

Texas Human Resources Management Statutes Inventory

2010-2011 Biennium

A Management Resource for State Agencies
and Institutions of Higher Education



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Foreword

The Texas Human Resources Management Statutes Inventory (Inventory) summarizes the human resources management statutes that apply to Texas state employees. It is provided by the State Auditor's Office as a guide to assist state agencies and institutions of higher education. The Inventory, first published in 1972 and updated every two years, is a compilation of state and federal laws that apply to human resource management. This 17th edition supersedes all previous editions and reflects changes made in the 81st Legislative Session.

Applicability of the Inventory: The Inventory is a general reference guide and should not be construed as legal advice. It is intended to serve as a general summary and is not intended to be an exhaustive source of information on human resources management statutes, policies, and procedures. The provisions within this Inventory apply to most executive agencies, but may not always apply to higher education institutions and legislative agencies. Readers are strongly encouraged to review all references cited in this document and to consult with the legal counsel within their agencies to ensure compliance with all applicable federal and state laws and regulations.

The State Auditor's Office has strived to provide an accurate collection of laws relating to human resources management. However, due to the complex and changing nature of the subject matter, the Inventory may contain some errors or omissions. The specific language contained in the statutes, regulations, and other source documents takes precedence over the content of the Inventory. Reference tables in the inventory present a selection of related sources, but they do not contain comprehensive lists of the resources available on the topics. Readers should consult the original source for further explanations and information.

Interpretation of the human resources management provisions: The Inventory draws state human resources statutes, policies, and procedures primarily from four sources: general laws enacted by the Legislature, the biennial General Appropriations Act, Texas Attorney General Opinions, and State Auditor Leave Interpretations. The Inventory is intended to assist agencies with the interpretation of human resources management provisions but is not intended to replace interpretations that are assigned to agencies (by statute or executive order), who have a responsibility for managing a state program for employees (for example, state employee retirement). Texas Government Code, Section 661.151, grants the State Auditor the authority to provide a uniform interpretation of Texas Government Code, Chapter 661, Subchapter F, General Provisions for Vacation Leave for State Employees; Subchapter G, General Provisions for Sick Leave for State Employees; and Subchapter Z, Miscellaneous Leave Provisions for Sick Leave for State Employees.¹ These interpretations are advisory in nature and are not a final determination. The Texas Attorney General has the responsibility to interpret legislative intent.²

Additional information: If you have questions concerning any of these statutes, policies, or procedures, please contact the Classification Analyst in the State Auditor's State Classification Team assigned to your agency or institution of higher education. Contact information for the analysts and additional information is available on the State of Texas Human Resources Web site at <http://sao.hr.state.tx.us>.

Intention of Inventory

The information contained in this Inventory is not intended to imply a written contract between the State of Texas and any of its employees. Unless explicitly exempted by written contract, statute, or policy, state employees are employed "at will" and there is no implied contract of employment.

Source: Opinion, Texas Attorney General, No. JM-941 (1988).

¹ Texas Government Code, Section 661.151.

² Opinion, Texas Office of the Attorney General, No. M-984 (1971).

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Section 1
Standards of Conduct

Ethics Policy

Each state agency is required to adopt a written ethics policy outlining standards of conduct for employees. The policy should be distributed to each new employee no later than the third business day after the date of employment with the agency.³ The Office of the Attorney General is responsible for developing and distributing a model policy that state agencies may use.⁴ A state employee who violates an agency's ethics policy is subject to termination.⁵

Nepotism

Nepotism statutes focus primarily on prohibiting public officials from employing his or her relatives. Specifically, the nepotism statutes state that public officials are not allowed to appoint, confirm, or vote for the appointment or confirmation of a person to a position that is compensated from public funds or fees of office if either of the following conditions is met:

- If the relationship is within the third degree of consanguinity or within the second degree by affinity (see Table 1-1).⁶
- The public official holds the appointment or confirmation authority as a member of a state or local board, the Legislature, or a court and the individual is related to another member of that board, Legislature, or court within a degree described within Table 1-1.⁷

Individuals are related by consanguinity if one is a descendant of the other, or if they share a common ancestor. An adopted child is considered to be the child of an adoptive parent for this purpose.⁸ Individuals are related to each other by affinity if they are married to each other, or the spouse of one of the individuals is related by consanguinity to the other individual.⁹

A "public official" is:

- A political officer.
- A state officer or board member.

³ Texas Government Code, Section 572.051 (c).

⁴ Texas Government Code, Section 572.051 (d).

⁵ Texas Government Code, Section 572.051 (b).

⁶ Texas Government Code, Section 573.002.

⁷ Texas Government Code, Section 573.041.

⁸ Texas Government Code, Section 573.022.

⁹ Texas Government Code, Section 573.024.

- A judge.¹⁰

A state agency may adopt a nepotism policy that is more restrictive than state law.¹¹

Table 1-1

| Consanguinity and Affinity Relationship Chart From Public Official or Employee ¹² | | | | | | | |
|---|-------------------|-------------------|---------------------|--|-------------------|-------------------|---------------------|
| Consanguinity (Includes individuals related by blood to the official or employee) | | | | Affinity (Includes an official's or employee's spouse and individuals related to the spouse) | | | |
| First Degree | Second Degree | Third Degree | Fourth Degree | First Degree | Second Degree | Third Degree | Fourth Degree |
| Parent | Grandparent | Great Grandparent | Great Uncle or Aunt | Spouse | Grandparent | Great Grandparent | Great Uncle or Aunt |
| Child | Grandchild | Great Grandchild | Cousin | Parent | Grandchild | Great Grandchild | Cousin |
| | Brother or Sister | Uncle or Aunt | | Child | Brother or Sister | Uncle or Aunt | |
| | | Nephew or Niece | | | | Nephew or Niece | |

Exceptions to a nepotism policy include:

- An appointment as a notary public.
- An appointment as a personal attendant for any member of the Legislature or officer of the state or political subdivision.
- A confirmation of appointment to a term in the Legislature when no one related to the appointee within the prescribed degrees was a member or candidate.¹³

Another exception is made for appointments, confirmations, or votes for an appointment or confirmation when the individual is employed in the position immediately before the election or appointment of the public official to whom the individual is related and the prior employment of the individual is continuous for at least:

- Thirty days, if the public official is appointed.
- Six months, if the public official is elected through an election other than the general election for state and county officers.
- One year, if the public official is elected through the general election for state and county officers.¹⁴

¹⁰ Texas Government Code, Section 573.001 (3).

¹¹ Letter Opinion, Texas Office of the Attorney General, No. 93-30 (1993).

¹² Texas Government Code, Sections 573.023 and 573.025, and *Degrees of Relationship Chart*, Office of the Attorney General.

¹³ Texas Government Code, Section 573.061.

When an employee is allowed to continue in a position because of an exception to the nepotism rules, the appointing official (who is a relative) cannot participate in decision making regarding the employee unless such deliberations affect a class or category of employees.¹⁵

Table 1-2 provides a list of resources from the Attorney General’s Office related to nepotism within the state. The Office of the Attorney General also provides a publication, *2008 Texas Nepotism Laws Made Easy*; available for download on its Web site at http://www.oag.state.tx.us/AG_Publications/pdfs/nepotism_easy2008.pdf.

Table 1-2

| Nepotism Related Attorney General Resources ^a | |
|--|--|
| Opinion Number | Topic |
| DM-46 | Whether the Texas nepotism law is violated when the superintendent of a Texas Department of Mental Health and Mental Retardation school awards a merit salary to his spouse, who is employed at the same facility. |
| DM-76 | Whether the Texas nepotism statute applies to individuals hired as independent contractors. |
| GA-73 | Whether the Texas Government Code prevents the hiring of a university president's spouse. |
| JM-1175 | Whether the Department of Banking may hire the son of a member of the Finance Commission. |
| LO 90-30 | Regarding the applicability of the Texas nepotism statute to relatives of half blood. |
| LO 93-30 | Whether a home-rule city may adopt a nepotism rule that is more restrictive than state law. |
| LO 94-39 | Whether the term 'child,' which defines a relationship by affinity for purposes of state nepotism prohibitions, includes an adult child who is no longer a dependent. |
| LO 96-142 | Whether a member of the board of trustees of the Teacher Retirement System of Texas becomes ineligible to serve when his spouse (who is a member of the system) retires, and related questions. |
| ^a Detailed references can be found at Letter opinions (LO): http://www.oag.state.tx.us/opin/op_letters.shtml . Opinions: http://www.oag.state.tx.us/opin/opindex.shtml . | |

¹⁴ Texas Government Code, Section 573.062 (a).

¹⁵ Texas Government Code, Section 573.062 (b).

Off-Duty and Outside Employment

State agencies may prohibit an employee from taking a second job without the prior approval of the executive director.¹⁶ Institutions of higher education have even broader authority and may prohibit outside work even if that work is serving as an elected official.¹⁷

An officer of the Department of Public Safety is entitled to engage in any outside employment that does not adversely affect the operations or the reputation of the department.¹⁸ If an officer is engaged in off-duty employment that is not explicitly prohibited by a Department of Public Safety guideline, the officer may continue with the off-duty employment until the director or the director's designee informs the officer in writing that the employment is not acceptable.¹⁹

Table 1-3 on the next page includes a list of resources from the Attorney General's Office related to off-duty and outside employment.

¹⁶ Opinion, Texas Office of the Attorney General, No. JM-93 (1983).

¹⁷ Letter Opinion, Texas Office of the Attorney General, No. 96-109 (1996).

¹⁸ Texas Government Code, Section 411.0077 (a).

¹⁹ Texas Government Code, Section 411.0077 (c).

Table 1-3

| Off-Duty and Outside Employment Related Attorney General Resources ^a | |
|---|---|
| Opinion Number | Topic |
| GA-256 | Whether a commissioned peace officer employed by the State violates the Texas Penal Code by working off duty for a private employer. |
| H-5 | Whether state employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and who are not State officers, may serve as members of the governing bodies of school districts, cities, towns, or other local governmental districts. |
| H-1317 | Whether an administrative rule of the Texas Department of Human Resources prohibiting departmental personnel from being licensed as real estate brokers or salesmen is a valid employment rule. |
| JC-430 | Whether a member of the Texas House of Representatives may be employed as an assistant county attorney. |
| JC-437 | Whether the Texas Commission for the Deaf and Hard of Hearing may pay members of the Board for Evaluation of Interpreters to evaluate interpreters, and related questions. |
| JC-577 | Whether an adjunct professor is considered a "schoolteacher." |
| JM-93 | Whether the Texas Automated Information Systems Advisory Council may prohibit its employees from taking outside employment. |
| JM-188 | Whether the Texas Department of Human Resources may prohibit workers from performing court-ordered social studies on their own time. |
| LO 89-67 | Whether Sections 36.08 and 36.09 of the Texas Penal Code prevent dual employment for a public servant who is employed by the legislature or a legislative agency. |
| LO 90-43 | Whether a state agency may adopt a personnel policy prohibiting its employees from engaging in counseling activities in a private capacity. |
| LO 90-106 | Whether a state employee or an employee of a junior college district may receive compensation for serving as a city council member. |
| LO 93-96 | Whether a district attorney may simultaneously hold a compensated teaching position with a state university. |
| LO 94-80 | Whether an individual may be employed simultaneously in a full-time faculty position at both a public junior college and a state university. |
| LO 96-109 | Whether a state university may prohibit its employees from engaging in outside employment. |
| LO 98-11 | Regarding the service of state employees on the boards of water districts. |
| LO 98-54 | Whether committee chairs or committee members of the Texas Physical Therapy Association may be members of the Texas Board of Physical Therapy Examiners. |
| LO 98-55 | Whether a member of the Texas Board of Physical Therapy Examiners may simultaneously hold the office of county clerk. |
| ^a Detailed references can be found at: Letter opinions (LO): http://www.oag.state.tx.us/opin/op_letters.shtml . Opinions: http://www.oag.state.tx.us/opin/opindex.shtml . | |

Physical Fitness Programs and Standards

Four states agencies with commissioned law enforcement officers are required to adopt physical fitness programs in which commissioned law enforcement officers must participate and physical fitness standards that the officers must meet.²⁰ The state agencies covered under this provision include the following:

- Department of Public Safety.
- Alcoholic Beverage Commission.
- Department of Criminal Justice.
- Parks and Wildlife Department.²¹

The standards must directly relate to the officer's job duties and include individual fitness goals specific to the officer's age and gender. The agencies shall use the services of a consultant to aid in the development of such standards. Each agency is required to adopt policy and procedures to provide reward incentives in the form of administrative leave to officers who participate in the physical fitness program and meet the standards. The total administrative leave offered as reward incentives is limited to four days per year.

A violation of the adopted standards is just cause for dismissal or transfer to a position not compensated within Salary Schedule C of the position classification salary schedule prescribed by the General Appropriations Act. The agencies, however, may exempt a law enforcement officer from participating in a physical fitness program or meeting a standard based on the facts and circumstances of the individual case, including whether an officer was injured in the line of duty. Each agency may adopt physical readiness standards independent of the other agencies.²²

| New Requirement |
|---|
| The 81st Legislature passed legislation requiring four states agencies with commissioned law enforcement officers to adopt physical fitness programs and reward incentives. |

Table 1-4 lists State Auditor's Office's Human Resources Question-and-Answer related to physical fitness programs and standards.

²⁰ Texas Government Code, Section 614.152 (a).

²¹ Texas Government Code, Section 614.151 (1).

²² Texas Government Code, Section 614.152, as amended by HB 2730 (81st Legislature, Regular Session).

Table 1-4

| Physical Fitness Programs and Standards Related State Auditor's Office Resources ^a | | |
|--|---|-----------|
| Type | Topic | Reference |
| HR Question | Whether the four state agencies with commissioned law enforcement officers must terminate a law enforcement officer who does not meet established physical fitness standards. | 10/1/2008 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . | | |

Political Influence

A state agency may not use any money under its control to finance or support the candidacy of a person for an office in the legislative, executive, or judicial branch of state government or of the government of the United States.²³

State officers and employees may not use official authority or influence to affect the result of an election or nomination of a candidate or to achieve any political purpose.²⁴ Employees may not coerce, restrict, or prevent contributions to candidates or political organizations.²⁵

The use of state-owned vehicles to support the candidacy of a person running for office is prohibited.²⁶

State agencies and institutions of higher education may not use appropriated funds to attempt to influence the passage or defeat of any legislation. However, this does not prohibit a state officer or employee from using state resources to provide public information or to provide information responsive to a request.²⁷

Employees are permitted to testify on their own behalf on their own time, or during working hours on behalf of the agency, in support of or in opposition to specific legislation.²⁸

State employees are not allowed to be employed as paid lobbyists. Appropriated funds may not be used as compensation to employees who are required to register as lobbyists.²⁹ Appropriated funds may not be used to pay membership fees in organizations that pay all or part of the salary of a person required to register as a lobbyist.³⁰

²³ Texas Government Code, Section 556.004 (a).

²⁴ Texas Government Code, Section 556.004 (c).

²⁵ Texas Government Code, Section 556.004 (d).

²⁶ Texas Government Code, Section 556.004 (b).

²⁷ Texas Government Code, Section 556.006 (a) and (b).

²⁸ Opinion, Texas Office of the Attorney General, No. H-566 (1975).

²⁹ Texas Government Code, Section 556.005 (a).

³⁰ Texas Government Code, Section 556.005 (b).

Each agency is required to provide all employees a copy of prohibited political activities and to maintain signed acknowledgements from employees. These acknowledgements must be made available for public inspection.³¹

Table 1-5 includes a list of resources from the Attorney General’s Office related to political activity and influence of state employees.

Table 1-5

| Political Activity and Influence Related Attorney General Resources ^a | |
|--|---|
| Opinion Number | Topic |
| GA-679 | Regarding a conflict of interest statute—Texas Government Code, Section 2054.022(a)(7)—which prohibits a Department of Information Resources board member or executive director from accepting or receiving money or items of value from an individual, firm, or corporation to whom a contract may be awarded. |
| H-566 | Whether state employees may testify before legislative committees in favor of or in opposition to legislation. |
| JM-957 | Regarding the political activity by employees of the Texas Department of Human Services. |
| ^a Detailed references can be found at http://www.oag.state.tx.us/opin/opindex.shtml . | |

Publicity

A state agency may not use appropriated money to publicize or direct attention to a state employee.³² In addition, a state agency may not use appropriated money to maintain a publicity office or department, employ an individual who has the title or duties of a public relations or press agent, or pay a public relations agent or business.³³

Representation by a Former Officer or Employee

A former member of a governing body or executive head of a regulatory agency may not make any communication to or appearance before an employee of the agency in which the member or executive head served until two years after the member or executive has ceased employment with the agency if the communication or appearance is made with the intent to influence and on behalf of any person in connection with any matter on which the person seeks official action.³⁴

A former state officer or employee of a regulatory agency who ceased service or employment with that agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered for a particular matter (a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other

³¹ Texas Government Code, Section 556.009.

³² Texas Government Code, Section 2113.011 (a).

³³ Texas Government Code, Section 2113.011 (b).

³⁴ Texas Government Code, Section 572.054 (a).

proceeding) in which the former officer or employee participated during their period of state service or employment.³⁵

Table 1-6 includes a list of resources from the Attorney General’s Office related to limitations on former state officers and employees.

Table 1-6

| Limitations on Former Officers and Employees Related Attorney General Resources ^a | |
|---|--|
| Opinion Number | Topic |
| DM-209 | Whether a former employee of the Public Utility Commission who goes to work for an affiliate of a regulated utility violates Section 6, Article 1446c, Texas Civil Statutes. |
| DM-223 | Whether Section 7A(a), Article 6252-9b, Texas Civil Statutes prohibits a former member of the Polygraph Examiners Board from appearing before the Board in connection with sponsoring an intern. |
| JM-1031 | Regarding the authority of the Department of Mental Health and Mental Retardation to impose certain requirements on contracts for community-based mental health and mental retardation services. |
| LO 92-24 | Whether Section 3.102, Article 601 (b), Texas Civil Statutes, applies to a bid or contract that includes proposed financial participation by certain former state employees. |
| LO 96-80 | Whether a former member of the Texas Legislature may be appointed chancellor of Texas Tech University. |
| LO 97-47 | Whether a former regent of the Texas State Technical College System may be appointed executive officer of the system. |
| LO 98-39 | Whether a legislator may employ local public officials. |
| LO 98-109 | Whether a former district judge sitting by assignment may hold a compensated teaching position with a state university. |
| ^a Detailed references can be found at: Letter opinions (LO): http://www.oag.state.tx.us/opin/op_letters.shtml . Opinions: http://www.oag.state.tx.us/opin/opindex.shtml . | |

Unacceptable Solicitations and Benefits

State law requires that all individuals who are responsible to the State in the performance of their official duties observe certain standards of conduct and disclosure requirements.

Employees and officers may not:

- Accept or solicit any gift, favor, or service that might tend to influence an employee’s or officer’s discharge of official duties or is offered with the intent to influence official conduct.

Texas Ethics Commission

The Texas Ethics Commission issues written opinions on standards of conduct and conflict of interest provisions of state statute; such opinions may be requested by a person subject to those provisions.

Exceptions to gift prohibitions can be found on the Texas Ethics Commission’s Web site at <http://www.ethics.state.tx.us>.

³⁵ Texas Government Code, Section 572.054 (b).

- Accept employment or engage in a business or professional activity that might reasonably require the employee or officer to disclose confidential information acquired by reason of an official position.
- Accept other employment or compensation that might impair the employee's or officer's independence of judgment in the performance of official duties.
- Make personal investments that might impair independence or judgment in the performance of official duties.
- Intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised official powers or performed official duties in favor of another.³⁶

A state agency may not use appropriated money to compensate a state employee who violates a standard of conduct outlined above.³⁷ In addition, unless authorized by law, a state employee may not accept money for wages or travel expenses from a person that the employee's state agency intends to, or is currently, auditing, examining, or investigating.³⁸

Use of Alcoholic Beverages

Except for legitimate law enforcement purposes, a state agency may not use appropriated funds to compensate an officer or state employee who uses alcoholic beverages on active duty, or to reimburse a travel expense for the purchase of an alcoholic beverage.³⁹

Use of State Property

State property may be used only for official state purposes and should not be used for personal purposes. This includes the use of state-owned or state-leased motor vehicles, which may be used only for official state business. The use of such vehicles to commute to and from work is acceptable if it is approved by the administrative head of an agency.⁴⁰ The names and job titles of these employees and the reasons for authorization must be included in an annual report to the Office of the Governor, Legislative Reference Library, State Auditor's Office, and Legislative Budget Board.⁴¹

³⁶ Texas Government Code, Section 572.051 (a).

³⁷ Texas Government Code, Section 2113.014 (a).

³⁸ Texas Government Code, Section 660.016 (a).

³⁹ Texas Government Code, Sections 2113.012, 2113.101, and 660.113 (e).

⁴⁰ Texas Government Code, Section 2113.013.

⁴¹ Texas Government Code, Section 2101.0115 (a) and c (13).

Related Legislation

Table 1-7 lists human resources-related bills that were passed by the 81st Legislature. This may not be a complete list and should be used only as a general summary of legislation related to standards of conduct that were addressed during the session.

Table 1-7

| Standards of Conduct Related Legislation (81st Legislature) ^a | |
|---|---|
| Bill Number | Summary |
| HB 2730 | Relating to the continuation and functions of the Department of Public Safety and to physical fitness programs and standards. |
| ^a Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at http://www.capitol.state.tx.us . | |

Section 2
***Employment Discrimination and
Anti-Retaliation Laws***

General Information

Employment discrimination laws make it illegal for employers to treat employees and applicants adversely based on race, color, sex, religion, national origin, physical disability, age, or genetic information. The main body of employment discrimination laws is composed of federal and state statutes. This section summarizes some important federal and state laws that are applicable to state agencies and institutions of higher education.

Texas Workforce Commission, Civil Rights Division

The Texas Workforce Commission's Civil Rights Division (Division) is responsible for the education on and enforcement of certain state and federal employment laws. They serve as the state Fair Employment Practices agency that is authorized, with respect to unlawful employment practices, to seek relief, grant relief, and institute criminal proceedings related to state and federal employment laws. The Division provides training to help state agencies and institutions of higher education improve their understanding and compliance with Equal Employment Opportunity laws.⁴²

Each state agency and institution of higher education is required to provide training to each new employee on policies and procedures regarding employment discrimination and sexual harassment no later than 30 days after the date of hire. In addition, supplemental training is required every two years. Training materials are available from the Division. A signed statement verifying attendance is required to be maintained in each employee's personnel file.⁴³

A person claiming to be discriminated against or aggrieved by an unlawful employment practice, or the person's agent, may file a complaint with the Division.⁴⁴

Workforce Diversity Programs

State agencies and institutions of higher education are required to develop and implement personnel policies that comply with Chapter 21 of the Texas Labor Code (Employment Discrimination), including the development of a workforce diversity program.⁴⁵ The Texas Workforce Commission's Civil Rights Division is required to review these policies on a six-year cycle to ensure compliance with state statute. If the Civil Rights Division finds that these policies do not comply with state statute, it will recommend revisions. The review of the state agency's personnel policies and procedures should be completed within one year.⁴⁶

⁴² Texas Labor Code, Section 21.0015 and Section 21.003 (a) (2), (5), and (8).

⁴³ Texas Labor Code, Section 21.010 (b), (c), (d), and (e).

⁴⁴ Texas Labor Code, Section 21.201 (a).

⁴⁵ Texas Labor Code, Section 21.452.

⁴⁶ Texas Labor Code, Section 21.453.

An employer does not commit an unlawful employment practice by developing and implementing personnel policies that incorporate workforce diversity programs.⁴⁷

Age Discrimination in Employment Act of 1967 (ADEA)

The Age Discrimination in Employment Act of 1967 (ADEA) and the Texas Labor Code prohibit discrimination against a person (employee or job applicant) because of his or her age with respect to any term, condition, or privilege of employment including, but not limited to, hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training. Employees aged 40 and older are protected from such age-related discrimination. In addition, employees are not required to retire at any specific age.⁴⁸

Americans with Disabilities Act of 1990 (ADA)

The Americans with Disabilities Act of 1990 (ADA) gives civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications.

This law applies to state agencies and institutions of higher education and prohibits discrimination in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment.⁴⁹

The ADA only applies to persons who meet the definition of "disabled" under the Act. Under the ADA, an individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities.
- Has a record of such impairment.
- Is regarded as having such impairment.⁵⁰

Major life activities are the basic components of any person's life and may include walking, talking, hearing, seeing, sitting or standing, lifting or reaching, and concentrating. The ADA has been amended several times since its passage in 1990 and undergoes continuous interpretation in the court systems; therefore, an agency and institution should consult with their general counsel or subject matter experts in regard to these matters.

| |
|--|
| <p style="text-align: center;">ADA Technical Assistance Manual</p> <p>The Department of Justice has issued a technical assistance manual designed to assist state and local officials improve compliance requirements for access to programs, services, activities, and facilities. The technical assistance manual can be found at: http://www.ada.gov/publicat.htm.</p> |
|--|

⁴⁷ Texas Labor Code, Section 21.121.

⁴⁸ Texas Labor Code, Sections 21.051, 21.101, and 21.103; and Title 29, United States Code, Section 621 (b) (Age Discrimination in Employment Act of 1967).

⁴⁹ Department of Justice *Guide to Disability Rights Law* at Web site <http://www.ada.gov/cguide.htm#anchor62335>.

⁵⁰ Title 42, United States Code, Section 12102 (2).

ADA State Efforts

The Texas Governor's Committee on People with Disabilities (Committee) consists of 12 volunteer members appointed by the Governor, seven of whom must be persons with disabilities. The primary purpose of the Committee is to coordinate and monitor the State's compliance with the ADA and other federal and state statutes. State agencies and institutions of higher education should direct their concerns to the Committee and cooperate with and assist in its goal of improving opportunities for people with disabilities.⁵¹

Americans with Disabilities Act Amendments Act of 2008 (ADAAA)

The Americans with Disability Act Amendments Act of 2008 (ADAAA) clarifies and broadens the definition of disability and expands the population eligible for protections under the Americans with Disabilities Act of 1990. Among the clarifications and changes, the ADAAA:

- Broadens the definition of disability, including what it means to be “substantially limited in a major life activity.”
- Creates a non-exhaustive list of “major life activities.”
- Clarifies that accommodations are not required if an individual is merely “regarded as” having a disability.
- Prohibits the consideration of mitigating measures, such as medication, prosthetics, and assistive technology, in determining whether an individual has a disability.⁵²

| New Requirement |
|--|
| The 81st Legislature passed legislation related to the employment of certain individuals with disabilities, and the definition of “major life activity.” ⁵³ |

Bona-Fide Occupational Qualification (BFOQ)

No person shall be subject to discriminatory employment practices based on race, color, disability, religion, sex, national origin, or age. However, there may be some exceptions based upon bona-fide occupational qualifications (BFOQ). A BFOQ is a requirement that is necessary and related to the performance of a job and which would otherwise be unlawful because of its discriminatory impact based on one's sex, religion, national origin, and other reasons. An example may be excluding men from being attendants in a women's locker room.⁵⁴ The concept of BFOQ is interpreted very narrowly by federal courts and the Equal Opportunity Employment Commission, and state agencies

⁵¹ Texas Human Resources Code, Section 115.001; and Texas Governor's Office Web site at <http://www.governor.state.tx.us/disabilities>.

⁵² *The ADA Amendments Act of 2008: Frequently Asked Questions*, U.S. Department of Labor Web site at <http://www.dol.gov/esa/ofccp/regs/compliance/faqs/ADAfaqs.htm>.

⁵³ Texas Labor Code, Section 21.002 (11 –a), as amended by HB 978 (81st Legislature, Regular Session).

⁵⁴ *Especially for Texas Employers Policy Issues, Affirmative Action*, Texas Workforce Commission, Web site at http://www.twc.state.tx.us/news/efte/affirmative_action.html.

and institutions of higher education should consult with their general counsel before choosing to use a BFOQ.

If a BFOQ is reasonably necessary to the normal operation of the particular business then performing any of the following practices on the basis of disability, religion, sex, national origin, or age of an employee, member, or other individual is not an unlawful employment practice:

- An employer hiring and employing an individual.
- An employment agency classifying or referring an individual for employment.
- A labor organization classifying its members or classifying or referring an individual for employment.
- An employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program admitting or employing an individual in its program.⁵⁵

In addition, an employer does not commit an unlawful employment practice by imposing a minimum or maximum age requirement for peace officers or fire fighters.⁵⁶

The Civil Rights Act of 1964, Title VII

Title VII of the Civil Rights Act of 1964, as well as Texas Labor Code, Chapter 21, prohibits employment discrimination because of race, sex, color, national origin, religion, age, and mental or physical disability.⁵⁷ An employer commits an unlawful employment practice if, because of race, color, disability, religion, sex, national origin, or age, the employer:

- Fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment.
- Limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee.⁵⁸

Under these laws, it is unlawful to discriminate in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment.

Title VII also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups. Title VII not only prohibits intentional discrimination, it also prohibits neutral job policies that disproportionately exclude minorities.⁵⁹

⁵⁵ Texas Labor Code, Section 21.119.

⁵⁶ Texas Labor Code, Section 21.104.

⁵⁷ Texas Labor Code, Section 21.110; and Title 42, United States Code, Section 2000e-2 (Title VII of Civil Rights Act of 1964).

⁵⁸ Texas Labor Code, Section 21.051.

⁵⁹ *Race and Color Discrimination Questions and Answers*, U.S. Equal Employment Opportunity Commission Web site at <http://www.eeoc.gov/types/race.html>.

Religious Affiliation Discrimination

Texas Labor Code, Chapter 21 prohibits discrimination of an employee or applicant based on any aspect of religious observance, practice, or belief; unless an employer demonstrates that the employer is unable reasonably to accommodate the religious observance or practice of an employee or applicant without undue hardship to the conduct of the employer's business.⁶⁰

Sexual Harassment

Sexual harassment is a form of gender-based discrimination prohibited by Title VII of the Civil Rights Act of 1964. The two most common forms of sexual harassment are “quid pro quo” and “hostile work environment.” Quid pro quo harassment forces an employee to choose between the job and the demands. Quid pro quo means “something for something” or “this for that.” A hostile work environment exists when the employer allows the workplace to be permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive enough to alter the conditions of the victim’s employment and create an abusive working environment.⁶¹

Definition of Sexual Harassment

Sexual Harassment is defined as:

“Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.”

Source: Code of Federal Regulations, Title 29, Section 1604.11 (a).

An employer is absolutely liable for hostile environment claims that include a tangible employment action. According to a ruling by the U.S. Supreme Court, “a tangible employment action constitutes a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.”⁶² A constructive discharge claim can be a tangible employment action if working conditions are so intolerable that a reasonable person would have felt compelled to resign.⁶³

If there is no tangible employment action, the employer may assert an affirmative defense. According to a U.S. Supreme Court ruling, “the defense comprises two necessary elements: (1) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (2) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.”⁶⁴

To be in a position to assert an affirmative defense, every state agency should establish a written policy against sexual harassment, include the policy in its employee handbook, and communicate the policy to all employees. In addition to establishing a policy against sexual harassment, agencies should establish a grievance procedure for employees to easily report sexual harassment, including a mechanism through which employees can bypass their immediate supervisor.

⁶⁰ Texas Labor Code, Section 21.108.

⁶¹ *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993).

⁶² *Burlington Industries, Inc. v. Ellerth*, 523 U.S. 742 (1998).

⁶³ *Pennsylvania State Police v. Suders*, 542 U.S. 129 (2004).

⁶⁴ *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).

Conflict Resolution and Employee Grievances

Alternative Dispute Resolution (ADR)

The Governmental Dispute Resolution Act provides explicit statutory authorization and encouragement to governmental entities to use mediation, arbitration, negotiation, mini-trials, and other alternatives as a method of resolving disputes without judicial trial or administrative agency contested case proceedings.

It is the policy of the State that disputes before governmental entities be resolved as fairly and expeditiously as possible and that each governmental body support this policy by developing and using alternative dispute resolution procedures in appropriate aspects of the governmental body's operations and programs.⁶⁵

A governmental body may pay for costs necessary to meet the objectives of the Governmental Dispute Resolution Act, including reasonable fees for training, policy review, system design, evaluation, and the use of impartial third parties. The Governmental Dispute Resolution Act also authorizes governmental entities to obtain alternative dispute resolution services from other governmental entities, agency "pooling" agreements, community Dispute Resolution Centers, and private providers.⁶⁶

The Governmental Dispute Resolution Act grants the State Office of Administrative Hearings and Administrative Law Judges the authority to conduct alternative dispute resolution proceedings and refer contested cases to alternative dispute resolution. Binding arbitration is specifically excluded as a method of alternative dispute resolution.⁶⁷

For additional information, contact the State Office of Administrative Hearings at <http://www.soah.state.tx.us/index.htm>.

Employee Grievances

The Texas Attorney General has ruled that state agencies should meet with their employees to hear grievances concerning wages, work hours, and work conditions.⁶⁸ State agencies and institutions of higher education may establish their own policies regarding the processing of employee grievances.

State funds cannot be used to pay expenses for salary, travel, or per diem of a public employee who represents another employee who filed a grievance in the presentation of grievances concerning wages, hours of work, or conditions of work. Such employees may, in accordance with agency policy, take annual leave, compensatory leave, or leave without pay for time associated with representing an employee who filed a grievance.⁶⁹

⁶⁵ Texas Government Code, Section 2009.002.

⁶⁶ Texas Government Code, Section 2009.004.

⁶⁷ Texas Government Code, Section 2009.005 (c).

⁶⁸ Opinion, Texas Office of the Attorney General, No. H-422 (1974) and No. M-719 (1970).

⁶⁹ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 16.03.

Faculty Grievances

A faculty member at an institution of higher education has a right to present a grievance, in person, to administration regarding non-renewal or termination of employment. This right is guaranteed and cannot be restricted. "Faculty members" are defined as individuals who are employed full-time with duties that include teaching, research, or administration or individuals who provide professional services. This right does not extend to faculty who spend the majority of their time dedicated to managerial or supervisory duties. Such positions include chancellor, vice chancellor, president, vice president, provost, assistant provost, dean, and assistant dean.⁷⁰

Employee Polygraph Protection Act of 1988 (EPPA)

The Employee Polygraph Protection Act of 1988 (EPPA) generally prevents employers from using lie detector tests, either for pre-employment screening or during the course of employment, with certain exemptions. Employers generally may not require or request any employee or job applicant to take a lie detector test, or discharge, discipline, or discriminate against an employee or job applicant for refusing to take a test or for exercising other rights under the Act. The Employment Standards Administration's Wage and Hour Division within the U.S. Department of Labor enforces the EPPA.⁷¹

Polygraph Examinations for Officers and Employees in Certain Positions

The Department of Public Safety may require a commissioned or noncommissioned officer or employee of the agency to submit to a polygraph examination if:

- The officer or employee is assigned to a position that requires them to work with a federal agency on national security issues; and
- The federal agency requires that the officer or employee submit to a polygraph examination.

If an officer or employee does not submit to the administration of a polygraph examination, the agency may remove or refuse to assign the officer or employee to that position.⁷²

Polygraph Examination Refusal

Under state law, a peace officer may not be suspended, discharged, or subjected to any other form of employment discrimination by the organization employing or appointing the peace officer because the peace officer refuses to submit to a polygraph examination as part of an internal investigation regarding the conduct of the peace officer unless:

- The complainant submits to and passes a polygraph examination (provided that the complainant is physically and mentally capable of being polygraphed); or
- The head of the law enforcement organization requires the peace officer to submit to a polygraph examination if:
 - ♦ The subject matter of the complaint is confined to the internal operations of the organization employing or appointing the peace officer, and

⁷⁰ Texas Education Code, Section 51.960.

⁷¹ *Compliance Assistance*, U.S. Department of Labor Web site at <http://www.dol.gov/compliance/laws/comp-eppa.htm>.

⁷² Texas Government Code, Section 411.00741.

- ♦ The complainant is an employee or appointee of the organization employing or appointing the peace officer, and
- ♦ The complaint does not appear to be invalid based on the information available when the polygraph is ordered; or
- The head of the law enforcement organization considers the circumstances to be extraordinary and believes that the integrity of a peace officer or the law enforcement organization is in question. Under these circumstances the head of the organization shall provide the peace officer with a written explanation of the nature of the extraordinary circumstances and how the integrity of a peace officer or the law enforcement organization is in question.⁷³

Equal Pay Act of 1963 (EPA)

The Equal Pay Act (EPA) requires that men and women be given equal pay for equal work in the same establishment. The jobs need not be identical, but they must be substantially equal. It is job content, not job titles, that determines whether jobs are substantially equal. Employers may not pay unequal wages to men and women who perform jobs that require substantially equal skill, effort, and responsibility and that are performed under similar working conditions within the same establishment.

Pay differentials are permitted when they are based on seniority, merit, quantity or quality of production, or a factor other than sex. These are known as “affirmative defenses” and it is the employer’s burden to prove that they apply. In correcting a pay differential, no employee’s pay may be reduced. Instead, the pay of the lower paid employee(s) must be increased.⁷⁴

Federal Pregnancy Discrimination Act of 1978

The Federal Pregnancy Discrimination Act of 1978 and the Texas Labor Code prohibit discrimination on the basis of pregnancy, childbirth, or related medical conditions.⁷⁵ Women affected by pregnancy or related conditions must be treated in the same manner as other employees or applicants who have medical conditions that place a similar limitation on their ability to or availability for work.⁷⁶

The Texas Department of Public Safety (Department) is required to make reasonable efforts to accommodate the request of a commissioned officer who is determined by a physician to be partially physically restricted by a pregnancy if the request is related to the officer’s working conditions. If an officer’s physician certifies that, because of the officer’s pregnancy, the officer is unable to perform the duties of the officer’s permanent work assignment and a temporary work assignment that the officer may perform is available, the Department must, on request of the officer, assign the officer to the temporary work assignment.⁷⁷

⁷³ Texas Government Code, Section 614.063.

⁷⁴ *Facts about Compensation Discrimination*, U.S. Equal Employment Opportunity Commission Web site at <http://www.eeoc.gov/facts/fs-epa.html>.

⁷⁵ *Pregnancy Discrimination Questions and Answers*, U.S. Equal Employment Opportunity Commission Web site at <http://www.eeoc.gov/types/pregnancy.html>; and Texas Labor Code, Section 21.106.

⁷⁶ Texas Labor Code, Section 21.106 (b).

⁷⁷ Texas Government Code, Section 411.0079.

Genetic Information Nondiscrimination Act of 2008

The Genetic Information Nondiscrimination Act (GINA) of 2008 is a federal law that prohibits discrimination in health coverage and employment based on genetic information. GINA prohibits group health plans and health insurers from denying health insurance coverage or charging higher premiums based solely on a genetic predisposition. GINA also prohibits employers from using an individual's genetic information when making hiring, firing, job placement, or promotion decisions. The section of GINA relating to health coverage (Title I) will take effect between May 2009 and May 2010. The sections relating to employment (Title II) will take effect on November 21, 2009.⁷⁸

Genetic Testing Discrimination

State agencies and institutions of higher education are prohibited from discriminating against an individual on the basis of genetic information or an individual's refusal to submit to a genetic test. Routine physical exams; chemical, blood, or urine analyses; tests to determine drug use; and tests for the presence of human immunodeficiency virus are excluded from this definition of genetic testing.⁷⁹

An employee's genetic information is confidential, regardless of the source, and cannot be disclosed without written authorization from the employee.⁸⁰ An individual who submits to a genetic test has the right to know the results. To obtain those results, individuals need to provide a written request to the entity that performed the test. Results should then be sent to the individual or a physician designated by the individual.⁸¹

Lilly Ledbetter Fair Pay Act of 2009

The Lilly Ledbetter Fair Pay Act amends Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and it modifies the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973. The Lilly Ledbetter Fair Pay Act clarifies that a discriminatory compensation decision or other practice occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice. Also, it allows pay discrimination complaints to be filed 180 days after any discriminatory paycheck.⁸²

Protections in Reporting Violations of Law

Employees are provided certain protections and relief against retaliation, or "whistle-blowing" for reporting violations of laws. This subsection summarizes some important federal and state laws that are applicable to state agencies and higher education institutions.

⁷⁸ *Genetic Information Nondiscrimination Act of 2008* at <http://www.genome.gov/10002328>.

⁷⁹ Texas Labor Code, Sections 21.401 and 21.402.

⁸⁰ Texas Labor Code, Sections 21.403, 21.4031, and 21.4032.

⁸¹ Texas Labor Code, Section 21.404.

⁸² Title 42, United States Code, Section 2000e-5 (e) (Title VII of the Civil Rights Act of 1964); Title 29, United States Code, Chapter 626 (d) (Age Discrimination in Employment Act of 1967); Title 42, United States Code, Section 12111 (Title 1 of the Americans with Disabilities Act of 1990); and Title 29, United States Code, Sections 501 and 504 (Rehabilitation Act of 1973).

Reporting Discrimination

The same laws that prohibit discrimination also prohibit retaliation against individuals who oppose unlawful discrimination or participate in an employment discrimination proceeding. An employer may not fire, demote, harass, or otherwise “retaliate” against individuals for filing a charge of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination.⁸³

Reporting Child Abuse and Neglect

An employer may not take action against a professional who, in good faith, reports child abuse or neglect to the person’s supervisor, administrator, a regulatory agency, or law enforcement. In this situation, “professional” means an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers.⁸⁴

Persons initiating or cooperating with an investigation are also extended this protection. This protection does not apply to a self-disclosure.⁸⁵

Texas Whistle Blower Act

A state agency or institution of higher education may not suspend, terminate, or take other adverse personnel action against an employee who, in good faith, reports a violation of the law by the employing governmental entity or another public employee to an appropriate law enforcement authority.⁸⁶ Agencies and institutions of higher education shall inform its employees of their rights by posting a sign in a prominent location in the workplace.⁸⁷ A copy of this sign may be obtained online from the Office of the Attorney General at www.oag.state.tx.us/newspubs/publications.shtml.

An employee who alleges that action taken against them is in violation of this provision may file suit against the State but not later than the 90th day after the date on which the alleged violation occurred or was discovered. The employee also must exhaust the employer appeals process not later than the 90th day after the alleged violation occurred or was discovered.⁸⁸

Public Employee Labor Unions

Texas is a “right-to-work” state. As such, no person can be denied public employment due to membership or non-membership in a labor union.⁸⁹

⁸³ Texas Labor Code, Section 21.055.

⁸⁴ Texas Family Code, Section 261.101.

⁸⁵ Texas Family Code, Section 261.110 (m).

⁸⁶ Texas Government Code, Section 554.002 (a).

⁸⁷ Texas Government Code, Section 554.009 (a).

⁸⁸ Texas Government Code, Sections 554.004 (a), 554.005 (a), and 554.006 (b).

⁸⁹ Texas Labor Code, Section 101.052 and 101.053; and Texas Government Code, Section 617.004.

Employees may use automatic payroll deductions for the payment of membership fees in state employee organizations. Participation by state employees in the payroll deduction program is voluntary. Such organizations must have a minimum of 4,000 members to qualify for this service.⁹⁰

Table 2-1 includes a list of resources from the Attorney General’s Office related to labor relations.

Table 2-1

| Labor Relations Related Attorney General Resources ^a | |
|---|---|
| Opinion Number | Topic |
| LO 97-38 | Whether Section 617.002 of the Texas Government Code prohibits public sector employers from meeting with union representatives to discuss matters affecting employee working conditions. |
| M-719 | Whether the Adjutant General of Texas must comply with Federal Executive Order No. 11491 and Department of Defense Order No. 1426.1 even though doing so apparently conflicts with Article 5154c, Texas Civil Statutes. |
| ^a Detailed references can be found at: Letter opinions (LO): http://www.oag.state.tx.us/opin/op_letters.shtml . Opinions: http://www.oag.state.tx.us/opin/opindex.shtml . | |

Strikes

Public employees may not strike or engage in an organized work stoppage against the State. A public employee who violates this statute forfeits all civil service rights, re-employment rights, and any other rights, benefits, and privileges the employee enjoys as a result of public employment or former public employment. The right of an individual to cease work may not be abridged if the individual is not acting in concert with others in an organized work stoppage.⁹¹

Workers’ Compensation Claims History Discrimination

The Texas Workers Compensation Act enables an employee who has been injured at work or has a work-related illness to receive medical benefits as well as income benefits. In addition, it protects against discrimination based upon workers’ compensation claims history.⁹² Although the Texas Supreme Court has ruled that this statute applies only to employees and not to applicants, discriminating against applicants based upon workers’ compensation claims history is generally viewed by the U.S. Equal Employment Opportunity Commission as a violation of disability discrimination laws.⁹³

⁹⁰ Texas Government Code, Sections 403.0165 and 814.009.

⁹¹ Texas Government Code, Sections 617.003 and 617.005.

⁹² *Especially for Texas Employers, Index, Workers’ Compensation*, Texas Workforce Commission Web site at http://www.twc.state.tx.us/news/eftc/workers_compensation.html.

⁹³ *Job Applicants and the American with Disabilities Act*, Question No. 9, Equal Employment Opportunity Commission’s Web site at <http://www.eeoc.gov/facts/jobapplicant.html#potential>.

Required Posters at the Workplace

Various laws require employers to display posters communicating employment rights for individuals in the workplace. These posters are available, free of charge, from various state and federal agencies. Table 2-2 provides a list of posters that may be required as well as the agency responsible for their distribution. Additional information, as well as links to these resources, is available through the Texas Workforce Commission's Web site at <http://www.twc.state.tx.us/ui/lablaw/posters.html>.

Table 2-2

| Required Workplace Posters ⁹⁴ | |
|--|--|
| Issuing Agency | Poster Title |
| Texas Workforce Commission | <i>Texas Unemployment Compensation Act</i> |
| Texas Workforce Commission | <i>Texas Payday Law</i> |
| Texas Workforce Commission, Civil Rights Division | <i>The Law in Texas (optional poster)</i> |
| Texas Department of Insurance, Officer of Injured Employee Counsel Division of Workers' Compensation | <i>The Employer's Notification of the Ombudsman Program to Employees</i> |
| Texas Department of Insurance, Officer of Injured Employee Counsel Division of Workers' Compensation | <i>Workers' Compensation Posters</i> |
| Texas Office of the Attorney General | <i>Whistle Blower Act Poster</i> |
| U.S. Department of Labor | <i>The Uniformed Services Employment and Re-employment Rights Act (USERRA)</i> |
| U.S. Department of Labor, Wage and Hour Division | <i>Fair Labor Standards Act (FLSA)</i> |
| U.S. Department of Labor, Wage and Hour Division | <i>Employee Polygraph Protection Act (EPPA)^a</i> |
| U.S. Department of Labor, Wage and Hour Division | <i>Family Medical Leave Act (FMLA)</i> |
| U.S. Department of Labor, Wage and Hour Division | <i>Migrant and Seasonal Agricultural Worker Protection Act (MSPA)</i> |
| U.S. Department of Labor, Occupational Health and Safety Administration (OSHA) | <i>Job Safety and Health Protection</i> |
| U.S. Equal Employment Opportunity Commission | <i>Equal Employment Opportunity Act</i> |
| U.S. Equal Employment Opportunity Commission | <i>Americans with Disabilities Act of 1990</i> |
| ^a Posting does not apply to federal, state, and local governments. | |

⁹⁴ *Required Posters at the Workplace*, Texas Workforce Commission's Web site at <http://www.twc.state.tx.us/ui/lablaw/posters.html>.

Related Legislation

Table 2-3 lists human resources-related bills that were passed by the 81st Legislature. This may not be a complete list and should be used only as a general summary of legislation related to employment discrimination and anti-discrimination laws that were addressed during the session.

Table 2-3

| Employment Discrimination and Anti-Retaliation Laws Related Legislation (81st Legislature) ^a | |
|--|--|
| Bill Number | Summary |
| HB 978 | Related to the employment of certain individuals with disabilities, and the definition of "major life activity." |
| ^a Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at www.capitol.state.tx.us . | |

Section 3
Employee Recruitment and Selection

At-Will Employment

Unless explicitly exempted by written contract, statute, or policy, all state employees are employed “at will” and there is no implied contract of employment.⁹⁵ “At-will” employment defines an employment relationship in which either party can terminate the relationship with no liability if there was no express contract for a definite term governing the employment relationship. Under this legal doctrine:

- Any hiring is presumed to be “at-will.” That is, the employer is free to discharge individuals “for good cause, or bad cause, or no cause at all.”
- The employee is equally free to quit or otherwise cease work.

A number of state agencies have segments of their employees who have federal and state statutory provisions and regulations that may erode the “at-will” relationship. These agencies include:

- The Department of Public Safety.⁹⁶
- Texas Workforce Commission.⁹⁷
- Health and Human Services Commission.
- Department of Family and Protective Services.
- Department of State Health Services.
- Department of Assistive and Rehabilitative Services.
- Department of Aging and Disability Services.⁹⁸

Table 3-1 lists resources from the Attorney General’s Office related to at-will employment within the state.

⁹⁵ Opinion, Texas Office of the Attorney General, No. JM-941 (1988).

⁹⁶ Texas Government Code, Sections 411.007(e) and 411.0071 (c).

⁹⁷ Texas Government Code, Section 655.001; and Title 42, United States Code, Section 503 (a) (1).

⁹⁸ Texas Government Code, Sections 655.001 and 531.010; and Title 42, United States Code, Section 1396 (a) (4).

Table 3-1

| At-Will Employment Related Attorney General Resources ^a | |
|---|---|
| Opinion Number | Topic |
| JM-941 | Regarding the circumstances under which a state employee may be discharged. |
| LO 95-063 | Whether employees of the Department of Mental Health and Mental Retardation are 'at will' employees. |
| LO 96-139 | Whether a new sheriff may discharge at-will employees of the former sheriff in a non-civil service county. |
| LO 97-021 | Regarding the status of county road and bridge employees if a county returns to the ex-officio road commissioner system pursuant to Texas Transportation Code, Chapter 252, Subchapter A. |
| ^a Detailed references can be found at: Letter opinions (LO): http://www.oag.state.tx.us/opin/op_letters.shtml . Opinions: http://www.oag.state.tx.us/opin/opindex.shtml . | |

Background and Criminal History Checks

An employer in the State that discloses information about a current or former employee is immune from civil liability for that disclosure or any damages caused by that disclosure unless it is proven that the information was known to be false or was made with reckless disregard for the truth.⁹⁹ This applies to a managerial employee or other representative of the employer who is authorized to provide and who provides this information.¹⁰⁰ An employer is not required to provide an employment reference to or about a current or former employee.¹⁰¹

Additionally, although the employer is not required to do so, the employer may disclose information about a current or former employee's job performance to a prospective employer at the request of either the prospective employer or the employee.¹⁰²

An employer may not disclose information about a licensed nurse or licensed vocational nurse that relates to conduct that is protected under the Texas Occupations Code.¹⁰³ The employer must provide the nurse with an opportunity to submit information that would allow the nurse to establish their protection under this code.¹⁰⁴

Criminal History Checks

The Legislature has authorized selected agencies and institutions of higher education to access the criminal histories of applicants, employees, and others who provide services to these agencies and institutions. For example, the School for the Deaf, the Department of Family and Protective Services,

⁹⁹ Texas Labor Code, Section 103.001.

¹⁰⁰ Texas Labor Code, Section 103.004.(a) and (b).

¹⁰¹ Texas Labor Code, Section 103.005.

¹⁰² Texas Labor Code, Section 103.003 (a).

¹⁰³ Texas Occupations Code, Sections 301.352 and 303.005 and Texas Labor Code 103.003 (b).

¹⁰⁴ Texas Labor Code, Section 103.003 (b).

the Health and Human Services Commission, the Youth Commission, the Department of Insurance, and the Veterans Commission, among others may access criminal history records of applicants for employment for certain positions.¹⁰⁵ In addition to specific enabling statutes, agencies, departments, and employees should consult Texas Government Code, Sections 411.081 through 411.127, for more information and specific limitations on access to criminal history records.¹⁰⁶

| New Requirement |
|--|
| The 81st Legislature amended laws regarding agencies that may have access to criminal history record information. ¹⁰⁷ |

Dissemination of Criminal History Information

Criminal history record information maintained by the Department of Public Safety (Department) is confidential information for the use of the Department and may not be disseminated by the Department except to the following:

- Criminal justice agencies.
- Non-criminal justice agencies authorized by federal statute or executive order or by state statute to receive criminal history record information.
- The person who is the subject of the criminal history record information.
- A person working on a research or statistical project that is funded in whole or in part by state funds; or meets the requirements of Part 22, Title 28, Code of Federal Regulations, and is approved by the Department.
- An individual or an agency that has a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice under that agreement, if the agreement:
 - ♦ Specifically authorizes access to the information.
 - ♦ Limits the use of information to the purposes for which it is given.
 - ♦ Ensures the security and confidentiality of the information.
 - ♦ Provides for sanctions if a requirement imposed is violated.
 - ♦ Requires the individual or agency to perform the applicable services in a manner prescribed by the Department.
- An individual or an agency that has a specific agreement with a noncriminal justice agency to provide services related to the use of criminal history record information, if the agreement:

¹⁰⁵ Texas Government Code, Sections 411.081 (i) and 411.1211.

¹⁰⁶ Texas Government Code, Sections 411.081 through 411.127.

¹⁰⁷ SB 1056, SB 2163, and HB 4343 (81st Legislature, Regular Session).

- ◆ Specifically authorizes access to the information.
 - ◆ Limits the use of information to the purposes for which it is given.
 - ◆ Ensures the security and confidentiality of the information.
 - ◆ Provides for sanctions if a requirement imposed is violated.
 - ◆ Requires the individual or agency to perform the applicable services in a manner prescribed by the Department.
- A county or district clerk's office.
 - The Office of Court Administration of the Texas Judicial System.¹⁰⁸

The Department of Public Safety is not required to release or disclose criminal history record information to any person that is not in compliance with rules adopted by the Department or rules adopted by the Federal Bureau of Investigation that relate to the dissemination or use of criminal history record information.¹⁰⁹

| New Requirement |
|---|
| The 81st Legislature amended laws regarding dissemination of criminal history information. ¹¹⁰ |

State Agency Access to Criminal History Information

A state agency can obtain the criminal history record information maintained by the Department of Public Safety that relates to a person who:

- Is an employee, applicant for employment, contractor, subcontractor, or intern or other volunteer with the state agency or with a contractor or subcontractor for the state agency; and
- Has access to information resources or information resources technologies, other than a desktop computer or telephone station assigned to that person.¹¹¹

If a state agency obtains criminal history record information, it may not release or disclose the information or any documents or other records derived from the information except:

- By court order;
- With the consent of the person who is the subject of the information; or
- To the affected contractor or subcontractor, unless the information was obtained by the Department of Public Safety from the Federal Bureau of Investigation.¹¹²

¹⁰⁸ Texas Government Code, Section 411.083 (a) and (b).

¹⁰⁹ Texas Government Code, Section 411.083 (d).

¹¹⁰ HB 2730 (81st Legislature, Regular Session).

¹¹¹ Texas Government Code, Section 411.1405 (b).

State agencies and the affected contractor or subcontractor are required to destroy criminal history information that relates to a person (1) after the information is used to make an employment decision or (2) after taking a personnel action relating to the person who is the subject of the information.¹¹³

A state agency may not obtain criminal history record information unless the state agency first adopts policies and procedures that provide that evidence of a criminal conviction or other relevant information obtained from the criminal history record information does not automatically disqualify an individual from employment.¹¹⁴

The Texas Office of Attorney General shall review the agency's policies and procedures for compliance with due process and other legal requirements before adoption by the state agency.¹¹⁵ The policies and procedures adopted by the agency must provide that the hiring official will determine, on a case-by-case basis, whether the individual is qualified for employment based on factors that include:

- The specific duties of the position.
- The number of offenses committed by the individual.
- The nature and seriousness of each offense.
- The length of time between the offense and the employment decision.
- The efforts by the individual at rehabilitation.
- The accuracy of the information on the individual's employment application.¹¹⁶

Strict guidelines govern the use of criminal history records.¹¹⁷ It is a criminal offense to obtain, use, or disseminate a criminal history record in an unauthorized manner. Additionally, it is an offense to provide this information in exchange for money or to employ another person to do so. The Department of Public Safety (Department) must provide a copy of the penalties of unauthorized obtainment and the use of or disclosure of criminal history record information to a person who applies for access to criminal history record information maintained by the Department and to each private entity that purchases criminal history record information from the Department.¹¹⁸

Higher Education Access to Criminal History Information

Institutions of higher education are entitled to obtain criminal history information from the Department of Public Safety for persons who are applicants for security-sensitive positions.¹¹⁹ A security-sensitive position is held by an employee who:

¹¹² Texas Government Code, Section 411.1405 (c).

¹¹³ Texas Government Code, Section 411.1405 (d).

¹¹⁴ Texas Government Code, Section 411.1405 (e).

¹¹⁵ Texas Government Code, Section 411.1405 (e).

¹¹⁶ Texas Government Code, Section 411.1405 (e).

¹¹⁷ Texas Government Code, Section 411.084.

¹¹⁸ Texas Government Code, Section 411.085(a), (c), and (d).

¹¹⁹ Texas Government Code, Section 411.094 (b).

- Handles currency;
- Has access to a computer terminal;
- Has access to a master key; or
- Works in a location designated as a security-sensitive area.¹²⁰

The information obtained may not be released or disclosed to any person except through court order or with the consent of the person who is the subject of the criminal history information.¹²¹

| New Requirement |
|---|
| The 81st Legislature amended laws regarding how criminal history information can be obtained. |

Table 3-2 provides a list of Texas Office of the Attorney General’s resources related to background and criminal history checks within the state.

Table 3-2

| Background and Criminal History Checks Related Attorney General Resources ^a | |
|--|---|
| Opinion Number | Topic |
| DM-238 | Whether Chapter 106 of the Human Resources Code requires a facility that submits the name of an employee for a criminal history check to terminate the employee if the check reveals convictions of certain offenses. |
| ^a Detailed references can be found at http://www.oag.state.tx.us/opin/opindex.shtml . | |

Civilian Workforce Composition

Each biennium, the Texas Workforce Commission’s Civil Rights Division is required to determine the composition of the statewide civilian workforce and report the information to the Office of the Governor and the Legislature. This report is due by the fifth day of each legislative session. The report includes percentages of Caucasian Americans, African Americans, Hispanic Americans, females, and males within the workforce by job category.¹²²

Employees Working Out of State

A state employee who is required to work outside of this state is entitled to the same benefits and is subject to the same restrictions provided by law for other state employees, including vacation, leave

¹²⁰ Texas Government Code, Section 411.094 (a) (2).

¹²¹ Texas Government Code, Section 411.094 (d), as amended by HB 2730 (81st Legislature, Regular Session).

¹²² Texas Labor Code, Section 21.0035 (a) and (b).

from employment, and the employment policies and restrictions provided by the General Appropriations Act.¹²³

Employment Contracts

Institutions of higher education may enter into an employment contract with an administrator who is to be paid in whole or in part from appropriated funds. Such a decision is left to an institution's governing board and must be based on the best interests of the institution.¹²⁴

An administrator is defined as someone with administrative duties related to the operation of the institution, including operation of a department, college, program, or other subdivision.¹²⁵ Such a contract may not:

- Provide for employment for more than three years.
- Allow for severance or other payment on the termination of the contract to exceed an amount equal to the discounted net cash value of the contract on termination (at a market interest rate agreed upon in the contract).
- Allow for development leave that is inconsistent with Texas Education Code, Section 51.105.
- Award tenure in any way that varies from the institution's general policy on the award of tenure.¹²⁶

If an administrator is reassigned to a faculty or staff position, he or she may not be paid more than other employees with similar qualifications who are doing similar work.¹²⁷

Employment Contracts for Faculty

Institutions of higher education may enter into a contract with a faculty member for more than one academic year.¹²⁸

An institution of higher education is not required to provide an annual contract to tenured or tenure-tracked faculty, but it must provide notification (according to the institution's tenure policy) of a change in a term of employment. This notification should be provided no later than 30 days before implementation of the change.¹²⁹

Institutions of higher education that reappoint a faculty member for the next academic year are required to provide that faculty member a written contract at least 30 days before classes begin.¹³⁰ If the institution of higher education is unable to offer the contract prior to that deadline, the institution

¹²³ Texas Government Code, Section 651.002.

¹²⁴ Texas Education Code, Section 51.948 (a).

¹²⁵ Texas Education Code, Section 51.948 (g) (1).

¹²⁶ Texas Education Code, Section 51.948 (b).

¹²⁷ Texas Education Code, Section 51.948 (c).

¹²⁸ Texas Education Code, Section 51.943 (f).

¹²⁹ Texas Education Code, Section 51.943 (c).

¹³⁰ Texas Education Code, Section 51.943 (b).

is required to inform the faculty member in writing that it is unable to comply, offer an explanation, and provide a time by which the contract will be offered.¹³¹

Employment Preference for Former Foster Children

An individual may qualify for a former foster child employment preference, which gives the individual a preference in employment over other applicants for the same position who do not have greater qualifications, if the individual meets the following conditions:

- The individual was under the permanent managing conservatorship of the Department of Family Services on the day preceding the individual's 18th birthday,¹³² and
- The individual is under the age of 25.¹³³

These provisions apply to a department, commission, board, office, or other agency in the executive branch of state government, including an institution of higher education.¹³⁴ It does not apply to the position of private secretary, deputy to an official or department, or a position that has a strictly confidential relation to the employing officer.¹³⁵

An individual entitled to the former foster child employment preference who is aggrieved by a state agency's hiring decision or a workforce reduction that affects the individual may appeal the agency's decision by filing a written complaint with the agency's governing board. The governing board is required to respond to a written complaint no later than 15 business days after the date that the governing body received the complaint. The governing board may render a different hiring decision if the governing board determines that the former foster child employment preference was not properly applied.¹³⁶

| New Requirement |
|---|
| The 81st Legislature passed legislation providing individuals who are former foster children an employment preference, as well as an option to appeal hiring decisions that may have been made without the preference applied. ¹³⁷ |

¹³¹ Texas Education Code, Section 51.943 (d).

¹³² Texas Government Code, Section 672.002 (a).

¹³³ Texas Government Code, Section 672.005.

¹³⁴ Texas Government Code, Section 672.001.

¹³⁵ Texas Government Code, Section 672.002 (b).

¹³⁶ Texas Government Code, Section 672.004.

¹³⁷ HB 1043 (81st Legislature, Regular Session).

Identification Cards for Peace Officers

Peace Officer Identification Cards

A law enforcement agency or other governmental entity that appoints or employs a commissioned peace officer is required to issue an identification card to its full-time or part-time peace officers.¹³⁸ The identification card must include:

- The full name of the peace officer.
- A photograph of the peace officer that is consistent with the peace officer's appearance.
- The name of the law enforcement agency or other governmental entity that appointed or employs the peace officer or that the peace officer was elected to serve.
- If applicable, the signature of the person appointing or employing the person as a peace officer on behalf of the law enforcement agency or other governmental entity.
- A brief description of the peace officer, including the peace officer's height, weight, and eye color.
- The thumbprint of the peace officer or a bar code with a unique identification label for the peace officer.
- The date the law enforcement agency or other governmental entity appointed or employed the peace officer.
- The date the law enforcement agency or other governmental entity issued the card to the peace officer.
- A phone number operational 24 hours a day, seven days a week that a person may call to verify the validity of the identification card.¹³⁹

On the identification card, the law enforcement agency or other governmental entity that issues the card shall print the following:

- “State of Texas” and the state seal.
- “This identification card certifies that (name of peace officer) is commissioned by (name of law enforcement agency or other governmental entity that appoints or employs the peace officer) as a (“full-time peace officer” or “part-time peace officer”).”¹⁴⁰

Identification cards expire on a date specified by the law enforcement agency or other governmental entity issuing the card.¹⁴¹ The head of a law enforcement agency or other governmental entity that appoints or employs a peace officer shall recover the identification card at the time of the peace officer's resignation or termination.¹⁴²

¹³⁸ Texas Government Code, Section 614.192 (a).

¹³⁹ Texas Government Code, Section 614.192 (b).

¹⁴⁰ Texas Government Code, Section 614.192 (c).

¹⁴¹ Texas Government Code, Section 614.125.

¹⁴² Texas Government Code, Section 614.192 (d).

Retired Peace Officer Identification Cards

The law enforcement agency or other governmental entity that was the last entity to appoint or employ an honorably retired peace officer as a peace officer may issue them an identification card. The identification card must include:

- Retiree's full name.
- Photograph consistent with the retiree's appearance.
- Name of law enforcement agency or governmental entity issuing the card.
- Signature of person authorizing the issuance of the card on behalf of the law enforcement agency or governmental entity, if applicable.
- Brief description of retiree, including the height, weight, and eye color.
- Thumbprint or a bar code with a unique identification label.
- Date retiree last served as a peace officer for the law enforcement agency or governmental entity.
- Date the law enforcement agency or other governmental entity issued the card.
- Operational phone number that a person may call to verify the validity of the identification card.¹⁴³

On the identification card, the law enforcement agency or other governmental entity that issues the card shall print the following:

- "State of Texas" and the state seal.
- The following statement: "This identification card certifies that [name of honorably retired peace officer] is an honorably retired peace officer of [name of law enforcement agency or other governmental entity that last appointed or employed the honorably retired peace officer]."¹⁴⁴

Identification cards expire on a date specified by the law enforcement agency or other governmental entity issuing the card and shall be recovered on the expiration date.¹⁴⁵

Limitations on State Employment Levels

State agencies and institutions of higher education are not permitted to exceed the number of full-time equivalent (FTE) positions¹⁴⁶ authorized by the General Appropriations Act (GAA). The limit on FTEs for most entities:

- Is determined in accordance with the report filed pursuant to Texas Government Code, Section 2052.103.
- Includes only employees paid with funds appropriated through the General Appropriations Act.

¹⁴³ Texas Government Code, Section 614.124 (a) and (b).

¹⁴⁴ Texas Government Code, Section 614.124 (c).

¹⁴⁵ Texas Government Code, Section 614.124 (d).

¹⁴⁶ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 6.10 (a).

- Does not include overtime hours.
- Includes positions filled by temporary or contract workers for more than half of the workdays of the year preceding the final day of the reporting period. Temporary or contract workers include workers employed under contract to fill specific positions customarily filled by state employees. The State Auditor is authorized to provide interpretations of this requirement.¹⁴⁷

A request to the Office of the Governor and Legislative Budget Board to exceed the FTE limitation must be submitted by the governing board of an agency or institution of higher education and must include:

- The date on which the board approved the request.
- A statement justifying the need to exceed or reduce the limitation.
- The source of funds to be used to pay any additional salaries.
- An explanation for why the functions of any proposed additional FTEs cannot be performed within current staffing levels.¹⁴⁸

The time frame controlling the FTE limitation varies by agency or institution of higher education. Some entities are assigned quarterly FTE limitations and others are assigned annual FTE limitations.

FTE limitations do not apply to employment that stems from the declaration of a disaster by the Governor. Each year, state agencies must notify the State Auditor's Office, Comptroller of Public Accounts, Legislative Budget Board, and Office of the Governor of any FTE positions created in response to a declared disaster.¹⁴⁹

According to the General Appropriations Act, the limitations on FTEs do not apply to a state agency or institution in an instance of employment, including employment of a temporary or contract worker, associated with implementation of a project that is 100 percent federally funded. Specifically, the state agency or institution is exempt from the FTE limitation only for the duration of the federal funding for the employment related to the project. In addition, all salaries, benefits, and other expenses incurred related to employment must be paid from federal funds. Each state agency or institution is required to notify the State Auditor, Comptroller of Public Accounts, Legislative Budget Board, and Office of the Governor of any FTEs that are exempted because of these circumstances.¹⁵⁰

If a program is transferred from a state agency or institution of higher education, then at any time during the biennium, the Legislative Budget Board and the Office of the Governor may agree to reduce the number of FTEs paid from funds appropriated by the General Appropriations Act for one or more fiscal quarters to a figure less than that indicated by the General Appropriations Act for that agency or institution.¹⁵¹

¹⁴⁷ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 6.10 (c).

¹⁴⁸ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 6.10 (b).

¹⁴⁹ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 6.10 (f).

¹⁵⁰ General Appropriations Act (81st Legislature, Regular Session), Section 6.10(g).

¹⁵¹ General Appropriations Act (81st Legislature, Regular Session), Section 6.10 (h).

Certain state agencies may have specific riders in the General Appropriations Act (81st Legislature) that increase or decrease agency FTE limitations or provide specific exemptions from mandated FTE caps.

Full-Time Equivalent Employees Reporting

Following each fiscal quarter, each state agency and institution of higher education must file with the State Auditor's Office a report for that fiscal quarter that provides:

- The number of full-time equivalent employees paid from appropriated funds and the number of full-time equivalent employees paid from funds outside the state treasury.
- The number of positions paid from appropriated funds and the number of positions paid from funds outside the state treasury.
- The number of individuals who performed services for the agency under contracts, including consultants and individuals employed under contracts for temporary help services.
- The number of managers, supervisors, and staff.¹⁵²

The report must be made in a format requested by the State Auditor's Office and include the following:

- An organizational chart detailing the total number of full-time equivalent employees, without regard to the source of funds used to pay all or part of the salary of an employee, and the total number of managers, supervisors, and staff for each functional area in the state agency.
- The management-to-staff ratio for each functional area.
- A separate organizational chart that summarizes the categories of employees in the agency's regional offices without regard to the source of funds used to pay all or part of the salary of an employee.¹⁵³

The State Auditor's Office publishes an annual Full-Time Equivalent report for the Legislative Budget Board, the Governor's Office, and the Comptroller of Public Accounts summarizing the results of the information provided by agencies.¹⁵⁴ The State Auditor's Office provides additional data analysis and reports from its Full-Time Equivalent (FTE) System through its Web site at <http://www.sao.state.tx.us/apps/ftesystem>.

Merit Selection Principles

Some state agencies may be required by federal law or regulation to use a merit system of personnel administration for the agency or for a program administered under the agency.¹⁵⁵ These agencies shall, by rule, establish intra-agency policies and procedures that ensure compliance with the federal requirements and the recruitment, selection, and advancement of highly competent agency personnel. The adopted rules must ensure the state agency:

¹⁵² Texas Government Code, Section 2052.103 (a).

¹⁵³ Texas Government Code, Section 2052.103 (b).

¹⁵⁴ Texas Government Code, Section 2052.104 (b).

¹⁵⁵ Texas Government Code, Section 655.001.

- Recruits, selects, and promotes its employees according to the relative abilities, knowledge, and skills of the applicants or employees.
- Provides equitable and adequate compensation to an employee.
- Provides any employee training necessary to ensure performance of a high quality.
- Uses the adequacy of an employee's job performance to determine whether the employee will be retained.
- Treats a job applicant or employee fairly in all aspects of personnel administration.
- Complies fully with state and federal equal opportunity and nondiscrimination laws.
- Protects an employee against coercion for partisan political purposes and prohibits the employee from using employment status to interfere with or affect the result of an election or nomination for office.¹⁵⁶

A state agency shall implement any additional merit principles required by federal law or regulation.¹⁵⁷ A state agency may create a separate division within the agency to administer merit selection policies and procedures if the chief executive of the agency considers the creation necessary.¹⁵⁸

Multiple Employment with the State

A person who is employed by more than one state agency or institution of higher education may not receive benefits from the State that exceed the benefits provided for one full-time employee.¹⁵⁹

A person must be informed of the following requirements before he or she is employed by more than one agency or institution:¹⁶⁰

- Separate vacation and sick leave records must be maintained for each employment.¹⁶¹
- Leave balance transfers are prohibited. For example, if the person separates from one employment, the person's leave balances that were accrued under that employment may not be transferred to the remaining employments.¹⁶²
- The employee accrues state service credit for all purposes as if the employee had only one employment.¹⁶³

¹⁵⁶ Texas Government Code, Section 655.002.

¹⁵⁷ Texas Government Code, Section 655.003.

¹⁵⁸ Texas Government Code, Section 655.004.

¹⁵⁹ Texas Government Code, Section 667.001 (a) and (b).

¹⁶⁰ Texas Government Code, Section 667.001 (c).

¹⁶¹ Texas Government Code, Section 667.002.

¹⁶² Texas Government Code, Section 667.003.

¹⁶³ Texas Government Code, Section 667.004.

- The total state contribution toward the employee's group insurance is limited to the amount specified in the General Appropriations Act for one full-time active employee.¹⁶⁴

Overtime compensation accrues for each employment independently of every other employment. However, in most situations, for the purposes of the federal Fair Labor Standards Act (FLSA), the state is considered one employer. If an employee is subject to the overtime provisions of FLSA, the employing agencies and institutions of higher education are required to ensure that the person is compensated for all combined time actually worked that exceeds 40 hours per week. The agencies and institutions of higher education are required to cooperate to determine which agency or institution of higher education is responsible for ensuring that the employee is properly compensated according to those provisions.¹⁶⁵

An employing agency or institution of higher education may not use multiple employments of an employee within the same agency or institution of higher education for the purpose of:

- Paying the employee for working more than 40 hours in a week instead of earning compensatory time in accordance with state law.
- Paying the employee a salary that is more than is allowed for either of the employee's positions.¹⁶⁶

An employee must inform his or her employing state agency or institution of higher education before accepting additional employment with another agency or institution of higher education.¹⁶⁷

State employees who are employed by multiple agencies and who work more than 40 hours per week may not accrue sick leave, vacation leave, or holidays at a rate that would exceed that for a full-time, 40 hour per week employee.¹⁶⁸ An employee who holds two part-time state jobs may not quit one part-time job and transfer the leave to the remaining part-time job.¹⁶⁹ However, an employee with two part-time jobs may quit both jobs at the same time, transfer to a new full-time position with another employer, and take his or her existing leave balances to the new position.¹⁷⁰

Special Provisions for Legislative Agencies

If a person's multiple employment involves only legislative agencies and if all employments are less than full-time, the person may use paid leave from leave balances in all employments. When such an employee separates from one employment, leave balances accrued under that employment will be transferred to the remaining employments.¹⁷¹

In addition, a position in or membership in the state military forces does not prevent an individual from holding state office.¹⁷²

¹⁶⁴ Texas Government Code, Section 667.005.

¹⁶⁵ Texas Government Code, Section 667.006 (a) and (b).

¹⁶⁶ Texas Government Code, Section 667.006 (c).

¹⁶⁷ Texas Government Code, Section 667.007.

¹⁶⁸ State Auditor's Office Leave Interpretation, No. 01-03.

¹⁶⁹ Texas Government Code, Section 667.003.

¹⁷⁰ State Auditor's Office Human Resources Question-and-Answer, April 16, 2001.

¹⁷¹ Texas Government Code, Section 667.008.

¹⁷² Texas Government Code, Section 431.0055.

Special Provisions for University Systems

A university system as defined by Section 61.003 of the Texas Education Code may establish a policy that defines a person's employment as the total hours the person is assigned to either:

- One component of the system, or
- All components of the system.

The policy applies to a person only if the person is employed by more than one institution of higher education and all the employing institutions of higher education are within the same university system.¹⁷³

Appointments at State Institutions of Higher Education

An institution of higher education is required to determine whether employees who have more than one appointment with the institution hold only one position or one position for each appointment. The institution's board of regents has the responsibility to determine whether an employee who holds more than one appointment at separate institutions of higher education (under the same board of regents) holds one position or one position for each appointment. If the two institutions of higher education are governed by separate boards, the employee is deemed to have more than one position.¹⁷⁴

A full-time employee at an institution of higher education who has more than one position may receive pay for working more than 40 hours in a week if the institution determines that pay in lieu of compensatory time is in the best interest of the institution.¹⁷⁵

¹⁷³ Texas Government Code, Section 667.009.

¹⁷⁴ Texas Government Code, Section 659.0411.

¹⁷⁵ Texas Education Code, Section 51.963.

Table 3-3 provides a list of Texas Office of the Attorney General’s resources related to multiple employment in the state.

Table 3-3

| Multiple Employment Related Attorney General Resources ^a | |
|---|---|
| Opinion Number | Topic |
| LO-95-50 | Whether a member of the Texas Historical Commission, during the term for which he was appointed, is eligible to serve in the Texas Legislature. |
| MW-311 | Related to the overtime compensation for an employee of the Department of Mental Health and Mental Retardation who holds full-time and a part-time jobs at the same facility. |
| MW-418 | Whether state employees may hold full-time and part-time jobs at the same facility. |
| ^a Detailed references can be found at: Letter opinions (LO): http://www.oag.state.tx.us/opin/op_letters.shtml . Opinions: http://www.oag.state.tx.us/opin/opindex.shtml . | |

Recruitment Plans

Based upon workforce availability analyses or court-ordered remedies or agreements, state agencies and institutions of higher education are directed to develop and implement plans to recruit qualified African Americans, Hispanic Americans, and females (“protected classes”). The Civil Rights Division at the Texas Workforce Commission monitors employers to ensure that their plans are consistent with state statute. In addition, employers must report to the Civil Rights Division the number of protected class hires in each class title during the preceding fiscal year. This report is due no later than November 1 of each year.¹⁷⁶

Posting Job Vacancies

State agencies with job vacancies are required to list these vacancies with the Texas Workforce Commission in the WorkinTexas.com system. This applies only to vacancies for which candidates from outside the agency will be considered, including return-to-work retirees.¹⁷⁷ Each notice of a job vacancy must be posted for a minimum of 10 working days unless the agency notifies the Texas Workforce Commission that the vacancy has been filled within this time frame.¹⁷⁸ In addition to using the statutorily required methods to announce job vacancies, agencies are encouraged to make other efforts to inform outside applicant recruitment sources of job vacancies.¹⁷⁹

A state agency is not required to comply with job vacancy notice requirements when it transfers or reassigns an employee as part of a reorganization or merger mandated by the Legislature as long as

¹⁷⁶ Texas Labor Code, Sections 21.502 and 21.504.

¹⁷⁷ Texas Government Code, Section 656.001.

¹⁷⁸ Texas Government Code, Section 656.024.

¹⁷⁹ Texas Government Code, Section 656.025.

the executive head of the agency certifies that the transfer or reassignment is necessary for the proper implementation of the reorganization or merger.¹⁸⁰

Probationary Period

There is no legislation either requiring or prohibiting an employee probationary or introductory period. Agencies and institutions of higher education have complete discretion in this matter. If a probationary or introductory period is used, such a practice should be documented and communicated to employees as an internal policy. The existence of an introductory or probationary period should be structured so that it does not diminish the State's employment-at-will doctrine.

Selective Service Registration

An agency in any branch of state government may not hire a person as an employee unless the person presents proof that they have registered for or are exempt from registration with the selective service system.¹⁸¹ Individuals who are exempt from registration include:

- Females.
- Lawfully admitted nonimmigrant aliens on visas.
- Members of the armed forces on full-time active duty, including cadets and midshipmen at military academies.
- Students in Officer Procurement Programs at the Citadel, North Georgia College and State University, Norwick University, Virginia Military Institute, Texas A & M University, and Virginia Polytechnic Institute and State University.
- Males that are continually confined to a residence, hospital, or institution or who are hospitalized or institutionalized for a medical reason as well as those who are incarcerated.¹⁸²

The Texas Office of the Attorney General issued an opinion that requires only those males who are between the ages of 18 and 25 years (inclusive) to furnish proof of either selective service registration or exemption from selective service as a condition of state employment.¹⁸³

For additional information, go to the Selective Service System's Web site at <http://www.sss.gov>.

Verification of Employment Eligibility

An individual who is not a citizen of this country is protected from discrimination under the provisions of federal law and the Texas Labor Code.¹⁸⁴ It is unlawful to discriminate on the basis of citizenship or "intending citizen" status. Federal law also prohibits an employer from knowingly hiring an individual who is not authorized to work in this country. To ensure compliance, employers

¹⁸⁰ Texas Government Code, Section 656.026.

¹⁸¹ Texas Government Code, Section 651.005 (a).

¹⁸² Title 50, Appendix, United States Code (Military Selective Service Act, June 24, 1948) Section 456.

¹⁸³ Opinion, Texas Office of the Attorney General, No. JC-0183 (2000).

¹⁸⁴ Texas Labor Code, Section 21.051; and Immigration and Nationality Act, Title 2, United States Code, Section 274B.

are required to complete federal form I-9 upon hiring a person. This form must be completed within three business days of the hire.¹⁸⁵

Additional information regarding the employment eligibility verification process can be found on the U.S. Citizenship and Immigration Web site at www.uscis.gov.

Volunteer Programs

State agencies may use volunteer programs to assist the agency in providing quality services. A state agency that provides basic human mental or physical needs is required to consider volunteers as a resource, if feasible.¹⁸⁶

A volunteer program must include:

- The use of paid staff to plan and implement the volunteer program.
- An effective training program for paid staff and prospective volunteers.
- An evaluation mechanism to assess (1) the performance of the volunteers, (2) the cooperation of paid staff with the volunteers, and (3) the volunteer program.
- Follow-up studies to determine the effectiveness of the volunteer program.

State agencies with volunteer programs may:

- Reimburse volunteers for actual and necessary expenses incurred in the performance of volunteer services.
- Establish an insurance program to protect volunteers in the performance of services.
- Cooperate with private organizations that provide services that are similar to those provided by the state agency.
- Purchase engraved certificates, plaques, pins, or awards of a similar nature, with a value that does not exceed \$75 for each volunteer, to recognize special achievement and outstanding services of volunteers.¹⁸⁷

A state agency that has a volunteer program may consider the use of volunteers in determining merit pay increases and performance evaluations.¹⁸⁸

Workforce Analysis

Each biennium, each state agency must analyze its current workforce and compare the numbers employed in each demographic group and EEO occupational category to those available in the

¹⁸⁵ Texas Labor Code, Section 21.051; Title 8, Code of Federal Regulations, Section 274 (a) (2); and Form I-9, Employment Eligibility Verification.

¹⁸⁶ Texas Government Code, Sections 2109.001 to 2109.003.

¹⁸⁷ Texas Government Code, Section 2109.004.

¹⁸⁸ Texas Government Code, Section 2109.005.

statewide civilian workforce. The intent of this analysis is to determine the percentage of exclusion or underutilization by each job category within each state agency.¹⁸⁹

State agencies and institutions of higher education must develop recruitment plans based on the workforce availability analysis. The Texas Workforce Commission’s Civil Rights Division monitors these plans to ensure that they comply with state statute and applicable rules.¹⁹⁰

The workforce analysis percentages for the state civilian workforce are available on the Civil Rights Division’s Web site within the Equal Employment Opportunity and Minority Hiring Practices Report, and are reported every biennium.¹⁹¹

Related Legislation

Table 3-4 contains a list of human resources-related bills that were passed by the 81st Legislature. This may not be a complete list and should be used only as a summary of general issues on this subject that were addressed during the session.

Table 3-4

| Recruitment and Selection Related Legislation (81st Legislature) ^a | |
|--|---|
| Bill Number | Summary |
| HB 1043 | Relating to the creation of an employment preference at state agencies and institutions of higher education for certain former foster children. |
| HB 2730 | Relating to the continuation and functions of the Department of Public Safety and to the use of criminal history information. |
| HB 4343 | Relating to the Department of Insurance’s access to certain criminal history information. |
| SB 833 | Relating to the eligibility of military service members to hold state office. |
| SB 1056 | Relating to the authorization of a criminal justice agency to disclose certain criminal history information. |
| SB 2163 | Relating to the Texas Veterans Commission’s access to certain criminal history information. |
| ^a Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at www.capitol.state.tx.us . | |

¹⁸⁹ Texas Labor Code, Section 21.501.

¹⁹⁰ Texas Labor Code, Section 21.502.

¹⁹¹ Texas Labor Code, Section 21.553 (b).

Section 4
Fair Labor Standards Act Requirements

Fair Labor Standards Act (FLSA)

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments. The U.S. Department of Labor's Wage and Hour Division is responsible for providing guidance on and enforcing the FLSA. Additional information about the FLSA can be found at www.dol.gov/esa/whd.

The minimum wage in Texas is linked to the federal minimum wage under the Fair Labor Standards Act of 1938.¹⁹² As of July 24, 2009, the federal minimum wage is \$7.25 per hour.¹⁹³

In general, most employees working in state agencies and institutions of higher education are covered under the FLSA.¹⁹⁴ The FLSA also allows government employers to choose whether to compensate their non-exempt employees for overtime in cash or in compensatory time off.¹⁹⁵ If compensation is paid to an employee for accrued compensatory time off, the compensation must be paid at the regular salary rate earned by the employee at the time the employee receives the payment.¹⁹⁶

Employees Not Subject to the FLSA

Staff members, appointees, or immediate advisors of an elected officeholder and employees in the Legislative branch are not subject to the FLSA.¹⁹⁷ These employees may be allowed compensatory time off under terms and conditions established by the officeholder as determined by the agency administrator by the employing officeholder.¹⁹⁸ Overtime pay and compensatory time off for House of Representatives and Senate employees shall be determined by the presiding officer of each body.¹⁹⁹ Employees of the Legislative Reference Library are not excluded by the provisions of the FLSA.²⁰⁰

Compliance Assistance

The U.S. Department of Labor's Wage and Hour Division has several resources to assist employers with implementing the FLSA. These include:

- Handy Reference Guide to the Fair Labor Standards Act, WH Publication 1282, July 2007 at <http://www.dol.gov/esa/whd/regs/compliance/wh1282.pdf>.
- Fair Pay overview and Fact Sheets at <http://www.dol.gov/esa/whd/regs/compliance/fairpay/main.htm>.

¹⁹² Texas Labor Code, Section 62.051.

¹⁹³ *Compliance Assistance-Fair Labor Standards Act (FLSA)*, U.S. Department of Labor's Wage and Hour Division's Web site at <http://www.dol.gov/esa/whd/flsa/index.htm>.

¹⁹⁴ Title 29, Code of Federal Regulations, Section 553.3.

¹⁹⁵ Title 29, Code of Federal Regulations, Section 553.20.

¹⁹⁶ Title 29, Code of Federal Regulations, Section 553.213 (b).

¹⁹⁷ Title 29, Code of Federal Regulations, Sections 553.11 and 553.12.

¹⁹⁸ Texas Government Code, Section 659.016 (h).

¹⁹⁹ Texas Government Code, Section 659.017.

²⁰⁰ Title 29, Code of Federal Regulations, Section 553.12 (b).

FLSA Nonexempt Employees

To be eligible for overtime pay, an employee must be considered nonexempt. The Department of Labor defines a nonexempt employee as an individual covered by the FLSA who must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than 1.5 times the employee's regular rate of pay. In general, the employer must total all the hours worked by the employee for that workweek (even though two or more unrelated job assignments may have been performed) and pay overtime compensation for each hour worked in excess of the overtime standard.²⁰¹

Employees subject to the FLSA are entitled to compensation for any hours worked in excess of 40 hours in one workweek in one of the following ways:

- The agency can allow or require the employee to take compensatory time off at the rate of 1.5 hours for each hour over 40 hours worked during the workweek.²⁰² State agencies can require nonexempt employees who have requested leave to exhaust their FLSA overtime balances before using annual leave.²⁰³
- In addition, an employer remains free under the FLSA to decrease the number of hours that employees work. An employer may tell an employee to take off an afternoon, a day, or even an entire week to avoid the accumulation of additional overtime.²⁰⁴
- When granting FLSA compensatory time off is not practical, the employing agency has the discretion to compensate the employee at 1.5 times his or her regular rate of pay in effect at the time the work was performed for each hour worked over 40 during the workweek.²⁰⁵

Paid leave and holidays are not counted as hours worked for determining FLSA overtime hours.²⁰⁶ However, if the total number of hours worked (if less than 40) plus the hours of paid leave or hours of paid holidays exceeds 40, the nonexempt employee shall be allowed state compensatory time off equal to the number of hours in excess of 40 hours.²⁰⁷

Nonexempt employees may accumulate an overtime credit up to 240 straight time hours of FLSA overtime (160 overtime hours converted to straight time). Those employees engaged in public safety, emergency response, or a seasonal activity may accumulate up to 480 hours of FLSA overtime.²⁰⁸

Nonexempt employees must be paid for any unused FLSA overtime at the time of separation from state employment.²⁰⁹ State agencies must pay employees for any accumulated FLSA overtime prior to transferring that employee to another agency.²¹⁰

²⁰¹ Title 29, Code of Federal Regulations, Section 778.101.

²⁰² Texas Government Code, Section 659.015 (c).

²⁰³ *Christensen v. Harris County* (98-1167), 529 U.S. 576 (2000).

²⁰⁴ *Christensen v. Harris County* (98-1167), 529 U.S. 585 (2000).

²⁰⁵ Texas Government Code, Section 659.015 (c).

²⁰⁶ Title 29, Code of Federal Regulations, Section 778.218.

²⁰⁷ Texas Government Code, Section 659.015 (f).

²⁰⁸ Texas Government Code, Section 659.015 (e); and Title 29, Code of Federal Regulations, Section 553.24.

²⁰⁹ Title 29, Code of Federal Regulations, Section 553.27.

Additional information on the FLSA may be found on the U.S. Department of Labor's Wage and Hour Division's Web site at <http://www.dol.gov/esa/whd/regs/compliance/hrg.htm>.

Authorizations for Payment of FLSA Compensatory Time

In some situations, state agencies must pay FLSA overtime rather than providing FLSA compensatory time. These provisions are located in the Texas Government Code and in General Appropriations Act riders. The following state agencies are required under state law to pay for FLSA overtime under the described conditions:

- The Department of Criminal Justice (Department) will provide compensation to a person employed by the Department for any overtime accrued by the nonexempt employee for which the employee is entitled to compensation within the same month the Department compensates employees at the regular rate of pay for the period in which the employee accrued the overtime.²¹¹
- The Texas Forest Service has been appropriated funds to pay mandatory overtime expenses of nonexempt employees of the Texas Forest Service when such overtime is incurred in emergency response activities. Payments from this appropriation are to be made only upon overtime payroll vouchers submitted to the State Comptroller's Office of Public Accounts.²¹²

FLSA-exempt Employees

An exempt employee is one that the Department of Labor has exempted from FLSA minimum wage and overtime requirements because the employee is employed in a bona fide executive, administrative, or professional capacity.²¹³ An employee's exemption status cannot be determined by the job title of the employee and must be determined on the basis of whether the employee's salary and duties meet the exempt requirements defined by applicable federal regulations.²¹⁴

Additional information on the rules for the executive, administrative, and professional exemptions can be found in Title 29 of the Code of Federal Regulations or on the Department of Labor's Wage and Hour Division Web site (<http://www.dol.gov/esa/whd/flsa/index.htm>).

An FLSA-exempt employee shall receive his or her full salary for any week in which work is performed without regard to the number of days and hours worked. Exempt employees need not be paid for any workweek in which they perform no work. Exceptions to this general rule include the following:

- Deductions may be made for full-day absences for personal reasons other than sickness or disability.
- While an employer cannot make deductions from pay for absences of an exempt employee occasioned by jury duty, witness at a judicial action, or military duty, the employer can offset any amounts received by an employee as jury fees, witness fees, or military pay for a particular week against the salary due for that particular week without loss of the exemption.

²¹⁰ Opinion, Texas Office of the Attorney General, No. H-883 (1976).

²¹¹ Texas Government Code, Section 659.0155.

²¹² General Appropriations Act (81st Legislature, Regular Session), Article III, Texas Forest Service, Rider 3.

²¹³ Title 29, Code of Federal Regulations, Section 541.0.

²¹⁴ Title 29, Code of Federal Regulations, Section 541.2.

- Deductions may be made for full-day absences for sickness or disability after exhaustion of sick leave or workers' compensation benefits.
- Deductions may be made for penalties due to safety infractions of major significance. Safety infractions of major significance include those relating to the prevention of serious danger in the workplace or to other employees.
- Deduction from pay of exempt employees may be made for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed pursuant to a written policy applicable to all employees. Thus, for example, an employer may suspend an exempt employee without pay for three days for violating a generally applicable written policy prohibiting sexual harassment. Similarly, an employer may suspend an exempt employee without pay for 12 days for violating a generally applicable written policy prohibiting workplace violence.
- An employer is not required to pay the full salary in the initial or final week of employment. Rather, an employer may pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment.
- An employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act.²¹⁵

State agencies may reduce the pay of FLSA-exempt employees for absences of less than a full day for personal reasons or because of injury or illness when permission to use leave was not sought or was denied, accrued leave was exhausted, or the employee chose to use leave without pay.²¹⁶

Additional Resources

Table 4-1 provides a list of Attorney General Resources related to the FLSA.

Table 4-1

| Fair Labor Standards Act (FLSA) Related Attorney General Resources ^a | |
|--|--|
| Opinion Number | Topic |
| JM-475 | Regarding compensatory time and/or overtime pay for state employees after April 15, 1986. |
| JM-491 | Whether a state agency may require its employees to take compensatory time in lieu of overtime pay. |
| JM-680 | Regarding the applicability of the 1985 amendments to the Fair Labor Standards Act to certain employees of the Texas Youth Commission. |
| ^a Detailed references can be found at http://www.oag.state.tx.us/opin/opindex.shtml . | |

²¹⁵ Title 29, Code of Federal Regulations, Section 541.602.

²¹⁶ Texas Government Code, Section 659.016 (e) (4).

Table 4-2 lists State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to FLSA.

Table 4-2

| Fair Labor Standards Act (FLSA) Related State Auditor Resources ^a | | |
|--|---|-----------|
| Type | Topic | Reference |
| HR Question | Whether salary requirements under the new FLSA regulations apply to part-time employees. | 7/30/2004 |
| HR Question | Whether an agency is at risk if they have ‘exempt’ employees making less than \$455 a week. | 6/30/2004 |
| HR Question | Whether a reduction in pay for personal time off for an FLSA-exempt employee violates the employee’s FLSA status. | 3/31/2003 |
| HR Question | Regarding the rate at which banked FLSA time should be paid. | 10/9/2000 |
| HR Question | Whether FLSA-exempt employees accrue compensatory time on a daily or weekly basis. | 10/2/2000 |
| HR Question | Regarding how overtime compensation is handled when an employee works for more than one state agency or university. | 4/17/2000 |
| HR Question | Whether an employee may accrue both state compensatory and FLSA compensatory time in the same week. | 4/3/2000 |
| Leave Interpretation | Regarding the payment of FLSA overtime at a rate greater than time and one-half. | 96-05 |
| Leave Interpretation | Regarding FLSA overtime interpretations for nonexempt employees. | 92-01 |
| Leave Interpretation | Regarding the use of FLSA overtime in the same workweek. | 91-03 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . Leave interpretations: http://sao.hr.state.tx.us/Rules/leaveinterpretations.html . | | |

Section 5
State and Holiday Compensatory Time

State Compensatory Time

In some situations, state employees may be eligible for state compensatory time. State compensatory time is accrued on a “straight” time basis, or one hour for one hour worked. State compensatory time differs from FLSA compensatory time because state compensatory time is based on hours worked plus any applicable leave time or holidays that occur within the workweek that totals more than 40 hours. In most cases, state compensatory time off must be used within 12 months of the end of the workweek in which it was earned.²¹⁷

State Compensatory Time for Nonexempt Employees Subject to FLSA

When a nonexempt employee takes leave or when a holiday occurs, the nonexempt employee is eligible for state compensatory time if the total number of hours worked (if less than 40 hours) plus any paid leave or paid holidays exceeds 40 in one workweek. If this occurs, the nonexempt employee shall be allowed state compensatory time off for this additional time on an hour-for-hour basis. The state compensatory time off must be used within 12 months of the end of the workweek in which it was earned.²¹⁸

Generally, employees will not be paid for any unused state compensatory time and there are no provisions in statutes or the General Appropriations Act that allow for the conversion of this time to any other type of leave.²¹⁹

When a nonexempt employee subject to the FLSA does not work more than 40 hours in a workweek and the number of hours worked plus the number of hours of holiday or other paid leave taken during the week does not exceed 40 hours, the employee may not accrue state compensatory time for the week.²²⁰ Nonexempt, part-time employees must be paid for hours worked over their designated hours (under 40 hours) and may not accrue state compensatory time in those instances.²²¹

State Compensatory Time for Employees Exempt from FLSA Overtime Provisions

At the discretion of the agency’s executive director, an employee who is exempt from the overtime provisions of the FLSA may be allowed to accrue state compensatory time for work hours that exceed 40 in a workweek.²²² Work hours, for the purpose of accruing state compensatory time, consist of paid leave, holidays, and actual hours worked.²²³

²¹⁷ Texas Government Code, Sections 659.015 (f) and 659.016 (b).

²¹⁸ Texas Government Code, Section 659.015 (f) and (g).

²¹⁹ Texas Government Code, Section 659.015 (g).

²²⁰ Texas Government Code, Section 659.015 (f).

²²¹ State Auditor’s Office Leave Interpretation Letter, No. 89-03 (1989).

²²² Texas Government Code, Section 659.016 (b).

²²³ Texas Government Code, Section 659.016 (b).

Part-time, FLSA-exempt employees may accrue state compensatory time when the number of actual work hours exceeds the number of hours that the employee was designated to work.²²⁴

If an exempt employee does not use state compensatory time within 12 months of when it was earned, the employee loses this time.²²⁵

Generally, an employee will not be paid for accrued but unused state compensatory time.²²⁶ However, there are some situations where the payment of state compensatory time can be authorized. These situations are identified and summarized later within this section.

State Compensatory Time for Emergency Services Personnel

An exception for the use of state compensatory time exists for selected emergency services personnel who provide services during emergency situations. Emergency services personnel includes firefighters, police officers, and other peace officers; emergency medical technicians; emergency management personnel; and other individuals whose duties require them to provide services for the benefit of the general public during emergency situations.

State employees not subject to the overtime provisions of the federal Fair Labor Standards Act and who qualify as emergency services personnel may be allowed to take state compensatory time during the 18-month period following the end of the workweek in which the compensatory time was accrued.²²⁷ Legislative employees, including employees of the Lieutenant Governor's Office or legislative agency employees are not eligible to be classified as emergency services personnel for the purposes of accruing state compensatory time under these provisions.

In those situations in which an emergency personnel employee provides services during emergency situations, the employee may be paid overtime at the employee's regular hourly salary rate for all or part of the compensatory hours accrued during the disaster in the preceding 18 months. The employee's compensatory time balance shall be reduced by one hour for each hour for which the employee is paid overtime.²²⁸

| New Requirement |
|---|
| The 81st Legislature amended laws regarding the circumstances when state compensatory time must be used for applicable, FLSA-exempt emergency services personnel. |

Payment of State Compensatory Time in Certain Situations

In certain situations, with the authorization of the administrative head or designee, an employee may be paid for state compensatory time that the employee earned for work directly related to a disaster or

²²⁴ Texas Government Code, Section 659.016 (b).

²²⁵ Texas Government Code, Section 659.016 (c).

²²⁶ Texas Government Code, Section 659.016 (c); and Opinion, Texas Office of the Attorney General, No. H-883 (1976).

²²⁷ Texas Government Code, Section 659.025.

²²⁸ Texas Government Code, Section 659.025 (d), as amended by HB 1831 (81st Legislature, Regular Session).

an emergency declared by the appropriate officer of the state or federal government.²²⁹ In addition, an employee of a state mental health or mental retardation facility may be paid for state compensatory time if the agency determines that taking the compensatory time off would disrupt the business functions of the agency.²³⁰

| New Requirement |
|--|
| The 81st Legislature amended laws regarding situations when certain state employees may be paid for compensatory time. |

Employees at institutions of higher education and those involved in public safety work (highway construction and maintenance, emergency response activities, etc.) may be paid for state compensatory time if taking the time off would be disruptive to teaching, research, or other critical functions.²³¹

Use of Compensatory Time before Lapsing

If an employee of a state agency (defined by the Texas Government Code, Section 658.001) submits a written request to use accrued compensatory time not later than the 90th day before the date on which the accrued compensatory time will lapse, the employer shall approve in writing the employee's request or provide the employee with an alternative date on which the employee may use the compensatory time.²³²

The employee may request permission to use the accrued compensatory time within 90 days of the date on which it will lapse, and the employing agency is encouraged to reasonably accommodate the employee's use of the accrued compensatory time before it lapses.²³³

There are no statutory provisions that allow for the conversion of state compensatory time or holiday compensatory time to any other type of leave. If an employee does not use the accrued time within 12 months of earning it, the employee loses this time.²³⁴

Notification of Compensatory Time Policy

A state agency shall notify its employees annually of the State's policy on compensatory time and shall accommodate to the extent practicable an employee's request to use accrued compensatory time.²³⁵

²²⁹ Texas Government Code, Sections 659.015 (i) and 659.016 (i).

²³⁰ Texas Government Code, Sections 659.015 (j) and 659.016 (j), as amended by SB 2298 (81st Legislature, Regular Session).

²³¹ Texas Government Code, Section 659.015 (g); and State Auditor's Office Technical Update Letter, No. 00-01 (1999).

²³² Texas Government Code, Section 659.022 (a).

²³³ Texas Government Code, Section 659.022 (b).

²³⁴ Texas Government Code, Sections 659.015 (g) and 659.016 (c); and State Auditor's Office Technical Update Letter, No. 00-01 (1999).

²³⁵ Texas Government Code, Section 659.023 (a) and (b).

For a state employee who has been activated to military services as a member of the reserve component of the armed force, a state agency must:

- Provide a statement containing the balance of the employee’s accrued state compensatory time, and
- Accommodate the employee’s request to use the balance of his or her accrued state compensatory time before the compensatory time expires.²³⁶

Compensatory Time for Persons Governing State Agencies

A member of the governing body of a state agency or a single state officer who governs a state agency may not accrue compensatory time. This law applies not only to governing bodies but also to elected officials such as the Governor or Comptroller of Public Accounts and certain appointed officials such as the Secretary of State.²³⁷

This statute does not apply to an employee who acts as the administrative head of a state agency, including an executive director.²³⁸ The statute does not prohibit executive directors, administrative heads of agencies, or people holding those positions in an acting capacity from accruing compensatory time.

Compensatory Time and Assigned Place of Employment

State agency employees in the executive branch may not accumulate compensatory time for hours worked during any calendar week at a location other than the employee’s regular or temporarily assigned place of employment, except under circumstances specified in the General Appropriations Act. However, for compensatory time purposes, an employee may accumulate compensatory time for hours worked during any calendar week at the employee’s personal residence if the employee obtains advance approval from the agency’s administrative head or designee.²³⁹

| New Requirement |
|---|
| The 81st Legislature amended legislation allowing employees to earn compensatory time for hours worked at the employee’s personal residence if the employee obtains advance approval. |

²³⁶ Texas Government Code, Section 659.023 (c).

²³⁷ Texas Government Code, Section 659.024 (c); and State Auditor’s Office’s Human Resources Question-and-Answer, September 30, 2003.

²³⁸ Texas Government Code, Section 659.024 (b).

²³⁹ Texas Government Code, Section 659.018, as amended by SB 2298 (81st Legislature, Regular Session).

Additional Resources

Table 5-1 lists Attorney General Resources related to state compensatory time.

Table 5-1

| State Compensatory Time Related Attorney General Resources ^a | |
|--|---|
| Opinion Number | Topic |
| GA-736 | Regarding whether the Adjutant General and Assistant Adjutants General may accrue state compensatory leave |
| H-883 | Regarding the disposition of compensatory time accrued by state employees while the constitutionality of the 1974 amendments to the Fair Labor Standards Act was being litigated. |
| MW-414 | Regarding the construction of the General Appropriations Act provision on compensatory time for employees required to work on holidays. |
| ^a Detailed references can be found at http://www.oag.state.tx.us/opin/opindex.shtml . | |

Table 5-2 lists State Auditor’s Office’s Human Resources Questions-and-Answers, Technical Updates, and Leave Interpretations related to compensatory time.

Table 5-2

| Compensatory Time Related State Auditor Resources ^a | | |
|--|---|--------------------|
| Type | Topic | Reference |
| HR Question | Whether a part-time employee who regularly works 25 hours a week can earn state compensatory time if he/she works 35 hours in one week. | 4/30/2004 |
| HR Question | Whether a state agency may choose the amount of state compensatory time an FLSA-exempt employee earns. | 2/27/2004 |
| HR Question | Whether an administrative head of a state agency may accrue state compensatory time. | 9/30/2003 |
| HR Question | Regarding the payment of compensatory time for separated employees. | 8/14/2000 |
| HR Question | Whether an agency may have a policy in which an FLSA-exempt employee earns state compensatory time only if the employee works on a weekend. | 5/7/2000 |
| HR Question | Whether an agency has to allow employees time off in order to use their accrued state compensatory time. | 11/8/1999 |
| HR Question | Whether a part-time, FLSA-exempt employee may receive compensatory time for hours he/she work over his/her scheduled workweek. | 10/18/1999 |
| HR Question and Technical Update | Whether a university may convert state compensatory or holiday time to annual leave. | 9/13/1999 00-01 |
| Leave Interpretation | Regarding the accrual of compensatory time by full-time and part-time employees. | 89-03 |
| Leave Interpretation | Regarding compensatory time for working on state holidays and substitute holiday time. | 89-01 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . Technical updates: http://sao.hr.state.tx.us/Rules/technicalupdates.html . Leave interpretations: http://sao.hr.state.tx.us/Rules/leaveinterpretations.html | | |

Holiday Compensatory Time

Employees who must work on a designated national or state holiday will be allowed holiday compensatory time off during the 12-month period following the date of the holiday if the state employee is entitled to a paid day off from working for a state agency on the holiday. Employees are required to give reasonable advance notice when taking holiday compensatory time; however, employees do not have to specify the reason for the request.²⁴⁰ Holiday compensatory time is earned at the straight time rate of an employee’s hourly rate.

²⁴⁰ Texas Government Code, Section 662.007 (a) and (b).

An institution of higher education, as defined by Section 61.003 of the Texas Education Code, may allow an employee who is required to work on a national or state holiday that does not fall on a Saturday or Sunday to take holiday compensatory time off in accordance with this statute or may instead pay the employee at the employee's regular rate of pay for that time if the institution determines that allowing holiday compensatory time off would disrupt normal teaching, research, or other critical functions.²⁴¹

A state employee who is a peace officer commissioned by a state officer or state agency listed under Article 2.12 of the Texas Code of Criminal Procedure, and who is required to work on a national or state holiday that falls on a Saturday or Sunday is entitled to holiday compensatory time off at the rate of one hour for each hour worked on the holiday. In addition, an employee of the Department of Public Safety who performs communications or dispatch functions related to traffic law enforcement or as a public security officer as defined by the Texas Occupations Code, Section 1701.001, is entitled to one hour of holiday compensatory time off for each hour worked on a federal or state holiday that falls on a Saturday or Sunday.²⁴²

| New Requirement |
|---|
| The 81st Legislature amended legislation entitling public security officers holiday compensatory time for time worked on a federal or state holiday that falls on a Saturday or Sunday. |

Transfer of Holiday Compensatory Time between State Agencies

State agencies are required to accept a transfer balance of holiday compensatory time if the employee transfers as a direct result of the Legislature's transfer of authority or duties from one agency to another. Additionally, if the employee's position was eliminated by the State Council on Competitive Government, the employee's holiday compensatory time would transfer. However, state agencies are not required to accept a transfer balance of holiday compensatory time if the transferring employee is required to apply for the new position.²⁴³

The Texas Attorney General has determined there is no authority that would authorize the transfer of compensatory time when an employee transfers from one agency to another or the payment of compensatory time when an employee terminates state employment.²⁴⁴ The Attorney General has also ruled that the estate of a deceased employee may not be paid for the employee's earned, but unused, compensatory time.²⁴⁵

Work-at-Home Hearing Officers

The Texas Workforce Commission is authorized to grant state compensatory time to hearing officers and reviewing attorneys for overtime work performed at the employee's personal residence and for work performed at the employee's personal residence on state skeleton holidays. Work performed

²⁴¹ Texas Government Code, Section 662.007 (c).

²⁴² Texas Government Code, Section 662.005 (b), as amended by HB 2730 (81st Legislature, Regular Session).

²⁴³ Texas Government Code, Section 662.0071.

²⁴⁴ Opinion, Texas Office of the Attorney General, No. H-883.

²⁴⁵ Opinion, Texas Office of the Attorney General, No. H-899.

must be approved in advance by the Director of the Appeals Office and must be verified by automated records, which includes audiotapes and computer and telephone logs. Compensatory time is granted only when corresponding additional work is assigned.²⁴⁶

Authorizations for Payment of Holiday and State Compensatory Time

In most cases, state agencies are not allowed to pay for accrued holiday and state compensatory time; however, in certain circumstances, state statute and the General Appropriations Act provide for payment of holiday and state compensatory time. The following sections summarize these provisions.

Department of Agriculture

The Department of Agriculture is authorized to pay FLSA-nonexempt employees in classified positions who are stationed at Department of Agriculture livestock export pens for state compensatory time hours on a straight-time basis when the taking of compensatory time off would be disruptive to normal working activities and other critical functions relating to livestock export pen operations.²⁴⁷

Department of Criminal Justice

The Department of Criminal Justice may authorize exceptions to the prohibition against substituting other days for holidays for employees who are required to work on holidays due to the continuing operation of the Department. Any employee who is required to work on any of the holidays and who does work on any of the said holidays is entitled to holiday compensatory time off to be taken on days that are mutually agreed upon by the employee and supervisor.²⁴⁸

Department of Transportation

The Department of Transportation is authorized to grant compensatory time off or to pay hourly employees for work performed on official state holidays in addition to any applicable holiday pay.²⁴⁹

The Department of Transportation may pay FLSA-exempt and FLSA-nonexempt employees on a straight-time basis for work on a holiday or for regular compensatory time hours when the taking of regular compensatory time off would be disruptive to normal business functions.²⁵⁰

To operate in the most economical manner, when inclement weather or other circumstances beyond the control of the department prevent construction or maintenance employees from performing their normal duties, the Department of Transportation is authorized to grant such employees time off with pay with the hours charged to the Compensatory Time Taken account, provided that such advanced time must be repaid by the employee at a time and in the most appropriate manner as determined by the department within the following 12 months or at termination, whichever is sooner.²⁵¹

²⁴⁶ General Appropriations Act (81st Legislature, Regular Session) Article VII, Texas Workforce Commission, Rider 20.

²⁴⁷ General Appropriations Act (81st Legislature, Regular Session) Article VI, Department of Agriculture, Rider 5.

²⁴⁸ General Appropriations Act (81st Legislature, Regular Session), Article V, Department of Criminal Justice, Rider 15.

²⁴⁹ General Appropriations Act (81st Legislature, Regular Session), Article VII, Department of Transportation, Rider 21(a).

²⁵⁰ General Appropriations Act (81st Legislature, Regular Session), Article VII, Department of Transportation, Rider 21(d).

²⁵¹ General Appropriations Act (81st Legislature, Regular Session), Article VII, Department of Transportation, Rider 21(b).

Health and Human Services Agencies

The Department of State Health Services and the Department of Aging and Disability Services, to the extent permitted by law, may pay FLSA-exempt and FLSA-nonexempt employees of state mental health and mental retardation facilities on a straight-time basis for work on a holiday or for regular compensatory time hours when the taking of state compensatory time off would be disruptive to normal business functions.

In addition, any health and human services agency, with the explicit approval of the Health and Human Services Executive Commissioner, to the extent permitted by law, may pay FLSA-exempt and FLSA-nonexempt employees required to provide support during a federally declared disaster on a straight-time basis for work on a holiday or for regular compensatory time hours when the taking of regular compensatory time off would be disruptive to normal business functions.²⁵²

Texas Engineering Extension Service

The Texas Engineering Extension Service is authorized to pay its FLSA-exempt employees on a straight-time basis for work on a holiday or for state compensatory time hours when such time is worked in connection with a state or federal activation and when the taking of regular compensatory time off would be disruptive to normal business functions.²⁵³

Texas Forest Service

The Texas Forest Service may use the appropriations to pay its FLSA-exempt employees on a straight-time basis for work on a holiday or for regular compensatory time hours when such time is worked in connection with an emergency and when the taking of regular compensatory time off would be disruptive to normal business functions.²⁵⁴

²⁵² General Appropriations Act (81st Legislature, Regular Session), Article II, Section 12.

²⁵³ General Appropriations Act (81st Legislature, Regular Session), Article III, Texas Engineering Extension Service, Rider 4.

²⁵⁴ General Appropriations Act (81st Legislature, Regular Session), Article III, Texas Forest Service, Rider 5.

Related Legislation

Table 5-3 lists human resources-related bills that were passed by the 81st Legislature. This may not be a complete list and should be used only as a summary of general issues on this subject that were addressed during the session.

Table 5-3

| Compensatory and Overtime Requirements Related Legislation (81st Legislature) ^a | |
|--|---|
| | Summary |
| HB 1831 | Relating to state compensatory time for certain emergency services personnel and optional overtime payments. |
| HB 2730 | Relating to the entitlement of public security officers holiday compensatory time for time worked on a federal or state holiday that falls on a Saturday or Sunday. |
| SB 1474 | Relating to state compensatory time for certain emergency services personnel. |
| SB 2298 | Relating to the accrual and use of state compensatory time. |
| ^a Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at www.capitol.state.tx.us . | |

Section 6
Position Classification Plan

Classification Plan Overview

The Position Classification Plan (Plan), established by the Position Classification Act,²⁵⁵ requires state agencies to comply with the salary schedules and compensation provisions of Article IX of the General Appropriations Act.

Prior to September 1, 1961, there was no uniform approach to classification, compensation, and salary administration in Texas state government. In time, the classification system became internally inconsistent, with differing rates of pay for similar jobs and large numbers of positions exempt from the Plan. To correct these internal inconsistencies in the classification system, Article IX of the General Appropriations Act of the 75th and 76th Legislatures revised the Plan.²⁵⁶ The modified Plan eliminated most exempt positions and created three salary schedules.

The Plan establishes job classification titles for full-time, part-time, hourly, and temporary employees.²⁵⁷ The job classifications within the Plan are defined as classified positions. Each job classification title is assigned to a salary group within a classified salary schedule. The classified salary schedules and job classification titles are contained in the most recent edition of the General Appropriations Act.²⁵⁸

The Plan, the General Appropriations Act, and the Texas Government Code provide guidelines for all classified positions. In general, these guidelines include rules about what constitutes proper classification, when the Plan applies, and the process to follow when reclassifying a position.

Agencies Subject to the Position Classification Plan

State agencies that are subject to the Plan include:

- General government agencies.
- Health and human services agencies.
- Courts (except for judges, district attorneys, and assistant district attorneys).
- Public safety and criminal justice agencies.
- Natural resources agencies.
- Business and economic development agencies.
- Regulatory agencies.

²⁵⁵ Texas Government Code, Section 654.001.

²⁵⁶ Texas Government Code, Section 654.002; and General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 2.01.

²⁵⁷ Texas Government Code, Section 654.011.

²⁵⁸ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 2.01.

- Agencies of public education (limited to the Texas Education Agency, School for the Blind and Visually Impaired, State Board for Educator Certification, and the School for the Deaf).²⁵⁹

Agencies' Use of the Plan

Agencies should use an occupationally specific job classification title contained in the Plan that is appropriate to a position and is not agency specific. Agencies may determine the appropriate rate of pay within the salary range for employees at the time of initial employment with the agency, which includes rehires and employees who transfer from another state agency or institution of higher education.²⁶⁰ State agencies subject to the Position Classification Act are responsible for ensuring that all positions are classified properly on an annual basis and may perform a monthly review of job assignments.²⁶¹

Bona Fide New Positions

The Texas Government Code gives the Governor the authority to exempt bona fide new positions during the biennium. A “bona fide new position” is defined as a new position established to accomplish duties related to programs or functions that were not anticipated, and for that reason not funded under the General Appropriations Act. It may not be established for the sole purpose of adjusting the salary of an existing position.

The comptroller may not pay compensation for the position until formal notification of the action of the Governor to exempt the position is filed with the State Classification Office and the Legislative Budget Board.

An exemption made during the first year of a biennium may be carried over to the second year. Pay may be adjusted during the second year, but this adjustment can be no higher than adjustments authorized for classified positions.²⁶²

Employee Job Classification

Each state agency or other state entities subject to the Plan determines, at the time it hires an employee, the appropriate classification and the employee’s salary rate within the applicable salary group for the employee’s classified position.²⁶³

The Plan provides that whenever “General Qualification Guidelines” are specified for each job, they are only meant to represent the qualifications commonly wanted by employing officers of the State and do not have the force of law. This includes specifications for experience, training, education, knowledge, skills, abilities, and physical conditions.²⁶⁴

The Plan is administered by the State Classification Team located in the State Auditor’s Office.²⁶⁵

²⁵⁹ Texas Government Code, Section 654.011 (a)(8).

²⁶⁰ Texas Government Code, Section 654.014 (b).

²⁶¹ Texas Government Code, Section 654.0155.

²⁶² Texas Government Code, Sections 654.012 (8) and 654.0125.

²⁶³ Texas Government Code, Section 654.014 (b).

²⁶⁴ Texas Government Code, Section 654.015.

²⁶⁵ Texas Government Code, Sections 654.036 and 654.031.

Responsibilities of the State Classification Team include:

- Maintaining the Plan and ensuring it is current and accurate.
- Advising and assisting state agencies to ensure equitable and uniform application of the Plan.
- Assisting with position classification audits to ensure conformity with the Plan.
- Making recommendations to the Governor and the Legislature as necessary and appropriate regarding the operation and improvement of the Plan.²⁶⁶

The State Classification Team submits recommendations to the Legislature for modifications to the Plan each biennium. Modifications may take the form of new job classification titles reallocations of existing job classification titles, changes in job classification titles and job classification numbers, and the deletion of job classification titles.

These recommendations can be found on the State Classification Office's Web site at <http://sao.hr.state.tx.us/Publications/reports.html> under the Compensation and Classification Reports section.

Classified Salary Schedules

The Plan has three salary schedules: Schedules A, B, and C. Schedule A includes paraprofessional, administrative support, protective service, maintenance service, and technical positions. Schedule B includes primarily professional and managerial positions, while Schedule C covers specific law enforcement positions certified by the Commission on Law Enforcement Officer Standards and Education.²⁶⁷ Only executive directors and specific positions remain exempt from the Plan.²⁶⁸

Fiscal Year 2010-2011 Classified Salary Schedules A and B

Classification salary schedules for Schedules A and B were revised for the 2010–2011 biennium (see Table 5-1 through Table 5-2).²⁶⁹ The State Auditor's Office's State Classification Team reviewed the structure of the current Salary Schedules A and B to determine whether they provided a sufficient structure by which to compensate employees. Over time, changes to salary schedules had resulted in inconsistencies between levels. In some situations, this placed limitations on the maximum salary rate for positions or created pay compression between salary range levels. To address these issues, the salary schedules were revised to:

- Ensure there is a logical and distinct progression between pay levels.
- Widen salary ranges to provide higher maximum salary ranges.
- Add additional salary groups.

²⁶⁶ Texas Government Code, Section 654.036.

²⁶⁷ *A Biennial Report on the State's Position Classification Plan*, State Auditor's Office Report. No. 09-701, October 2008, Page 2.

²⁶⁸ Texas Government Code, Section 654.012.

²⁶⁹ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 2.01.

- Create more consistency between employees paid under Salary Schedule A and employees paid under Salary Schedule B.²⁷⁰

To create this consistency between the two schedules, Salary Schedule B now starts at B10 to match levels on Salary Schedule A. For example, an employee who is in salary group 15 is paid in the same range with the same minimum and maximum pay, regardless of whether it is a position on Salary Schedule A or Salary Schedule B. The classification salary schedules for the 2010–2011 biennium are listed in Table 6-1 and Table 6-2. They can also be found online by accessing the State of Texas Human Resources Web site at <http://sao.hr.state.tx.us/>.

Table 6-1

| Classification Salary Schedule A | | | |
|----------------------------------|----------------|----------|----------------|
| Fiscal Years 2010-2011 | | | |
| Salary Group | Minimum Salary | Midpoint | Maximum Salary |
| A3 | \$16,850 | \$20,641 | \$24,433 |
| A4 | \$17,693 | \$21,673 | \$25,654 |
| A5 | \$18,577 | \$22,757 | \$26,937 |
| A6 | \$19,506 | \$23,895 | \$28,284 |
| A7 | \$20,481 | \$25,090 | \$29,698 |
| A8 | \$21,505 | \$26,344 | \$31,183 |
| A9 | \$22,581 | \$27,661 | \$32,742 |
| A10 | \$23,710 | \$29,044 | \$34,379 |
| A11 | \$25,132 | \$32,044 | \$38,955 |
| A12 | \$26,640 | \$33,966 | \$41,292 |
| A13 | \$28,239 | \$36,004 | \$43,770 |
| A14 | \$29,933 | \$38,164 | \$46,396 |
| A15 | \$31,729 | \$40,454 | \$49,180 |
| A16 | \$33,633 | \$42,882 | \$52,130 |
| A17 | \$35,651 | \$45,454 | \$55,258 |
| A18 | \$38,146 | \$49,590 | \$61,034 |
| A19 | \$40,816 | \$53,061 | \$65,306 |
| A20 | \$43,673 | \$56,775 | \$69,878 |

²⁷⁰ A Biennial Report on the State's Position Classification Plan, State Auditor's Office Report No. 09-701, October 2008, Pages 9-10.

Table 6-2

| Classification Salary Schedule B Fiscal Years 2010-2011 | | | |
|--|----------------|-----------|----------------|
| Salary Group | Minimum Salary | Midpoint | Maximum Salary |
| B10 | \$23,710 | \$29,044 | \$34,379 |
| B11 | \$25,132 | \$32,044 | \$38,955 |
| B12 | \$26,640 | \$33,966 | \$41,292 |
| B13 | \$28,239 | \$36,004 | \$43,770 |
| B14 | \$29,933 | \$38,164 | \$46,396 |
| B15 | \$31,729 | \$40,454 | \$49,180 |
| B16 | \$33,633 | \$42,882 | \$52,130 |
| B17 | \$35,651 | \$45,454 | \$55,258 |
| B18 | \$38,146 | \$49,590 | \$61,034 |
| B19 | \$40,816 | \$53,061 | \$65,306 |
| B20 | \$43,673 | \$56,775 | \$69,878 |
| B21 | \$46,731 | \$60,750 | \$74,769 |
| B22 | \$50,002 | \$65,002 | \$80,003 |
| B23 | \$53,502 | \$69,552 | \$85,603 |
| B24 | \$57,247 | \$74,421 | \$91,595 |
| B25 | \$61,254 | \$79,631 | \$98,007 |
| B26 | \$67,380 | \$89,278 | \$111,176 |
| B27 | \$74,118 | \$98,206 | \$122,294 |
| B28 | \$81,529 | \$108,026 | \$134,524 |
| B29 | \$89,682 | \$118,829 | \$147,976 |
| B30 | \$98,651 | \$130,712 | \$162,773 |
| B31 | \$108,516 | \$143,783 | \$179,051 |
| B32 | \$119,367 | \$158,162 | \$196,956 |
| B33 | \$131,304 | \$173,978 | \$216,652 |
| B34 | \$144,434 | \$191,375 | \$238,317 |
| B35 | \$158,878 | \$210,513 | \$262,148 |

Fiscal Year 2010-2011 Classified Salary Schedule for Schedule C

Salary Schedule C contains salaries for the State’s law enforcement positions and is part of the Plan (see Table 6-3). This schedule provides the salary structure only for peace officers licensed by the Texas Commission on Law Enforcement Officers Standards and Education who are employed at the following agencies:

- Department of Public Safety.
- Parks and Wildlife Department.
- Alcoholic Beverage Commission.
- Department of Criminal Justice.²⁷¹

Table 6-3

| Classified Salary Schedule C Fiscal Years 2010 and 2011 | | | | | | |
|--|------------------|-------------------------|-------------------------|--------------------------|--------------------------|--------------------------|
| Salary Group | Years of Service | | | | | |
| | Less than 4 | Equal to or More Than 4 | Equal to or More Than 8 | Equal to or More Than 12 | Equal to or More Than 16 | Equal to or More Than 20 |
| C1 | \$35,787 | | | | | |
| C2 | \$39,097 | | | | | |
| C3 | \$47,221 | \$50,988 | \$54,860 | \$57,504 | \$60,307 | \$61,793 |
| C4 | | \$57,578 | \$61,677 | \$64,402 | \$67,377 | \$69,043 |
| C5 | | \$64,489 | \$68,859 | \$71,682 | \$74,848 | \$76,714 |
| C6 | | \$71,470 | \$76,077 | \$79,001 | \$82,359 | \$84,427 |
| C7 | | \$87,719 | \$88,529 | \$88,939 | \$88,939 | \$88,939 |
| C8 | | \$91,200 | \$91,935 | \$92,394 | \$92,394 | \$92,394 |

Classification Compliance Audits

As part of the requirements established in government code, the State Classification Team in the State Auditor’s Office has a responsibility to conduct classification compliance audits.²⁷² The objective of these audits is to determine whether agencies conform to the State Classification Plan by ensuring proper classification of positions. The audits may focus on a classification series within the state, or all classifications within an agency or portion of an agency. If these audits reveal misclassifications, the State Classification Office provides written notice to the appropriate agency heads. The steps available to resolve misclassifications include:

- Reclassifying the employee to a class title consistent with the work that is actually performed.
- Changing the employee’s duties to conform to the assigned class title.

²⁷¹ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 3.01 (g).

²⁷² Texas Government Code, Section 654.036 (3).

- Obtaining a new class title and salary range.²⁷³

Additional information on classification compliance audits is available in the Classification Compliance Audit Resource Guide on the State Classification Office's Web site at <http://sao.hr.state.tx.us/Publications/reports.html/type/compliance>.

Salary Studies

The State Classification Office makes periodic studies of salary rates in other governmental units and in industry for similar work performed in state government. The results of these studies must be reported to the Governor's budget office and the Legislative Budget Board prior to October 1 preceding each regular session of the Legislature.²⁷⁴

In addition, before September 1 of each even-numbered year, the State Classification Office will survey the local law enforcement departments that employ more than 1,000 commissioned law enforcement officers to gather information about the total compensation provided by the departments to law enforcement officers. The results of this survey will be analyzed and reported to the Legislature before January 1 of each odd-numbered year. The report will contain information that identifies the five local law enforcement departments that provide the highest average total compensation to local law enforcement officers who have been employed by the local law enforcement departments at the maximum salary level.²⁷⁵

These studies and recommendations can be found on the State Classification Office's Web site at <http://sao.hr.state.tx.us/Publications/reports.html> under the Compensation and Classification Reports section.

²⁷³ Texas Government Code, Section 654.038.

²⁷⁴ Texas Government Code, Section 654.037 (a).

²⁷⁵ Texas Government Code, Section 654.037 (b).

Additional Information

Table 6-4 provides a list of resources from the Attorney General's office related to the classification of employees within the state.

Table 6-4

| Classification of Employees Related Attorney General Resources ^a | |
|--|---|
| Opinion Number | Topic |
| GA-365 | Whether a peace officer commissioned by the Texas Department of Safety is an "appointed officer" for purposes of Article XVI, Section 1 of the Texas Constitution. |
| M-707 | Whether public junior college districts are political subdivisions of Texas. |
| MW-165 | Regarding the classification of faculty members at Odessa College. |
| WW-565 | Whether the Employees Retirement System and the Teacher Retirement System are administrative agencies for which administration expenses should be appropriated by the legislature, and related questions. |
| WW-1443 | Whether Article 6252-4 Vernon's Texas Civil Statutes applies to employees of independent and common school districts. |
| ^a Detailed references can be found at http://www.oag.state.tx.us/opin/opindex.shtml . | |

Section 7
Positions Exempt from Classification Plan

Positions Exempt from the Classification Plan

The State has a limited number of positions that are exempt from the Classification Plan at state agencies. These positions include:

- A constitutional officer or official.
- An elected officer or official.
- An officer appointed by the Governor.
- The chief executive of a state agency.
- A teacher in public schools, a special school of the State, or state institution of higher education.
- Personnel employed by state institutions of higher education.
- A professional compensated for services on a fee basis.
- An employee excluded from the plan by executive order of the Governor or at the direction of the Legislature.²⁷⁶

The number of authorized positions for a title listed in a “Schedule of Exempt Positions” may be exceeded only:

- For the purpose of hiring a replacement in a key management position as certified by the chief administrator of the agency.
- If the current incumbent of the position has formally resigned or otherwise announced irrevocable plans to vacate the position.
- For a period of time not to exceed the equivalent of one month’s salary per fiscal year per terminating incumbent (excluding time spent on the payroll for the purpose of exhausting accrued annual leave or state compensatory time.
- If exceptions are reported as prescribed for payroll reporting procedures.²⁷⁷

A list of exempt positions used by agencies can be found on the State Auditor’s Office’s Web site at <http://sao.hr.state.tx.us/Compensation/exempt.html>.

Provisions for the Head of State Agencies

The Legislature authorizes and designates the title and maximum compensation rate for each agency head in the General Appropriations Act. Unless specifically authorized, the administrative head may

²⁷⁶ Texas Government Code, Section 654.012.

²⁷⁷ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 3.05e (2).

not receive a salary higher than the established salary, even if the administrative head performs duties assigned to a position title classified in the state's position classification plan that is assigned to a salary group that would pay a higher salary.

At the Governor's discretion, he or she is authorized, notwithstanding the rate listed for the Governor in the "Schedule of Exempt Positions to establish the rate of compensation for the Governor at any amount below the listed authorization.²⁷⁸ The salary provided by the General Appropriations Act for the Governor is an annual salary and is not reduced during the Governor's absence from the state.²⁷⁹ In addition, the Governor may designate the title and compensation rate of positions exempt from the Position Classification Plan that are used by the Office of the Governor.²⁸⁰

Not to Exceed Rates

Exempt positions have not-to-exceed (NTE) salaries that are set by the Legislature each biennium. A position listed in a state agency's Schedule of Exempt Positions shall receive compensation at a rate not to exceed the amount indicated in that agency's Schedule of Exempt Positions.²⁸¹ If an agency's Schedule of Exempt Positions has a NTE rate that is less than the maximum salary listed in table 7-1, the NTE rate in the agency's schedule prevails.

The General Appropriations Act provides guidance regarding exempt positions listed in the agency appropriations as the Schedule of Exempt Positions. The salaries listed for the exempt positions are "Not to Exceed" salaries.

Salary Groups

The General Appropriations Act identifies the salary group and the agency head's assigned salary group in each agency's appropriations bill pattern. Each salary group has a minimum salary and a maximum salary (see Table 7-1). For some agencies, the Governor has the authority to set compensation in an amount not to exceed the maximum salary, but not less than the minimum.²⁸²

²⁷⁸ General Appropriations Act (81st Legislature, Regular Session), Article I, Office of the Governor, Rider 7.

²⁷⁹ General Appropriations Act (81st Legislature, Regular Session), Article I, Office of the Governor, Rider 3.

²⁸⁰ General Appropriations Act (81st Legislature, Regular Session), Article I, Office of the Governor, Rider 2.

²⁸¹ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 3.05 (a).

²⁸² General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 3.05b (1).

Table 7-1

| Scheduled Exempt Position Salary Rates Fiscal Years 2010- 2011 ²⁸³ | | |
|--|----------------|----------------|
| Group | Minimum Salary | Maximum Salary |
| 1 | \$70,000 | \$110,000 |
| 2 | \$80,500 | \$126,600 |
| 3 | \$92,600 | \$145,600 |
| 4 | \$106,500 | \$167,500 |
| 5 | \$122,500 | \$192,600 |
| 6 | \$140,900 | \$221,500 |
| 7 | \$162,000 | \$254,700 |
| 8 | \$186,300 | \$292,500 |

Some agencies and exempt positions have the authority to request to set the rate of compensation provided for the agency’s respective exempt positions at an amount not to exceed the maximum salary, but not less than the minimum salary for the appropriate salary group. To obtain permission to do so, the governing board of the state agency must submit the request to the Legislative Budget Board and the Governor’s Office. The request must include:

- The date that the board approved the request.
- A statement that justifies the need to exceed the limitations in the agency’s Schedule of Exempt Positions.
- The source of funds to be used to pay the additional salary amount.

The governing board may make this request a maximum of once per fiscal year or upon a vacancy in the exempt position. After submission of the request, the agency can consider it approved if neither the Legislative Budget Board nor the Governor’s Office issues a written disapproval by:

- The 10th business day after the Legislative Budget Board staff submits the results of its review to the chairperson of the House Appropriations Committee and the chairperson of the Senate Finance Committee; and
- The 10th business day after the Governor’s Office received the request for the increase.

If a proposed rate increase is approved, the Legislative Budget Board shall notify the affected agency, the Governor’s Office, and the Office of the Comptroller of Public Accounts.

The exempt positions and agencies allowed to set rates using this new authority are:

- Commissioner for the Department of State Health Services.
- Commissioner for the Department of Family and Protective Services.
- Commissioner for the Higher Education Coordinating Board.

²⁸³ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 3.05.

- Commissioner for the Department of Aging and Disability Services.
- Executive Director of the Department of Information Resources.
- Commissioner for the Department of Assistive and Rehabilitative Services.
- Executive Director of the Texas Lottery Commission.
- Executive Director of the Texas Youth Commission.
- Executive Director of the State Preservation Board.²⁸⁴

Salary Increases for Exempt Positions

In addition to all other requirements and limits established under an agency's bill pattern, requests for a salary increase for exempt positions outlined in Article IX of The General Appropriations Act must be:

- In writing;
- Signed by the presiding officer of the governing board;
- Submitted to the Governor, the Legislative Budget Board and the Comptroller; and
- Approved by the governing board in a public meeting.²⁸⁵

Salary Supplements for Exempt Positions

In addition to salary amounts appropriated by the General Appropriations Act and identified in the schedule of exempt positions, some exempt positions may receive a salary supplement. These positions include:

- Cancer Prevention and Research Institute of Texas, Executive Director: Salary supplement not to exceed \$86,000 for a total combined salary of \$300,000 out of state and foundation funds each fiscal year of the biennium.
- Cancer Prevention and Research Institute of Texas, Chief Scientific Officer: Salary supplement not to exceed \$488,000 for a total combined salary of \$700,000 out of state and foundation funds each fiscal year of the biennium.²⁸⁶
- Texas Medical Board, Executive Director: Salary supplement not to exceed \$12,000 annually if the executive director is a medical doctor and an attorney.²⁸⁷

²⁸⁴ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 3.05 (c).

²⁸⁵ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 3.05 (d).

²⁸⁶ General Appropriations Act (81st Legislature, Regular Session), Article I, Cancer Prevention and Research Institute of Texas, Rider 8.

²⁸⁷ General Appropriations Act (81st Legislature, Regular Session), Article VIII, Texas Medical Board, Rider 3.

- Office of Consumer Credit Commissioner, Commissioner: Salary supplement not to exceed \$12,000 annually if the commissioner also serves at the executive director of the Finance Commission.²⁸⁸

Provisions for Salaries in the Judiciary Branch

Judges and justices in the Judicial Branch may have specific salaries. Table 7-2 provides an outline of those provisions.

Table 7-2

| Provisions for Salaries in the Judiciary Branch ²⁸⁹ | | |
|--|---|--|
| Title | Minimum Salary | Maximum Salary |
| District Judge | \$125,000 | Combined salary (state and county sources) may not exceed the amount that is \$5,000 less than the salary provided for a justice of a court of appeals. ^a |
| Justice, Court of Appeals | 110 percent of salary of district judge | Combined salary (state and county sources) may not exceed the amount that is less than \$5,000 less than the salary provided for a justice of the Texas Supreme Court. |
| Justice, Supreme Court and Judge, Criminal Court of Appeals ^a | 120 percent of salary of district judge | None Listed |
| Chief Justice of Supreme Court, Presiding Judge of Criminal Court of Appeal, and Chief of a Court of Appeals | \$2,500 more than salary provided for other justices or judges of the court | Combined salary may not exceed the amount that is \$2,500 less than the salary provided for a justice of the Texas Supreme Court. |
| ^a This excludes chief justice positions. | | |

The Comptroller's Office provides oversight to ensure the required salary limitations for the judiciary branch are maintained. If a salary combined with additional compensation from other sources would be in excess of the limitation, the Comptroller shall reduce the state salary by the excess amount.²⁹⁰

Appellate Court Salary Limits for Attorneys

Intermediate appellate courts may not pay more than one chief staff attorney promoted or hired after September 1, 2010, more than \$92,400 annually under this provision. Further, it is the intent of the Legislature that no intermediate appellate court may pay other permanent legal staff hired or promoted after September 1, 2010, more than \$79,750 annually. This provision does not apply to law clerk positions at any appellate court.²⁹¹

²⁸⁸ General Appropriations Act (81st Legislature, Regular Session), Article VIII, Office of Consumer Credit Commissioner, Rider 7.

²⁸⁹ Texas Government Code, Section 659.012.

²⁹⁰ Texas Government Code, Section 659.012 (e)

²⁹¹ General Appropriations Act (81st Legislature, Regular Session), Article IV, Section 10.

Provisions for Educational Institutions

Of the educational and general funds appropriated to general academic institutions, community colleges, health centers, health science centers, and medical education programs, the Legislature sets a not-to-exceed amount for the salary of a president or chancellor. All presidents may receive additional amounts for a house, utilities, and/or supplement from institutional funds. Table 7-3 lists those rates and the positions to which they apply.

Table 7-3

| Provisions for Salaries for Educational Institutions ²⁹² | | |
|--|--|---|
| Title | Not To Exceed Rate (Paid from Appropriated Funds) | Not to Exceed Rate for Housing Allowance ^a |
| President, Higher Education Institution | \$65,945 | \$7,200 |
| Chancellor, Higher Education Institution | \$70,231 | \$7,200 |
| Campus President, Texas State Technical College | \$63,654 | \$7,200 |
| Chancellor, Texas State Technical College | \$70,231 | \$7,200 |
| ^a If a house owned by the institution, system, or program is not available, additional amounts from private or institutional funds may be provided in lieu of house and utilities, when required. | | |

Salary Study on Exempt Positions

The State Auditor's Office is directed to conduct a study similar to the annual study on the State's Classification Plan that reviews the compensation of exempt positions in the General Appropriations Act. The study should compare exempt positions from different agencies and take into account the following:

- Size of an agency's annual appropriations.
- Full-time equivalent (FTE) level.
- Market average compensation for similar executive positions.
- Exempt position salary as compared to classified positions within the agency.
- Other objective criteria the State Auditor's Office deems appropriate.

The study shall be submitted to all members of the Legislature and the director of the Legislative Budget Board no later than September 1, 2010.²⁹³

²⁹² General Appropriations Act (81st Legislature, Regular Session), Article III, Section 5 (2) and (3); and General Appropriations Act (81st Legislature, Regular Session), Article III, Special Provisions Relating only to Components of Texas State Technical College, Riders 10 and 11.

²⁹³ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 3.09.

Section 8 Salary Administration

General Information

For salary administration purposes, there are two types of positions:

- Classified positions paid in accordance with the Classification Salary Schedule²⁹⁴ (<http://sao.hr.state.tx.us/Compensation/schedules.html>).
- Positions that are exempted from the Classification Plan by authority of the Legislature or the Governor. Salaries for these positions must be set in accordance with the General Appropriations Act.²⁹⁵

The following sections relate primarily to salary administration for classified employees.

Part-time and Hourly Employees

Regular, full-time positions may be filled by part-time and hourly employees.²⁹⁶ The salary rates for part-time and hourly employees are to be proportionate to those of full-time employees. Part-time employees must be appropriately classified with titles from the Classification Plan or appropriate exempt titles.²⁹⁷ For benefits purposes, a part-time employee is an employee who works fewer than 40 hours per week.²⁹⁸

Salary at the Time of Hire

State agencies have the authority to determine, at the time of initial employment, the salary rate within the applicable salary group for all classified positions. Initial employment includes rehires and interagency transfers.²⁹⁹

Salary Limitations

State employees must be paid at a salary rate that falls within the salary range of the applicable salary group.³⁰⁰ Therefore, a promotion, reclassification, or other salary adjustment may not result in an employee's receiving a salary in excess of the maximum rate authorized for his or her salary group.³⁰¹

| |
|---|
| Administration by the Comptroller of Public Accounts |
|---|

| |
|---|
| The Comptroller of Public Accounts may establish procedures and adopt rules to administer promotions, reclassifications, and other adjustments to salary. These procedures and rules may be found in the Comptroller of Public Accounts' <i>Payroll Policies and Procedures Guide</i> at the following Web site: http://www.cpa.state.tx.us . |
|---|

²⁹⁴ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 3.01.

²⁹⁵ Texas Government Code, Sections 654.012, 654.0125, and 659.011; and General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 3.05.

²⁹⁶ Texas Government Code, Section 658.009.

²⁹⁷ Texas Government Code, Section 659.019 (a).

²⁹⁸ Texas Insurance Code, Section 1551.003 (11).

²⁹⁹ Texas Government Code, Section 654.014 (b).

³⁰⁰ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 3.01 (d).

³⁰¹ Texas Government Code, Section 659.259 (b).

Salary Supplementation

Classified employees or employees in exempt positions funded by the General Appropriations Act cannot receive a salary supplement from any source unless specifically authorized by statute or the General Appropriations Act.³⁰²

Additionally, appropriated funds to state agencies and institutions of higher education may not be expended until a report showing the salary supplements has been reported to the Secretary of State and Comptroller of Public Accounts (Comptroller).³⁰³

Additional Information

Table 8-1 provides a list of State Auditor's Office's Human Resources Questions-and-Answers related to salary administration for classified positions.

Table 8-1

| Salary Administration-General Information Related State Auditor Resources ^a | | |
|---|---|------------|
| Type | Topic | Reference |
| HR Question | Whether there is a mandatory time limit on how long an employee may be hired in a temporary position. | 7/7/2005 |
| HR Question | Whether a classified employee may be temporarily assigned to two different classified positions within a 12-month period. | 5/30/2003 |
| HR Question | Whether an agency may classify employees to a lower salary group to avoid paying a higher salary due to mandatory reallocations. | 8/16/1999 |
| HR Question | Whether an agency may hire an hourly employee at a rate that is higher than the salary range for a position in the State Classification Plan. | 12/7/1998 |
| HR Question | Whether there are restrictions on hiring a new employee and paying the employee more than the minimum salary rate. | 10/26/1998 |

^a Complete references can be found at:
HR questions: <http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html>.

Conversion of Exempt Employees to Classified Positions

An employee who transfers from an exempt position to a classified position within an agency is entitled to receive an annual salary in the salary group to which the classified position is allocated. The employee's annual salary after the transfer may not exceed the rate received by the employee when holding the exempt position or the maximum rate of the salary group to which the classified position is allocated. The employee may receive his or her current salary or the maximum rate of the new salary group, whichever is lower.³⁰⁴

A merit salary increase for an employee who transfers to a classified position from an exempt position may not take effect if the employee has spent fewer than six months in the classified position

³⁰² Texas Government Code, Section 659.020.

³⁰³ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 3.02.

³⁰⁴ Texas Government Code, Section 659.253 (b).

or the increase would take the employee's salary beyond the maximum of his or her new salary group.³⁰⁵

The Legislative Budget Board and the Governor may approve, upon receiving the employing state agency's application, an exception to the salary limitation for a state employee who transfers from an exempt position to a classified position if the employee's job responsibilities with the agency have changed substantially during the biennium.³⁰⁶

A transfer from an exempt position to a classified position is not considered initial employment; therefore, agency heads can designate an employee's pay rate only in accordance with the provisions stating that the compensation rate must not exceed an employee's current salary rate.³⁰⁷

Reassignment of Executive Directors

An executive director may not be reassigned to another position within the agency or at another agency that is controlled by the same governing body unless, in an open meeting, the governing body votes to approve the proposed reassignment.³⁰⁸

Demotions

A demotion is a change from one classification title to another classification title in a salary group with a lower minimum salary rate.³⁰⁹ The salary of a demoted employee in Salary Schedule A will be reduced at least \$30 a month from the base salary for full-time employees. The salary of a demoted employee in Salary Schedule B will be reduced by at least 3.4 percent.³¹⁰

An agency is not required to reduce a demoted employee's salary if:

- The demotion was accepted in lieu of a layoff or reduction in force. An employee demoted under these circumstances may not receive a salary rate that exceeds the employee's salary rate before the demotion.
- The employee was selected for another position in a lower salary group as a result of applying for the position. An employee under these circumstances may not receive a salary rate that exceeds the maximum rate of the lower salary group.³¹¹

Equity Adjustments

A state agency, other than an institution of higher education, can increase the salary of a classified employee to any rate within the employee's salary group as necessary to maintain desirable salary

³⁰⁵ Texas Government Code, Section 659.253 (c).

³⁰⁶ Texas Government Code, Section 659.253 (d).

³⁰⁷ Texas Government Code, Section 659.253 (b) (2).

³⁰⁸ Texas Government Code, Section 669.002.

³⁰⁹ Texas Government Code, Section 659.257 (b).

³¹⁰ Texas Government Code, Section 659.257 (c) and (d); *Reason Code Definitions and Restrictions for State Agencies*, Fiscal Year 2010-2011 (Salary Action Code 021), Comptroller of Public Accounts Fiscal Policies and Procedures, August 2009; and *Payroll Policies and Procedures Guide*, Office of the Comptroller of Public Accounts, June 2009. Both publications can be found at <http://www.cpa.state.tx.us>.

³¹¹ Texas Government Code, Section 659.257 (f) and (g).

relationships between and among employees of the agency or between employees of the agency and employees who hold similar positions in relevant labor markets.³¹²

A classified employee may receive an equity adjustment if the employee has worked in the current position for at least six months while maintaining a satisfactory level of job performance. An employee may not receive more than one equity adjustment during a fiscal year.³¹³ State agencies must establish written rules regarding equity adjustments and shall consider the education, skills, related work experience, length of service, and job performance of agency employees and similar employees in the relevant labor market. These rules shall include procedures under which the agency will review and analyze the salary relationships between agency employees who receive salaries under the same job classification and perform the same type and level of work to determine if inequities exist.³¹⁴

In providing an equity adjustment, the salary must increase but still remain within the same salary group without a change to the job classification or salary group.³¹⁵

Table 8-2 lists State Auditor’s Office’s Human Resources Questions-and-Answers related to equity adjustments for classified positions.

Table 8-2

| Equity Adjustments Related State Auditor Resources ^a | | |
|--|---|-----------|
| Type | Topic | Reference |
| HR Question | Whether an equity adjustment may be granted in combination with a merit increase. | 1/25/2007 |
| HR Question | Regarding the frequency at which an agency may grant equity adjustments to employees. | 8/1/2006 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . | | |

Lateral Transfer

A lateral transfer is a change-in-duty assignment of an agency employee that moves the employee to another classification title in the same salary group. An example might be an Accountant V (B21) who moves to Accounts Examiner V (B21). When a lateral transfer occurs, the salary can be increased, it can remain the same, or it can decrease within the salary group. If an increase is provided, it can be no more than 3.4 percent above the employee’s salary prior to the transfer. If the salary decreases, it may not decrease below the minimum of the salary group. A state employee’s annual salary rate immediately after a transfer may not exceed the maximum rate for the salary

³¹² General Appropriations Act (81st Legislature, Regular Session) Article IX, Section 3.08 (a).

³¹³ General Appropriations Act (81st Legislature, Regular Session), Section 3.08 (c).

³¹⁴ General Appropriations Act (81st Legislature, Regular Session), Section 3.08 (d).

³¹⁵ *Reason Code Definitions and Restrictions for State Agencies*, Fiscal Year 2010-2011 (Salary Action Code 040), Comptroller of Public Accounts Fiscal Policies and Procedures, August 2009 at <http://www.cpa.state.tx.us>.

group.³¹⁶ An increase in salary is not authorized for employees moving to a different position in the same job classification at the same agency. An example might be an Accountant IV in the Finance division who moves to an Accountant IV in the human resources division.

Reallocations

In this section, “higher salary group” means a salary group with a higher minimum salary rate, and “lower salary group” means a salary group with a lower minimum salary rate.³¹⁷

Reallocations refer to the process by which the General Appropriations Act assigns specific classified positions to a salary group that differs from the previously designated salary group.

A classified employee whose position is reallocated to a higher salary group will receive the minimum rate in the higher salary group or the salary he or she would have received without the reallocation, whichever is higher. Salaries of employees may not be increased more than 6.8 percent for the purpose of maintaining desirable salary relationships among employees in the affected positions.³¹⁸

Employees whose positions are reallocated to lower salary groups will receive the salaries they would have received had their positions not been reallocated. However, the employees’ salaries should not exceed the maximum rates for the lower salary groups.³¹⁹

Reclassifications

Reclassification is defined as a change in the classification of a position to another classification title as a result of a classification review or agency reorganization. The purpose of a reclassification is to properly classify a position based on the actual duties currently performed by an employee. It does not refer to a change in an employee’s duty assignment. A position may be reclassified at any time to correct a discrepancy.³²⁰ Annually, all agencies covered by the Position Classification Act are required to review individual job assignments to ensure that each employee is classified properly. In addition, an agency may perform a monthly review of job assignments.³²¹

A classified employee whose position is reclassified to a higher salary group will receive the minimum rate in the higher salary group or the salary he or she would have received without the reclassification, whichever is higher. Salaries of employees may not be increased more than 6.8 percent for the purpose of maintaining desirable salary relationships among employees in the affected positions.³²²

³¹⁶ Texas Government Code, Section 659.2531; and *Reason Code Definitions and Restrictions for State Agencies*, Fiscal Year 2010-2011 (Salary Action Code 046), Comptroller of Public Accounts Fiscal Policies and Procedures, August 2009 at <http://www.cpa.state.tx.us>.

³¹⁷ Texas Government Code, Section 659.254 (b).

³¹⁸ Texas Government Code, Section 659.254 (c).

³¹⁹ Texas Government Code, Section 659.254 (d).

³²⁰ Texas Government Code, Section 654.0156.

³²¹ Texas Government Code, Section 654.0155.

³²² Texas Government Code, Section 659.254 (c).

Employees whose positions are reclassified to a lower salary group will receive the salaries they would have received had the positions not been reclassified. However, the employees' salaries should not exceed the maximum rates for the lower salary groups.³²³ Consequently, if the employee's salary prior to the reclassification is above the maximum salary of the lower salary group, the employee will receive the maximum salary of the salary group.

Salary Reduction for Disciplinary Reasons

Agency heads may reduce a classified employee's pay for disciplinary reasons if warranted by the employee's performance. The reduced salary cannot be lower than the minimum rate of the employee's current salary group. Pay may be restored to any rate within the same salary group, up to and including the employee's prior rate, as performance improves without accounting for the increase as a merit increase.³²⁴

Promotions

A promotion is a change in classification title that provides a higher minimum salary rate, requires higher qualifications, and involves a higher level of responsibility.³²⁵

An employee promoted to a position in Salary Schedule A will receive at least a \$30 per month increase to the base salary for a full-time employee or the minimum salary rate of the new salary group, whichever is higher. An employee promoted to a position in Salary Schedule B will receive at least a 3.4 percent increase or the minimum salary rate of the new salary group, whichever is higher. In addition, agency administrators have the discretion to grant a promoted employee a salary amount up to and including the maximum rate of the new salary group.³²⁶

Temporary Assignments

To facilitate the work of state agencies during emergencies or special circumstances, an employee may be temporarily assigned to other duties for a period not to exceed six months. During that time, the employee will receive at least the same amount of pay he or she received prior to the reassignment. An employee may not be temporarily assigned to a position with a lower minimum salary rate. Temporary assignments will not exceed 6 months in a 12-month period. An employee temporarily designated to act as the administrative head of a state agency may continue to receive a salary for a classified position in an amount not to exceed the amount established by the General Appropriations Act for the administrative head of the agency. During the temporary assignment, an agency cannot award a merit increase to or promote or demote the employee.³²⁷

³²³ Texas Government Code, Section 659.254 (d).

³²⁴ Texas Government Code, Section 659.258 (b).

³²⁵ Texas Government Code, Section 659.256 (b).

³²⁶ Texas Government Code, Sections 659.256 (c) and 659.256 (d); and *Reason Code Definitions and Restrictions for State Agencies*, Fiscal Year 2010-2011 (Salary Action Code 020), Comptroller of Public Accounts Fiscal Policies and Procedures, August 2009 at <http://www.cpa.state.tx.us>.

³²⁷ Texas Government Code, Section 659.260.

Fiscal Year 2009 One-Time Retention Bonus Payment

The 81st Legislature authorized an \$800 one-time retention bonus payment for certain employees. The Comptroller of Public Accounts has determined that the payment will be paid on August 31, 2009.

Eligible individuals include employees at state agencies, the Texas Higher Education Coordinating Board, and Texas A&M University System service agencies. To be eligible for the payment, an employee must have been continuously employed by one agency for the entire period from March 31, 2009, to August 1, 2009, and have an authorized base pay salary of less than \$100,000. Employees not eligible for the bonus payment include:

- Employees of institutions of higher education.
- Statewide elected officials.
- Justices and judges of the appellate and district courts.
- District attorneys, criminal district attorneys, and county attorneys performing the duties of a district attorney.
- Line item exempt employees.
- Department of Criminal Justice employees who were provided pay increases through the General Appropriations Act for the 2010-2011 biennium. (These include Correctional Officers, Senior Correctional Officers, Wardens, Laundry Managers, Food Service Managers, Parole Officers, and select unit staff.)
- Texas Youth Commission employees who were provided pay increases through the General Appropriations Act (These include Juvenile Correctional Officers and select unit staff.)
- Law Enforcement Employees classified under Salary Schedule C.
- Parks and Wildlife Department employees who were provided pay increases through the General Appropriations Act for the 2010-2011 biennium (which are contingent on certification of additional revenue from the Game, Fish, and Water Safety Account).
- Staff attorneys, law clerks, and administrative staff at the Supreme Court and the Court of Criminal Appeals.
- Staff attorneys, law clerks, and employees at the 15 Appellate Courts whom a Court of Appeals designates as receiving a salary increase in the General Appropriations Act for the 2010-2011 biennium.
- All positions at the State Law Library.
- General Counsel and attorney staff at the State Commission on Judicial Conduct.

- Financial Examiners otherwise provided a pay increase under the General Appropriations Act for the 2010-2011 biennium.³²⁸

Additional Information

Table 8-3 lists State Auditor’s Office’s Human Resources Questions-and-Answers related to salary actions.

Table 8-3

| Salary Administration-Salary Actions Related State Auditor Resources ^a | | |
|--|--|------------|
| Type | Topic | Reference |
| HR Question | Whether an agency may make adjustments to an employee’s salary at the time the employee is selected for an open position in the same salary group. | 10/31/2003 |
| HR Question | Whether an agency may process a demotion or reclassification of an employee whose duties changed as a result of reorganization. | 8/1/2002 |
| HR Question | Whether an employee who voluntarily applies for and is selected for a lower classified position may receive a salary increase. | 11/1/1999 |
| HR Question | Regarding the appropriate use of reclassifications and promotions. | 11/23/1998 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . | | |

Related Legislation

Table 8-4 contains a list of human resources-related bills that were passed by the 81st Legislature. This may not be a complete list and should be used only as a summary of general issues on salary administration that were addressed during the session.

Table 8-4

| Salary Administration Related Legislation (81st Legislature) ^a | |
|--|--|
| Bill Number | Summary |
| HB 4586 | Relating to a one-time retention bonus for state agency employees. |
| ^a Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at www.capitol.state.tx.us . | |

³²⁸ *Guidelines for the One-Time \$800 Retention Payment for Certain Employees*, Comptroller of Public Accounts (FFP G.006) at <http://www.cpa.state.tx.us>.

Section 9
Employee Compensation

Employee Compensation Overview

There are various statutes and policies that determine pay for employees in state agencies and institutions of higher education. This section provides an overview of these statutes, but does not cover individual agency or university policies and procedures related to employee compensation.

Salary Limitations

The General Appropriations Act does not limit the total amount agencies may expend for merit salary increases and promotions.³²⁹

Recovering Excess Compensation Paid

State agencies are authorized to recover overpayments of compensation to employees.³³⁰ The Comptroller of Public Accounts may adopt rules and establish procedures to administer the recovery of overpayments.³³¹ Overpayments of compensation includes base salary or wages, longevity or hazardous duty pay, benefit replacement pay, payment for the balance of vacation and sick leave, payment for the accrued balance of vacation time, and an emolument in lieu of base salary or wages.³³²

If requesting recovery of an overpayment, the agency must first notify the employee before collection action.³³³ The agency may request that the Comptroller of Public Accounts recover the overpayment.³³⁴ No statute of limitations bars the State's recovery of employee indebtedness.³³⁵

Additional Resources

Table 9-1 provides a list of State Auditor's Office's Human Resources Questions-and-Answers related to state employee compensation.

³²⁹ General Appropriations Action (81st Legislature, Regular Session), Article IX, Section 3.04.

³³⁰ Texas Government Code, Section 666.002 (a).

³³¹ Texas Government Code, Section 666.008.

³³² Texas Government Code, Section 666.001 (1).

³³³ Texas Government Code, Sections 666.003 and 666.002 (a) (1) and (2).

³³⁴ Texas Administrative Code, Title 34, Chapter 5; and Texas Government Code, Section 666.005.

³³⁵ Opinion, Texas Office of the Attorney General, No. GA-0171 (2004).

Table 9-1

| Employee Compensation Related State Auditor Resources ^a | | |
|--|--|------------|
| Type | Topic | Reference |
| HR Question | Regarding the types of classified positions that may be awarded recruitment and retention payments. | 3/29/2007 |
| HR Question | Whether enhanced compensation payments have to comply with the six-month rule between merits, one-time merits, and promotions. | 11/13/2000 |
| HR Question | Whether an agency may deduct an overpayment to employees' subsequent pay. | 1/3/2000 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . | | |

Benefit Replacement Pay

Prior to January 1, 1996, the State paid federal taxes for eligible state employees and eligible state-paid judges under the Federal Insurance Contributions Act (FICA). This payment was commonly known as state-paid social security or benefit replacement pay. Beginning with wages paid January 1, 1996, this state-paid social security ceased. The Legislature chose to offset the effects of the repeal of the state's payment of the taxes imposed on state employees and state paid judges under the FICA.

To be eligible, an employee must have been employed by the State on August 31, 1995, and must have been:

- Eligible for the state-paid Social Security contribution under Section 606.064 of the Texas Government Code.
- Using unpaid leave from a position with a state agency, if the employee would have been otherwise eligible; or
- Not working because his or her employment customarily did not include summer months; he or she had contracted to resume employment before September 2, 1995; and such employment would have made the employee eligible for the state-paid tax if the employee had held that position at that time.³³⁶

Benefit replacement pay is equal to 5.85 percent of the FICA wages earned during the pay period and the additional retirement contribution that would have been paid by the employee because of receiving benefit replacement pay. The total paid out (not including the retirement contribution) may not exceed \$965.25 each calendar year for a state agency employee.³³⁷ The benefit replacement pay for employees at institutions of higher education participating in the Teacher Retirement System may not exceed \$1,031.25.³³⁸

Regular state agencies have the option of providing benefit replacement pay in equal installments during the calendar year. This practice is known as "leveling." The Comptroller's *Payroll Policy*

³³⁶ Texas Government Code, Section 659.121.

³³⁷ Texas Government Code, Section 659.123.

³³⁸ *Notice to State Agencies, FM-96-37*, Comptroller of Public Accounts, November 13, 1995.

and Procedures Guide states that this option exists if the employee’s wages are anticipated to be at least \$16,500 during the year in which the leveling would occur. If an employee chooses to receive benefit replacement pay in equal installments and then terminates his or her employment before year end, the employee will not be paid the difference between the benefit replacement pay received and the amount the employee would have received had the installment plan not been chosen.³³⁹

An eligible employee who leaves state employment for 30 or more consecutive days after August 31, 1995, becomes ineligible to receive benefit replacement pay upon re-employment with the State.³⁴⁰ An eligible state employee who retired from state employment on or after June 1, 2005, and who receives an annuity based wholly or partly on services as a state officer or state employee in a public retirement system, is ineligible to receive benefit replacement pay upon re-employment with the State.³⁴¹

Additional Resources

Table 9-2 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers related to benefit replacement pay.

Table 9-2

| Benefit Replacement Pay Related State Auditor Resources ^a | | |
|--|---|-----------|
| Type | Topic | Reference |
| HR Question | Regarding benefit replacement pay eligibility and payment procedures. | 7/31/2000 |
| HR Question | Whether an employee who has been on leave without pay for more than 12 months because of military leave is still eligible for benefit replacement pay when he or she returns to work. | 9/8/1998 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . | | |

Hazardous Duty Pay

A state employee is eligible for hazardous duty pay if he or she is a state employee for any portion of the first work day of the month and has completed at least 12 months of lifetime service credit (by the last day of the preceding month).³⁴² Those state employees eligible for hazardous duty pay include:

- A commissioned law enforcement officer of the Department of Public Safety, the Texas Facilities Commission, the Alcoholic Beverage Commission, or the Department of Criminal Justice.
- A commissioned security officer of the Comptroller of Public Accounts.
- A law enforcement officer commissioned by the Parks and Wildlife Department.
- A commissioned peace officer of an institution of higher education.

³³⁹ Texas Government Code, Section 659.125 (a); and *Comptroller Payroll Policy and Procedure Guide*, Chapter 3.

³⁴⁰ Texas Government Code, Section 659.126 (a).

³⁴¹ Texas Government Code, Section 659.126 (d).

³⁴² Texas Government Code, Section 659.302.

- An employee or official of the Board of Pardons or the Department of Criminal Justice’s Parole Division if the employee or official has routine, direct contact with inmates or with administratively released prisoners.
- An individual certified as having begun employment as a law enforcement officer or custodial officer unless the employee ceased that employment.³⁴³
- An employee who received hazardous duty pay before May 29, 1987, based on the terms of any state law if the individual holds a position designated under that law as eligible for pay.³⁴⁴

Department of Criminal Justice employees hired after August 31, 1985, must occupy positions approved by the Texas Board of Criminal Justice and meet statutory criteria to receive hazardous duty pay.³⁴⁵

The Alcoholic Beverage Commission is authorized to pay hazardous duty pay to any commissioned law enforcement personnel as prescribed by law. It is further provided that individuals who had received hazardous duty pay as of August 31, 1981, will continue to receive hazardous duty pay for the 2010-2011 biennium. Individuals hired after August 31, 1981, will not be eligible to receive hazardous duty pay unless so authorized by statute.³⁴⁶

Hazardous Duty Pay Lifetime Service Credit

The amount of an employee’s hazardous duty pay is based on the number of months served in a hazardous duty position, which is also known as “lifetime service credit.”³⁴⁷ The number of months is determined on the last day of the preceding month. To be considered a full-time employee, the employee must be an employee for a portion of the first workday of the month.³⁴⁸ For a part-time employee, hazardous duty pay is proportional to the amount given to a full-time employee.³⁴⁹

Amount of Hazardous Duty Pay

In most cases, the amount of a full-time employee’s hazardous duty pay for a particular month is \$10 for each 12-month period of lifetime service credit accrued by the employee.³⁵⁰ The state agency that employs the individual at the beginning of the first workday of the month is responsible for paying hazardous duty pay for that month.³⁵¹

³⁴³ Texas Government Code, Section 659.301 (5).

³⁴⁴ Texas Government Code, Section 659.301 (5) (g).

³⁴⁵ General Appropriations Act (81st Legislature, Regular Session), Article V, Department of Criminal Justice, Rider 16.

³⁴⁶ General Appropriations Act (81st Legislature, Regular Session), Article V, Alcoholic Beverage Commission, Rider 3.

³⁴⁷ Texas Administrative Code, Title 34, Section 5.39 (a) (6).

³⁴⁸ Texas Government Code, Section 659.302.

³⁴⁹ Texas Government Code, Section 659.305 (f).

³⁵⁰ Texas Government Code, Section 659.305 (a).

³⁵¹ Texas Government Code, Section 659.306.

Table 9-3 provides examples of hazardous duty pay.

Table 9-3

| Hazardous Duty Pay Table ^a | |
|---------------------------------------|----------------------------|
| Years of Service | Monthly Hazardous Duty Pay |
| More Than 1 and fewer than 2 years | \$10 |
| More Than 2 and fewer than 3 years | \$20 |
| More Than 3 and fewer than 4 years | \$30 |
| More Than 4 and fewer than 5 years | \$40 |
| More Than 5 and fewer than 6 years | \$50 |
| More Than 6 and fewer than 7 years | \$60 |
| More Than 7 and fewer than 8 years | \$70 |
| More Than 8 and fewer than 9 years | \$80 |
| More Than 9 and fewer than 10 years | \$90 |
| More Than 10 and fewer than 11 years | \$100 |

^a With the exception of the Department of Criminal Justice Correctional Officers, there is no cap on hazardous duty pay. For purposes of this table, the amount of hazardous duty pay has been calculated only through 10 years.

Hazardous Duty Pay for Department of Criminal Justice Correctional Officers

A full-time correctional officer employed by the Department of Criminal Justice is eligible to receive hazardous duty pay at a rate of \$12 per month for each 12-month period of lifetime service credit up to a maximum of \$300 per month.³⁵²

Table 9-4 provides examples of hazardous duty pay.

Table 9-4

| Hazardous Duty Pay Table ^a Department of Criminal Justice Correctional Officers | |
|---|----------------------------|
| Years of Service | Monthly Hazardous Duty Pay |
| More Than 1 and fewer than 2 years | \$12 |
| More Than 2 and fewer than 3 years | \$24 |
| More Than 3 and fewer than 4 years | \$36 |
| More Than 4 and fewer than 5 years | \$48 |
| More Than 5 and fewer than 6 years | \$60 |
| More Than 6 and fewer than 7 years | \$72 |
| More Than 7 and fewer than 8 years | \$84 |
| More Than 8 and fewer than 9 years | \$96 |
| More Than 9 and fewer than 10 years | \$108 |
| More Than 10 and fewer than 11 years | \$120 |

^a For purposes of this table, the amount of hazardous duty pay has been calculated only through 10 years. The maximum monthly hazardous duty pay is \$300 (25 years of lifetime service credit).

Hazardous Duty Pay for Youth Commission Employees

The Texas Youth Commission (Commission) may include hazardous duty pay in the compensation paid to an individual for services rendered during a month if the individual has completed at least 12 months of lifetime service credit not later than the last day of the preceding month and has routine direct contact with youth who are:

- Placed in a residential facility of the Commission, or
- Released under the Commission's supervision.³⁵³

An individual who has routine direct contact with youth on any portion of the first workday of a month is considered to have routine direct contact with youth for the entire month.³⁵⁴ The Commission may not pay hazardous duty pay from funds authorized for payment of an across-the-board employee salary increase or to an employee who works at the Commission's central office.³⁵⁵

³⁵² Texas Government Code, Section 659.305 (h).

³⁵³ Texas Government Code, Section 659.303 (a).

³⁵⁴ Texas Government Code, Section 659.303 (b).

³⁵⁵ Texas Government Code, Section 659.303 (d).

The amount of a full-time employee's hazardous duty pay for a particular month is \$10 per month for each 12-month period of lifetime service credit accrued by the employee.³⁵⁶

Additional Resources

Table 9-5 lists Office of the Attorney General resources related to hazardous duty pay for state employees.

Table 9-5

| Hazardous Duty Pay Related Attorney General Resources ^a | |
|---|---|
| Opinion Number | Topic |
| JM-713 | Whether prior state service in a non-hazardous duty assignment may be used in calculating hazardous duty pay, and related questions. |
| LO 90-7 | Whether employees of the Board of Pardons and Paroles whose positions have been reclassified to allow them to collect hazardous duty pay are entitled to receive that pay immediately or whether they must serve in a hazardous duty pay position for one year before receiving that pay. |
| ^a Detailed references can be found at: Letter opinions (LO): http://www.oag.state.tx.us/opin/op_letters.shtml . Opinions: http://www.oag.state.tx.us/opin/opindex.shtml . | |

Jury Service and Witness Fees

A deduction may not be made from the salary or wages of a state employee because the employee is called for jury service, including a deduction for any fee or compensation the employee receives for the jury service.³⁵⁷

A state officer or employee who appears as a witness in an official capacity in a judicial proceeding or legislative hearing may not accept or receive a witness fee for the appearance.

A state officer or employee who appears as a witness in a capacity that is other than as a state officer or employee in a judicial proceeding or legislative hearing and to testify from personal knowledge concerning matters related to the proceeding or hearing is entitled to receive any customary witness fees for the appearance.

A state officer or employee who appears as an expert witness in a judicial proceeding or legislative hearing may accept compensation for the appearance only if the person is not also compensated by the State for his or her time in making the appearance, and the state officer or employee may accept reimbursement for travel expenses only if the expenses are not reimbursed by the State. For these purposes, paid leave is not considered time compensated by the State.

A state officer or employee may receive reimbursement for travel and a per diem or reimbursement for expenses connected to an appearance in an official capacity as a witness in a judicial proceeding

³⁵⁶ Texas Government Code, Section 659.305 (a).

³⁵⁷ Texas Government Code, Section 659.005 (a).

or legislative hearing from the state or the judicial body, but not from both the state and the judicial body.³⁵⁸

Authorized Witness Expenses, Texas Alcoholic Beverage Commission

There are no provisions preventing the payment of salaries and expenses incurred by representatives of the Texas Alcoholic Beverage Commission to attend state or federal grand jury proceedings, and who may be called as witnesses in a trial of criminal or civil cases in state or federal courts involving offenses of state or federal liquor regulatory or revenue laws. Any fees collected by such representatives in performing such duties shall be deposited in the State Treasury to the credit of the agency.³⁵⁹

Longevity Pay

Longevity pay is provided to all eligible full-time employees who are not on leave without pay the first workday of the month and who have at least two years of lifetime service credit.³⁶⁰ Part-time employees do not receive longevity pay on a proportional basis. Those ineligible for longevity pay include members of the Legislature, individuals elected to public office, an independent contractor or an employee of an independent contractor, temporary workers, officers or employees of public junior colleges, academic employees of institutions of higher education, and employees receiving hazardous duty pay.³⁶¹ The Comptroller of Public Accounts is responsible for issuing rules and procedures for the administration of longevity pay.³⁶²

Accrual of Lifetime Service Credit

Length of service for longevity pay is determined in the same manner as length of service for annual leave. Legislative service is included in determining lifetime service credit for purposes of longevity pay.³⁶³ For the purposes of longevity pay, an employee accrues lifetime service credit for the period in which the employee:

- Serves as a full-time, part-time, or temporary state employee or otherwise serves as an employee of the state;
- Serves as a member of the legislature;
- Holds a statewide office that is normally filled by a vote of the people; or
- Serves as an academic employee of a state institution of higher education.³⁶⁴

An employee who is on leave without pay for an entire calendar month does not accrue lifetime service credit for the month. An employee who is on leave without pay for less than an entire

³⁵⁸ Texas Government Code, Section 659.005 (b), (c), (d), and (e).

³⁵⁹ General Appropriations Act (81st Legislature, Regular Session) Article V, Alcoholic Beverage Commission, Rider 4.

³⁶⁰ Texas Government Code, Section 659.043 (a).

³⁶¹ Texas Government Code, Section 659.042; and Title 34, Texas Administrative Code Section 5.39.

³⁶² Texas Government Code, Section 659.047.

³⁶³ Texas Government Code, Section 659.046 (a).

³⁶⁴ Texas Government Code, Section 659.046.

calendar month accrues lifetime service credit for the month if the employee otherwise qualifies to accrue credit.

An employee who simultaneously holds two or more positions that each accrues lifetime service credit accrues credit for only one of the positions. An employee who begins working on the first workday of a month in a position that accrues lifetime service credit is considered to have begun working on the first day of the month.

An employee does not accrue lifetime service credit for a period in which the employee serves as an officer or employee of a public junior college.³⁶⁵

The amount of an employee's lifetime service credit does not include the period served in a hazardous duty position if the employee is entitled to receive hazardous duty pay or is receiving the maximum amount of hazardous duty pay that the Texas Youth Commission may pay to the employee.³⁶⁶

³⁶⁵ Texas Government Code, Section 659.046 (b), (c), (d), and (e).

³⁶⁶ Texas Government Code, Section 669.046 (f).

Table 9-6 lists the amounts of longevity pay that eligible employees receive based upon years of service.³⁶⁷

Table 9-6

| Longevity Pay | |
|--|-----------------------|
| Years of Service | Monthly Longevity Pay |
| Less than 2 years | \$0 |
| Greater than 2 and less than 4 years | \$20 |
| Greater than 4 and less than 6 years | \$40 |
| Greater than 6 and less than 8 years | \$60 |
| Greater than 8 and less than 10 years | \$80 |
| Greater than 10 and less than 12 years | \$100 |
| Greater than 12 and less than 14 years | \$120 |
| Greater than 14 and less than 16 years | \$140 |
| Greater than 16 and less than 18 years | \$160 |
| Greater than 18 and less than 20 years | \$180 |
| Greater than 20 and less than 22 years | \$200 |
| Greater than 22 and less than 24 years | \$220 |
| Greater than 24 and less than 26 years | \$240 |
| Greater than 26 and less than 28 years | \$260 |
| Greater than 28 and less than 30 years | \$280 |
| Greater than 30 and less than 32 years | \$300 |
| Greater than 32 and less than 34 years | \$320 |
| Greater than 34 and less than 36 years | \$340 |
| Greater than 36 and less than 38 years | \$360 |
| Greater than 38 and less than 40 years | \$380 |
| Greater than 40 and less than 42 years | \$400 |
| Greater than 42 years | \$420 |

³⁶⁷ Texas Government Code, Section 659.044.

Additional Resources

Table 9-7 lists State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to length of state service and longevity pay.

Table 9-7

| Length of State Service-Longevity Pay Related State Auditor’s Office Resources ^a | | |
|--|--|-------------------------|
| Type | Topic | Reference |
| HR Question | Whether an agency is responsible for recalculating longevity and annual leave accruals for an employee who failed to identify all state service at the time of hire. | 2/28/2005 and 12/1/2001 |
| HR Question | Whether military time that has been purchased counts as state service when calculating leave accruals and longevity pay. | 11/26/2003 |
| HR Question | Whether prior junior college service counts toward the determination of longevity accruals with a state agency. | 2/27/2003 |
| Leave Interpretation | Whether entitlement for leave accrual or longevity pay purposes is based solely upon total service as an employee of the State of Texas. | 96-02 |
| Leave Interpretation | Regarding state service credit for annual leave and longevity purposes. | 88-02 |
| Leave Interpretation | Regarding the determination of total state service credit. | 87-02 |
| Leave Interpretation | Regarding the computation of state service to determine eligibility for longevity benefits. | 80-01 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . Leave interpretations: http://sao.hr.state.tx.us/Rules/leaveinterpretations.html . | | |

Longevity Pay for Select Texas Youth Commission Employees

An employee of the Texas Youth Commission who receives less than the maximum amount of hazardous duty pay that the commission pays may be eligible for longevity pay. In these cases, an employee’s monthly amount of longevity pay is the sum of:

- \$4 for each year of lifetime service credit, which may not include any period served in a hazardous duty position; and
- The lesser of \$4 for each year served in a hazardous duty position, or the difference between \$7 for each year served in a hazardous duty position and the amount paid by the commission for each year served in a hazardous duty position.³⁶⁸

Longevity Pay for State Judges and Justices

A judge or justice who receives a salary paid by the State, is a member of the Judicial Retirement System of Texas Plan I or the Judicial Retirement System of Texas Plan II, and is an active judge (as defined by Texas Government Code, Section 74.041) is entitled to longevity pay as provided by this section. The monthly amount of longevity pay to which a judge or justice is entitled is equal to the product of .031 multiplied by the amount of the judge’s or justice’s current monthly state salary. Longevity pay becomes payable beginning with the month following the month in which the judge or

³⁶⁸ Texas Government Code, Section 659.044 (e).

justice completes 16 years of service for which credit is established in the applicable retirement system.³⁶⁹ Longevity pay paid to a judge or justice is not included as part of the judge's or justice's combined salary for purposes of a salary limitation.³⁷⁰

| New Requirement |
|---|
| The 81st Legislature amended laws related to the rate of longevity pay for judges and justices. |

Longevity Pay for Return-to-Work Retirees

A state employee who retired from state employment before June 1, 2005, and who returned to state employment before September 1, 2005, is entitled to receive longevity pay. The monthly amount of longevity pay the employee is entitled to receive equals the amount of longevity pay that the employee was entitled to receive immediately before September 1, 2005. A state employee who retired from state employment before June 1, 2005, and who returns to state employment on or after September 1, 2005, is not entitled to receive longevity pay.³⁷¹

Longevity Pay When Employee's Status Changes

If an employee changes from a full-time state employee after the first workday of a month to another status (for example, a part-time employee), but otherwise qualifies for longevity pay, the employee's compensation for the month includes full longevity pay.³⁷²

³⁶⁹ Texas Government Code, Section 659.0445.

³⁷⁰ Texas Government Code, Section 659.0445 (e), as amended by SB 497 (81st Legislature, Regular Session).

³⁷¹ Texas Government Code, Section 659.044 (f).

³⁷² Texas Government Code, Section 659.045.

Additional Resources

Table 9-8 provides a list of Office of the Attorney General resources related to longevity pay for state employees.

Table 9-8

| Longevity Pay Related Attorney General Resources ^a | |
|---|--|
| Opinion Number | Topic |
| LO 97-010 | Whether longevity pay and benefit replacement pay are included within the capped salary rate for Texas Youth Commission teachers. |
| MW-100 | Regarding the application of Article 6813d, Texas Civil Statutes, to state employees after military service and to prior service of National Guard technicians. |
| MW-282 | Whether a retiring employee is entitled to be paid longevity or hazardous duty pay in addition to accumulated leave if he takes the accumulated leave in a lump sum. |
| MW-334 | Whether teachers employed by the Texas Youth Council are entitled to longevity pay under Article 6813d, Texas Civil Statutes. |
| DM-376 | Whether a Texas Youth Commission employee in a hazardous duty position but not receiving hazardous duty pay accrues service credits for purposes of longevity pay. |
| GA-0312 | Whether service while employed by another state's district attorney qualifies as service credit for longevity pay in Texas. |
| ^a Detailed references can be found at: Letter opinions (LO): http://www.oag.state.tx.us/opin/op_letters.shtml . Opinions: http://www.oag.state.tx.us/opin/opindex.shtml . | |

Merit Increases for State Agency Employees

State agencies may award merit salary increases to employees whose job performance and productivity is consistently above that normally expected and required.³⁷³ Each state agency shall adopt policies to ensure that an employee's performance expectations are linked to the goals in the agency's strategic plan.³⁷⁴

For classified employees in Salary Schedules A and B, a merit increase consists of an increase within the range of the same salary group.³⁷⁵ There are no specific minimum or maximum amounts for either a merit salary increase or a one-time merit payment. Agencies should ensure that merit increases and one-time merit payments are distributed throughout the range of classified salary groups.³⁷⁶ A merit salary increase should not be confused with a promotion, because a merit salary increase rewards an employee for performance in the same job.³⁷⁷

³⁷³ Texas Government Code, Section 659.255 (e) (4).

³⁷⁴ Texas Government Code, Section 659.2551.

³⁷⁵ Texas Government Code, Section 659.255 (a) (3).

³⁷⁶ Texas Government Code, Section 659.255 (d).

³⁷⁷ Opinion, Texas Office of the Attorney General, H-405 (1974).

A state agency may award a merit salary increase or a one-time merit payment to a classified employee in relation to his or her current performance if:

- The employee has been employed by the agency for six months of continuous employment by the agency in that classified position before the effective date of the increase.
- The effective date of the increase is at least six months after the employee's last promotion, enhanced compensation award, one-time merit payment, or merit salary increase for performance in that position.
- The agency has established a procedure for determining the eligibility of a classified employee to receive a merit salary increase or a one-time merit payment.
- The employee's job performance and productivity in that position are consistently above that normally expected or required.
- The effective date of the increase is at least six months after the effective date of the agency's last payment to the employee of an enhanced compensation award or one-time merit payment for performance in that position.³⁷⁸

One-Time Merit Increases

Employees may receive a one-time merit payment following the same criteria used to award merit salary increases.³⁷⁹ The Employees Retirement System has indicated that such a payment is not considered compensation or wages for purposes of determining the amount of the State's contribution for retirement for employees of state agencies.³⁸⁰ Employees at the maximum of their salary groups are eligible to receive one-time merit payments.³⁸¹

The six-month limitations on one-time merit increases do not apply if the administrative head of an agency determines in writing that the merit payment is made in relation to the employee's performance during a natural disaster or other extraordinary circumstance.³⁸²

| New Requirement |
|--|
| The 81st Legislature amended laws on the payment of one-time merit increases to employees for special circumstances. |

³⁷⁸ Texas Government Code, Section 659.255 (e) and (f); and *Payroll Policies and Procedures Guide*, Office of the Comptroller of Public Accounts, August 2000, Page 2.21.

³⁷⁹ Texas Government Code, Section 659.255 (f).

³⁸⁰ *Payroll and Policies and Procedures Guide*, Office of the Comptroller of Public Accounts, August 2000, Page 2.21.

³⁸¹ State Auditor's Office Human Resources Question and Answer, October 11, 1999, and November 22, 1999.

³⁸² Texas Government Code, Section 659.255 (g), as amended by SB 2298 (81st Legislature, Regular Session).

Employees Not Eligible for Merit Increases

Merit increases are prohibited for all Department of Criminal Justice employees who are eligible to receive career ladder adjustments, such as:

- Correctional officers.
- Sergeants, Lieutenants, Captains, and Majors of correctional officers.
- Food service managers.
- Laundry managers.
- Parole officers.³⁸³
- Merits are also prohibited for all Youth Commission juvenile correctional officers who are eligible to receive career ladder adjustments.³⁸⁴

Additional Resources

Table 9-9 lists Office of the Attorney General resources related to merit increases for state employees.

Table 9-9

| Merit Increases Related Attorney General Resources ^a | |
|--|--|
| Opinion Number | Topic |
| H-106 | Regarding the determination of merit increases under House Bill 139 (63rd Legislature), General Appropriations Act. |
| JM-556 | Whether a state employee may be denied a merit increase because of absence for a work-related injury. |
| O-1752 | Regarding whether a Joint Merit System Council may be established by the executive directors of the State Department of Public Welfare and the Texas Unemployment Compensation Commission. |
| ^a Detailed references can be found at http://www.oag.state.tx.us/opin/opindex.shtml . | |

³⁸³ General Appropriations Act (81st Legislature, Regular Session), Article V, Department of Criminal Justice, Rider 9.

³⁸⁴ General Appropriations Act (81st Legislature, Regular Session), Article V, Youth Commission, Rider 17.

Table 9-10 lists State Auditor’s Office’s Human Resources Questions-and-Answers related to merit increases for state employees.

Table 9-10

| Merit Increases Related State Auditor Resources ^a | | |
|--|--|---------------------------------|
| Type | Topic | Reference |
| HR Question | Regarding the date of eligibility for another merit increase for an employee approved for a one-time merit payment on July 27, but paid on August 15. | 10/26/2004 |
| HR Question | Whether a state agency must have written policies and procedures for determining the eligibility of merit increases. | 9/2/2003 |
| HR Question | Whether an employee who received a merit increase in the last six months may receive a promotion with an additional salary change. | 7/1/2002 |
| HR Question | Whether a classified employee who temporarily assumes a supervisor position with commensurate salary would be eligible for a merit increase without waiting another six months once the employee returned to his or her former position. | 5/21/2001 |
| HR Question | Whether an agency may grant a one-time merit payment to an employee who is at the maximum of his or her salary range. | 11/22/1999 and 10/11/1999 |
| HR Question | Whether an agency must complete any required paperwork prior to granting an employee a merit increase. | 1/19/1999 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . | | |

Merit Increases at Institutions of Higher Education

Merit salary increases are awarded to employees whose job performance and productivity is consistently above that normally expected or required.³⁸⁵ An institution of higher education may grant merit salary increases, including one-time merit payments, to employees. A merit salary increase does constitute salary and wages and member compensation for purposes of the state’s retirement system. One-time merit payments for employees of institutions of higher education are not considered compensation or wages and are not subject to retirement plan contributions.³⁸⁶

An institution of higher education may pay merit salary increases from any funds. Before awarding a merit salary increase, an institution of higher education must adopt criteria for the granting of merit salary increases. To be eligible for a merit salary increase, an employee must have been employed by the institution of higher education for the six months immediately preceding the effective date of the increase and at least six months must have elapsed since the employee’s last merit salary increase.³⁸⁷

³⁸⁵ General Appropriations Act (81st Legislature, Regular Session), Article III, Section 5.4.

³⁸⁶ Texas Education Code, Section 51.962; Texas Government Code, Section 822.201; and *Payroll Policy and Procedures Guide*, Office of the Comptroller of Public Accounts, August 2000, Page 2.21.

³⁸⁷ Texas Education Code, Section 51.962.

Salary increases for faculty or faculty-equivalent employees at institutions of higher education shall be awarded on the basis of merit and job performance. This does not include salary adjustments designed to avoid salary inequities.³⁸⁸

An institution of higher education that has adopted a pay-for-performance program that is in effect when an across-the-board salary increase for state employees takes effect may use the amount appropriated for (1) an across-the-board salary increase or (2) increases in compensation under the institution's pay-for-performance program.³⁸⁹

Recruitment Bonuses

To enhance the recruitment of competent personnel for certain classified positions, a state agency may provide to a state employee, at the time of the employee's hiring for a classified position, additional compensation in the form of a one-time payment not to exceed \$5,000.

If the employee discontinues employment with the state agency for any reason less than three months after the date of receiving the recruitment payment, the employee shall refund to the state agency the full amount of the recruitment payment. If the employee discontinues employment with the state agency for any reason 3 months or more but less than 12 months after the date of receiving the recruitment payment, the employee shall refund to the state agency an amount computed by:

- Subtracting from 12 months the number of complete calendar months the employee worked after the date of receiving the recruitment payment;
- Dividing the number of months above by 12 months; and
- Multiplying the fraction computed by the amount of the recruitment payment.³⁹⁰

Before an agency provides or enters into a contract to provide additional compensation to an employee under this section, the chief administrator of the state agency must certify in writing to the Comptroller of Public Accounts the reasons the additional compensation is necessary. Additional compensation paid to an employee in accordance with the statute is specifically exempted from any limitation on salary or salary increases.³⁹¹

Retention Bonuses

To enhance the retention of employees who are employed in classified positions that are considered "essential for the state agency's operations," an agency head may enter into a deferred compensation contract to provide a one-time payment not to exceed \$5,000.³⁹²

To be eligible to enter into a contract for deferred compensation, the state employee must have already completed at least 12 months of service in a classified position. The retention bonus will be

³⁸⁸ General Appropriations Act (81st Legislature, Regular Session), Article III, Section 5.5.

³⁸⁹ Texas Education Code, Section 51.0065.

³⁹⁰ Texas Government Code, Section 659.262 (a) and (b).

³⁹¹ Texas Government Code, Section 659.262 (f) and (g).

³⁹² Texas Government Code, Section 659.262 (c).

added to the employee's salary payment the month after the conclusion of the 12-month period of service under the deferred compensation contract.³⁹³

The chief administrator of a state agency shall determine whether additional compensation is necessary on a case-by case basis and shall consider the following:

- The criticality of the employee position in the operation of the agency.
- Evidence of high turnover rates among employees filling the position for an extended period.
- Evidence of a shortage of employees qualified to fill the position or a shortage of qualified applicants.
- Other relevant factors.³⁹⁴

Before an agency provides or enters into a contract to provide additional compensation to an employee under this section, the agency head must certify in writing to the Comptroller of Public Accounts the reasons the additional compensation is necessary. Additional compensation paid to an employee in accordance with this statute is specifically exempted from any limitation on salary or salary increases.³⁹⁵

Retention bonuses do not constitute compensation or salary and wages for purposes of determining the amount of the State's contribution for retirement.³⁹⁶

Performance Rewards

The Legislature has provided a system of performance rewards and penalties for state agencies and institutions of higher education to encourage them to make use of appropriations in the most efficient and effective manner. Agencies and institutions of higher education were tasked with establishing key performance milestones. Based on the achievement of these milestones, the Legislative Budget Board and the Governor may adopt a budget execution order, which may include positive incentives and rewards for the agency. These incentives could include: increased funding, exemption from reporting requirements, increased funding transferability, formalized recognition or accolades, awards or bonuses, expended responsibility, or expanded contracting authority.³⁹⁷

To further foster, support, and reward outstanding performance, ongoing productivity improvements, and innovative improvement programs; and to retain key high performing employees, qualified state agencies and institutions may expend amounts necessary on enhanced compensation for employees who directly contribute to such improvements. Only classified employees (including classified employees in higher education) are eligible for these enhanced compensation awards. Such awards may not exceed 6.8 percent of an employee's annual base pay.

³⁹³ Texas Government Code, Section 659.262 (c) and (d).

³⁹⁴ Texas Government Code, Section 659.262 (e).

³⁹⁵ Texas Government Code, Section 659.262 (f) and (g).

³⁹⁶ Texas Government Code, Section 811.001 (7).

³⁹⁷ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 6.13 (b) and (c).

To qualify, an agency or institution must meet the following criteria:

- Achieve or exceed targets for 80 percent of key performance measures.
- Have an unqualified certification by the State Auditor's Office for at least 70 percent of performance measures as shown by the agency's most recent certification review by the State Auditor's Office.
- File a report with the Comptroller of Public Accounts, Legislative Budget Board, Governor, House Appropriations Committee, and Senate Finance Committee describing the success of any innovative program used to justify the award, as well as the criteria used to assess the improvements.
- In addition, a qualifying agency must file a report with the Comptroller of Public Accounts, Legislative Budget Board, Governor's Office of Budget and Planning, House Appropriations Committee, and Senate Finance Committee 60 days prior to implementation detailing how the agency intends to use its increased flexibility to further the goals.³⁹⁸

Professional Trainees and Interns

The Department of State Health Services and the Department of Aging and Disability Services are authorized to compensate professional trainees or interns in recognized educational programs related to the provision of mental health or mental retardation services, radiation control, or any critical health care profession as determined by the Health and Human Services Executive Commissioner at any salary rate not to exceed the provisions outlined in the General Appropriations Act.³⁹⁹

Salary Stipends for Employees in Salary Schedule C

Commissioned peace officers in Salary Schedule C employed by the Department of Public Safety, the Department of Criminal Justice, the Parks and Wildlife Department, and the Alcoholic Beverage Commission are eligible to receive salary stipends. These stipends shall be paid to officers who achieve certain levels of skill or certifications as approved by the agencies. Commissioned peace officers may receive a stipend for education level or certification level, but not both.

These salary stipends for skills and certifications include:

Education Level

- Associate Degree – \$50 per month.
- Bachelor's Degree – \$100 per month.
- Master's Degree – \$150 per month.

Commission on Law Enforcement Officer Standards Certification Level

- Intermediate – \$50 per month.
- Advanced – \$100 per month.

³⁹⁸ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 6.13(d).

³⁹⁹ General Appropriations Act (81st Legislature, Regular Session), Article II, Section 34.

- Masters – \$150 per month.

Bilingual Capabilities

Commissioned peace officers can receive a salary stipend of \$50 per month for the ability to speak a language other than English.⁴⁰⁰

Department of Public Safety Pay for Corporal Classification

The Department of Public Safety may pay its employees assigned to a Corporal position at rates that exceed the maximum rated designated in Salary Schedule C by up to \$600 per fiscal year.⁴⁰¹

Salary Stipends and Pay for Special Assignments

Salary stipends may be used to provide additional salary to employees in certain circumstances. Specific agencies are provided authority in the General Appropriations Act for stipends to supplement employee pay for special assignments or duties. The information below summarizes some of these stipends authorized by the Legislature.

Animal Health Commission

The Animal Health Commission is authorized to provide an allowance not to exceed \$50 per employee per day for each Commission employee whose duties require the use of a personally-owned horse.⁴⁰²

Credit Union Department

Credit Union Department examiners, when traveling on examination assignments related to the agency's regulatory responsibilities, may receive an overnight travel stipend for any overnight stays in excess of 60 days per fiscal year. The stipend shall be paid annually in August and the daily rate may not exceed the rate set by the National Credit Union Administration.⁴⁰³

Health and Human Services Agencies

Fire Prevention and Safety Assignments

In instances in which regular employees of state mental health and mental retardation facilities located in remote areas are assigned extra duties in fire prevention programs, the following payments are authorized for fire prevention and safety assignments:

- Fire Chief—\$75 per month.
- Assistant Fire Chief—\$65 per month.
- Fire Brigade Member—\$50 per month.⁴⁰⁴

⁴⁰⁰ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 3.01 (g).

⁴⁰¹ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 3.01 (e).

⁴⁰² General Appropriations Act (81st Legislature, Regular Session), Article VI, Animal Health Commission, Rider 9.

⁴⁰³ General Appropriations Act (81st Legislature, Regular Session), Article VIII, Credit Union Department, Rider 4.

⁴⁰⁴ General Appropriations Act (81st Legislature, Regular Session), Article II, Section 28.

Language Interpreter Services

In order to compensate employees of state mental health and mental retardation facilities for assuming the duty of providing interpreter services to consumers whose primary language is not English, the facilities of the Department of State Health Services and the Department of Aging and Disability Services, with written authorization, may, increase the salary of classified employees by an amount equal to 3.4 percent, so long as the resulting salary rate does not exceed the rate designated as the maximum rate for the applicable salary group.

This increase shall be granted only for the regular provision of interpreter services above and beyond the regular duties of the position, and shall be removed when these services are, for whatever reason, no longer provided by the employee or when these services are no longer needed by the facility. Salary increases provided for this purpose are not merit increases and shall not affect an employee's eligibility to receive a merit increase. This authorization also includes employees who provide interpreter services in American Sign Language.⁴⁰⁵

Protective Service Investigators

The Department of Family and Protective Services is authorized to provide an annual amount of \$5,000 authorized by the Legislature for child protective services investigation caseworkers and supervisors. The pay is paid at the rate of \$416.67 per month, or pro-rata portion if a partial month is worked in the position. This pay is in addition to the salary rates stipulated by the Position Classification Act relating to the position classifications and assigned salary ranges.⁴⁰⁶

Phone Allowances

The Department of Aging and Disability Services shall pay guardianship program caseworkers, supervisors, and directors an amount not to exceed \$50 per month for work-related use of personal cellular telephones.⁴⁰⁷

The Department of Family and Protective Services is authorized to pay child and adult protective services program caseworkers, supervisors, directors, and residential child-care licensing investigators an amount not to exceed \$50 per month for work-related use of their personal cellular telephones.⁴⁰⁸

Maximum Security Salaries

The Department of State Health Services and the Department of Aging and Disability Services are authorized to pay employees working in designated maximum security units or designated specialized behavioral management units of state mental health and mental retardation facilities up to a 6.8 percent increase over those salary rates provided by the General Appropriations Act.⁴⁰⁹

⁴⁰⁵ General Appropriations Act (81st Legislature, Regular Session), Article II, Section 31.

⁴⁰⁶ General Appropriations Act (81st Legislature, Regular Session), Article II, Department of Family and Protective Services, Rider 26.

⁴⁰⁷ General Appropriations Act (81st Legislature, Regular Session), Article II, Department of Aging and Disability Services, Rider 29.

⁴⁰⁸ General Appropriations Act (81st Legislature, Regular Session), Article II, Department of Family and Protective Services, Rider 14.

⁴⁰⁹ General Appropriations Act (81st Legislature, Regular Session), Article II, Section 27.

Department of Public Safety

The Department of Public Safety is authorized to designate 40 hardship stations across the state based on excessive vacancies in the Texas Highway Patrol Division. The department provides additional incentives to commissioned peace officers who accept positions at these posts.⁴¹⁰

Department of Transportation

To more adequately compensate employees who perform hazardous duties for the State, the Department of Transportation is authorized to compensate employees who perform underwater bridge inspections an additional rate of pay of up to \$25 per hour for actual time spent performing underwater bridge inspections.⁴¹¹

Office of Consumer Credit Commissioner

Office of Consumer Credit Commissioner examiners, when traveling on examination assignments related to the agency's regulatory responsibilities, may receive an overnight travel stipend for any overnight stays in excess of 60 days per fiscal year. The stipend shall be paid annually in August and the daily rate may not exceed the rate set by the Federal Deposit Insurance Corporation.⁴¹²

Office of State-Federal Relations

The Office of State-Federal Relations (OSFR) has authority to pay a cost-of-living salary supplement, not to exceed \$1,200 per month, to each OSFR employee whose duty station is located in Washington, D.C. This salary supplement is in addition to the salary rate authorized for that position.

Any state agency or institution of higher education that assigns an employee to work in the Washington, D.C. office of the OSFR on a permanent basis and also designates that employee's duty station as Washington, D.C., is authorized to pay that employee a salary supplement not to exceed \$1,200 per month. This salary supplement is in addition to the salary rate authorized for the position. In the event that an employee is assigned works on a less than full-time basis, the maximum salary supplement will be set on a proportionate basis.⁴¹³

Shift Differentials, Standby, or On-Call Pay

Shift differentials may be paid to employees to compensate them for working shifts different than a normal schedule. Standby or on-call pay may be used to compensate certain employees who are required to be on call and to return to work when they are contacted via pager or telephone in the event of an emergency. The following section provides information on various state agencies that have authority to provide shift differentials, standby, or on-call pay to these employees.

Department of Transportation

The Department of Transportation may pay an additional evening shift or night shift differential not to exceed 15 percent of the pay rate to employees who work the 3 p.m. to 11 p.m. shift or the 11 p.m. to 7 a.m. shift (or their equivalents). An additional weekend shift salary differential not to exceed 5

⁴¹⁰ General Appropriations Act (81st Legislature, Regular Session), Article V, Department of Public Safety, Rider 29.

⁴¹¹ General Appropriations Act (81st Legislature, Regular Session), Article VII, Department of Transportation, Rider 21 (e).

⁴¹² General Appropriations Act (81st Legislature, Regular Session), Article VIII, Office of Consumer Credit Commissioner, Rider 8.

⁴¹³ General Appropriations Act (81st Legislature, Regular Session), Article I, Office of State Federal Relations, Rider 2.

percent of the pay rate may be paid to employees. The weekend shift salary differential may be paid to an eligible individual in addition to the evening shift or night shift salary differential.⁴¹⁴

The Department of Transportation may also pay compensation for standby (on-call) time at the following rates:

- Credit for one hour worked per day on call during the normal work week, and
- Two hours worked per day on call during weekends and holidays.

This credit is in addition to actual hours worked during normal duty hours or while on call. Nonexempt employees who work a normal 40-hour work week and also work on-call duty will receive Fair Labor Standards Act (FLSA) overtime rates for the on-call duty.⁴¹⁵

Health and Human Service Agencies

The Department of State Health Services and the Department of Aging and Disability Services are authorized to pay a night shift salary differential to clinical and support personnel in addition to their regular pay to those who work either the 3 p.m. to 11 p.m. shift or the 11 p.m. to 7 a.m. shift (or their equivalents). This salary differential may not exceed 15 percent of the employee's monthly pay rate. A weekend shift salary differential not to exceed 5 percent of the monthly pay rate may be paid to persons who work weekend shifts. The evening or night shift salary differential may be paid to an eligible individual in addition to the weekend shift salary differential.⁴¹⁶

Employees involved in data processing or printing operations in these agencies as well as the Health and Human Services Commission and the Department of Family and Protective Services are also eligible for these differentials.⁴¹⁷

The Department of Family and Protective Services is authorized to pay an evening or night shift salary differential not to exceed 15 percent of the monthly pay rate to statewide intake personnel who work the 3 p.m. to 11 p.m. shift or the 11 p.m. to 7 a.m. shift (or their equivalents). A weekend shift salary differential not to exceed 5 percent of the monthly pay rate may be paid to persons who work weekend shifts. The evening or night shift salary differential may be paid in addition to the weekend shift salary differential for persons working weekend, evening, or night shifts.⁴¹⁸

Texas Facilities Commission

The Texas Facilities Commission is authorized to pay an additional night shift differential to Facilities Management Division employees.⁴¹⁹

The Texas Facilities Commission may pay compensation for on-call time at the following rates:

- Credit for one hour worked for each day on call during the normal work week, and

⁴¹⁴ General Appropriations Act (81st Legislature, Regular Session), Article VII, Department of Transportation, Rider 21 (f).

⁴¹⁵ General Appropriations Act (81st Legislature, Regular Session), Article VII, Department of Transportation, Rider 21 (c).

⁴¹⁶ General Appropriations Act (81st Legislature, Regular Session), Article II, Section 2 (a).

⁴¹⁷ General Appropriations Act (81st Legislature, Regular Session), Article II, Section 2 (b).

⁴¹⁸ General Appropriations Act (81st Legislature, Regular Session), Article II, Section 2 (c).

⁴¹⁹ General Appropriations Act (81st Legislature, Regular Session), Article I, Facilities Commission, Rider 13.

- Two hours worked for each day on call during weekends and on holidays.

This credit is in addition to actual hours worked during normal duty hours and actual hours worked during on-call status. For employees subject to the FLSA, an hour of on-call service shall be considered to be an hour worked during the week for purposes of the FLSA only to the extent required by federal law.⁴²⁰

Registered and Licensed Vocational Nurses

A state agency may pay an additional evening shift or night shift differential not to exceed 15 percent of the monthly pay rate to registered nurses or licensed vocational nurses who work the 3 p.m. to 11 p.m. shift, or its equivalent, or who work the 11 p.m. to 7 a.m. shift, or its equivalent. An additional weekend shift salary differential not to exceed 5 percent of the monthly pay rate may be paid to registered nurses and licensed vocational nurses. The weekend shift salary differential may be paid to an eligible individual in addition to the evening shift or night shift salary differential.⁴²¹

⁴²⁰ General Appropriations Act (81st Legislature, Regular Session), Article I, Facilities Commission, Rider 10.

⁴²¹ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 3.06.

Additional Resources

Table 9-11 lists Office of the Attorney General Resources related to employee compensation in the state.

Table 9-11

| Employee Compensation Related Attorney General Resources ^a | |
|--|---|
| Opinion Number | Topic |
| GA-171 | Whether the Department of Assistive and Rehabilitative Services must seek reimbursement for Benefit Replacement Pay erroneously paid to ineligible employees. |
| GA-318 | Whether certain members of the Commission on State Emergency Communications are entitled to receive compensatory per diem. |
| GA-437 | Regarding the maximum salary payable to a district judge under Texas Government Code, Section 659.012. |
| H-405 | Regarding the promotion and merit salary increases under the General Appropriations Act for the 1974-75 Biennium. |
| H-1186 | Authority of a state agency to enter into a conciliation agreement providing back wages to a person who claims employment discrimination. |
| H-1303 | Whether the state or a political subdivision may establish a special program to make payments to an employee on account of sickness. |
| JM-459 | Whether awards to state employees under the State Employee Incentive Program contravene Article III, Section 44, of the Texas Constitution. |
| JM-1194 | Regarding the authority of a municipality to advance compensation to an employee. |
| LO 92-47 | Whether the Teacher Retirement System's Board of Trustees may contract with an employee to provide incentive pay in addition to a regular salary. |
| LO 96-51 | Whether a community college may deduct outstanding cellular telephone charges from an employee's salary. |
| LO 96-132 | Whether the Water Development Board may purchase a savings bond as an employee service award pursuant to the 1995 General Appropriations Act, Article IX, Section 11, if the bond has a maturity value of more than \$50. |
| M-888 | Regarding compensation for hourly employees. |
| M-949 | Regarding the authority of the Teacher Retirement System's Board of Trustees to grant merit increases to salaried employees, and the Board of Trustees' authority to pay certain insurance premiums for employees. |
| ^a Detailed references can be found at http://www.oag.state.tx.us/opin/opindex.shtml . | |

Related Legislation

Table 9-12 lists human resources-related bills that were passed by the 81st Legislature. This may not be a complete list and should be used only as a summary of general issues on employee compensation that were addressed during the session.

Table 9-12

| Employee Compensation Related Legislation (81st Legislature) ^a | |
|--|---|
| Bill Number | Summary |
| SB 497 | Relating to longevity pay for certain judges and justices. |
| SB 2298 | Relating to limitations on the payment of one-time merit increases. |

^a Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at www.capitol.state.tx.us.

Section 10
Payroll and Personnel Reporting

Payroll Overview

For payroll and personnel reporting purposes, “State agency” means:

- A board, commission, department, institution, office, or other agency in the executive branch of state government that is created by the constitution or a statute of this state, including an institution of higher education as defined by the Texas Education Code, other than a public junior college; or
- The Supreme Court of Texas, the Texas Court of Criminal Appeals, a court of appeals, or other agency in the State’s judicial branch.⁴²²

The Comptroller of Public Accounts, in consultation with the State Auditor, shall adopt rules that prescribe uniform procedures for payroll and personnel reporting for all state agencies and that are designed to:

- Facilitate the auditing of payrolls.
- Facilitate a classification compliance audit for agencies covered by the State’s Classification Plan.
- Assure conformity with state statute and the General Appropriations Act.
- Provide the legislative audit committee with current information on employment and wage rate practices in state government.⁴²³

Payday

The Comptroller may not pay the salary of a state officer or employee before the first working day of the month following the payroll period unless the employee is paid twice a month. For employees paid twice a month, the first payment is made on the first working day of the month following the payroll period that covers the last half of the preceding month; and the second payment is made on the 15th day of the month or the first working day after the 15th for the payroll period that covers the first half of the month.⁴²⁴

“Working day” for payroll purposes means a day other than Saturday, Sunday, or a national holiday as listed in the General Appropriations Act or state statute. A day does not cease to be a national holiday because a state agency maintains or is required to maintain a minimum working staff on the holiday.⁴²⁵

Salaries for state officers and employees paid once a month shall be paid through electronic funds transfer unless paid on warrant as permitted by state statute.⁴²⁶

⁴²² Texas Government Code, Sections 658.001 (2) and 659.004 (a).

⁴²³ Texas Government Code, Section 659.004 (b).

⁴²⁴ Texas Government Code, Section 659.083 (a) and (b).

⁴²⁵ Texas Government Code, Section 659.083 (c).

⁴²⁶ Texas Government Code, Section 659.084.

Method and Frequency of Pay

Except as provided by state statute or the General Appropriations Act, annual salaries for state officers and employees shall be paid once a month.⁴²⁷

An employee is entitled to be paid twice a month if:

- The employee is employed by:
 - ♦ The Department of Mental Health and Mental Retardation,
 - ♦ The Department of Transportation,
 - ♦ The Department of Human Services,
 - ♦ The Texas Workforce Commission,
 - ♦ The Department of Public Safety;
 - ♦ Any other state agency designated by the Comptroller of Public Accounts;
- The employee holds a classified position under the State's position classification plan;
- The employee's position is classified below salary group A12 under Classification Salary Schedule A in the General Appropriations Act;
- The employing state agency satisfies the Comptroller's requirements relating to the payment of compensation twice a month; and
- At least 30 percent of the eligible employees of the agency choose to be paid twice a month.⁴²⁸

Employees of an institution of higher education as defined by the Texas Education Code may be paid twice a month at the election of the employing institution of higher education.⁴²⁹

Determining Amounts for Part-time Pay

The amount of monthly salary for an annual employee who maintains a 40-hour work week and works for a state agency is determined by the General Appropriations Act and rules adopted by the Comptroller.

For purposes of partial payment or other applicable situations, an employee's hourly rate of pay for a given month is computed based on the salary schedules located within the General Appropriations Act and rules adopted by the Comptroller.

Alternatively, an institution of higher education, as defined by the Texas Education Code, may compute an employee's hourly rate of pay for a given month by dividing the employee's annual salary by 2,080, which is the number of working hours in the standard work year.

⁴²⁷ Texas Government Code, Section 659.081.

⁴²⁸ Texas Government Code, Section 659.082 (a).

⁴²⁹ Texas Government Code, Section 659.082 (b).

When an employee is on leave without pay, compensation for the pay period will be reduced by an amount computed in line with the General Appropriations Act and rules adopted by the Comptroller.

An agency that may contract with its employees for employment for less than a 12-month period may make equal monthly salary payments under the contract during the contract period or during the fiscal year in accordance with the General Appropriations Act and rules adopted by the Comptroller.⁴³⁰

Federal Insurance Contribution Act (FICA)

The State shall withhold money from salaries and wages paid to state officers and employees in accordance with applicable federal law, including federal law relating to withholding for purposes of the federal income tax. The State shall make any required employer contributions in accordance with applicable federal law. The Comptroller shall make payments in accordance with applicable state and federal law.⁴³¹

The Federal Insurance Contribution Act (FICA) is also known as the U.S. Social Security tax. It is composed of Old Age, Survivors, and Disability Insurance benefits (OASDI) and Medicare.

The OASDI rate is 6.2 percent of a base amount that changes each year due to an increase in the Consumer Price Index. As of August 2009, the Medicare rate is 1.45 percent and currently has no income limit.

All employees are subject to both types of FICA taxes.⁴³² The maximum wage contribution for 2009 is \$106,800.⁴³³

Payroll Deductions

A state agency may not make a deduction from the compensation paid to an officer or employee whose compensation is paid in full or in part from state funds unless the deduction is authorized by law.

For payroll deduction purposes, "state agency" means:

- A board, commission, department, office, or other agency in the executive branch of state government and that was created by the constitution or a statute of this state, including an institution of higher education other than a public junior college;
- The legislature or a legislative agency; or
- The Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of appeals, the State Bar of Texas, or another state judicial agency.

To the extent that the laws, regulations, and rules of Texas or the United States do not specify the priority of deductions, the Comptroller by rule may determine the priority for compensation paid by a state governmental body.⁴³⁴

⁴³⁰ Texas Government Code, Section 659.085.

⁴³¹ Texas Government Code, Section 659.002 (d).

⁴³² Title 26, United States Code, Section 3101.

⁴³³ Social Security OnLine: Contribution and Benefit Base, <http://www.ssa.gov/OACT/COLA/cbb.html#Series>.

Charitable Contributions Deductions

A state employee may authorize a deduction each pay period from the employee's salary or wage payment for a charitable contribution as authorized by state law. In most cases, a state employee may authorize a deduction only during a state employee charitable campaign. However, a state employee who begins working for the State when a campaign is not being conducted may authorize a deduction according to the Comptroller's requirements.

A state agency other than an institution of higher education is not required to permit an employee to authorize a deduction until the first full payroll period after the agency converts to a system in which uniform statewide payroll procedures are followed. In such situations, a state employee who works for a state agency that does not allow deduction authorizations may authorize a deduction that is effective with the first full payroll period after the agency is converted to a system in which uniform statewide payroll procedures are followed.

A state employee who authorized a deduction while working for a state agency may continue the deduction after transferring to another state agency if the Comptroller's rules for continuing the deduction are followed.

An authorization must direct the Comptroller to distribute the deducted funds to a participating federation or fund and a local campaign manager as prescribed by rule. Deductions must be in the form prescribed by the Comptroller. The Comptroller by rule may establish a reasonable minimum deduction for each pay period.⁴³⁵

Credit Unions Deductions

An employee of a state agency may provide written authorize to make a deduction each pay period from the employee's salary to an account with a credit union.⁴³⁶

Deductions for Membership Fees for Eligible State Employee Organizations

An employee of a state agency may provide written authorization to make a deduction each pay period from the employee's salary or wage payment for payment to a membership fee of an eligible state employee organization. Currently, there are five organizations certified by the Comptroller's office for deductions of membership fees.⁴³⁷ These organizations include:

- American Federation of State, County, and Municipal Employees (AFSCME).
- Correctional Peace Officers Foundation, Inc. (CPOF).
- Department of Public Safety Officers Association (DPSOA).
- Texas Public Employee Association (TPEA).

⁴³⁴ Texas Government Code, Section 659.002 (a), (b), and (c).

⁴³⁵ Texas Government Code, Section 659.132.

⁴³⁶ Texas Government Code, Section 659.103 (a).

⁴³⁷ Texas Government Code, Section 403.0165.

- Texas State Employee Union (TSEU).⁴³⁸

Deductions for Supplemental Optional Benefits Program

An employee of a state agency may authorize in writing a deduction each pay period from the employee's salary or wage payment for coverage of the employee under an eligible supplemental optional benefits program. A deduction may be made each pay period from the employee's salary or wage payment without authorization in writing from the employee for participation in a 401(k) plan as provided by state law.

The Employees Retirement System of Texas shall designate supplemental optional benefits programs that are eligible under this section and that promote the interests of the State and state agency employees. The supplemental optional benefits program may include permanent life insurance, catastrophic illness insurance, disability insurance, prepaid legal services, or a qualified transportation benefit.⁴³⁹

Payroll Reductions or Deductions Authorized for Institutions of Higher Education

An institution of higher education employee may provide written authorization to reduce the employee's salary each pay period for the payment of any fee or charge for parking, a parking permit, a transportation pass, or other qualified transportation benefit authorized under by the federal Internal Revenue Code. An authorization for a reduction by the employee must be voluntary. The institution determines the fee or charge an employee may pay.

An employee of an institution of higher education may authorize in writing a deduction each pay period from the employee's salary for the payment of any fee or charge for parking or for a club membership, recreational sports membership, or similar activity or program. An authorization for a deduction by the employee must be voluntary. The institution shall determine which fee or charge an employee may pay.⁴⁴⁰

Withholding of Administrative Fee for Supplemental Deductions

The state may withhold from the employee's salary or wage payment an administrative fee for making a supplemental deduction. In addition, an institution of higher education that is authorized to operate a payroll system reimbursable from the state treasury may withhold from the employee's salary or wage payment an administrative fee for making a supplemental deduction.

The administrative fee may not exceed the lower of the actual administrative cost of making the deduction or the highest fee charged by the state or institution, as appropriate, for making another similar deduction.⁴⁴¹

⁴³⁸ *Approved State Employee Organizations for Membership Fee Deduction*, Comptroller of Public Accounts' Web site, August 2009 at <https://fmx.cpa.state.tx.us/fmx/payper/deduct/memberfees.php>; and Texas Government Code, Section 659.1031.

⁴³⁹ Texas Government Code, Section 659.102.

⁴⁴⁰ Texas Government Code, Section 659.202.

⁴⁴¹ Texas Government Code, Section 659.108.

Related Legislation

Table 10-1 lists human resources-related bills that were passed by the 81st Legislature. This may not be a complete list and should be used only as a summary of general issues on payroll and personnel reporting that were addressed during the session.

Table 10-1

| Payroll and Personnel Reporting Related Legislation (81st Legislature) ^a | |
|--|---|
| Bill Number | Summary |
| SB 1940 | Relating to the establishment of the Veteran's Assistance Fund as an eligible charitable organization, and the entitlement of state employees to authorize a payroll deduction to the fund as a charitable contribution. |
| SB 1941 | Relating to the establishment of the Texas Save and Match program as an eligible charitable organization and the entitlement of state employees to authorize a payroll deduction to the program as a charitable contribution. |
| ^a Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at www.capitol.state.tx.us . | |

Section 11 General Leave Provisions

The State Auditor's Office is responsible for providing uniform interpretation of certain leave provisions and for reporting any exceptions made by individual agencies to the Governor and Legislature.⁴⁴² These interpretations are advisory in nature.⁴⁴³

The governing board of an institution of higher education may adopt a comprehensive leave policy that applies to employees of the university system or any component institution of the system.⁴⁴⁴ The comprehensive leave policy may combine vacation, sick, and holiday leave into a paid leave system that does not distinguish or separate the types of leave to be awarded.⁴⁴⁵

Practical Guide to Common Leave Types

Additional information on leave provisions can be found in the State Auditor's Office's *Practical Guide to Common Leave Types* (Report No. 08-705, February 2008). The complete guide can be found at:
<http://sao.hr.state.tx.us/Rules/leaveguide.html>.

Leave Records

Each state agency must keep a record of time and attendance for each of its employees. Such records include:

- The accrual and use of annual and sick leave.
- The reason an employee takes leave if the law requires the employee to inform the agency of the reason.
- Whether any leave taken is accounted for as sick leave, annual leave, other paid leave, leave without pay, or other absence.⁴⁴⁶

Table 11-1 provides a list of Texas Office of the Attorney General resources related to general leave provisions within the State.

⁴⁴² Texas Government Code, Section 661.151.

⁴⁴³ Opinion, Texas Office of the Attorney General, No. M-984 (1971).

⁴⁴⁴ Texas Education Code, Section 51.961 (b).

⁴⁴⁵ Texas Education Code, Section 51.961 (c).

⁴⁴⁶ Texas Government Code, Section 661.908.

Table 11-1

| General Leave Provisions Related Office of the Attorney General Resources ^a | |
|--|--|
| Opinion Number | Topic |
| H-502 | Whether residents and patients at Department of Mental Health and Mental Retardation facilities are entitled to the benefits of state employees when they engage in institution-maintaining labor. |
| JM-204 | Whether temporary and part-time employees of the Texas Employment Commission accrue vacation, sick leave, and holiday time. |
| JM-205 | Regarding the benefits available to employees of schools for inmates that are operated by Department of Corrections. |
| M-1014 | Regarding the extent that part-time monthly and hourly employees of the Texas Highway Department are entitled to fringe benefits such as vacation, sick leave, holidays, and group insurance. |
| ^a Detailed references can be found at http://www.oag.state.tx.us/opin/opindex.shtml . | |

Table 11-2 provides a list of State Auditor's Office Leave Interpretations related to general leave provisions within the State.

Table 11-2

| General Leave Provisions Related State Auditor's Office Resources ^a | | |
|--|--|-----------|
| Type | Topic | Reference |
| Leave Interpretation | Whether a state employee who holds positions totaling more than 40 hours per week is eligible for additional leave accruals and/or holidays. | 01-03 |
| Leave Interpretation | Whether state employees who are exhausting their leave as a result of a workers' compensation claim can use the leave hours they accrue before they physically return to work. | 01-02 |
| Leave Interpretation | Regarding the prohibition on negative sick leave, vacation leave, and compensatory time balances. | 97-03 |
| Leave Interpretation | Regarding the accrual of sick leave and annual leave when a leave continues from the end of one month through the beginning of another month. | 91-02 |
| Leave Interpretation | Regarding the relationship between employees working a scheduled 10-hour day and paid annual, sick, and compensatory leave. | 85-02 |
| Leave Interpretation | Regarding the accrual of sick and annual leave while an employee is on leave. | 84-04 |
| ^a Complete references can be found for leave interpretations at http://sao.hr.state.tx.us/Rules/leaveinterpretations.html . | | |

Annual Leave

State employees are entitled to paid annual leave each year. Exceptions to this policy include faculty members of institutions of higher education who worked less than 12 months during the year and instructors at the School for the Blind and Visually Impaired, the School for the Deaf, or the Youth Commission who worked less than 12 months during the year. Additionally, employees not entitled to annual leave include higher education employees who do not work at least 20 hours per week for a period of at least 4.5 months or employees in positions that require student status.⁴⁴⁷ Employees of independent school districts and junior colleges are not considered state employees.⁴⁴⁸

Any appointed officer or employee who normally works 900 hours or more per year is allowed to accrue annual and sick leave.⁴⁴⁹ Annual leave accrual rates are the same for both hourly and salaried employees.⁴⁵⁰ Part-time employees are also eligible for annual leave, but their accrual rate and maximum annual leave carryover amounts are proportionate to the number of hours they work.⁴⁵¹ For example, half-time employees earn and carry over annual leave at one-half the rate authorized for full-time employees.

State employees who are employed by multiple state agencies may not accrue annual leave at a rate that exceeds that of a full-time employee.⁴⁵²

An employee accrues annual leave and may carry annual leave forward from one fiscal year to the next in accordance with the schedule detailed in Table 11-3.⁴⁵³

Table 11-3

| Schedule of Annual Leave Accruals for Full-Time Employees | | | |
|---|-------------------------|-----------------------|-----------------------------|
| Length of Service | Hours Accrued per Month | Days Accrued per Year | Allowable Carryover (Hours) |
| Less than 2 years | 8 | 12.0 | 180 |
| At least 2 but less than 5 years | 9 | 13.5 | 244 |
| At least 5 but less than 10 years | 10 | 15.0 | 268 |
| At least 10 but less than 15 years | 11 | 16.5 | 292 |
| At least 15 but less than 20 years | 13 | 19.5 | 340 |
| At least 20 but less than 25 years | 15 | 22.5 | 388 |
| At least 25 but less than 30 years | 17 | 25.5 | 436 |
| At least 30 but less than 35 years | 19 | 28.5 | 484 |
| At least 35 years or more | 21 | 31.5 | 532 |

⁴⁴⁷ Texas Government Code, Section 661.152 (a).

⁴⁴⁸ Opinions, Texas Office of the Attorney General, No. WW-1443 (1962), No. M-707 (1970), and No. MW-165 (1980).

⁴⁴⁹ Opinion, Texas Office of the Attorney General, No. JM-19 (1983).

⁴⁵⁰ Texas Government Code, Section 661.121.

⁴⁵¹ Texas Government Code, Section 661.152 (c).

⁴⁵² State Auditor's Office Leave Interpretation Letter, No. 01-03 (2001).

⁴⁵³ Texas Government Code, Section 661.152 (d).

All annual leave hours in excess of the maximum allowable carryover remaining at the end of a fiscal year shall be credited to the employee's sick leave balance.⁴⁵⁴ In computing annual leave taken by an employee, absences due to holidays are not charged.⁴⁵⁵

Annual Leave Accruals

The amount of annual leave accrued by an employee is based on his or her employment status on the first day of the month. Credit for the higher rate of accrual will be given on the first calendar day of the month only if the employee's anniversary falls on that day. Otherwise, the increase in annual leave accrual will be given on the first calendar day of the following month.⁴⁵⁶

Employees begin to accrue annual leave from their first day of employment. Accruals of annual leave end on an employee's last day of duty, which is an employee's last physical day on the job. Credit for annual leave is given for each month or fraction of a month of state employment. The employee receives this credit on the first day of the month.⁴⁵⁷ If the employee is on any type of paid leave that extends into the following month, the accrual will not be posted until the employee returns to duty.⁴⁵⁸ An employee forfeits this accrual if he or she fails to return to duty.⁴⁵⁹

Annual Leave Utilization

Annual leave may not be taken until the employee has been continuously employed with a state agency for six months.⁴⁶⁰ An employee who separates from state employment for any reason during that six-month period is not eligible for any accruals made during that period. While a full calendar month of leave without pay does not constitute a break in employment nor does it cause the employee to start over in the calculation of the number of continuous months of employment, the time is not included in the calculation of the number of continuous months of employment for purposes of annual leave.⁴⁶¹

After an employee has accrued six months of continuous state employment and separates from state employment, he or she is entitled to be paid for accrued annual leave.⁴⁶²

⁴⁵⁴ Texas Government Code, Section 661.152 (h).

⁴⁵⁵ Texas Government Code, Section 661.152 (i).

⁴⁵⁶ Texas Government Code, Section 661.152 (g).

⁴⁵⁷ Texas Government Code, Section 661.152 (e).

⁴⁵⁸ Texas Government Code, Section 661.152 (j).

⁴⁵⁹ State Auditor's Office Leave Interpretation Letter, No. 91-02 (1991).

⁴⁶⁰ Texas Government Code, Section 661.152 (f).

⁴⁶¹ Texas Government Code, Section 661.909 (f), (g), and (h).

⁴⁶² Texas Government Code, Section 661.062 (a).

Table 11-4 provides a list of Office of the Attorney General resources related to annual leave provisions within the state.

Table 11-4

| Annual Leave Provisions Related Office of the Attorney General Resources ^a | |
|--|--|
| Opinion Number | Topic |
| GA-0300 | Whether payment for annual leave that is paid as salary is creditable for purposes of determining benefits in the Teacher Retirement System. |
| H-341 | Regarding the computation of annual leave under the General Appropriations Act (63rd Legislature). |
| H-1305 | Regarding the annual leave entitlement of professional librarians. |
| JC-40 | Regarding the use of annual leave by employees receiving workers' compensation benefits. |
| JM-19 | Whether the commissioner of insurance is an 'employee' or 'officer' for purposes of Article 6252-8b, Texas Civil Statutes. |
| JM-76 | Whether a faculty member at Southwest Texas State University may take annual leave or lump sum payment for accrued annual leave. |
| JM 204 | Whether temporary and part-time employees of the Texas Employment Commission accrue vacation, sick leave and holiday time. |
| M-984 | Regarding questions concerning compensation and accumulation of annual leave for state employees. |
| M-1156 | Regarding the determination of accumulated annual leave under Article 6252-a, Texas Civil Statutes. |
| ^a Detailed references for the opinion letters can be found at: http://www.oag.state.tx.us/opin/opindex.shtml . | |

Table 11-5 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to annual leave provisions within the state.

Table 11-5

| Annual Leave Provisions Related State Auditor’s Office Resources ^a | | |
|--|--|------------|
| Type | Topic | Reference |
| HR Question | Whether the amount of annual leave each employee receives is determined separately for time worked at an institution of higher education and a state agency. | 5/29/2007 |
| HR Question | Regarding annual leave accrual rates earned by legislative employees. | 11/24/2001 |
| HR Question | Whether the time an employee spent working in a temporary capacity at an agency counts towards the six months of continuous employment required before an employee may use annual leave. | 7/16/2001 |
| HR Question | Whether an employee’s status change from part-time to full-time in the middle of a month has an effect on that month’s annual leave accrual. | 1/29/2001 |
| HR Question | Regarding the time at which an employee who works less than six months at one agency, is terminated, and then is hired by a different agency is allowed to take annual leave. | 5/8/2000 |
| HR Question | Whether an agency can require an employee to use compensatory time before using annual leave. | 11/15/1999 |
| HR Question | Regarding the maximum annual leave carryover for part-time employees. | 8/31/1998 |
| Leave Interpretation | Regarding a one-time exception for the maximum hours that an employee may carry forward from one fiscal year to the next fiscal year for the leave balance on August 31, 1991. | 92-03 |
| Leave Interpretation | Whether a state employer can deny vacation leave on a date specifically requested by the employee, and, if such denial is possible, under what circumstances would it be proper? | 91-01 |
| Leave Interpretation | Regarding the allowable carryover of annual leave of an employee whose anniversary date is in August. | 86-06 |
| Leave Interpretation | Regarding the accrual of vacation leave for an employee who holds part-time positions as both a faculty member and as a staff member. | 84-03 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . Leave interpretations: http://sao.hr.state.tx.us/Rules/leaveinterpretations.html . | | |

Annual Leave and Employee Transfers

Employees who transfer directly from one state agency to another will have their annual leave balances transferred.⁴⁶³ If an employee separates from employment and is re-employed within 30 calendar days by a state agency to a position that accrues annual leave, his or her annual leave balance will transfer to the new agency.⁴⁶⁴ Separation includes, but is not limited to, leaving one state agency to work for another, provided at least one workday passes between those employments.⁴⁶⁵

Table 11-6 provides a list of State Auditor's Office's Human Resources Questions-and-Answers and Leave Interpretations related to annual leave and the transfer of employees.

Table 11-6

| Annual Leave and Employee Transfers Related State Auditor's Office Resources ^a | | |
|--|--|------------|
| Type | Topic | Reference |
| HR Question | Whether a full-time employee who transfers to a part-time position on September 1 can carry over annual leave hours as a full-time employee. | 2/1/2005 |
| HR Question | Whether the House of Representatives or Senate can refuse to accept an employee's accrued annual leave if the employee transfers directly from a state agency. | 12/30/2004 |
| HR Question | Regarding annual and sick leave accruals for an employee who terminates from one state agency, but is allowed to remain on the payroll to exhaust annual leave and is then hired by another agency. | 8/1/2003 |
| HR Question | Whether a state agency may zero out an employee's annual leave balance if those hours were paid out at an institution of higher education. | 7/30/2001 |
| HR Question | Whether an employee with part-time status at two agencies may transfer to a third agency in a full-time status and take his leave with him. | 4/16/2001 |
| HR Question | Whether an employee who transfers to another state agency after a break of service can transfer annual and sick leave balances. | 10/23/2000 |
| HR Question | Regarding an agency's responsibility to accept annual leave balances for transferred employees. | 7/19/1999 |
| Leave Interpretation | Regarding the payment of annual leave when transferring from an annual leave accruing position to a non-accruing position. | 96-06 |
| Leave Interpretation | Regarding the payment of leave time when a University of Texas System employee transfers from a position that accrues annual leave to a non-accruing position. | 96-04 |
| Leave Interpretation | Regarding the transfer of an employee from an annual leave vacation accruing position to a non-accruing position with the same agency and providing lump sum payments for accrued vacation time. | 92-00 |
| Leave Interpretation | Regarding the certification for credit of unused balances of accumulated annual and sick leave for employees transferring between agencies; and the transfer of leave balances for employees of the House or Senate. | 89-00 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . Leave interpretations: http://sao.hr.state.tx.us/Rules/leaveinterpretations.html . | | |

⁴⁶³ Texas Government Code, Section 661.153.

⁴⁶⁴ Texas Government Code, Section 661.152 (k).

⁴⁶⁵ Texas Government Code, Section 661.062 (b) (1).

Annual Leave for Legislative Employees

Annual leave for employees of the legislative branch, including employees of the lieutenant governor's office, is determined as follows:

- For employees of either house of the legislature, members of the legislature, or the lieutenant governor, annual leave will be determined by the presiding officer of the appropriate house of the legislature.
- For employees of a legislative agency, annual leave will be determined by the agency's administrative head.⁴⁶⁶

Annual Leave and Employee Separations

State agency employees are entitled to be paid for the accrued balance of the employee's annual leave as of the date of separation, if the employee is not reemployed by the state in a position which accrues annual leave during the 30 day period immediately following the date of separation from state employment.

Employees of institutions of higher education who do not directly transfer to another state agency or institution of higher education must be paid for accrued and unused annual leave immediately upon an employee's separation.⁴⁶⁷

A terminating employee may, with the approval of the employing agency, remain on the payroll after separation to use accrued annual leave rather than receive a lump-sum payment.⁴⁶⁸ No additional accruals will be made during this period. The employee may not use sick leave or accrue sick leave or annual leave while exhausting annual leave.⁴⁶⁹

Upon separation, lump-sum payments for accrued but unused annual leave will include payment for any holidays that the employee would have observed had he or she remained on the payroll. Eight hours per holiday will be added for employees who are normally scheduled to work 40 hours per week. Employees who are normally scheduled to work less than 40 hours per week will receive a proportionate payment. An employee moving to a position in a state agency that does not accrue annual leave is not entitled to added time for holidays that fall within the accrual period.⁴⁷⁰ In no case is the employee entitled to receive longevity or hazardous duty pay for the accrual period.⁴⁷¹

Appendices 5 and 6 contain tables that detail the payment entitlements upon separation from state employment.

⁴⁶⁶ Texas Government Code, Section 661.154.

⁴⁶⁷ Texas Government Code, Section 661.062 (a).

⁴⁶⁸ Texas Government Code, Section 661.067 (a).

⁴⁶⁹ Texas Government Code, Section 661.067 (b) (3); and State Auditor's Office Leave Interpretation Letter, No. 99-01 (1998).

⁴⁷⁰ Texas Government Code, Section 661.064.

⁴⁷¹ Texas Government Code, Section 661.063 (c) (2).

Table 11-7 provides a list of Office of the Attorney General resources related to annual leave entitlements upon separation from the State.

Table 11-7

| Annual Leave Entitlements Upon Separation from the State Related Office of the Attorney General Resources ^a | |
|--|--|
| Opinion Number | Topic |
| H-126 | Whether House Bill 139 (63rd Legislature) authorizes payment of accrued vacation pay to an employee who separates or is separated from state employment. |
| H-408 | Whether a separated employee is entitled to be retained on the payroll until he has been paid for vacation time accrued during the initial six months of his employment if he is separated from state service before he has been continuously employed for six months. |
| H-829 | Whether a teacher employed by the Texas Youth Council is a state employee for the purposes or receiving pay for accrued vacation time. |
| JC-302 | Related to the validity of Texas Government Code, Section 661.063 with regard to payment of vacation balances accrued prior to September 1, 1997. |
| M-731 | Regarding the proper method of determining the payment for accumulated vacation and sick leave to be paid to the estates of deceased state employees. |
| M-1075 | Whether state employees covered under specific provisions of the appropriation bill are entitled to be compensated for accumulated vacation in the event of the employees' resignation, dismissal, or separation from state employment. |
| M-1252 | Whether a state employee who resigns, is dismissed, or is separated from state employment must be paid for all duly accrued vacation time, and related questions. |
| M-1281 | Whether an employee of the Texas Highway Department occupying a line item position who resigns, or is dismissed or is separated from state employment must be paid for accumulated vacation time. |
| O-2814 | Related to salary payments to a state employee who was dismissed during his vacation. |
| ^a Detailed references can be found at http://www.oag.state.tx.us/opin/opindex.shtml . | |

Table 11-8 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to leave entitlements upon separation from the State.

Table 11-8

| Annual Leave Entitlements Upon Separation from the State Related State Auditor’s Office Resources ^a | | |
|--|--|------------|
| Type | Topic | Reference |
| HR Question | Whether a deceased employee may remain on the payroll to exhaust annual leave. | 5/31/2005 |
| HR Question | Whether an employee who resigns on August 31 but has annual leave hours that will be converted to sick leave on September 1 will get paid for those hours if the check for vacation balance will not be cut until after September 1. | 5/3/2005 |
| HR Question | Whether an employee who resigns on September 1 must have the annual leave balance reduced to the maximum allowable carry-over. | 12/18/2000 |
| HR Question | Whether an employee may be allowed to remain on the payroll to exhaust administrative leave for outstanding performance as permitted in the same manner as accrued state or Fair Labor Standards Act compensatory time. | 12/4/2000 |
| HR Question | Regarding the transfer of various kinds of leave to an education service center. | 8/18/2000 |
| HR Question | Whether an employee who resigned and remains on the payroll to exhaust annual leave can take sick leave. | 8/9/1999 |
| HR Question | Whether separating employees receive payment for accrued annual leave if the employee has worked for the State for less than six months. | 9/21/1998 |
| Leave Interpretation | Whether an employee is allowed to substitute jury duty for annual leave when exhausting annual leave on an agency's payroll following resignation. | 99-01 |
| ^a Complete references can be found at: HR Questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . Leave Interpretations: http://sao.hr.state.tx.us/Rules/leaveinterpretations.html . | | |

Annual Leave Accruals and Retirees

Annual leave accruals for return-to-work retirees are based on retirement and rehire dates. An employee returning to state employment who retired from state employment on or after June 1, 2005, and who receives a state retirement annuity accrues annual leave based only on the employee’s length of service earned after the employee’s retirement date.⁴⁷² The employee’s length of service earned before the retirement date is not taken into account for annuity accrual rates. Return-to-work retirees are not required to re-establish the six months continuous service in order to take annual leave with pay.⁴⁷³

⁴⁷² Texas Government Code, Section 661.152 (l).

⁴⁷³ Texas Government Code, Section 661.152 (f).

Table 11-9 provides a list of State Auditor’s Technical Updates, Human Resources Questions-and-Answers, and Leave Interpretations related to annual leave and return-to-work retirees.

Table 11-9

| Annual Leave for Return-to-Work Retirees Related State Auditor’s Office Resources ^a | | |
|--|---|-----------|
| Type | Topic | Reference |
| Technical Update | Whether an employee who retires under the Employees Retirement System (ERS) may choose whether to be paid for accrued vacation time or to transfer that time to another state agency. | 01-02 |
| HR Question | Whether an employee who retires under the Employees Retirement System (ERS) may choose whether to be paid for accrued annual leave or to transfer that time to another agency. | 9/6/2000 |
| HR Question | Regarding the rate at which an employee is paid for annual leave balances upon retirement from a non-leave accruing position when the leave was earned during previous time in a leave accruing position. | 3/29/1999 |
| Leave Interpretation | Whether retired state employees who return to state employment are eligible for leave accruals. | 97-07 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . Leave interpretations: http://sao.hr.state.tx.us/Rules/leaveinterpretations.html . Technical Updates: http://sao.hr.state.tx.us/Rules/technicalupdates.html . | | |

Determining Length of State Service for Annual Leave

The amount of annual leave each employee receives is determined by his or her length of state service. To determine the length of service, count the actual days, months, and years of employment.⁴⁷⁴

Table 11-10 provides a list of Office of the Attorney General resources related to determining state service for the purpose of annual leave.

Table 11-10

| Length of State Service - Annual Leave Related Office of the Attorney General Resources ^a | |
|--|---|
| Opinion Number | Topic |
| H-105 | Regarding the meaning of “total continuous service.” |
| H-1096 | Whether a short period between employments by two different state agencies constitutes a break in state employment. |
| JM-407 | Regarding the allowable credit for prior state service of student employees. |
| ^a Detailed references can be found at http://www.oag.state.tx.us/opin/opindex.shtml . | |

⁴⁷⁴ Opinion, Texas Office of the Attorney, No. H-341 (1974); and State Auditor’s Office Leave Interpretation Letter, No. 80-01 (1979) and No. 87-02 (1987).

Table 11-11 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to determining state service for the purposes of annual leave.

Table 11-11

| Length of State Service -for Purposes of Annual Leave Related State Auditor’s Office Resources ^a | | |
|--|--|-------------------------|
| Type | Topic | Reference |
| HR Question | Whether an agency is responsible for recalculating longevity and annual leave accruals for an employee who failed to identify all state service at the time of hire. | 2/28/2005 and 12/1/2001 |
| HR Question | Whether military time that has been purchased counts as state service when calculating leave accruals and longevity pay. | 11/26/2003 |
| HR Question | Whether one year of part-time service equates to one year of full-time service for calculating annual leave accruals. | 6/26/2000 |
| Leave Interpretation | Whether entitlement for leave accrual or longevity pay purposes is based solely upon total service as an employee of the State of Texas. | 96-02 |
| Leave Interpretation | Regarding the clarification of "initial employment by the agency." | 96-01 |
| Leave Interpretation | Regarding state service credit for annual leave and longevity purposes. | 88-02 |
| Leave Interpretation | Regarding the determination of total state service credit. | 87-02 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . Leave interpretations: http://sao.hr.state.tx.us/Rules/leaveinterpretations.html . | | |

Sick Leave

State employees are entitled to sick leave. An employee accrues sick leave at a rate of eight hours per month (or proportionately for part-time employees).⁴⁷⁵ An employee accrues sick leave beginning on the first day of state employment and ending on the last duty day of state employment. Duty day means an employee’s last physical day on the job.⁴⁷⁶ Workers employed by multiple agencies cannot accrue sick leave at a rate that exceeds that of a full-time, 40-hour-per-week employee.⁴⁷⁷ An employee who is on leave the first day of the month may not use that month’s accrual until he or she returns to duty.⁴⁷⁸ An employee may use sick leave while he or she is on annual leave.⁴⁷⁹

Table 11-12 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to sick leave provisions within the State.

⁴⁷⁵ Texas Government Code, Section 661.202 (c).

⁴⁷⁶ Texas Government Code, Section 661.202 (b).

⁴⁷⁷ State Auditor’s Office Leave Interpretation Letter, No. 01-03 (2001).

⁴⁷⁸ Texas Government Code, Section 661.202 (k).

⁴⁷⁹ State Auditor’s Office Leave Interpretation Letter, No. 87-01 (1986) and No. 97-05 (1996).

Table 11-12

| Sick Leave Provisions Related State Auditor's Office Resources ^a | | |
|--|---|------------|
| Type | Topic | Reference |
| HR Question | Whether an employee who has exhausted all of his sick leave balance may use accrued annual leave for sickness. | 11/27/2002 |
| HR Question | Whether an agency or institution of higher education may require an employee to use state compensatory time or Fair Labor Standards Act (FLSA) overtime in place of sick leave. | 8/28/2000 |
| HR Question | Whether sick leave must be exhausted prior to an employee taking a leave of absence without pay. | 5/15/2000 |
| HR Question | Whether an agency must allow an employee to use his or her remaining sick leave even after exhausting family and medical leave. | 2/1/1999 |
| HR Question | Whether an agency may require an employee to provide documentation for a sick leave absence. | 11/16/1998 |
| HR Question | Whether an employee may have a negative balance on sick leave hours. | 10/19/1998 |
| Leave Interpretation | Regarding the use of sick leave while on vacation and medical documentation requirements. | 97-05 |
| Leave Interpretation | Regarding the clarification of whether supervisors should be allowed to request a physician's statement from an employee when the appropriate use of sick leave is in question. | 96-00 |
| Leave Interpretation | Regarding the use of sick leave while on annual leave. | 87-01 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . Leave interpretations: http://sao.hr.state.tx.us/Rules/leaveinterpretations.html . | | |

Sick Leave Utilization

Sick leave may be used when an employee is prevented from performing his or her job due to sickness, injury, pregnancy, or confinement. It may also be used to care for an immediate family member who is ill. "Immediate family" is defined as individuals related by kinship, adoption, or marriage who live in the same household; foster children who reside in the same household; and minor children regardless of whether they live in the same household.⁴⁸⁰ Sick leave may be used to care for immediate family members who do not reside in the same household only for a documented medical condition. In this instance only, "immediate family" is interpreted as spouse, parent, or child.⁴⁸¹

An employee who will be absent from work must notify his or her supervisor as soon as possible.⁴⁸² An absence of more than three days requires the employee to provide the administrative head of the agency a doctor's certification or a written statement of the facts surrounding the absence and the

⁴⁸⁰ Texas Government Code, Section 661.202 (d).

⁴⁸¹ Texas Government Code, Section 661.202 (e); and State Auditor's Office Leave Interpretation Letter, No. 97-04 (1996).

⁴⁸² Texas Government Code, Section 661.202 (f).

nature of the illness. The need to provide such documentation for absences of three days or fewer is done at the discretion of the administrative head of the agency.⁴⁸³

An employee who is the legal guardian of a child by court appointment may use sick leave to care for the child.⁴⁸⁴ Sick leave may be used for the adoption of a child under the age of three.⁴⁸⁵

Table 11-13 provides a list of Office of the Attorney General resources related to sick leave utilization in the State.

Table 11-13

| Sick Leave Utilization Related Office of the Attorney General Resources ^a | |
|--|---|
| Opinion Number | Topic |
| GA-201 | Whether the Texas Military Facilities Commission may make a lump sum payment for accumulated sick leave when an employee has been terminated. |
| H-684 | Regarding the entitlement of part-time employees to sick leave benefits. |
| H-775 | Whether teachers employed by the Texas Youth Council are state employees for purposes of receiving pay for accumulated sick leave. |
| H-1083 | Whether the Commissioner of the Savings and Loan Department is eligible for payment for accumulated sick leave. |
| JM-401 | Regarding the validity and interpretation of a rider passed in the General Appropriations Act (69th Legislature) relating to a sick leave provision that excludes faculty members at institutions of higher education who have appointments of less than 12 months. |
| JM-1203 | Regarding sick leave for adopting parents. |
| LO 89-79 | Whether the recuperative leave provision of Section 13.904 (f) of the Texas Education Code applies to teachers and professional employees of the Texas School for the Blind and Visually Impaired. |
| LO 90-92 | Whether sick leave with pay may be taken when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty, or when the employee is needed to care for and assist a member of his immediate family who is ill. |
| LO 92-15 | Whether an employee of the Department of Health and Human Services may take sick leave to care for an ill child that is not a member of the employee's 'immediate family.' |
| M-1222 | Regarding the determination of eligibility for maternity leave. |
| MW-427 | Regarding the sick leave entitlement of state employees. |
| ^a Detailed references can be found at Letter opinions (LO): http://www.oag.state.tx.us/opin/op_letters.shtml . Opinions: http://www.oag.state.tx.us/opin/opindex.shtml . | |

⁴⁸³ Texas Government Code, Section 661.202 (g).

⁴⁸⁴ State Auditor's Office Leave Interpretation Letter, No. 01-04 (2001).

⁴⁸⁵ State Auditor's Office Leave Interpretation Letter, No. 97-01 (1998); and Opinion, Texas Office of the Attorney General, No. JM-1203 (1990).

Table 11-14 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to sick leave utilization.

Table 11-14

| Sick Leave Utilization Related State Auditor’s Office Resources ^a | | |
|--|---|-----------|
| Type | Topic | Reference |
| HR Question | Whether sick leave may be used to care for a grandparent. | 2/19/2001 |
| HR Question | Whether a state employee may use sick leave to care for a step-child whose primary residence is not full-time with that parent. | 6/19/2000 |
| HR Question | Whether an employee may use sick leave while awaiting an Americans with Disabilities Act (ADA) accommodation. | 10/4/1999 |
| HR Question | Whether an employee may use sick leave for cosmetic surgery. | 9/14/1998 |
| Leave Interpretation | Whether a state employee who is the legal guardian of a child may use sick leave to care for the child. | 01-04 |
| Leave Interpretation | Whether Texas School for the Blind and Visually Impaired employees who are not regularly employed during the summer months and not under contract for a summer session are allowed to use accrued sick leave during those months. | 97-08 |
| Leave Interpretation | Related to the use of sick leave for parent-in-laws not residing in the same household. | 97-04 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . Leave interpretations: http://sao.hr.state.tx.us/Rules/leaveinterpretations.html . | | |

Sick Leave Records for Faculty at Institutions of Higher Education

Faculty members at institutions of higher education, as defined by Section 61.003 (8), Texas Education Code, are required to submit prescribed leave forms for all sick leave taken if the absence occurs during the normal workday for regular employees, even if no classes are missed.⁴⁸⁶

Sick Leave and Employee Separations

Employees who separate from state employment under a formal reduction in force are entitled to have their sick leave balances restored if they are re-employed by the State within 12 months.⁴⁸⁷

Employees separated for reasons other than a formal reduction in force and re-employed by the same state agency may have their sick leave balances restored only if:

- The employee is re-employed by the same state agency or institution of higher education within 12 months after the end of the month in which the employee separates from state employment, and if there has been a break in employment with the State of at least 30 calendar days; or
- The employee is re-employed by a different state agency or institution of higher education within 12 months after the end of the month in which the employee separates from state employment.⁴⁸⁸

⁴⁸⁶ Texas Government Code, Section 661.203.

⁴⁸⁷ Texas Government Code, Section 661.205 (a).

⁴⁸⁸ Texas Government Code, Section 661.205 (b).

There is no authority to pay out an employee’s accrued but unused sick leave balance upon termination.⁴⁸⁹

An employee who is restored to state employment following military service is entitled to have his or her sick leave balance restored.⁴⁹⁰

Table 11-15 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to sick leave and employee separations.

Table 11-15

| Sick Leave and Employee Separations Related State Auditor’s Office Resources ^a | | |
|--|---|-----------|
| Type | Topic | Reference |
| HR Question | Whether a retiree of the Employees Retirement System (ERS) must use his or her entire sick leave balance toward retirement. If not, whether the employee may choose to have the sick leave balance transferred to another state agency or university. | 9/6/2000 |
| HR Question | Regarding the restoration of sick leave for an employee who left a state agency on April 30, 1999, and started at another state agency on May 1, 2000. | 5/30/2000 |
| HR Question | Whether an employee who terminated from a state agency on April 30, 1981, and returned to the same agency on April 19, 1982, may now ask to have his sick leave balance restored. | 8/2/1999 |
| Leave Interpretation | Regarding the contribution of accrued sick leave in increments of eight hours and the exception of a retiring state employee who may contribute accrued sick leave in increments of less than eight hours. | 97-02a |
| Leave Interpretation | Regarding the use of sick leave at time of termination. | 90-01 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . Leave interpretations: http://sao.hr.state.tx.us/Rules/leaveinterpretations.html . | | |

Employees Retirement System (ERS) retirees who return to state employment will not have their sick leave balances restored as there is no provision that allows a retiring employee to store or bank accumulated sick leave for use after retirement.⁴⁹¹

⁴⁸⁹ Opinion, Texas Office of the Attorney General, No. GA-0201 (2004).

⁴⁹⁰ Opinion, Texas Office of the Attorney General, No. MW-109 (1979).

⁴⁹¹ State Auditor’s Office Technical Update Letter, No. 01-02 (2000).

Table 11-16 provides a list of Office of the Attorney General resources related to sick leave for terminated employees.

Table 11-16

| Sick Leave for Terminated Employees Related Office of the Attorney General Resources ^a | |
|--|---|
| Opinion Number | Topic |
| H-766 | Whether a General Appropriation Act provision (64th Legislature) for paying employees one-half accumulated sick leave upon termination of employment is applicable to institutions of higher education. |
| H-996 | Regarding the entitlement of Department of Banking employees to be paid for accumulated sick leave on separation. |
| H-1055 | Whether faculty members of the University of Texas are entitled to payment for sick leave on termination. |
| JM-956 | Regarding the use of sick leave by employees who are involuntarily terminated. |
| MW-247 | Whether a terminated employee of the State Commission for the Blind is entitled to be paid for accrued sick leave (Affirmed in Attorney General Opinion Letter MW-427). |
| ^a Detailed references can be found at http://www.oag.state.tx.us/opin/opindex.shtml . | |

Extended Sick Leave

The administrative head of a state agency may extend sick leave to an employee only after a thorough review of the merits of each individual case. He or she may also grant, on a case-by-case basis, exceptions to the amount of sick leave an employee may take. All agencies are required to submit policies addressing extended sick leave to the State Auditor's Office. Such policies must also be made available to all agency employees.⁴⁹²

Table 11-17 lists State Auditor's Office's Human Resources Questions-and-Answers and Leave Interpretations related to extended sick leave provisions within the State.

Table 11-17

| Extended Sick Leave Provisions Related State Auditor's Office Resources ^a | | |
|--|---|-----------|
| Type | Topic | Reference |
| HR Question | Whether an agency or institution of higher education must have an extended sick leave policy. | 3/26/2001 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . | | |

⁴⁹² Texas Government Code, Section 661.202 (i) and (j).

Table 11-18 provides a list of Office of the Attorney General resources related to extended sick leave within the State.

Table 11-18

| Extended Sick Leave Related Office of the Attorney General Resources ^a | |
|--|--|
| Opinion Number | Topic |
| H-421 | Whether an employee of the Texas Highway Department is entitled to extended sick leave due to pregnancy. |
| H-701 | Regarding the effect of a state agency's granting extended sick leave to an employee. |
| H-1036 | Regarding the validity of a personnel policy denying extended sick leave for pregnancy-related disabilities. |
| ^a Detailed references can be found at http://www.oag.state.tx.us/opin/opindex.shtml . | |

Table 11-19 provides a list of State Auditor's Office's Human Resources Questions-and-Answers and Leave Interpretations related to extended sick leave.

Table 11-19

| Extended Sick Leave Related State Auditor's Office Resources ^a | | |
|--|---|-----------|
| Type | Topic | Reference |
| HR Question | Whether an agency or institution of higher education must have an extended sick leave policy. | 3/26/2001 |
| Leave Interpretation | Whether an employer can require an employee to "pay back" extended sick leave. | 01-01 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . Leave interpretations: http://sao.hr.state.tx.us/Rules/leaveinterpretations.html . | | |

Sick Leave Pool

Each state agency is required to establish a program that allows employees to voluntarily transfer sick leave to a sick leave pool. The sick leave pool is intended to assist employees and their immediate families in dealing with catastrophic illnesses or injuries that force them to exhaust all sick leave.⁴⁹³

Catastrophic Injury or Illness

The Employees Retirement System has defined a *catastrophic injury or illness* as:

- A severe condition or combination of conditions affecting the mental or physical health of the employee or the employee's immediate family that requires the services of a licensed practitioner

⁴⁹³ Texas Government Code, Section 661.004 (a).

for a prolonged period of time and that forces the employee to exhaust all leave time earned by that employee and to lose sick leave compensation from the State for the employee.

- Licensed practitioner means 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, marriage, or foster children who are so certified by the Texas Department of Human Services [now the Texas Health and Human Services Commission] 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.⁴⁹⁴

Although the ERS definition of catastrophic injury or illness states an employee must exhaust all leave before becoming eligible for the agency's sick leave pool, the State Auditor's Office believes that the specific language of the statute can be followed and agencies may only require employees to exhaust their sick leave before being eligible for the sick leave pool. Agencies who are concerned about the potential conflict in the language should consult their internal legal counsel for additional assistance.⁴⁹⁵

Administering the Sick Leave Pool

The program must be administered by the executive director or his or her designee.⁴⁹⁶ Agencies should ensure that their sick leave pool policies do not conflict with their extended sick leave policies.⁴⁹⁷

Contributions to the sick leave pool must be in increments of eight hours with the exception of retiring employees, who may contribute any unused balance.⁴⁹⁸

An employee may draw from the sick leave pool only with the approval of the pool administrator. Supporting documentation from a medical practitioner must be submitted to the pool administrator. The documentation must contain sufficient information to allow the pool administrator to evaluate the employee's eligibility.⁴⁹⁹ An employee may not receive sick leave in excess of one-third of the total time in the pool or 90 days, whichever is less.⁵⁰⁰

⁴⁹⁴ Board of Trustees Meeting, Employees Retirement System, October 24, 1989.

⁴⁹⁵ State Auditor's Office Human Resources Question-and-Answer, September 19, 2007.

⁴⁹⁶ Texas Government Code, Section 661.002.

⁴⁹⁷ Texas Government Code, Section 661.202 (j).

⁴⁹⁸ Texas Government Code, Section 661.003 (a) and (c).

⁴⁹⁹ Texas Government Code, Section 661.005 (a) and (b).

⁵⁰⁰ Texas Government Code, Section 661.006 (b).

Table 11-20 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers related to sick leave pool.

Table 11-20

| Sick Leave Pool Related State Auditor’s Office Resources ^a | | |
|--|---|------------|
| Type | Topic | Reference |
| HR Question | Whether an employee from one state agency can transfer sick leave to a sick leave pool at a different agency. | 12/12/2007 |
| HR Question | Whether state holidays are counted toward the amount of time that an employee receives from a sick leave pool. | 3/12/2001 |
| HR Question | Whether an employee may donate hours to the sick leave pool for a specific individual’s use. | 1/8/2001 |
| HR Question | Whether an agency may bank in the sick leave pool a retiree’s sick leave that has been certified to the Employees Retirement System for service credit. | 9/11/2000 |
| HR Question | Whether sick leave that was donated to the sick leave pool at the time an employee resigns may be restored if the employee returns to state employment. | 4/24/2000 |
| HR Question | Whether an employee who has donated hours to the sick leave pool and then becomes ill may retrieve those hours. | 5/3/1999 |
| HR Question | Regarding the minimum or maximum number of hours that may be granted to an employee who wants to use the sick leave pool. | 1/11/1999 |
| HR Question | Whether there is any formal documentation required for an employee who wants to use the sick leave pool. | 1/4/1999 |
| ^a Complete references on HR questions can be found at: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . | | |

Education Service Centers and Leave

Education Service Centers were established to assist school districts in improving student performance and increasing the efficiency and effectiveness of school operations.⁵⁰¹ Education Service Centers are not considered state agencies for benefits purposes. However, certain allowances have been made for the transfer of personal leave and sick leave.

An Education Service Center is required to accept the transfer of personal leave for prior state service. This leave will be converted to sick leave by the Education Service Center.⁵⁰² The exception to this policy involves employees in the schools of the Department of Criminal Justice, who are not considered state employees.⁵⁰³ Sick leave may be transferred from Education Service Centers to a state agency or a school district at a rate not to exceed five days per year for each year of employment.⁵⁰⁴

⁵⁰¹ Texas Education Code, Section 8.002.

⁵⁰² Texas Education Code, Section 8.007 (a).

⁵⁰³ Texas Education Code, Section 19.009.

⁵⁰⁴ Texas Education Code, Section 8.007 (b).

Annual leave is not transferable to Education Service Centers because these centers are not considered state agencies. State employees transferring to Education Service Centers should be paid for accumulated leave. Sick leave may not be transferred to an Education Service Center. Any accumulated sick leave balance would be forfeited by the employee. Some Education Service Centers have policies allowing credit for this leave as a hiring incentive for employees who were formerly employed by the State.⁵⁰⁵

Table 11-21 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers related to sick leave pool.

Table 11-21

| Annual Leave for Return-to-Work Retirees Related State Auditor’s Office Resources ^a | | |
|--|---|-----------|
| Type | Topic | Reference |
| HR Question | Regarding the rules for transferring various kinds of leave to an education service center. | 8/18/2000 |
| ^a Complete references on HR questions can be found at: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . | | |

Leave without Pay

State agencies or institutions of higher education may grant a leave of absence (leave without pay, or LWOP) subject to the following provisions:

- The leave is unpaid.
- The leave may not exceed 12 months.
- Annual leave and sick leave, if appropriate, must be exhausted except in instances of disciplinary suspension, leave covered by workers’ compensation benefits, or active military duty situations.
- Subject to fiscal constraints, approval of LWOP constitutes a guarantee of employment for a specified period of time.
- The administrative head of an agency or institution of higher education may allow for exceptions to these limitations.
- Any full or partial calendar month of LWOP does not constitute a break in employment, but also does not count for purposes of state service credit, with the exception of an employee returning from military leave without pay. This time is also not included in the calculation of the number of continuous months of employment for purposes of merit increases and leave entitlement.⁵⁰⁶

⁵⁰⁵ State Auditor’s Office, Human Resources Questions-and-Answers, August 18, 2000.

⁵⁰⁶ Texas Government Code, Section 661.909.

An employee who is on LWOP will have his or her compensation reduced for the pay period at the hourly rate of pay times the number of hours on LWOP.⁵⁰⁷ Please refer to Texas Government Code, Chapter 659, for specific guidelines concerning salary reductions for employees who are exempt from the Fair Labor Standards Act (FLSA).

Table 11-22 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to leave without pay.

Table 11-22

| Leave Without Pay Related State Auditor’s Office Resources ^a | | |
|--|--|-----------|
| Type | Topic | Reference |
| HR Question | Whether a leave without pay status may affect an employee’s six months of continuous employment for the purpose of using annual leave. | 1/18/2000 |
| HR Question | Whether a faculty member currently on leave without pay at one university and is working at another university is allowed to transfer sick leave from their current employer. | 2/8/1999 |
| HR Question | Whether an employee on leave without pay can receive compensatory time for a holiday that falls during the time that the employee is not at work. | 11/9/1998 |
| Leave Interpretation | Regarding a leave of absence without loss of pay for a state employee who is a foster parent to a child for the purpose of attending staffing meetings held by the Department of Human Services (now Department of Protective Services). | 92-02 |
| Leave Interpretation | Whether leave without pay during the first six months of state employment constitutes a break in service. | 89-02 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . Leave interpretations: http://sao.hr.state.tx.us/Rules/leaveinterpretations.html . | | |

Payment of Accrued Leave of Deceased Employees

The estate of an employee who dies while employed by the State is entitled to payment for all accumulated annual leave and one-half of accumulated sick leave or 336 hours, whichever is less.⁵⁰⁸ The payment is calculated at the employee’s salary rate at the time of death and will not include longevity or hazardous duty pay.⁵⁰⁹ The estates of appointed officers or employees of the State who normally work at least 900 hours per year are eligible for this benefit.⁵¹⁰

A deceased employee’s estate is entitled to receive payment for earned but unused overtime, but it is not entitled to payment for earned but unused state compensatory time.⁵¹¹

⁵⁰⁷ Texas Government Code, Sections 659.085 (c) and 659.016 (e).

⁵⁰⁸ Texas Government Code, Section 661.033.

⁵⁰⁹ Texas Government Code, Section 661.034.

⁵¹⁰ Texas Government Code, Section 661.031 (2).

⁵¹¹ Title 29, Code of Federal Regulations, Section 553.27; and Opinion, Texas Office of the Attorney General, No. H-899 (1976).

Table 11-23 provides a list of Office of the Attorney General resources related to leave and other benefits for deceased employees within the State.

Table 11-23

| Leave and Other Benefits for Deceased Employees Related Attorney General Resources a | |
|--|--|
| Opinion Number | Topic |
| H-899 | Whether the estate of a deceased employee may be paid for compensatory time. |
| LO 97-40 | Regarding the continuation of health insurance benefits for survivors of deceased public safety officers. |
| M-811 | Regarding the right of estates of deceased state regular 'hourly employees' to recover vacation and sick leave due to the deceased employee. |
| O-5803 | Regarding the liability of the State for pay to an employee or a department head after the death of such employee or department head. |
| <p>^a Detailed references can be found at: Letter opinions (LO): http://www.oag.state.tx.us/opin/op_letters.shtml. Opinions: http://www.oag.state.tx.us/opin/opindex.shtml.</p> | |

Leave Policies Provisions for Institutions of Higher Education

The governing board of an institution of higher education may adopt a leave policy for an employee that combines annual, sick, and holiday leave into a paid leave system that does not distinguish or separate the types of leave awarded. The higher education institution's governing board may award leave in amounts that it determines to be appropriate and cost-effective. This policy must include provisions for payment of accrued leave to:

- The estates of heirs of deceased employees.
- Separating employees.
- Retirees.
- Awards of accrued leave to employees who are transferring to other state agencies.

Chapters 661 and 662 of the Texas Government Code do not apply to employees covered by a paid leave bank adopted by an institution of higher education.⁵¹²

⁵¹² Texas Education Code, Section 51.961.

Section 12
Miscellaneous Leave Provisions

In addition to the annual and sick leave provisions, the State offers leave to employees for specific situations. This section of the inventory covers various leave provisions that may be granted to state employees. Agencies and institutions of higher education should review these provisions carefully to determine if employees are eligible to use these leave types.

Additional information on leave provisions can be found in the State Auditor’s Office’s *Practical Guide to Common Leave Types* (Report No. 08-705, February 2008). The complete guide can be found at: <http://sao.hr.state.tx.us/Rules/leaveguide.html>.

Administrative Leave for Outstanding Performance

Administrative leave with pay may be granted by the head of an agency as a reward for outstanding performance. This performance should be documented by the agency. The total amount of leave granted may not exceed 32 hours per employee during a fiscal year.⁵¹³

Table 12-1 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to administrative leave for outstanding performance.

Table 12-1

| Administrative Leave for Outstanding Performance Related State Auditor Resources ^a | | |
|--|--|------------|
| Type | Topic | Reference |
| HR Question | Whether a state employee is required to use administrative leave for outstanding performance prior to being eligible for sick leave pool or being granted leave without pay. | 3/5/2001 |
| HR Question | Whether an employee may be allowed to remain on payroll to exhaust administrative leave for outstanding performance. | 12/4/2000 |
| HR Question | Whether executive directors and employees of institutions of higher education are eligible for administrative leave for outstanding performance. | 12/13/1999 |
| Leave Interpretation | The administration of administrative leave for outstanding performance. | 98-02 |
| ^a Complete references can be found at: Leave interpretations: http://sao.hr.state.tx.us/Rules/leaveinterpretations.html HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . | | |

Amateur Radio Operator Leave

A state employee with an amateur radio station license issued by the Federal Communications Commission may be granted leave not to exceed 10 days each fiscal year to participate in specialized disaster relief services without a deduction in salary or loss of annual or sick leave, overtime leave, or

⁵¹³ Texas Government Code, Section 661.911; and State Auditor’s Office Leave Interpretation Letter, No. 98-02 (1997).

state compensatory time. The amateur radio operator leave should be authorized by the employee's supervisor and with the approval of the governor.⁵¹⁴

The number of amateur radio operators eligible for this type of leave may not exceed 350 state employees during a fiscal year. The Texas Division of Emergency Management is responsible for coordinating the establishment and maintenance of the list of employees eligible for this leave.⁵¹⁵

Table 12-2 lists State Auditor's Office's Human Resources Questions-and-Answers related to amateur radio operator leave.

Table 12-2

| Amateur Radio Operator Leave Related State Auditor Resources ^a | | |
|--|---|-----------|
| Type | Topic | Reference |
| HR Question | Relating to the use of paid leave time to participate in disaster relief services if the state employee holds an amateur radio license issued by the Federal Communications Commission. | 3/31/2008 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . | | |

Assistance Dog Training

An employee with a disability as defined by Texas Human Resources Code, Section 121.002, will be granted paid leave not to exceed 10 days in a fiscal year to attend training necessary to provide the employee with an assistance dog to be used by the employee.⁵¹⁶

Blood Donations

A state agency shall allow employees sufficient time off, without a deduction in salary or accrued leave, to donate blood. An employee may not receive time off to donate blood unless the employee obtains approval from his or her supervisor before taking time off. Upon returning to work, the employee shall provide his or her supervisor with proof that the employee donated blood during the time off. If an employee fails to provide proof that he or she donated blood during the time off, the agency shall deduct the time off from the employee's salary or accrued leave, whichever the employee chooses. An employee may receive time off to donate blood not more than four times in a fiscal year.⁵¹⁷

⁵¹⁴ Texas Government Code, Section 661.919 (a).

⁵¹⁵ Texas Government Code, Section 661.919 (b).

⁵¹⁶ Texas Government Code, Section 661.910.

⁵¹⁷ Texas Government Code, Section 661.917.

Bone Marrow and Organ Donation

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 provided by this section may not exceed:

- Five working days in a fiscal year to serve as a bone marrow donor; or
- 30 working days in a fiscal year to serve as an organ donor.⁵¹⁸

Certified American Red Cross Activities

Employees who are certified disaster service volunteers of the American Red Cross or are in training to become a volunteer may be granted paid leave, not exceed 10 days each fiscal year, to participate in specialized disaster relief services for the American Red Cross. The employee must have the approval of his or her supervisor and the Governor and a formal request from the American Red Cross. The number of certified disaster relief service volunteers who are eligible for this type of leave may not exceed 350 state employees at any one time during a fiscal year. The Texas Division of Emergency Management shall coordinate the establishment and maintenance of the list of eligible employees.⁵¹⁹

Compliance with a Subpoena

An employer may not take action against an employee for complying with a subpoena to appear in a civil, criminal, legislative, or administrative proceeding. Any organization that violates this may be found in contempt of court or subject to a monetary penalty, depending upon the issuing authority.

An employee testifying in an official capacity is considered to be on “special assignment,” and would not be required to use his or her own leave to be absent from work. An employee who testifies as an expert witness is authorized to use emergency leave for his or her absence. Agencies should use their own discretion in instances of unofficial testimony to decide whether such an absence is considered good cause for emergency leave.⁵²⁰

⁵¹⁸ Texas Government Code, Section 661.916.

⁵¹⁹ Texas Government Code, Section 661.907 (a) and (b).

⁵²⁰ Texas Labor Code, Section 52.051; and Opinion, Texas Office of the Attorney General, No. JM-785 (1987).

Court Appointed Special Advocate (CASA) Volunteers

A state employee may be provided paid leave not to exceed five hours each month to participate in mandatory training or perform volunteer services for Court Appointed Special Advocates. This leave is provided to an employee without a deduction in salary or loss of vacation time, sick leave, earned overtime credit, or state compensatory time.⁵²¹

| New Requirement |
|--|
| The 81st Legislature passed legislation authorizing up to five hours of paid employee leave per month for employees attending training or volunteering as Court Appointed Special Advocates. |

Emergency Leave

An employee is entitled to leave with pay for a death in the employee's family. An employee's immediate family is defined as the employee's spouse, as well as the employee's and spouse's parents, children, brothers, sisters, grandparents, and grandchildren. There is nothing in statute that requires an agency to provide a specific number of days of emergency leave for a death in the employee's family. The amount of leave is dependent on agency policy. An agency head may grant emergency leave for other reasons determined to be for good cause.⁵²²

Table 12-3 lists State Auditor's Office's Human Resources Questions-and-Answers related to emergency leave.

Table 12-3

| Emergency Leave Related State Auditor Resources ^a | | |
|--|--|-----------|
| Type | Topic | Reference |
| HR Question | Whether common law marriages are covered for the purposes of bereavement and emergency leave. | 10/1/2004 |
| HR Question | Whether an employee may be granted emergency leave for a death in the family if the employee is on leave without pay. | 4/29/2003 |
| HR Question | Whether funeral leave may be used for an in-law if the employee's spouse is also deceased. | 5/22/2000 |
| HR Question | Whether an employee may be granted emergency leave to attend the funeral of a great-grandchild. | 2/15/1999 |
| HR Question | Whether an executive director may grant emergency leave to an employee who has exhausted all annual leave and needs emergency leave for good reason. | 1/25/1999 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . | | |

⁵²¹ Texas Government Code, Section 661.921, as amended by HB 1462 (81st Legislature, Regular Session).

⁵²² Texas Government Code, Section 661.902.

Emergency Leave Reporting for Adjutant General's Department

Every 30 days, the Adjutant General's Department is required to submit a report to the Governor's Office and the State Auditor's Office specifying emergency leave and overtime payments provided and approved for all employees for the previous 30 days. In addition, any emergency leave granted for more than three days or for reasons other than a death in the immediate family must be pre-approved by the Governor's Office and the Legislative Budget Board. In addition, the Governor's Office and the Legislative Budget Board must pre-approve any emergency leave taken by an officer with a rank above Major. These requirements do not apply to emergency leave used for the purposes of military differential pay.⁵²³

| New Requirement |
|--|
| The 81st Legislature passed legislation establishing a reporting requirement for the Adjutant General's Department regarding the use of emergency leave. |

Foster Parent Leave

An employee who is a foster parent to a child under the protection of the Department of Family and Protective Services (Department) is entitled to a paid leave of absence to attend staff meetings held by the Department regarding the foster child. In addition, the employee may use this entitlement to attend admission, review, and dismissal meetings held by a school district regarding the foster child.⁵²⁴

Table 12-4 lists State Auditor's Office's Human Resources Questions-and-Answers and Leave Interpretations related to foster parent leave.

Table 12-4

| Foster Parent Leave Related State Auditor Resources ^a | | |
|--|--|-----------|
| Type | Topic | Reference |
| HR Question | Whether an employee who wishes to be a foster parent may take foster parent leave to attend trainings and meetings for potential foster parents. | 4/2/2001 |
| Leave Interpretation | Related to a leave of absence with full pay for a state employee who is a foster parent to a child. | 92-02 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html Leave Interpretations: http://sao.hr.state.tx.us/rules/leaveinterpretations.html . | | |

⁵²³ General Appropriation Act (81st Legislature, Regular Session), Article V, Adjutant General's Department, Rider 28.

⁵²⁴ Texas Government Code, Section 661.906.

Injury Leave for Certain Peace Officers

Peace officers injured in the course of duty are entitled to paid injury leave without a deduction in salary. This covers commissioned law enforcement officers or agents commissioned by the Public Safety Commission and the director of the Department of Public Safety, the Parks and Wildlife Department, or the Alcoholic Beverage Commission.⁵²⁵

Peace officers who are injured in the line of duty as a result of the performance of their duties may be entitled to paid injury leave. An officer who qualifies for injury leave is not required to use compensatory time off or any other type of leave for an injury that occurs in the line of duty. However, a peace officer is not entitled to injury leave if the officer's own gross negligence contributed to the injury or if the injury was related to performing routine office duties.⁵²⁶

To be eligible for injury leave, the peace officer must submit evidence of a medical examination and a recommendation for a specific period of leave from his or her physician.⁵²⁷ The maximum amount of leave allowed for all injuries occurring at one time is one year.⁵²⁸

The injured peace officer may simultaneously be on injury leave and receive workers' compensation medical benefits but is not eligible for disability retirement benefits during the leave period. The injured peace officer is entitled to workers' compensation indemnity benefits after the discontinuation or exhaustion of injury leave.⁵²⁹

| New Requirement |
|---|
| The 81st Legislature passed legislation stating that peace officers are not entitled to injury leave 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. |

Jury Service

An employee is entitled to serve on a jury without a deduction in salary. Jury service leave is designed so that employees will not lose pay or leave time due to being required to serve on a jury.⁵³⁰

Officers or employees of the Senate, the House of Representatives, or any organization in the legislative branch of state government may establish an exemption from jury service.⁵³¹

Table 12-5 on the next page lists State Auditor's Office's Human Resources Questions-and-Answers and Leave Interpretations related to jury service leave.

⁵²⁵ Texas Government Code, Section 661.918 (a).

⁵²⁶ Texas Government Code, Section 661.918 (b).

⁵²⁷ Texas Government Code, Section 661.918 (c).

⁵²⁸ Texas Government Code, Section 661.918 (d).

⁵²⁹ Texas Government Code, Section 661.918 (e), as amended by SB 687 (81st Legislature, Regular Session).

⁵³⁰ Texas Government Code, Section 659.005 (a).

⁵³¹ Texas Government Code, Section 62.106 (5).

Table 12-5

| Jury Service Leave Related State Auditor Resources ^a | | |
|--|---|-----------|
| Type | Topic | Reference |
| HR Question | Whether an employee is allowed leave for jury duty for a full day even if the employee is not selected. | 2/28/2000 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . | | |

Legislative Leave for Peace Officers or Fire Fighters

A peace officer or fire fighter is entitled to legislative leave to serve in, appear before, or petition a governmental body during a regular or special legislative session.⁵³²

To be eligible for legislative leave, a peace officer or fire fighter must submit a written application to his or her employer on or before the 30th day before the employee intends to begin the legislative leave. The application must state the length of the requested leave and that the peace officer or fire fighter is willing to reimburse the employer for any wages, pension, or other costs the employer will incur as a result of the leave. The length of requested leave may not exceed the length of the session.⁵³³

Legislative leave is not considered a break in service and is treated as any other paid leave.⁵³⁴

Parent-Teacher Conference Leave

An employee may use up to eight hours of sick leave each fiscal year to attend parent-teacher conference sessions for the employee's children who are in pre-kindergarten through twelfth grade. The employee must give reasonable notice of his or her intention to use this leave.⁵³⁵ Part-time employees receive this leave on a proportionate basis.⁵³⁶

Table 12-6 on the next page lists State Auditor's Office's Human Resources Questions-and-Answers related to parent-teacher conference leave.

⁵³² Texas Government Code, Section 614.003.

⁵³³ Texas Government Code, Section 614.004.

⁵³⁴ Texas Government Code, Section 614.008.

⁵³⁵ Texas Government Code, Section 661.206.

⁵³⁶ State Auditor's Office, Human Resource Question-and-Answer, August 30, 1999.

Table 12-6

| Parent-Teacher Conference Leave Related State Auditor Resources ^a | | |
|--|---|------------|
| Type | Topic | Reference |
| HR Question | Whether a state employee who has her child in a home school may use sick leave for a conference with the home school teacher. | 3/19/2001 |
| HR Question | Whether an employee may use sick time for a parent-teacher conference that only involves a phone call. | 10/16/2000 |
| HR Question | Whether an employee who works part time may receive four hours or eight hours of parent teacher leave each year. | 8/30/1999 |
| HR Question | Whether an employee may use a total of eight hours of sick leave for parent teacher conferences or may they use eight hours of sick leave per child for parent teacher conferences. | 7/12/1999 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . | | |

Time Off to Vote

Employers shall allow sufficient time off to employees, without a deduction in salary, to vote in each national, state, or local election if there is not sufficient time to vote outside regular working hours.⁵³⁷ There is no consistent standard or formal guidance regarding how much time should be provided to employees for this purpose; however, employers should spell out their voting policy in written procedures. State law does not differentiate between regular and runoff elections.

Early voting enables an employee to vote (before or after work, including the weekends) prior to an election. If an employee has been unable to vote during the early voting period, time off to vote on Election Day is clearly allowed.

Table 12-7 lists Office of the Attorney General resources related to employees taking time off to vote.

Table 12-7

| Time Off to Vote Related Attorney General Resources ^a | |
|--|--|
| Opinion Number | Topic |
| O-6242 | Regarding the construction of Penal Code, Article 209, on the right of an employee to absent himself or herself to vote, and related questions. |
| V-1475 | Regarding employers deducting from employees' wages for the time that employees are absent for the purpose of voting. |
| V-1532 | Regarding the necessity that an employer allow employees time off to vote when the employees have sufficient time to vote outside working hours. |
| ^a Detailed references can be found at http://www.oag.state.tx.us/opin/opindex.shtml . | |

⁵³⁷ Texas Government Code, Section 661.914; and Opinion, Texas Office of the Attorney General, No. V-1532 (1952).

Volunteer Firefighters and Emergency Medical Services Training Leave

Volunteer firefighters and emergency medical services volunteers are entitled to paid leave not to exceed five working days each fiscal year for attending training services conducted by a state agency or institution of higher education. Also, a state agency or institution of higher education may grant paid leave to a volunteer firefighter or an emergency medical services volunteer for the purpose of responding to emergencies if an agency policy for granting the leave exists.⁵³⁸

Table 12-8 lists State Auditor's Office's Human Resources Questions-and-Answers related to volunteer firefighter and emergency medical services leave.

Table12-8

| Volunteer Firefighters and Emergency Medical Services Leave Related State Auditor Resources ^a | | |
|--|---|-----------|
| Type | Topic | Reference |
| HR Question | Whether paid leave may be granted to an employee who attends volunteer firefighter training in another state. | 6/5/2000 |
| HR Question | Whether an agency may grant paid leave to an employee who worked as a volunteer firefighter on his normal paid day off. | 3/20/2000 |
| HR Question | Whether a volunteer paramedic may receive paid leave to respond to medical situations. | 2/14/2000 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . | | |

Wellness Leave

A state agency may provide eight hours of leave time each year to an employee who receives a physical examination and completes an online health risk assessment tool or similar health risk assessment conducted in person by a wellness coordinator. In addition, a state agency may provide an employee 30 minutes during normal working hours for exercise three times each week if the agency has an established wellness policy.⁵³⁹

⁵³⁸ Texas Government Code, Section 661.905.

⁵³⁹ Texas Government Code, Section 664.061 (3).

Table 12-9 lists State Auditor’s Office’s Human Resources Questions-and-Answers related to wellness leave.

Table12-9

| Wellness Leave Related State Auditor Resources ^a | | |
|--|--|-----------|
| Type | Topic | Reference |
| HR Question | Whether a state agency as part of the agency’s wellness program may provide eight hours of additional leave each year to an employee who receives a physical examination and completes either an online health risk assessment or a similar health risk assessment conducted in person by a worksite wellness coordinator, and whether an employee can carry any unused balance from one year to the next. | 6/2/2009 |
| HR Question | Whether a state agency may permit an employee 30 minutes during normal working hours for exercise three times a week. | 2/4/2008 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . | | |

Related Legislation

Table 12-10 lists human resource-related bills that were passed by the 81st Legislature. This may not be a complete list and should only be used as a summary of general issues on leave provisions that were addressed during the session.

Table 12-10

| Employee Leave Related Legislation (81st Legislature) ^a | |
|--|--|
| Bill Number | Summary |
| HB 1462 | Relating to leave for certain state employees who volunteer or participate in training for Court Appointed Special Advocates. |
| SB 687 | Relating to injury leave and related benefits for certain state peace officers injured in the course of performing their duties. |
| ^a Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at www.capitol.state.tx.us . | |

Section 13
State Employee Holidays

Overview of Holidays for State Employees

State agency employees are entitled to a paid day off from work on national, state, and optional holidays observed by the State.⁵⁴⁰ Employees who work for multiple agencies may not accrue holiday leave at a rate greater than that of a full-time, 40-hour-per-week employee.⁵⁴¹

An employee is eligible to a paid day off for a holiday if:

- The holiday does not fall on a weekend.
- The employee is not on leave without pay (LWOP).⁵⁴²

A state agency must have enough state employees on duty during a state holiday to conduct the public business of the agency with the exception of those state holidays that fall on a Saturday or Sunday, the Friday after Thanksgiving Day, December 24, or December 26.⁵⁴³

Employees who work on an observed state holiday will receive holiday compensatory time for those hours worked. At times, these state holidays are referred to as “skeleton crew days.” Holiday compensatory time must be used within 12 months following the date that the hours were earned. Employees are required to give reasonable notice to their employers when taking this holiday compensatory time.⁵⁴⁴

A state employee who is a peace officer commissioned by a state officer or state agency listed under Article 2.12, Code of Criminal Procedure, or who is employed by the Department of Public Safety either to perform communications or dispatch services related to traffic law enforcement or as a public security officer, as that term is defined by Section 1701.001, Occupations Code, and who is required to work on a national or state holiday that falls on a Saturday or Sunday is entitled to holiday compensatory time off at the rate of one hour for each hour worked on the holiday.⁵⁴⁵

⁵⁴⁰ Texas Government Code, Sections 662.003 and 662.013.

⁵⁴¹ State Auditor’s Office Leave Interpretation Letter, No. 01-03 (2001).

⁵⁴² Texas Government Code, Section 662.005 (a).

⁵⁴³ Texas Government Code, Section 662.004 (a).

⁵⁴⁴ Texas Government Code, Section 662.007 (a), (b), and (c).

⁵⁴⁵ Texas Government Code, Section 662.005 (b), as amended by HB 2730 (81st Legislature, Regular Session).

**Applicability of State
Holiday Section**

Unless specifically stated, the information in this section regarding holidays pertains only to state agencies and does not pertain to institutions of higher education.

The applicability of holidays for state employees of the Texas House of Representatives or the Senate applies only at the discretion of the presiding officer or the administration committee of each respective house.

Types of Holidays

National Holidays:

- New Year’s Day.
- Martin Luther King, Jr. Day.
- President’s Day.
- Memorial Day.
- Independence Day.
- Labor Day.
- Veterans Day.
- Thanksgiving Day.
- Christmas Day.

State Holidays:

- Confederate Heroes Day.
- Texas Independence Day.
- San Jacinto Day.
- Emancipation Day in Texas.
- Lyndon Baines Johnson Day.
- The Friday after Thanksgiving Day.
- December 24.
- December 26.

Optional Holidays:

- Rosh Hashanah.
- Yom Kippur.
- Good Friday.
- Cesar Chavez Day.

New Requirement

The 81st Legislature passed legislation clarifying that Department of Public Safety employees who perform communications or dispatch services or who serve as public security officers, as defined by Section 1701.001, Texas Occupational Code, and who work on a national or state holiday that falls on a Saturday or Sunday are entitled to compensatory time off for each hour worked on the holiday.

To be paid for a holiday that falls in mid-month (other than the first or last workday of the month), the employee must be a state employee on the day before and the day after the holiday. For the purposes of determining holiday pay, a state employee includes someone who is using paid leave from a state agency. It does not include an individual who is taking leave without pay.

If the holiday falls on the first workday of a month, the employee must be a state employee on the day immediately after the holiday to be paid. If the holiday falls on the last workday of the month, the employee must be a state employee on the day immediately before the holiday to be paid.⁵⁴⁶

In situations where an employee works before or after a holiday and takes a partial leave without pay day, the employee will receive credit for working the entire day if he or she works any part of it. The Office of the Comptroller of Public Accounts has determined that only employees who use unpaid leave for the entire workday will be considered to be on leave without pay for the day.⁵⁴⁷

Table 13-1 on the next page provides examples of these types of scenarios.

⁵⁴⁶ Texas Government Code, Section 662.010 ; and *Payroll Policies and Procedures Guide*, Office of the Comptroller of Public Accounts, August 2000, Pages 2.14 and 2.15.

⁵⁴⁷ *Payroll Policies and Procedures Guide*, Office of the Comptroller of Public Accounts, August 2000, Page 2.13.

Table 13-1

| Scenarios in which a State Agency Would or Would Not Pay an Employee for a Holiday | | | | | | |
|---|--|--------------|------------------------------|----------|--------|----------|
| <p>In the first example, an employee begins work on January 2. This employee would be paid for the holiday observed on January 1 because it falls on the first workday of the month and the employee is a state employee on the day after the holiday.</p> | | | | | | |
| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
| 23 | 24 | 25 | 26 | 27 | 28 | 29 |
| 30 | 31 | 1 Holiday | 2 Employee Begins Work | 3 | 4 | 5 |
| <p>In the second example, an employee works December 31 and then terminates employment. This employee would not be paid for the January 1 holiday because it fell on the first workday of the month, and the employee was not a state employee on the day after the holiday.</p> | | | | | | |
| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
| 23 | 24 | 25 | 26 | 27 | 28 | 29 |
| 30 | 31 Employee Terminates Employment | 1 Holiday | 2 | 3 | 4 | 5 |

Table 13-2 lists State Auditor’s Office’s Human Resources Questions-and-Answers, Leave Interpretations, and Technical Updates related to state holidays.

Table 13-2

| Holidays - General Information Related State Auditor’s Office Resources ^a | | |
|--|---|------------|
| Type | Topic | Reference |
| HR Question | Whether state agency employees who work non-standard workweeks would be entitled to holiday time off. | 12/2/2008 |
| HR Question | Relating to how an agency accounts for an employee being absent for part of a workday on a skeleton crew state or national holiday. | 9/15/2000 |
| HR Question | Whether an agency may require an employee to work on a federal or state holiday. | 5/17/1999 |
| HR Question | Whether an agency may close early on the day before a holiday. | 12/21/1998 |
| HR Question | Relating to a new employee who starts work in a month in which the first day of the month is a holiday. | 12/14/1998 |
| Leave Interpretation | Whether a state employee who holds positions that, in total, require the employee to work more than 40 hours per week, is eligible for additional leave accruals and/or holidays. | 01-03 |
| Technical Update | Related to holiday hours for employees in state agencies and institutions of higher education. | 97-03 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . Leave Interpretations: http://sao.hr.state.tx.us/Rules/leaveinterpretations.html . Technical Updates: http://sao.hr.state.tx.us/Rules/technicalupdates.html . | | |

Fiscal Year 2010-2011 Holiday Schedules

State employees receive both federal and state holidays, as well as optional holidays. Tables 13-3 and 13-4 list the state holiday schedules for fiscal years 2010 and 2011.

Table 13-3

| State Holiday Schedule for Fiscal Year 2010 | | | |
|---|-------------------------|-----------------|------------------|
| Holiday | Agency Status | Date | Day of Week |
| Labor Day | All agencies closed. | 09-07-09 | Monday |
| <i>Rosh Hashanah</i> | | <i>09-19-09</i> | <i>Saturday</i> |
| <i>Rosh Hashanah</i> | | <i>09-20-09</i> | <i>Sunday</i> |
| <i>Yom Kippur</i> | <i>Optional Holiday</i> | <i>09-28-09</i> | <i>Monday</i> |
| Veterans Day | All agencies closed. | 11-11-09 | Wednesday |
| Thanksgiving Day | All agencies closed. | 11-26-09 | Thursday |
| Day after Thanksgiving | All agencies closed. | 11-27-09 | Friday |
| Christmas Eve Day | All agencies closed. | 12-24-09 | Thursday |
| Christmas Day | All agencies closed. | 12-25-09 | Friday |
| Day after Christmas | | 12-26-09 | Saturday |
| New Year's Day | All agencies closed. | 01-01-10 | Friday |
| Martin Luther King, Jr. Day | All agencies closed. | 01-18-10 | Monday |
| Confederate Heroes Day | Skeleton crew required. | 01-19-10 | Tuesday |
| Presidents' Day | All agencies closed. | 02-15-10 | Monday |
| Texas Independence Day | Skeleton crew required. | 03-02-10 | Tuesday |
| <i>Cesar Chavez Day</i> | <i>Optional Holiday</i> | <i>03-31-10</i> | <i>Wednesday</i> |
| <i>Good Friday</i> | <i>Optional Holiday</i> | <i>04-02-10</i> | <i>Friday</i> |
| San Jacinto Day | Skeleton crew required. | 04-21-10 | Wednesday |
| Memorial Day | All agencies closed. | 05-31-10 | Monday |
| Emancipation Day | | 06-19-10 | Saturday |
| Independence Day | | 07-04-10 | Sunday |
| LBJ's Birthday | Skeleton crew required. | 08-27-10 | Friday |

Table 13-4

| State Holiday Schedule for Fiscal Year 2011 | | | |
|---|-------------------------|-----------------|-----------------|
| Holiday | Agency Status | Date | Day of Week |
| Labor Day | All agencies closed. | 09-06-10 | Monday |
| <i>Rosh Hashanah</i> | <i>Optional Holiday</i> | <i>09-09-10</i> | <i>Thursday</i> |
| <i>Rosh Hashanah</i> | <i>Optional Holiday</i> | <i>09-10-10</i> | <i>Friday</i> |
| <i>Yom Kippur</i> | | <i>09-18-10</i> | <i>Saturday</i> |
| Veterans Day | All agencies closed. | 11-11-10 | Thursday |
| Thanksgiving Day | All agencies closed. | 11-25-10 | Thursday |
| Day after Thanksgiving | All agencies closed. | 11-26-10 | Friday |
| Christmas Eve Day | All agencies closed. | 12-24-10 | Friday |
| Christmas Day | | 12-25-10 | Saturday |
| Day after Christmas | | 12-26-10 | Sunday |
| New Year's Day | | 01-01-11 | Saturday |
| Martin Luther King, Jr. Day | | 01-17-11 | Monday |
| Confederate Heroes Day | Skeleton crew required. | 01-19-11 | Wednesday |
| Presidents' Day | All agencies closed. | 02-21-2011 | Monday |
| Texas Independence Day | Skeleton crew required. | 03-02-11 | Wednesday |
| <i>Cesar Chavez Day</i> | <i>Optional Holiday</i> | <i>03-31-11</i> | <i>Thursday</i> |
| San Jacinto Day | Skeleton crew required. | 04-21-11 | <i>Thursday</i> |
| <i>Good Friday</i> | <i>Optional Holiday</i> | 04-22-11 | Friday |
| Memorial Day | All agencies closed. | 05-30-11 | Monday |
| Emancipation Day | | 06-19-11 | Sunday |
| Independence Day | All agencies closed. | 07-04-11 | Monday |
| LBJ's Birthday | | 08-27-11 | Saturday |

Optional Holidays

A state employee is entitled to observe Rosh Hashanah, Yom Kippur, Good Friday, and Cesar Chavez Day.⁵⁴⁸ A state employee is entitled to each optional holiday if the employee qualifies for the paid day off and agrees to give up during the same fiscal year an equivalent number of state holidays; however, the employee may not agree to give up the Friday after Thanksgiving Day, December 24, or December 26. Optional holidays cannot be substituted for National Holidays.⁵⁴⁹

Holidays and Employee Separations

If an employee separates from the State and is exhausting unused annual leave, the employee receives payment for any holidays that the employee would have observed had he or she remained on the payroll.⁵⁵⁰

Holidays and Employee Transfers

With the exception of a transfer directed by the Legislature or the State Council on Competitive Government, there is no authority to transfer accrued holiday compensatory time between state agencies.⁵⁵¹

In the event that a state or national holiday falls between the periods an employee transfers from one state agency or institution of higher education to another without a break in service, the receiving agency or institution of higher education must pay for the holiday regardless of whether the agency or institution of higher education recognizes that particular holiday.⁵⁵²

Table 13-5 provides a list of State Auditor's Office's Human Resources Questions-and-Answers related to state holidays and transferring employees.

Table 13-5

| Transferring Employees and Holidays Related State Auditor Resources ^a | | |
|--|--|-----------|
| Type | Topic | Reference |
| HR Question | Whether holiday compensatory time may be transferred to another state agency. | 7/3/2000 |
| HR Question | Whether an employee who transfers (without a break in service) from one agency to another would get paid for a holiday that falls in between the date of termination at one agency and start date at the next. | 6/14/1999 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . | | |

⁵⁴⁸ Texas Government Code, Sections 662.003 (c) and 662.013.

⁵⁴⁹ Texas Government Code, Section 662.006 (b) and (c).

⁵⁵⁰ Texas Government Code, Section 661.064.

⁵⁵¹ Texas Government Code, Section 662.0071 (a); and Texas Office of the Attorney General, Opinion No. H-883.

⁵⁵² Texas Government Code, Section 662.0072.

Holidays for Employees Working Non-Traditional Schedules

A state employee who works 40 hours a week on a schedule other than Monday through Friday is entitled to paid holiday time off during the fiscal year equal to eight hours multiplied by the number of national and state holidays in the fiscal year.⁵⁵³

A state employee working a non-traditional schedule who works less than the entire fiscal year is entitled to paid holiday time off during the fiscal year equal to eight hours multiplied by the number of national and state holidays that occur during the time period worked by the employee.⁵⁵⁴

Paid holiday time off for a part-time employee, who works on a schedule other than Monday through Friday, is proportionate to the number of hours normally worked by the employee.⁵⁵⁵

A state agency can establish a “holiday bank” for employees working a non-standard workweek. The bank can include the total number of holiday hours observed by state employees that fiscal year.⁵⁵⁶

Table 13-6 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers related to holidays for employees working non-traditional schedules.

Table 13-6

| Holidays for Employees Working Non-Traditional Schedules Related State Auditor Resources ^a | | |
|--|---|-----------|
| Type | Topic | Reference |
| HR Question | Whether an employee who works Tuesday through Saturday is entitled to holiday time off for a holiday that falls on a Saturday. | 12/1/2006 |
| HR Question | Whether an employee who works a compressed work week of four ten-hour days may be paid for a holiday that falls on the weekday that the employee has off. | 10/5/1998 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . | | |

Holidays for Institutions of Higher Education

Institutions of higher education may establish their own holidays in accordance with academic schedules. However, the number of observed holidays may not exceed the number of holidays observed by state agencies.⁵⁵⁷

There are three options regarding an institution of higher education’s determination of holidays:

- Establish all holidays and mandate those holidays for all employees.

⁵⁵³ Texas Government Code, Section 662.009 (a).

⁵⁵⁴ Texas Government Code, Section 662.009 (b).

⁵⁵⁵ Texas Government Code, Section 662.009 (c).

⁵⁵⁶ State Auditor’s Office Technical Update Letter, No. 97-03 (1997).

⁵⁵⁷ Texas Government Code, Section 662.011 (a) and (b).

- Establish some holidays and allow each employee to take the remainder as “floating” holidays.
- Establish no holidays and allow each employee to take his or her holiday time off in the form of “floating” holidays that would be unique for each employee.⁵⁵⁸

Non-student employees who work 20 hours per week or more and are employed for a period of at least four-and-one-half months are eligible for paid holidays.⁵⁵⁹

Employees of institutions of higher education may be paid for national or state holidays if taking holiday compensatory time off would be disruptive to teaching, research, or other critical functions.⁵⁶⁰

Table 13-7 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Technical Updates related to holidays and institutions of higher education.

Table 13-7

| Holidays and Institutions of Higher Education Related State Auditor Resources ^a | | |
|--|---|-----------|
| Type | Topic | Reference |
| HR Question | Whether student employees of institutions of higher education may get paid leave for holidays. | 3/27/2000 |
| HR Question | Whether a university may create floating holidays in which each employee picks his or her holidays. | 9/13/1999 |
| Technical Update | Whether a university may create floating holidays in which each employee picks his or her holidays. | 00-02 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . Technical updates: http://sao.hr.state.tx.us/Rules/technicalupdates.html . | | |

Holiday Time Payment for Deceased Employees

Eight hours is to be added to the payment of the estate of a deceased state employee for each state and national holiday that is scheduled to fall within the period after the date of death and during which the employee could have used. To determine the period during which could have been used and the number of state or national holidays, the employee’s leave is allocated over the workdays after the employee’s death and eight hours is added as a state or a national holiday occurs during the period. Holiday pay for a part-time employee should be proportionate to the number of hours normally worked by the deceased employee.⁵⁶¹

⁵⁵⁸ State Auditor’s Office Technical Update Letter, No. 00-02 (1999).

⁵⁵⁹ Texas Government Code, Section 662.011 (c).

⁵⁶⁰ Texas Government Code, Section 662.007 (c).

⁵⁶¹ Texas Government Code, Section 661.035 (a) and (b).

Section 14
Family and Medical Leave

Family and Medical Leave Act Overview

The Family and Medical Leave Act (FMLA) as amended by the National Defense Authorization Act for fiscal year 2008 generally ensures that employees are able to take extended leaves of absence from work to handle family issues or illness without fear of being terminated from their jobs or being forced into a lower job upon their return.⁵⁶²

Additional Resources

Additional information on the Family and Medical Leave regulations can be found on the U.S. Department of Labor's Web site at:
http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_825/toc.htm.

The leave guaranteed by the FMLA is unpaid and employers can require the employee to provide a doctor's certification. However, state agencies and institutions of higher education can require an employee to use all annual and sick leave, prior to being placed on a leave without pay status.⁵⁶³

New Requirement

On November 17, 2008, the Department of Labor published the implementation rules for amendments to the Family and Medical Leave Act. These new rules included military family leave provisions that were included in the National Defense Authorization Act (Public Law 110-181). These regulations became final on January 16, 2009.

Coverage

The FMLA applies to all public agencies. This includes state, local, and federal employers; schools and institutions of higher education; and private-sector companies who employ 50 or more employees in 20 or more work weeks during the current or preceding calendar year.⁵⁶⁴

Family and Medical Leave Eligibility

Eligibility for family and medical leave is limited to employees who have worked for the State for at least 12 months. The 12 months of employment do not need to be consecutive or continuous. However, an agency or higher education institution does not have to include employment prior to a break in service of seven or more years unless the break is occasioned by the employee's fulfillment of his or her National Guard or Reserve military obligation (as protected under the Uniformed

⁵⁶² Title 29, Code of Federal Regulations, Section 825.100; and the National Defense Authorization Act, Public Law 110-181, Section 585 (January 2008).

⁵⁶³ Texas Government Code, Section 661.912 (b); and Title 29, Code of Federal Regulations, Section 825.207 (a) and (f).

⁵⁶⁴ Title 29, Code of Federal Regulations, Section 825.108; and Texas Government Code, Section 661.912 (a).

Services Employment and Reemployment Rights Act).⁵⁶⁵ In addition, the employee must have worked a minimum of 1,250 hours during the 12 months immediately preceding the start of leave.⁵⁶⁶

| New FMLA Requirement |
|---|
| The Family and Medical Leave Act regulations regarding a break in service were clarified. Employment prior to a continuous break in service of seven years or more need not be counted unless the break in service is due to an employee's fulfillment of military obligations. |

Eligible employees must first use all available and applicable paid vacation and sick leave while taking family and medical leave, with the exception of an employee who is receiving temporary disability benefits or workers' compensation benefits and is not required to use paid leave while receiving those benefits.⁵⁶⁷

For purposes of family and medical leave, the State is considered a single employer. Agencies should credit time worked for other state agencies when considering family and medical leave eligibility. Consequently, agencies should research any leave taken by the employee while previously employed with the State.

⁵⁶⁵ Title 29, Code of Federal Regulations, Section 825.110 (b).

⁵⁶⁶ Texas Government Code, Section 661.912 (a).

⁵⁶⁷ Texas Government Code, Section 661.912 (b).

Table 14-1 lists State Auditor’s Office’s Human Resources Questions-and-Answers related to family and medical leave eligibility.

Table 14-1

| Family and Medical Leave (FMLA) Eligibility Related State Auditor Resources ^a | | |
|--|--|------------|
| Type | Topic | Reference |
| HR Question | Whether state or federal paid leave counts toward family and medical leave. | 2/17/2009 |
| HR Question | Whether the parent of an adult child who has complications as a result of pregnancy is eligible for family and medical leave to care for the adult child. | 8/27/2001 |
| HR Question | Whether the host parent of a foreign exchange student is eligible for family and medical leave, and whether the host parent may use accrued sick leave to care for the foreign exchange student. | 6/25/2001 |
| HR Question | Whether an employee may take family and medical leave to care for an ill father-in-law or mother-in-law who resides in the same household. | 4/9/2001 |
| HR Question | Whether there is an age limit for a child whose care of which the employee wants to use family and medical leave. | 12/11/2000 |
| HR Question | Whether a state employee may take family and medical leave if the employee has worked less than 1,250 hours with one state agency but has several years of uninterrupted state service. | 7/17/2000 |
| HR Question | Whether a part-time employee who is unable to work 1,250 hours in a 12-month period is ineligible for family and medical leave. | 6/12/2000 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . | | |

Family and Medical Leave Entitlement

The FMLA provides all eligible employees a total of 12 weeks of unpaid leave during a 12-month period for one or more of the following reasons:

- The birth and subsequent care of a newborn child.
- The placement of a child into the home of an employee or with the employee for adoption or foster care.
- The need to care for a spouse, child, or parent with a serious health condition.
- A serious health condition that renders the employee unable to work.
- A qualifying exigency 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.

In cases where spouses are in employed by the same employer, they are limited to a combined total of 12-weeks of family and medical leave for the birth and care of a newborn, child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition. If the leave is

for the birth and care, or placement for adoption or foster care, it must conclude within 12 months of the birth or placement of the child.⁵⁶⁸ Family and medical leave may be used intermittently if required by a physician to address a serious illness. If the request to use intermittent leave is for a planned medical treatment, the employee must make a reasonable effort to schedule the treatment in a manner that does not unduly disrupt the employer's business operations.⁵⁶⁹ Employees requesting intermittent leave to care for a child that is a newborn, during adoption, or during foster care must get employer approval for the intermittent leave.⁵⁷⁰ State agencies and institutions of higher education may use any one of the following periods to administer the 12-week leave entitlement:

- A calendar year.
- Any fixed 12-month period such as a fiscal year or anniversary date to anniversary date.
- A 12-month period measured forward from the date an employee first uses family and medical leave.
- A rolling 12-month period measured backward from the date an employee uses any family and medical leave.⁵⁷¹

**Military Caregiver Leave -
Amount of Leave**

A "single 12-month period" begins on the first day that the eligible employee takes family and medical leave to care for a covered service member and ends 12 months after that date.

Source: Title 29, Code of Federal Regulations, Section 825.200 (f).

Family and Medical Leave Act New Leave Entitlements

Amendments to the FMLA created two new leave entitlements, which are known as the military family leave entitlements. These include: Military Caregiver Leave (also known as Covered Service Member Leave) and Qualifying Exigency Leave.

Military Caregiver Leave - Eligible employees may take up to 26 weeks of job-protected leave in a "single 12-month period" to care for a covered service member with a serious injury or illness.

Qualifying Exigency Leave - Eligible employees may take up to 12 weeks of job-protected leave in an applicable 12-month period for any qualifying exigency arising out of the active duty or call to active duty status of a spouse, son, daughter, or parent. Examples of a qualifying exigency include:

- Short-term deployment.
- Military events and related activities.
- Child care duties and school activities.
- Financial and legal arrangements.
- Counseling.
- Rest and recuperation.

⁵⁶⁸ Title 29, Code of Federal Regulations, Section 825.201 (b); and State Auditor's Office, Human Resource Questions-and-Answers, December 31, 2003.

⁵⁶⁹ Title 29, Code of Federal Regulations, Sections 825.202 and 825.203.

⁵⁷⁰ Title 29, Code of Federal Regulations, Section 825.202 (c).

⁵⁷¹ Title 29, Code of Federal Regulations, Section 825.200 (b).

- Post-deployment activities.
- Additional activities not encompassed in the other categories, but agreed to by the employer and the employee.

Military Caregiver Leave: Employers covered by these provisions must also grant an eligible employee who is a spouse, son, daughter, parent, or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, with a series injury or illness up to a total of 26 workweeks of unpaid leave during a “single 12-month period” to care for the service member.⁵⁷² This approach is required regardless of the method used by the employer to determine the employee’s 12 workweeks of leave entitlement for other family and medial qualifying reasons.⁵⁷³

Job Restoration and Maintenance of Health Benefits

An employee who takes family and medical leave must be returned to the same job or a job with equivalent status and pay.⁵⁷⁴ The use of family and medical leave by an employee cannot result in the loss of any employee health benefits that the employee earned or was entitled to before using family or medical leave. Furthermore, time out on such leave cannot be counted against the employee under a “no fault” attendance policy.

During the time an employee is out on FMLA leave, the employer must continue the employee’s health benefits during the absence.⁵⁷⁵ An employee who takes family and medical leave is still responsible for paying his or her portion of health insurance premiums.⁵⁷⁶

For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if for some reason the employer’s business activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks (for example, a school closing two weeks for the Christmas/New Year holiday or the summer vacation), the days the employer’s activities have ceased do not count against the employee’s FMLA leave entitlement.⁵⁷⁷

An employee does not earn state service credit, annual leave, or sick leave for any full calendar months of leave without pay while on family and medical leave.⁵⁷⁸

Notice and Certification

Employee Notice

If the need for family and medical leave is foreseeable, an employee seeking to use family and medical leave is required to provide a 30-day advance notice of the need for the leave.⁵⁷⁹ If notice

⁵⁷² Title 29, Code of Federal Regulations, Section 825.100 (a).

⁵⁷³ Title 29, Code of Federal Regulations, Section 825.127 (c).

⁵⁷⁴ Title 29, Code of Federal Regulations, Section 825.214.

⁵⁷⁵ Title 29, Code of Federal Regulations, Section 825.209.

⁵⁷⁶ Title 29, Code of Federal Regulations, Section 825.210.

⁵⁷⁷ Title 29, Code of Federal Regulations, Section 825.200 (h).

⁵⁷⁸ Texas Government Code, Section 661.909 (f).

⁵⁷⁹ Title 29, Code of Federal Regulations, Section 825.302 (a).

cannot be provided 30 days in advance, the employee should notify his or her employer as soon as practicable. In most cases, this means the same day or the next business day; however, the determination of when an employee could practicably provide notice should take into consideration the individual facts and circumstances.⁵⁸⁰

In order for the employer to determine whether family and medical leave applies to a leave request, the employee must provide sufficient information regarding the nature of the request. If an employee is seeking leave for the first time for a family and medical qualifying event, the employee does not need to expressly assert his or her family and medical leave rights or even mention family and medical leave. The employee's verbal request may be sufficient to make the employer aware that the employee may qualify for family and medical leave.

However, when an employee seeks leave due to a family and medical qualifying reason for which the employer has previously provided the employee with family and medical leave protection, the employee must specifically reference either the qualifying reason for the leave or the need for family and medical leave.⁵⁸¹

Unless unusual circumstances exist, an employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave.⁵⁸²

Employer Notice

State agencies and institutions of higher education are required to post a notice in a location where it can be seen by employees and applicants that explains an employee's rights and responsibilities under the FMLA. Furthermore, employers must either include a general notice in their employee handbooks or provide other written guidance to employees concerning family and medical leave benefits. Also, the notice should be distributed to each new employee upon hiring.⁵⁸³

When an employee requests family and medical leave or when the employer acquires knowledge that an employee's leave may be for a family and medical leave qualifying reason, the employer must notify the employee verbally or in writing of the employee's eligibility to take family and medical leave within five business days, absent extenuating circumstances.⁵⁸⁴ The employer's written notice must detail the specific expectations for and obligations of the employee and explain any consequences of a failure to meet the obligations.⁵⁸⁵

Certification

A state agency or institution of higher education may require that an employee's request for leave due to a serious health condition affecting the employee or a covered family member be supported by a health care provider's certification.⁵⁸⁶ The employer may also request, at the employer's expense, second and third medical opinions.⁵⁸⁷ In addition, the employer may require periodic recertification

⁵⁸⁰ Title 29, Code of Federal Regulations, Section 825.302 (b).

⁵⁸¹ Title 29, Code of Federal Regulations, Section 825.302 (c).

⁵⁸² Title 29, Code of Federal Regulations, Section 825.302 (d).

⁵⁸³ Title 29, Code of Federal Regulations, Section 825.300 (a).

⁵⁸⁴ Title 29, Code of Federal Regulations, Section 825.300 (b).

⁵⁸⁵ Title 29, Code of Federal Regulations, Section 825.300 (c) and (d).

⁵⁸⁶ Title 29, Code of Federal Regulations, Section 825.305 (a).

⁵⁸⁷ Title 29, Code of Federal Regulations, Section 825.307 (b) and (c).

of a serious health condition.⁵⁸⁸ An employer may use a health care provider, a human resource professional, a leave administrator, or a management official – but not the employee’s direct supervisor to authenticate or clarify a medical certification of a serious health condition.⁵⁸⁹ An employer may have a uniformly-applied policy requiring employees returning from leave for their own serious health conditions to submit a certification that they are able to resume work.⁵⁹⁰ If reasonable safety concerns exist, an employer may, under certain circumstances, require such a certification for employees returning from intermittent family and medical leave.⁵⁹¹

Table 14-2 lists State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to general family and medical leave issues.

Table 14-2

| Family and Medical Leave (FMLA), General Information Related State Auditor Resources ^a | | |
|--|--|------------|
| Type | Topic | Reference |
| HR Question | Whether a parent must take all family and medical leave at once after the birth of a child. | 4/4/2005 |
| HR Question | Whether a husband and wife who both work for the State at different agencies each receive 12 weeks of family and medical leave for the birth of a child. | 12/31/2003 |
| HR Question | Related to when family and medical leave must be exhausted for the birth of a child or the placement of a child for adoption or foster care. | 12/31/2002 |
| HR Question | Related to information on how to apply Family Medical Leave Act, Americans with Disabilities Act and Worker’s Compensation leave together. | 1/15/2001 |
| HR Question | Whether a holiday and/or business closing day that occurs while an employee is out on family and medical leave counts against his or her 12 week entitlement. | 11/6/2000 |
| HR Question | Whether an employee may combine parental leave with family and medical leave for the birth of a natural child or the adoption or foster care placement of a child. | 7/26/1999 |
| Leave Interpretation | Related to the agency's responsibility to designate leave as family and medical leave. | 97-06 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . Leave interpretations: http://sao.hr.state.tx.us/Rules/leaveinterpretations.html . | | |

Family and Medical Leave and the Use of State Paid Leave

Annual leave, sick leave, state compensatory time, administrative leave, and banked holiday time are considered state benefits and can be counted toward an employee’s 12- week FMLA entitlement.⁵⁹²

⁵⁸⁸ Title 29, Code of Federal Regulations, Section 825.308.

⁵⁸⁹ Title 29, Code of Federal Regulations, Section 825.307 (a).

⁵⁹⁰ Title 29, Code of Federal Regulations, Section 825.312 (a).

⁵⁹¹ Title 29, Code of Federal Regulations, Section 825.312 (f).

⁵⁹² Title 29, Code of Federal Regulations, Sections 553.25 and 553.28.

Employees on workers' compensation or receiving temporary disability benefits cannot be required to use, but may elect to use, paid leave prior to taking unpaid family and medical leave.⁵⁹³

In addition, accrued Fair Labor Standard Act overtime for nonexempt employees may be counted against the 12-week FMLA entitlement. If an employee requests and is permitted to use accrued Fair Labor Standards Act compensatory time to receive pay for time taken off for an FMLA reason, or if the employer requires accrued Fair Labor Standards Act compensatory time be taken, the compensatory time taken may be counted against the employee's FMLA leave entitlement.⁵⁹⁴ Therefore, any of the state and federal paid leave options (for example, annual leave, sick leave, state compensatory time, and Fair Labor Standards compensatory time) could be counted toward an employee's 12-week FMLA entitlement.⁵⁹⁵

Sick leave may be used in conjunction with family and medical leave when a child under the age of three is adopted, regardless of whether the child is ill at the time of adoption. However, a state employee on family and medical leave who is the father of a child may use his sick leave only if the child is ill due to childbirth or to care for his spouse while she is recovering from labor and delivery.⁵⁹⁶

⁵⁹³ Texas Government Code, Section 661.912 (b); and Opinion, Texas Office of the Attorney General, No. JC-0040 (1999).

⁵⁹⁴ Title 29, Code of Federal Regulations, Section 825.207 (f).

⁵⁹⁵ State Auditor's Office, Human Resource Questions-and-Answers, February 17, 2009.

⁵⁹⁶ State Auditor's Office Leave Interpretation Letter, No. 97-01 (1998).

Table 14-3 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to the use of paid leave and family and medical leave.

Table 14-3

| Family and Medical Leave (FMLA) and the Use of Paid Leave Related State Auditor Resources ^a | | |
|--|---|------------|
| Type | Topic | Reference |
| HR Question | Related to what state paid leave counts towards family and medical leave when an employee has a FMLA-qualifying event and requests paid leave. | 10/31/2002 |
| HR Question | Whether time that an employee would not have been required to report for duty is counted against the employee’s FMLA leave entitlement. | 9/1/2002 |
| HR Question | Whether an employee who has accrued sick and annual leave may choose which time he will exhaust while out on family and medical leave. | 10/30/2000 |
| HR Question | Whether FMLA eligible employees may use compensatory or holiday time as part of their FMLA entitlement. | 6/1/1999 |
| Leave Interpretation | Related to the father's use of sick leave and Family and Medical Leave (FMLA) in the event of the birth of a child. | 97-01 |
| Leave Interpretation | Related to the clarification of the rules related to the use of paid leave before unpaid leave for a Family and Medical Leave Act (FMLA) covered event. | 96-03 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . Leave interpretations: http://sao.hr.state.tx.us/Rules/leaveinterpretations.html . | | |

Parental Leave

Employees who do not qualify for family and medical leave are entitled to parental leave for the birth of a child or the adoption or foster care placement of a child under the age of three. To be eligible for parental leave, an employee does not meet the eligibility requirements for family and medical leave because:

- The employee has worked for the State of Texas for less than 12 months, or
- The employee has worked fewer than 1,250 hours during the 12-month period preceding the leave.

In contrast, an employee must have 12 months and 1,250 hours of state service to qualify for family and medical leave. Parental leave cannot exceed 12 weeks. The employee must first use all available and applicable paid vacation and sick leave while taking the leave, with the remainder of the leave unpaid. Parental leave is limited to and begins on the date of the birth of a natural child of the employee or the adoption by or foster care placement with the employee of a child younger than three years of age.⁵⁹⁷

An employee can only meet the requirements for parental leave or family and medical leave, but not both at the same time. Circumstances can exist that would allow an employee to take parental leave,

⁵⁹⁷ Texas Government Code, Section 661.913.

return to duty, and subsequently be eligible for family and medical leave. The employee could then take family and medical for the birth, adoption, or foster placement of a child or for another reason.⁵⁹⁸

Table 14-4 provides a list of Attorney General resources related to parental leave in the state.

Table 14-4

| Parental Leave Related Attorney General Resources ^a | |
|--|--|
| Opinion Number | Topic |
| JM-337 | Whether a state employee is entitled to paternity leave. |
| ^a Detailed references can be found at http://www.oag.state.tx.us/opin/opindex.shtml . | |

⁵⁹⁸ State Auditor's Office, Human Resource Question-and-Answer, July 26, 1999.

Section 15 Military Leave

Military Leave Overview

A state employee who is called to active duty or authorized military training is entitled to a paid leave of absence of 15 workdays in each federal fiscal year (October 1 through September 30) without loss of pay or benefits.⁵⁹⁹ State employees are eligible for military leave to accommodate:

- Authorized training or duty for the state's military forces, a reserve branch of the U.S. Armed Forces, or state or federally authorized urban search and rescue team.⁶⁰⁰
- National emergency activation for members of a reserve branch of the U.S. Armed Forces.⁶⁰¹

Practical Guide to Common Leave Types - Military Leave

Additional information on military leave provisions, including specific definitions and examples of how to treat various situations in regards to military leave can be found in the State Auditor's Office's *Practical Guide to Common Leave Types* (Report No. 08-705, February 2008). The complete guide can be found at:
<http://sao.hr.state.tx.us/Rules/leaveguide.html>.

The 15 days of paid leave need not be consecutive. These days are considered business days, not calendar days.⁶⁰² After exhausting the 15 days, the employee may use accrued annual leave or be placed on leave without pay status (LWOP) (or a combination of the two) for the remainder of the active duty period.⁶⁰³ State agencies cannot force employees to use their annual and sick leave accruals. However, employees may choose to use all or some portion of annual leave or state compensatory time prior to going on leave without pay.

A state employee who is a member of the state military forces, a reserve component of the U.S. Armed Forces, or a member of a state or federally authorized urban search and rescue team and who is ordered to duty by the proper authority is entitled, when relieved from duty, to be restored to the position that the employee held when ordered to duty.⁶⁰⁴

All deployed military members are entitled to an unpaid leave of absence from their state positions, with no loss of years-of-service accrual and secure a return to their former positions or a position with similar seniority, status, and pay upon return to duty.⁶⁰⁵

Adjusted Work Schedule for Military Leave

State agencies and institutions of higher education are required to adjust the work schedule of an employee who is a member of the Texas National Guard or United States Armed Forces Reserve so that two of the employee's days off each month coincide with two days of military duty.⁶⁰⁶

⁵⁹⁹ Texas Government Code, Section 431.005 (a); and State Auditor's Office Leave Interpretation Letter, No. 98-03 (1998).

⁶⁰⁰ Texas Government Code, Section 431.005 (c).

⁶⁰¹ Texas Government Code, Section 661.904.

⁶⁰² Opinion, Texas Office of the Attorney General, No. C-679 (1966).

⁶⁰³ State Auditor's Office Leave Interpretation Letter, No. 79-01 (1979).

⁶⁰⁴ Texas Government Code, Section 431.005 (c).

⁶⁰⁵ Texas Government Code, Section 613.002.

⁶⁰⁶ Texas Government Code, Section 658.008.

Call to National Duty

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 receive emergency leave without loss of military or annual leave.⁶⁰⁷ This leave will be provided without a deduction in salary.⁶⁰⁸

A member of the National Guard or any reserve branch of the U.S. Armed Forces called to federal active duty during a national emergency is entitled to an unpaid leave of absence after exhausting the 15 days of paid military leave. The employee retains any accrued sick or annual leave. The employee does accrue annual leave, sick leave and state service credit. The employee may use any accrued annual 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.⁶⁰⁹

New Requirement

The 81st Legislature passed legislation allowing a state employee to accrue vacation and sick leave while on an unpaid military leave of absence. Accruals are credited to the state employee on his or her return to state employment.

Benefits and Protections for State Service

A member of the state military forces who is ordered to active state duty by the Governor or by other proper authority under the law of this State is entitled to the same benefits and protections provided:

- To persons performing service in the uniformed services by 38 United States Code, Sections 4301–4313 and Sections 4316–4319, as that law existed on April 1, 2003; and
- To persons in the military service of the United States by 50, Appendix United States Code, Sections 501–536, 560, and 580–594, as that law existed on April 1, 2003.⁶¹⁰

Related State Auditor's Office Resources

Table 15-1 provides a list of State Auditor's Office's Human Resources Questions-and-Answers and Leave Interpretations related to military leave.

⁶⁰⁷ Texas Government Code, Section 431.0825.

⁶⁰⁸ Texas Government Code, Section 661.903.

⁶⁰⁹ Texas Government Code, Section 661.904 (f), as amended by SB 833 (81st Legislature, Regular Session); and Opinion, Texas Office of the Attorney General, No. MW-109 (1979).

⁶¹⁰ Texas Government Code, Section 431.017.

Table 15-1

| Military Leave Related State Auditor Resources ^a | | |
|--|--|-----------|
| Type | Topic | Reference |
| HR Question | Whether an employee who works four 10-hour days is entitled to 150 hours (15 10-hour days) of military leave as opposed to 120 hours (12 8-hour days). | 9/17/2001 |
| HR Question | Whether graduate assistants are eligible for paid military leave. | 7/9/2001 |
| HR Question | Whether an agency is required to grant weekend time off for military leave to an employee who works various shifts, including the weekend. | 5/29/2001 |
| HR Question | Whether an employee who has used their 15 days of military leave and has documentation for another request for military training may use compensatory time instead of annual leave or leave without pay. | 8/21/2000 |
| HR Question | Whether military leave for part-time employees is proportional to their hours worked. | 7/31/1998 |
| Leave Interpretation | Whether an employee may receive paid leave for duty with the National Guard if the leave exceeds 15 days. | 98-06 |
| Leave Interpretation | Whether an employee is entitled to another 15 days of paid military leave if the length of active service crosses two federal fiscal years. | 98-03 |
| Leave Interpretation | Military leave and its relation to sick leave, annual leave, and leave without pay. | 79-01 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . Leave interpretations: http://sao.hr.state.tx.us/Rules/leaveinterpretations.html . | | |

Military Pay Differentials

The administrative head of a state agency shall grant emergency leave to provide a pay differential if an employee's military pay is less than the employee's state gross pay. The combination of military pay and emergency leave may not exceed the employee's actual state gross pay. Pay received while assigned to a combat zone, hardship duty pay, and family separation pay is excluded when computing military differential pay.⁶¹¹

The agency should inform activated state employees of the agency's intent to use emergency leave to supplement their military pay to raise it to a rate comparable to the state pay received prior to activation.

Only state employees called to active duty in support of a national emergency or Homeland Security mission (under U.S. Code, Title 10 or Title 32) and whose military pay is less than their gross state pay are eligible for differential pay. Service members

Military Pay Differential Guidelines

The State Auditor's Office is required to establish uniform guidelines for state agencies in determining the amount of emergency leave to grant to deployed military members for the purposes of providing differential pay. These guidelines, available online, include specific definitions and examples of how to treat various situations in regards to military pay differentials.

The guidelines are available at:
http://sao.hr.state.tx.us/WhatsHappening/Military_guidelines.pdf.

⁶¹¹ Texas Government Code, Section 661.9041.

involved in routine military training or who are attending military schools are not entitled to this differential pay.⁶¹²

If emergency leave is granted to state employees activated for military duty, those employees will accrue sick and vacation leave each month they receive pay from the state agency. The sick and vacation hours will be accrued but not posted until they return to full employment with the state agency.⁶¹³

Determining Eligibility

To determine eligibility, state agencies should request a copy of the employees' Military Leave and Earnings Statements each month that emergency leave is going to be granted to look at the total entitlement of military pay received by the service members. The service members' pay may change during the period of active duty because of a promotion or change in entitlements, an increase in their pay, or the reduction or ceasing of the need for state military differential pay.⁶¹⁴

Information on the Leave and Earnings Statements is available at <http://www.dfas.mil/militarypay/militaryemploymentverification.html> (see Field 20 Total Entitlements).

Military Qualifying Exigency Leave

On January 16, 2009, the Family and Medical Leave Act (FMLA) was amended to allow eligible employees to take up to 12 weeks of job-protected leave in the applicable 12-month period for any “qualifying exigency” arising out of the active duty or call to active duty status of a spouse, son, daughter, or parent.

In addition, the amendment to the FMLA also allows eligible employees to take up to 26 weeks of job-protected leave in a single 12-month period to care for a covered service member with a serious injury or illness. These two new types of FMLA leave are known as the military family leave entitlements. For additional information regarding these new FMLA leave types, see Section 12 of this human resources management statutes.⁶¹⁵

Additional Information

Table 15-2 on the next page lists resources from the Office of Attorney General related to military leave.

⁶¹² *Military Pay Differential Guidelines*, State Auditor’s Office, October 4, 2005.

⁶¹³ Texas Government Code, Sections 661.152 (e) and 661.202 (k).

⁶¹⁴ *Military Pay Differential Guidelines*, State Auditor’s Office, October 4, 2005.

⁶¹⁵ Title 29, Code of Federal Regulations, Sections 825.122 and 825.124.

Table 15-2

| Military Service Related Attorney General Resources ^a | |
|---|---|
| Opinion Number | Topic |
| C-679 | Whether the 15-day leave of absence allowed for purposes of military service training or duty is dependent upon such training or duty being for a period of 15 consecutive days, and related questions. |
| DM-422 | Regarding the applicability of specific statutes, which relate to veterans' employment preference. |
| H-941 | Regarding the vacation entitlement of state employees who return to state employment after service in the armed forces. |
| LO 94-7 | Whether a city may deny military leave to an employee called up by the Texas National Guard for special service. |
| LO 90-96 | Whether a state or district officer called into military service may waive his salary and emoluments and authorize their payment to any person temporarily serving in his office. |
| M-886 | Whether a city fireman, upon returning from military leave, is entitled to credit for pay purposes for that time he served in military service. |
| MW-29 | Regarding the rights of the state employee on active duty for training with the Texas National Guard. |
| MW-109 | Regarding the rights of state employees to accrued sick leave when returning to state service after military leave. |
| ^a Detailed references can be found at: Letter opinions (LO): http://www.oag.state.tx.us/opin/op_letters.shtml . Opinions: http://www.oag.state.tx.us/opin/opindex.shtml . | |

Related Legislation

Table 15-3 lists human resources-related bills that were passed by the 81st Legislature. This may not be a complete list and should be used only as a summary of general issues on military leave that were addressed during the session.

Table 15-3

| Military Leave Related Legislation (81st Legislature) ^a | |
|--|--|
| Bill Number | Summary |
| SB 833 | Relating to the accrual of vacation and sick leave for certain state employees during a military leave of absence. |
| ^a Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at www.capitol.state.tx.us . | |

Section 16
Military Employment and Re-employment Rights

The Uniformed Services Employment and Re-employment Rights Act (USERRA)

The Uniformed Services Employment and Re-employment Rights Act (USERRA) prohibits discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services. USERRA prohibits an employer from denying any benefit of employment on the basis of an individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

The Act protects the right of veterans, reservists, National Guard members, and certain other members of the uniformed services to reclaim their civilian employment after being absent due to military service or training. The U.S. Department of Labor Veteran's Employment and Training Service (VETS) administers USERRA.

Eligible individuals may be absent from work for military duty and retain re-employment rights for a cumulative time of five years. Exceptions to the five-year limit include initial enlistments lasting more than five years, periodic National Guard and Reserve training duty, and involuntary active duty extensions and recalls, especially during a time of national emergency. Re-employment protection does not depend on the timing, frequency, duration, or nature of an individual's service as long as the basic eligibility criteria are met.

USERRA provides protection for disabled veterans, requiring employers to make reasonable efforts to accommodate the disability. Service members recovering from injuries received during service or training may have up to two years from the date of completion of service to return to their jobs or apply for re-employment.⁶¹⁶

Health and Pension Plan Coverage

Under USERRA, individuals performing military duty of more than 30 days may elect to continue employer-sponsored health care for up to 24 months; however, they may be required to pay up to 102 percent of the full premium. For military service of less than 31 days, health care coverage is provided as if the service member had remained employed. USERRA also provides specific protection related to eligibility and participation in pension plans.⁶¹⁷

Returning Service Members

Returning service-members are re-employed in the job that they would have attained had they not been absent for military service under USERRA, with the same seniority, status, and pay, as well as

FMLA Military Family Leave Update

The Family and Medical Leave Act (FMLA) was amended on January 16, 2009, to allow eligible employees to take up to 12 weeks of job-protected leave in the applicable 12-month period for any qualifying exigency arising out of the active duty or call to active duty status of a spouse, son, daughter, or parent.

In addition, the amendment also allows eligible employees to take up to 26 weeks of job-protected leave in a single 12-month period to care for a covered service member with a serious injury or illness.

These two new types of FMLA leave are known as the military family leave entitlements. (See Section 12 and Section 15 of this Human Resources Statutes Inventory for more information on FMLA.)

Source: Title 29, Code of Federal Regulations, Section 825.112.

⁶¹⁶ *Non-Technical Guide to the Uniform Services Employment and Reemployment Rights Act (USERRA) April 2005*, The U.S. Department of Labor Web site:http://www.dol.gov/vets/programs/userra/Right_Act4_2005.pdf.

⁶¹⁷ Title 38, United States Code, Sections 4317 and 4318.

other rights and benefits determined by seniority. Employers are required to make reasonable efforts (such as training or retraining) to enable returning service members to refresh or upgrade their skills to help them qualify for re-employment. The law also provides for alternative re-employment positions if the service member cannot qualify for some positions.

The period in which an individual has to apply for re-employment or report back to work after military service is based on the time spent on military duty. For military service of less than 31 days, the service member 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 eight-hour rest period. For military service of more than 30 days but less than 181 days, the service member must submit an application for re-employment within 14 days of release from service. For military service of more than 180 days, an application for re-employment must be submitted within 90 days of release from service. Reporting and application deadlines are extended for up to two years for persons who are hospitalized or convalescing.

Veterans' Employment and Training Service (VETS)

For more information about U.S. Department of Labor employment and training programs for veterans, go to the U.S. Department of Labor's Web site at: <http://www.dol.gov/vets/programs/main.html>.

In addition, USERRA requires that service members provide advance written or verbal notice to their employers for all military duty unless giving notice is impossible, unreasonable, or precluded by military necessity. An employee should provide notice as far in advance as is reasonable under the circumstances. While performing military duty, service members are able (but are not required) to use accrued annual leave.⁶¹⁸

State Re-employment Following Military Service

State law provides that an employee who separates from state service to enlist in the U.S. Armed Forces, Texas State Guard, Texas National Guard, or federal military reserves is entitled to restoration of employment.

The employee is entitled to be re-employed in the same position held at the time when he or she began military service or in a position of similar seniority, status, and pay.

To be eligible for re-employment at the conclusion of military service, the employee must be honorably discharged no later than five years after induction, enlistment, or call to duty and must be physically and mentally qualified to perform the duties of the job.⁶¹⁹

Applications for Re-employment

Eligible veterans must apply for reinstatement within 90 days after discharge or release from service. The application must be made to the agency or institution of higher education head and must include evidence of discharge.⁶²⁰

Re-employment to another Position Following Military Service

If a veteran is unable to perform the duties of the previous job due to a service-related disability, the veteran is entitled to be restored to a position that he or she can perform with similar (same or nearest)

⁶¹⁸ Title 38, United States Code, Sections 4301-4334.

⁶¹⁹ Texas Government Code, Section 613.002.

⁶²⁰ Texas Government Code, Section 613.004.

seniority, status, and pay.⁶²¹ Veterans whose employment has been restored may not be dismissed without cause within a year of their reinstatement.⁶²²

Entitlement to Retirement or Other Benefits

An individual re-employed is considered to have been on furlough or leave of absence during the time that the individual was in military service. As such, the employee may participate in retirement or other benefits to which a public employee is or may be entitled.⁶²³

Veteran's Employment Preference

An individual who qualifies for a veteran's employment preference is entitled to a preference in employment over other applicants for the same position who do not have a greater qualification.⁶²⁴ A veteran is defined as an individual who served in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard or in an auxiliary service of one of those branches of the U.S. armed forces.

A veteran qualifies for a veteran's employment preference if the veteran meets all of the following conditions:

- Served in the military for not less than 90 consecutive days during a national emergency declared in accordance with federal law or was discharged from military service for an established service-connected disability.
- Was honorably discharged from military service.
- Is competent.⁶²⁵

Individuals entitled to veteran's employment preference are not disqualified from holding positions with state agencies or institutions of higher education because of age or an established service-connected disability if the age or disability does not make the individual incompetent to perform the duties of the position.⁶²⁶

Veteran's employment preference does not apply to private secretaries or deputies of state officials, nor does it apply to people holding a strictly confidential relationship to the appointing or employing official.⁶²⁷

Agencies and institutions of higher education are required to provide to the Texas Workforce Commission information regarding an open position that is subject to the hiring preference.⁶²⁸

⁶²¹ Texas Government Code, Section 613.003.

⁶²² Texas Government Code, Section 613.005.

⁶²³ Texas Government Code, Section 613.006.

⁶²⁴ Texas Government Code, Section 657.003 (a).

⁶²⁵ Texas Government Code, Section 657.002 (a).

⁶²⁶ Texas Government Code, Section 657.003 (d).

⁶²⁷ Texas Government Code, Section 657.003 (e).

⁶²⁸ Texas Government Code, Section 657.009(a).

Service-Connected Disabilities

An individual who has an established service-connected disability and who qualifies for a veteran's employment preference is entitled to preference for employment or appointment in a position for which a competitive examination is not held over all other applicants for the same position without a service-connected disability and who do not have a greater qualifications.⁶²⁹ An "established service connected disability" means a disability that has been or may be established by official records.⁶³⁰

Spouse and Orphans

A veteran's surviving spouse who has not remarried and an orphan of a veteran qualify for a veteran's employment preference if all of the following conditions are met:

- The veteran was killed while on active duty.
- The veteran served in the military for not less than 90 consecutive days during a national emergency declared in accordance with federal law.
- The spouse or orphan is competent.⁶³¹

Requirements for Public Entities

An individual whose duty is to appoint or employ individuals for the State is required to give preference in hiring to individuals entitled to a veteran's employment preference so that at least 40 percent of the employees are selected from individuals given that preference. In filling vacancies, a public entity that does not have 40 percent of its employees who are entitled to the preference is required to give preference to individuals entitled to a veteran's employment preference until at least 40 percent of its employees are entitled to the preference.

When possible, a public entity is required to give 10 percent of the preferences it grants to qualified veterans discharged from the armed services of the United States within the preceding 18 months. If at least 40 percent of an agency's employees are entitled to the preference, the agency is exempt from employment preference requirements.⁶³²

State Employment Forms

All state agency employment forms prescribed by the Texas Workforce Commission must include a statement regarding the veteran's employment preference until the agency workforce is composed of at least 40 percent veterans.⁶³³

Employment Investigation

Prior to hiring an individual who qualifies for veteran's employment preference, a state agency or institution of higher education shall investigate the qualifications of the applicant for the position. If the applicant is of good moral character and can perform the duties of the position, the officer, chief

⁶²⁹ Texas Government Code, Section 657.003 (b).

⁶³⁰ Texas Government Code, Section 657.001.

⁶³¹ Texas Government Code, Section 657.002 (b).

⁶³² Texas Government Code, Section 657.004.

⁶³³ Texas Government Code, Section 656.027.

executive, or individual whose duty it is to appoint or employ shall appoint or employ the applicant for the position.

An applicant with an established service-connected disability shall furnish the official records to the individual whose duty is to fill the position.⁶³⁴

Competitive Examinations

If an agency or institution of higher education requires competitive examinations as part of a civil service plan when selecting or promoting an employee, an individual is entitled to a veteran's employment preference if the individual has received at least the minimum required score for the test. In such situations, the individual is entitled to have additional points added to the test score as provided by statute.⁶³⁵

Reductions in Force

An individual who is entitled to a hiring preference is also entitled to a preference in retaining employment if the public entity that employs the individual reduces its workforce. This applies only to the extent that a reduction in workforce by an employing public entity involves other employees of a similar type or classification.⁶³⁶

Appealing Employment Decisions under Veteran's Preference

An individual entitled to a veteran's employment preference that is aggrieved by a decision of a state agency or institution of higher education relating to hiring of the individual, or relating to the retaining of the individual if the entity reduces its workforce, may appeal the decision by filing a written complaint with the governing body of the employer.⁶³⁷

The governing body that receives a written complaint is required to respond to the complaint not later than the 15th business day after it receives the complaint. The governing body may render a different hiring decision than the decision that is the subject of the complaint if the governing body determines that the veteran's preference was not applied.⁶³⁸ The governing body should resolve the complaint rather than delegating the decision making process to staff.⁶³⁹

The governing body can acknowledge receipt of the complaint within 15 business days and assist in investigating the complaint. Further, the complaint does not have to be resolved within 15 business days, but it can be an agenda item at the governing body's next scheduled board meeting.⁶⁴⁰ Deliberation of the complaint can be considered in a closed meeting followed by final action in an open meeting.⁶⁴¹ A similar open meetings opinion by the Texas Office of the Attorney General

⁶³⁴ Texas Government Code, Section 657.005.

⁶³⁵ Texas Government Code, Section 657.003 (c).

⁶³⁶ Texas Government Code, Section 657.007.

⁶³⁷ Texas Government Code, Section 657.010 (a).

⁶³⁸ Texas Government Code, Section 657.010 (b).

⁶³⁹ *Moody v. Texas Water Commission*, 373 S.W.2d 793 (3rd Court of Civil Appeals - Austin 1963); and Texas Office of the Attorney General Opinion No. H-884 (1976).

⁶⁴⁰ *Railroad Commission of Texas v. Lone Star Gas Co.*, 656 S.W.2d 421 (Texas Supreme Court, 1983).

⁶⁴¹ Texas Government Code, Sections 551.074 (a) (1) and 551.102.

suggests that the non-employee complainant is not allowed to be present in the closed meeting nor is the non-employee complainant entitled to request an open meeting.⁶⁴²

State agencies and institutions of higher education without governing bodies must determine whether these provisions do not apply or create a complaint process through some authority that was not involved in the disputed hiring decision. The alternative approach could be to address the complaint through the human resources director, an ombudsman, an ethics advisor, any other review by a detached, neutral party.

Veteran's Preference Reporting Requirements

State agencies and institutions of higher education must file quarterly reports with the Comptroller of Public Accounts that state:

- The percentage of the total number of employees hired during the reporting period that are entitled to a preference.
- The percentage of the total number of employees who are entitled to a preference.
- The number of complaints filed with the governing body during that quarter and the number of complaints resolved by the governing body.⁶⁴³

Annually, the Comptroller of Public Accounts files a report with the Legislature that compiles and analyzes information that the Comptroller of Public Accounts received from agencies and institutions of higher education quarterly reports.⁶⁴⁴

⁶⁴² Texas Office of the Attorney General Opinion, No. GA-0511 (2006); and Texas Government Code, Section 551.074 (b).

⁶⁴³ Texas Government Code, Section 657.008 (a).

⁶⁴⁴ Texas Government Code, Section 657.008 (b).

Section 17

Insurance Programs

Insurance Overview

The State of Texas provides a comprehensive benefits program for employees in state agencies and institutions of higher education. Health insurance for most employees is available through the Employees Retirement System (ERS). Exceptions include employees of the University of Texas and Texas A&M University systems, which provide their own insurance programs for employees.⁶⁴⁵

In addition to health insurance, state employees have access to other types of insurance such as dental, life, supplemental life, dependent life, short- and long-term disability insurance, accidental death and dismemberment, and flexible health and dependent care savings accounts. Although the majority of these programs are paid for by the employee, the State negotiates and coordinates benefits for which the employees may participate.

Detailed information on state insurance programs is available through the ERS Web site at www.ers.state.tx.us.

Employee Insurance Benefits

The Texas Employees Group Benefits Program is intended to provide health, life, and accident insurance benefits to all employees of the State and their dependents.⁶⁴⁶ Except for the conditions discussed in the Texas Insurance Code, no employee may be denied coverage unless the employee waives this coverage in writing by demonstrating that the employee is covered by another health benefit plan that provides substantially equivalent coverage or is eligible for benefits under the TRICARE Military Health System.⁶⁴⁷

There are two types of medical plans in the Group Benefits Program: HealthSelect and health maintenance organizations (HMOs). When employees enroll in either of these plans, they automatically receive a basic group term life insurance policy paid for by the State.

Waiting Period for Health Insurance Coverage

New employees' eligibility for health insurance begins on the first day of the calendar month that begins after the 90th day after the date the employee performs services for a state agency or is qualified for and begins to hold elected or appointed office.⁶⁴⁸

Dependent Coverage

An employee or retiree can secure for his or her dependents any uniform coverage provided for employees by the Texas Employees Group Benefits Program. A dependent of an active or retired employee includes:

⁶⁴⁵ Texas Insurance Code, Section 1551.006 (b).

⁶⁴⁶ Texas Insurance Code, Section 1551.002 (1).

⁶⁴⁷ Texas Insurance Code, Sections 1551.104 and 1551.1045.

⁶⁴⁸ Texas Insurance Code, Section 1551.1055 (a).

- A spouse.
- An unmarried child under the age of 25 years.
- A child of any age who the ERS Board of Trustees determines lives with or whose care is provided by the employee on a regular basis if:
 - ♦ The child is mentally retarded or physically incapacitated to the extent that the child is dependent on the employee for care or support, as determined by the ERS Board of Trustees;
 - ♦ The child's coverage under the Texas Employees Group Benefits Act that has not lapsed; and
 - ♦ The child is at least 25 years old and was enrolled as a participant in the employee's health benefits coverage under the State's group benefits program on the date of his or her 25th birthday.
- A ward, as defined by Texas Probate Code, Section 601.⁶⁴⁹

An unmarried child who meets the definition of dependent for the purposes of health benefit coverage under the Texas Employees Group Benefits Act and whose coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) has expired may be eligible for health and dental coverage indefinitely as a Former COBRA Unmarried Child.

A child, for the purposes of dependent coverage includes:

- A natural child, adopted child, stepchild, or foster child.
- A child who is related by blood or marriage and was claimed as a dependent on the federal income tax return of an individual who is eligible to participate in the group benefits program. The child must be claimed as a dependent on the federal income tax return (1) for the calendar year preceding the plan year in which the child is first enrolled as a dependent and (2) for each subsequent year in which the child is enrolled as a dependent.⁶⁵⁰ This requirement does not apply if:
 - ♦ The child is born in the year in which the child is first enrolled; or
 - ♦ The participant can demonstrate good cause for not claiming the child as a dependent in the preceding calendar year.⁶⁵¹

| New Requirement |
|--|
| <p>The 81st Legislature passed legislation modifying the definition of a dependent for the purposes of dependent insurance coverage.</p> |

⁶⁴⁹ Texas Insurance Code, Section 1551.004 (a).

⁶⁵⁰ Texas Insurance Code, Section 115.004 (b).

⁶⁵¹ Texas Insurance Code, Section 1551.004 (c), as amended by HB 2559 (81st Legislature, Regular Session).

An unmarried child, whose coverage ended when the child became 25 years of age, is eligible for reinstatement of coverage upon the expiration of his or her benefits under the Consolidated Omnibus Budget Reconciliation Act (COBRA), but at a rate sufficient to cover the entire cost of the coverage. The cost of this coverage will be paid by the child or the child's participating parent. Coverage terminates at the end of the month in which the child marries.⁶⁵²

Cafeteria Plan

The Texas Employees Group Benefits Program may also include a cafeteria plan that allows the employee to pay premiums, health care expenses, and dependent care expenses on a pre-tax basis. If the cost of coverage exceeds the amount of the State's contribution, the difference will be deducted from the employee's pay or retirement benefits.⁶⁵³ To participate, each employee must be enrolled in the premium conversion benefit portion of the plan.⁶⁵⁴

State Contributions for Health Insurance

An employee is considered full time if he or she is designated to work 40 hours in a workweek. A part-time employee is defined as a person designated to work less than 40 hours in a workweek.⁶⁵⁵

For full-time employees, the State pays all of the health care and basic life premiums and 50 percent of dependents' health premium. The State pays half of the health care and basic life premiums for part-time employees and 25 percent of the dependents' health premium.⁶⁵⁶ The ERS Board of Trustees establishes the amount of the state's contribution no later than November 1 proceeding each regular session of the Legislature.⁶⁵⁷ State contributions to group insurance costs can be found on the ERS Web site at <http://www.ers.state.tx.us>.

Prescription Drug Benefits

All individuals who are covered by state insurance plans have access to prescription drug benefits. Each individual must satisfy a \$50 deductible during each plan year before benefits and co-payments begin. The amount of each co-payment depends upon the category or tier of prescription drugs covered in each plan.⁶⁵⁸

Dental Insurance

All individuals who are covered by state insurance plans have access to optional dental insurance. There are two plans available to employees with different costs, benefits, service areas, and participating dentists. Neither plan requires evidence of insurability.⁶⁵⁹

⁶⁵² Texas Insurance Code, Sections 1551.158 (a) and (c).

⁶⁵³ Texas Insurance Code, Section 1551.206.

⁶⁵⁴ Texas Insurance Code, Section 1151.207.

⁶⁵⁵ Texas Insurance Code, Section 1551.003 (9) and (11).

⁶⁵⁶ Texas Insurance Code, Section 1551.319 (a) and (b).

⁶⁵⁷ Texas Insurance Code, Section 1551.311.

⁶⁵⁸ Employees Retirement System Web site at http://www.ers.state.tx.us/insurance/drugs/copay_chart.aspx.

⁶⁵⁹ Employees Retirement System Web site at <http://www.ers.state.tx.us/htdocs/insurance/dental/default.aspx>.

State Kids Insurance Program

The States Kids Insurance Program (SKIP) provides primary and preventative health care to low-income, uninsured children who are not served by or eligible for other state-assisted health insurance programs.⁶⁶⁰

SKIP is available to state employees participating in the state insurance program who meet all of the following criteria:

- The employee has a child or children under the age of 19 who are eligible for state insurance and living with the employee in Texas.
- The employee or children are not eligible for Medicaid.
- The employee meets eligibility criteria regarding family income and size.
- The employee or children are U.S. citizens or legal residents.⁶⁶¹

If an employee meets the eligibility requirements and his or her children are approved for SKIP, the employee will get a subsidy to pay most of the children's health insurance premiums based on the employee's status (full time or part time), family size and income, and health care plan and coverage.⁶⁶²

State agencies are required to provide employees information regarding SKIP and Medicaid. This must be done at least annually during open enrollment and when an employee terminates state employment.⁶⁶³

Employee Life and Disability Insurance

State employees have the option of enrolling in various life and disability insurance plans. New employees (within the first 31 days on the job) may sign up for these benefits without evidence of insurability. Current employees may have to provide additional information prior to participating in these plans.

The State provides basic group term life coverage of \$5,000 for current employees and \$2,500 for retirees at no cost. Optional group and dependent term life programs may be purchased to supplement this plan. Accidental death and dismemberment, and short- and long-term disability insurance are also available. All of these plans include provisions in the event of the death of an employee or retiree.⁶⁶⁴

Accelerated Payment of Life Insurance Benefits

The board of trustees of the Texas Employees Group Benefits Program (GBP) may adopt rules to pay accelerated life insurance benefits to terminally ill, terminally injured, or permanently disabled

⁶⁶⁰ Texas Health and Safety Code, Section 62.001.

⁶⁶¹ Texas Health and Safety Code, Section 62.101 (a).

⁶⁶² Texas Health and Safety Code, Sections 62.059 (e) and 62.101 (b).

⁶⁶³ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 10.03 (a); and Texas Insurance Code, Section 1551.159 (i).

⁶⁶⁴ Employees Retirement System Web site at <http://www.ers.state.tx.us/htdocs/insurance/life/default.aspx>.

participants including an annuitant participating in optional term life insurance in amounts that benefit the participant without increasing the cost of providing the benefits. The amount of any payment will be deducted from the amount of the death benefit.⁶⁶⁵

Law Enforcement Officers and Firefighters Survivor Benefits

The Legislature is empowered to provide assistance payments to survivors of eligible peace officers, probation officers, parole officers, correctional officers, firefighters, chaplains, and other employees due to the hazardous nature of the employees' duties.⁶⁶⁶ A surviving spouse may receive \$250,000 from the State. If there is no eligible spouse, the payment will be distributed in equal shares to the children. Without a spouse or children, the surviving parents receive \$250,000 in equal shares.⁶⁶⁷ Additional benefits may be available from the federal government through the Public Safety Officer's Benefits Program managed through the U.S. Department of Justice.⁶⁶⁸

A surviving spouse or child is eligible to receive education benefits. An eligible beneficiary may enroll as a full-time student at a public institution of higher education and be exempt from all tuition and fees until the student receives a bachelor's degree or 200 credit hours, whichever comes first. This benefit extends to on-campus housing, meals, and the cost of textbooks.⁶⁶⁹

The State will pay for funeral expenses and an annuity to an eligible beneficiary of an employee killed in the line of duty who had not qualified for payment under a retirement plan. The annuity will consist of monthly payments that equal the greater of:

- The monthly payment had the employee survived and retired on the last day of the month (if eligible for retirement); or
- The monthly payment had the employee survived, had been employed by the State for 10 years, had been paid a salary at the lowest amount provided by the General Appropriations Act, and had been eligible to retire under the ERS.⁶⁷⁰

The surviving spouse may receive these payments until:

- The date the surviving spouse remarries;
- The date the surviving spouse becomes eligible to retire under a state retirement plan; or
- The date the surviving spouse becomes eligible for Social Security benefits.⁶⁷¹

The ERS Board of Trustees administers all survivor benefits under this provision, which are available to the eligible survivors of the following:

⁶⁶⁵ Texas Insurance Code, Section 1551.254.

⁶⁶⁶ Texas Government Code, Sections 615.003 and 615.021.

⁶⁶⁷ Texas Government Code, Section 615.022.

⁶⁶⁸ Department of Justice's Public Safety Officers Benefits Program Web site at http://www.ojp.usdoj.gov/BJA/grant/psob/psob_death.html.

⁶⁶⁹ Texas Government Code, Section 615.0225.

⁶⁷⁰ Texas Government Code, Section 615.121 (a).

⁶⁷¹ Texas Government Code, Section 615.121 (b).

- Individuals who are elected, appointed, or employed as peace officers under Article 2.12 of the Texas Code of Criminal Procedure, or other law.
- A paid probation officer appointed by the director of a community supervision and corrections department.
- A parole officer employed by the Pardons and Paroles Division of the Texas Department of Criminal Justice and who has the duties set out in Texas Government Code, Section 508.001, and the qualifications set out in Texas Government Code, Section 508.113.
- Custodial employees of the Texas Department of Criminal Justice.
- Juvenile correctional employees of the Texas Youth Commission.
- Paid aircraft crash and rescue firefighters.
- Any employees of the State or a political or legal subdivision who are subject to certification by the Texas Commission on Fire Protection.
- Paid jailers.
- An individual who is employed or formally designated as a chaplain for a law enforcement agency of the state, a political subdivision of the state, or the Texas Department of Criminal Justice.
- An employee considered by the State or a political subdivision of the State to be a trainee for any position listed above.
- Employees of the Department of State Health Services or the Department of Aging and Disability Services who work at the Department of State Health Services' maximum security unit or who provide services for the Texas Department of Criminal Justice.⁶⁷²

The surviving spouse is entitled to continue to purchase health insurance coverage until the date he or she becomes eligible for federal Medicare benefits.⁶⁷³ An eligible surviving dependent who is a minor child is entitled to continue health insurance coverage until he or she turns 18 years old. An eligible surviving dependent who is not a minor child is entitled to health insurance coverage until the dependent becomes eligible for group health insurance through another employer or the dependent becomes eligible for federal Medicare benefits.⁶⁷⁴

Liability Insurance

State agencies that own or operate motor vehicles, power equipment, aircraft, or boats are authorized to provide liability insurance to employees. If liability insurance is required but not provided, the employee may be reimbursed from agency funds for the amount spent on such insurance.⁶⁷⁵

⁶⁷² Texas Government Code, Section 615.003.

⁶⁷³ Texas Government Code, Section 615.073 (c).

⁶⁷⁴ Texas Government Code, Section 615.074 (a) and (b).

⁶⁷⁵ Texas Government Code, Section 612.002 (a) and (c).

Related Legislation

Table 17-1 lists human resources-related bills that were passed by the 81st Legislature. This may not be a complete list and should be used only as a summary of general issues on insurance that were addressed during the session.

Table 17-1

| Insurance Related Legislation (81th Legislature) ^a | |
|--|--|
| Bill Number | Summary |
| HB 582 | Relating to informing the parents and guardians of certain children about the availability of the State Kids Insurance Program health plan and medical assistance program. |
| HB 1191 | Relating to the enrollment period for insurance benefits for certain retirees of the Teacher Retirement System. |
| HB 1290 | Relating to health benefit plan coverage for bariatric surgery and for certain tests for the early detection of cardiovascular disease. |
| HB 2559 | Relating to the definition of dependent for the purposes of dependent insurance coverage. |
| HB 4586 | Relating to the establishment of an ERS pilot program to test alternatives to traditional fee-for-service payments to physicians and health care providers. |
| SB 704 | Relating to disclosure of the prices charged to state agencies in connection with pharmacy benefit manager services. |
| SB 872 | Relating to continued health insurance coverage and financial assistance for eligible survivors of certain public servants killed in the line of duty. |
| SB 1969 | Relating to clarification of additional benefits for survivors of a peace officer. |
| ^a Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at www.capitol.state.tx.us . | |

Section 18 **Retirement**

Retirement Overview

The State offers defined benefit and defined contribution retirement plans to employees. Most employees are covered under a defined benefit plan (or traditional pension plan) through the Employees Retirement System (ERS), the Teacher Retirement System (TRS), or the Judicial Retirement System of Texas (Plan I or Plan II). In some cases, eligible employee of institutions of higher education may elect to participate in the Optional Retirement Program (ORP).

Most state employees are covered through ERS. These employees also have the opportunity to contribute to defined contribution plans such as 401(k) or 457 accounts. These accounts can supplement the current state retirement plan and offer employees the option of choosing how they will invest their money. The purpose of this chapter is to introduce these plans and provide a brief overview of eligibility and plan benefits.

Retirement benefits for most higher education employees are processed through TRS. Employees who are covered by TRS, by Plan I or Plan II, or who are independent contractors or employees of such contractors are not eligible to participate in the ERS retirement program. For specific information, these employees should be directed to the appropriate agency responsible for administering their retirement plan.

Employees Retirement System (ERS)

The ERS retirement program is a defined benefit plan, qualified under Section 401(a) of the Internal Revenue Code.⁶⁷⁶ This plan provides a lifetime level of retirement income based on a formula authorized by the State Legislature. The types of benefits payable by the retirement system are:

- Service retirement benefits.
- Disability retirement benefits (occupational or non-occupational disability).
- Death benefits.⁶⁷⁷

State agency employees become members of this program starting on the first of the month after their 90th day of agency employment.⁶⁷⁸ Each employee who is a member of ERS is required to pay an annual membership fee.⁶⁷⁹ However, since 1973 the Legislature has continued a long-standing tradition of appropriating funds to pay the membership fee.⁶⁸⁰

Additional information regarding retirement can be found on ERS' Web site at www.ers.state.tx.us.

⁶⁷⁶ Title 26, United States Code, Section 401 (a).

⁶⁷⁷ Texas Government Code, Section 814.001.

⁶⁷⁸ Texas Government Code, Section 812.003 (d).

⁶⁷⁹ Texas Government Code, Section 815.401.

⁶⁸⁰ General Appropriations Act (81st Legislature, Regular Session), Article I, Employee Retirement System, Rider 4.

Retirement Contributions

Employees participating in ERS must contribute 6.45 percent of their eligible compensation into the system while the State contributes 6.45 percent of an employee's total compensation. Texas legislators must contribute 8 percent of their pay.⁶⁸¹

For judicial officers, the State contributes 16.83 percent of payroll for contributing members each fiscal year.⁶⁸²

| New Requirement |
|---|
| The 81st Legislature passed legislation to increase state employee contributions from 6.0 percent to 6.45 percent to the retirement system. |

The employing agency is responsible for deducting the amount of this contribution from the employee's pay. The deduction process requires no employee consent since the employee consents to the automatic deduction when he or she becomes a member of the ERS program.⁶⁸³

In addition, state agencies that employ a law enforcement or custodial officer are required to deduct an additional 0.5 percent contribution from that employee's compensation. This additional contribution must be deposited in the law enforcement and custodial officer supplemental retirement fund. If the state contribution to the law enforcement and custodial officer supplemental retirement fund is computed using a percentage less than 0.5 percent, then the member's contribution should be computed using a percentage equal to the percentage used to compute the state contribution.⁶⁸⁴

| New Requirement |
|---|
| The 81st Legislature passed legislation to create a new employee retirement contribution for members of the Law Enforcement and Custodial Officer System (LECOS). |

Withdrawal of Contributions

Upon termination of employment, an individual who is a member of the employee class may withdraw his or her contributions to the retirement plan. For a law enforcement or custodial officer, the withdrawal of accumulated contributions includes all of the officer's contributions made under Texas Government Code, Section 815.402(h). In order to receive this refund, the member must not

⁶⁸¹ Texas Government Code, Section 815.402 (a), as amended by HB 2559 (81st Legislature, Regular Session).

⁶⁸² General Appropriations Act (81st Legislature, Regular Session), Article I, Employees Retirement System, Rider 5.

⁶⁸³ Texas Government Code, Section 815.402 (g).

⁶⁸⁴ Texas Government Code, Section 815.402 (h), as amended by HB 2559 (81st Legislature, Regular Session).

resume employment in this class during the 30 days following termination and must file an application for the refund with ERS.⁶⁸⁵

Withdrawal of contributions cancels membership in the retirement plan, service credit, and all rights to benefits.⁶⁸⁶ The amount of the refund includes total monthly contributions, service credit contributions, and any accumulated interest.⁶⁸⁷

| New Requirement |
|---|
| The 81st Legislature passed legislation to include accumulated contributions made under Texas Government Code, Section 815.402(h) into the withdrawal of contributions by law enforcement and custodial officers. |

Effective Date of Retirement

The effective date of a class member's service retirement is the date that the member designates at the time the member applies for retirement, but the date must be the last day of a calendar month.⁶⁸⁸

The effective date of a member's disability retirement is the date designated on the application for retirement filed by or for the member as provided by state statute, but the date must be the last day of a calendar month.⁶⁸⁹

Retirement Eligibility

Class Member Eligibility

An employee who is an ERS employee class member and retires from the State of Texas receives a check based on his or her salary and years of creditable service. This is called an "annuity."⁶⁹⁰

An employee who is an ERS employee class member is eligible to retire and receive an annuity if he or she is at least 60 years old with 5 years of service credit or meets the "rule of 80." An employee who is an ERS employee class member and who begins employment on or after September 1, 2009, is eligible to retire and receive an annuity if the employee is at least 65 years old with 10 years of service credit or meets the "rule of 80."⁶⁹¹

The "rule of 80" is met when the sum of the employee's age and amount of service credit equals or exceeds 80. A minimum of five years of service credit is required to "vest" in the system or meet the

⁶⁸⁵ Texas Government Code, Sections 812.101 and 812.102.

⁶⁸⁶ Texas Government Code, Section 812.103.

⁶⁸⁷ Texas Government Code, Section 812.104, as amended by HB 2559 (81st Legislature, Regular Session).

⁶⁸⁸ Texas Government Code, Section 814.003 (a).

⁶⁸⁹ Texas Government Code, Section 814.003 (d).

⁶⁹⁰ *Planning Your Retirement*, Employee Retirement System of Texas, April 2009, Page 3, http://www.ers.state.tx.us/retirement/pyr/documents/pyr_booklet.pdf.

⁶⁹¹ Texas Government Code, Section 814.104 (a) and (d).

requirements to be securely qualified to receive a lifetime of retirement annuity.⁶⁹² However, an employee who (1) is not a member on the most recent date of hire, (2) was hired on or after September 1, 2009, and (3) has service credit in the retirement system is eligible to retire and receive a service retirement annuity if the employee:

- Is at least 65 years old and has at least 10 years of service credit in the employee class; or
- Has at least 5 years of service credit in the employee class, and the sum of the member's age and amount of service credit equals or exceeds the number 80.⁶⁹³

| New Requirement |
|--|
| The 81st Legislature passed legislation to amend vesting requirements for retirement eligibility for nonmembers hired on or after September 1, 2009. |

Commissioned Peace Officer and Custodial Officer Eligibility

A member who is at least 55 years old and who has at least 10 years of service credit as a commissioned peace officer engaged in criminal law enforcement activities of the Department of Public Safety, the Alcoholic Beverage Commission, the Parks and Wildlife Department, or the Office of Inspector General at the Texas Youth Commission, or as a custodial officer, is eligible to retire and receive a service retirement annuity.⁶⁹⁴

A person hired on or after September 1, 2009 and who (1) was not a member on the date hired and (2) has at least 20 years of service credit as a law enforcement or custodial officer is eligible to retire, regardless of the employee's age, and receive a standard service retirement annuity.⁶⁹⁵

For additional information on retirement annuities for commissioned peace officers and custodial officers, refer to Texas Government Code, Sections 814.107 and 814.1075, and the ERS Web site at <http://www.ers.state.tx.us/home/default.aspx>.

Custodial Officers are employees of the Texas Department of Criminal Justice, Institutional Division who are certified as having normal duties that require direct contact with inmates or a parole officer or caseworker employed and certified by the Board of Pardons and Paroles or the Department of Criminal Justice.⁶⁹⁶

⁶⁹² Texas Government Code, Section 814.104 (a).

⁶⁹³ Texas Government Code, Section 814.104 (d), as amended by HB 2559 (81st Legislature, Regular Session).

⁶⁹⁴ Texas Government Code, Section 814.104 (b).

⁶⁹⁵ Texas Government Code, Section 814.1075 (b).

⁶⁹⁶ Texas Government Code, Section 813.506; and *The Supplemental Retirement Program for Commissioned Peace Officers and Custodial Officers*, Employees Retirement System at http://www.ers.state.tx.us/retirement/planning/documents/cpo_co_booklet.pdf.

New Requirement

The 81st Legislature passed legislation adjusting retirement eligibility requirements for qualified commissioned peace officers and custodial officers who were non members hired on or after September 1, 2009.

Elected Class Eligibility

Membership in an elected class is limited to:

- Persons who hold state offices normally filled by a statewide election and not included for coverage under the Judicial Retirement System of Texas Plan I or Judicial Retirement System of Texas Plan II.
- Members of the State Legislature.
- District and criminal district attorneys (to the extent that they receive salaries from the state general revenue fund).⁶⁹⁷

An employee who is an elected class member of ERS is eligible to retire and collect a retirement annuity if the employee:

- Is at least 60 years old and has at least 8 years of service credit in that class; or
- Is at least 50 years old and has 12 years of service credit in that class.⁶⁹⁸

Establishing Service Credit

Membership in the ERS' employee class begins on the 91st day after the first day a person is employed or holds office.⁶⁹⁹ Employees receive a full month's retirement credit when a retirement contribution is deposited from a paycheck and reported to ERS.⁷⁰⁰ However, service credit toward an employee's eligibility for retirement may be established in other ways. If eligible, these may include the use of annual and sick leave, combined service credit, purchase of service credit, and the transfer of service credit.

Use of Annual Leave and Sick Leave

Upon retiring, an employee has the option to designate accrued but unused annual leave and sick leave as service credit provided that the employee was a state employee on August 31, 2009.⁷⁰¹ Employees who first start working for the State on or after September 1, 2009, or former employees

⁶⁹⁷ Texas Government Code, Section 812.002; and *Retirement Benefits for Members of the Elected Class*, Employees Retirement System, December 2007 at http://www.ers.state.tx.us/retirement/planning/documents/eso_booklet.pdf.

⁶⁹⁸ Texas Government Code, Section 814.102.

⁶⁹⁹ Texas Government Code, Section 812.003 (d).

⁷⁰⁰ *Planning Your Retirement*, Employees Retirement System, April 2009, Page 4, http://www.ers.state.tx.us/retirement/pyr/documents/pyr_booklet.pdf.

⁷⁰¹ Texas Government Code, Sections 813.509 and 813.511.

who never contributed to the system, or who withdrew all their money from their ERS retirement account and then returned to work on or after September 1, 2009, are not eligible to use sick and annual leave toward service credit. However, these employees may use annual and sick leave for the purpose of calculating their annuity.⁷⁰²

For those employees who are eligible, annual leave is credited at the rate of one month of service credit for each 20 days, or 160 hours, of annual leave.⁷⁰³ In addition, sick leave is credited at the rate of one month of service credit for each 20 days, or 160 hours, of sick leave.⁷⁰⁴ However, sick leave does not include credit granted under the agency's sick leave pool or under the Family Medical Leave Act.⁷⁰⁵

The reporting agency must certify the amount of annual and/or sick leave to accrue through the effective month of retirement or death. Certification may not be made more than 90 days prior to or 11 days after the member's retirement date. The agency must notify ERS immediately when any change in the projected annual leave and sick leave will affect the accrual of a month's service credit.⁷⁰⁶

In addition to the additional service credit, employees may receive a lump sum payment for the unused annual leave and may donate unused sick leave to the employer's sick leave pool.⁷⁰⁷

Contributing members of Teacher Retirement System who transfer their service credits to ERS at retirement are not eligible to convert their annual and sick leave to ERS service credit.⁷⁰⁸

| New Requirement |
|--|
| The 81st Legislature passed legislation allowing only those who were members on August 31, 2009, to use their annual leave and sick leave as state service credit. |

Combined Service Credit

Eligible members of ERS may transfer TRS-credited service to ERS and vice versa. The transfer of service takes place at the time a member retires. A person who has membership in two or more retirement systems to which this chapter of the inventory applies is subject to the laws governing each of those systems for determination of the person's eligibility for service retirement benefits from each system. However, for the purpose of determining whether a person meets a system's length-of-

⁷⁰² Texas Government Code, Sections 813.509 (k) and 813.511 (d).

⁷⁰³ Texas Government Code, Section 813.511 (c).

⁷⁰⁴ Texas Government Code, Section 813.509 (c).

⁷⁰⁵ Texas Government Code, Section 813.509 (j), as amended by HB 2559 (81st Legislature, Regular Session).

⁷⁰⁶ Texas Government Code, Section 813.509 (f) and (g).

⁷⁰⁷ Texas Government Code, Sections 661.091 and 661.003 (c).

⁷⁰⁸ *Planning Your Retirement*, Employees Retirement System, April 2009, Page 5, http://www.ers.state.tx.us/retirement/pyr/documents/pyr_booklet.pdf.

service requirements for retirement benefits, the person's combined service credit must be considered as if it were all credited in each system.⁷⁰⁹

A person's combined service credit is useable only in determining eligibility for service retirement benefits and may not be used in determining:

- Eligibility for disability retirement benefits, death benefits, or any type of benefit other than service retirement benefits.
- The amount of any type of benefit.⁷¹⁰

Purchase of Service Credit

In addition to the monthly service credit earned by employees, there are three types of service credit that may be purchased by members of the employee class; refunded service credit, military service and additional service credit.

Purchase of Refunded Service Credit

Employees may purchase previously refunded service credit by depositing with ERS the amount refunded plus interest. At least six months must have elapsed since the date of the refund and employee must have membership with ERS or with an entity that participates in the Proportionate Retirement System (PRS).⁷¹¹

Purchase of Military Service

Employees may purchase service credit for military service on a month-for-month basis for up to 60 months. Employees cannot purchase active duty military service if they are eligible for military retirement based on 20 or more years of active military duty or its equivalent. In addition, the employee must not have received a dishonorable discharge.⁷¹²

A member claiming credit in the employee class for military service not previously established shall, for each month of the service, pay a contribution in an amount equal to the greater of the amount that the member contributed for the first full month of membership service that is after the member's date of release from active military duty and that is credited in the retirement system or \$18.⁷¹³

Employees in either the elected class or employee class may not purchase more than 60 months of service credit.⁷¹⁴

An employee who has already purchased 60 months of military service may purchase additional military service credit if the employee is called to active duty again while working for the State.⁷¹⁵

⁷⁰⁹ Texas Government Code, Section 814.002 (a).

⁷¹⁰ Texas Government Code, Section 803.201 (b).

⁷¹¹ Texas Government Code, Sections 803.203, 813.102, 813.104, and 813.504.

⁷¹² Texas Government Code, Sections 813.301 and 813.302.

⁷¹³ Texas Government Code, Section 813.505 (b).

⁷¹⁴ Texas Government Code, Section 813.301 (b).

⁷¹⁵ *Purchasing Service Credit*, Employees Retirement System, Page 3,
http://www.ers.state.tx.us/retirement/service_credit/documents/purchase_ser_credit.pdf.

Purchase of Additional Service Credit

Additional Service Credit (ASC) allows eligible members to purchase up to 36 months of equivalent membership service credit in either the elected class or the employee class if they have at least 10 years of actual membership service of the type of service that the member seeks to establish.⁷¹⁶

ASC can advance an employee's retirement eligibility date and/or increase the value of the employee's standard annuity upon retirement. Employees must purchase all service for which they may be eligible, such as refunded ERS service and military service before being allowed to purchase ASC.⁷¹⁷

Employees may also buy back TRS service to transfer to ERS at retirement to increase their annuity. The cost of reinstating or purchasing service credit is determined according to the statutes that govern the reinstatement or purchase of the type of service credit in the system in which it is to be reinstated or purchased. All payments for service credit reinstated or purchased must be made before retirement or before a later date, if allowed, for members of the retirement system in which the credit is to be reinstated or purchased. In order to do this, the employee must have at least three years of service credit in the system from which he or she is retiring.⁷¹⁸

Service Credit Payment Options

Retirement plan members can purchase service credit from ERS in one of two ways:

- A "rollover" of funds from a retirement account such as a 401(k) or an IRA; or
- A lump sum payment, such as a personal check.⁷¹⁹

Service credit cannot be purchased through a payroll deduction.

Transfer of Service Credit

Upon retirement, employees can transfer creditable service between ERS and TRS. To do this, the employee must have at least three years of service credit in the system from which he or she is retiring.⁷²⁰ The transfer of service that has been actively maintained or reinstated takes place under the rules of the system to which the credit is transferred.

Determining the Standard Service Retirement Annuity

The standard service retirement annuity for service credited in the employee's membership class is an amount computed as the member's average monthly compensation for service in that class for the 36 highest months of compensation multiplied by 2.3 percent for each year of service credit in that class.⁷²¹

⁷¹⁶ Texas Government Code, Section 813.513 (a) and (b).

⁷¹⁷ Employees Retirement System's Web site, http://www.ers.state.tx.us/retirement/service_credit/asc.aspx.

⁷¹⁸ Texas Government Code, Sections 805.002 and 805.003.

⁷¹⁹ *Planning Your Retirement*, Employees Retirement System of Texas, April 2009, Page 5, http://www.ers.state.tx.us/retirement/pyr/documents/pyr_booklet.pdf.

⁷²⁰ Texas Government Code, Section 805.002.

⁷²¹ Texas Government Code, Section 814.105 (a).

The standard service retirement annuity for a member who (1) was not a member on the date hired, (2) was hired on or after September 1, 2009, and (3) is eligible to retire is an amount computed as the member's average monthly compensation for service in his or her membership class for the 48 highest months of compensation multiplied by 2.3 percent for each year of service credit in that class. For these employees, the standard service retirement annuity is reduced by 5 percent for each year the member retires before age 60, with a maximum possible reduction of 25 percent.⁷²²

| New Requirement |
|---|
| The 81st Legislature passed legislation changing the number of months used to compute the standard service retirement annuity for nonmembers hired on or after September 1, 2009. |

Health Insurance Benefits Eligibility

A retirement plan member employee is eligible for group health insurance in retirement if:

- The member is at least 65 years old and has 10 years of service credit in the employee class; or
- The sum of the member's age and amount of service credit equals 80 and the member has at least 10 years of service credit in the employee class.⁷²³

Employees who are receiving a part-time state contribution (50 percent) for their health insurance when they file for retirement will receive that same part-time contribution when they retire.⁷²⁴

Health and other insurance benefits for members and retirees are subject to change based on available state funding. The Texas Legislature determines the level of funding for such benefits and has no continuing obligation to provide those benefits beyond each fiscal year.⁷²⁵

Table 18-1 provides examples of age and service credit combinations as they apply to the "rule of 80."

⁷²² Texas Government Code, Section 814.105 (c) and (d), as amended by HB 2559 (81st Legislature, Regular Session).

⁷²³ Texas Insurance Code, Section 1551.102 and *Planning Your Retirement*, Employees Retirement System, April 2009, Page 3, http://www.ers.state.tx.us/retirement/pyr/documents/pyr_booklet.pdf.

⁷²⁴ Texas Insurance Code, Section 1551.3195.

⁷²⁵ Employees Retirement System's Web site, <http://www.ers.state.tx.us/insurance/default.aspx>.

Table 18-1

| Rule of 80 Example Combinations | | | | |
|---------------------------------|------------------------------|----------|---------------------|------------------------------------|
| Age | Service Credit at Retirement | Total | Eligible to Retire? | Eligible to Retire with Insurance? |
| 53 years, 5 months | 26 years, 7 months | 80 years | Yes | Yes |
| 75 years, 6 months | 4 years, 6 months | 80 years | No | No |
| 49 years, 6 months | 30 years, 6 months | 80 years | Yes | Yes |

Source: *Planning Your Retirement*, Employees Retirement System, April 2009, Page 3, http://www.ers.state.tx.us/retirement/pyr/documents/pyr_booklet.pdf.

Insurance Coverage for Survivors

At the time of a retiree's death, the retiree's spouse and eligible dependent children may continue the health and dental coverage in which they were enrolled.⁷²⁶ Additional information concerning insurance coverage for survivors should be directed to the ERS.

Optional Retirement Program Service

Some employees who work at colleges and institutions of higher education have the choice of paying into a TRS retirement account or an Optional Retirement Program (ORP) governed by the Higher Education Coordinating Board. Employees may use ORP service credit to help them meet the "rule of 80" or "65 and 10" (65 years of age and 10 years of service), but it will not increase their annuity.⁷²⁷

Additional information is available through the Higher Education Coordinating Board's "Overview of TRS and ORP for Employees Eligible to Elect ORP" available online at <http://www.theccb.state.tx.us/reports/PDF/0869.PDF>.

Disability Retirement Benefits

Two types of disability retirement benefits are available to ERS members; however, benefits are a reduced amount and are not calculated like a standard annuity:

- Occupational (for example, a commissioned peace officer is injured in the line of duty, resulting in a permanently disabling injury).
- Non-occupational (for example, an employee is diagnosed with a terminal illness and is unable to continue working).⁷²⁸

A member is eligible to retire under an occupational disability, regardless of age or amount of service credit. In the case of a non-occupational disability, a member must be currently employed by the

⁷²⁶ Texas Insurance Code, Section 1551.155 and *Planning Your Retirement*, Employees Retirement Systems, April 2009, Page 14, http://www.ers.state.tx.us/retirement/pyr/documents/pyr_booklet.pdf.

⁷²⁷ *Planning Your Retirement*, Employees Retirement System, April 2009, Page 6, <http://www.ers.state.tx.us/htdocs/retirement/pyr/default.aspx>.

⁷²⁸ *Overview of Disability Retirement Benefits*, Employees Retirement System's Web site, <http://www.ers.state.tx.us/retirement/disability/overview.aspx>.

State and have 10 years of service credit (ORP credit cannot be used to meet the 10 years of service credit).⁷²⁹

A member otherwise eligible to receive a disability retirement annuity may not receive the annuity if the member is:

- Still earning a salary or wage from the employment for which the member is claiming disability; or
- On leave without pay from the employment for which the member is claiming disability.⁷³⁰

| New Requirement |
|---|
| The 81st Legislature passed legislation to add stipulations on receiving a disability retirement annuity. |

Proportionate Service Retirement Program

The State provides proportionate retirement benefits to qualified members who have service credit in more than one retirement system. These participating retirement systems are the ERS, the TRS, and the Judicial Retirement System of Texas Plan I and Plan II. Certain municipal employees may also elect to join this program.⁷³¹

A person who has membership in two or more retirement systems is subject to the laws governing each system for determining eligibility for retirement benefits. Each retirement system will only pay benefits based upon the service and salaries established in that system.⁷³²

Service credit may not be re-established in a municipality or subdivision participating in a state retirement program if the person seeking the credit is excluded from participation by that respective retirement system under Texas Government Code, Section 803.103.⁷³³

Resumption of State Service by a Retiree

ERS retirement annuities are not affected for employees who retired prior to May 31, 2009, and return to state employment, as long as they have waited at least one full calendar month before returning to work. Employees who retire on or after May 31, 2009, may not return to work in a position in the employee class of membership before the 90th day after the original retirement date.⁷³⁴

⁷²⁹ Texas Government Code, Section 814.202, and Employees Retirement System's Web site at <http://www.ers.state.tx.us/retirement/disability/occupational.aspx> and <http://www.ers.state.tx.us/retirement/disability/nonoccupational.aspx>.

⁷³⁰ Texas Government Code, Section 814.202 (g), as amended by HB 2559 (81st Legislature, Regular Session).

⁷³¹ Texas Government Code, Sections 803.101 and 803.102.

⁷³² Texas Government Code, Section 803.201 (a).

⁷³³ Texas Government Code, Section 803.001 (b).

⁷³⁴ Texas Government Code, Section 812.205, as amended by HB 2559 (81st Legislature, Regular Session).

In addition, state agencies are required to pay into the retirement system an amount equal to the amount of the state contribution for active members for a person who retired on or after September 1, 2009, from the employee class and then was rehired as a retiree in a position that would otherwise include membership in the employee class.⁷³⁵

Employers should not promise reemployment to any retiree and employees must certify at the time of retirement that they do not have a job set up with the State after retirement or else retirement can be cancelled.

Employees who retired from another statewide retirement system should refer to that system to find out if returning to state employment will affect their annuity.

Retirees must notify their employer that they are a retiree and are no longer eligible to be an active member of the ERS. Both the retiree and his/her employer must notify ERS in writing of the date that the retiree returns to work. An employee taking a position in another class of membership or serving as an independent contractor may continue to receive retirement benefits.⁷³⁶

Retirement shall be canceled and membership in a retirement system reinstated if the member holds a position in the class from which he or she retired during the calendar month following retirement. If a person establishes that service credit received after retirement was the result of an oversight or an error on the part of the employee's department, the member may petition the executive director for relief.⁷³⁷

Additional information on return-to-work retirees can be found on the ERS Web site at www.ers.state.tx.us (see the flyer "Working for the State After You Retire," <http://www.ers.state.tx.us/retirement/retired/documents/rtw.pdf>).

| New Requirement |
|---|
| The 81st Legislature passed legislation requiring employees who retire after May 31, 2009, to wait 90 days before returning to work. In addition, legislation was passed adding a requirement for agencies to pay into the retirement system for employees who retired on or after September 1, 2009, from the employee class and then was rehired. |

Death and Survivor Benefits

The Death Benefit Plan is for employees who contribute to the ERS retirement fund and have at least 10 years of ERS service credit. A Death Benefit Plan enables employees to choose someone to receive their retirement benefits if they die before they retire under ERS. The benefit is based on an employee's salary and service.

⁷³⁵ Texas Government Code, Section 812.205 (b).

⁷³⁶ Texas Government Code, Sections 812.202 and 812.204.

⁷³⁷ Texas Administrative Code, Title 34, Section 73.7.

The Death Benefit Plan allows employees to choose how beneficiaries will receive the benefit based on one of three options:

- Life annuity – Beneficiary receives a monthly annuity check for the rest of his/her life.
- Lump sum payment – Beneficiary receives a refund of the employee’s retirement contributions in a lump sum payment, minus applicable taxes.
- 10-year guaranteed annuity – Beneficiary is paid an annuity once a month for 10 years. (This amount will likely be different from the lifetime annuity amount.)⁷³⁸

If a member who is eligible to choose a death benefit dies without selecting a death benefit plan, the designated beneficiary or personal representative of the estate may select a death benefit plan.⁷³⁹ In lieu of a death benefit plan, a refund of contributions may be elected by the beneficiary or representative of the estate. The death benefit beneficiary may use the deceased member’s sick and/or annual leave to qualify for making a death benefit plan selection if the decedent was a member or employee on August 31, 2009.⁷⁴⁰

| New Requirement |
|---|
| The 81st Legislature passed legislation allowing the death beneficiary to use the deceased member’s sick and/or annual leave to qualify for making a death benefit plan selection only if the decedent was a member or employee on August 31, 2009. |

Survivor Options at Retirement

Employees who retire under ERS may choose between the standard annuity (with no survivor benefits) or one of five survivor options. Choosing one of these options will permanently reduce the amount of annuity and will further be reduced if taken with a partial lump sum option.

- Equal benefits for beneficiaries.
- 50 percent benefits for beneficiaries.
- Five years of payments for beneficiaries. If retiree dies before they receive five years (60 months) of annuity payments, their beneficiary receives the remainder of those 60 payments.
- Ten years of payments for beneficiaries. If retiree dies before they receive five years (120 months) of annuity payments, their beneficiary receives the remainder of those 120 payments.
- 75 percent of benefits for beneficiaries.⁷⁴¹

⁷³⁸ Employees Retirement System’s Web site, <http://www.ers.state.tx.us/retirement/survivors/dbp.aspx>.

⁷³⁹ Texas Government Code, Section 814.302 (a).

⁷⁴⁰ Texas Government Code, Sections 813.509 (e) and 813.511 (e), as amended by HB 2559 (81st Legislature, Regular Session).

⁷⁴¹ *Planning Your Retirement*, Employees Retirement System, April 2009, Pages 12 and 13, http://www.ers.state.tx.us/retirement/pyr/documents/pyr_booklet.pdf.

Additional information, including detailed explanations of these survivor benefit options, can be found on the ERS Web site at <http://www.ers.state.tx.us/retirement/survivors/default.aspx>.

Deferred Compensation

State employees have the opportunity to participate in a deferred compensation plan in addition to an established benefit plan for purposes of retirement. Under such a plan, employees may defer a part of their pay for investment in a qualified “investment product” and will not be taxed on this amount until they receive a distribution from the plan, subject to the employee’s option to designate all or a portion of deferred amounts as contributions under Texas Government Code, Section 609.5021.⁷⁴²

An institution of higher education may create and administer a 457 plan. Institutions of higher education may contract with other institutions of higher education to create a single plan for their employees.⁷⁴³

For state agency employees, there are two types of deferred compensation plans available: a 401(k) and a 457. The deferred compensation plans also have “catch-up” provisions that allow employees who meet the eligibility requirements to make up for lost time.

401(k) Plan

The 401(k) plan allows employees to defer from 1 percent to 99 percent of 401(k) eligible compensation or \$16,500 in 2009, whichever is less. This plan allows employees to borrow against these funds as well as roll them over to another investment vehicle such as an individual retirement account.⁷⁴⁴

An employee who begins state employment on or after January 1, 2008, automatically participates in a 401(k) plan unless the employee elects not to participate in the plan. The contribution is made by automatic payroll deduction and represents 1 percent of an employee’s pay. Unless otherwise directed by the employee, this contribution is placed in a default investment product selected by the board of trustees for ERS.⁷⁴⁵

Employees participating in a 401(k) plan under this legislation may elect to end participation in the 401(k) plan, to contribute to a different investment product, to contribute a different amount to the plan.⁷⁴⁶

A state agency participating in a 401(k) plan is required to inform new hires of their automatic enrollment in a 401(k) account and their right to opt-out of enrollment. This information should be included as part of the new employee orientation process. State agencies participating in a 401(k) plan shall maintain a record of a new hire's acknowledgement of receipt of information regarding the ability to opt-out of enrollment in a 401(k) plan.⁷⁴⁷

⁷⁴² Texas Government Code, Sections 609.502, 609.005, and 609.006.

⁷⁴³ Texas Government Code, Section 609.702.

⁷⁴⁴ Employees Retirement System’s Web site, <http://www.ers.state.tx.us/htdocs/texasaver/plans/compare.aspx>.

⁷⁴⁵ Texas Government Code, Section 609.5025.

⁷⁴⁶ Texas Government Code, Section 609.5025.

⁷⁴⁷ Texas Government Code, Section 609.5025 (h).

457 Plan

The 457 plan is a voluntary retirement plan that allows employees to defer a dollar amount of their salary toward retirement savings and pay taxes later on the contributions and earnings. Employees decide how to invest their contributions among choices offered in the plan. Employees must elect a dollar amount for a 457 plan with a minimum of \$20 per month. Deferrals must not exceed the yearly maximum set by the IRS. For 2009, the maximum deferral is \$16,500.⁷⁴⁸

Roth IRA

If implemented by Employees Retirement System, employees may also be able to designate all or a portion of the employee's contribution as a Roth IRA contribution. A Roth IRA differs from a traditional individual retirement account because contributions are not tax deductible. Additionally, contributions from a Roth IRA account may have fewer withdrawal restrictions.

| New Requirement |
|---|
| The 81st Legislature passed legislation allowing the Employees Retirement System to establish a qualified Roth IRA contribution program. ⁷⁴⁹ |

⁷⁴⁸ Employees Retirement of System's Web site, <http://www.ers.state.tx.us/htdocs/texasaver/plans/compare.aspx>.

⁷⁴⁹ HB 2283 (81st Legislature, Regular Session).

Additional Information

Table 18-2 lists resources from the Attorney General's Office related to retirement for state employees.

Table 18-2

| Retirement Related Attorney General Resources ^a | |
|---|---|
| Opinion Number | Topic |
| DM-275 | Whether the Teacher Retirement System is responsible for paying the early retirement incentive portion of its share of an annuity of a member who has transferred service credit from the TRS to the Employees Retirement System. |
| JC-27 | Regarding the construction of Section 814.1041 of the Texas Government Code, which provides for a temporary service retirement option for certain state employees. |
| JC-137 | Regarding the relationship between two bills adopted by the 76th Legislature on temporary service retirement options for certain state employees. |
| JC-431 | Whether the Texas A&M University System is authorized to offer employees the opportunity to participate in a nonqualified deferred compensation program or plan under Section 457(f) of the Internal Revenue Code. |
| JM-1151 | Regarding eligibility for the Optional Retirement System, and related questions. |
| LO 94-93 | Whether the Teacher Retirement System must credit a Southwest Texas State University faculty member for a mid-year salary increase. |
| LO 95-89 | Whether a retirement system's board of trustees governed by Texas Civil Statutes is authorized to exclude a car allowance paid to a fire fighter from his or her compensation for purposes of calculating contributions and benefits. |
| LO 96-133 | Whether a 1995 General Appropriations Act rider regarding the state contribution to the Optional Retirement Program is unconstitutional, and related questions. |
| MW-40 | Regarding credit of legislative service for judicial retirement. |
| V-480 | Regarding the eligibility of State Bar of Texas employees to be members of the Employees Retirement System. |
| ^a Detailed references can be found at: Letter opinions (LO): http://www.oag.state.tx.us/opin/op_letters.shtml . Opinions: http://www.oag.state.tx.us/opin/opindex.shtml . | |

Related Legislation

Table 18-3 lists bills that were passed by the 81st Legislature related to retirement. This may not be a complete list and should be used only as a summary of general issues on this subject that were addressed during the session.

Table 18-3

| Retirement Related Legislation (81st Legislature) ^a | |
|--|---|
| Bill Number | Summary |
| HB 2283 | Relating to increasing state employee participation in the TexaSaver program by establishing a ROTH contribution program. |
| HB 2559 | <p>Relating to the power and duties of and benefits available under the Employees Retirement System (ERS). The ERS omnibus bill includes the following:</p> <ul style="list-style-type: none"> ▪ A 90-day waiting period for the resumption of state service by a retiree. ▪ Public information requirements for retirement records. ▪ Withdrawal of retirement contributions for law enforcement or custodial officers. ▪ Return to work surcharge for state agencies employing a retiree. ▪ Increase in the state employee contribution to the retirement system from 6.0 percent to 6.5 percent of an employee's salary. ▪ New required contribution of 0.5 percent of an employee's salary for members of the law enforcement and correction officer system (LECOS). ▪ Changes the requirements for retirement benefits for employees hired after September 1, 2009, related to the use of sick and annual leave, annuity calculations, and vesting. |
| ^a Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at www.capitol.state.tx.us . | |

Section 19
Additional Benefits

Awards and Gifts

State agencies are authorized to purchase and present awards to employees for professional achievement or outstanding service. The cost of each award must not exceed \$100.⁷⁵⁰

There is no limit on the number of awards per employee that may be provided during a fiscal year. The only limitation is on the amount of the award.

Savings bonds with a maturity value in excess of the award maximum may be given as a gift as long as the purchase price does not exceed the award maximum.⁷⁵¹

State agencies that have established a volunteer program may also present awards for special achievements or outstanding service. Such awards must not exceed a value of \$50 and are limited to pins, certificates, plaques, or other similar awards.⁷⁵²

Table 19-1 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers related to awards for outstanding performance.

Table 19-1

| Awards for Outstanding Performance Related State Auditor Resources ^a | | |
|--|--|------------|
| Type | Topic | Reference |
| HR Question | Whether there is a limit on the number of awards for outstanding service or professional achievement that can be given to an employee per fiscal year. | 10/13/2006 |
| HR Question | Regarding the amount an agency may spend to award a volunteer in recognition of a special achievement or outstanding service as part of a volunteer program. | 5/1/2006 |
| ^a Complete references can be found at: HR questions: http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html . | | |

Employee Health and Wellness Programs

Health Fitness and Education Programs

A state agency may use available funds for health fitness education and activities and other costs related to health fitness. In addition, available facilities may be used for health fitness programs.⁷⁵³

⁷⁵⁰ Texas Government Code, Section 2113.201.

⁷⁵¹ Letter Opinion, Texas Office of the Attorney General, No. 96-132 (1996).

⁷⁵² Texas Government Code, Section 2113.202.

⁷⁵³ Texas Government Code, Section 664.004.

Such programs are designed to encourage and create a condition of health fitness in employees and serve important purposes including:

- An understanding and reduction of the risk factors associated with society's most debilitating diseases.
- The development of greater work productivity and capacity.
- A reduction in absenteeism.
- A reduction of health insurance costs.
- An increase in the general level of fitness.⁷⁵⁴

State agencies are encouraged to enter into agreements with other state, local, or federal agencies to present, join in presenting, or participate in health fitness education or activity programs for state employees.⁷⁵⁵

Wellness Programs

The Department of State Health Services shall designate a wellness coordinator to create and develop a model statewide wellness program to improve the health and wellness of state employees.⁷⁵⁶

The statewide wellness coordinator is responsible for:

- Coordinating with other agencies that administer a health benefits program to develop the model wellness program, preventing duplication of efforts, providing information and resources to employees, and encouraging the use of wellness benefits included in the health benefits program.
- Maintaining a set of Internet links to health resources for use by employees.
- Designing an outreach campaign to educate employees about health and fitness-related resources.
- Studying the implementation and participation rates of state agency worksite wellness programs and report the findings to the legislature.
- Organizing an annual conference for all state agency wellness councils.⁷⁵⁷

State agencies must designate an employee to serve as the wellness liaison between the agency and the statewide wellness coordinator. A state agency may implement a wellness program based on the model program or components of the model program.⁷⁵⁸

The Executive Commissioner of the Health and Human Services Commission shall create a worksite wellness advisory board consisting of 13 members.⁷⁵⁹ The board is responsible for advising the

⁷⁵⁴ Texas Government Code, Section 664.002.

⁷⁵⁵ Texas Government Code, Section 664.005.

⁷⁵⁶ Texas Government Code, Section 664.053 (a).

⁷⁵⁷ Texas Government Code, Section 664.053 (b).

⁷⁵⁸ Texas Government Code, Section 664.053 (d) and (e).

⁷⁵⁹ Texas Government Code, Section 664.054 (a).

Department of State Health Services, Executive Commissioner of the Health and Human Services Commission, and wellness coordinator on worksite wellness issues including:

- Funding and resource development for worksite wellness programs.
- Identifying food service vendors that successfully market healthy foods.
- Best practices for worksite wellness used by the private sector.
- Worksite wellness features and architecture for new state buildings similar to those used by the private sector.⁷⁶⁰

A state agency may develop a wellness council composed of employees and managers to promote worksite wellness. The worksite council may undertake the following:

- Increasing employee interest in worksite wellness.
- Developing and implementing policies to improve agency infrastructure to allow for increased worksite wellness.
- Involving employees in worksite wellness programs.⁷⁶¹

The wellness council may identify best practices for worksite wellness and report the practices to the wellness advisory board annually.⁷⁶²

A state agency may allow its employees to participate in wellness council activities for two or more hours each month.⁷⁶³

As part of agency wellness policies, a state agency may:

- Allow each employee 30 minutes during normal working hours to exercise three times a week.
- Allow all employees to attend on-site wellness seminars when offered.
- Provide eight hours of additional leave time each year to an employee who receives a physical examination and completes either an online health risk assessment tool or a similar health risk assessment conducted in person by a worksite wellness coordinator.⁷⁶⁴

⁷⁶⁰ Texas Government Code, Section 664.059.

⁷⁶¹ Texas Government Code, Section 664.060 (a) and (b).

⁷⁶² Texas Government Code, Section 664.060 (f).

⁷⁶³ Texas Government Code, Section 664.060 (d).

⁷⁶⁴ Texas Government Code, Section 664.061.

New Requirement

The 81st Legislature provided funding for fiscal year 2010 through the General Appropriations Act to the Employees Retirement System to purchase access to an online health risk assessment for employees who do not have access to one.⁷⁶⁵

Health Services Pilot Program

To reduce the cost of health care and increase the wellness and productivity of state employees, the Employees Retirement System shall develop and implement a pilot program to provide on-site health services at a selected location to state employees who choose to use the services.⁷⁶⁶

The pilot program will provide the following:

- A licensed advanced practice nurse or licensed physician assistant who is employed or contracted by the State and will be located at a state office complex.
- A licensed physician who is employed by a state governmental entity for purposes other than the pilot program or is contracted by the State who will perform supervisory functions.
- Appropriate office space and equipment to provide basic medical care to employees.
- Professional liability insurance covering services provided.⁷⁶⁷

The Employees Retirement System may continue or expand the pilot program to cover more state office complexes if the pilot program proves beneficial in meeting the health care needs of state employees and is economically beneficial.⁷⁶⁸

New Requirement

The 81st Legislature provided authority to the Department of State Health Services and Employees Retirement System to establish pilot programs for chronic disease prevention and wellness initiatives.⁷⁶⁹

Employee Assistance Programs

An employee assistance program (EAP) offers employees help with personal concerns that may adversely affect job performance. An EAP is discretionary and is not required to be provided by a state agency or institution of higher education.

⁷⁶⁵ General Appropriations Act (81st Legislature, Regular Session), Article I, Employees Retirement System, Rider 12.

⁷⁶⁶ Texas Government Code, Section 671.001 (a).

⁷⁶⁷ Texas Government Code, Section 671.001 (b).

⁷⁶⁸ Texas Government Code, Section 671.001 (e).

⁷⁶⁹ HB 2559, Section 46 (81st Legislature, Regular Session).

Employee Break and Meal Periods

There is no state or federal law that requires or prohibits the establishment of breaks or meal periods. State agencies and institutions of higher education are free to generate their own policies in this area. Meal periods of 30 minutes or longer are not considered work time.⁷⁷⁰

Child Care Services

The Texas Facilities Commission shall develop a child care program that provides child care services for state employees. The Texas Facilities Commission may establish methods to administer and supervise the child care program.⁷⁷¹

The Texas Facilities Commission shall appoint a child care advisory committee composed of individuals who are interested in child care services for state employees. The committee shall advise the Texas Facilities Commission on the location, size, and design of the child care facilities and the child care facility curriculum.⁷⁷² The Texas Facilities Commission shall report to the Legislature the development and progress of the child care program and describe additional child care services needed by state employees.⁷⁷³

To establish a child care facility, the Texas Facilities Commission shall acquire property or build, renovate, repair, or equip a building that the State owns.⁷⁷⁴ The Texas Facilities Commission shall set the number of children that a child care facility may serve.⁷⁷⁵ The Texas Facilities Commission shall monitor the activities and operations of a child care facility by conducting regular visits during operating hours to investigate, inspect, and evaluate the services provided.⁷⁷⁶

The State may enter into an agreement with a state employee to reduce the employee's salary by an amount to be paid for child care expenses. A state employee may request the salary reduction agreement and select the recipient for child care payments by filing a written request with the agency with which the employee is employed.⁷⁷⁷

Clothing or Cleaning Allowances

Clothing or cleaning allowances are authorized for certain officers assigned to the Alcoholic Beverage Commission⁷⁷⁸, the Department of Public Safety⁷⁷⁹, and the Parks and Wildlife

⁷⁷⁰ Title 29, Code of Federal Regulations, Sections 785.18 and 785.19.

⁷⁷¹ Texas Government Code, Section 663.101.

⁷⁷² Texas Government Code, Section 663.051 (a) and (c).

⁷⁷³ Texas Government Code, Section 663.052.

⁷⁷⁴ Texas Government Code, Section 663.104.

⁷⁷⁵ Texas Government Code, Section 663.107.

⁷⁷⁶ Texas Government Code, Section 663.109.

⁷⁷⁷ Texas Government Code, Section 610.011.

⁷⁷⁸ General Appropriations Act (81st Legislature, Regular Session), Article V, Alcoholic Beverage Commission, Rider 9.

⁷⁷⁹ General Appropriations Act (81st Legislature, Regular Session), Article V, Department of Public Safety, Rider 26.

Department,⁷⁸⁰ as well as correctional officers working at the Department of Criminal Justice⁷⁸¹ and travel counselors and ferry operations personnel at the Department of Transportation.⁷⁸²

Allowances for laundry services are authorized at the Department of State Health Services, the Department of Aging and Disability Services, and the Texas Youth Commission for services rendered by interns, chaplains in training, and student nurses.⁷⁸³

Employee Meal Authorization

State agencies providing institution-based services, including the Department of Criminal Justice, the Department of Aging and Disability Services, the Department of State Health Services, the Texas Youth Commission, the School for the Blind and Visually Impaired, and the School for the Deaf, may provide meals to employees working in institutional settings. These agencies may charge employees a fee that does not exceed the cost of food preparation.⁷⁸⁴

The Department of State Health Services and the Department of Aging and Disability Services may provide free meals to food service personnel, volunteer workers, interns, chaplains in training, student nurses, and employees of state mental health and mental retardation facilities who are required to eat meals with clients.⁷⁸⁵

The Texas Youth Commission may provide free meals for food service personnel, volunteer workers, interns, chaplains-in-training, and student nurses.⁷⁸⁶

Medical Services

Additional medical services and benefits are offered to select state employees.

Animal Health Commission

Appropriated money may be expended for any immunization that is required of employees in performance of their duties.⁷⁸⁷

Health and Human Services Agencies

Appropriated money may be expended for any immunization that is required of the Department of State Health Services employees at risk in performance of their duties.⁷⁸⁸

⁷⁸⁰ General Appropriations Act (81st Legislature, Regular Session), Article VI, Parks and Wildlife Department, Rider 10.

⁷⁸¹ General Appropriations Act (81st Legislature, Regular Session), Article V, Department of Criminal Justice, Rider 13.

⁷⁸² General Appropriations Act (81st Legislature, Regular Session), Article VII, Department of Transportation, Rider 18.

⁷⁸³ General Appropriations Act (81st Legislature, Regular Session), Article II, Section 4; and Article V, Texas Youth Commission, Rider 10.

⁷⁸⁴ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 13.01; and Article V, Department of Criminal Justice, Rider 10.

⁷⁸⁵ General Appropriations Act (81st Legislature, Regular Session), Article II, Section 26, and Section 4.

⁷⁸⁶ General Appropriations Act (81st Legislature, Regular Session), Article V, Texas Youth Commission, Rider 10.

⁷⁸⁷ General Appropriations Act (81st Legislature, Regular Session), Article VI, Animal Health Commission, Rider 5.

⁷⁸⁸ General Appropriations Act (81st Legislature, Regular Session), Article II, Department of State Health Services, Rider 30.

The Department of State Health Services and Department of Aging and Disability Services may expend appropriated money for providing first aid or other minor medical attention to employees injured during the course of their employment and for the repair and/or replacement of employees' personal property that is damaged or destroyed during the course of their employment, provided that such items are medically prescribed equipment. Expenditures may not exceed \$500 per employee per incident.⁷⁸⁹

Department of Criminal Justice

The Department of Criminal Justice may use appropriated funds to provide medical attention and hospitalization by correctional medical staff and the correctional hospital facilities, or to pay necessary medical expenses for employees injured while performing the duties of any hazardous position that are not reimbursed by workers' compensation and/or employees' state insurance. Appropriated funds may also be used for medical tests and procedures on employees that are required by federal or state law or regulations when the tests or procedures are required as a result of the employee's job assignment or when considered necessary due to potential or existing litigation.⁷⁹⁰

Department of Public Safety

The Department of Public Safety may use appropriated funds for drugs, medical, hospital, laboratory, and funeral costs of law enforcement employees or other employees performing duties involving unusual risk when injury or death occurs in the performance of such duties. Appropriated funds shall not be expended for drugs, medical, hospital, laboratory, or funeral costs of employees who are not actively engaged in the performance of law enforcement or other hazardous duties or of law enforcement employees when injury or death occurs in the performance of clerical or office duties as distinguished from law enforcement or other duties involving unusual risk. Appropriated funds may also be expended for physical examinations and testing when such examinations and tests are a condition of employment or exposure to infectious diseases or hazardous materials occurs in the line of duty.⁷⁹¹

Special Provisions for the School for the Blind and Visually Impaired and School for the Deaf

The governing boards of the School for the Blind and Visually Impaired and the School for the Deaf may expend money for the provision of first aid or other minor medical attention for employees injured in the course and scope of their employment and for the repair and/or replacement of employees' personal property that is damaged or destroyed in the course and scope of their employment, so long as such personal property is medically prescribed equipment (for example, eyeglasses, hearing aids, and other prescribed items).⁷⁹²

Texas Facilities Commission

The Texas Facilities Commission is authorized to pay for medical testing for employees or prospective employees that work in high-risk environment areas (for example, asbestos removal, sewage). Appropriated funds may also be expended for immunizations that are required of

⁷⁸⁹ General Appropriations Act (81st Legislature, Regular Session), Article II, Section 3.

⁷⁹⁰ General Appropriations Act (81st Legislature, Regular Session), Article V, Department of Criminal Justice, Rider 14.

⁷⁹¹ General Appropriations Act (81st Legislature, Regular Session), Article V, Department of Public Safety, Rider 12.

⁷⁹² General Appropriations Act (81st Legislature, Regular Session), Article III, Special Provisions for the School for the Blind and Visually Impaired and School for the Deaf, Rider 1.

employees at risk in the performance of their duties. Such testing must be approved by the executive director.⁷⁹³

Texas Youth Commission

The Texas Youth Commission is authorized to pay necessary medical expenses, including the cost of repairing or replacing broken eyeglasses and other health aids, for employees injured while performing the duties of any hazardous position that is not reimbursed by workers' compensation and/or employees' state insurance. The agency is also authorized to provide employees medical tests and procedures that are required by federal or state law or regulations, when the tests or procedures are required as a result of the employee's job assignment, or when considered necessary due to potential or existing litigation.⁷⁹⁴

Memberships In and Dues for Professional Organizations

With the exception of a state library, a state agency may not use appropriated money to pay for membership in or dues for a professional organization unless the administrative head of the agency or designee reviews and approves the expenditure.⁷⁹⁵

Table 19-2 provides a list of Office of the Attorney General Resources related to the payment of professional fees for state employees.

Table 19-2

| Payment of Professional Fees Related Attorney General Resources ^a | |
|--|---|
| Opinion Number | Topic |
| JM-1063 | Whether a state agency may pay the temporary fees assessed against accountants and engineers in its employ. |
| MW-251 | Whether the State can pay notary license fees of its employees. |
| ^a Detailed references can be found at http://www.oag.state.tx.us/opin/opindex.shtml . | |

⁷⁹³ General Appropriations Act (81st Legislature, Regular Session), Article I, Texas Facilities Commission, Rider 6.

⁷⁹⁴ General Appropriations Act (81st Legislature, Regular Session), Article V, Texas Youth Commission, Rider 8.

⁷⁹⁵ Texas Government Code, Section 2113.104.

Moving and Storage Expenses

A state agency may use appropriated money to pay expenses incurred in moving the household property of state employees who are:

- Reassigned from one headquarters to another if the agency determines that the best interests of the State will be served and the distance between headquarters is at least 25 miles; or
- Employed at a facility that is being closed or is undergoing a reduction in force if the employee accepts a position with the agency at another headquarters that is at least 25 miles from the facility that is being closed or undergoing a reduction in force.⁷⁹⁶

A state agency may use State-owned equipment to move an employee if it is available. If not, the agency may pay for the services of a transportation company or self-service vehicles to make the move.⁷⁹⁷

A state employee is entitled to be reimbursed for expenses incurred in traveling by personally owned or a leased motor vehicle for a move.⁷⁹⁸

A state agency may also pay for or reimburse a state employee for storage expenses incurred if the employee is required to live in state-owned housing and the housing is not available when the move is made.⁷⁹⁹

The Department of Public Safety may use appropriated funds to pay the reasonable, necessary, and resulting costs of moving the household goods and effects of a commissioned peace officer employed by the department who is transferred from one designated headquarters to another, so long as the department determines that the best interests of the State will be served by the transfer.⁸⁰⁰

Tuition and Mandatory Fees Assistance

Members of the State's military forces are authorized to receive tuition and mandatory fees assistance for vocational, technical, undergraduate, or graduate level courses offered by public or private institutions of higher education. This assistance may not exceed 12 semester credit hours in any semester or more than 5 academic years or 10 semesters, whichever comes first.

Tuition and mandatory fees is provided to eligible members to encourage voluntary membership, to improve the education level of its members, to diversify the composition of the forces, and to enhance the state's workforce.

⁷⁹⁶ Texas Government Code, Section 2113.204 (a).

⁷⁹⁷ Texas Government Code, Section 2113.204 (b).

⁷⁹⁸ Texas Government Code, Section 2113.204 (c).

⁷⁹⁹ Texas Government Code, Section 2113.204 (d).

⁸⁰⁰ General Appropriations Act (81st Legislature, Regular Session), Article V, Department of Public Safety, Rider 14.

To be eligible, a person must be a member in good standing who is:

- An enlisted member,
- A warrant officer in grades one through three, or
- A commissioned officer in grades Second Lieutenant through Captain, and
- Meet any additional qualifications established by the Adjutant General.⁸⁰¹

State-Owned Housing

There are certain situations in which the State provides housing for employees. This housing may be at a reduced cost or at no cost to employees based upon provisions in the General Appropriations Act. Agencies that have authority to provide state housing to certain individuals include the Texas Facilities Commission,⁸⁰² Texas Historical Commission,⁸⁰³ Department of Criminal Justice,⁸⁰⁴ Texas Youth Commission,⁸⁰⁵ Parks and Wildlife Department,⁸⁰⁶ and select state employees working at state mental health and mental retardation facilities.⁸⁰⁷

The Adjutant General, Assistant Adjutant General-Air, and the Assistant Adjutant General-Army are authorized to live in state-owned housing and are exempt from paying housing costs. The Adjutant General's Department may also allocate existing department housing to other department employees with a demonstrated need based on location and job description.⁸⁰⁸ Housing services are authorized at the Department of State Health Services, the Department of Aging and Disability Services, and the Texas Youth Commission for services rendered by interns, chaplains in training, and student nurses.⁸⁰⁹

Each state agency that provides employee housing shall report to the Legislature annually all employees who receive agency housing, the fair market rental value of housing supplied by the agency, and the amount of revenue recovered to meet mandated goals.⁸¹⁰

Related Legislation

Table 19-3 contains a list of human resources-related bills that were passed by the 81st Legislature. This may not be a complete list and should be used only as a summary of general issues on benefits that were addressed during the session.

⁸⁰¹ Texas Government Code, Section 431.090.

⁸⁰² General Appropriations Act (81st Legislature, Regular Session) Article I, Texas Facilities Commission, Rider 12.

⁸⁰³ General Appropriations Act (81st Legislature, Regular Session), Article I, Texas Historical Commission, Rider 22.

⁸⁰⁴ General Appropriations Act (81st Legislature, Regular Session), Article V, Department of Criminal Justice, Rider 12.

⁸⁰⁵ General Appropriations Act (81st Legislature, Regular Session), Article V, Texas Youth Commission, Rider 13.

⁸⁰⁶ General Appropriations Act (81st Legislature, Regular Session), Article VI, Parks and Wildlife Department, Rider 12.

⁸⁰⁷ General Appropriations Act (81st Legislature, Regular Session), Article II, Section 32.

⁸⁰⁸ General Appropriations Act (81st Legislature, Regular Session), Article V, Adjutant General's Department, Rider 9.

⁸⁰⁹ General Appropriations Act (81st Legislature, Regular Session), Article II, Section 4, and Article V, Texas Youth Commission, Rider 10.

⁸¹⁰ General Appropriations Act (81st Legislature, Regular Session), Article IX, Section 11.05(c).

Table 19-3

| Other Benefits Related Legislation (81st Legislature) ^a | |
|---|---|
| Bill Number | Summary |
| HB 2559 | Provides authority to the Department of State Health Services and the Employees Retirement System to establish a state employee pilot program consistent with federal guidelines for chronic disease prevention and wellness initiatives. |
| ^a Detailed information on changes to statutes as a result of this bill can be found in the text of the enrolled bill at www.capitol.state.tx.us . | |

Section 20 Training

Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Awareness Education

State agencies must annually provide an educational pamphlet to all employees about:

- Methods of transmission and prevention of HIV infection;
- State laws related to the transmission of HIV infection; and
- Conduct that may result in the transmission of HIV infection.⁸¹¹

This educational pamphlet should be provided to all newly hired state employees on their first day of employment.⁸¹² Workplace guidelines should also be adopted concerning persons with AIDS and HIV infection. At a minimum, the guidelines should include the provisions within the model workplace guidelines developed by the Department of State Health Services.⁸¹³

State agencies shall make available HIV education for clients, inmates, patients, and residents of treatment, educational, correctional, or residential facilities under the agency's jurisdiction.⁸¹⁴

State agencies are also required to develop and implement guidelines regarding the confidentiality of AIDS and HIV-related medical information.⁸¹⁵

Correctional and Juvenile Correctional Officers Training

The Department of Criminal Justice shall provide at least 284 hours of training for new correctional officers.⁸¹⁶ The Texas Youth Commission shall provide at least 300 hours of training for each juvenile correctional officer prior to the correctional officer independently commencing his or her duties.⁸¹⁷

Equal Employment Opportunity (EEO) Compliance Training

State agencies and institutions of higher education that receive three or more discrimination complaints with merit in a fiscal year must provide comprehensive equal employment opportunity training to managers and supervisors. The training shall be provided by the Civil Rights Division of the Texas Workforce Commission or by a person or agency approved by the Civil Rights Division. If the training is not provided by the Civil Rights Division, documentation verifying this training must be provided to the Civil Rights Division. The documentation should include the dates that the training

⁸¹¹ Texas Health and Safety Code, Section 85.111 (a).

⁸¹² Texas Health and Safety Code, Section 85.111 (b).

⁸¹³ Texas Health and Safety Code, Sections 85.012 and 85.112; and www.dshs.state.tx.us/hivstd/policy/policies/090021.pdf.

⁸¹⁴ Texas Health and Safety Code, Section 85.114.

⁸¹⁵ Texas Health and Safety Code, Section 85.115 (a).

⁸¹⁶ General Appropriations Act (81st Legislature, Regular Session), Article V, Department of Criminal Justice, Rider 47.

⁸¹⁷ Texas Human Resources Code, Section 61.0356 (b).

was provided, the names of the persons attending the training, an agenda for the training program, and the name of the entity or person providing the training. The minimum standards for training are determined by the Texas Workforce Commission.⁸¹⁸

Equal Employment Opportunity (EEO) Standards Training

Each state agency and institution of higher education shall provide employment discrimination training, including employment discrimination involving sexual harassment, to its employees. New employees shall receive employment discrimination training no later than 30 days after the date of hire. Employees who complete the training are required to sign a statement verifying their completion of the training program. The agency shall file the statement in the employee's personnel file.⁸¹⁹

Additional employment discrimination and sexual harassment training is required for each employee every two years after employment. The minimum standards for the training are determined by the Texas Workforce Commission.⁸²⁰

Coordinated Technology Training

Each calendar quarter a state agency, including an institution of higher education, shall coordinate agency or institution information technology training with technology training offered or coordinated by the Department of Information Resources. The agency or institution shall use training offered or coordinated by the Department of Information Resources if the training meets agency requirements and is cost-competitive.⁸²¹

Training and Education Programs

A state agency or institution of higher education may require an employee to attend a training or education program if the training and education is related to the employee's duties or prospective duties.⁸²²

A state agency or institution of higher education may spend appropriated funds to pay the salary, tuition and other fees, travel and living expenses, training expenses, expense of training materials, and other necessary expenses of an instructor, student, or other participant in a training or education program.⁸²³

A state agency or institution of higher education shall adopt rules relating to the eligibility of employees for training and education supported by the agency or institution of higher education, as well as rules relating to the obligations assumed by the employees receiving the training and education.⁸²⁴

⁸¹⁸ Texas Labor Code, Section 21.556, and Texas Administrative Code, Title 40, Section 819.25.

⁸¹⁹ Texas Labor Code, Section 21.010; and Texas Administrative Code, Title 40, Section 819.24.

⁸²⁰ Texas Labor Code, Section 21.010 (c) and (d).

⁸²¹ Texas Government Code, Section 2054.122.

⁸²² Texas Government Code, Section 656.045.

⁸²³ Texas Government Code, Section 656.047.

⁸²⁴ Texas Government Code, Section 656.048.

A state agency or institution of higher education may contract with another state, local, or federal department, agency, or institution of higher education to train or educate its employees or may join in presenting a training or educational program.⁸²⁵

Training Policy Requirements

The State Employees Training Act authorizes a state agency or an institution of higher education to use public funds to provide training to state employees. Such training is intended to be applicable to current or prospective duty assignments.⁸²⁶

The Governor's Office has provided general guidelines for the approval of the following:

- College degree programs, both undergraduate and graduate.
- Interagency training.
- Out-of-agency training.
- Internship training.⁸²⁷

A state agency or institution of higher education may use public funds for a given fiscal year to pay expenses for training if it occurs during the fiscal year. To the extent that it is cost-effective, a state agency or institution of higher education may use money appropriated for a particular fiscal year to pay expenses for training that will occur partly or entirely during a different fiscal year.⁸²⁸

A state agency's training and educational program may include the following:

- Preparing for technological and legal developments.
- Increasing work capabilities.
- Increasing the number of qualified employees in areas designated by institutions of higher education as having an acute faculty shortage.
- Increasing the competence of state employees.⁸²⁹

Before funds for training may be expended, agencies and institutions of higher education must adopt a policy that requires training to specifically relate to an employee's duties following the training.⁸³⁰ If a state employee receives training that is paid for by a state agency or institution of higher education, and during the training period the employee does not perform their regular duties for three or more months as a result of the training, the agency shall require the employee to agree, in writing before the training begins, to certain conditions. For an employee, the conditions state that they must:

⁸²⁵ Texas Government Code, Section 656.049.

⁸²⁶ Texas Government Code, Section 656.044, and Opinion, Texas Office of the Attorney General, No. MW 116.

⁸²⁷ Official Memorandum from the Governor's Office: "Implementation of State Employees Training Act of 1969 (S.B. 653)," October 31, 1969.

⁸²⁸ Texas Government Code, Section 2113.205 (a).

⁸²⁹ Texas Government Code, Section 656.046.

⁸³⁰ Texas Government Code, Section 656.102.

- Work for the agency for at least one month following training, for each month of the training period.
- Reimburse the State for all costs related to the training, including salary for hours not considered paid annual leave or compensatory leave.⁸³¹

If a state employee does not provide the required services or provides those services for less than the required term, the employee is liable to the state agency or institution of higher education for all costs associated with training and for the agency's or institution's reasonable expenses incurred in obtaining payment, including attorney fees.⁸³²

These requirements may be waived by the agency or institution of higher education if it is in the best interest of the agency or institution or is warranted because of personal hardship.⁸³³

Additional Information

Table 20-1 includes a list of resources from the Attorney General's Office related to the training of state employees.

Table 20-1

| Training Related Attorney General Resources ^a | |
|--|---|
| Opinion Number | Topic |
| DM-497 | Regarding the validity of an appropriations act rider requiring certain state agencies to expend appropriated funds for training provided by the Texas Commission on Human Rights. |
| GA-0281 | Whether the Texas Workforce Commission is properly interpreting the Equal Employment Opportunity training requirement of the Texas Labor Code, Section 21.556. |
| LO 90-086 | Whether the Polygraph Examiners Board may allow its executive director and its investigator to maintain their peace officer licenses by meeting the continuing education requirements during their working hours. |
| M-1141 | Regarding the construction of Article 6252-11a, Texas Civil Statutes relating to programs for training and education of state administrators and employees. |
| MW-116 | Regarding the payment of tuition fees under the State Employees Training Act. |
| ^a Detailed references can be found at http://www.oag.state.tx.us/opin/opindex.shtml | |

⁸³¹ Texas Government Code, Section 656.103 (a) and (b).

⁸³² Texas Government Code, Section 656.104.

⁸³³ Texas Government Code, Section 656.103 (c).

Section 21

Unemployment Insurance Compensation

Overview

Unemployment insurance compensation is an insurance program paid by the employer. This program provides temporary compensation to workers, while they are seeking another job, who became unemployed through no fault of their own.⁸³⁴ With few exceptions, state employees are covered by unemployment insurance in Texas.⁸³⁵ The Texas Workforce Commission (Commission) is the agency responsible for managing the State's Unemployment Insurance Compensation programs.

The Commission supplies employers, without cost, printed notices that provide general information about filing a claim for unemployment benefits. A state agency or institution of higher education shall post and maintain the notices in places accessible to all employees.⁸³⁶

Reimbursements to the Unemployment Compensation Fund

The State has elected to reimburse the unemployment compensation fund administered by the Commission for benefits paid to former employees rather than to pay taxes into the fund.⁸³⁷ If a claim is approved for payment, a state agency will be billed on a quarterly basis for all benefits based on wages it reported during the base period of the claim.⁸³⁸ In general, a base period refers to the first four of the last five completed calendar quarters that an employee worked for an organization.⁸³⁹ The beginning and ending date of the base period will change based upon an employee's work history.

State agencies and institutions of higher education may elect to pay reimbursements for benefits instead of contributions.⁸⁴⁰ A reimbursing employer shall pay the reimbursement to the Commission according to the provisions of applicable laws and the Commission's rules.⁸⁴¹

Claiming Unemployment Benefit

To claim unemployment benefits, claimants must register for work at a state employment office. The claimant's registration for work gives the Commission an opportunity to help the claimant find a job. After registering for work, individuals may then file an initial claim for unemployment compensation showing the name of the employer for whom they worked most recently and the reason for their unemployment. A notice of the initial claim is mailed to the most recent employer named on the claim.⁸⁴²

⁸³⁴ Texas Workforce Commission Web site at <http://www.twc.state.tx.us/ui/bnfts/claimant1.html#ui>.

⁸³⁵ Texas Labor Code, Section 201.063.

⁸³⁶ Texas Labor Code, Section 208.001 (b).

⁸³⁷ Texas Labor Code, Sections 201.011 (16) and 205.001 (a).

⁸³⁸ Texas Labor Code, Section 205.013.

⁸³⁹ Texas Labor Code, Section 201.011 (1) (a).

⁸⁴⁰ Texas Labor Code, Section 205.001 (a).

⁸⁴¹ Texas Labor Code, Section 205.012.

⁸⁴² Texas Workforce Commission Web site at <http://www.twc.state.tx.us/ui/bnfts/employer1.html#qualify>.

The law requires employers to respond to the notice of initial claim within 14 days of the mailing date of the claim. A failure to respond to the claim in a timely manner results in a waiver of all rights in connection with the claim.⁸⁴³

Benefit Eligibility

To receive unemployment benefits, claimants must:

- Have registered for work at an employment office and continue to report the status of a work search to an employment office.
- Have filed a claim for benefits.
- Be able to work.
- Be available for work.
- For the individual's base period, have benefit wage credits in at least two calendar quarters and in an amount not less than 37 times the individual's benefit amount.
- Have earned wages totaling at least six times the claimants' weekly benefit amount since the beginning date of their most recent prior benefit year.
- Be totally or partially unemployed for a waiting period of at least seven consecutive days.
- Participate in re-employment activities, such as a job search assistance service, if the individual has been determined, according to a profiling system established by the commission, to be likely to exhaust eligibility for regular benefits and needs those services to obtain new employment. However, if the individual has completed participation in such a service or there is reasonable cause for the individual's failure to participate in those services this may be waived.⁸⁴⁴

Unemployment Benefits

Unemployment benefits are based on the wages reported to the Commission by employers during the base period of the initial claim. In general, a base period refers to the first four of the last five completed calendar quarters that an employee worked for an organization. The beginning and ending date of the base period will change based upon an employee's work history. Individuals precluded from working during a major part of a calendar year because of a medically verifiable injury or illness may have their base period calculated differently.⁸⁴⁵

These wages are known as the "benefit wage credit." These wages are the sum of all quarters' wages reported by an employer, or compiled by the Commission from the best information obtained, and are used to determine an individual's right to benefits.⁸⁴⁶

⁸⁴³ Texas Labor Code, Sections 208.003 and 208.004 (b).

⁸⁴⁴ Texas Labor Code, Section 207.021.

⁸⁴⁵ Texas Labor Code, Section 201.011 (1).

⁸⁴⁶ Texas Labor Code, Section 207.004.

Payment of Benefits

An eligible individual who is totally unemployed in a benefit period is entitled to benefits for that benefit period at the rate of 1/25 of the past wages received during the quarter in the individual's base period in which wages were the highest.⁸⁴⁷ This means that the Commission divides the highest quarter's total earnings by 25 to get an employee's weekly benefit amount. An individual who is partially unemployed may still be eligible for benefits at a reduced amount.⁸⁴⁸

The maximum amount of benefits payable to an eligible individual during a benefit year is the lesser of 26 times the weekly benefit amount or 27 percent of the individual's benefit wage credits.⁸⁴⁹ Individuals who exhaust their regular benefits may apply for extended benefits if such benefits are available.⁸⁵⁰

Extended Benefits

Extended benefits are additional payments of unemployment benefits equal to 50 percent of an individual's regular benefits and may be made to a claimant during a period of high unemployment after all of his or her regular unemployment benefits are exhausted. The period of time during which these additional payments may be made is called an "extended benefit period." Whether an extended benefit period exists is determined by several statewide factors.⁸⁵¹

Disqualification for Benefits

An otherwise qualified claimant can be disqualified for unemployment benefits if the claimant quit or was fired for misconduct.⁸⁵² A claimant will not be disqualified if he or she left work due to a medically verifiable illness (claimant or child), injury, disability, pregnancy, a permanent move that was made with the individual's spouse who is a member of the armed forces, or if an involuntary separation was for any of the following reasons:

- A work-related reason that made the individual's separation from employment urgent, compelling, and necessary.
- The individual leaves the workplace to protect himself or herself from family violence or stalking.
- The individual leaves the workplace to care for his or her terminally ill spouse, as evidenced by a physician's statement or other medical documentation, in which reasonable, alternative care is not available.⁸⁵³

⁸⁴⁷ Texas Labor Code, Section 207.002 (a).

⁸⁴⁸ Texas Labor Code, Section 207.003.

⁸⁴⁹ Texas Labor Code, Section 207.005.

⁸⁵⁰ Texas Labor Code, Section 209.041.

⁸⁵¹ Texas Workforce Commission Web site at <http://www.twc.state.tx.us/ui/bnfts/employer5.html#eb>; and Texas Labor Code, Section 209.

⁸⁵² Texas Labor Code, Sections 207.044 (a) and 207.045.

⁸⁵³ Texas Labor Code, Section 207.045 (d) and 207.046 (a).

Coverage for State Employees Working Outside the State

The Commission may enter into agreements with agencies of other states or federal agencies to cover an employee who performs his or her duties outside of Texas.⁸⁵⁴ If the Commission is unable to execute a reciprocal agreement with another state, the employing Texas state agency shall become a reimbursing employer if permitted by the laws of the state in which the employee works. If the agency is not permitted to be a reimbursing employer, it may pay the required contributions for that employee from funds available for that purpose.⁸⁵⁵

Eligibility of Certain Disabled Persons

Permanently disabled individuals who receive Social Security Disability Insurance (SSDI) and can work only part-time may be eligible for unemployment insurance benefits if they meet certain conditions. Specifically, these individuals must:

- Be able to work and be available for work.
- Be unable to work full time.
- Have worked part-time during a substantial part of the individual's base period.
- Seek part-time work consistent with the limitations imposed by the individual's disability.
- Receive disability insurance benefits under Title 42, United States Code, Section 423.⁸⁵⁶

Eligibility of Certain Persons Unemployed Because of a Disaster

Notwithstanding Texas Government Code, Section 207.021, the governor by executive order may suspend the waiting period requirement and authorize an individual to receive benefits during the waiting period if the individual:

- Is unemployed as a direct result of a natural disaster that results in a disaster declaration by the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (United States Code, Section 42, Section 5121 et seq.); (1) is otherwise eligible for unemployment compensation benefits; and (2) is not receiving disaster unemployment assistance benefits for the period included in that waiting period.⁸⁵⁷

| New Requirement |
|--|
| The 81st Legislature passed legislation allowing the Governor to suspend the benefits waiting period requirement if the individual is unemployed as a direct result of a natural disaster. |

⁸⁵⁴ Texas Labor Code, Sections 211.001 and 211.002.

⁸⁵⁵ Texas Labor Code, Section 205.042.

⁸⁵⁶ Texas Labor Code, Section 207.0211.

⁸⁵⁷ Texas Labor Code, Section 207.0212, as amended by HB 1831 (81st Legislature, Regular Session).

Related Legislation

Table 21-1 contains a list of unemployment related bills that were passed by the 81st Legislature. This may not be a complete list and should be used only as a summary of the general issues on unemployment compensation subject that were addressed during the session.

Table 21-1

| Unemployment Compensation Related Legislation (81st Legislature) ^a | |
|--|--|
| Bill Number | Summary |
| HB 1831 | Related to disaster preparedness and emergency management and to eligibility of certain individuals for disaster unemployment assistance benefits. |
| ^a Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at www.capitol.state.tx.us . | |

Section 22
Workers' Compensation

Overview of Workers' Compensation

Workers' Compensation is a form of insurance that provides wage replacement benefits, medical treatment, vocational rehabilitation, and other benefits to workers who are injured on the job or acquire an occupational disease.

The Texas Department of Insurance, Division of Workers' Compensation (Division) regulates the State's workers' compensation program.⁸⁵⁸ The Office of Injured Employee's Counsel was established to represent the interests of workers' compensation claimants in Texas.⁸⁵⁹

Coverage for State Employees

For most state agencies, the State Office of Risk Management (Office) is responsible for administering state risk management and insurance services obtained by state agencies, including the government employees' workers' compensation insurance program and the state risk management programs.⁸⁶⁰

State agencies and institutions of higher education that are excluded from the workers' compensation coverage provided by the Office are the Department of Transportation, University of Texas System, and the Texas A&M University System.

Other individuals excluded from workers' compensation coverage provided by the Office include:

- A person performing personal services for the State as an independent contractor or volunteer.
- A person who at the time of injury was performing services for the federal government and who is covered by some form of federal workers' compensation insurance.
- A prisoner or inmate of a correctional institution other than a work program participant in a Texas Correction Industries contract.
- A client or patient of a state agency.⁸⁶¹

Recovery of workers' compensation benefits is the exclusive remedy of an employee covered by workers' compensation insurance coverage. For the death of an employee as a result of a work-related injury, this may include a legal beneficiary, or an agent of the employee.⁸⁶² However, the

State Office of Risk Management

The State Office of Risk Management (Office) is responsible for operating a self-insured workers' compensation program for the State. Duties of the Office include receiving and investigating reports of an injury filed on behalf of state employees; determining whether a claim is compensable; paying income and medical benefits as due; and reviewing medical bills to determine reasonableness, necessity, and compliance with Division fee guidelines. In addition, the Office may appear as an adversary before the Division and the courts, presenting the legal defenses and positions of the State's workers' compensation program, as well as prepare reports for the Legislature and provide workers' compensation training for state agencies.

Sources: Texas Labor Code, Sections 412.011 and 412.012, and Strategic Plan 2009-2013, State Office of Risk Management.

⁸⁵⁸ Texas Labor Code, Section 402.001.

⁸⁵⁹ Texas Labor Code, Section 404.002 (a).

⁸⁶⁰ Texas Labor Code, Section 412.011.

⁸⁶¹ Texas Labor Code, Section 501.024.

⁸⁶² Texas Labor Code, Section 408.001 (a).

Texas Labor Code does not authorize a cause of action for damages against the State, a state agency, or an employee of the State beyond the actions and damages authorized by Chapter 101 of the Civil Practice and Remedies Code.⁸⁶³

Out of State Assignments or Positions

A state employee who performs services outside Texas is entitled to workers' compensation benefits from the State of Texas even if the person:

- Is hired or not hired in Texas;
- Does not work in Texas;
- Works both in Texas and out of Texas;
- Is injured outside of Texas; or
- Has been outside of Texas for more than one year.⁸⁶⁴

In situations where an employee works outside of Texas, some states may require agencies to purchase separate workers' compensation insurance. If an employee elects to pursue remedies in the state where the injury occurred, the employee is not entitled to workers' compensation benefits through the Texas State Office of Risk Management.⁸⁶⁵

Coverage for Services Provided by Volunteers

While volunteers generally are not covered, a person who performs volunteer services for the State in a disaster or in scheduled emergency response training under the direction of an officer or employee of the State is entitled to medical benefits for an injury sustained in the course of providing those services. A disaster in this situation means a condition for which the governor has issued a declaration of a state of disaster or another occurrence that initiates the state emergency management plan.

The State Office of Risk Management has developed a Statewide Volunteer Insurance Program to provide excess liability, excess automobile liability, and excess accident or medical coverage for registered volunteers of Texas state agencies and institutions of higher education.⁸⁶⁶

To receive the workers' compensation benefits, the person must seek medical attention from a doctor for the injury not later than 48 hours after the occurrence of the injury or after the date the person knew or should have known the injury occurred. The person shall comply with the notification requirements by providing notice of the injury to the Texas Department of Insurance, Division of Workers' Compensation (Division) or the state agency with which the officer or employee is associated.⁸⁶⁷

⁸⁶³ Texas Labor Code, Section 501.002 (d).

⁸⁶⁴ Texas Labor Code, Section 501.025 (a).

⁸⁶⁵ Texas Labor Code, Section 501.025 (b).

⁸⁶⁶ Texas Labor Code, Sections 412.011 and 501.026 (b); and www.sorm.state.tx.us/Risk_Management/Bonds_and_Insurance/volunteer.php.

⁸⁶⁷ Texas Labor Code., Section 501.026 (b) and http://www.sorm.state.tx.us/Claims_Coordinator_Handbook/employer.php (Employee Responsibility, #2).

Additional Resources

Table 22-1 includes a list of resources from the Texas Office of the Attorney General related to workers' compensation for state employees.

Table 22-1

| Workers' Compensation Related Attorney General Resources ^a | |
|---|---|
| Opinion Number | Topic |
| DM-124 | Whether the federal Americans with Disabilities Act precludes the Texas Workers' Compensation Commission from disclosing job applicants' prior work injuries to prospective employers pursuant to the Texas Workers' Compensation Act. |
| DM-181 | Whether information related to an employee's "no lost time injuries" must be released by the Texas Workers' Compensation Commission as part of a record check or pre-employment check pursuant to the Texas Workers' Compensation Act or the Texas Open Records Act, and related questions. |
| DM-189 | Whether former workers' compensation laws authorize the Industrial Accident Board or its successor to pay for the cost of agency-ordered medical examinations of claimants. |
| DM-214 | Regarding the impact of leave without pay provisions of the Workers' Compensation Act. |
| H-1105 | Regarding the computation of benefits due to a state employee with a specific injury under the workers' compensation statutes. |
| JC-188 | Whether a state agency may require an employee to exhaust compensatory leave before receiving workers' compensation benefits. |
| JM-497 | Regarding the validity of General Appropriations Act rider requiring reimbursement to the General Revenue Fund for workers' compensation benefits paid to certain employees. |
| LO 93-023 | Whether certain disabled individuals in a state university vocational training program are "employees" under Texas Civil Statutes, Article 8309g (relating to workers' compensation coverage). |
| ^a Detailed references can be found at: Letter opinions (LO): http://www.oag.state.tx.us/opin/op_letters.shtml . Opinions: http://www.oag.state.tx.us/opin/opindex.shtml . | |

Workers' Compensation Benefits

State employees with compensable injuries are entitled to compensation by the director of the State Office of Risk Management.⁸⁶⁸ However, the Texas Department of Insurance, Division of Workers' Compensation (Division) adjudicates income and medical benefit disputes for the State.⁸⁶⁹ Upon receipt of a report of injury, the Division contacts the affected employee by mail or by telephone to provide information on the benefit process and the compensation established by state law.⁸⁷⁰

There are four types of workers' compensation benefits: medical benefits, income benefits, burial benefits, and death benefits. The following sections provide a brief overview of each type.

⁸⁶⁸ Texas Labor Code, Section 501.021.

⁸⁶⁹ Texas Labor Code, Section 410.002.

⁸⁷⁰ Texas Labor Code, Section 409.013 (b).

Medical Benefits

An injured employee is entitled to all health care reasonably required to treat a compensable injury when needed.⁸⁷¹ The injured employee is entitled to his or her choice of treating physicians. If an employee is dissatisfied with the initial choice of a doctor, the employee may notify the Division and request authority to select an alternative doctor.⁸⁷² The Division prescribes the criteria to be used in granting an employee the authority to select an alternative doctor.⁸⁷³

Income Benefits

In addition to medical payments, employees are eligible to receive income benefits for time lost from work as the result of an injury. To be eligible, an injury must result in disability for at least one week. Income benefits begin to accrue on the eighth day after the disabling injury. If the disability continues for two weeks or longer, compensation shall be computed from the date the injury or disability began.⁸⁷⁴ In the event of an employee's death, the entitlement for income benefits ends.⁸⁷⁵

Eligibility for temporary income, impairment income, and supplemental income expires 401 weeks after the date of the injury. In the case of an occupational disease, the employee's eligibility for temporary income benefits, impairment income benefits, and supplemental income benefits terminates 401 weeks after the date on which benefits began to accrue.⁸⁷⁶

Temporary Income Benefits

Temporary income benefits are provided to the injured employee until he or she reaches maximum medical improvement.⁸⁷⁷ Injured workers may continue to receive temporary income benefits after they return to work as long as their salaries are less than their pre-injury wages.⁸⁷⁸ Maximum medical improvement refers to the earlier of:

- The earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated;
- The expiration of 104 weeks from the date on which income benefits began to accrue; or
- The date determined by the Division in cases of spinal surgery.⁸⁷⁹

Impairment Income Benefits

Impairment income benefits begin the day after an employee reaches maximum medical improvement and end on the date of the employee's death or after a period equal to three weeks for each percentage point of impairment.⁸⁸⁰ An employee may not recover impairment income benefits unless evidence

⁸⁷¹ Texas Labor Code, Section 408.021 (a).

⁸⁷² Texas Labor Code, Section 408.022 (b).

⁸⁷³ Texas Labor Code, Section 408.022 (c).

⁸⁷⁴ Texas Labor Code, Section 408.082.

⁸⁷⁵ Texas Labor Code, Section 408.081 (d).

⁸⁷⁶ Texas Labor Code, Section 408.083.

⁸⁷⁷ Texas Labor Code, Section 408.101 (a); and Title 28, Texas Administrative Code, Section 130.4 (a).

⁸⁷⁸ Title 28, Texas Administrative Code, Section 129.3 (e).

⁸⁷⁹ Texas Labor Code, Sections 401.011(30) and 408.104.

⁸⁸⁰ Texas Labor Code, Section 408.121 (a).

of the impairment that is based on an objective clinical or laboratory finding exists.⁸⁸¹ Typically, impairment income benefits are equal to 70 percent of the employee's average weekly wage.⁸⁸² An injured worker is entitled to impairment benefits in addition to any wages they may earn. An injured worker who has returned to work for 90 days is entitled to request that the impairment benefit be paid in a lump sum commute.⁸⁸³

Supplemental Income Benefits

Supplemental income benefits are paid out when impairment income benefits have expired and the employee:

- Has an impairment rating of 15 percent or more.⁸⁸⁴
- Has not returned to work or has returned to work earning less than 80 percent of his or her average pre-injury weekly wage.⁸⁸⁵
- Has made a good-faith effort to find employment suitable for his or her ability to work.⁸⁸⁶
- Has not elected to commute impairment income benefits.⁸⁸⁷

The amount of a supplemental income benefit for a week may not exceed 70 percent of the state average weekly wage rounded to the nearest whole dollar.⁸⁸⁸ The Commissioner of Workers' Compensation has established compliance standards for supplemental income benefit recipients. These standards require recipients of supplemental income benefits to demonstrate an active effort to obtain employment, including participation in a vocational rehabilitation program and active participation in work-search efforts.⁸⁸⁹

Lifetime Income Benefits

Lifetime income benefits are paid until the death of an employee for:

- Total and permanent loss of sight in both eyes.
- Loss of both feet at or above the ankle.
- Loss of both hands at or above the wrist.
- Loss of one foot at or above the ankle and one hand at or above the wrist.
- Injury to the spine resulting in complete paralysis of both arms, both legs, or one arm and one leg.

⁸⁸¹ Texas Labor Code, Section 408.122.

⁸⁸² Texas Labor Code, Section 408.126.

⁸⁸³ Title 28, Texas Administration Code, Section 147.10.

⁸⁸⁴ Texas Labor Code, Section 408.142 (1).

⁸⁸⁵ Texas Labor Code, Section 408.142 (2).

⁸⁸⁶ Texas Labor Code, Section 408.1415.

⁸⁸⁷ Texas Labor Code, Section 408.128.

⁸⁸⁸ Texas Labor Code, Section 408.061(c).

⁸⁸⁹ Texas Labor Code, Section 408.1415 (a).

- Injury to the brain resulting in incurable insanity or imbecility.
- Third-degree burns over 40 percent of the body that require grafting or third-degree burns covering the majority of both hands or one hand and the face.⁸⁹⁰

A weekly lifetime income benefit may not exceed 100 percent of the state average weekly wage rounded to the nearest whole dollar.⁸⁹¹ Weekly lifetime income benefits are increased by 3 percent per year up to the maximum weekly rate.⁸⁹²

Death and Burial Benefits

Death benefits are paid to the legal beneficiaries of a deceased employee if the employee died because of a compensable injury.⁸⁹³ Distribution of death benefits is based on criteria identified in state law. Beneficiaries may include eligible spouses, children, grandchildren, or dependents. If there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased, the death benefits shall be paid in equal shares to surviving eligible parents of the deceased. A payment of death benefits may not exceed one payment per household and may not exceed 104 weeks of workers' compensation benefits.⁸⁹⁴

If no legal beneficiary is found, death benefits equal to 364 weeks of benefits will be paid in a lump sum by the agency to the Texas Department of Insurance's Subsequent Injury Fund.⁸⁹⁵

Burial benefits are provided if the death of an employee results from a compensable injury. These benefits are paid to the person who incurred the cost of the burial and are the lesser of the costs incurred for reasonable burial expenses or \$6,000.⁸⁹⁶

Employer Responsibilities

A state agency or institution of higher education covered under Texas Labor Code, Chapter 501, must report to the State Office of Risk Management (Office) an injury that results in medical expenses or the absence of an employee of the agency for one day.⁸⁹⁷ In addition, an agency must notify the Office of an occupational disease reported by an employee.⁸⁹⁸ The initial report of injury must not be made later than the eighth day after the employee's absence from work for more than one day due to an injury; or the day on which the employer receives notice that the employee has contracted an occupational disease.⁸⁹⁹

⁸⁹⁰ Texas Labor Code, Section 408.161 (a).

⁸⁹¹ Texas Labor Code, Section 408.061 (e).

⁸⁹² Texas Labor Code, Section 408.161 (c).

⁸⁹³ Texas Labor Code, Section 408.181 (a).

⁸⁹⁴ Texas Labor Code, Sections 408.182.

⁸⁹⁵ Texas Labor Code, Section 408.184 (c).

⁸⁹⁶ Texas Labor Code, Section 408.186 (a).

⁸⁹⁷ Title 28, Texas Administrative Code, Section 251.207. and Texas Labor Code, Section 501.001 (6).

⁸⁹⁸ Texas Labor Code, Section 409.005 (a) (2).

⁸⁹⁹ Texas Labor Code, Section 409.005 (b), and the *State Office of Risk Management Handbook* at http://www.sorm.state.tx.us/Claims_Coordinator_Handbook/employer.php.

The following list is a summary of responsibilities for state agencies and institutions of higher education that are covered by these provisions. Additional details and information can be found in the Claims Coordinator Handbook provided by the Office.

- **Sending timely notices, reports, and information** - Agencies are required to give notices, make reports, and otherwise transmit information to the Office and to the Texas Department of Insurance, Division of Workers' Compensation (Division) concerning on-the-job injuries and occupational diseases/illnesses in a timely manner.⁹⁰⁰
- **Designating a claims coordinator** - Agencies must designate one or more claims coordinators, and must report to the Office any change in this designation.⁹⁰¹
- **Complying with rules** - Agencies must comply with all rules enacted by the Office, as well as those of the Division. Agency policies, guidelines, or instructions must not vary from Division rules, the Office's rules, or with the Texas Workers' Compensation Act (Act). As the employer of record, state agencies are subject to administrative penalties for violations of the Act that may be assessed against the employer by the Division's Compliance and Practices Division.⁹⁰²
- **Keeping adequate records** - Agencies must make a record of all injuries sustained by employees in the course of employment.⁹⁰³
- **Immediately notifying the Office if an injury is severe or fatal** - Agencies must immediately notify the Office by telephone if an injury is severe or results in death, in addition to filing the required first report of injury.⁹⁰⁴
- **Posting required notices** - Agencies must post notices for workers' compensation insurance coverage in the workplace.⁹⁰⁵ Agencies employing law enforcement officers and correctional officers must post a notice regarding certain work-related communicable diseases and eligibility for workers' compensation benefits.⁹⁰⁶ Agencies must post a notice in the workplace to inform employees about requirements that may affect qualifying for workers' compensation benefits following a work-related exposure to human immunodeficiency virus (HIV).⁹⁰⁷
- **Maintaining an ombudsman program** - Agencies are required to inform employees of the Office of Injured Employee Counsel's Ombudsman program. Failure to inform employees of this program is an administrative violation.⁹⁰⁸
- **Developing health and safety programs and return-to-work programs** - Agencies must have programs in place to promote the health and safety of the employees and to assist injured employees with returning to work and comply with the Office's guidelines. Return-to-work

⁹⁰⁰ Title 28, Texas Administrative Code, Section 110.101.

⁹⁰¹ Title 28, Texas Administrative Code, Section 251.213.

⁹⁰² Texas Labor Code, Section 415.001, and the *State Office of Risk Management Handbook* at http://www.sorm.state.tx.us/Claims_Coordinator_Handbook/employer.php.

⁹⁰³ Texas Labor Code, Section 409.006.

⁹⁰⁴ Title 28, Texas Administrative Code, Section 251.212.

⁹⁰⁵ Title 28, Texas Administrative Code, Section 110.101.

⁹⁰⁶ Title 28, Texas Administrative Code, Section 110.108 (a).

⁹⁰⁷ Title 28, Texas Administrative Code, Section 110.108 (b).

⁹⁰⁸ Texas Labor Code, Section 404.153 (a) and (b).

programs must be a coordinated effort involving the Office's Risk Assessment and Loss Prevention Section, the employing state agency, and the medical provider.⁹⁰⁹ A Return-to-work Program Guide published by the Texas Department of Insurance can be found at <http://www.tdi.state.tx.us/wc/rtw/index.html>.

Workers' Compensation and State Sick and Annual Leave Provisions

An employee may elect to use accrued sick leave prior to receiving workers' compensation income benefits. If the employee makes the election to use accrued sick leave, the employee must exhaust all accrued sick leave before the employee is entitled to use income benefits.⁹¹⁰

After exhausting sick leave, the employee may also use accrued annual leave. If making this choice, the employee may elect to use all or any number of weeks of annual leave. The amount of annual leave the employee elects to use must be exhausted before the employee is entitled to receive income benefits.⁹¹¹

Employers may not require employees to exhaust state or FLSA compensatory time balances before receiving income benefits. Employers also may not prohibit employees from using compensatory time while they are receiving income benefits.⁹¹² State employees who are exhausting their leave as a result of a workers' compensation claim are prohibited from using sick and annual leave hours that accrue after the first day of the month in which the employee became incapacitated unless they physically return to work.⁹¹³

Workers' Compensation and Emergency Leave

The administrative head of an agency, department, or institution of higher education may authorize emergency leave with pay to an employee receiving workers' compensation benefits. The emergency leave payment may not exceed an amount equal to the difference between the basic monthly wage of the employee and the amount of income benefits that the employee received for the month. Emergency leave payments may not extend beyond six months. If emergency leave is authorized, the state agency must attach a statement of the reasons for the authorization to its payroll voucher for the first payroll period affected by the leave.⁹¹⁴

Employer's Rights

As the employer of record, state agencies are entitled to certain rights under the Texas Workers' Compensation Act. These rights include:

- The right to be present at all administrative proceedings relating to an employee's claim.
- The right to present relevant evidence relating to an employee's claim at any proceeding.
- The right to report suspected fraud.

⁹⁰⁹ Texas Labor Code, Sections 412.051 and 412.0125.

⁹¹⁰ Texas Labor Code, Section 501.044 (a).

⁹¹¹ Texas Labor Code, Section 501.044 (b).

⁹¹² Opinion, Texas Office of the Attorney General, No. JC-0188 (2000).

⁹¹³ State Auditor's Office, Leave Interpretation Letter No. 01-02 (2000).

⁹¹⁴ Texas Labor Code, Section 501.045.

- The right to contest the compensability of an injury if the employer’s insurance carrier accepts liability for the payment of benefits.
- The right to receive notice, after making a written request to the insurance carrier, of:
 - ♦ A proposal to settle a claim; or
 - ♦ An administrative or a judicial proceeding relating to the resolution of a claim.⁹¹⁵

Employee’s Responsibilities

An employee or person representing the employee should notify the employer as soon as possible but no later than 30 days after an injury occurred, or if the injury is an occupational disease, the employee should notify the employer as soon as the employee knows that the injury might be related to the employment.⁹¹⁶ Failure to notify the employer may relieve that employer of any liability in the matter unless the employer has actual knowledge of the injury, the Texas Department of Insurance, Division of Workers' Compensation (Division) determines that good cause exists for failure to provide notice, or the employer or its insurance carrier does not contest the claim.⁹¹⁷

Claims for compensation must normally be filed within one year from the date of injury, or if the injury is an occupational disease, a claim must be filed within one year from the date the employee knew or should have known that the disease was related to the employee’s employment.⁹¹⁸ Failure to file a claim for compensation with the Division as required by statute relieves the employer and the employer’s insurance carrier of liability unless the Division determines that good cause exists for failure to file a claim in a timely manner or the employer or the employer’s insurance carrier does not contest the claim.⁹¹⁹

Claims for death benefits generally must be filed within one year of the employee’s death. Failure to file within the required time period bars the claim unless the person is a minor or incompetent, or if good cause exists for the failure to file. Separate claims must be filed for each beneficiary unless the claim expressly includes other parties.⁹²⁰

Additional State Agency Injury Reporting Requirements

State agencies are required to submit in the administrative statement of its biennial budget request a summary containing:

- The number of first reports of injury filed by the agency during the preceding biennium.
- The amount of workers’ compensation indemnity and medical benefits paid to or for employees during the preceding biennium.

⁹¹⁵ Texas Labor Code, Section 409.011(b).

⁹¹⁶ Texas Labor Code, Section 409.001 (a).

⁹¹⁷ Texas Labor Code, Section 409.002.

⁹¹⁸ Texas Labor Code, Section 409.003.

⁹¹⁹ Texas Labor Code, Section 409.004.

⁹²⁰ Texas Labor Code, Section 409.007.

- The number of on-the-job injuries per 100 of its employees during each year of the preceding biennium.
- A description of the efforts made by the agency to increase job safety and to reduce job injuries, including the participation of the head of the agency and the executive staff of the agency in training programs offered by the Texas Department of Insurance, Division of Workers' Compensation, and others.⁹²¹

Facilitating an Injured Employee's Return to Work

To facilitate an injured employee's return to employment as soon as it is considered safe and appropriate by the injured employee's treating doctor, the treating doctor may request that the employer provide the doctor specific information about the functions and physical responsibilities related to the injured employee's job. The employer should do this using the form developed and adopted by the Commissioner of Workers' Compensation. Information provided to a treating doctor does not constitute:

- A request by the employer that the injured employee return his or her job.
- An offer of employment by the employer for the injured employee.
- An admission of the compensability of the employee's injury.⁹²²

| New Requirement |
|---|
| <p>The 81st Legislature passed legislation allowing a treating doctor to request that the injured employee's employer provide the doctor specific information about the injured employee's job functions and physical responsibilities outlined in a form prescribed by the Commissioner.</p> |

⁹²¹ Texas Labor Code, Section 501.048.

⁹²² Texas Labor Code, Section 408.0221, as amended by HB 2547 (81st Legislature, Regular Session).

Related Legislation

Table 22-2 contains a list of workers' compensation-related bills that were passed by the 81st Legislature. This may not be a complete list and should be used only as a summary of general issues on workers' compensation that were addressed during the session.

Table 22-2

| Workers' Compensation Related Legislation (81st Legislature) ^a | |
|--|---|
| Bill Number | Summary |
| HB 2547 | Relating to the use of a description of employment in determining the safety and appropriateness of an injured employee's return to work. |
| ^a Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at www.capitol.state.tx.us . | |

Section 23
Contract Workforce Provisions

Contract Manager Training

The Texas Procurement and Support Services within the Comptroller of Public Accounts is responsible for administering a training program for contract managers.⁹²³ A contract manager is defined as a person who is employed by a state agency and has significant contract management duties for the state agency.⁹²⁴ Each state agency is responsible for ensuring that the agency's contract managers complete the training administered by the Comptroller of Public Accounts.⁹²⁵

The Texas Procurement and Support Services within the Comptroller of Public Accounts, in consultation with the Office of the Attorney General, the Department of Information Resources, and the State Auditor's Office, develops and periodically updates a *Contract Management Guide* for use by state agencies.⁹²⁶ This document can be viewed on the Texas Comptroller of Public Accounts Web site: <http://www.window.state.tx.us/procurement/pub/contractguide/>.

Contract Notification

A state agency is required to provide written notice to the Legislative Budget Board of a contract for consulting services if the amount of the contract, including amendments, modifications, renewals, or extensions of the contract, exceeds \$14,000. The notice must be on a form prescribed by the Legislative Budget Board and filed no later than the 10th day after the date the agency enters into the contract.⁹²⁷

Contracting with Former or Retired Agency Employees

A state agency may not enter into an employment contract, a professional services contract, or a consulting services contract under Texas Government Code, Chapter 2254, with a former or retired employee of the agency who was employed by the agency within the last 12 months if appropriated money will be used to make payments under the contract.⁹²⁸

An agency may not enter into a contract with the following people unless its governing board votes to approve the contract and notifies the Legislative Budget Board, at least five days before the governing board votes, of the terms of the contract:

- The executive director of an agency.
- A person who, during the previous four years, served as the executive director of the agency.

⁹²³ Texas Government Code, Section 2262.053 (a).

⁹²⁴ Texas Government Code, Section 2262.001 (3).

⁹²⁵ Texas Government Code, Section 2262.053 (c) and (d).

⁹²⁶ Texas Government Code, Section 2262.051 (a).

⁹²⁷ Texas Government Code, Section 2254.0301.

⁹²⁸ Texas Government Code, Section 2252.901 (a).

- A person who employs a current or former executive head of a state agency.⁹²⁹

Agencies are not prohibited from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee of the agency within one year of the employee's leaving the agency. However, the former or retired employee cannot perform services on projects for the corporation, firm, or other business entity that the employee worked on while employed by the agency.⁹³⁰

“Employment contract” includes a personal services contract, regardless of whether the performance of the contract involves the traditional relationship of employer and employee. The phrase “employment contract” does not apply to an at-will employment relationship that involves the traditional relationship of employer and employee.⁹³¹

A former state employee (if terminated within the previous two years) who provides consulting services is required to disclose the nature of his or her previous agency employment, date of termination from employment, and annual compensation at the time of termination.⁹³²

The U.S. Internal Revenue Service's definitions and rules distinguish between an independent contractor and an employee.⁹³³ Agencies should consult these definitions and rules to clarify their positions regarding the use of independent contractors. Additional information on this topic may be found in the State Auditor's Office report *An Audit Report on the State's Contract Workforce Use and Contract Workforce Data Collection* (SAO Report No. 01-023, March 2001).

Contracting with a Private Auditor

A state agency, or a corporation that is dedicated to the benefit of a state agency and that meets the criteria specified by Section B, Article 2.23B, of the Texas Non-Profit Corporation Act (Article 1396-2.23B, Vernon's Texas Civil Statutes), may employ a private auditor to audit the state agency or corporation only if:

- The agency or corporation is authorized to contract with a private auditor through a delegation of authority from the State Auditor.
- The scope of the proposed audit has been submitted to the State Auditor for review and comment.
- The services of the private auditor are procured through a competitive selection process in a manner allowed by law.⁹³⁴

Major Consulting Services Contract

Major consulting services contracts are defined as contracts for which it is reasonably foreseeable that the value of the contract will exceed:

⁹²⁹ Texas Government Code, Section 669.003.

⁹³⁰ Texas Government Code, Section 2252.901 (a).

⁹³¹ Texas Government Code, Section 2252.901 (d) (1).

⁹³² Texas Government Code, Section 2254.033 (a).

⁹³³ Internal Revenue Service Publication 1779 (Rev 8-2008), Independent Contractor or Employee.

⁹³⁴ Texas Government Code, Section 321.020 (a).

- \$15,000 for a state agency.
- \$25,000 for an institution of higher education other than a public junior college.⁹³⁵

Before a state agency can enter into a major consulting services contract, the agency must:

- Notify the Legislative Budget Board and the Governor's Budget and Planning Office that the agency intends to contract with a consultant.
- Provide information to the Legislative Budget Board and the Governor's Budget and Planning Office to demonstrate that the agency has complied or will comply with Texas Government Code, Sections 2254.026 and 2254.027 (summarized under “Use of Consultants by State Agencies”).
- Obtain a finding of fact from the Governor's Budget and Planning Office that the consulting services are necessary.⁹³⁶

Institutions of higher education, other than a public junior college, do not have to obtain a finding of fact from the Governor’s Budget and Planning Office for a major consulting services contract if the institution of higher education (1) includes in the invitation for consulting services, published under the Texas Government Code, Section 2254.029, and (2) includes an explanation of the finding by the chief executive officer of the institution of higher education that the consulting services are necessary.⁹³⁷

In addition, for major contracts, an agency must file with the Secretary of State for publication in the *Texas Register* no later than 30 days prior to entering into a contract for services. The agency must send out invitations soliciting private consultants to submit competitive bids. The invitation must provide the name of a contact within the agency, the closing date for receipt of bids, and the procedures by which the award will be made.⁹³⁸

No later than 20 days after a contract has been awarded, the agency must once again file with the Secretary of State for publication in the *Texas Register* and provide:

- A description of the services to be performed.
- The name and address of the consultant.
- The total value and the beginning and ending dates of the contract.
- The dates on which documents, films, recordings, or reports that the consultant is required to present to the agency are due.⁹³⁹

Use of Consultants by State Agencies

A state agency may use a private consultant only if there is a substantial need for such services and the agency’s own staff or another agency’s consulting services cannot adequately do the job. The

⁹³⁵ Texas Government Code, Section 2254.021(2).

⁹³⁶ Texas Government Code, Section 2254.028 (a).

⁹³⁷ Texas Government Code, Section 2254.028 (c).

⁹³⁸ Texas Government Code, Section 2254.029 (a).

⁹³⁹ Texas Government Code, Section 2254.030.

selection of a consultant must be based on the consultant's demonstrated competence, knowledge, and qualifications, as well as the reasonableness of the cost of services. If other considerations are equal, preference should be given to a consultant whose principal place of business is headquartered in Texas or one that will manage the consulting contract wholly from one of its offices within the state.⁹⁴⁰

⁹⁴⁰ Texas Government Code, Sections 2254.026 and 2254.027.

Section 24
Miscellaneous Provisions

Employee Exit Surveys

Each state agency must provide all employees, who are terminating their employment voluntarily, access to the State Auditor's Office online exit survey.⁹⁴¹ This includes all employee types (i.e., classified full-time, classified part-time, non-classified full-time, and non-classified part-time). The objective of this online system is to offer a direct means through which employees can provide information about why they decided to leave employment with their agency. Institutions of higher education are exempt from this requirement.⁹⁴²

The State Auditor's Office considers the following reason codes used by the Comptroller of Public Accounts' Human Resource Information System (HRIS), the Uniform Statewide Payroll/Personnel System (USPS), and the Standardized Payroll/Personnel Reporting System (SPRS) as voluntary terminations:

- Voluntary separation from agency.
- Transfer to a different state agency or institution of higher education with no break in service.
- Retirement.

The exit survey instrument can be accessed at: <https://www.sao.state.tx.us/apps/exit/>.

Exit Survey Employee Access

The agency must provide each exiting employee who voluntarily leaves employment with their agency a unique ID, a computer with Internet access (although employees may complete the survey at another location if they wish), and the Web address for the survey.

There are several methods that can be used to distribute the unique ID. These include printing out the unique ID to give to the employee, copying and pasting the unique ID into an e-mail to send to the exiting employee with the link to the Web site, or mailing the unique ID along with an employee acknowledgment form. Once employees enter the system, they complete an employee acknowledgement form that allows the employee to indicate whether or not they elect to complete the survey. It also allows them to share their responses with the Governor's office and/or their agency's executive director.⁹⁴³

Exit Survey Reporting and Disclosure Requirements

Summarized quarterly reports are sent to executive directors and human resources directors. In addition, the State Auditor's Office is required to provide a report summarizing exit survey responses to the Governor, Lieutenant Governor, Speaker of the House of Representatives, and members of the

⁹⁴¹ Texas Government Code, Section 651.007 (b).

⁹⁴² Texas Government Code, Section 651.007 (a).

⁹⁴³ Texas Government Code, Section 651.007 (b).

Senate Committee on Finance and House Committee on Appropriations by December 15 before each year of a regular legislative session.⁹⁴⁴

Individual responses may be disclosed only to a law enforcement agency in a criminal investigation or on order of a court.⁹⁴⁵

Recruitment and Human Resources Management Plans

Select state agencies may be required to develop a Human Resources Management Plan designed to improve employee morale and retention. These plans must focus on reducing employee turnover through better management.

Department of Family and Protective Services

The Department of Family and Protective Services is required to submit a semi-annual report on the agency's employee turnover rate by job category during the preceding 12 months to the Senate Finance Committee, the House Committee on Appropriations, the Legislative Budget Board, and the Governor. The effectiveness of the agency's plan will be measured in relation to reductions in employee turnover rates, specifically reductions in the turnover rates for caseworkers.⁹⁴⁶

Department of Criminal Justice

The Department of Criminal Justice is required to submit an annual report by October 1 on the agency's employee turnover rate by job category during the preceding fiscal year to the Senate Finance Committee, the House Committee on Appropriations, the Legislative Budget Board, and the Governor. The effectiveness of the agency's plan will be measured in relation to reductions in annual employee turnover rates, specifically reductions in the turnover rates for correctional officers.⁹⁴⁷

In addition, the Department of Criminal Justice is required to submit a biennial report on its recruitment and retention efforts to the Governor and the Legislative Budget Board no later than January 1, 2011. The report must include information on vacancy rates, turnover rates, average years of service, and average number of continuing education training hours for security and non-security staff.⁹⁴⁸

Texas Youth Commission

The Texas Youth Commission is required to submit an annual report by October 1 on the Agency's employee turnover rate by job category during the preceding fiscal year to the Legislative Budget Board and the Governor. The effectiveness of an agency's plan shall be measured in relation to reductions in annual employee turnover rates, specifically reductions in the turnover rates for juvenile correctional officers.⁹⁴⁹

⁹⁴⁴ Texas Government Code, Section 651.007 (e) and (i).

⁹⁴⁵ Texas Government Code, Section 651.007 (g).

⁹⁴⁶ General Appropriations Act (81st Legislature, Regular Session), Article II, Department of Family and Protective Services, Rider 13.

⁹⁴⁷ General Appropriations Act (81st Legislature, Regular Session), Article V, Department of Criminal Justice, Rider 48.

⁹⁴⁸ General Appropriations Act (81st Legislature, Regular Session), Article V, Department of Criminal Justice, Rider 45.

⁹⁴⁹ General Appropriations Act (81st Legislature, Regular Session), Article V, Texas Youth Commission, Rider 18.

Human Resources Staffing

State agencies with 500 or more full-time-equivalent employees are required to have a human resources employee-to-staff ratio of not more than one human resources employee for every 85 staff members.⁹⁵⁰ The phrase “human resources employee” does not include an employee whose primary job function is enforcement of Title VI or Title VII of the Civil Rights Act of 1964. The phrase “state agency” means a department, commission, board, office, authority, council, or other governmental entity in the executive branch of government. The term does not include a university system or institution of higher education.⁹⁵¹ The State Council on Competitive Government shall determine the cost-effectiveness of consolidating the human resources functions of or contracting with private entities to perform the human resources functions of state agencies that employ fewer than 500 full-time equivalent employees.⁹⁵²

Place of Work and Working Hours

Employees must, during normal working hours, conduct agency business only at their regular place of business or assigned duty point unless they are on travel status or have received prior written authorization from the administrator of the employing agency. An employee’s home may not be considered his or her regular place of business without the written approval of the agency head.⁹⁵³ A full-time salaried employee in a state agency or institution of higher education may not be authorized to work less than 40 hours in a calendar week.⁹⁵⁴

Office hours for state agencies are 8:00 a.m. to 5:00 p.m., Monday through Friday. These are considered the regular working hours for a full-time state employee. All state agencies are required to remain open with at least one person on duty during the noon hour each work day to accept calls, receive visitors, and conduct business.⁹⁵⁵ The chief administrator of a state agency that must maintain certain services 24 hours a day may require essential employees who perform those services to be on duty for a workweek that exceeds 40 hours in necessary or emergency situations. This does not apply to a houseparent who is employed by and lives at a Texas Youth Commission facility.⁹⁵⁶

The chief administrator also has the authority to:

- Keep the agency open during other hours and on other days, with the time worked counting toward the 40 hours a week that are required for full-time employees.
- Make exceptions to the minimum length of the workweek to take care of any emergency or public necessity that the chief administrator finds to exist.⁹⁵⁷

⁹⁵⁰ Texas Government Code, Section 670.002.

⁹⁵¹ Texas Government Code, Section 670.001.

⁹⁵² Texas Government Code, Section 670.003 (a).

⁹⁵³ Texas Government Code, Section 658.010.

⁹⁵⁴ Texas Government Code, Section 658.002 (a).

⁹⁵⁵ Texas Government Code, Section 658.005 (a).

⁹⁵⁶ Texas Government Code, Section 658.002 (b) and (c).

⁹⁵⁷ Texas Government Code, Section 658.005 (b) and (c).

The governing board of an institution of higher education or a university system may make exceptions to the minimum length of the workweek and the maximum length of a workday to achieve and maintain operational efficiency at the institution of higher education, university system, or an office, department, or division of either.⁹⁵⁸

State agencies and institutions of higher education may consider the use of alternative work schedules such as compressed work weeks, flexible work schedules, and staggered work hours.⁹⁵⁹

Four-Day Work Week Study

The Comptroller of Public Accounts is responsible for conducting a study on the establishment of a 4-day, 40-hour work week for state employees. In conducting the study, the following will be considered:

- The experience of other jurisdictions that have instituted a four-day work week.
- Expansion of existing variable work schedule options for state employees.
- Potential environmental, financial, and health benefits of establishing a four-day work week.
- Any other information that the Comptroller determines is necessary.

State agencies will provide information and assistance in conducting the study at the Comptroller's request. The Comptroller will report the study results to the 82nd Legislature.⁹⁶⁰

| New Requirement |
|--|
| The 81st Legislature included provisions in the General Appropriations Act requiring the Comptroller of Public Accounts to conduct a study on the establishment of a 4-day, 40-hour work week for state employees. |

Eight Hour Work Day for Certain Public Works Employees

Eight hours of work in a calendar day constitute a day's work for a laborer, worker, or mechanic employed by or on behalf of the State or a political subdivision of the State for the construction, repair, or improvement of a building, bridge, road, highway, stream, or levee or for other similar work.⁹⁶¹

Voluntary Work Reduction Program

To increase state efficiency while reducing the cost of state government, a state agency may create a work reduction program in which a full-time state employee of the agency agrees to accept reduced

⁹⁵⁸ Texas Government Code, Section 658.007 (a).

⁹⁵⁹ Texas Government Code, Section 658.006; and Opinion, Texas Office of the Attorney General, No. M-1058 (1972).

⁹⁶⁰ General Appropriations Act (81st Legislature, Regular Session), Article I, Comptroller of Public Accounts, Rider 15, Four-Day Work Week Study.

⁹⁶¹ Texas Government Code, Section 605.001.

wages and benefits for a proportionate reduction in work hours. Agencies that have this program shall place a notice of the program’s availability in common areas of the agency. Participation by the employee is strictly voluntary and must be for a period of no less than six months. In addition, the agreement must be in writing and signed by the employee. Temporary and exempt employees are not permitted to participate in this program.⁹⁶²

Additional Resources

Table 24-1 provides a list of Office of the Attorney General Resources related to working hours for state employees.

Table 24-1

| Working Hours Related Attorney General Resources ^a | |
|--|--|
| Opinion Number | Topic |
| H-465 | Regarding the method of computing an hourly rate of payment to state employees under the U.S. Fair Labor Standards Act. |
| M-1058 | Whether certain maintenance and operations employees of the University of Houston may work on the basis of a 10-hour day, 4-day work week. |
| ^a Detailed references can be found at http://www.oag.state.tx.us/opin/opindex.shtml . | |

Public Information Responsibilities

The Texas Public Information Act (Act) gives the public the right to access records of state agencies and institutions of higher education, with the exception of judicial agencies. Under this act, documentation that deals with government affairs and official business conducted by employees of the State is available to the general public. Whether the record is in a paper, electronic, or other format does not affect its status as a public record.⁹⁶³ Such information includes, among other things:

- Completed reports, audits, evaluations, or investigations.
- Name, sex, ethnicity, salary, title, and dates of employment of employees and officers of governmental bodies.
- Information in an account, voucher, or contract relating to the receipt or expenditure of public funds (unless deemed confidential by law).
- Name of each official and the final record of voting on all proceedings of a governmental body.
- Working papers, research materials, and other information used as a basis to estimate the need for, or expenditure of, public funds after the estimate is complete.
- Name, place of business, and name of the municipality to which local sales and use taxes are credited for a named person, or a person reporting or paying sales and use taxes.

⁹⁶² Texas Government Code, Sections 658.003 and 658.004 (a).

⁹⁶³ Texas Government Code, Sections 552.001, 552.002, and 552.003 (1) (B).

- Description of the agency’s central and field organizations.
- A statement of the general course and method by which the agency’s function are channeled and determined, including the nature and requirements of all formal and informal policies and procedures.
- A rule of procedure, descriptions of forms available or the places where the forms may be obtained, and instructions relating to the scope and content of all papers, reports, or examinations.
- A substantive rule of general applicability adopted by an agency as authorized by law, and a statement of general policy or interpretation of general applicability formulated and adopted by an agency.
- A policy statement of interpretation that has been adopted or issued by an agency.
- Agency staff manuals and various policies and procedures.
- Final opinions and orders in the determination of cases.
- Other information regarded as open to the public under an agency’s policies.⁹⁶⁴

Information in the custody of a governmental body that relates to an employee or officer of the governmental body is exempted from public information if, under the specific circumstances pertaining to the employee or officer, disclosure of the information would subject the employee or officer to a substantial threat or physical harm.⁹⁶⁵

| New Requirement |
|---|
| <p>The 81st Legislature passed legislation allowing exemption of public disclosure information pertaining to an employee or officer if the disclosure would subject the employee or officer to substantial threat or physical harm.</p> |

In addition, the Attorney General has identified the following items as generally being subject to public disclosure:

- Settlement terms of an equal employment claim.⁹⁶⁶
- An employee’s letter of resignation.⁹⁶⁷
- Names and dates associated with sick leave usage.⁹⁶⁸

⁹⁶⁴ Texas Government Code, Section 552.022.

⁹⁶⁵ Texas Government Code, Section 552.151, (81st Legislature, Regular Session).

⁹⁶⁶ Texas Open Records Decision, No. 245 (1980).

⁹⁶⁷ Texas Open Records Decision, No. 278 (1981).

⁹⁶⁸ Texas Open Records Decision, No. 336 (1982).

- A hearing officer's reports concerning an employee's termination.⁹⁶⁹
- An employee's educational background and work experience.⁹⁷⁰
- Information about a public employee's job performance, dismissal, demotion, promotion, resignation, and salary information.⁹⁷¹

An individual or designated representative may access records that relate to that individual and that contain information that is ordinarily protected from disclosure by privacy laws. Consent to release this information must be in writing and signed by the individual or the individual's representative.⁹⁷²

The following records pertaining to agency executive directors may not be withheld from public disclosure:

- Reassignment of an executive head of a state agency.
- Terms of consulting contracts with current or former agency heads.
- Documents related to the settlement, compromise, or other resolution of differences between the State and a current or former agency head.⁹⁷³

Such information, even if its age is past the required retention schedule, is still subject to open records requests. Once accessed, information cannot be destroyed, altered, or removed from employee records.⁹⁷⁴

The following types of information may be withheld from the general public:

- Information deemed confidential by law.⁹⁷⁵
- Information in personnel files that, if accessed, would be considered a clear invasion of privacy.⁹⁷⁶
- Interagency and intra-agency correspondence or letters that would not be available to a party in litigation.⁹⁷⁷
- Home address, home telephone number, and social security number of a current or former official or employee of a governmental body who elects confidentiality for such information.⁹⁷⁸

⁹⁶⁹ Texas Open Records Decision, No. 325 (1982).

⁹⁷⁰ Texas Open Records Decision, No. 67 (1975).

⁹⁷¹ Texas Government Code, Section 552.022 (a) (2); and Texas Open Records Decisions, No. 444 (1986) and No. 405 (1983).

⁹⁷² Texas Government Code, Sections 552.023 and 552.229.

⁹⁷³ Texas Government Code, Section 669.004 (b).

⁹⁷⁴ Opinion, Texas Office of the Attorney General, No. DM-40 (1991) and No. MW-327 (1981).

⁹⁷⁵ Texas Government Code, Section 552.101.

⁹⁷⁶ Texas Government Code, Section 552.102 (a).

⁹⁷⁷ Texas Government Code, Section 552.111.

⁹⁷⁸ Texas Government Code, Section 552.117.

- Information regarding litigation of a civil or criminal nature to which the State, or an employee of the State as a consequence of his/her office or employment, is involved.⁹⁷⁹ (Open Records Decision No. 555, May 17, 1990, asserts that the provision for withholding information applies only if the information relates to litigation that is pending or reasonably anticipated.)⁹⁸⁰

The Attorney General has determined that the following information may be confidential by law:

- Information concerning matters relating to marriage, contraception, family relationships, raising children, and education.
- Any highly intimate or embarrassing fact, the publication of which would be highly objectionable and not the legitimate concern of the public.⁹⁸¹

An agency may be allowed to withhold advice, opinions, and recommendations contained in inter-agency or intra-agency memoranda that pertain to the policy making functions of the governmental body at issue. However, correspondence relating solely to an internal personnel matter involving a particular individual that does not implicate the agency's or higher education institution's policy making functions is subject to open records.⁹⁸²

State statute requires that the Social Security number of a living person is exempted from the requirements of Texas Government Code, Section 552.021. A governmental body may redact the Social Security number of a living person from any information the governmental body discloses without requesting a decision from the Attorney General.⁹⁸³

Additional information can be found in a document published by the Office of the Attorney General titled "Texas Public Information Act Made Easy." The document can be found at:
http://www.oag.state.tx.us/AG_Publications/pdfs/2006pia_easy.pdf.

Open Records Assistance

A governmental body is required to designate a public information officer. The public information officer is responsible for posting a sign that informs the public about its right to access public information.⁹⁸⁴

The Open Records Division of the Office of the Attorney General issues rulings and decisions that determine whether information is open to the public under the Texas Public Information Act and other applicable laws. Additional information can be found on the Office of the Attorney General's Web site at www.oag.state.tx.us.

⁹⁷⁹ Texas Government Code, Section 552.103.

⁹⁸⁰ Opinion, Texas Office of the Attorney General, No. JM-555 (1990).

⁹⁸¹ Texas Open Records Decision, No. 260 (1980) and No. 361 (1983).

⁹⁸² Texas Open Records Decision, No. 615 (1993).

⁹⁸³ Texas Government Code, Section 552.147 (a) and (b).

⁹⁸⁴ Texas Government Code, Sections 552.205 and 552.201 (a).

Table 24-2 provides a list of resources from the Attorney General’s Office related to public information responsibilities within the state.

Table 24-2

| Public Information Responsibilities Related Attorney General Resources ^a | |
|--|---|
| Opinion Number | Topic |
| DM-40 | Whether federal law authorizes a federal agency to require the Department of Human Services to delete certain information from personnel files. |
| GA-572 | Whether certain information regarding public employees must be included in the Comptroller of Public Account's public database of state expenditures. |
| ORD-615 | Whether section 3(a)(11) of the Texas Open Records Act, Article 6252-17a, exempts from public disclosure correspondence from university professors to the chancellor and the department chair regarding the evaluation of a certain professor and the method and criteria used for such evaluation. |
| OR2003-3639 | Whether certain information is subject to required public disclosure under Chapter 552 of the Texas Government Code. |
| ^a Detailed references can be found at: Opinions: http://www.oag.state.tx.us/opin/opindex.shtml . Open records decisions (ORD): http://www.oag.state.tx.us/open/ogindex.shtml . Open records letter rulings (OR): http://www.oag.state.tx.us/open/index_orl.php . | |

Reductions in Force

Agencies undergoing reorganizations may institute reductions in force.⁹⁸⁵ An employee who is separated from employment with the State under a formal reduction in force can have his or her sick leave balance restored if he or she is re-employed by the State within 12 months of termination.⁹⁸⁶

Additional information can be found on the State Auditor’s Office’s Web site at <http://sao.hr.state.tx.us/Workforce/06-704.pdf>.

State Privacy Policy

Members of the public are entitled to be informed about information that the State has collected about them, unless such information is protected under Texas Government Code, Section 552.023.⁹⁸⁷ With few exceptions, an individual is entitled, upon request, to:

- Be informed about information the State has collected regarding the individual.
- Receive and review the information.
- Correct inaccurate information.⁹⁸⁸

⁹⁸⁵ Texas Government Code, Section 651.006.

⁹⁸⁶ Texas Government Code, Section 661.205 (a).

⁹⁸⁷ Texas Government Code, Section 559.002.

Each state governmental body that collects information (1) about an individual by means of an Internet site, (2) about a computer network location, or (3) about the identity of a site user is required to prominently post on its Internet site what information is being collected through the site, including information that is being collected by means that are not obvious.⁹⁸⁹ Each state agency and institution of higher education is required to establish a reasonable correction procedure that cannot unduly burden an individual using the procedure.⁹⁹⁰ Unless specifically allowed by state law, an agency or institution of higher education may not charge an individual to correct his or her information.⁹⁹¹

Workforce Planning

As part of their strategic plans, state agencies are required to conduct staffing analyses and develop workforce plans. The workforce planning process helps agencies:

- Identify the number of employees and types of employee skill sets required to meet agency goals and strategic objectives.
- Develop a plan of action to ensure that the appropriate workforce will be available to provide quality services to the citizens of Texas.

The workforce plans must be based on guidelines established and provided by the State Auditor. Institutions of higher education, university systems, and agencies within the judicial and legislative branches are excluded from this requirement, but they are encouraged to conduct such planning.⁹⁹²

The State Auditor's Office has published a workforce planning guide to assist agencies with developing their workforce plans. This guide can be found at: <http://sao.hr.state.tx.us/Workforce/06-704.pdf>.

⁹⁸⁸ Texas Government Code, Section 559.003(a).

⁹⁸⁹ Texas Government Code, Section 559.003(b).

⁹⁹⁰ Texas Government Code, Section 559.004.

⁹⁹¹ Texas Government Code, Section 559.005 (a).

⁹⁹² Texas Government Code, Sections 2056.001, 2056.002, and 2056.0021.

Related Legislation

Table 24-3 contains a list of human resources-related bills on miscellaneous provisions that were passed by the 81st Legislature. This may not be a complete list and should be used only as a summary of general issues on this subject that were addressed during the session.

Table 24-3

| Miscellaneous Provisions Related Legislation (81st Legislature) ^a | |
|--|---|
| Bill Number | Summary |
| SB 476 | Relating to staffing, overtime, and other employment protections for nurses. |
| SB 1071 | Relating to the required disclosure under the public information law of information pertaining to an employee or trustee of a public employee pension system. |
| HB 874 | Relating to the abolition of the Texas Incentive and Productivity Commission and the state employee incentive program. |
| HB 2004 | Relating to a breach of computer security involving sensitive personal information and to the protection of sensitive personal information and certain protected health information. |
| SB 1068 | Relating to allowing a governmental body to redact certain personal information under the public information law without the necessity of requesting a decision from the attorney general and allowing information about a public officer or public employee to be withheld if disclosure would pose a substantial risk of physical harm. |
| ^a Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at www.capitol.state.tx.us . | |

Appendices

Appendix 1

Objective, Scope, and Methodology

Objective

The objective of this inventory was to summarize state and federal human resource management laws that apply to Texas state employees in state agencies and institutions of higher education.

Methodology

Information collected and reviewed included the following:

- Texas Education Code.
- Texas Family Code.
- Texas Government Code.
- Texas Health and Safety Code.
- Texas Human Resources Code.
- Texas Insurance Code.
- Texas Labor Code.
- Texas Occupational Code.
- Texas Code of Criminal Procedures.
- General Appropriations Act (81st Legislature, Regular Session).
- Texas Administrative Code.
- Title 29, Code of Federal Regulations.
- Title 8, Code of Federal Regulations.
- Title 42, United States Code.
- Attorney General of Texas Opinions and Letter Opinions.
- Comptroller's Payroll Policy and Procedures.
- State Auditor's Office Leave Interpretation Letters.
- State Auditor's Office Technical Updates.
- State Auditor's Office Human Resources Questions and Answers.

- United States Supreme Court Cases.

Project Information

Fieldwork was conducted from March 2009 through September 2009. This project is a general reference guide on the State's human resources management statutes; therefore, the information in this statutes Inventory was not subjected to all the tests and confirmations that would be performed in an audit. However, the information in this report was subject to certain quality control procedures to ensure accuracy and compliance with the generally accepted compensation practices.

The following members of the State Auditor's staff performed the review:

- Christine Bailey, CCP, GRP (Project Manager)
- Sharon Schneider, PHR (Project Manager)
- Stacey Robbins McClure, MBA, CCP, PHR
- Robert Pagenkopf
- Steven Pearson, IPMA-HR
- Stevency Telfort
- Juliette Torres, CCP, PHR
- Mary Wise, CPA, CFE
- Dana Musgrave, MBA (Quality Control Review)
- Nicole M. Guerrero, MBA, CIA,CGAP, CICA (Audit Manager)

State Agency Responsibilities

Table A lists subject areas and the corresponding responsible agencies for various human resource-related subjects. Agencies should contact the appropriate office with questions.

Table A

| Agencies Responsible for Human Resources-related Subjects | | |
|---|--|---|
| Topic | Office to Contact | Phone Number |
| Salary Administration | State Auditor's Office - State Classification Team | (512) 936-9500 http://www.sao.state.tx.us/contact/directory.html?sort=team |
| | Comptroller of Public Accounts | (512) 463-9009 or (512) 463-4021 http://www.cpa.state.tx.us/contact.html |
| Discrimination in Employment | Texas Workforce Commission - Civil Rights Division | (512) 463-2642 (888) 452-4778 (toll free) http://www.twc.state.tx.us/crd/contact.html |
| Vacations and Leave | State Auditor's Office - State Classification Team | (512) 936-9500 http://www.sao.state.tx.us/contact/directory.html?sort=team |
| Health Insurance | Employees Retirement System | (512) 867-7711 (877) 275-4377 (toll free) http://www.ers.state.tx.us/customer_service/default.aspx |
| Holidays | Comptroller of Public Accounts | (512) 463-9009 or (512) 463-4021 http://www.cpa.state.tx.us/contact.html |
| Job Vacancy Posting | Texas Workforce Commission | (512) 463-2222 (800) 832-9394 http://www.twc.state.tx.us/twcinfo/twcnumbers.html |
| Longevity | Comptroller of Public Accounts | (512) 463-9009 or (512) 463-4021 http://www.cpa.state.tx.us/contact.html |
| Payroll | Comptroller of Public Accounts - Payroll | (512) 463-9009 or (512) 463-4021 http://www.cpa.state.tx.us/contact.html |
| Retirement | Employees Retirement System | (512) 867-7711 (877) 275-4377 (toll free) http://www.ers.state.tx.us/customer_service/default.aspx |
| | Teacher Retirement System | (512) 542-6400 (800) 223-8778 (toll free) http://www.trs.state.tx.us/info.jsp?submenu=about&page_id=/about/contacts |
| Travel | Comptroller of Public Accounts | (512) 475-0966 http://www.cpa.state.tx.us/contact.html |

| Agencies Responsible for Human Resources-related Subjects | | |
|---|--|---|
| Topic | Office to Contact | Phone Number |
| Unemployment Insurance | Texas Workforce Commission | (512) 340-4300 (800) 939-6631 (toll free) http://www.twc.state.tx.us/ui/bnfts/offices.html |
| Veterans' Benefits | Texas Veterans Commission | (512) 475-2395 http://www.tvc.state.tx.us/ContactUs.html |
| Workers' Compensation | Division of Workers' Compensation at the Texas Department of Insurance | (512) 804-4000 (800) 372-7713 (toll free) http://www.tdi.state.tx.us/wc/dwcccontacts.html |
| | State Office of Risk Management | (512) 475-1440 http://www.sorm.state.tx.us/About_Us/contact_us.php |

Appendix 3
Entitlements for State Agency Employees

Table B

| Entitlements for State Agency Employees | | | | | |
|--|--|--|-------------------------------------|------------------------------|--|
| Employment Status ^a | Annual Leave Accrual ⁹⁹³ | Sick Leave Accrual ⁹⁹⁴ | State Service Credit ⁹⁹⁵ | Longevity Pay ⁹⁹⁶ | Holidays ⁹⁹⁷ |
| Classified Full-time | Yes | Yes | Yes | Yes | Yes |
| Classified Part-time | Yes, proportionate to the number of hours appointed. | Yes, proportionate to the number of hours appointed. | Yes | No | Yes, proportionate to the number of hours appointed. |
| Exempt Full-time | Yes | Yes | Yes | Yes | Yes |
| Exempt Part-time | Yes, proportionate to the number of hours appointed. | Yes, proportionate to the number of hours appointed. | Yes | No | Yes, proportionate to the number of hours appointed. |
| Unclassified Full-time | Yes | Yes | Yes | Yes | Yes |
| Unclassified Part-time | Yes, proportionate to the number of hours appointed. | Yes, proportionate to the number of hours appointed. | Yes | No | Yes, proportionate to the number of hours appointed. |
| Temporary Classified/Unclassified/Exempt (Full-time) | Yes | Yes | Yes | No | Yes |
| Temporary Classified/Unclassified/Exempt (Part-time) | Yes, proportionate to the number of hours appointed. | Yes, proportionate to the number of hours appointed. | Yes | No | Yes, proportionate to the number of hours appointed. |
| Contract Employee | No | No | No | No | No |

^a Classified positions are those that are subject to the State's Position Classification Plan. Exempt positions are excluded from the State's Position Classification Plan and are listed in the General Appropriations Act. Unclassified positions are not subject to the State's Position Classification Plan. Temporary positions are those limited in duration and established for a specific period of time. Contract positions are filled by independent contractors, temporary workers supplied by staffing companies, contract company workers, and consultants.

⁹⁹³ Texas Government Code, Section 661.0152.

⁹⁹⁴ Texas Government Code, Section 661.202.

⁹⁹⁵ Texas Government Code, Section 659.046.

⁹⁹⁶ Texas Government Code, Sections 659.041, 659.042, and 659.043.

⁹⁹⁷ Texas Government Code, Section 662.005.

Entitlements for Employees of Institutions of Higher Education

Table C

| Entitlements for Employees of Institutions of Higher Education ^a | | | | | |
|---|---|---|--------------------------------------|-------------------------------|---|
| Employment Status | Annual Leave Accrual ⁹⁹⁸ | Sick Leave Accrual ⁹⁹⁹ | State Service Credit ¹⁰⁰⁰ | Longevity Pay ¹⁰⁰¹ | Holidays ¹⁰⁰² |
| Regular Staff Employee (Full-time) | Yes | Yes | Yes | Yes | Yes |
| Regular Staff Employee (Part-time) | Yes, proportionate to the number of hours appointed | Yes, proportionate to the number of hours appointed | Yes | No | Yes, proportionate to the number of hours appointed |
| Faculty (Full-Time or Part-Time) 20 Hours or More | No, except those employed for 12 calendar months | Yes | Yes | No | Yes |
| Non-Faculty (less than 20 hours and/or less than 4.5 month appointment) | No | No | Yes | No | No |
| Positions Requiring Student Status as a Condition of Employment | No | No | Yes ^b | No | No |

^a For institutions of higher education, a regular staff employee is defined as one who is employed to work at least 20 hours per week for a period of at least four-and-one-half months, excluding students employed in positions that require student status as a condition of employment. A faculty member employed for a period of less than 12 months is not eligible for vacation accrual in accordance with Texas Government Code, Section 661.152 (a).

^b Opinion, Texas Office of the Attorney General, No. JM-407 (1985).

⁹⁹⁸ Texas Government Code, Section 661.0152.

⁹⁹⁹ Texas Government Code, Section 661.202.

¹⁰⁰⁰ Texas Government Code, Section 659.046.

¹⁰⁰¹ Texas Government Code, Sections 659.041, 659.042, and 659.043.

¹⁰⁰² Texas Government Code, Section 662.005.

Pay Entitlements upon Separation from State Employment

An employee who separates from state employment may be entitled to additional pay beside his or her regular pay. Table D lists the various pay entitlements an employee may be entitled upon separating from state employment.

Table D

| Pay Entitlements upon Separation from State Employment | | | | | |
|--|--|--|---|---|---|
| Pay Entitlements | Type of Separation | | | | |
| | Any Separation Where the Employee is Permitted to Remain on the Payroll to Expend Accrued Vacation | Any Separation Where the Employee Is Not Permitted to Remain on the Payroll to Expend Accrued Vacation | Any Separation Where the Employee Is Permitted to Remain on the Payroll to Expend Accrued State or FLSA Compensatory Time | Any Separation Where the Employee Is Not Permitted to Remain on the Payroll to Expend Accrued State or FLSA Compensatory Time | Death (Payment to estate) |
| Lump-Sum Payment for Accrued Vacation Leave | No, but may expend accrued vacation prior to separation | Yes ^a | Yes, at the time of separation | Yes | Yes |
| Lump-Sum Payment for Accrued Sick Leave | No, also not eligible to use sick leave while remaining on the payroll to expend vacation | No | No, also may not use sick leave while remaining on payroll to expend state or FLSA compensatory time | No | Yes, for ½ sick leave hours not to exceed 336 hours |
| Further Accrual of Vacation Leave | No | n/a | No | n/a | n/a |
| Further Accrual of Sick Leave | No | n/a | No | n/a | n/a |
| Lump-Sum Payment for Accrued State Compensatory Time ^b | No ^b | No ^b | No ^b | No ^b | No ^b |
| Lump-Sum Payment for Accrued FLSA Compensatory Time | Yes | Yes | Yes | Yes | Yes |
| Payment for Longevity or Hazardous Duty | Yes | n/a | Yes | n/a | No |
| Holiday Entitlement | Yes | Yes ^c | Yes | No | Yes ^c |
| General Salary Increase Entitlement | Yes | No | Yes | No | No |
| ^a Requires six months of continuous state service. ^b The Legislature has made exceptions to allow for the payment of state compensatory time to employees of certain agencies and institutions of higher education under certain circumstances. ^c Applicable for the period beginning on the day following the last day of employment and ending on the last working day through which the accrued leave would have extended. | | | | | |

Transfer and Rehire Leave Reinstatement Entitlements

Employees who separate from their current state agency or institution of higher education and then directly transfer to another state agency or institution without a break in service may be entitled to have their remaining leave transferred to their new employer.¹⁰⁰³ In addition, employees who have separated from state employment and then are rehired by a state agency or institution may be entitled to have their leave reinstated, depending on the length of separation from the state.¹⁰⁰⁴ Table E lists these entitlements. For additional information regarding leave balances and leave transfers (and for all references to related statutes) refer to the Employee Leave section of this Inventory.

Table E

| Transfer and Rehire Leave Reinstatement Entitlements | | | | |
|---|---|--|--|---|
| Employment Status | Transfer or Reinstatement of Annual Leave | Transfer or Reinstatement of Sick Leave | Transfer or Reinstatement of State Compensatory Time | Transfer or Reinstatement of FLSA Overtime |
| Employee Directly Transfers From one State Agency or Institution to Another State Agency or Institution Without a Break In Service. | Yes. All remaining annual leave should be transferred to the new state employer. | Yes. All remaining sick leave should be transferred to the new state employer. | No | No. FLSA overtime must be paid by employer from which the employee transferred. ^c |
| Employee Terminates Employment from a State Agency and then Returns to State Employment after a Break in Service. | Yes, as long as the employee returns to state employment within 30 days of such separation. ^a | Yes, as long as the employee returns to state employment within 12 months after the end of the month following their termination. ^b | No | No. FLSA overtime must be paid by employer from which the employee transferred. ^d |
| Employee Terminates Employment from an Institution and then Returns to State Employment after a Break in Service. | No. Employees who separate employment with the institution are entitled to be paid their annual leave balance upon termination. | Yes. As long as the employee is re-employed by another state agency or institution within 12 months. | No | No |
| Employee Transfers to Another State Agency as a Result of a Legislative Mandate. | Yes. All remaining annual leave should be transferred to the new state employer. | Yes. All remaining sick leave should be transferred to the new state employer. | Yes, if that is the agreement between the agencies. | Yes, if that is the agreement between agencies. Otherwise the employee must be paid for the remaining balance. ^e |
| <p>^a As long as the employee has had continuous employment for at least six months.</p> <p>^b Employees who are separated for reasons other than a formal reduction in force and who are employed by the same agency or institution may have only their sick leave balance restored if they have had a break in service of at least 30 calendar days since their date of termination.</p> <p>^c Code of Federal Regulations, Title 29, Section 553.27 (b), states employees shall be paid unused FLSA compensatory time upon termination with an employer.</p> <p>^d Code of Federal Regulations, Title 29, Section 553.27 (b), states employees shall be paid unused FLSA compensatory time upon termination with an employer.</p> <p>^e Texas Government Code, Section 662.007, provides the specific situations in which agencies may agree to transfer employee compensatory balances.</p> | | | | |

¹⁰⁰³ Texas Government Code, Sections 661.153 and 661.204.

¹⁰⁰⁴ Texas Government Code, Sections 661.062 and 661.205.

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