



John Keel, CPA

### **What's The Purpose?**

Sick leave is a benefit to state employees that allows for an absence from work with pay and can be used when an employee is prevented from performing his or her job due to sickness, injury, pregnancy, or confinement.

### **Need Additional Help?**

Human Resources Statutes Inventory and State Auditor's Office Leave Interpretations located at <http://sao.hr.state.tx.us>

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

State agency employees and their supervisors should direct their questions to their agency's 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. We have provided this guide on sick leave for informational purposes only. State agencies and institutions of higher education should consult with their legal counsel to ensure compliance with all applicable federal and state laws and regulations.*

# **SICK LEAVE**

## **Who Is Eligible?**

State employees at agencies and higher education institutions are entitled to sick leave without a deduction in salary for the following:

- When sickness, injury, pregnancy, or 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 parent-teacher conference sessions for the employee's children.

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 this instance only, "immediate family" is interpreted as spouse, parent, or child.

Employees of higher education institutions must be employed to work at least 20 hours per week for a period of at least four and one-half months to be eligible for sick leave. In addition, students employed in positions that require student status as a condition of employment are not eligible for sick leave.

## **Implementation**

Full-time employees accrue sick leave at a rate of 8 hours for each month of state employment. Part-time employees accrue sick leave on a 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.

## **Administrative Details**

An employee on sick leave should notify the employee's supervisor at the earliest practical time. An employee must provide to the administrative head of the agency a doctor's certification showing the cause or nature of the condition when sick leave is taken for a period of more than three days. The administrative head of an agency has the discretion to require a doctor's certification when sick leave of three or fewer days is taken.

A faculty member at a higher education institution must submit appropriate leave forms for all sick leave the faculty member takes if the absence occurs during the normal workday for regular employees, even if no classes are missed.

Upon returning to work after taking sick leave, an employee should complete the appropriate application for sick leave and submit it for approval to the appropriate authority.

### *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 the employee is re-employed by the State within 12 months after the end of the month in which the employee separated from state employment.

An employee's sick leave balance should be restored if the employee 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.

An employee's sick leave balance should be restored if the employee is re-employed by a different state agency or higher education institution within 12 months after the end of the month in which the employee separated from state employment.

Employees Retirement System (ERS) retirees who return to state employment will not have their sick leave balances restored as there is no provision that allows a retiring employee to store or bank accumulated sick leave for use after retirement.

An employee who is restored 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 their military leave absence.

### *Payment of Sick Leave at Time of Death*

Employees are not paid for unused sick leave upon termination of employment. However, in the event of an employee's death, the agency will pay the employee's estate one-half of the employee's accumulated sick leave or 336 hours of sick leave, whichever is less.

A deceased state employee's total leave balance must be allocated over the workdays following the date and time of the employee's death until the balance is completely allocated. Therefore, a state employee who at the time of death was working at least 40 hours a week will have eight hours added to his or her sick and vacation leave for each state or national holiday that is scheduled to fall within the period after the employee's date of death in which the employee could have used the leave. Employees who work fewer than 40 hours a week will receive a proportionate payment. To determine the period during which leave could have been used and the number of state or national holidays, the employee's leave is allocated over the workdays after his or her death, and eight hours is added for each state or national holiday that occurs during the period.

### **Relevant Statutes (for the above information)**

Texas Government Code, Sections 661.031 through 661.038 and 661.201 through 661.205.