entitled to sick leave, then the fact that such sick leave is requested while on annual (vacation) 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. See Texas Government Code, Sections 661.067 and 661.202.

3. Should an employee be granted sick leave for the time necessary to provide care as the result of a documented medical condition of his or her mother-in-law who does not live with the employee?

The parent-in-law of an employee who does not reside in the same household as the employee is not treated the same as the parent of the employee for purposes of granting sick leave.

According to Texas Government Code, Section 661.202(e), an employee's 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, or parent of the employee who needs such care and assistance as a direct result of a documented medical condition.

4. An employee resigned but remains on the payroll while exhausting his or her vacation (annual) leave. The employee has called in sick. Is my agency required to grant this employee sick leave?

The employee may not use or accrue sick leave while remaining on the State's payroll to exhaust the employee's accrued vacation time. See Texas Government Code, Section 661.067.

5. Can a state employee who is exhausting his or her leave as a result of a workers' compensation claim use the leave hours he or she accrues before he or she physically returns to work?

State employees who are exhausting their leave because of a workers' compensation claim are prohibited from using sick leave and vacation leave hours that accrue after the first day of the month in which they become incapacitated, unless they physically return to work. See Texas Government Code, Sections 661.152(e) and (j) and 661.202(b) and (k).

6. Is a retired state employee who returns to state employment eligible for sick leave accruals?

Nothing in statute prohibits return-to-work retirees from accruing sick leave. According to Texas Government Code, Section 661.202(c), a full-time employee accrues sick leave at the rate of eight hours for each month of state employment. A part-time employee accrues sick leave on a proportionate basis.

7. Does an employee need to provide a doctor's note if he or she is out a certain number of days?

To be eligible to take accrued sick leave for more than three working days, an employee must provide to the administrative head of the agency a doctor's certification showing the cause or nature of the condition or another written statement of the facts concerning the condition that is acceptable to the administrative head. An agency's administrative head has the discretion to require a doctor's certification or other written statement of facts when sick leave of three or fewer workdays are taken.

8. Is there a limit on the number of sick leave hours that an employee may use to attend children's educational activities?

Yes, the limit is eight hours each fiscal year.

Types of Parental Leave

Paid Parental Leave

Texas Government Code, Section 661.9125, establishes a paid parental leave benefit for State of Texas employees who are members of the Employees Retirement System if they are eligible to take leave under the Family and Medical Leave Act (FMLA) for the:

- Birth of a child;
- Birth of a child by the employee's spouse;
- Birth of a child by a gestational surrogate;
- Adoption of a child.

Following the birth of a child, a state employee is entitled to **40** days of paid leave during leave taken under the FMLA. **Following the birth of a child by the employee's spouse or gestational surrogate, or the adoption of a child**, a state employee is entitled to **20** days of paid leave during leave taken under the FMLA (as shown in Figure 1 on the next page).

Employees are not required to use all available paid vacation and sick leave before taking paid parental leave.

Family Medical Leave Act (FMLA)

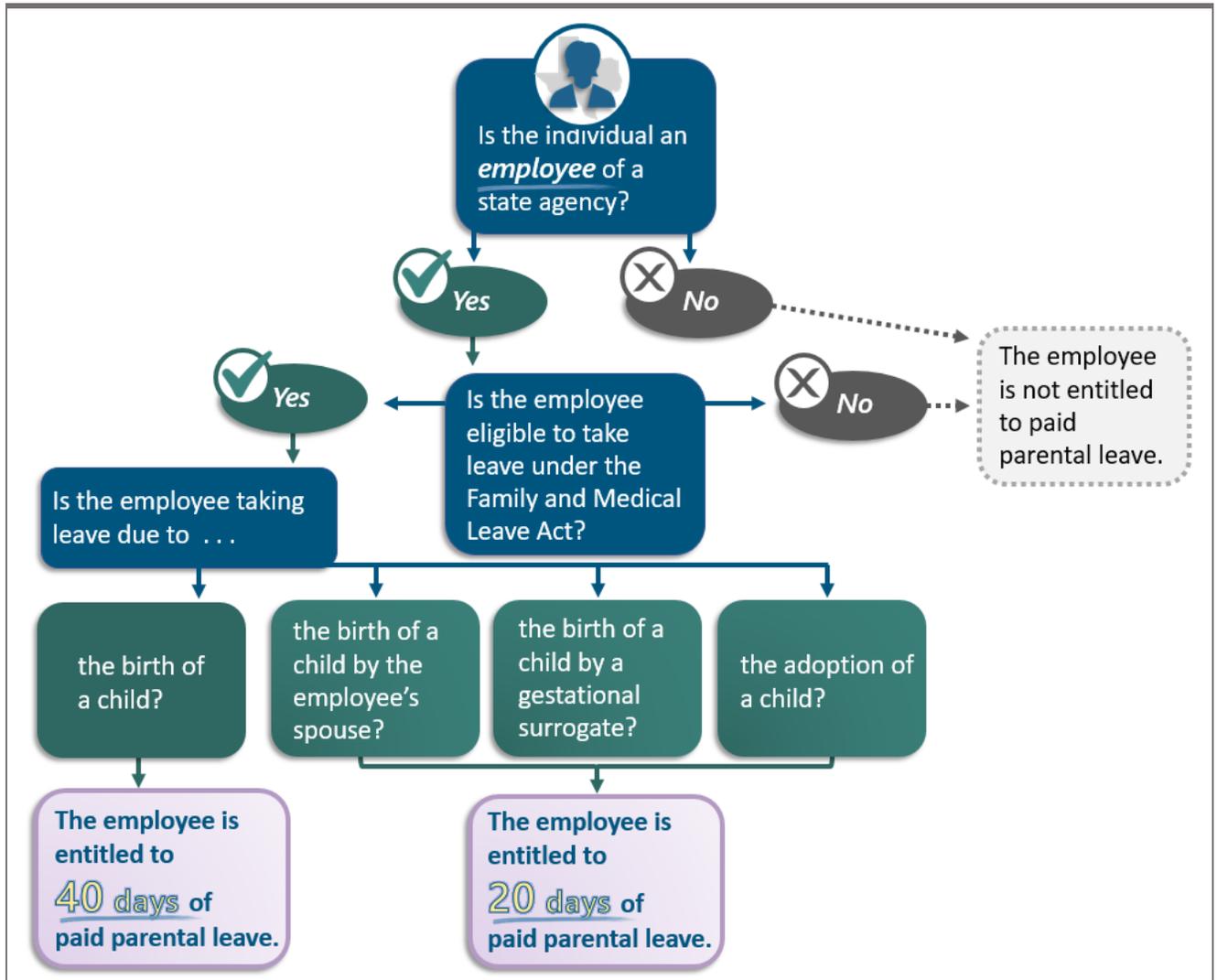
The FMLA allows eligible employees to take unpaid, job-protected leave, or to substitute appropriate paid leave, for an FMLA-qualifying event without fear of being terminated from their jobs or being forced into a lower job upon their return.

To be eligible for family and medical leave under the FMLA, an individual must have been employed by the State of Texas for at least 12 months and must have actually worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the family medical leave.

More information on FMLA can be found on the [U.S. Department of Labor website](#).

Figure 1

Flow Chart for Paid Parental Leave



Note: In accordance with Texas Government Code, Section 661.9125, paid parental leave applies only to a state employee who is a member of the Employees Retirement System of Texas or is employed by a board, commission, department, or other agency in the executive branch of state government, except for an institution of higher education as defined by Texas Education Code, Section 61.003.

Parental Leave

Employees who do **not** qualify for family and medical leave under the FMLA are entitled to an unpaid parental leave of absence not to exceed 12 weeks for the birth of a child or the adoption or foster care placement of a child under the age of 3. An employee does not meet the FMLA eligibility requirements (and thus is eligible for unpaid parental leave) if:

- The employee has worked for the State for less than 12 months, or
- The employee has worked fewer than 1,250 hours during the 12-month period preceding the leave.

The employee must first use all available and applicable paid vacation and sick leave while taking unpaid parental leave; the remainder of the leave is unpaid. Unpaid parental leave is limited to, and begins on the date of, the birth of the employee's natural child or the adoption by or foster care placement with the employee of a child younger than three years of age.



Frequently Asked Questions Related to Paid Parental Leave and Parental Leave

Paid Parental Leave

1. Is paid parental leave limited to just one qualifying event?

No. The amount of paid parental leave is not tied to just one specific qualifying event per employee.

2. Can an employee transfer paid parental leave to a new agency?

If the employee transfers to another state agency while on paid parental leave, the new agency would be responsible for providing the employee with the remaining paid parental leave to which they are entitled.

3. Does paid parental leave need to be taken in a continuous block?

Yes, paid parental leave starts after the birth of a child or at the time an adopted child is brought into the home.

4. Can paid parental leave be taken for time spent at prenatal appointments prior to the birth of a child?

No, paid parental leave starts after the birth of a child.

5. Can paid parental leave be taken for traveling to another country in order to adopt a child?

No, paid parental leave starts at the time an adopted child is brought into the home.

6. If there are spouses working for the same state agency, can they EACH get paid parental leave for the same qualifying event?

Yes. There is nothing in the statute that limits the time to just one employee if both spouses work for the same agency and qualify.

7. If an employee chooses not to use the entire number of days of paid parental leave, would the remaining number of days be “lost” or could they be banked for a future event?

Statute does not provide authority to bank leave hours for future events. An employee would not receive further paid parental leave if they are no longer eligible for FMLA leave.

8. A new employee is in the hospital with complications prior to the birth of her child. Would the employee qualify for paid parental leave in this situation?

No, paid parental leave starts at the birth of the child; therefore, the employee would not be eligible for paid parental leave in this situation.

9. If an employee wants to take personal time starting on the date of birth, come back to work, and then go back out at a later date, could the employee use paid parental leave continuously at the later date?

No, the continuous paid parental leave must be used immediately following the birth of a child. There is no authority to bank this leave to use at a later date or to use the time intermittently.

Parental Leave

1. May a father who is eligible for parental leave use his sick leave accrual for the birth of his child?

A father who is otherwise healthy cannot use sick leave for the birth of a child unless he needs to care for the child and/or mother who is sick.

2. Is a mother who has twins eligible for additional weeks of parental leave?

No, an employee that gives birth to twins is not entitled to additional weeks of leave for multiple births. The birth is treated as one qualifying event.

Donated Sick Leave, Sick Leave Pool, and Family Leave Pool

State employees and employees of higher education institutions are eligible for other relevant types of leave as well. Note, however, that employees of higher education institutions must be employed to work at least 20 hours per week for a period of at least 4.5 months, and in a position that does not require student status as a condition of employment, to be eligible for any type of sick leave, including the types outlined in this section.

Donating Leave Time

Sick Leave Donation to Another Employee - Employees of state agencies and higher education institutions, as defined by Texas Government Code, Section 661.001, may donate any amount of accrued sick leave to another employee who:

- Is employed in the same agency as the donor employee, and
- Has exhausted his or her sick leave, including any time he or she may be eligible to withdraw from a sick leave pool.

Employees may not provide or receive remuneration or a gift in exchange for a sick leave donation.

Sick Leave Pool - State agencies are required to establish a sick leave pool program. Each agency has discretion to adopt rules and procedures related to the operation of its sick leave pool.

An employee may contribute one or more days of accrued sick leave to the pool and the hours donated will be deducted from that employee's sick leave balance.

Family Leave Pool - Each state agency is required to establish a program that allows employees to voluntarily transfer accrued sick leave or vacation leave to a family leave pool. An employee may donate one or more days of the employee's accrued sick or vacation leave.

Tax and Retirement Implications

Tax Implications. Please refer to the Office of the Comptroller of Public Accounts' website for information regarding any tax implications pertaining to [donating or receiving sick leave](#) and [donating or receiving family leave](#).

Retirement Implications. Agencies need to ensure that employees who are planning to retire within the Employees Retirement System fully understand that, if they donate sick leave or vacation leave hours to a person, the sick leave pool, or the family leave pool, those hours cannot be used for retirement credit purposes.

Using Donated Leave Time

Sick Leave Pool – An employee becomes eligible to withdraw time from the sick leave pool if the employee has exhausted his or her sick leave because of a catastrophic illness or injury of the employee or of a member of the employee’s immediate family ([see the definition of “immediate family”](#)). The employee must obtain the approval of the pool administrator and provide supporting documentation from a medical practitioner.

Family Leave Pool – An employee is eligible to use time contributed to the family leave pool if the employee has exhausted his or her eligible compensatory, discretionary, sick, and vacation leave because of the conditions listed in Figure 2 on the next page. The employee must obtain the approval of the pool administrator and provide supporting documentation.

Sick Leave Donation to Another Employee – After exhausting all available sick leave (including accrued sick leave as well as the sick leave pool and family leave pool), an employee may be eligible to use sick leave donated by another employee within the same agency. The employee does not need to have been employed by the agency or university for a minimum period of time to be eligible to use donated sick leave.

For full details on using and administering these forms of leave, see Chapter 11 in the [Texas Human Resources Management Statutes Inventory](#).

Figure 2

Summary of Leave Donation Provisions

Sick Leave Donation to Another Employee	Sick Leave Pool	Family Leave Pool
Purpose		
<p>Intended to allow a state employee the option of donating sick leave to another state employee at the same agency when the receiving employee has exhausted all available sick leave.</p>	<p>Intended to assist state employees and their immediate family members in dealing with catastrophic illnesses or injuries that force employees to exhaust all of their available sick leave.</p>	<p>Intended to provide eligible state employees the flexibility to bond with and care for children during a child's first year following birth, adoption, or foster placement; or to care for a seriously ill family member or the employee, including illnesses or complications resulting from a pandemic.</p>
Eligibility and Use of Time in Pool		
<p>An employee may be eligible to use sick leave donated by another employee within the same agency if the receiving employee has exhausted all available sick leave, including any time the employee may be eligible to withdraw from a sick leave pool.</p>	<p>An employee may be eligible to use time contributed to the sick leave pool if the employee has exhausted all sick leave because of:</p> <ul style="list-style-type: none"> (1) a catastrophic illness or injury of the employee or of a member of the employee's immediate family; or (2) a previous donation of time to the pool. <p>Employees must apply to the pool administrator for permission. See Texas Government Code, Section 661.005, for information on supporting documentation that may be required.</p>	<p>An employee may be eligible to use time contributed to the family leave pool if the employee has exhausted the employee's eligible compensatory, discretionary, sick, and vacation leave because of:</p> <ul style="list-style-type: none"> (1) the birth of a child; (2) the placement of a foster child or adoption of a child under 18 years of age; (3) the placement of any person 18 years of age or older requiring guardianship; (4) a serious illness of an immediate family member or the employee, including a pandemic-related illness; (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.

Sick Leave Donation to Another Employee	Sick Leave Pool	Family Leave Pool
		<p>Employees must apply to the pool administrator for permission. See Texas Government Code, Sections 661.024 and 661.025, for information on supporting documentation that may be required.</p>
Contribution Amount and Withdrawal Limit		
<p>Contribution Amount – An employee may contribute any amount of sick leave up to the amount of earned sick leave the employee has accrued.</p> <p>Withdrawal Limit – There is no limit to the amount of donated sick leave hours the employee may receive; however, the amount used would be subject to the amount they would have been able to use had it been his or her own sick leave hours.</p> <p>An employee may not receive service credit under the Employees Retirement System for any sick leave donated and unused.</p>	<p>Contribution Amount – An employee may contribute one or more days of accrued sick leave. This leave will be deducted from the employee’s earned sick leave as if the employee had used the time for personal purposes.</p> <p>Certain employees, depending upon their membership in the Employees Retirement System, may designate a number of their accrued sick leave hours to be donated to the sick leave pool upon retirement (instead of using those hours for retirement credit).</p> <p>Withdrawal Limit – The pool administrator determines the amount of time that an employee may withdraw. However, the employee may not withdraw time from the sick leave pool in an amount that exceeds the lesser of one-third of the total time in the pool or 90 days.</p> <p>The estate of a deceased employee is not entitled to payment for unused sick leave pool time.</p>	<p>Contribution Amount – An employee may contribute one or more days of accrued sick leave or vacation leave. This leave will be deducted from the employee’s earned sick leave or vacation leave as if the employee had used the time for personal purposes.</p> <p>A retiring employee may designate a number of accrued sick leave or vacation leave hours to be donated to the family leave pool upon retirement (instead of using those hours for retirement credit).</p> <p>Withdrawal Limit – The pool administrator determines the amount of time that the employee may withdraw. However, the employee may not withdraw time from the family leave pool in an amount that exceeds the lesser of one-third of the total time in the pool or 90 days.</p> <p>The estate of a deceased employee is not entitled to payment for unused family leave pool time.</p>
Full Text of Related Statutes		
<p>Texas Government Code, Section 661.207</p>	<p>Texas Government Code, Sections 661.002-661.008</p>	<p>Texas Government Code, Sections 661.021–661.028</p>



Frequently Asked Questions Related to Donated Sick Leave, Sick Leave Pool, and Family Leave Pool

1. Does donated sick leave expire?

Nothing in Texas Government Code, Section 661.207, provides for the expiration of donated sick leave while the receiving employee is employed with the agency.

2. In what increments may full-time and part-time state employees contribute accrued sick leave to a sick leave pool?

Texas Government Code, Section 661.003, provides in part that:

(a) An employee may contribute one or more **days** of the employee's accrued sick leave. *[and]*

(c) A retiring employee may designate the number of the retiring employee's accrued sick leave **hours** to be used for retirement credit and the number of the retiring employee's accrued sick leave hours to be donated on retirement to the sick leave pool.

The most logical reading of those provisions is that "days" refers to an eight-hour workday, while "hours" refers to any hourly fraction of a workday. Texas Government Code, Section 658.005(a), states that the normal office hours for a state agency are from 8:00 a.m. to 5:00 p.m., Monday through Friday.

Part-time employees should be allowed to contribute accrued sick leave on a proportionate basis because their work day and leave accruals are proportional to a full-time employee's (for example, an employee who works 20 hours per week may contribute accrued sick leave in increments of 4 hours). See Texas Government Code, Sections 661.003 and 661.202(c).

3. An employee left state employment with a sick leave balance. Can that employee donate the remaining sick leave to the sick leave pool or family leave pool a month after the employee left state employment if the employee does not plan to return to state employment?

Only active state employees can donate their accrued sick leave to the sick leave pool or family leave pool. In the scenario described, the employee is no longer a state employee and therefore is not authorized under Texas Government Code, Sections 661.003 and 661.023, to donate the balance of sick leave that remained after he or she left state employment.

4. Does an employee have to exhaust leave from the sick leave pool or family leave pool before being eligible to receive donated sick leave?

Yes. In accordance with Texas Government Code, Section 661.207(a)(2), an employee must have exhausted all of his or her accrued sick leave, including any time the employee may be eligible to withdraw from the sick leave pool, prior to receiving donated sick leave.

Texas Government Code, Section 661.027, states “a state employee absent while using time withdrawn from the family leave pool may use the time as sick leave earned by the employee. The employee shall be treated for all purposes as if the employee is absent on earned sick leave.”

Since family leave pool hours used are treated as sick leave earned by an employee, and Texas Government Code, Section 661.207(a)(2), requires that an employee use accrued sick leave (including any time eligible to be withdrawn from the sick leave pool) prior to being eligible for donated sick leave hours, it is the State Auditor’s Office’s interpretation that family leave pool hours should be exhausted prior to an employee receiving donated sick leave.

5. Does an employee have to be employed by an agency for six months prior to receiving donated sick leave?

An employee does not need to have been employed by an agency or higher education institution for a minimum period of time prior to being eligible for donated sick leave.

6. Can an employee donate ANY amount of sick leave and designate it to another employee in the same agency?

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 that the employee has accrued.

Extended Sick Leave

Each state agency and higher education institution may grant exceptions to the amount of sick leave an employee may take. This leave is often referred to as “extended sick leave.” State agencies and higher education institutions that grant extended sick leave are required to have an extended sick leave policy. Such policies must be made available to all agency and higher education institution employees.

The State Auditor's Office has advised that all forms of appropriate paid leave should be exhausted prior to a state agency or higher education institution granting extended sick leave. Examples of paid leave may include vacation (annual) leave, sick leave, sick leave pool, compensatory time, and leave for outstanding performance. Texas Government Code, Sections 661.202 (i) and (j), does not specify who is qualified to use extended sick leave; therefore, it is possible for an employee who is not eligible for the sick leave pool to be eligible for extended sick leave.



Frequently Asked Questions Related to Extended Sick Leave

1. Is there a minimum or maximum amount of hours that can be given?

No, the amount of extended sick leave given to the employee is left to the discretion of each agency or higher education institution. The agency or higher education institution also determines whether the leave must be used all at once or used intermittently.

2. Are employees required to submit documentation?

Each agency and higher education institution has the discretion to require the employee to provide written documentation from a licensed medical practitioner who is treating the employee or the employee's immediate family member in order to evaluate the employee's eligibility to use extended sick leave (including the expected recovery time).

3. If an employee never returns to work and terminates his or her employment with the organization, what happens to the leave that was accrued while on extended sick leave?

If the employee was out on extended sick leave for an entire calendar month or was out with a combination of sick leave and leave without pay, then the employee would accrue sick leave and vacation (annual) leave; however, the leave would not be posted to the employee's balance until he or she physically returns to work. If the employee does not return to work, he or she will lose the accrued time because it would not have been posted to the employee's leave balances.

4. Is extended sick leave given on a proportionate basis according to the number of hours an employee works?

Agencies have discretion on how much extended sick leave is granted to employees; however, a common practice is to give a proportionate amount of leave to part-time employees.

5. Must employees pay back extended sick leave?

No, an agency or higher education institution may not require the employee to pay back the amount of extended sick leave used.

Sources of Additional Information

Information on additional types of leave can be found in the [Texas Human Resources Management Statutes Inventory](#).

State agency and higher education institution employees and their supervisors should direct questions about specific situations to their entity's human resources department. Then if the human resources department staff has questions, they should contact the classification analyst on the State Auditor's Office's State Classification Team assigned to the entity. [The contact information is on our website](#).

Due to the complex nature of many leave provisions, state agencies and higher education institutions should also consult with their legal counsel to ensure compliance with all applicable federal and state laws and regulations related to the Family and Medical Leave Act.