



FIFTH COURT OF APPEALS EMPLOYEE LEAVE POLICY

3.03. LEAVE POLICIES.

A. **Annual Leave.** (TEX. GOV'T CODE ANN. § 661.152).

1. An employee accrues and is entitled to be credited for annual (vacation) leave for each month or fraction of a month of service, as set forth in the table below. An employee accrues annual leave at the applicable rate beginning on the first day of employment and ending on the last duty day of state employment. Accrued leave is the employee's personal entitlement and is transferred with the employee when he transfers from one state agency to another, subject to provisions of Texas Government Code section 661.153 (see *infra*).
2. Although an employee begins accruing leave credit on the first day of employment, an employee may not take annual leave until the employee has six months of continuous employment with the state.
3. An employee should check with his or her supervisor to schedule annual leave. If a conflict arises, priority in scheduling annual leave is determined by the employee's length of service with the Court. Special rules may apply during the Christmas season due to the large number of requests.
4. **Leave Schedule.** A full-time employee accrues annual leave and may carry annual leave forward from one fiscal year to the next in accordance with the following schedule. The amount of leave a part-time employee accrues and may carry forward is determined on a proportionate basis. Unused accumulated annual leave that may not be carried forward into the next fiscal year shall be credited to the employee's sick leave balance on the first day of the next fiscal year.

<u>Employees with Total State Employment of</u>	<u>Hours Accrued per Month for Full-Time Employment</u>	<u>Maximum Hours to Carry Forward from one FY to next</u>
< 2 years	08	180
2 < 5 years	09	244
5 < 10 years	10	268
10 < 15 years	11	292
15 < 20 years	13	340
20 < 25 years	15	388
25 < 30 years	17	436
30 < 35 years	19	484
35 or more years	21	532

B. Sick Leave. (TEX. GOV'T CODE ANN. §§ 661.201–.202).

1. Each full-time employee accrues sick leave credit at the rate of eight hours for each month or fraction of a month of employment with the State. A part-time employee accrues sick leave on a proportionate basis. There is no limit to the amount of sick leave that may be accrued or carried forward from one fiscal year to the next.

Hours taken off for medical, dental, and other health-related appointments are considered legitimate claims against sick leave. An employee may not take sick leave after his or her last day of employment.

2. Sick leave with pay may be taken when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty or when the employee is needed to care for and assist a member of the employee's immediate family who is sick. For purposes of taking regular sick leave with pay, the following persons are considered to be members of the employee's immediate family: (a) an individual who resides in the same household as the employee and is related to the employee by kinship, adoption, or marriage; (b) a foster child of the employee who resides in the same household as the employee and who is under the conservatorship of the Department of Protective and Regulatory Services; and (c) a minor child of the employee, regardless of whether the child lives in the same household.

An employee's use of sick leave to care for and assist members of the employee's family who are not described in the previous paragraph is strictly limited to the time necessary to provide care and assistance to a spouse, child, or parent of the employee who needs the care and assistance as a direct result of a documented medical condition.

3. An employee who must be absent from duty because of illness shall notify his supervisor or cause the supervisor to be notified of that fact at the earliest practicable time.

4. To be eligible for accumulated sick leave with pay during a continuous period of more than three working days, an employee absent due to sickness, injury, or pregnancy and confinement shall send to the administrative head of the agency a doctor's certificate 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. The administrative head may require documentation concerning illnesses resulting in absences of three or fewer working days.

5. Upon return to duty after a three-day or more sick leave, the employee shall, without delay, complete the prescribed application for sick leave and submit the application through proper channels to the appropriate approving authority for consideration.

6. The administrative head of the agency may authorize exceptions to the amount of sick leave an employee may take. Such exceptions are authorized on an individual basis after a review of the merits of the particular case.

C. Donation of Sick Leave. (TEX. GOV'T CODE ANN. § 661.207).

1. An employee may donate any amount of the employee's accrued sick leave to another employee of the Court who has exhausted all of his or her sick leave, including any time the employee may be eligible to withdraw from the sick leave pool. An employee may not provide or receive remuneration or a gift in exchange for donated sick leave.
2. An employee who receives donated sick leave may use the donated sick leave for only the following purposes:
 - (a) When sickness, injury, or pregnancy and confinement prevent the employee's performance of duty or when the employee is needed to care for and assist a member of the employee's immediate family who is sick.
 - (b) To care for and assist members of the employee's family who are not described in the previous paragraph is strictly limited to the time necessary to provide care and assistance to a spouse, child, or parent of the employee who needs the care and assistance as a direct result of a documented medical condition.
3. Donated sick leave is taxable to the recipient when the donated sick leave is used. (Rev. Ruling 90-29, 1990-1 C.B. 11).

D. Sick Leave Pool.

1. Statutory Authority. The Court established a Sick Leave Pool Policy and adopted the following policies pursuant to the provisions of chapter 661 of the Texas Government Code.
2. An employee is eligible to use time contributed to the sick leave pool if the employee has exhausted the employee's sick leave because of catastrophic illness or injury or a previous donation of time to the pool. (TEX. GOV'T CODE ANN. § 661.004).
3. Administration of the Pool. The Business Administrator shall serve as Pool Administrator for the Court, will develop policy and procedures to transfer accrued sick leave into and out of the pool, will develop rules and procedures for the operation of the pool, and will develop forms for contributions and usage of the sick leave pool.
4. Procedures and Forms. The procedures for contributing to and requesting leave from the sick leave pool and the applicable forms are available in the Employee Handbook.

E. Family and Medical Leave. (TEX. GOV'T CODE ANN. §§ 661.912–.913).

1. A state employee who has a total of at least 12 months of state service and who has worked at least 1,250 hours during the 12-month period preceding the beginning of leave under this section is entitled to leave under the federal Family and Medical Leave Act (FMLA) (29 U.S.C. §§ 2601, et seq.). While taking leave under the FMLA, an employee must first use all available and applicable annual and sick leave. An employee who is receiving temporary disability

benefits or workers' compensation is not required to first use applicable paid annual or sick leaving while receiving leave under the FMLA.

2. An employee who has been employed for fewer than 12 months by the state or who has worked fewer than 1,250 hours during the 12-month period preceding the beginning of leave under the FMLA is eligible to take a parental leave of absence not to exceed 12 weeks in accordance with this section. While taking leave under the FMLA, an employee must first use all available and applicable annual and sick leave, and the remainder of the leave is unpaid. The leave authorized by this section is limited to, and begins on the date of, the birth of a natural child of the employee or the adoption by or foster care placement with the employee of a child younger than three years of age.

F. Administrative Leave. Administrative leave *can only be* awarded upon receipt of an *annual outstanding performance* evaluation by a supervisor and the approval of the Chief Justice. The maximum allowable award of administrative leave is 32 hours per fiscal year. Annual performance evaluations are generally completed each summer. Awards of administrative leave will be tracked on monthly timesheets. Administrative leave must be used within 12 months of the initial award date. Employees cannot rollover administrative leave beyond the initial 12 months, cannot transfer administrative leave when going to work for another state agency, and cannot be paid for unused administrative leave upon termination or retirement.

Because budget cuts restrict the Court's ability to monetarily compensate employees for *outstanding performance*, the Court implements this leave option to reduce the impact of budget cuts on employee morale. An employee with an outstanding performance evaluation may also opt to receive administrative leave in lieu of one-time merit compensation, if the administrative leave is of greater benefit. Under exceptional circumstances, approved by the Chief Justice, an outstanding employee may receive both a combination of administrative leave and monetary compensation.

G. Miscellaneous Leave Provisions.

1. **Emergency Leave.** A state employee is entitled to emergency leave without a deduction in salary because of a death in the employee's family. For purposes of this rule, the following are considered the employee's family: spouse, parent, brother, sister, grandparent, grandchild, or child of the employee or of the employee's spouse. The administrative head of the agency may grant an employee emergency leave for another reason other than a death in the family if the administrative head determines the employee has shown good cause for taking the emergency leave. (TEX. GOV'T CODE ANN. § 661.902).

2. **Administrative Closures.** Occasionally, the Chief Justice may administratively close the Court or provide for a staff reduction due to weather conditions or other circumstances as determined appropriate. In these instances, such time will not be charged against an employee's accumulated annual or sick leave. Employees who have previously made arrangements to be on leave will not receive credit for the administratively scheduled closure or staff reduction.

3. ***Jury Duty and Court Appearance.*** (TEX. GOV'T CODE ANN. § 659.005).

(a) The time spent by an employee who is called for jury service will not be charged against the employee's accumulated leave, nor will the compensation the employee receives for jury service be deducted from the employee's salary.

(b) An employee who serves as a witness in an official capacity in a judicial proceeding or legislative hearing may not accept or receive a witness fee for the appearance. An employee who appears as a witness in a judicial proceeding or legislative hearing in a nonofficial capacity may, under certain circumstances, be entitled to receive customary witness fees. Before accepting any witness fees or reimbursement for travel and per diem, the employee should consult the Chief Justice.

4. ***Voting.*** All employees are encouraged to exercise their right to vote in all elections. Employees are encouraged to participate in the election process. However, campaigning must take place outside of working hours or while on leave. Employees may not use their position as a state employee in their election activities, nor may any state property be utilized for that purpose. No Court rules will affect any employee's right to vote or rights as a private citizen to express opinions on political subjects or candidates.

If an election is held on a normal work day, and an employee is unable to vote prior to or following normal work hours, the employee may request time off during normal working hours to exercise his or her right to vote. The employee will be granted a reasonable amount of time to accomplish this purpose. (TEX. GOV'T CODE ANN. § 661.914).

5. ***Military Leave.*** (TEX. GOV'T CODE ANN. §§ 437.202, .254; 661.903, .904, .9041).

(a) An employee who is a member of the Texas military forces, a reserve component of the armed forces, or a member of a state or federally authorized urban search and rescue team is entitled to a paid leave of absence from the employee's duties on a day on which the person is engaged in authorized training or duty ordered or authorized by proper authority for not more than 15 workdays in a fiscal year. During a leave of absence, the employee may not be subjected to loss of time, efficiency rating, personal time, sick leave or annual time. When the employee is relieved from duty, the employee is to be restored to the position the employee held when ordered to duty. (TEX. GOV'T CODE ANN. § 437.202).

(b) An employee called to state active duty as a member of the Texas military forces by the governor or other appropriate authority in response to a natural or man-made disaster or because of an emergency is entitled to receive paid emergency leave without loss of military leave under section 437.202 or annual leave. However, an employee who is called to federal active duty as a member of the Texas military forces may not receive the employee's state salary, except as provided by law. (TEX. GOV'T CODE ANN. §§ 437.254, 661.903, .904, .9041).

(c) An employee called to active duty during a national emergency to serve in a reserve component of the armed forces of the United States under Title 10 or 32, United States Code, is entitled to an unpaid leave of absence. An employee on unpaid leave of absence during military duty described in this section continues to accrue state service credit for purposes of longevity pay, annual leave, and sick leave. All aspects of government code section 661.904 apply to a leave taken under this section. (TEX. GOV'T CODE ANN. § 661.904).

6. ***Volunteer Firefighters and Emergency Medical Services Volunteers.*** An employee who is a volunteer firefighter or an emergency medical services volunteer (as defined in Tex. Health & Safety Code § 773.003) is entitled to a leave of absence to attend fire service or emergency medical services training conducted by a state agency or institution of higher education, not to exceed five working days in a fiscal year. (TEX. GOV'T CODE ANN. § 661.905).

7. ***Leave of absence without pay.*** The Chief Justice may grant an employee a leave of absence without pay not to exceed 12 months when the leave would be in the mutual interest of the Court and the employee. Except for disciplinary suspensions, active military duty, and leave covered by workers' compensation benefits, an employee must use all accumulated paid leave entitlements before going on leave without pay status. However, sick leave must first be used only if the employee is taking leave for a reason for which the employee is eligible for sick leave. An employee must formally request leave without pay status and approval of leave without pay must be reflected in a Personnel Action Form. (TEX. GOV'T CODE ANN. § 661.909).

8. ***Other leave.*** Other leave may be available to employees in accordance with the law. (TEX. GOV'T CODE ANN. chapter 661).

H. **Transfer of Leave Credits.** An employee transferring from one state agency to another is entitled to transfer credit for accumulated sick and annual leave to the new state agency if state employment is uninterrupted and if the employee is not paid for the leave.

To transfer either the amount of accrued leave or the rate of leave accrual, the employee must request that each state agency with which the employee was employed send a statement containing the appropriate information regarding length of employment to the Business Administrator. (TEX. GOV'T CODE ANN. § 661.153, .204).

I. **Exceptions to Leave Policy.** Exceptions to the use of sick leave and annual leave may be authorized by the Chief Justice on an individual basis after review of the particular case. Neither annual leave nor sick leave accrues during a leave of absence without pay. Upon returning from an extended leave of absence without pay, an employee will have priority consideration for a comparable job if the employee's original job is not available.