

Chapter 11. Leave and Absences

Leave Records

revised: 08/01/2014

Pursuant to state law and to comply with **records-management** guidelines, the Office of the Attorney General (OAG) shall maintain leave information on each employee. This information includes: a record of absences; leave accruals; leave balances; explanations for certain absences (e.g., **sick leave**); and documentation for certain other absences (e.g., **jury duty**, **military leave**). To maintain such records, the OAG uses an electronic leave system (**e-Leave**).

Responsibilities: Employees

- Every OAG employee is responsible for ensuring that all absences and extra hours worked are entered into the e-Leave system at the end of each **work week** (or as soon as possible).
- All leave must be entered in 15-minute increments.
- When a non-exempt employee works **beyond the assigned work schedule**, a “Leave-Earned Action” must be entered into the e-Leave system (unless related to an approved schedule adjustment).
- When any employee works on a **skeleton-crew state holiday**, a “Leave-Earned Action” must be entered into the e-Leave system.
- Employees who must maintain **legal-billing** records shall ensure that those records do not conflict with their leave records.
- Failure to submit or maintain accurate leave records may be grounds for **corrective or disciplinary action**, up to and including termination of an employee’s **at-will employment**.

Responsibilities: e-Leave Approvers

- The e-Leave approver(s) for each division or office shall promptly review all e-Leave entries for accuracy by the first work day following each **work week** when possible.
- Leave entries shall be designated as approved, if accurate.
- If an approver reviews a leave entry in e-Leave that is inaccurate (e.g., using sick leave for non-sick purposes, entering an incorrect date), the leave approver may:
 - Contact the employee and request that the entry be corrected or cancelled in the e-Leave system and resubmitted.
 - Designate the entry as “Denied”.

- Approvers shall ensure that an appropriate entry is made in place of a canceled or denied entry.
- Approvers are encouraged to make notations in the “Comments” section of a specific entry in e-Leave for certain types of absences (e.g., pattern of tardiness, failure to obtain prior approval for non-sick leave).
- If an employee is unable, or fails, to submit a leave request or leave-earned action into the e-Leave system in a timely fashion, an appropriate e-Leave approver shall make the entry into the e-Leave system for the employee.
- Approvers may seek assistance via **e-mail** from the Human Resources Division regarding e-Leave.

Responsibilities: Division Management

- Division management shall ensure that leave records are accurately maintained.
- Division management must timely notify the Human Resources Division’s designee(s) if an employee falls into an unpaid status.
- Employees shall be allowed to adjust their schedule in the same **work week** to make up absences of less than ten (10) minutes whenever practicable.
- Division management shall take **corrective and/or disciplinary action** against an employee, including an e-Leave approver, who does not maintain accurate leave records.

Annual Leave

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Per state law, employees of the Office of the Attorney General (OAG) accrue a specified amount of annual leave (also known as “Vacation Leave”) each month. Although OAG employees are not required to maintain a minimum annual-leave balance, they are encouraged to maintain a sufficient balance to prevent **unpaid absences**.

The OAG recognizes the benefits of taking a break from work to help maintain a proper work-life balance. Nevertheless, approval of annual leave is not automatic. To use accrued annual leave, an employee must obtain explicit prior approval from division management unless the employee is using annual leave for an absence covered by the **Family and Medical Leave Act**. Employees shall request annual leave as far in advance as possible to ensure workload coverage. While every attempt shall be made by division management to approve a timely leave request, division/regional management has the authority and responsibility to use its discretion to ensure that adequate staff remain on duty in order to perform the work of the division. Failure to get prior approval before using annual leave may lead to an **unauthorized absence**, which could result in **corrective or disciplinary action**. Making plans, such as purchasing airfare, should not be made until approval has been confirmed.

New Hires

Newly hired employees must be especially aware of when and how they can use annual leave:

- A new employee with no previous state employment may take annual leave only after completing six months of continuous employment at the OAG.
- A new employee who transferred directly from another state agency or institution of higher learning and who already had six months of continuous state employment may immediately take any transferred and accrued annual leave.
- A new employee who transferred directly from another state agency or institution of higher learning without having six months of continuous state employment may take any transferred and accrued leave once he/she has six months of state employment.
- An employee with previous state service of at least six months but who had a break in service may take annual leave as it is earned at the OAG.

Accruals

The **Schedule of Annual Leave Accruals** provides the annual-leave accrual rates and the maximum number of hours an employee may carry forward each fiscal year for full-time employees based on years of state service. If an employee's effective state-service date falls on the first calendar day of the month, the increased rate of accrual will begin on that day. Otherwise, the increase will begin on the first calendar day of the following month. Excess annual-leave balances above the amount that can be carried forward shall be credited to the employee's **sick leave** balance on the first day of the next fiscal year.

Part-time Employees

The number of hours accrued and the maximum amount of carry-forward hours allowed for part-time employees will be on a proportionate basis.

Retirees

The annual leave of a **return-to-work ERS retiree** who retired on or after June 1, 2005, and who returns to state employment will be computed based only on the length of state employment after the rehire date -- not the years of total state service. A return-to-work ERS retiree who retired on or before June 1, 2005, should contact **HR-Help** for information on accrual rates.

Paid Status

As long as an employee is in a paid status during any part of a month, the employee shall earn his/her full annual leave accrual for that month.

Unpaid Status

An employee in an unpaid status for a full calendar month cannot accrue annual leave for that month. An employee in an unpaid status on the last workday of the month cannot earn annual leave for the following month(s) until he/she has returned to work.

Availability of Accrual

An employee who is absent on the first workday of the month may not use annual leave accrued for that month until after he/she has returned to work.

Separations

An OAG employee separating from the agency must be aware of rules governing annual leave.

Transfers to Another State Entity

If an OAG employee with at least six months of state service **transfers to another state entity** within 30 days of separating from the OAG, the employee's annual-leave balance shall be transferred to the employee's leave balance at the new state employer.

Lump-Sum Payments

A separating employee with at least six months of state service and who is not transferring to another state entity may receive a lump-sum payment for any unused annual leave. The lump sum payment will be processed within 60 days from the date of separation.

Note: **Retirees** and **involuntarily separated** employees with at least six months of state service may be entitled to lump-sum payments.

Recently Hired Employees

An employee who separates from the OAG before completing six months of continuous state employment and who does not transfer to another state entity cannot receive payment for his/her annual-leave balance upon separation.

Exhausting Annual Leave

Upon approval from division management, a separating employee may elect to remain on the payroll and exhaust all or part of his/her annual leave (and other non-sick leave, such as compensatory time and holiday compensatory time) until the end of the month. The separating employee, however, may not continue on leave into a new month. In addition, a separating employee who is exhausting leave cannot accrue additional **sick leave** or annual leave. In the case of a **direct transfer to another state entity**, leave shall not run past the starting date at the new state employer.

If a separating employee is allowed to exhaust some or part of his/her annual leave, division management is responsible for entering or having the employee enter the absences into the **e-Leave system**.

Holiday Compensatory Time

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Office of the Attorney General (OAG) employees who work on **state skeleton-crew holidays** shall earn holiday-compensatory time (HE in the **e-Leave system**). In rare situations, an employee may earn holiday-compensatory time for working on a **state or national holiday** or an **agency-declared holiday**. An employee who earns holiday-compensatory time must use it within twelve months of the end of the month in which it was earned or the earned time will be forfeited per state law. In addition, holiday-compensatory time may not be transferred to another state agency and cannot be paid when an employee separates from the agency.

Sick Leave

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The Office of the Attorney General (OAG) is committed to complying with all state and federal laws concerning the health of employees, including the **Family and Medical Leave Act** and those laws concerning **accommodations** and **workplace injuries**. Pursuant to state law and as part of this commitment, the OAG provides its employees with paid sick leave to cover illnesses, injuries, and other health conditions that may require employees to be absent from work.

Accruals

- OAG employees begin earning sick leave on the first day of employment.
- Full-time employees accrue sick leave at the rate of eight hours per month.
- Part-time employees accrue sick leave at a proportionate rate.

- As long as an employee is in a paid status during any part of a month, the employee shall earn his/her full sick-leave accrual for that month.
- Unused sick leave carries forward each month.
- There is no limit as to how many sick-leave hours an employee may maintain.

Using Sick Leave

An employee is eligible to use sick leave immediately upon employment with the OAG. Nevertheless, an employee who is absent on the first workday of a month may not use that month's sick-leave accrual until after the employee has returned to work.

Sick leave may be taken for the following reasons:

- Any sickness, injury (including a **workplace injury**), pregnancy, or other health condition that prevents the employee from performing work;
- A medical appointment for diagnostic, preventative, or treatment purposes;
- Sick leave may be taken for the following individuals:
 - The employee;
 - An employee's ill minor child, regardless of where the child lives;
 - An ill individual who is related by kinship, adoption, or marriage *and* who lives in the employee's household;
 - An ill state-certified foster child who resides in the employee's household; or
 - A spouse, child, or parent of the employee who does not live in the employee's household (but medical documentation must be provided).

Employees should also be aware that division management may require:

- the use of accrued sick leave per the **Contagious Illnesses and Other Health Conditions** policy; or the
- changing of sick leave to a type of appropriate leave (such as **annual leave**) if an absence does not qualify for sick leave.

Sick Leave Abuse

Sick leave shall not be used except in a way identified in this policy. Employees are especially reminded that sick leave cannot be used for reasons such as:

- Supplementing exhausted **annual leave**
- Vacations, weddings, family gatherings, and other personal events
- **Outside employment** or **outside legal representation**
- Sick pets
- Non-relative roommates, friends, or live-in companions who are ill or injured
- Bonding or caring for a *healthy* newborn by a father
- Bonding or caring for a *healthy* newborn by a mother after the prescribed post-delivery recovery period.
- Grandparents, aunts, or uncles who do not reside in the employee's household
- Tardiness that is not health-related
- Fitness Activities

Abusing sick leave or providing **false or misleading information** regarding sick leave amounts to **unacceptable conduct** and could lead to **corrective or disciplinary action**. Division management is encouraged to seek advice from the **Director of Human Resources**, or designee, if sick-leave abuse is suspected.

Planned Sick Leave

For planned health-condition events, such as medical check-ups and regular dental appointments, employees are encouraged to obtain prior approval from division management to minimize any disruption that an absence might cause. Division management, however, shall not deny an employee's request to take sick leave for a planned health event without good cause.

Unplanned Sick Leave

An employee who must unexpectedly be absent from work because of a health condition shall notify division management pursuant to the method established by the division. (If the division has no established method, the employee must notify his/her supervisor, or designee, within thirty minutes after the employee's start time, preferably via telephone, and provide a manner to be contacted. If the employee is unable to make the notification, a representative of the employee may do so.) If an absence lasts for more than one day, the employee must provide timely notification each day unless other arrangements are made with division management.

Catastrophic Illnesses & Special Situations

Employees who have exhausted their sick leave and are affected by catastrophic illnesses or other health conditions may be entitled to sick-leave hours under the OAG's **Sick Leave Pool** or **Extended Sick Leave** policies.

Returning to Work

- To ensure proper **leave records**, employees shall promptly enter the sick-leave absence into the e-Leave system upon returning to work with a brief description for the sick leave (e.g., "illness," "injury," "medical appointment") in the comments section for the entry.
- When an employee is absent from work for more than three continuous workdays due to a health condition, division management shall require:
 - Adequate medical documentation supporting the absence; or
 - An adequate explanation in writing concerning the absence.
- Division management shall promptly send any medical documentation or written explanation in an email to **e-leave@texasattorneygeneral.gov**. The employee's User ID and start date of the absence shall be included on the documentation.
- Division management may request documentation for periods of three days or less, particularly if there is a pattern of excessive or suspicious sick-leave use or a potential FMLA condition.

Separations

Separating from the OAG may affect an employee's sick leave:

- With respect to a **transfer between state entities** without a break in service, an employee shall have his/her accrued sick-leave balance transferred to the new state employer.
- An employee separating from the OAG is entitled to have his/her sick leave balance restored if the employee is reemployed by the state within 12 months after the end of the month in which the employee separated from the OAG. Nevertheless, an employee reemployed by the OAG within 30 days of his/her separation forfeits his/her sick-leave balance.
- An employee who **retires** may be entitled to ERS service credit based on his/her sick-leave balance as of the last day of employment.

- Separating employees may donate sick-leave hours to the **Sick Leave Pool**, but such hours cannot be used towards ERS service credit and may not be reinstated except in rare situations.

Payment of Sick Leave

A current employee is not entitled to payment for any sick leave balance during or after employment except in the event of the employee's death. In such a situation, half of the deceased employee's sick-leave balance or 336 hours of sick leave, whichever is less, shall be paid to the employee's estate.

Sick Leave for Educational Activities

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An employee of the Office of the Attorney General may use up to eight hours of accrued sick leave each fiscal year to attend educational activities of the employee's children who are in pre-kindergarten through 12th grade. The employee must give reasonable notice to his/her supervisor(s) of the intention to use this leave. Unless the absence will cause an unreasonable disruption to the division's operations or for other good cause, the request shall be granted. Educational activities involve school-sponsored activities, such as parent-teacher conferences; field trips; classroom programs; school committee meetings; academic competitions; and athletic, music, or theater programs. Absences for approved educational activities shall be entered as "SC" in the e-Leave system.

Family and Medical Leave

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The Office of the Attorney General (OAG) complies fully with the federal Family and Medical Leave Act (FMLA) and the National Defense Authorization Act as well as any similar state statutory leave provisions. These laws recognize the need for balancing family, work, and personal obligations, and entitle eligible employees to certain protections. Along with this policy, employees needing FMLA information can access **The Family and Medical Leave Act Frequently Asked Questions**.

FMLA General Information

The FMLA requires the agency to provide an eligible employee with job-protected leave for:

1. the birth, adoption, or foster placement of a child;
2. a serious health condition of the employee or a spouse, parent, or child of the employee;

3. qualifying events arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member; and
4. the care of a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member.

In addition to the protected leave, other FMLA safeguards include:

1. restoring the employee to the same position upon returning to work, or if the same position is unavailable, the agency must provide the employee with a position that is substantially equal in pay, benefits, and responsibility;
2. protecting the employee's benefits while on leave and reinstating all benefits to which the employee was entitled before going on leave; and
3. continuing the state-paid portion of the employee's monthly insurance premium if the employee is in a Leave Without Pay status for a full calendar month while taking FMLA leave.

Under federal regulations, it is the agency's responsibility to designate leave, paid or unpaid, as FMLA-qualifying, and to give notice of the designation to the employee. **Designation by the OAG of FMLA-qualifying leave is non-discretionary.** Employees are required to provide sufficient information to allow the agency to make a determination of whether an employee's leave is for an FMLA-qualifying event. An employee who fails to reasonably cooperate in this determination process may be subject to disciplinary action, up to and including termination.

Definitions

For purposes of this policy:

"Active duty or call to active duty status" is defined as military service under a call or order to active duty in support of a contingency operation under certain provisions of federal law. [29 C.F.R. §825.126(b)(2) and §825.800]

"As soon as practicable" is defined as at the earliest time that is both possible and practical. [29 C.F.R. §825.302(b)]

"Child" is defined as a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is either under age 18 or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence. [29 C.F.R. §825.122(c)]

“Chronic serious health condition” is defined as an illness, injury, impairment, or physical or mental condition which:

1. requires at least two visits per year for treatment by a health care provider or by a nurse under direct supervision of a health care provider;
2. continues over an extended period of time (including recurring episodes of a single underlying condition); and
3. may cause episodic instead of a continuing period of incapacity (e.g., asthma, diabetes, epilepsy). [29 C.F.R. §825.115(c) and §825.800]

“Complete and sufficient certification” is defined as an FMLA certification that has all required entries of information and that information is clear, unambiguous, and fully responsive. [29 C.F.R. §825.305(c)]

“Contingency operation” is defined as a military operation (a) designated by the Secretary of Defense as an operation in which members of the U.S. armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or (b) that results in the call or order to, or retention on, active duty of members of the U.S. uniformed services under certain provisions of federal law during a war or during a national emergency declared by the President or Congress. [29 C.F.R. §825.1262(b)(3) and §825.800]

“Continuing treatment by a health care provider” is defined as any period of:

1. incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity related to the same condition that also involves: (a) two or more in-person visits to a health care provider within 30 days of the first day of the incapacity, unless extenuating circumstances exist, with the first visit to occur within seven days of the first day of incapacity; or (b) at least one in-person visit to a health care provider, within seven days of the first day of incapacity, that results in a regimen of on-going treatment;
2. incapacity due to pregnancy or any absence for prenatal care;
3. incapacity or treatment for such incapacity due to a chronic serious health condition;
4. incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, severe stroke, terminal stages of a disease); or
5. incapacity or absence to receive multiple treatments (including any recovery time) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider (e.g., physical therapy, dialysis, chemotherapy). [29 C.F.R. §825.115 and §825.800]

“Covered military member” is defined as an employee’s spouse, son, daughter, or parent on active duty or call to active duty status. [29 C.F.R. §826.126(b) and §825.800]

“Covered service member” is defined as an employee’s spouse, son, daughter, parent, or next of kin who is a current member of the U.S. armed forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred in the line of duty on active duty. [29 C.F.R. §825.127(a) and §825.800]

“Extenuating circumstances” are defined as conditions beyond one’s control. [29 C.F.R. §825.115(a)(5) and §825.800]

“Health care provider” is defined as:

1. a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; or
2. a person capable of providing health care services and authorized to practice in the state or country (if outside the United States) in accordance with the law of the respective state or country, but generally limited to the following:
 - a) physician assistants;
 - b) nurse practitioners;
 - c) nurse midwives;
 - d) dentists;
 - e) optometrists;
 - f) podiatrists;
 - g) clinical psychologists;
 - h) clinical social workers;
 - i) chiropractors (only for treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist); and
 - j) Christian Science practitioners. [29 C.F.R. §825.125(a) and §825.800]

“Incapable of self-care” is defined as the requirement for active assistance or supervision to provide oneself with daily care in three or more activities of daily living (e.g., caring appropriately for one’s grooming and hygiene, bathing, dressing, and eating) or instrumental activities of daily living (e.g., cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, and using the post office). [29 C.F.R. §825.122(c)(1) and §825.800]

“Incapacity” is defined as the inability to work, attend school, or perform other regular daily activities due to a serious health condition, treatment for the condition, or recovery from the condition. [29 C.F.R. §825.113(b)]

“In loco parentis” is defined as the circumstances in which a person assumes day-to-day responsibility for the care and financial support of a child, or in the case of an employee, who had such responsibilities for the employee when the employee was a child. A biological or legal relationship is not necessary. [29 C.F.R. §825.122(c)(3)]

“Inpatient care” is defined as an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment connected to such care. [29 C.F.R. §825.114]

“Intermittent Leave” is defined as leave taken in separate blocks of time due to a single FMLA-qualifying event. [29 C.F.R. §825.202(a) and §825.800]

“Next of kin of a covered service member” is defined as the nearest blood relative other than the covered service member’s spouse, parent, son, or daughter. [29 C.F.R. §825.122(d), §825.127(b)(3), and §825.800]

“Outpatient status” with respect to a covered service member is defined as assignment to either a:

1. military medical treatment facility as an outpatient; or
2. unit established for the purpose of providing command and control of members of the U.S. armed forces receiving medical care as outpatients. [29 C.F.R. §825.127(a)(2) and §825.800]

“Parent” is defined as a biological, adoptive, step- or foster mother or father, or any other person who stood *in loco parentis* to an employee when the employee was under the age of 18, or age 18 or older and incapable of self-care because of a physical or mental disability. The term does not include parents-in-law. [29 C.F.R. §825.122(b) and §825.800]

“Parent of a covered service member” is defined as a covered service member’s biological, adoptive, step- or foster mother or father, or any other person who stood *in loco parentis* to the covered service member. The term does not include parents-in-law. [29 C.F.R. §825.122(i), §825.127(b)(2), and §825.800]

“Physical or mental disability” means an impairment that substantially limits one or more of the major life activities of an individual. [29 C.F.R. §825.122(c)(2) and §825.800]

“Reduced work schedule” is defined as a temporary decrease in an employee’s usual number of working hours per work week. [29 C.F.R. §825.202(a) and §825.800]

“Serious health condition” is defined as an illness, injury, impairment, or a physical or mental condition that involves inpatient care or continuing treatment by a health care provider. [29 C.F.R. §825.113(a) and §825.800]

“Serious injury or illness” is defined as a physical or mental condition incurred by a covered service member in the line of duty while on active duty that may render the service member unfit to perform the duties of the member’s office, grade, rank, or rating. [29 C.F.R. §825.127(a)(1) and §825.800]

“Son or daughter” is defined as an employee’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stands *in loco parentis*, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence. [29 C.F.R. §825.122(c) and §825.800]

“Son or daughter of a covered service member” is defined as the service member’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the service member stood *in loco parentis*, and who is of any age. [29 C.F.R. §825.122(h), §825.127(b)(1), and §825.800]

“Son or daughter on active duty or call to active duty status” is defined as an employee’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood *in loco parentis*, who is on active duty or call to active duty status, and who is of any age. [29 C.F.R. §825.122(g) and §825.800]

“Spouse” is defined as a husband or wife as recognized in the Texas Family Code. [29 C.F.R. §82.122(a) and §825.800]

“Unable to perform the functions of the position” is defined as the circumstances in which a health care provider states that an employee is incapable of working, or is incapable of performing any one of the essential duties of the employee’s job. An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform his/her essential job functions during the absence for treatment. [29 C.F.R. §825.123(a)]

There are numerous additional definitions in 29 C.F.R. Part 825 that apply to this policy and are incorporated by reference to the controlling federal regulations.

FMLA-Qualifying Events

An eligible employee, as that term is described below, is entitled to up to 12 work weeks of FMLA leave during a 12-month period measured prospectively from the date the employee first uses any designated FMLA leave for any of the following reasons:

1. the birth of a child to the employee and to care for the newborn child (including any period of incapacity due to pregnancy or for pre-natal care);
2. the placement, with the employee, of a child for adoption or foster care;
3. to care for the employee's spouse, child, or parent with a serious health condition;
4. a serious health condition that makes the employee unable to perform the essential functions of the employee's job; or
5. any qualifying event arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.

Additionally, an eligible employee is entitled to up to 26 work weeks of FMLA leave during a 12-month period measured prospectively from the date the employee first uses this type of leave to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member.

Employee Responsibilities

Foreseeable FMLA Leave

Whenever practicable, an employee must provide at least 30 days advance written notice to his/her Division Chief or designee before FMLA leave is to begin if the need for the leave is foreseeable based on:

1. an expected birth;
2. an expected placement for adoption or foster care;
3. planned medical treatment for a serious health condition of the employee or the employee's spouse, child, or parent; or
4. planned medical treatment for a serious injury or illness of a covered service member.

If 30 days advance notice is not practicable, notice must be given as soon as practicable for the above FMLA-qualifying events.

Whenever military-related FMLA leave is foreseeable due to a qualifying event, an employee must provide advance written notice to his/her Division Chief or designee as soon as practicable regardless of how far in advance the leave is foreseeable.

Notice for foreseeable FMLA leave shall include the reason for the leave, and the anticipated date(s) and time(s) of the leave. The employee shall notify his/her Division Chief or designee and the Special Leave Coordinator in the Human Resources Division (HRD) as soon as practicable if dates or times of scheduled leave change.

When planning his/her own medical treatment, the employee must consult with his/her Division Chief or designee and make a reasonable effort to schedule the treatment to avoid unduly disrupting business operations, subject to the approval of the employee's health care provider for the FMLA-qualifying event.

Unforeseeable FMLA Leave

When the need for FMLA leave is unforeseeable, an employee must provide notice to his/her Division Chief or designee as soon as practicable given the facts and circumstances of the particular FMLA-qualifying event. Except in extenuating circumstances, the employee is expected to provide notice of the leave in accordance with the agency's [Sick Leave Policy](#). Notice may be given by the employee's spokesperson (e.g., spouse, parent, other adult family member, or other responsible party) if the employee is personally unable to do so.

The employee must provide sufficient information for his/her Division Chief or designee to reasonably determine whether the leave is for an FMLA-qualifying event. Calling in "sick" without providing further information will not be adequate when the leave is for an FMLA-qualifying event. In any circumstance in which the Division Chief or designee has insufficient information about the reason for an employee's leave, the Division Chief or designee must further inquire of the employee or the employee's spokesperson to ascertain whether the leave involves an FMLA-qualifying event. The employee must respond to any such inquiries.

FMLA Eligibility and Certification for an FMLA-Qualifying Event

For purposes of the FMLA, an "eligible employee" is one who has been employed by the State of Texas for at least 12 months and who has worked at least 1,250 hours during the 12 months immediately preceding the FMLA-qualifying event. When calculating the required 12 months of state employment for FMLA eligibility, all state employment will be counted and it need not be continuous. The 1,250 hours refer to hours actually worked and do not include any paid or unpaid time off. (Employees who have less than the requisite 12 months of service and 1,250 hours may still be eligible for leave in accordance with the agency's [Non-FMLA](#)

Parental Leave Policy for the birth, adoption, or foster placement of a child under three years of age). Eligibility is determined at the beginning of the first instance of leave for each FMLA-qualifying event in an applicable 12-month period.

Within three business days from the date an employee requests FMLA leave or the date an employee's manager acquires knowledge that an employee's leave may be for an FMLA-qualifying event, the employee's Division Chief or designee must provide written notice to the Special Leave Coordinator in HRD of the employee's possible FMLA-qualifying event. In addition, if a Division Chief or designee has knowledge after the fact that leave has been or is being taken for an FMLA-qualifying reason, he/she must provide the Special Leave Coordinator with written notice of the leave within three business days of acquiring the information.

Within two business days of the notice from the Division Chief or designee, the Special Leave Coordinator shall provide the employee with notice of the employee's eligibility for FMLA leave by giving the employee an *FMLA Notice of Eligibility and Rights & Responsibilities* with a copy of the notice to the employee's Division Chief or designee. The employee must return (e.g., by FAX, scanned e-mail attachment, U.S. mail, etc.) a copy of the *FMLA Notice of Eligibility and Rights & Responsibilities*, signed and dated by the employee, to the Special Leave Coordinator within two business days after the employee receives the notice.

With the *FMLA Notice of Eligibility and Rights & Responsibilities*, the Special Leave Coordinator shall provide an eligible employee with one of the following certification forms depending on the type of FMLA-qualifying event:

1. *FMLA Certification of Health Care Provider for Employee's Serious Health Condition;*
2. *FMLA Certification of Health Care Provider for Family Member's Serious Health Condition;*
3. *FMLA Certification of Qualifying Event for Military Family Leave;* or
4. *FMLA Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave.*

Complete and sufficient documentation must be received by the Special Leave Coordinator in HRD within 15 calendar days from the date the employee received the *FMLA Notice of Eligibility and Rights & Responsibilities* and the accompanying certification form unless extenuating circumstances exist.

If an employee provides notice of a subsequent need for FMLA leave during the applicable 12-month period due to a different FMLA-qualifying event, and the employee's eligibility status has not changed, no additional eligibility notice is required. However, if the employee's eligibility status has changed (e.g., the employee has worked less than 1,250 hours in the 12 months immediately preceding the beginning of the leave for the

subsequent FMLA-qualifying event), the Special Leave Coordinator must notify the employee of the change in eligibility status within five business days of the date the employee provides notice.

If an employee has more than one FMLA-qualifying event, each event requires a separate certification.

Designation of FMLA Leave

The OAG is responsible in all circumstances for determining and designating appropriate leave as FMLA-qualifying. When an employee submits the required FMLA certification to HRD within 15 calendar days from the date the employee received the *FMLA Notice of Eligibility and Rights & Responsibilities*, the Special Leave Coordinator in HRD will review the documentation to determine if the leave is for an FMLA-qualifying event. If the Special Leave Coordinator receives insufficient documentation, he/she will send a written inquiry to the employee or the employee's spokesperson for further information to determine if the leave is for an FMLA-qualifying event. The employee or the employee's spokesperson will be given 10 calendar days from the date of the inquiry to provide the necessary information.

When the certification/documentation is sufficient, the Special Leave Coordinator will send an *FMLA Designation Notice* to the employee with a copy to the employee's Division Chief or designee within five business days from receipt of such documentation. This notice advises the employee:

1. if leave for an FMLA-qualifying event has been approved;
2. if additional information is necessary to determine if the leave is for an FMLA-qualifying event;
3. that the FMLA does not apply in the employee's immediate circumstances; or
4. that the employee has exhausted his/her FMLA leave entitlement in the applicable 12-month period.

If the Special Leave Coordinator has not received FMLA documentation from the employee after 10 calendar days from the date the employee received the *FMLA Notice of Eligibility and Rights & Responsibilities*, the Special Leave Coordinator will send an e-mail reminder to the employee with a copy to his/her Division Chief or designee that HRD has not received FMLA documentation from the employee. Unless extenuating circumstances prevent the employee from returning the FMLA documentation within 15 calendar days from the date the employee received the *FMLA Notice of Eligibility and Rights & Responsibilities*, the employee may be considered in violation of agency policy for the failure to timely return the documentation/certification and may be subject to disciplinary action up, to and including termination.

If the Special Leave Coordinator has not received FMLA documentation from the employee after 15 calendar days from the date the employee received the *FMLA Notice of Eligibility and Rights & Responsibilities*, the Special Leave Coordinator shall notify the employee's Division Chief or designee of the employee's failure to

timely return the documentation. If the Special Leave Coordinator has not received the FMLA documentation from the employee after reasonable notice to the employee's Division Chief or designee, the Special Leave Coordinator shall provide written notice to the Director of the Human Resources Division and the Deputy Attorney General for Administration of the employee's failure to timely return the documentation. The Deputy Attorney General for Administration shall promptly notify the appropriate Deputy Attorney General in an effort to obtain the required FMLA documentation from the employee.

Upon an employee's subsequent request for FMLA leave, if information provided to the employee in the prior FMLA Designation Notice has changed (e.g., the employee exhausts his/her FMLA leave entitlement), the Special Leave Coordinator must notify the employee in writing of the change within five business days of the date the employee provides notice of the need for the subsequent FMLA leave.

Birth of a Child

Eligible employees are entitled to up to 12 work weeks of FMLA leave for pregnancy and/or the birth of a child as follows:

1. Both the mother and father are entitled to FMLA leave for the birth of their child.
2. Both the mother and father are entitled to FMLA leave to be with their healthy newborn child only during the 12-month period immediately following the date of the birth.
3. The mother is entitled to FMLA leave for incapacity due to pregnancy or for her own serious health condition following the birth of the child.
4. A husband is entitled to FMLA leave if needed to care for his: (a) pregnant wife who is incapacitated or needs care for a serious health condition during her prenatal period, or (b) wife following the birth of their child if the wife has a serious health condition.
5. Both the mother and father are entitled to FMLA leave if needed to care for their newborn child with a serious health condition.

A pregnant employee is allowed to use her accrued sick leave for prenatal, delivery, and recovery periods certified by her health care provider. While an employee may take FMLA time off (including annual leave or leave without pay) after the birth of a child, the employee may not use sick leave for post-delivery time unless the employee or the newborn child is ill in accordance with the agency's [Sick Leave Policy](#).

An employee who is an expectant father or the father of a newborn child may use his accrued sick leave in conjunction with the child's anticipated or actual birth only if:

1. he is needed to care for his pregnant wife who is incapacitated or needs care for a serious health condition during her prenatal period;
2. the newborn child is ill in accordance with the agency's [Sick Leave Policy](#); or
3. he is needed to care for his wife following the birth of their child if the wife has a serious health condition.

Adoption or Foster Care of a Child

Eligible employees are entitled to up to 12 work weeks of FMLA leave for placement with the employee of a child for adoption or foster care as follows:

1. An employee may take FMLA leave (i.e., accrued annual leave, other earned leave, or leave without pay):
(a) before the actual placement or adoption of a child if an absence from work is required for the adoption or placement to proceed, and (b) to be with his/her healthy adopted or foster child only during the 12-month period immediately following the date of placement.
2. An employee is entitled to FMLA leave (i.e., accrued sick or annual leave, other earned leave, or leave without pay) if needed to care for his/her: (a) adopted or foster child with a serious health condition, or (b) healthy, newborn, adopted, or foster child if child care is unavailable for the first six weeks after the child's birth.

Military-Related FMLA Leave

Two types of military-related FMLA leave are available to eligible employees:

1. **Active duty leave** entitles an eligible employee to up to 12 work weeks of FMLA leave for a covered military member for one or more of the following qualifying events:
 - a) Short-notice deployment;
 - b) Military events and related activities;
 - c) Child care and school activities;
 - d) Financial and legal arrangements;
 - e) Counseling;
 - f) Rest and recuperation;
 - g) Post-deployment activities; and

h) Other activities that arise out of the covered military member's active duty or call to active duty status provided that the employer and employee agree:

- i) that such leave meets the criteria for a qualifying event;
- ii) to the timing of the leave; and
- iii) to the duration of the leave.

2. **Caregiver leave** entitles an eligible employee to up to 26 work weeks of FMLA leave in a single 12-month period to care for a covered service member recovering from a serious illness or injury incurred in the line of duty while on active duty that may render the service member medically unfit to perform the duties of his/her office, grade, rank, or rating.

If an eligible employee requires military-related FMLA leave, his/her Division Chief or designee must contact the Special Leave Coordinator in HRD for further instructions.

Spouses Employed by the Agency

A husband and wife who are eligible for FMLA leave, and both employed by the agency, are each permitted to take a total of 12 work weeks of FMLA leave during any 12-month period if the leave is taken for the:

1. birth of the employees' child or to care for the child after birth;
2. placement of a child for adoption or foster care, or to care for the adopted or foster child after placement; or
3. care of either of the employees' parents.

When a husband and wife, who are eligible for FMLA leave and both employed by the agency, each take a portion of their respective 12 work weeks of FMLA leave for the birth, adoption, or placement of a child, or to care for a parent, each would be entitled to take the remaining portion of their respective 12 work weeks of FMLA leave for his/her own serious health condition or to care for a sick child.

A husband and wife who are eligible for FMLA leave and both employed by the agency are each permitted to take a total of 26 work weeks of FMLA leave during a single 12-month period for military-related caregiver leave.

Use of Leave

Paid and unpaid leave will be counted toward an employee's FMLA entitlement if it is used for an FMLA-qualifying event. An employee must use all appropriate paid leave prior to the use of unpaid leave for FMLA purposes. However, an employee will not be required to use compensatory time or FLSA overtime for an

FMLA-qualifying event. If the employee chooses to use compensatory time or FLSA overtime, the compensatory time and FLSA overtime will not be counted as part of the employee's FMLA entitlement.

Maximum Duration of FMLA-Protected Leave

Except for military-related caregiver leave, the maximum combination of paid and unpaid FMLA-protected leave shall not exceed 12 work weeks during a single 12-month period. If the FMLA-qualifying event requires the employee to be absent for more than 12 work weeks, the absence will be handled in accordance with the agency's non-FMLA leave policies.

For military-related caregiver leave, the maximum combination of paid and unpaid leave for an FMLA-qualifying event will be limited to 26 work weeks during a single 12-month period. If the FMLA-qualifying event requires the employee to be absent for more than 26 work weeks, the absence will be handled in accordance with the agency's non-FMLA leave policies.

Failure of the employee to report back to work at the end of the prescribed and approved duration of an FMLA-qualifying event, without prior written approval from the employee's Division Chief or designee, may be considered job abandonment which may lead to separation from the agency.

If the employee originally requests less than the maximum allowable leave for an FMLA-qualifying event and the employee subsequently needs an extension to the FMLA leave originally approved, the employee must submit an updated medical certification to the Special Leave Coordinator in HRD prior to the exhaustion of the originally approved leave. **However, in no event will FMLA-protected leave exceed the maximum durations identified in this section.**

Intermittent Leave and Reduced Work Schedule During FMLA Leave

Except for active duty FMLA leave or leave after the birth, adoption, or foster placement of a healthy child, there must be a documented medical need for an employee to be approved for intermittent FMLA leave or a reduced work schedule due to an FMLA-qualifying event. An employee who requests intermittent FMLA leave or a reduced work schedule must provide the Special Leave Coordinator in HRD with a completed *Certification of Health Care Provider* form or other medical documentation that specifically states the need for this type of leave or work schedule. For any planned medical treatment that necessitates intermittent FMLA leave or a reduced work schedule, the *Certification of Health Care Provider* form must state the dates and duration of the treatment(s). The employee must reasonably attempt to schedule such leave or work to avoid disruption of the division's work operations.

Upon prior written notification to the employee's Division Chief or designee, an employee may take active duty FMLA leave intermittently or on a reduced work schedule for one or more of the qualifying events described above. If prior notice is not practicable, the notification must be provided as soon as reasonably possible.

An employee who requests intermittent FMLA leave or a reduced work schedule, after the birth, adoption, or foster placement of a healthy child, must obtain prior written approval for this type of leave or work schedule. After receiving written approval from his/her Division Chief or designee, the employee may return to work on a reduced work schedule and may take intermittent leave, as necessary. The employee must reasonably attempt to schedule such leave or work to avoid disruption of the division's work operations.

The employee's Division Chief or designee may make adjustments to the division's work operations when considering a request for intermittent FMLA leave or a reduced work schedule. This may include temporarily reassigning the employee to an alternative position for which the employee is qualified, and which has equivalent pay, if the alternative position better accommodates recurring periods of leave than the employee's regular position.

Any modified work schedule that includes working at home requires written approval by the HRD Director and Executive Management in accordance with the agency's [Telecommuting Policy](#).

Reinstatement after FMLA Leave

An eligible employee who takes FMLA leave is entitled to be restored to his/her former position or to an equivalent position with equivalent pay, and to other terms and conditions of employment. An employee who has been absent due to a serious health condition must provide certification that he/she is able to resume work. A *Fitness for Duty Report* completed by the employee's health care provider must be submitted to the employee's Division Chief or designee before the employee will be allowed to return to work. If an employee is able to return to work earlier than originally indicated, the employee shall provide as much prior notice as possible, but no less than two business days written notice, to his/her Division Chief or designee before returning from FMLA leave.

Benefit Rights

An employee who takes FMLA leave will not lose any employment benefit accrued prior to the date on which the leave commenced. Nothing in the FMLA, however, entitles an employee to any right, benefit, or position other than one to which the employee would have been entitled had the leave not been taken.

Group Health Coverage

The agency will maintain any group health coverage for the employee on FMLA leave on the same terms as if the employee were at work for the duration of the leave. However, an employee on unpaid leave for an entire calendar month is responsible for timely paying any insurance premium that is regularly deducted from the employee's paycheck.

Insurance Premium Recovery

If an employee elects to separate from employment during or upon completion of unpaid FMLA leave, or if the employee elects not to return to work for a minimum of 30 days, then the agency may recover from the employee the cost of any insurance premiums paid to maintain the employee's coverage. This provision does not apply when the employee's medical condition prevents a return to work or when the employee is unable to return to work for any reason beyond the employee's control. Before or at the beginning of the FMLA-qualifying event, the employee must complete the *FMLA Notice of Eligibility and Rights, & Responsibilities* certifying the employee's understanding of the agency's right to recover the cost of any insurance premium paid by the state to maintain the employee's coverage in group health benefits under certain conditions.

Workers' Compensation and FMLA Leave

Workers' compensation benefits run concurrently with FMLA leave.

Record Keeping

HRD, in conjunction with each Division Chief or designee, shall be responsible for maintaining:

1. records of FMLA leave requested, designated, and used by staff and ensuring that the maximum amount allowable is not exceeded; and
2. medical documentation in a confidential manner.

For further details concerning FMLA rights and responsibilities, or for answers to questions about the application of this policy, an employee may contact the HRD Benefits and Leave Manager.

Non-FMLA Parental Leave

revised: 11/01/2014

An employee of the Office of the Attorney General with less than 12 months of state service or who has worked less than 1,250 hours in the 12-month period immediately preceding the commencement of leave is eligible to take a parental leave of absence, not to exceed 12 weeks, for the:

- 1) birth of the employee's natural child;
- 2) adoption by the employee of a child younger than three years of age; or
- 3) placement with the employee of a foster child younger than three years of age.

The 12-week period begins with the date of birth of the employee's natural child, or the first day the adoptive or foster child is formally placed in the employee's home.

The employee must first use all available and applicable paid vacation and sick leave while taking non-FMLA parental leave. The employee may also use any accrued compensatory time or overtime. If the amount of paid leave is insufficient to cover the entire period of time taken by the employee for non-FMLA parental leave, the employee will be in a leave-without-pay status for the remainder of the time taken.

Notification

An employee who anticipates using non-FMLA parental leave shall notify his/her regional/division management at the earliest possible opportunity to allow ample time to plan for coverage of the employee's duties for the expected duration of the absence.

If an employee plans to return before the expected return date, he/she shall notify his/her regional/division management as soon as possible.

FMLA Distinguished

Employees with 12 months of state service and who have worked for 1,250 hours during the preceding 12 months shall refer to the [FMLA policy](#).

Special Sick Leave Resources

revised: 01/01/2016

The Office of the Attorney General (OAG) provides resources to assist eligible employees in need of sick leave:

- Sick Leave Pool
- Extended Sick Leave
- Sick Leave Donations to Individual Employees

Sick Leave Pool

The Office of the Attorney General (OAG) recognizes that a catastrophic illness or injury can exhaust the accumulated paid leave of an affected employee. To help employees in such situations, the OAG has established a sick leave pool consisting of sick leave hours voluntarily donated by OAG employees.

An employee may receive up to 720 sick leave hours from the sick leave pool if the employee has exhausted all accumulated paid leave and has a catastrophic illness or injury affecting himself/herself or a member of his/her "immediate family," as defined in the **Sick Leave** policy. A catastrophic illness or injury amounts to a severe condition or combination of conditions affecting mental or physical health and requiring the services of a licensed health care practitioner.

The Director of Human Resources is responsible for managing the sick leave pool.

Sick Leave Pool Donations

Current Employees: To donate sick leave to the pool, a current employee must submit a **Sick Leave Donation Form** to his/her division leave liaison. Sick leave pool donations must be in increments of eight hours. The leave liaison shall forward the properly completed form to **SickLeavePool@texasattorneygeneral.gov**. Upon receipt of a Sick Leave Pool Form, the Sick Leave Pool Coordinator shall credit the pool with the donation and shall deduct a corresponding amount from the donating employee's sick leave balance. Current employees who donate sick leave to the pool cannot reclaim the leave unless they exhaust their sick leave balance in the same fiscal year as the donation; only the number of hours donated that fiscal year can be reclaimed.

Separating, Non-Retiring Employees: Employees who leave state employment are especially encouraged to donate to the pool. Donations must be made in increments of eight hours and can be made up to 12 months after separation. An employee who separates from the OAG and donates sick leave to the pool is not eligible to have donated hours restored if he/she returns to state employment. A Sick Leave Donation Form shall be provided to separating employees. Completed separation forms shall be sent to **HR-Help@texasattorneygeneral.gov**.

Retiring employees: These employees may donate accumulated sick leave to the pool in any amount. However, retiring employees may not receive additional **Employees Retirement System** retirement credit for hours donated to the sick leave pool. A Sick Leave Donation Form shall be provided to separating employees. Completed separation forms shall be sent to **HR-Help@texasattorneygeneral.gov**.

Sick Leave Pool Withdrawals

An employee wanting to request sick leave from the pool must submit a **Sick Leave Pool Form** to SickLeavePool@texasattorneygeneral.gov. The employee shall provide a statement from his/her licensed health care practitioner(s) treating the illness or injury for which the sick leave pool hours are being requested. The statement(s) must provide sufficient information regarding the illness or injury, including a description of the condition, the prognosis, and the anticipated date of return to duty. The actual hours requested by the employee must not conflict with information provided by the licensed health care practitioner(s).

The Special Leave Coordinator shall brief the Director of Human Resources on the request. The Director of Human Resources may form a committee to review the request and provide a recommendation.

In reviewing the request, the following factors shall be considered:

- the illness or injury;
- the information provided by the employee on the Sick Leave Pool Form;
- the documentation from the licensed practitioner(s);
- the employee's current accumulated leave balances; and
- the amount of sick leave available in the pool.

For employees not protected by the **Family and Medical Leave Act**, the Director of Human Resources or designee(s) shall also consider the following factors:

- the duration of the projected absence;
- the impact of the projected absence on the division or agency;
- the employee's prior use of leave;
- the employee's past performance and conduct; and
- whether the employee has previously received sick leave pool hours.

The Director of Human Resources may grant a maximum of 240 hours from the sick leave pool per request. The employee may reapply for additional sick leave pool hours if the amount previously granted is insufficient to cover the employee's absence(s). In no event shall the total sick leave pool hours allocated to an eligible employee for any one catastrophic illness or injury exceed 720 hours or one-third of the agency's sick leave pool balance, whichever is less. The Director of Human Resources may grant leave from the sick leave pool for use on an intermittent basis.

If sick leave pool hours are granted, the Director of Human Resources shall credit the employee with the approved sick leave pool hours and shall notify the employee and his/her division management.

An employee using sick leave pool hours shall still accrue annual leave and sick leave at the beginning of each month. Nevertheless, an employee who is on leave on the first working day of a month may not use the leave he/she accrues for that month until he/she returns to active duty. At that time, the employee must exhaust the newly accrued leave prior to using additional sick leave pool hours.

An employee who receives a denial of a request for sick leave pool hours may resubmit the request with additional documentation.

Limitations and Disclaimers

- This policy amounts to a full notification to all employees of the existence and availability of the agency's sick leave pool.
- The OAG is not required to personally inform any OAG employee of the sick leave pool.
- Granting sick leave from the sick leave pool does not alter an employee's **at-will employment** status and/or create a contract between the employee and the OAG.
- An employee who receives sick leave hours from the pool may use such hours only for the catastrophic illness or injury for which they were granted.
- Sick leave granted from the sick leave pool can be revoked at any time, including upon separation from the agency or when the employee is released to return to work.
- Employees not protected by the **FMLA** are not guaranteed the same job upon returning to work or to other protections covered by the FMLA.
- Providing **false or misleading information** to obtain sick leave pool hours and/or other abuse may lead to the revocation of sick leave pool hours, an investigation, disciplinary action, and/or criminal prosecution.
- The estate of a deceased employee is not entitled to payment for unused sick leave assigned from the pool.
- **Job-related illnesses or injuries** covered by Workers' Compensation do not qualify an employee for leave from the sick leave pool.
- Applying for sick leave under the sick leave pool authorizes the OAG to contact the employee's health care practitioner(s) to verify information provided in the employee's request and attachments.
- Sick leave donated to the pool may not be designated for the use by a particular employee.
- Unused donated sick leave pool hours shall be returned to the sick leave pool.

Please refer to **Comparison of Sick Leave Pool and Extended Sick Leave**.

Return to Work

If a licensed health-care practitioner releases an employee to return to work or does not extend the duration of the absence, the employee shall return to work as provided in the medical documentation. Otherwise, the employee may be considered to have abandoned his/her position. Separation from the agency may follow.

Extended Sick Leave

The Office of the Attorney General (OAG) recognizes that in very rare situations, employees facing a personal or family health crisis may not have any accumulated paid leave and may not be eligible to obtain sick leave through the Sick Leave Pool. In such situations, the First Assistant Attorney General or designee may grant extended sick leave after a review of the individual's particular circumstances.

A regular, full-time employee who has exhausted all other forms of paid leave is eligible to request extended sick leave. Leave may be granted for any serious physical/mental condition of an employee or the employee's immediate family, as defined in the **Sick Leave** policy that requires inpatient care or the services of a licensed health care practitioner for a prolonged period of time.

Requesting Extended Sick Leave

An employee wanting to apply for extended sick leave shall submit an **Extended Sick Leave Request Form** to the Director of Human Resources or designee. The request shall be accompanied by a statement from a licensed health care practitioner(s) treating the specified illness or injury. The statement must provide sufficient information regarding the illness or injury such as a description of the condition, the prognosis for recovery, and the anticipated date of return to duty.

The Director of Human Resources or designee shall inform the employee's Division Chief that the employee has requested extended sick leave. Additionally, the Director of Human Resources or designee shall promptly forward the properly completed Extended Sick Leave Request Form and accompanying medical information to the First Assistant Attorney General or designee for review and approval/denial.

In reviewing the request, the following factors shall be considered:

- the physical or mental condition;
- whether inpatient care is/was required;
- the medical documentation from the treating health care practitioner(s);
- the employee's performance;
- the employee's past use of leave; and

- the amount of leave requested.

The First Assistant Attorney General or designee shall not grant more than 80 hours of extended sick leave per request. Extended sick leave may be granted for consecutive days, intermittent absences, or specific, non-consecutive days.

An employee may reapply for additional extended sick leave hours. Subsequent extended sick leave requests are subject to the same eligibility criteria as the original. In no event shall the extended sick leave hours allocated to an eligible employee for any one condition exceed 720 hours.

The Director of Human Resources shall advise the employee, his/her leave liaison, and his/her Division Chief of the approval/denial decision, including the approved number of hours, if applicable. Additionally, the Director of Human Resources shall credit the employee with any approved extended sick leave hours.

The employee shall use extended sick leave hours only for the condition for which they were granted. The employee shall be treated as if he/she were absent using earned sick leave. An employee using extended sick leave hours shall, therefore, still accrue annual leave and sick leave at the beginning of each month. Nonetheless, an employee who is on leave on the first working day of a month may not use the leave he/she accrues for that month until he/she returns to active duty. At that time, the employee must exhaust the newly accrued leave prior to using additional extended sick leave hours.

Return to Work

If a licensed health care practitioner releases an employee to return to work or does not extend the duration of the absence, the employee shall return to work as provided in the medical documentation. Otherwise, the employee may be considered to have abandoned his/her position. Separation from the agency may follow.

Limitations and Disclaimers

- This policy amounts to a full notification to all employees of the existence and availability of extended sick leave.
- The OAG is not required to personally inform any OAG employee of extended sick leave.
- Granting extended sick leave does not alter an employee's **at-will employment** status and/or create a contract between the employee and the OAG.
- An employee who receives extended sick leave hours may use such hours only for the medical condition for which they were granted.

- Extended sick leave granted can be revoked at any time, including upon separation from the agency or when the employee is released to return to work.
- Providing false or misleading information to obtain extended sick leave hours and/or other abuse may lead to the revocation of extended sick leave, an investigation, disciplinary action, and/or criminal prosecution.
- The estate of a deceased employee is not entitled to payment for unused extended sick leave hours.
- **Job-related illnesses or injuries** covered by Workers' Compensation do not qualify an employee for extended sick leave.
- Applying for extended sick leave authorizes the OAG to contact the employee's health care practitioner(s) to verify information provided by the employee.
- Unused extended sick leave hours will be reclaimed by the OAG.
- Employees who receive extended sick leave but are not covered by the **Family and Medical Leave Act** (FMLA) are not guaranteed the same job upon returning to work or to the other protections covered by the FMLA.
- Exceptions to this policy may be granted in writing by the First Assistant Attorney General.

Please refer to **Comparison of Sick Leave Pool and Extended Sick Leave**.

Sick Leave Donations to Individual Employees

An OAG employee may donate accrued sick leave to an individual OAG employee who has exhausted his/her sick leave, including any sick leave from the Sick Leave Pool and any awarded Extended Sick Leave.

An employee who donates sick leave:

- shall donate on a voluntary basis;
- shall not accept a gift, benefit, or payment in exchange for a sick leave donation; and
- cannot retract a submitted donation.

An employee who receives donated sick leave:

- shall not provide a gift, benefit, or payment in exchange for a sick leave donation;
- shall use the donated sick leave only for purposes identified in the agency's **Sick Leave** policy;
- shall not receive service credit in the Employees Retirement System of Texas for any donated sick leave that is unused on the last day of his/her employment;
- shall not receive notice from the Human Resources Division of the identity of the donor;
- shall not redonate any sick leave received as a donation; and

- may refuse a donation.

Because the donation of sick leave hours must be done voluntarily, solicitation of donations is discouraged. Furthermore, solicitation of leave that is disruptive to the workplace is unacceptable and may lead to **corrective or disciplinary action**. Unacceptable solicitation includes communications that exert pressure or play on people's emotions. A solicitation made on behalf of others shall not violate the agency's **Sensitive Personal Information** policy.

To ensure consistency and avoid even the appearance of impropriety, donations from a supervisor or manager to his/her subordinates, or from an employee to a supervisor or manager in the employee's chain of command, shall be reviewed and approved by the First Assistant Attorney General or designee.

To donate sick leave to an individual OAG employee, a current OAG employee must submit a **Sick Leave Donation Form** to e-leave@texasattorneygeneral.gov. Upon receipt of a Sick Leave Donation Form, the appropriate HRD representative shall credit the individual employee with the donation and shall deduct a corresponding amount from the donating employee's sick leave balance. Any donated sick leave hours that are refused by the recipient or remain unused at the time a recipient employee separates agency employment shall be credited to the Sick Leave Pool. If the intended recipient of a donation of sick leave hours is not eligible to receive it prior to his/her separation, the sick leave will be donated to the agency sick leave pool. Having sick leave, including donated sick leave, does not affect an employee's at-will employment status.

Emergency Leave: Death of Employee

revised: 08/01/2014

In the unfortunate and rare circumstance that an employee of the Office of the Attorney General (OAG) dies while employed, the deceased employee's division management shall promptly notify **Executive Administration** and the **Director of Human Resources** of the employee's death and provide any relevant information. Division management shall coordinate with the surviving family the transfer of personal effects and shall submit a final **personnel action form** to the Human Resources Division.

The First Assistant Attorney General or designee may grant up to four hours of **emergency leave** to employees who attend the funeral or memorial service of the deceased employee. Division management shall submit a request for such emergency leave to the **Director of Human Resources** who shall forward the request to Executive Administration. If approved, the Human Resources Division shall make appropriate entries into the **e-Leave** system.

If the death resulted from an **injury in the workplace**, worker's compensation reporting procedures shall be followed.

Emergency Leave: Death in Family

revised: 05/01/2013

An employee is eligible for Emergency Leave due to the death of the employee's spouse, child, parent, sibling, grandparent, or grandchild or a child, parent, sibling, grandparent, or grandchild of the employee's spouse. For the purpose of this policy, the term sibling includes an employee's stepbrother or stepsister. The employee, however, is not eligible for this leave if he/she is in an unpaid absence status at the time the Emergency Leave is to commence.

When an employee is absent from work due to a covered death, a leave request for Emergency Leave (EM) must be entered into the e-Leave system. The request must clearly provide the family relationship of the deceased to the employee in the comments section. Verification of the need for the leave may be required. Division management may grant a maximum of three days of Emergency Leave. If out-of-state travel is involved, an additional two days may be granted at the discretion of division management.

If extenuating factors exist, additional time may be requested in writing to the employee's division chief or designee and appropriate Executive Deputy. The division chief or designee and Executive Deputy shall review the request and submit it with their recommendation to the First Assistant Attorney General or designee for approval or denial. After approval or denial, the documentation shall be forwarded to the Human Resources Division (HRD), which shall notify the Executive Deputy, division management, and employee of the decision. HRD shall retain the relevant documentation for entry into the e-Leave system.

Emergency Leave: Other

revised: 09/01/2017

The First Assistant Attorney General may grant paid Emergency Leave for any reason determined to be good cause. A request for Emergency Leave must be submitted in writing on an **Emergency Leave Request** form by the employee to his/her division chief, who shall forward it to the appropriate Executive Deputy. The request must clearly provide the reason(s) for the leave and must include the specific date(s) for which the Emergency Leave is requested. Verification of the need for the leave may be required. Emergency Leave may only be granted if the First Assistant Attorney General has a good faith belief that the employee will return to his/her position with the agency on expiration of the period of emergency leave.

The division chief, Executive Deputy, and Deputy Attorney General for Administration shall review the request and forward it with their recommendation to the First Assistant Attorney General for approval or denial. After approval or denial, the documentation shall be forwarded to the Human Resources Division (HRD), which shall notify the Executive Deputy, the division chief, and employee of the decision. HRD shall retain the relevant documentation for entry into the e-Leave system. This leave may not be used to extend the active employment status of an employee beyond the established separation date or for the purpose of severance or settlement with a separating employee.

Emergency Leave: Leave During Agency Investigation

revised: 09/01/2017

The Office of the Attorney General may need to conduct investigations when needed. The First Assistant Attorney General may grant paid leave to an employee in order to conduct an investigation into an act or event such as the following:

- Sexual harassment
- Violence or threats in the workplace
- Fraud, unlawful conduct, or egregious abuse of authority
- Possible indecent, immoral, or unethical behavior by an employee

A request for Investigation Leave must be submitted in writing on an Emergency Leave Request form by division management or the Human Resources Division (HRD). HRD is responsible for entry of Emergency Leave: Investigation Leave into the e-Leave system.

Leave for Emergency Services Volunteers

revised: 08/01/2014

The Office of the Attorney General (OAG) commends OAG employees who are able to serve as volunteer firefighters or emergency medical services (EMS) volunteers outside of their employment at the OAG. For purposes of this policy, an EMS volunteer is an unpaid member of an organized EMS entity that provides emergency pre-hospital care.

This policy does not apply if compensation is received for performing emergency services; in such situations employees shall complete an **outside employment** request.

Training

An OAG employee who serves as a volunteer firefighter or an EMS volunteer may attend fire service or EMS training conducted by a state agency or institution of higher education for up to five working days per fiscal year without a deduction in salary. To request paid leave to attend training, the employee shall: (1) notify his/her supervisor in advance of taking the leave, and (2) submit a written request to division management with relevant information, including the sponsor and duration of the training. If the training is conducted by a state agency or institution of higher learning and if the absence will not unreasonably affect the productivity of the OAG, division management may approve the request. Division management may consult with the **Director of Human Resources**, or designee, for guidance.

Upon completion of the training, the employee shall send a certificate of completion and documentation of the approval to e-Leave@texasattorneygeneral.gov. The OAG shall not compensate the employee for any expenses involved in attending the training. Volunteers, however, may receive reimbursements (e.g., travel) from the entity for which he/she volunteers to attend training or respond to emergencies.

Emergency Responses

If an employee is requesting to be absent from work to respond to an emergency fire or EMS situation, the employee must: (1) notify his/her supervisor of the emergency situation as soon as possible; (2) indicate the expected duration of the absence; (3) obtain approval for the absence; and (4) report back to work as soon as possible. The request shall not be approved if the absence will unduly disrupt OAG business. Once the employee returns, the employee or division management shall forward relevant documentation regarding the absences to e-Leave@texasattorneygeneral.gov. The amount of paid leave approved for any one day cannot exceed the amount of scheduled hours not worked by the employee on that day.

Blood and Platelet Donation Leave

revised: 08/01/2014

Employees of the Office of the Attorney General may take up to two hours of paid leave to donate blood or up to four hours of paid leave for platelet donations. An employee may be allowed a maximum of four absences per fiscal year for the donation of blood or blood platelets, which must be made at a blood bank or center of the employee's choice. This leave must be approved in advance by division management. Requests for absences that could cause a disruption to agency or division operations may be denied. Upon return from an approved absence to donate blood or blood platelets, the employee must provide division management with a donor's receipt or other proof of donation, which division management shall promptly email to e-leave@texasattorneygeneral.gov for documentation purposes. In addition, division management shall

ensure that leave for the absence is entered into the e-Leave system. The leave code shall be entered as DB, and a notation as to whether the donation was for blood or blood platelet shall be made in the comment section.

During state or national disasters, the Attorney General, or designee, may grant additional hours of paid **emergency leave** to allow employees to donate blood. Division management shall require advance notice and proof of participation upon the employee's return. Such documentation shall be forwarded to **e-leave@texasattorneygeneral.gov** for entry into the e-Leave system.

Donating blood during an agency-sponsored blood drive does not require using leave; does not need to be entered into the e-Leave system; and does not count against the four absences allowed for blood or blood platelet donations. Nevertheless, employees wanting to participate in agency-sponsored blood drives must get prior approval from division management to prevent or minimize disruption to agency or division operations.

Military Leave

revised: 09/01/2017

The Office of the Attorney General (OAG) supports its employees who serve in the military and their use of appropriate military-related leave. State and federal law provide employment and re-employment rights to individuals who are called to military service. These laws provide specific job and income protection, as well as a means for employees to secure time off when called to military service.

Leave of Absence

A state employee called to active duty is entitled to a leave of absence from state service as authorized by proper authority without the loss of position, seniority, accumulated leave, diminished performance evaluation, pay status, work schedule including shift, and available group insurance benefits. There is a 5-year-cumulative total of military service an employer is required to support.

Texas Military Forces Called to Active Duty by the Governor

A state employee called to active duty in the Texas Military Forces by the Governor is entitled to unlimited emergency leave as long as the employee is on active duty. This time does not count against military leave or annual leave. Essentially, an employee remains a state employee with full benefits.

Military Leave with Pay

All military leave, other than active duty in the Texas Military Forces as called by the Governor, is subject to a maximum of 15 days of paid military leave per federal fiscal year (October 1 through September 30). If the employee does not use the 15 days of military leave in a federal fiscal year, the employee is entitled to carry the balance forward to the next federal fiscal year provided the military balance does not exceed 45 work days.

After exhausting the 15 days of paid military leave, the employee may use accrued vacation leave, state compensatory leave, administrative leave for outstanding performance, holiday comp time or FLSA overtime to the extent available or be placed in a leave without pay status, or a combination of the two, for the remainder of the active duty period.

The 15 days of leave are granted to:

- Members of the uniformed services for:
 - active duty training (annual training or special schools)
 - inactive duty training (drills - usually on weekends)
- Texas Military Forces members

When a military obligation is less than 31 days, an employee is authorized eight (8) hours recoup time before and after performance of the military duties or military training. This time may also be charged to the 15 days or other available leave, if any. Example: An employee may be scheduled on a Friday to take a convoy to a specific site. If significant travel is required, the employee may need to be released early on the day before training in order to accommodate the request for travel and reasonable rest. The employee is to return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel home plus an 8 hour rest period.

Leave for Pay for Physical Examination

In addition to the 15 days of leave, the OAG shall grant emergency leave for a required physical examination relating to membership in the uniformed services.

Using the 15 Military Leave Days

A state employee is entitled to 15 days of paid military leave regardless of whether or not he/she is currently in a leave without pay status. An employee called to active duty may select to use a portion of the 15-day allowance each month in order to continue insurance benefits and retirement contributions. The employee should contact a benefits coordinator in the Human Resources Division and/or the Employees Retirement

System (ERS) to discuss their rights and responsibilities for retaining insurance coverages and retirement service while on active military duty.

Responsibility: Notification of Service for Full Pay or Differential Pay

Effective December 17, 2001, the agency approved the initiative of paying emergency leave up to the amount needed to make up the difference between each employee's gross military pay and gross state salary, when the employee's military pay is the lower of the two. Employees called to active military duty have the option to accept or decline this emergency leave based on individual circumstances, such as the impact on their retirement and group insurance benefits.

The OAG shall require that the employee, or an appropriate officer of the uniformed service in which such service is performed, provide written or verbal notice of such service claimed for military leave with pay. For periods that are eligible for military leave with emergency differential pay, the agency shall require the employee to provide a copy of their Leave and Earnings Statement or a similar document covering the period eligible for differential pay.

Retention and Continuation of Benefits During Leave with Pay

The employee may choose to retain or exhaust his/her balance of vacation leave, comp time, FLSA overtime, holiday comp time, or administrative leave for outstanding performance. During a paid military leave of absence, an employee will continue to accrue vacation and sick leave, along with state service credit.

Emergency differential pay does not meet the statutory definition of "compensation" for retirement purposes. Thus, retirement contributions shall not be reported to the ERS on differential pay. Retirement membership service credits shall be granted State employees for all required periods of active military service.

Time served in active military status will also count towards satisfying the six continuous months of service requirement for taking vacation leave and for Family Medical Leave Act (FMLA) eligibility once the employee returns to work.

Military Leave Without Pay

Military leave without pay shall be granted for all uniformed service duty that is not covered by military leave with pay. Among the reasons are:

- extended active duty for a period not to exceed five years plus any additional service imposed by law (see note below);

- full time National Guard duty (usually a 3-year contract);
- initial active duty for training (initial enlistment);

The following absences may be taken as leave without pay or as available vacation leave or a combination of the two, at the employee's option:

- duties resulting from disciplinary action imposed by military authorities;
- inactive duty training (drills) performed for the convenience of the member, such as equivalent training, split unit assemblies, make-up drills, etc.

Agencies are not required to excuse an employee for incidental military activities such as volunteer work at military facilities (not in duty status), unofficial military activities, etc.

Note: Service in the uniformed services, except the types of service listed below, counts toward the cumulative 5-year limit of military service a person can perform while retaining re-employment rights:

- Unable (through no fault of the individual) to obtain release from service or service in excess of 5 years to fulfill an initial period of obligated service;
- Required drills and annual training and other training duty certified by the military to be necessary for professional development or skill training/retraining; or
- Service performed during time of war or national emergency or for other critical missions/contingencies/military requirements.

Additional Periods of Military Leave Without Pay

Leave without pay shall also be granted in other situations, including but not limited to, the following:

- 1) While awaiting entry into active duty, such period as may be reasonable to enable the employee to address personal matters prior to such extended active duty.
- 2) The period immediately following eligible period(s) of active duty, as defined under "Reinstatement From Military Leave Without Pay" of this policy, while reinstatement with State government is pending, provided the employee applies for such reinstatement within the time limits defined. (Note: It is the employee's responsibility to apply for reinstatement within the time limit defined.)
- 3) Employees hospitalized for, or convalescing from, an injury or illness incurred in, or aggravated during the performance of extended active duty, except that such period shall not exceed two years beyond their release from extended active duty under honorable conditions. Also, the employee shall be entitled to leave

without pay for the period from the time of release by the physician until actually reinstated in State employment, provided the employee applies for such reinstatement within the time limits defined.

Employee Responsibility

The employee or an appropriate officer of the military service in which such service is or is to be performed shall provide written or verbal notice of such service as soon as it is known. The employee shall be responsible for returning, or making application for reinstatement, within the time limits defined under "Reinstatement from Military Leave Without Pay."

Retention and Continuation of Benefits During Leave Without Pay

While in leave without pay (LWOP) status, an employee may continue insurance benefits as long as the employee maintains payment to ERS for any obligating premiums. Additionally, such an employee will accrue annual leave and sick leave which will become available to use upon the employee's return. The employee will also continue to receive retirement service credit for the time in which he/she is in military LWOP status. Current law allows employees to establish up to 60 months of retirement credit for active military duty.

When the employee is not paid by the State, contributions to the employee's retirement account stop and credit for service is not granted, but the employee can purchase credit with his/her military service. The employee in LWOP status becomes a non-contributing member but his/her account continues to draw interest. For more information contact ERS at (512) 867-7711 or toll-free (877) 275-4377.

Reinstatement from Military Leave Without Pay

The time limit for submitting an application for re-employment or reporting back to work depends upon the length of uniformed service. If reporting back or submitting an application for re-employment within the specified periods is impossible or unreasonable through no fault of the employee, the employee must report back or submit the application as soon as possible thereafter. The service duration and periods for returning or applying for re-employment are as follows:

- 1) less than 31 days, must return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel home plus an 8-hour rest period;
- 2) more than 30 days but less than 181 days, must submit a written or verbal application for re-employment with the agency not later than 14 days after the completion of the period of service; or,
- 3) more than 181 days, by submitting an application with the agency not later than 90 days after the completion of the period of service.

Reinstatement shall be made if the employee:

- 1) separated/discharged from military service under honorable conditions, and
- 2) reports to work or applied for reinstatement within the established time limits.

Reinstatement shall be to the position the employee would have likely achieved had he or she remained continuously employed. The employee will also receive any promotion or salary increase for which he or she is otherwise eligible. If the period of uniformed service was in excess of 180 days, then the employee shall be entitled to reinstatement to the position last occupied immediately prior to the period of military service, or one of like seniority, status and pay with the OAG or with another State agency. Re-employment shall be effective as promptly as possible under the circumstances. For example, some situations may require a two-week delay to allow for notice to the substitute employee.

If, during military service, the employee incurs or aggravates a disability during uniformed service, then to the extent that the duties of the vacated position cannot be performed, the employee shall be reinstated to a position most nearly comparable to the vacated position, with duties compatible with the disability and without loss of seniority.

The employee's salary upon reinstatement shall be based on the salary rate applicable to the position in the job classification that the employee occupied immediately prior to military leave. In no case will the reinstated employee's salary be less than when placed in a military leave status, unless the employee's job classification is changed as an accommodation.

If the employee was in trainee status at the time of military leave, the addition of trainee adjustments may be considered, at the discretion of the agency head, if it can be determined that military experience was directly related to development in the area of work to be performed in the State position. The addition of trainee adjustments must be made if it can be shown that progression within or through such status is based merely upon the passage of time with satisfactory performance.

Note: It is assumed that an employee had at least satisfactory performance when placed on military leave; therefore, any cost-of-living adjustment should be included in the reinstatement pay. The addition of career growth adjustments or performance bonuses is determined in the same manner as any other employee on leave without pay.

Medical and Mental Health Care Leave for Veterans

An employee of the Office of the Attorney General who is a veteran and eligible for health benefits under a program administered by the Veterans Health Administration of the United States Department of Veterans

Affairs (VA) may be granted up to 15 days of paid military health care leave each fiscal year. Eligible employees may use this leave to obtain medical or mental health care administered by the Veterans Health Administration of the United States Department of Veterans Affairs, including physical rehabilitation.

The First Assistant Attorney General may grant additional days of military health care leave as determined appropriate for the employee.

Division management may request documentation to ensure leave used does qualify for the leave allowed in this section. An employee who is granted this leave to obtain medical or mental health care administered by the VA, including physical rehabilitation shall enter Military Medical (MM) leave into the e-leave system.

Who to Contact with Questions

Should you or your staff have questions regarding this or other military leave issues, please contact the Special Leave Coordinator in the Human Resources Division.

Injury Leave for Peace Officers

revised: 06/01/2017

A peace officer of the Office of the Attorney General (OAG) who is absent from work due to an injury sustained while performing law enforcement duties on behalf of the OAG may be entitled to paid leave.

To be eligible for paid injury leave, the OAG peace officer or family representative must submit the following to the agency's Special Leave Coordinator within 30 days of the injury:

- a written explanation of the injury
- medical documentation supporting the injury
- an estimated return-to-work date from a licensed physician
- **Request for Emergency Leave: Other form**

Once this documentation is received and reviewed by the agency's Special Leave Coordinator, the documentation shall be forwarded to the Director of Law Enforcement for review. If the officer's own gross negligence contributed to the officer's injury or if the injury was related to the performance of routine office duties, the request must be denied. The Director of Law Enforcement shall inform the Special Leave Coordinator of the decision. If approved, the Special Leave Coordinator shall code any absence related to the injury as Emergency Leave: Other.

Peace Officers should be aware of the following information:

- If the estimated return-to-work date changes, the peace officer must submit a new Request for Emergency Leave: Other form along with a new estimated return-to-work date from a licensed physician.
- Paid injury leave under this policy may not extend beyond one year after the date of the injury.
- While an OAG peace officer is on paid injury leave, the officer may also receive approved workers' compensation medical benefits.
- An OAG peace officer may be entitled to any workers' compensation indemnity benefits that accrue after the discontinuation or exhaustion of paid injury leave.
- An OAG peace officer shall not be eligible for disability retirement benefits while on paid injury leave.

Foster Parent Leave

revised: 08/01/2014

An employee of the Office of the Attorney General (OAG) who is a foster parent to a child under the conservatorship of the Department of Family and Protective Services (DFPS) may take paid leave to attend staffing meetings held by the DFPS regarding the child under the foster care of the employee or to attend the Admission, Review and Dismissal (ARD) meeting held by a school district regarding the child under the foster care of the employee. Employees must give reasonable advance notice to division management of the employee's intention to use this leave. The leave shall be entered as foster-parent leave (FP) in the e-Leave system. Division management shall promptly email relevant documentation to e-leave@texasattorneygeneral.gov.

Court-Appointed Special Advocate Volunteer Leave

revised: 08/01/2014

An employee of the Office of the Attorney General may participate in mandatory training or perform volunteer services for Court Appointed Special Advocates (CASA) up to five hours each month in a paid status.

An employee shall obtain prior approval from his/her immediate supervisor before participating in CASA-related mandatory training and/or volunteer services. An approved absence shall be entered into the e-Leave system indicating the number of hours used to participate in approved CASA-related activities. (e-Leave code: AD).

An employee who participates in CASA-related mandatory training and/or volunteer activities must use other available leave for any CASA-related absences over five hours per month.

Jury Service Leave

revised: 08/01/2014

As the legal representative of the State of Texas, the Office of the Attorney General (OAG) recognizes the importance of the jury system. Accordingly, the OAG shall not prevent an OAG employee from serving on a jury.

An OAG employee who is called for jury service shall promptly inform his/her supervisor. An employee who participates in juror services (e.g., jury selection, trial, Grand Jury) shall be granted paid leave and may accept fees for juror services.

After serving as a juror, the employee shall submit documentation from the court indicating the time the employee was required to serve in juror activities. It is the employee's responsibility to obtain such documentation. Division management shall promptly email the documentation to e-leave@texasattorneygeneral.gov. The employee shall enter the absence into the e-Leave system as "Jury Service Leave" (JS).

The time an employee engaged in jury services shall not be counted for production quotas and shall not otherwise adversely affect an employee's performance **evaluation**.

Administrative Leave for Outstanding Performance

revised: 01/01/2017

The Office of the Attorney General (OAG) is committed to recognizing and rewarding outstanding and exemplary performance by employees. One option is to grant administrative leave for outstanding performance to these employees.

Eligibility

An employee or group of employees may be eligible to receive administrative leave with pay in recognition for:

- completion of a special work initiative or project in an outstanding manner. In such a situation, granting administrative leave for outstanding performance does not necessarily indicate that an employee has consistently exceeded performance standards for his/her job; or
- consistently exceeding performance standards for a minimum of six months.

To receive administrative leave for outstanding performance, an employee cannot have received a **disciplinary action** in the twelve months immediately preceding the recommendation for this type of leave.

Review Process

- Division/regional management shall recommend administrative leave for outstanding performance in an **Administrative Leave for Outstanding Performance Request** to the Director of Human Resources (HR) describing the performance or action(s) supporting the request.
- HR-reviewed requests shall be forwarded to the appropriate Executive Deputy for review.
- The appropriate Executive Deputy shall send reviewed requests to the First Assistant Attorney General or designee for approval or denial.
- Approved/denied requests shall be forwarded to the Human Resources Division, which shall enter awarded hours in the e-Leave system and notify the employee's division/regional manager to inform the employee(s).

Leave Administration

An employee may be granted up to 32 hours of administrative leave for outstanding performance per fiscal year and may accumulate up to 64 hours of administrative leave for outstanding performance if the leave is granted in two fiscal years within the same biennium. Any administrative leave for outstanding performance that has not been used by the end of a biennium will be forfeited.

Administrative leave for outstanding performance shall be taken at a time mutually agreeable to the employee and division/regional management.

Employees cannot receive administrative leave for outstanding performance for any otherwise qualifying activity in which they also received overtime leave or pay.

Upon approval from the division/regional management, an employee voluntarily separating from the OAG may remain on the OAG payroll and exhaust any administrative leave for outstanding performance if the leave is not carried into the next month or in the case of a separating employee transferring to another state agency, the leave may not run past the start date at the state agency to which the employee is transferring.

Leave of Absence

revised: 08/01/2014

The Office of the Attorney General (OAG) may grant an employee an unpaid leave of absence in special circumstances. Pursuant to state law, an unpaid leave of absence may not exceed twelve consecutive months, except for **military leave**. An approved leave of absence is an acceptable type of **unpaid absence**.

Requests

An employee must submit a **Leave of Absence Request** to his/her Division Chief. The request must include a **start date, end date**, the reason(s) for the absence, and whether the leave of absence will be combined with any paid leave. If the absence is for health reasons, the employee must follow the **accommodations policy**. After considering factors such as division needs, the reason for the absence, and the employee's prior performance, division management shall recommend denying or granting the request.

Division management shall promptly forward a request for an unpaid leave of absence to the **Director of Human Resources**, who shall have the request reviewed for compliance with agency policy. After consultation with division management, the Director of Human Resources shall promptly forward the request to **Executive Administration** for approval or denial. Once a decision has been made, the Director of Human Resources shall notify the employee and division management of the decision.

Exhausting Available Leave

All appropriate accumulated paid leave must be exhausted before beginning an unpaid leave of absence except for leave taken as a result of the **Family and Medical Leave Act (FMLA)**, a workplace injury covered by Workers' Compensation, military leave, and disciplinary suspensions.

Leave Accruals and Insurance Premiums

If an unpaid leave of absence covers an entire calendar month, the employee does not accrue any annual leave or sick leave for that month. In addition, the employee must pay his/her insurance premiums for that month, including the portion normally paid by the State (unless excepted under FMLA provisions). An unpaid leave of absence may affect State and retirement service credit.

Returning to Work

Although approval of an unpaid leave of absence constitutes a conditional guarantee of employment, such a guarantee is subject to fiscal constraints and does not alter the employee's at-will employment status. Upon return to duty, the employee may be placed anywhere in the agency with no guarantee of his/her previous salary level or job title. An employee is expected to return to work upon the expiration of the leave of absence unless the employee has requested and received approval for an extension.

Unauthorized Absences

revised: 08/01/2014

Attending work is an essential function of every position at the Office of the Attorney General. Accordingly, an absence may be disruptive unless an employee is on approved leave to cover the absence. Unauthorized absences could amount to **unacceptable conduct** or job abandonment. Such absences include:

- Excessive tardiness
- Taking non-sick leave, such as **annual leave**, without explicit prior approval
- Failing to properly notify division management of an absence due to an unexpected situation (e.g., illness, emergency, weather, traffic accident)
- Failing to report to work without permission
- Failing to return to work upon the expiration of approved leave
- Leaving the workplace without permission
- Failing to account for the employee's full scheduled work hours during a **work week** (i.e., 40 hours of work or approved leave for a full-time employee)

Division management may also request documentation regarding the absence and note the unauthorized status of the absence in the e-Leave system. Unless the employee produces a satisfactory explanation for an unauthorized absence, **corrective or disciplinary action**, up to and including termination of the employee's **at-will employment** may result.