

STATE AUDITOR'S OFFICE

LEAVE INTERPRETATION 01-02¹

TO: Human Resources Directors

DATE: September 8, 2001

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

Question:

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?

Answer:

State employees who are exhausting their leave as a result of a workers' compensation claim are prohibited from using sick and annual leave hours that accrue after the first day of the month in which the employees become incapacitated unless they physically return to work.

According to Texas Government Code, Section 661.202(b), employees on duty on the first *day* of the month may accrue sick leave. Texas Government Code, Section 661.152(e), allows employees on duty the first *workday* of the month to accrue vacation leave. Employees therefore become eligible for both annual leave and sick leave to accrue on the *first day of each month* of service.

The annual leave statute provides that "[a]n employee who is on *paid leave* on the *first workday* of a month may not take vacation leave accruing for that month *until the employee has returned to duty.*" (Emphasis added).

The sick leave statute provides that "[a]n employee who is *on leave* on the *first day* of a month may not use the sick leave that the employee accrues for that month *until after the employee returns to duty.*" (Emphasis added).

In rare instances, employees could return to duty, only to find the return medically premature. Theoretically, these employees, having satisfied the "return to duty" requirements of Texas Government Code, Sections 661.152(j) and 661.202(k), might then be able to use sick leave and annual leave that had accrued since the first day of the month upon their return, albeit temporarily, to duty.

¹ This is an updated version of this State Auditor's Office Leave Interpretation. It was updated in 2011 to primarily reflect statutory changes. The previous version can be found at http://www.hr.sao.state.tx.us/Statutes/LI01-02_old.html