

Sections 8-32 TIME AND LEAVE POLICY

General Time and Leave Policy Information. The Eighth Court of Appeals' Time and Leave Policy is set forth in Sections 8 through 32 of the Personnel Policy Manual, and it sets forth the leave benefits and reporting requirements for employees of the Eighth Court of Appeals. The Time and Leave Policy is intended to comply with Chapter 661 of the Texas Government Code and other applicable laws, including the Fair Labor Standards Act, the Family and Medical Leave Act, the Americans with Disabilities Act, and those federal and state laws pertaining to employment discrimination. The Time and Leave Policy is subject to change at the discretion of the Eighth Court of Appeals. As a state agency, the Eighth Court of Appeals is required to keep a record of its employees' accrual and use of various types of leave, including annual and sick leave.¹ This policy does not apply to elected officials or unpaid interns.² The Time and Leave Policy is posted to the Court's website as required by Section 661.252(c) of the Texas Government Code.

Section 8 ANNUAL VACATION LEAVE

8.01. *Employee Vacations.* Employees are entitled to a vacation each fiscal year without a deduction in salary provided the employee has adequate leave available.³ An employee must obtain the approval of his or her Supervising Judge and/or immediate supervisor before taking a vacation. Further, vacation schedules should be coordinated so that the essential functions of the Court are not disturbed.

8.02. *Limitations on Vacation Leave.* Vacation with pay may not be granted until the employee has had continuous employment with the State for six [6] months, although credit will be accrued during that period.⁴ If an employee resigns, is dismissed, or is otherwise separated from State employment prior to completing six [6] months of continuous employment with the State, then the accrued vacation leave terminates on the last day of duty and the employee will not be paid for the accrued vacation leave.

8.03. *Rate of Vacation Leave Accrual.* A full-time employee accrues vacation leave at the rate set forth in Section 661.152(d) of the Texas Government Code. Part-time employees accrue vacation leave on a proportionate basis. The maximum carryover is also proportionate.

8.04. *Method of Vacation Leave Accrual and Carryover.* An employee begins earning vacation leave at the applicable rate on the first *calendar* day of employment with the State and terminating on the last day of duty. Credit for one month's accrual will be given for each month of *State* employment and on the first of each succeeding month of employment. Vacation leave accumulates with the unused portion carried forward each month, subject to the carryover limitations set forth in Section 661.152(d). An employee who is on paid leave on the first workday

¹ TEX.GOV'T CODE ANN. §§661.001(4)(D), 661.908.

² TEX.GOV'T CODE ANN. §661.032.

³ TEX.GOV'T CODE ANN. §661.152.

⁴ TEX.GOV'T CODE ANN. §661.152(f).

of a month may not take vacation leave accrued for that month until the employee has returned to duty.⁵

8.05. *Unused Vacation Leave.* All hours of unused accumulated vacation leave which are lapsed at the end of a fiscal year by operation of the Texas Government Code shall be credited to the employee's sick leave balance as of the first day of the next fiscal year.⁶

8.06. *Accumulated Vacation Leave Payable to Estate.* If an employee dies while employed by the State, all of the employee's accumulated vacation leave will be paid to the estate of the employee.⁷

8.07. *Annual Leave and Employee Separation.* A State employee who transfers directly from one State agency to another is entitled to credit by the agency to which the employee transfers for the unused balance of the employee's accumulated vacation provided that the employee's employment with the State is uninterrupted and the employee is not paid for the leave.⁸ If a State employee separates from employment and is re-employed within 30 calendar days by a State agency to a position that accrues annual leave, the employee's annual leave balance will transfer to the new agency.⁹ State agency employees are entitled to be paid for the accrued balance of their annual leave as of the date of separation, if they are not re-employed by the State in a position that accrues annual leave during the 30-day period immediately following the date of separation from State employment.¹⁰ The Court may agree to permit an employee entitled to payment under Chapter 661, Subchapter C, to remain on the payroll to exhaust the employee's accrued vacation time.¹¹

Section 9 **SICK LEAVE**

9.01. *Accrual of Sick Leave and Method of Carryover.*¹² An employee begins earning sick leave at the applicable rate on the first day of employment with the State and terminating on the last day of duty. Full-time employees accrue sick leave at the rate of eight [8] hours per month. Part-time employees accrue sick leave at a proportionate rate. Credit for one month's accrual will be given for each month or fraction of a month of employment with the State. The earned sick leave will be posted to each employee's leave record on the first day of employment and on the first day of each succeeding month of employment thereafter. Sick leave accumulates with the unused amount carried forward each month, and there is no limitation on the amount which can be accrued. An employee in a paid leave status at the end of the month does not earn sick leave until he or she returns to work.

9.02. *Use of Sick Leave.* An employee is eligible to use sick leave immediately upon

⁵ TEX.GOV'T CODE ANN. §661.152(j).

⁶ TEX.GOV'T CODE ANN. §661.152(h).

⁷ TEX.GOV'T CODE ANN. §661.033.

⁸ TEX.GOV'T CODE ANN. §661.153.

⁹ TEX.GOV'T CODE ANN. §661.152(k).

¹⁰ TEX.GOV'T CODE ANN. §661.062.

¹¹ TEX.GOV'T CODE ANN. §661.067(a).

¹² TEX.GOV'T CODE ANN. §661.202.

employment with the agency. Sick leave may be taken when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty, or when the employee is needed to care for and assist a member of his or her immediate family who is ill.¹³

9.03. *Immediate family defined.* For purposes of this subsection, "immediate family" is defined as those individuals who reside in the same household and are related by kinship, adoption or marriage, as well as foster children certified by the Texas Department of Protective and Regulatory Services.¹⁴ Minor children of the employee, whether or not living in the same household, will be considered immediate family for purposes of this subsection. An employee's use of sick leave for family members not residing in that employee's household is strictly limited to the time necessary to provide care and assistance to a spouse, child or parent of the employee who needs such care and assistance as a direct result of a documented medical condition.¹⁵

9.04. *Timely Notification.* An employee who must be absent from work because of illness must notify his or her department head or Supervising Judge, or must have the supervisor notified of that fact, at the earliest possible time.¹⁶ If the absence is going to be for more than one day, the employee must notify the supervisor of his or her status each morning, unless other arrangements have been made. The employee must leave a phone number where he or she can be reached during the period of illness.

9.05. *Illness for More than Three Days.* When an employee is absent from work due to illness for more than three [3] consecutive work days, he or she must provide a doctor's statement showing the cause or nature of the illness, or some other written statement of the facts concerning the illness that is acceptable to the employee's Supervising Judge.¹⁷ This written statement must be submitted with the employee's timesheet at the end of the month.

9.06. *Unused Sick Leave.* An employee is not entitled to payment for any sick leave balance upon terminating employment with the State. Retirees gain additional months on their annuity for every twenty [20] days, or 160 hours, or fraction thereof, of accrued sick leave.

9.07. *Transfer of Sick Leave.* If an employee makes a direct transfer to another State agency without a break in service, the sick leave balance will transfer to the receiving agency.¹⁸

9.08. *Sick Leave and Employee Separation.* An employee who separates from State employment under a formal reduction in force is entitled to have his or her sick leave balance restored if re-employed by the State within twelve [12] months.¹⁹ An employee who separates from State service for a reason other than a formal reduction in force is entitled to have the sick leave balance restored if re-employed after a 30-day break and within twelve [12] months of State service. If

¹³ TEX.GOV'T CODE ANN. §661.202(d).

¹⁴ TEX.GOV'T CODE ANN. §661.202(d).

¹⁵ TEX.GOV'T CODE ANN. §661.202(e).

¹⁶ TEX.GOV'T CODE ANN. §661.202(f).

¹⁷ TEX.GOV'T CODE ANN. §661.202(g).

¹⁸ TEX.GOV'T CODE ANN. §661.204.

¹⁹ TEX.GOV'T CODE ANN. §661.205.

there is a break in service of less than thirty [30] days, all accrued sick leave is lost.²⁰ A retiring employee may designate the number of accrued sick leave hours to be donated on retirement to the sick leave pool.²¹

9.09. *Accumulated Sick Leave Payable to Employee's Estate.* If an employee dies while employed by the State, one-half of the sick leave balance or 336 hours of sick leave, whichever is less, will be paid to the employee's estate.²²

9.10. *Educational Activities.* An employee may use up to eight [8] hours of sick leave each fiscal year to attend educational activities of the employee's children who are in pre-kindergarten through 12th grade.²³ Educational activities include school-sponsored activities such as parent-teacher conferences; tutoring; volunteer programs; field trips; classroom programs; school committee meetings; academic competitions; and athletic, music, or theater programs. The employee must give reasonable notice of his or her intention to use this leave. Part-time employees receive this leave on a proportionate basis.

Section 10 EXTENDED SICK LEAVE

10.01. *Extended Sick Leave.* Extended sick leave is discretionary paid leave available for the same purposes as sick leave when an employee has exhausted all sick leave, vacation leave, and accrued comp time.²⁴ The granting of extended sick leave is strictly discretionary with the Court after review of an employee's circumstances and the needs of the Court. Employees have no right to extended sick leave.

10.02. *Eligibility.* To be eligible for extended sick leave, an employee must:

- have exhausted all sick leave, vacation leave, and accrued overtime or comp time;
- have been performing job duties at a satisfactory level prior to the illness according to the employee's immediate supervisor or Supervising Judge; have used past sick leave in a responsible manner;
- have indicated an intention and the ability to return to work; and

²⁰ TEX.GOV'T CODE ANN. §661.205.

²¹ TEX.GOV'T CODE ANN. §661.003(c).

²² TEX.GOV'T CODE ANN. §661.033.

²³ TEX.GOV'T CODE ANN. §661.206.

²⁴ TEX.GOV'T CODE ANN. §661.202(i) and (j).

- have provided the Court with a written statement from the employee or his or her physician regarding the nature of the illness, prognosis, and estimated date of return to duty.

10.03. *Amount of Extended Sick Leave Awarded.* If extended sick leave is approved, the Court will exercise its discretion to award a reasonable amount of paid leave based upon the employee's circumstances and the best interest of the Court.

Section 11 SICK LEAVE POOL

11.01. *Purpose.* Pursuant to the Texas Government Code, the Court has established a Sick Leave Pool to benefit Court employees who have exhausted all sick leave due to a catastrophic injury or illness, or who have made a previous donation of time to the pool.²⁵ The sick leave pool is a form of paid sick leave.

11.02. *Pool Administrator.* The Court *en banc* is the Pool Administrator.²⁶ The Clerk of the Court or other designee will assist the Court by accepting applications for sick leave pool withdrawal, determining the maximum amount of time available to an employee, submitting the applications to the Court for decision, and if a request is approved, transferring leave from the pool to the employee. The Clerk of the Court or other designee may be required to perform other duties as directed by the Court.

11.03. *Catastrophic Injury or Illness and Related Terms Defined.* The Employees Retirement System has defined the following terms:

- **Catastrophic injury or illness** is a severe condition or combination of conditions affecting the mental or physical health of the employee or a member of the employee's immediate family that requires the services of a licensed practitioner for a prolonged period of time, and that forces the employee to exhaust all time earned by that employee and to lose compensation from the State.

- **Licensed practitioner** means a practitioner, as defined in the Texas Insurance Code, who is practicing within the scope of his or her license.

- **Immediate family** is defined as those individuals related by kinship, adoption or marriage, and foster children who are so certified by the Texas Department of Protective and Regulatory Services, who are living in the same household, or if not in the same household are totally dependent upon the employee for personal care or services on a continuing basis.²⁷

11.04. *Employee Contributions to Sick Leave Pool.* All donations of sick leave hours to the Sick Leave Pool are strictly voluntary. The following policies govern contributions to the sick leave pool:

²⁵ TEX.GOV'T CODE ANN. §661.001-.008.

²⁶ TEX.GOV'T CODE ANN. §661.001(3).

²⁷ Board of Trustees Meeting, Employees Retirement System, October 24, 1989.

- An active employee may contribute one or more days of the employee's accrued sick leave time to the pool in eight-hour increments.

- Employees are encouraged to contribute one or more days to the pool at the time of their separation from State employment, less any hours previously contributed during that same fiscal year.

- Terminating employees who contribute to the sick leave pool may have their sick leave restored if they are re-employed by another State agency within twelve [12] months of termination.

- Employees who make contributions to the pool cannot stipulate who is to receive their contribution.

11.05. *General Conditions.* The following policies and conditions govern eligibility and usage of leave from the sick leave pool:

- All employees of the Eighth Court of Appeals, other than elected officers, including those on probationary, provisional temporary, emergency, hourly, or other types of appointments, may apply to use sick leave from the sick leave pool.

- Employees with catastrophic illnesses or injuries are not required to contribute to the pool before they can use pool leave.

- Employees who use pool leave are not required to pay back pool leave.

- Employees may apply to use the pool leave for their own catastrophic illness or injury, as defined above, or for a person in their immediate family.

- If they are contributing members of the Sick Leave Pool, employees may also apply to use the pool sick leave for other than catastrophic illness or injury, when they have exhausted their sick leave balance in the same fiscal year. Such employees may receive credit for only the number of hours they have contributed to the pool in the same fiscal year for absences other than those caused by catastrophic illness or injury as defined above.

- Employees must exhaust all accrued leave, plus any extended sick leave granted them by this Court, before they are eligible to use leave from the pool. However, employees who are off work due to an on-the-job injury or illness are not required to exhaust their annual or compensatory leave before becoming eligible to use leave from the pool.

- The amount of Sick Leave Pool time granted per request will be limited to 90 days or 1/3 of the pool balance, whichever is less.²⁸

- Employees on pool sick leave for an entire month will accrue annual and sick leave for that month. The leave must be exhausted as it is accrued.

²⁸ TEX.GOV'T CODE ANN. §661.006(b).

11.06. *Requesting Leave from the Sick Leave Pool.* Requests for leave from the Sick Leave Pool must be submitted in writing to the Clerk of the Court or other designee. Requests will be evaluated in the order in which they are received. The employee must attach to the request a written statement from the licensed practitioner who is treating the employee or the employee's immediate family member.²⁹ The statement must provide sufficient information regarding the illness or injury to enable the Court to evaluate the employee's eligibility. If the request is for an immediate family member, the statement should indicate the length of time the employee is required to assist the family member. If an employee is qualified to use leave from the sick leave pool, the Clerk of the Court or other designee will indicate on the sick leave pool application the maximum amount of time available to the employee and as soon as practicable submit the application to the Court for decision.

11.07. *Criteria for Approval of Sick Leave Pool Request.* Before a sick leave pool request will be granted, the following factors will be taken into consideration:

- severity of the illness or injury;
- responsible use of sick leave in the past;
- sustained satisfactory job performance; and
- intention to return to work.

11.08. *Return to Work.* If a physician releases an employee back to work or does not provide a statement requesting additional time (subject to the approval of the Court), and the employee does not return to work immediately, the employee will be on leave without pay.

11.09. *Equal Treatment.* An employee who is absent on time withdrawn from the sick leave pool may use the time as sick leave earned by the employee, and the employee is treated for all purposes as if the employee were absent on earned sick leave.³⁰

11.10. *Unused Leave from the Pool.* Any unused balance of pool leave granted to an employee will be returned to the pool. The estate of a deceased employee is not entitled to payment for unused pool leave.³¹

Section 12

DONATION OF SICK LEAVE

12.01. *Voluntary Transfer of Sick Leave.* An employee may voluntarily transfer any amount of his or her accrued sick leave to another employee of the Eighth Court of Appeals who has exhausted his or her sick leave, including any time the recipient may be eligible to withdraw from a sick leave pool.³²

²⁹ TEX.GOV'T CODE ANN. §661.005.

³⁰ TEX.GOV'T CODE ANN. §661.007.

³¹ TEX.GOV'T CODE ANN. §661.008.

³² TEX.GOV'T CODE ANN. §661.207.

12.02. *Tax Implications.* The tax implications arising from a donation of sick leave under Section 661.207 are not addressed in this policy and employees are encouraged to consult with a tax advisor.

12.03. *Unused Sick Leave.* Unlike accrued sick leave, donated sick leave is not eligible for transfer to another State agency or for payment to an estate upon death of the recipient.

12.04. *No Remuneration Allowed.* An employee may not provide or receive remuneration or a gift in exchange for a sick leave donation.

12.05. *Use of Donated Sick Leave.* An employee who receives donated sick leave may only use the leave as provided by Texas Government Code, Sections 661.202(d) and (e). Further, an employee will not receive service credit in the Employees Retirement System of Texas for any sick leave received under Section 661.207 that is unused on the last day of that employee's employment.

Section 13 EMERGENCY LEAVE

13.01. *Death in Employee's Immediate Family.* A State employee is entitled to emergency leave without a deduction in salary because of a death in the employee's family.³³ For purposes of this type of leave, an employee's family is defined as the employee's spouse, as well as the employee's parents and spouse's parents, children, brothers, sisters, grandparents, and grandchildren.³⁴

13.02. *Criteria for Granting Emergency Leave.* The Chief Justice may grant emergency leave for a reason other than a death in the employee's family under Section 661.902(a). The Court shall grant emergency leave under the following circumstances:

- the employee requests the leave;
- the Chief Justice determines the employee has shown good cause for taking emergency leave; and
- the Chief Justice believes in good faith that the employee being granted emergency leave intends to return to the employee's position upon expiration of the leave granted.³⁵

13.03. *Closure Due to Weather.* An employee is not required to request emergency leave if the Court grants the emergency leave under Section 661.902(b) because the agency is closed due to weather conditions or in observance of a holiday.³⁶

³³ TEX.GOV'T CODE ANN. §661.902.

³⁴ TEX.GOV'T CODE ANN. §661.902(a).

³⁵ TEX.GOV'T CODE ANN. §661.902(b).

³⁶ TEX.GOV'T CODE ANN. §661.902(c).

13.04. *Reporting Requirements.* By October 1 of each year, the Clerk of the Court is required to report to the Comptroller the name and position of each court employee granted more than 32 hours of emergency leave during the previous State fiscal year, the reason for the granting of such leave, and the total number of hours of emergency leave granted to the employee in the State fiscal year.³⁷

Section 14

APPROVED LEAVE WITHOUT PAY

(Reference: Texas Government Code, Section 661.909)

14.01. *Unpaid Leave.* Approved leave without pay (LWOP) is the temporary absence from duty of an employee who intends to return to work.³⁸ The Eighth Court of Appeals has discretion to grant employees leave without pay or an unpaid leave of absence subject to the terms and conditions set below.

14.02. *Length of Leave.* Pay is suspended during the length of the absence which cannot exceed 12 months.³⁹

14.03. *Procedure for Requesting Unpaid Leave.* An employee requesting LWOP must submit a written request to the Clerk of the Court. The request must include a start date, end date, and reason for the request. If the request is for medical reasons, it must be accompanied by a doctor's statement and any other documentation explaining the reasons for the request.

14.04. *Exhaustion of Accumulated Paid Leave.* Except for disciplinary suspensions, active military duty, and leave covered by workers' compensation benefits, all accumulated paid leave entitlements must be used before going on leave without pay status.⁴⁰ Sick leave must first be used only if the employee is taking leave for a reason for which the employee is eligible to take sick leave under Chapter 661, Subchapter G, Texas Government Code.

14.05. *Accrual of Leave and Payment of Insurance Premiums.* If an absence covers an entire month, the employee does not accrue any vacation or sick leave.⁴¹ The employee is also responsible for payment of insurance premiums unless excepted under provisions of FMLA.

14.06. *Guarantee of Employment.* Subject to fiscal constraints, approval of LWOP under this policy constitutes a guarantee of employment at the conclusion of the specified leave period.⁴² The employee is not guaranteed a return to the same position or the same pay. Failure to return to work from LWOP on the approved return date will be considered abandonment of position and the Eighth Court of Appeals may take appropriate action to terminate employment.

14.07. *Exceptions.* The Court may grant exceptions to these provisions when it is deemed

³⁷ TEX.GOV'T CODE ANN. §661.902(d).

³⁸ TEX.GOV'T CODE ANN. §661.909.

³⁹ TEX.GOV'T CODE ANN. §661.909(b).

⁴⁰ TEX.GOV'T CODE ANN. §661.909(c).

⁴¹ TEX.GOV'T CODE ANN. §661.909(g).

⁴² TEX.GOV'T CODE ANN. §661.909(d).

to be in the best interest of the State, such as when the leave is granted to work for another state governmental agency under an interagency agreement, or for educational purposes.⁴³

Section 15

FAMILY AND MEDICAL LEAVE

15.01. *Entitlement to Leave under the FMLA.* Pursuant to the Family and Medical Leave Act (FMLA), an eligible employee is entitled to a total of twelve [12] work weeks of leave during any twelve-month-period for one or more of the following:

- (A) because of the birth of a child of the employee and to care for such child;
- (B) because of the placement of a child with the employee for adoption or foster care;
- (C) to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition; or
- (D) because of a serious health condition that makes the employee unable to perform the functions of the employee's position.⁴⁴

15.02. *Expiration of Entitlement.* The entitlement to leave under subparagraphs (A) and (B) of section 14.01 for a birth or placement of a son or daughter shall expire at the end of the twelve-month period beginning on the date of such birth or placement.

15.03. *Eligibility.* For purposes of FMLA, an eligible employee is one who has been employed by the State for at least twelve [12] months, and who has worked at least 1,250 hours during the preceding twelve months.⁴⁵ When calculating the required twelve months of State employment for FMLA eligibility, all State employment will be counted and it need not be continuous. The 1,250 hours refers to hours actually worked and does not include any paid time off.

15.04. *Maximum Amount of Time Available.* The maximum combination of paid and unpaid leave taken pursuant to the FMLA is limited to twelve [12] work weeks in a twelve-month period.

15.05. *Substitution of Paid Leave.* Unless an employee has accrued vacation leave, sick leave, or comp time which will be substituted pursuant to this section for unpaid leave, all leave provided by the Court pursuant to FMLA is unpaid leave. An employee is required to substitute the employee's accrued paid vacation leave, personal leave, and comp time for the leave provided pursuant to paragraphs (A) or (B) of section 14.01. An employee is required to substitute the employee's accrued paid vacation leave, personal leave, and sick leave for the leave provided

⁴³ TEX.GOV'T CODE ANN. §661.909(e).

⁴⁴ 29 U.S.C. §2601 et seq.; TEX.GOV'T CODE ANN. §661.912.

⁴⁵ TEX.GOV'T CODE ANN. §661.912.

pursuant to paragraphs (C) or (D) of section 14.01 unless the employee is receiving temporary disability or workers compensation benefits. Any extension beyond the twelve-week time period must be requested and approved under the Court's unpaid leave policy. Failure of the employee to report back to work at the end of the prescribed period without prior written approval of the employee's Supervising Judge will be considered leave without pay.

15.06. *Serious Health Condition Defined.* A "serious health condition" is defined as an illness, injury, impairment, or physical or mental condition that involves either inpatient care in a hospital, hospice, or residential medical care facility or continuing treatment by a licensed health care provider.

15.07. *Birth or Placement of Child.* In the case of FMLA leave for the birth or placement of a child for adoption or foster care, an employee should, if possible, provide thirty [30] days advance notice before the date on which the leave would begin. If the employee is unable to provide this advance notice, he or she must provide as much notice as is practicable.

15.08. *Planned Medical Treatment.* When the need for leave is foreseeable, based on planned medical treatment for the employee or family member, the employee must make a reasonable effort to schedule the treatment so as not to unduly interrupt the operations of the employer, subject to the approval of the health care provider providing the planned care. The employee should provide thirty [30] days' notice of the employee's intent to take leave for this purpose, or if not possible, as much notice as is practicable.

15.09. *Intermittent Leaves and Reduced Schedules.* Leave for childbirth or placement for adoption or foster care may not be taken intermittently or on a reduced work schedule except with the agreement of the employee and the employee's Supervising Judge. Leave for the illness of the employee or a family member may be taken intermittently or on a reduced schedule when medically necessary. The taking of leave intermittently or on a reduced leave schedule will not result in a reduction in the total amount of leave to which the employee is entitled under FMLA.

15.10. *Temporary Transfer.* If an employee requests intermittent or reduced schedule leave pursuant to section 15.01(C) or (D), the Court may temporarily transfer the employee to an available 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.

15.11. *Reinstatement.* An eligible employee who takes FMLA leave is entitled to be restored to his or her former position, or to an equivalent position with equivalent pay, and other terms and conditions of employment.

15.12. *Benefit Rights.* The taking of leave under FMLA may not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. Nothing in 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.

15.13. *Insurance.* The Court will maintain any group health coverage for the employee

on leave on the same terms as if the employee were at work for the duration of the leave. If an employee is on unpaid leave for an entire calendar month, it is the responsibility of the employee to pay his or her portion of the insurance premium, if any, and the State will pay its portion. The employee should make arrangements for premium payment with the Clerk of the Court or other designee/Benefits Coordinator prior to taking leave, if practicable.

15.14. *Recovery of Insurance Premiums.* If an employee elects not to return to work upon completion of an approved unpaid leave of absence, the Court may recover from the employee the cost of any premiums paid by the State to maintain the employee's coverage, unless the failure to return to work was for reasons beyond the employee's control or due to continuation, recurrence, or onset of a serious health condition.

15.15. *Certification of Serious Health Condition.* An employee requesting leave under FMLA due to the serious health condition of the employee or a member of the employee's family will be required to provide certification from the health care provider treating the condition. The health care provider should provide detailed information regarding the condition of the employee or family member, and also give an estimate of the amount of time needed for the employee's recovery or the amount of time needed to care for the family member. If intermittent leave or a reduced leave schedule is requested, the health care provider should also state the dates and duration of planned medical treatment.

15.16. *Additional Certifications.* If the Court has reason to question the validity of the certification, the employee may be required to obtain a second certification from a health care provider designated or approved by the Court. If the second provider disagrees with the first, a third and final opinion might also be required from a jointly selected provider.

15.17. *Return to Work.* In the situation where the employee has been absent due to a serious health condition, the employee is required to provide certification that he or she is able to return to work.

15.18. *Spouses Employed by the Court.* A husband and wife who are eligible for FMLA leave and who are both employed by the agency are permitted to take only a combined total of twelve [12] weeks of leave during a fiscal year if the leave is taken:

1. for birth of a son or daughter or to care for the child after birth;
2. for placement of a child for adoption or foster care, or to care for the child after placement;
or
3. to care for a parent with a serious health condition.

When a husband and wife each take a portion of the total twelve-week period to care for a parent or for the birth, adoption, or placement of a child, each would be entitled to take the remaining portion of the twelve-week leave for his own serious illness or to care for a sick child.

15.19. *Employee Requests.* Employees must follow specific procedures to request a family

or medical leave. These procedures are detailed as follows:

1. Contact the Clerk of the Court or other designee/Benefits Coordinator to obtain and complete the required paperwork.
2. Notify Supervising Judge in writing of the request.
3. If intermittent leave is requested, the employee must provide the Supervising Judge with a proposed schedule and duration.

15.20. *Action on the Request.* After the required paperwork has been completed, the Clerk of the Court or other designee/Benefits Coordinator will present the request to the Court at the next monthly meeting of the Chief Justice and Justices or at a specially called meeting of the Court if required under the circumstances.

15.21. *Designation of Leave by the Court.* Even if an employee does not request FMLA leave, the Court may designate leave taken by the employee as FMLA-protected for purposes of calculating the twelve-week period under the FMLA. If the Court intends to take this step, the employee will be notified in writing by the Court and given three days to provide a written response. The Court will then determine whether to designate the leave as FMLA-protected and notify the employee in writing of the Court's decision.

The FMLA policy outlined above is a summation of the Family and Medical Leave Act and does not detail all of its provisions. Questions about FMLA should be directed to your Supervising Judge and/or immediate supervisor.

Section 16 PARENTAL LEAVE

16.01. *Eligibility for Parental Leave.* Employees who do not qualify for FMLA leave because they have fewer than twelve [12] months of total State service or because they have worked fewer than 1,250 hours in the 12-month period immediately preceding the commencement of leave are eligible to take a parental leave of absence, not to exceed twelve [12] weeks, for the birth of a natural child or the adoption by or foster care placement of a child under three [3] years of age.⁴⁶

16.02. *Limitations on Parental Leave.* Parental leave is limited to, and begins on the date of, the birth of the employee's natural child or the adoption by or foster care placement with the employee of a child younger than three years of age.⁴⁷ An employee must first use all available and applicable paid vacation and sick leave while taking parental leave prior to going on leave without pay.⁴⁸ The use of sick leave is strictly limited to those situations clearly falling within the definition of sick leave contained in the Texas Government Code.

Section 17

⁴⁶ TEX.GOV'T CODE ANN. §661.913.

⁴⁷ TEX.GOV'T CODE ANN. §661.913(c).

⁴⁸ TEX.GOV'T CODE ANN. §661.913(b).

NATIONAL GUARD EMERGENCY⁴⁹

A State employee called to State active duty as a member of the State military forces by the governor because of an emergency is entitled to a leave of absence without a deduction in salary in accordance with Section 437.254 of the Texas Government Code. A State employee who is called to federal active duty as a member of the Texas military forces may not receive the employee's State salary except as provided by Sections 661.904(d) and (f) and 661.9041.

Section 18 MILITARY LEAVE DURING NATIONAL EMERGENCY⁵⁰

An employee called to active duty during a national emergency to serve in a reserve component of the armed forces of the United States under Title 10 or 32, United States Code, is entitled to an unpaid leave of absence. The employee on an unpaid leave of absence during military duty described by Section 661.904(a) continues to accrue State service credit for purposes of longevity pay, vacation leave, and sick leave.

This leave will be accrued but not posted until the employee returns to State employment. In addition, the employee retains his or her leave balances unless the employee chooses to use any accrued vacation leave, compensatory time, or overtime leave to maintain benefits for the employee or the employee's dependents while on military duty.

Additionally, the employee may continue to accrue service credit with the Employees Retirement System by receiving at least one hour of State pay during each month of active military service. The employee may use any combination of paid leave to qualify for State pay.

Section 19 VOLUNTEER FIREFIGHTERS AND EMERGENCY MEDICAL SERVICES VOLUNTEERS⁵¹

A State employee who is a volunteer firefighter or an emergency medical services volunteer (as defined by Section 773.003, Texas Health and Safety Code) is entitled to paid leave not to exceed five working days each fiscal year to attend training services conducted by a State agency or higher education institution.

An employee who is a volunteer firefighter or an emergency medical service volunteer and is called to duty during working hours may be granted leave under Section 661.905(c) at the discretion of the Chief Justice provided that such service does not operate as an extended or continuous disruption in the office.

SECTION 20 FOSTER PARENT⁵²

⁴⁹ TEX.GOV'T CODE ANN. §661.903.

⁵⁰ TEX.GOV'T CODE ANN. §661.904.

⁵¹ TEX.GOV'T CODE ANN. §661.905.

⁵² TEX.GOV'T CODE ANN. §661.906.

An employee who is a foster parent to a child under the conservatorship of the Department of Protective and Regulatory Services is entitled to a leave of absence without a deduction in salary for the purpose of attending (1) meetings held by the Texas Department of Protective and Regulatory Services regarding the child under the foster care of the employee; or (2) an admission, review, and dismissal meeting held by a school district regarding the child under the foster care of the employee.

Section 21
RED CROSS DISASTER SERVICE VOLUNTEER⁵³

Employees who are certified disaster service volunteers of the American Red Cross or are in training to become such a volunteer may be granted a paid leave of absence not to exceed 10 days each fiscal year. The employee must have the approval of his or her supervisor and a formal request from the Red Cross. In addition, the approval of the governor is required. An employee on such leave will not lose pay, vacation time, sick leave, earned overtime, and/or compensatory time during this leave. The pool of certified disaster volunteers must not exceed 350 participants at any one time.

Section 22
ASSISTANCE DOG TRAINING FOR EMPLOYEES WITH A DISABILITY⁵⁴

An employee with a disability as defined by Texas Human Resources Code, Section 121.002, is entitled to paid leave for up to ten [10] working days in a fiscal year for the purpose of attending a training program to acquaint the employee with an assistance dog to be utilized by the employee. This leave is in addition to other leave entitlements.

Section 23
ADMINISTRATIVE LEAVE FOR OUTSTANDING PERFORMANCE⁵⁵

The Eighth Court of Appeals recognizes employees whose performance exceeds the expectations or requirements for their current job duties. The Court may grant administrative leave with pay to an employee for outstanding performance. The total amount of leave granted may not exceed thirty-two [32] hours during a fiscal year.

To be eligible, an employee recommended for administrative leave for outstanding performance (ALOP) shall:

- have consistently exceeded performance standards as documented in the employee's most recent annual evaluation.

⁵³ TEX.GOV'T CODE ANN. §661.907.

⁵⁴ TEX.GOV'T CODE ANN. §661.910.

⁵⁵ TEX.GOV'T CODE ANN. §661.911.

- not have received a disciplinary action in the twelve [12] months immediately preceding the recommendation for performance leave.

Section 24
XXIV. VOTING⁵⁶

Employees are allowed sufficient time off, without a deduction in salary or accrued leave, to vote in each national, state, or local election.

Section 25
BONE MARROW AND ORGAN DONATION⁵⁷

A State employee is entitled to a leave of absence without a deduction in salary for the time necessary to permit the employee to serve as a bone marrow or organ donor. The leave of absence may not exceed five [5] working days in a fiscal year to serve as a bone marrow donor or thirty [30] working days in a fiscal year to serve as an organ donor.

Section 26
DONATION OF BLOOD⁵⁸

Employees are allowed sufficient time off, without a deduction in salary or accrued leave, to donate blood. An employee may receive time off not to exceed more than four [4] times in a fiscal year.

Section 27
AMATEUR RADIO OPERATORS⁵⁹

An employee with an amateur radio station license issued by the Federal Communications Commission will be granted a paid leave of absence not to exceed ten [10] working days each fiscal year to participate in specialized disaster relief services. An employee on such leave will not lose pay, vacation time, sick leave, overtime leave, or compensatory time. The amateur radio operator leave must be authorized by the employee's supervisor and must have the approval of the governor. The number of amateur radio operators eligible for this leave may not exceed 350 state employees at any one time.

Section 28
COURT APPOINTED SPECIAL ADVOCATES VOLUNTEER (CASA)⁶⁰

⁵⁶ TEX.GOV'T CODE ANN. §661.914.

⁵⁷ TEX.GOV'T CODE ANN. §661.916.

⁵⁸ TEX.GOV'T CODE ANN. §661.917.

⁵⁹ TEX.GOV'T CODE ANN. §661.919.

⁶⁰ TEX.GOV'T CODE ANN. §661.921.

An employee who is a court appointed special advocate (CASA) volunteer is entitled to leave not to exceed five [5] hours each month. Leave is to be used to participate in mandatory CASA training or to perform CASA voluntary services. Employees will not be required to use accrued vacation and sick leave or earned overtime.

Section 29
RESERVE LAW ENFORCEMENT OFFICERS⁶¹

State employees who are reserve law enforcement officers as defined by Texas Occupations Code, Section 1701.001, are entitled to paid leave not to exceed five [5] working days each fiscal biennium to attend training required by Texas Occupations Code, Section 1701.351.

Section 30
LEAVE DURING AGENCY INVESTIGATION⁶²

The Eighth Court of Appeals may grant leave without a deduction in salary to an employee who is the subject of an internal investigation being conducted by the Court, or a victim of, or witness to, an act or event that is the subject of an internal investigation being conducted by the Eighth Court of Appeals.

Section 31
MEDICAL AND MENTAL HEALTHCARE LEAVE FOR VETERANS⁶³

A State employee 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 is entitled to leave without a deduction in salary or loss of vacation time, sick leave, earned overtime credit, or State compensatory time 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 leave granted may not exceed fifteen [15] days each fiscal year. The Chief Justice, or a designee, may annually grant additional days of leave as determined to be appropriate for the employee.

Section 32
FLSA OVERTIME/STATE COMPENSATORY TIME

32.01. *General Provisions.* An employee must obtain approval from his Supervising Judge and/or immediate supervisor prior to accruing overtime under the Fair Labor Standards Act (FLSA)⁶⁴ or State compensatory time (State comp time). Failure to obtain prior approval may subject the employee to discipline. No employee, whether or not subject to FLSA, shall accrue

⁶¹ TEX.GOV'T CODE ANN. §661.922.

⁶² TEX.GOV'T CODE ANN. §661.923.

⁶³ TEX.GOV'T CODE ANN. §661.924.

⁶⁴ 29 U.S.C. §§201 et seq.; TEX.GOV'T CODE ANN. §659.018.

State compensatory time for work conducted at any location other than the employee's regular place of employment or assigned duty point.

32.02. *The Fair Labor Standards Act.* An employee whose position is subject to the overtime provisions of FLSA is entitled to compensation as provided by that Act and this subdivision of the Policy Manual. An employee who is covered by FLSA is referred to as non-exempt. The non-exempt positions are: Deputy Clerk, Legal Assistant, and Accountant. Those employees in certain executive, professional, and administrative positions are exempt from FLSA. The exempt positions are: the Clerk of the Court, Systems Analyst, Law Clerk, and all court attorney positions.

32.03. *Overtime under FLSA Earned by Nonexempt Employees.* Pursuant to FLSA, a non-exempt employee of the Court is entitled to one and one-half [1.5] hours leave for every hour the employee works in excess of forty [40] hours in a workweek (Monday through Sunday).⁶⁵ The Court's policy manual refers to this type of accrued leave as "FLSA overtime" and it should not be confused with "State compensatory time" or "State comp time" discussed below. In computing the hours actually worked for purposes of FLSA overtime, any form of paid leave or holidays **will not** be included in the calculations.

Example: a non-exempt employee works an actual 44 hours in a regular work week. She has accrued 6 hours of FLSA overtime (4 hours x 1.5 = 6 hours).

Example: a non-exempt employee works an actual 42 hours in a work week that includes Veteran's Day. He has accrued 3 hours of FLSA overtime (2 hours x 1.5 = 3 hours).

Example: a non-exempt employee works an actual 40 hours in a work week that includes Veteran's Day. He has not accrued any FLSA overtime.

32.04. *State Compensatory Time Earned by Non-Exempt Employee.*⁶⁶ Pursuant to State law, a non-exempt employee earns State compensatory time in two situations:

(1) a non-exempt employee, who has not worked more than forty [40] actual hours in a work week (Monday through Sunday) but whose recorded time (total hours worked plus hours of paid leave and holidays) exceeds forty [40] hours, is entitled to receive equivalent compensatory time off for the excess hours.

Example: a non-exempt employee works 36 hours in a work week that includes Veteran's Day. She has accrued 4 hours straight comp time (44 hours recorded less 40 hours = 4).

⁶⁵ 29 U.S.C. §207(a)(1) and (o); TEX. GOV'T CODE ANN. § 659.015.

⁶⁶ TEX. GOV'T CODE ANN. § 659.015.

Example: a non-exempt employee works 40 hours in a work week that includes Veteran's Day. He has accrued 8 hours straight comp time (48 hours recorded less 40 hours = 8).

(2) a non-exempt employee, who has worked more than forty [40] actual hours in a work week and the total of hours worked and hours of paid leave or paid holidays exceeds 40 hours after subtracting FLSA overtime hours worked, shall be allowed equivalent compensatory time off for the excess hours.

Example: a non-exempt employee works an actual 42 hours in a work week that includes Veteran's Day. In addition to the three [3] hours of FLSA overtime (2 hours x 1.5 = 3 hours) he has accrued, he has also earned 8 hours of straight comp time (the employee's recorded hours were 50 less the two hours of FLSA overtime = 48 less 40 = 8). Thus, the employee has earned a total of 11 hours of comp time.

32.05. *Loss of State Compensatory Time.* State compensatory time must be taken during the twelve-month period following the end of the work week in which the overtime was accrued. Compensatory time under this provision may not be carried forward past the end of the twelve [12] month period and an employee may not be paid for the unused time.

32.06. *State Compensatory Time for Working on Holidays.*⁶⁷ All employees, whether exempt or non-exempt, who work on a national holiday or state holiday will be allowed equivalent compensatory time off during the twelve [12] month period following the date of the holiday worked. An employee must obtain approval from his Supervising Judge prior to accruing State compensatory time under this provision.

⁶⁷ TEX. GOV'T CODE ANN. § 662.007.