

Texas Human Resources Management Statutes Inventory

2012-2013 Biennium

A Resource for Management of State Agencies
and Institutions of Higher Education



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Foreword

The Texas Human Resources Management Statutes Inventory (Inventory) 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 18th edition supersedes all previous editions and reflects changes made in the 82nd 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 should consult with the legal counsel within their agencies to ensure compliance with all applicable federal and state laws and regulations.

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.

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.

Interpretation of the human resources management provisions: The Inventory draws state human resources statutes, policies, and procedures primarily from five sources: general laws enacted by the Legislature, the General Appropriations Act, the Texas Administrative Code, Texas Attorney General Opinions, and State Auditor Leave Interpretations. 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 State Employees.¹ These interpretations are advisory in nature and are not a final determination.

Additional information: Questions concerning this Inventory should be directed to 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 is at <http://sao.hr.state.tx.us>.

¹ Texas Government Code, Section 661.151.

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Chapter 1

Standards of Conduct

Ethics Policy

Each state agency and institution of higher education is required to adopt a written ethics policy outlining standards of conduct for employees. The ethics policy should be distributed to each new employee no later than the third business day after the date of employment with the agency.² The Office of the Attorney General is responsible for developing and distributing a model policy that state agencies may use.³ A state employee who violates an agency's ethics policy is subject to termination.⁴

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); or
- 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 1-1.⁵

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.⁶ 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.⁷

A "public official" is:

- A political officer.
- An officer or board member.
- A judge.⁸

² Texas Government Code, Section 572.051 (c).

³ Texas Government Code, Section 572.051 (d).

⁴ Texas Government Code, Section 572.051 (b).

⁵ Texas Government Code, Sections 573.002 and 573.041.

⁶ Texas Government Code, Section 573.022.

⁷ Texas Government Code, Section 573.024 (a).

⁸ Texas Government Code, Section 573.001 (3).

A state agency may adopt a nepotism policy that is more restrictive than state law.⁹

Table 1-1

Consanguinity and Affinity Relationship Chart From Public Official or Employee ¹⁰							
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 page, secretary, or 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.¹¹

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.¹²

⁹ Texas Office of the Attorney General, Opinion MW-540 (1982).

¹⁰ Texas Government Code, Sections 573.023 and 573.025, and *Degrees of Relationship Chart*, Office of the Attorney General.

¹¹ Texas Government Code, Section 573.061.

¹² Texas Government Code, Section 573.062 (a).

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.¹³

The Office of the Attorney General provides a publication on nepotism, *2010 Texas Nepotism Laws Made Easy*; available at <https://www.oag.state.tx.us>.

Off-Duty and Outside Employment

State agencies may prohibit an employee from taking a second job without the prior approval of the executive director.¹⁴ In at least one instance, a Letter Opinion issued by the Texas Office of the Attorney General advised that institutions of higher education may prohibit outside work even if that work is serving as an elected official.¹⁵

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.¹⁶ 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.¹⁷

Physical Fitness Programs and Standards

Four state 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. 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 must use the services of a consultant to aid in the development of such standards. Each agency is required to adopt policies 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.¹⁸

A violation of the adopted standards is just cause for dismissal or transfer to a position not compensated within Salary Schedule C of the classified 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.¹⁹

The state agencies covered under this provision include the following:

- Alcoholic Beverage Commission.

¹³ Texas Government Code, Section 573.062 (b).

¹⁴ Texas Office of the Attorney General, Opinion JM-93 (1983).

¹⁵ Texas Office of the Attorney General, Letter Opinion 96-109 (1996).

¹⁶ Texas Government Code, Section 411.0077 (a).

¹⁷ Texas Government Code, Section 411.0077 (c).

¹⁸ Texas Government Code, Section 614.172 (a) and (a-1).

¹⁹ Texas Government Code, Section 614.172 (a-2), (b), and (c).

- Department of Criminal Justice.
- Department of Public Safety.
- Parks and Wildlife Department.²⁰

Political Influence

A state agency or institution of higher education 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.²¹

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.²² Employees may not coerce, command, restrict, or prevent contributions to candidates or political organizations.²³

The use of state-owned or state-leased vehicles to support the candidacy of a person running for office is prohibited.²⁴

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.²⁵

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.²⁶

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.²⁷ 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.²⁸

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.²⁹

²⁰ Texas Government Code, Section 614.171 (1).

²¹ Texas Government Code, Section 556.004 (a).

²² Texas Government Code, Section 556.004 (c).

²³ Texas Government Code, Section 556.004 (d).

²⁴ Texas Government Code, Section 556.004 (b).

²⁵ Texas Government Code, Section 556.006.

²⁶ Texas Office of the Attorney General, Opinion H-566 (1975).

²⁷ Texas Government Code, Section 556.005 (a).

²⁸ Texas Government Code, Section 556.005 (b).

²⁹ Texas Government Code, Section 556.009.

Publicity

A state agency or institution of higher education may not use appropriated money to publicize or direct attention to a state officer or employee.³⁰ In addition, a state agency or institution of higher education 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.³¹

An institution of higher education may operate a news and information service for the benefit of the public if the institution's governing body has authorized and approved the operation.³²

State agencies and institutions of higher education may use appropriated funds for publicity functions authorized under Texas Transportation Code, Chapter 204 (Travel Information).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 officer or 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 proceeding) in which the former officer or employee participated during their period of state service or employment.³⁵

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 officer, employee, 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.

Written opinions can be found on the Texas Ethics Commission's Web site at <http://www.ethics.state.tx.us>.

³⁰ Texas Government Code, Section 2113.011 (a).

³¹ Texas Government Code, Section 2113.011 (b).

³² Texas Government Code, Section 2113.011 (d).

³³ Texas Government Code, Section 2113.011 (e).

³⁴ Texas Government Code, Section 572.054 (a).

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 create a conflict between the employee's or officer's private interest and the public's interest.
- 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 or institution of higher education may not use appropriated money to compensate a state employee who violates a standard of conduct.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 or institution of higher education 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 a state agency or institution of higher education. 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.⁴⁰ The reporting requirement does not apply to institutions of higher education.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, Sections 2101.0115 (a) and (c) (13) and 2113.013.

⁴¹ Texas Government Code, Section 2101.0115 (e).

Chapter 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. This chapter 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 relating to employment discrimination, including employment discrimination involving 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, or the person's agent, claiming to be discriminated against by an unlawful employment practice 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.⁴⁶

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

⁴² Texas Labor Code, Sections 21.0015 and 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.

⁴⁷ Texas Labor Code, Section 21.121.

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) and the Americans with Disabilities Act of 2008 (ADAAA)

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 has been amended several times since its passage in 1990, including changes in 2008 that clarified and broadened the definition of disability and expanded the population eligible for protections under the ADA.⁵⁰ The ADA undergoes continuous interpretation in the court systems; therefore, an agency or institution of higher education should consult with their legal counsel or subject matter experts in regard to these matters.

ADA Technical Assistance Manual

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>.

Bona-Fide Occupational Qualification (BFOQ)

No person must 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.⁵¹ The concept of BFOQ is interpreted very narrowly by federal courts and the Equal Opportunity Employment Commission, and state agencies and institutions of higher education should consult with their legal counsel before choosing to use a BFOQ.

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

⁵¹ *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.

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.⁵² 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.⁵³

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 impact minorities.⁵⁴

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 to reasonably accommodate the religious observance or practice of an employee or applicant without undue hardship to the conduct of the employer's business.⁵⁵

Sexual Harassment

Sexual harassment is a form of gender-based discrimination prohibited by Title VII of the Civil Rights Act of 1964. Sexual Harassment is defined within the Code of Federal Regulations 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.”⁵⁶

⁵² Texas Labor Code, Section 21.110; and Title 42, United States Code, Section 2000e-2 (Title VII of Civil Rights Act of 1964).

⁵³ Texas Labor Code, Section 21.051; and Title 42, United States Code, Section 2000e-2 (a) (Title VII of Civil Rights Act of 1964).

⁵⁴ *Race and Color Discrimination Questions and Answers*, U.S. Equal Employment Opportunity Commission Web site at http://www.eeoc.gov/policy/docs/qanda_race_color.html.

⁵⁵ Texas Labor Code, Section 21.108.

⁵⁶ Code of Federal Regulations, Title 29, Section 1604.11 (a).

Employee Polygraph Examinations

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.⁵⁷

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
 - ♦ 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 must 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.⁵⁸

⁵⁷ Texas Government Code, Section 411.00741.

⁵⁸ Texas Government Code, Section 614.063.

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.⁵⁹ 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.

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.⁶⁰ 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 or inability to work.⁶¹

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.⁶²

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.⁶³

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.⁶⁴

Unless specifically exempted by law, an employee's genetic information is confidential, regardless of the source, and cannot be disclosed without written authorization from the employee.⁶⁵ An individual

⁵⁹ Public Law 88-38.

⁶⁰ Public Law 95-555; and *Facts about Pregnancy Discrimination*, U.S. Equal Employment Opportunity Commission Web site at <http://www.eeoc.gov/facts/fs-preg.html>; and Texas Labor Code, Section 21.106.

⁶¹ Texas Labor Code, Section 21.106 (b).

⁶² Texas Government Code, Section 411.0079.

⁶³ *The Genetic Information Nondiscrimination Act of 2008*, Public Law 110-233.

⁶⁴ Texas Labor Code, Sections 21.401 and 21.402.

⁶⁵ Texas Labor Code, Sections 21.403, 21.4031, and 21.4032.

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.⁶⁶

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 (or 300 days in jurisdictions that have a local or state law prohibiting the same form of compensation discrimination) after any discriminatory paycheck.⁶⁷

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 institutions of higher education.

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.⁶⁸

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.⁶⁹

Persons initiating or cooperating with an investigation are also extended this protection. This protection does not apply to a self-disclosure of the person’s own abuse or neglect of a child or who initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of abuse or neglect of a child.⁷⁰

⁶⁶ Texas Labor Code, Section 21.404.

⁶⁷ *Lilly Ledbetter Fair Pay Act of 2009*, Public Law 111-2.

⁶⁸ Texas Labor Code, Section 21.055.

⁶⁹ Texas Family Code, Sections 261.101 and 261.110 (b).

⁷⁰ Texas Family Code, Section 261.110 (b) (2) and (m).

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.⁷¹ Agencies and institutions of higher education must inform its employees of their rights by posting a sign in a prominent location in the workplace.⁷² 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.⁷³

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.⁷⁴

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.⁷⁵

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.⁷⁶

⁷¹ Texas Government Code, Section 554.002 (a).

⁷² Texas Government Code, Section 554.009 (a).

⁷³ Texas Government Code, Sections 554.004 (a), 554.005, and 554.006 (b).

⁷⁴ Texas Labor Code, Sections 101.052 and 101.053; and Texas Government Code, Section 617.004.

⁷⁵ Texas Government Code, Section 403.0165.

⁷⁶ Texas Government Code, Sections 617.003 and 617.005.

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.⁷⁷ 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.⁷⁸

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 2-1 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 2-1

Required Workplace Posters ⁷⁹	
Issuing Agency	Poster Title
Texas Department of Insurance, Office of Injured Employee Counsel Division of Workers' Compensation	<i>Employer's Notice of Ombudsman Program</i>
Texas Department of Insurance, Office of Injured Employee Counsel Division of Workers' Compensation	<i>Workers' Compensation Posters</i>
Texas Department of State Health Services	<i>Texas Hazard Communication Act</i>
Texas Office of the Attorney General	<i>You Have the Right to Not Remain Silent</i>
Texas Workforce Commission	<i>Texas Payday Law</i>
Texas Workforce Commission, Civil Rights Division	<i>The Law in Texas (optional 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>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 Safety and Health Administration (OSHA)	<i>Job Safety and Health-It's the Law</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>

⁷⁷ *Especially for Texas Employers, Index, Workers' Compensation*, Texas Workforce Commission Web site at http://www.twc.state.tx.us/news/efte/workers_compensation.html.

⁷⁸ *Major Laws Impacting the Hiring Process*, Texas Workers' Compensation Act, Texas Workforce Commission's Web site at http://www.twc.state.tx.us/news/efte/major_laws.html.

⁷⁹ *Required Posters at the Workplace*, Texas Workforce Commission's Web site at <http://www.twc.state.tx.us/ui/lablaw/posters.html>.

Chapter 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.⁸⁰ “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 are subject to federal and state statutory provisions and regulations that may affect the “at-will” relationship. These agencies include:

- The Department of Public Safety.⁸¹
- Texas Workforce Commission.⁸²
- 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.⁸³

Reference Checks

An employer in the State that discloses information about a current or former employee’s job performance to a prospective employer 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.⁸⁴ This applies to a managerial employee or other representative of the employer who is authorized to provide and who provides this information.⁸⁵ An

⁸⁰ Texas Office of the Attorney General, Opinion JM-941 (1988).

⁸¹ Texas Government Code, Sections 411.007(e) and 411.0071 (c).

⁸² Texas Government Code, Section 655.001; and Title 42, United States Code, Section 503 (a) (1).

⁸³ Texas Government Code, Sections 655.001 and 531.010; and Title 42, United States Code, Section 1396 (a) (4).

⁸⁴ Texas Labor Code, Sections 103.001 and 103.004 (a).

⁸⁵ Texas Labor Code, Section 103.004 (b).

employer is not required to provide an employment reference to or about a current or former employee.⁸⁶

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.⁸⁷

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.⁸⁸ The employer must provide the nurse with an opportunity to submit information that would allow the nurse to establish his or her protection under this code.⁸⁹

Criminal History Checks

Texas Government Code, Chapter 441, establishes limitations on agency access to criminal history record information maintained by the Department of Public Safety (Department). The limitations in this chapter do not apply to all types of criminal history information. Agencies should consult Texas Government Code, Sections 411.089 through 411.1409 for more information on agency-specific access and limitations.

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 Title 28, Code of Federal Regulations, Part 22, 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.

⁸⁶ Texas Labor Code, Section 103.005.

⁸⁷ Texas Labor Code, Section 103.003 (a).

⁸⁸ Texas Occupations Code, Section 301.352, as amended by SB 192 and SB 193 (82nd Legislature, Regular Session), and Section 303.005; and Texas Labor Code, Section 103.003 (b).

⁸⁹ Texas Labor Code, Section 103.003 (b).

- ♦ 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:
 - ♦ 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.⁹⁰

The Department 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.⁹¹

Strict guidelines govern the use of criminal history records.⁹² It is a criminal offense to obtain, use, or disclose 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.⁹³

Criminal History Checks on Information Technology Employees

A state agency or institution of higher education 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 or institution of higher education; and

⁹⁰ Texas Government Code, Section 411.083 (a) and (b).

⁹¹ Texas Government Code, Section 411.083 (d).

⁹² Texas Government Code, Section 411.084.

⁹³ Texas Government Code, Section 411.085 (a), (c), and (d).

- Has access to information resources or information resources technologies, other than a desktop computer or telephone station assigned to that person.⁹⁴

If a state agency or institution of higher education 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.⁹⁵

A state agency or institution of higher education 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.⁹⁶

A state agency or institution of higher education may not obtain criminal history record information unless the state agency or institution of higher education 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.⁹⁷

The Texas Office of Attorney General must review the agency's or institution's policies and procedures for compliance with due process and other legal requirements before adoption by the state agency or institution of higher education. The Office of the Attorney General may charge the state agency or institution of higher education a fee to cover the cost of the review. The policies and procedures adopted by the agency or institution of higher education 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.⁹⁸

⁹⁴ Texas Government Code, Section 411.1405 (b).

⁹⁵ Texas Government Code, Section 411.1405 (c).

⁹⁶ Texas Government Code, Section 411.1405 (d).

⁹⁷ Texas Government Code, Section 411.1405 (e).

⁹⁸ Texas Government Code, Section 411.1405 (e).

Criminal History Checks on Security Sensitive Positions in Higher Education

Institutions of higher education and the Higher Education Coordinating Board are also entitled to obtain criminal history information from the Department of Public Safety for persons who are applicants for security-sensitive positions.⁹⁹

A security-sensitive position is held by an employee who:

- Handles currency;
- Has access to a computer terminal;
- Has access to the personal information or identifying information of another person;
- Has access to the financial information of the employer or another person;
- Has access to a master key; or
- Works in a location designated as a security-sensitive area.¹⁰⁰

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.¹⁰¹

New Requirement
The 82nd Legislature enacted legislation allowing the Higher Education Coordinating Board to obtain criminal history information and expanding the criteria for a security-sensitive position.

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 from employment, and the employment policies and restrictions provided by the General Appropriations Act.¹⁰²

⁹⁹ Texas Government Code, Section 411.094 (b), as amended by HB 2937 (82nd Legislature, Regular Session).

¹⁰⁰ Texas Government Code, Section 411.094 (a) (2), as amended by HB 2937 (82nd Legislature, Regular Session).

¹⁰¹ Texas Government Code, Section 411.094 (d), as amended by HB 2937 (82nd Legislature, Regular Session).

¹⁰² Texas Government Code, Section 651.002.

Employment Contracts - Institutions of Higher Education

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.¹⁰³

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.¹⁰⁴ 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.¹⁰⁵

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.¹⁰⁶

Employment Contracts for Faculty

Institutions of higher education may enter into a contract with a faculty member for more than one academic year.¹⁰⁷

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.¹⁰⁸

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.¹⁰⁹ If the institution of higher education is unable to offer the contract prior to that deadline, the institution 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.¹¹⁰

¹⁰³ Texas Education Code, Section 51.948 (a).

¹⁰⁴ Texas Education Code, Section 51.948 (g) (1).

¹⁰⁵ Texas Education Code, Section 51.948 (b).

¹⁰⁶ Texas Education Code, Section 51.948 (c).

¹⁰⁷ Texas Education Code, Section 51.943 (f).

¹⁰⁸ Texas Education Code, Section 51.943 (c).

¹⁰⁹ Texas Education Code, Section 51.943 (b).

¹¹⁰ Texas Education Code, Section 51.943 (d).

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,¹¹¹ and
- The individual is under the age of 25.¹¹²

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.¹¹³ 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.¹¹⁴

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.¹¹⁵

Employment Preference for Veterans

An individual who qualifies for a veteran's employment preference is entitled to a preference in employment over other applicants who do not have a greater qualification for the same position.¹¹⁶ 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.¹¹⁷ (See Chapter 15, Military Leave and Employment Rights, for additional information.)

¹¹¹ Texas Government Code, Section 672.002 (a).

¹¹² Texas Government Code, Section 672.005.

¹¹³ Texas Government Code, Section 672.001.

¹¹⁴ Texas Government Code, Section 672.002 (b).

¹¹⁵ Texas Government Code, Section 672.004.

¹¹⁶ Texas Government Code, Section 657.003 (a).

¹¹⁷ Texas Government Code, Section 657.002 (c).

Identification Cards for Peace Officers

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.¹¹⁸

Identification cards expire on a date specified by the law enforcement agency or other governmental entity issuing the card.¹¹⁹ The head of a law enforcement agency or other governmental entity that appoints or employs a peace officer must recover the identification card at the time of the peace officer's resignation or termination.¹²⁰

Limitations on State Employment Levels

State agencies and institutions of higher education are not permitted to exceed the number of full-time equivalent (FTE) positions authorized by the General Appropriations Act (GAA).¹²¹ 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.
- 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.¹²²

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.¹²³

¹¹⁸ Texas Government Code, Section 614.122 (a).

¹¹⁹ Texas Government Code, Section 614.125.

¹²⁰ Texas Government Code, Section 614.122 (d).

¹²¹ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 6.10 (a).

¹²² General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 6.10 (c).

¹²³ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 6.10 (b).

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.¹²⁴

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.¹²⁵

According to the General Appropriations Act, the limitations on FTEs do not apply to a state agency or institution of higher education 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 of higher education 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 that are related to employment must be paid from federal funds. Each state agency or institution of higher education is required to notify the State Auditor's Office, Comptroller of Public Accounts, Legislative Budget Board, and Office of the Governor of any FTEs that are exempted because of these circumstances.¹²⁶

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 of higher education.¹²⁷

Certain state agencies may have specific riders in the General Appropriations Act (82nd 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 increase or decrease, if any, of the number of full-time equivalent employees from the fiscal quarter preceding the quarter covered by the report.
- 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.

¹²⁴ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 6.10 (d).

¹²⁵ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 6.10 (f).

¹²⁶ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 6.10 (g).

¹²⁷ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 6.10 (h).

- The number of managers, supervisors, and staff.¹²⁸

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.¹²⁹

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.¹³⁰

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/>.

Merit Selection Principles - Federal Laws or Regulations

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.¹³¹ These agencies must, 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.

A state agency must implement any additional merit principles required by federal law or regulation.¹³² 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.¹³³

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.¹³⁴ 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

¹²⁸ Texas Government Code, Section 2052.103 (a).

¹²⁹ Texas Government Code, Section 2052.103 (b).

¹³⁰ Texas Government Code, Section 2052.104 (b).

¹³¹ Texas Government Code, Section 655.001.

¹³² Texas Government Code, Section 655.003.

¹³³ Texas Government Code, Section 655.004.

¹³⁴ Texas Government Code, Section 667.001 (a) and (b).

hour per week employee.¹³⁵ 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.¹³⁶

A person must be informed of the following requirements before he or she is employed by more than one agency or institution of higher education:¹³⁷

- Separate vacation and sick leave records must be maintained for each employment.¹³⁸
- 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.¹³⁹
- The employee accrues state service credit for all purposes as if the employee had only one employment.¹⁴⁰
- 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.¹⁴¹

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.¹⁴²

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.¹⁴³

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.¹⁴⁴

¹³⁵ Texas Government Code, Section 667.001 (b).

¹³⁶ Texas Government Code, Section 667.003.

¹³⁷ Texas Government Code, Section 667.001 (c).

¹³⁸ Texas Government Code, Section 667.002.

¹³⁹ Texas Government Code, Section 667.003.

¹⁴⁰ Texas Government Code, Section 667.004.

¹⁴¹ Texas Government Code, Section 667.005.

¹⁴² Texas Government Code, Section 667.006 (a) and (b).

¹⁴³ Texas Government Code, Section 667.006 (c).

¹⁴⁴ Texas Government Code, Section 667.007.

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.¹⁴⁵

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 of higher education hold only one position or one position for each appointment. The institution of higher education'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.¹⁴⁶

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 of higher education determines that pay in lieu of compensatory time is in the best interest of the institution of the higher education.¹⁴⁷

Posting Job Vacancies

State agencies and institutions of higher education 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.¹⁴⁸ 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.¹⁴⁹ In addition to using the statutorily required methods to announce job vacancies, state agencies and institutions of higher education are encouraged to make other efforts to inform outside applicant recruitment sources of job vacancies.¹⁵⁰

A state agency or institution of higher education 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 the executive head of the agency certifies that the transfer or reassignment is necessary for the proper implementation of the reorganization or merger.¹⁵¹

Probationary or Introductory Period

There is no legislation either requiring or prohibiting an employee probationary or introductory period. Agencies and institutions of higher education have discretion in this matter. The existence of a probationary or introductory period should be structured so that it does not diminish the State's employment-at-will doctrine.

¹⁴⁵ Texas Government Code, Section 667.009.

¹⁴⁶ Texas Government Code, Section 659.0411.

¹⁴⁷ Texas Education Code, Section 51.963.

¹⁴⁸ Texas Government Code, Section 656.001.

¹⁴⁹ Texas Government Code, Section 656.024.

¹⁵⁰ Texas Government Code, Section 656.025.

¹⁵¹ Texas Government Code, Section 656.026.

Selective Service Registration

A state 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.¹⁵² 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.¹⁵³

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.¹⁵⁴

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 in hiring and in employment under the provisions of federal law and the Texas Labor Code.¹⁵⁵ 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 are required to complete federal form I-9 upon hiring a person. This form must be completed within three business days of the hire.¹⁵⁶

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

¹⁵² Texas Government Code, Section 651.005 (a).

¹⁵³ Title 50, Appendix, United States Code (Military Selective Service Act, June 24, 1948), Section 456; and *Who Must Register Chart*, The Selective Service System, at <http://www.sss.gov/>.

¹⁵⁴ Texas Office of the Attorney General, Opinion JC-0183 (2000).

¹⁵⁵ Texas Labor Code, Section 21.051; and Title 8, United States Code, Section 1324b.

¹⁵⁶ Texas Labor Code, Section 21.051; and Title 8, Code of Federal Regulations, Sections 274a.2 (a) (2) and 274a.2 (b) (B) (ii).

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.¹⁵⁷

A volunteer program must include:

- An effective training program for paid staff and prospective volunteers.
- The use of paid staff to plan and implement the volunteer program.
- 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.¹⁵⁸

A state agency that has a volunteer program must consider the use of volunteers in determining merit pay increases and performance evaluations.¹⁵⁹

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 this information to the Office of the Governor and the Legislature. This report is due by the fifth day of each regular legislative session. The report includes percentages of Caucasian Americans, African Americans, Hispanic Americans, females, and males within the state workforce by job category.¹⁶⁰

¹⁵⁷ Texas Government Code, Sections 2109.001, 2109.002, and 2109.003.

¹⁵⁸ Texas Government Code, Section 2109.004.

¹⁵⁹ Texas Government Code, Section 2109.005.

¹⁶⁰ Texas Labor Code, Section 21.0035.

Workforce Analysis

Each biennium, each state agency and institution of higher education must analyze its current workforce and compare the numbers employed in each demographic group and job category to those available in the 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.¹⁶¹

In addition, state agencies and institutions of higher education must report equal employment opportunity information to the Texas Workforce Commission's Civil Rights Division (Division). The report must be submitted in the form prescribed by the Division. The Division will conduct an analysis of the equal employment opportunity information and report the results of the analysis to the Legislature no later than the fifth day of each regular legislative session. The workforce analysis percentages for the state civilian workforce are available in the Division's "Equal Employment Opportunity and Minority Hiring Practices Report".¹⁶²

Recruitment Plans

Based on 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 Texas Workforce Commission's Civil Rights Division (Division) monitors employers to ensure that the employers' plans are consistent with state statute. In addition, state agencies and institutions of higher education must report to the Division the number of protected class hires in each class title that the agency and institution made during the preceding fiscal year. This report is due no later than November 1 of each year.¹⁶³

¹⁶¹ Texas Labor Code, Section 21.501.

¹⁶² Texas Labor Code, Sections 21.552 and 21.553 (b); and *Equal Employment Opportunity and Minority Hiring Practices Report*, Texas Workforce Commission's Web site at <http://www.twc.state.tx.us/>.

¹⁶³ Texas Labor Code, Sections 21.502 and 21.504.

Chapter 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/whd/flsa/index.htm.

The minimum wage in Texas is linked to the federal minimum wage under the Fair Labor Standards Act of 1938.¹⁶⁴ As of July 24, 2009, the federal minimum wage is \$7.25 per hour.¹⁶⁵

In general, most employees working in state agencies and institutions of higher education are covered under the FLSA.¹⁶⁶

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 at <http://www.dol.gov/whd/regs/compliance/hrg.htm>.
- Fair Pay Overview and Fact Sheets at <http://www.dol.gov/whd/regs/compliance/airpay/main.htm>.

FLSA Nonexempt Employees

To be eligible for FLSA overtime pay, an employee must be considered nonexempt. A nonexempt employee covered by the FLSA 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 and pay overtime compensation for each hour worked in excess of the overtime standard.¹⁶⁷ However, the FLSA allows government employers to choose whether to compensate their nonexempt employees for overtime in cash or in compensatory time off.¹⁶⁸ 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.

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.

¹⁶⁴ Texas Labor Code, Section 62.051.

¹⁶⁵ *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/whd/flsa/index.htm>.

¹⁶⁶ Title 29, Code of Federal Regulations, Section 553.3.

¹⁶⁷ Texas Government Code, Section 659.015; and Title 29, Code of Federal Regulations, Section 778.101.

¹⁶⁸ Title 29, Code of Federal Regulations, Section 553.20.

- 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.¹⁶⁹

State agencies can require nonexempt employees who have requested leave to exhaust their FLSA overtime balances before using vacation leave. 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.¹⁷⁰

Paid leave and holidays are not counted as hours worked for determining FLSA overtime hours.¹⁷¹ 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 must be allowed state compensatory time off equal to the number of hours in excess of 40 hours.¹⁷²

Nonexempt employees may accumulate an overtime credit up to 240 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 (320 overtime hours converted to straight time).¹⁷³

Nonexempt employees must be paid for any unused FLSA overtime at the time of separation from state employment. Upon separation from employment, an employee must be paid for unused FLSA compensatory time at either the final regular salary rate at the time the employee's separation or the average regular salary rate during the last three years of employment immediately prior to separation, whichever is higher.¹⁷⁴ State agencies must pay employees for any accumulated FLSA overtime prior to transferring that employee to another agency.¹⁷⁵

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.¹⁷⁶ 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.¹⁷⁷

An FLSA-exempt employee must 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

¹⁶⁹ Texas Government Code, Section 659.015 (c).

¹⁷⁰ *Christensen v. Harris County* (98-1167), 529 U.S. 576 (2000).

¹⁷¹ Title 29, Code of Federal Regulations, Section 778.218.

¹⁷² Texas Government Code, Section 659.015 (f).

¹⁷³ Texas Government Code, Section 659.015 (e); and Title 29, Code of Federal Regulations, Section 553.24.

¹⁷⁴ Title 29, Code of Federal Regulations, Section 553.27 (b).

¹⁷⁵ Texas Office of the Attorney General, Opinion H-883 (1976).

¹⁷⁶ Title 29, Code of Federal Regulations, Section 541.0.

¹⁷⁷ Title 29, Code of Federal Regulations, Section 541.2.

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.
- Deductions may be made for full-day absences for sickness or disability after the exhaustion of sick leave or workers' compensation benefits.
- 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 for jury fees, witness fees, or military pay for a particular week against the salary due for that particular week without loss of the exemption.
- 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.¹⁷⁸

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.¹⁷⁹

¹⁷⁸ Title 29, Code of Federal Regulations, Section 541.602.

¹⁷⁹ Texas Government Code, Section 659.016 (e) (4).

Chapter 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.¹⁸⁰

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 must 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 or it lapses.¹⁸¹ This is different from FLSA overtime in which the nonexempt employee earns FLSA overtime by physically working more than 40 hours in a workweek. See Chapter 4 (Fair Labor Standards Act Requirements) for additional information regarding FLSA overtime provisions.

State compensatory time off earned by Department of Criminal Justice correctional officers must be taken during the 24-month period following the end of the workweek in which the compensatory time was accrued or the compensatory time lapses.¹⁸²

New Requirement
The 82nd Legislature enacted legislation requiring state compensatory time earned by correctional officers employed by the Texas Department of Criminal Justice to be taken within a 24-month period or the compensatory time lapses.

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.¹⁸³ However, there are some situations in which the payment for state compensatory time can be authorized. Those situations are identified and summarized below.

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. Work hours, for the purpose of accruing state compensatory time, consist of paid leave, holidays, and actual hours worked. Part-time, FLSA-exempt employees may accrue state

¹⁸⁰ Texas Government Code, Sections 659.015 (f) and 659.016 (b).

¹⁸¹ Texas Government Code, Section 659.015 (f) and (g), as amended by HB 988 (82nd Legislature, Regular Session).

¹⁸² Texas Government Code, Section 659.015 (k), as amended by HB 988 (82nd Legislature, Regular Session).

¹⁸³ Texas Government Code, Section 659.015 (g).

compensatory time when the number of actual work hours exceeds the number of hours that the employee was designated to work.¹⁸⁴

If an exempt employee does not use state compensatory time within 12 months of when it was earned, the employee loses this time.¹⁸⁵

Generally, an employee will not be paid for accrued but unused state compensatory time.¹⁸⁶ However, there are some situations where the payment of state compensatory time can be authorized. These situations are identified and summarized below.

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 FLSA 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. 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 also be paid 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 must be reduced by one hour for each hour for which the employee is paid.¹⁸⁷

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 an emergency declared by the appropriate officer of the state or federal government.¹⁸⁸ 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.¹⁸⁹

Employees at institutions of higher education and those involved in public safety work (for example, highway construction, highway maintenance, and emergency response activities) may be paid for

¹⁸⁴ Texas Government Code, Section 659.016 (b).

¹⁸⁵ Texas Government Code, Section 659.016 (c).

¹⁸⁶ Texas Government Code, Section 659.016 (c); and Texas Office of the Attorney General, Opinion H-883 (1976).

¹⁸⁷ Texas Government Code, Section 659.025.

¹⁸⁸ Texas Government Code, Sections 659.015 (i) and 659.016 (i).

¹⁸⁹ Texas Government Code, Sections 659.015 (j) and 659.016 (j).

state compensatory time if taking the time off would be disruptive to teaching, research, or other critical functions.¹⁹⁰

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 must approve in writing the employee's request or provide the employee with an alternative date on which the employee may use the compensatory time.¹⁹¹

The employing agency is encouraged to reasonably accommodate the employee's use of the accrued compensatory time before it lapses.¹⁹²

There are no statutory provisions that allow for the conversion of state compensatory time or holiday compensatory time to any other type of leave. Subject to the exceptions noted above, if an employee does not use the accrued time within 12 months of earning it, the employee loses this time.¹⁹³

Notification of Compensatory Time Policy

A state agency must notify its employees annually of the State's policy on compensatory time and must accommodate to the extent practicable an employee's request to use accrued compensatory time.¹⁹⁴

For a state employee who has been activated to military services as a member of the reserve component of the armed forces, 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.¹⁹⁵

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.¹⁹⁶

An employee who acts as the administrative head of a state agency, including an executive director, is not prohibited from accruing compensatory time.¹⁹⁷

¹⁹⁰ Texas Government Code, Section 659.015 (g).

¹⁹¹ Texas Government Code, Section 659.022 (a).

¹⁹² Texas Government Code, Section 659.022 (b).

¹⁹³ Texas Government Code, Sections 659.015 (g), as amended by HB 988 (82nd Legislature, Regular Session); and Texas Government Code, Section 659.016 (c).

¹⁹⁴ Texas Government Code, Section 659.023 (a) and (b).

¹⁹⁵ Texas Government Code, Section 659.023 (c).

¹⁹⁶ Texas Government Code, Section 659.024 (c).

¹⁹⁷ Texas Government Code, Section 659.024 (b).

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.¹⁹⁸

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.¹⁹⁹ Holiday compensatory time is earned on an hour per hour basis.

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 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.²⁰⁰

The following employees are 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:²⁰¹

- A peace officer commissioned under Article 2.12 of the Texas Code of Criminal Procedure.
- A Department of Public Safety employee who performs communications or dispatch functions related to traffic law enforcement.
- A public security officer as defined by the Texas Occupations Code, Section 1701.001.
- A Parks and Wildlife Department employee who performs communications and dispatch services to assist law enforcement officers in performing law enforcement duties.

New Requirement
The 82nd Legislature enacted legislation entitling Parks and Wildlife Department employees who perform communications and dispatch services to assist law enforcement officers to holiday compensatory time for time worked on a federal or state holiday that falls on a Saturday or Sunday.

¹⁹⁸ Texas Government Code, Section 659.018.

¹⁹⁹ Texas Government Code, Section 662.007 (a) and (b).

²⁰⁰ Texas Government Code, Section 662.007 (c).

²⁰¹ Texas Government Code, Section 662.005 (b), as amended by HB 46 (82nd Legislature, Regular Session).

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 transferring authority or duties from one agency to another, or
- A requirement by the State Council on Competitive Government to bid a commercially available service that a state agency previously performed.

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.²⁰²

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.²⁰³ 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.²⁰⁴

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 the General Appropriations Act provides for payment of holiday and state compensatory time.

²⁰² Texas Government Code, Section 662.0071.

²⁰³ Texas Office of the Attorney General, Opinion H-883.

²⁰⁴ Texas Office of the Attorney General, Opinion H-899.

Chapter 6 *Position Classification Plan*

Position Classification Plan Overview

The Position Classification Plan (Plan), established by the Position Classification Act,²⁰⁵ requires most state agencies to comply with the salary schedules and compensation provisions of Article IX of the General Appropriations Act.

The Plan is administered by the State Classification Team located in the State Auditor's Office.²⁰⁶

Responsibilities of the State Classification Team include:

- Maintaining the Plan and ensuring that it is current.
- Advising and assisting state agencies to ensure equitable and uniform application of the Plan.
- Conducting 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.²⁰⁷

The Plan establishes job classification titles for full-time, part-time, hourly, and temporary employees.²⁰⁸ 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.²⁰⁹

The Plan, the General Appropriations Act, and the Texas Government Code provide guidelines for all classified positions.

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.

²⁰⁵ Texas Government Code, Section 654.001.

²⁰⁶ Texas Government Code, Sections 654.036 and 654.031.

²⁰⁷ Texas Government Code, Section 654.036.

²⁰⁸ Texas Government Code, Section 654.011 (a).

²⁰⁹ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 2.01.

- Business and economic development agencies.
- Regulatory agencies.
- Agencies of public education (limited to the Texas Education Agency, School for the Blind and Visually Impaired, and the School for the Deaf).²¹⁰

Agencies' Use of the Position Classification 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 appropriate 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.²¹¹ 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.²¹²

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 Auditor’s 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.²¹³

State Job Descriptions

The State Classification Team prepares general job descriptions for state agencies to use. Agencies should use the state job descriptions as guidelines and develop functional job descriptions that are more specific to the work of the agency and its employees.

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.²¹⁴

²¹⁰ Texas Government Code, Section 654.011 (a).

²¹¹ Texas Government Code, Section 654.014 (b).

²¹² Texas Government Code, Section 654.0155.

²¹³ Texas Government Code, Sections 654.012 (8) and 654.0125.

²¹⁴ Texas Government Code, Section 654.015.

Classified Salary Schedules

The Plan has three salary schedules: Schedules A, B, and C. Schedule A includes paraprofessional, administrative support, maintenance, service, and technical positions. Schedule B includes primarily professional and managerial positions, while Schedule C covers commissioned law enforcement officers who are employed by the Department of Public Safety, the Parks and Wildlife Department, the Alcoholic Beverage Commission, or the Department of Criminal Justice.²¹⁵ Only executive directors and specific positions remain exempt from the Plan.²¹⁶

Fiscal Year 2012-2013 Classified Salary Schedules A and B

The classification salary schedules for Schedules A and B for the 2012–2013 biennium are listed in Table 6-1 and Table 6-2.²¹⁷

Table 6-1

Classification Salary Schedule A Fiscal Years 2012-2013			
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	\$25,089	\$29,698
A8	\$21,505	\$26,344	\$31,183
A9	\$22,581	\$27,662	\$32,742
A10	\$23,710	\$29,044	\$34,379
A11	\$25,132	\$32,043	\$38,955
A12	\$26,640	\$33,966	\$41,292
A13	\$28,239	\$36,005	\$43,770
A14	\$29,933	\$38,164	\$46,396
A15	\$31,729	\$40,454	\$49,180
A16	\$33,633	\$42,881	\$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

²¹⁵ *A Biennial Report on the State's Position Classification Plan*, State Auditor's Office Report. No. 10-708, August 2010, Page 2.

²¹⁶ Texas Government Code, Section 654.012.

²¹⁷ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 2.01.

Table 6-2

Classification Salary Schedule B			
Fiscal Years 2012-2013			
Salary Group	Minimum Salary	Midpoint	Maximum Salary
B10	\$23,710	\$29,044	\$34,379
B11	\$25,132	\$32,043	\$38,955
B12	\$26,640	\$33,966	\$41,292
B13	\$28,239	\$36,005	\$43,770
B14	\$29,933	\$38,164	\$46,396
B15	\$31,729	\$40,454	\$49,180
B16	\$33,633	\$42,881	\$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 2012-2013 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).²¹⁸

Table 6-3

Classified Salary Schedule C Fiscal Years 2012 and 2013						
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.²¹⁹ The objective of these audits is to determine whether agencies conform to the State Position Classification Plan by ensuring proper classification of positions. The audits may focus on a job classification series within the state, or all classifications within an agency or portion of an agency. If these audits reveal misclassifications, the State Classification Team provides written notice to the appropriate agency heads. The steps available to resolve misclassifications include:

- Reclassifying the employee to a job classification title that is consistent with the work that is actually performed.
- Changing the employee's duties to conform to the assigned job classification title.
- Obtaining a new job classification title and salary range.²²⁰

Additional information on classification compliance audits is available in the Classification Compliance Audit Resource Guide on the State of Texas State Classification Web site at <http://sao.hr.state.tx.us/>.

²¹⁸ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 2.01.

²¹⁹ Texas Government Code, Section 654.036 (3).

²²⁰ Texas Government Code, Section 654.038.

Salary Studies

Each biennium, the State Classification Team submits to the Legislature recommended modifications to the Plan. Modifications may take the form of new job classification titles; reallocations of existing job classification titles; changes to job classification titles and job classification numbers; and deletion of job classification titles. In reviewing the Plan, the State Classification Team makes periodic studies of salary rates in both the public and private sector industries for similar work performed in state government. The objective of the review is to determine (1) the competitiveness of the Plan and (2) whether changes to the Plan are needed to ensure that the Plan effectively meets the needs of its users.²²¹ The results of those studies are reported to the Governor's Budget Office and the Legislative Budget Board prior to October 1 preceding each regular session of the Legislature.²²²

In addition, before September 1 of each even-numbered year, the State Classification Team 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.²²³

These studies and recommendations can be found on the State of Texas State Classification Web site at <http://sao.hr.state.tx.us/>.

²²¹ *A Biennial Report on the State's Position Classification Plan*, State Auditor's Office Report. No. 10-708, August 2010.

²²² Texas Government Code, Section 654.037 (a).

²²³ Texas Government Code, Section 654.037 (b).

Chapter 7
Positions Exempt from the Position Classification Plan

Positions Exempt from the Position Classification Plan

The State has a limited number of positions that are exempt from the Position 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.²²⁴

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 vacation leave or state compensatory time).
- If exceptions are reported as prescribed for payroll reporting procedures.²²⁵

²²⁴ Texas Government Code, Section 654.012.

²²⁵ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 3.05 (e) (2).

Salary Groups and Not-to-Exceed Rates for Exempt Positions

Salary Groups

The State currently has eight salary groups for positions exempt from the Position Classification Plan. Each salary group has a corresponding salary range that establishes the appropriate minimum and maximum annual salary for each position assigned to that group (see Table 7-1). Within the General Appropriations Act, the Legislature authorizes and designates the title and assigned salary group for each position listed in an agency's "Schedule of Exempt Positions."

Table 7-1

Scheduled Exempt Position Salary Rates Fiscal Years 2012 - 2013 ²²⁶		
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

Not-to-Exceed Rates

In addition to having assigned salary groups, most exempt positions have "authorized salaries" listed in the agencies' Schedule of Exempt Positions, often referred to as "not-to-exceed (NTE) rates," which are set by the Legislature and identified in the General Appropriations Act. If an agency's Schedule of Exempt Positions has an NTE rate that is less than the maximum salary listed in Table 7-1, the NTE rate listed in the agency's Schedule of Exempt Positions in the General Appropriations Act prevails. These NTE rates cannot be changed unless specifically authorized in accordance with the General Appropriations Act.²²⁷

Exempt Employees Salaries

As noted above, the Legislature sets an agency's NTE rate for exempt positions identified within the agency's Schedule of Exempt Positions. The Governor has the authority to set compensation in an amount not to exceed the maximum salary, but not less than the minimum, for positions within specific agencies listed in Table 7-2, notwithstanding the salary rate listed in an agency's Schedule of Exempt Positions. In addition, the Governor may designate the title and set the compensation rate of positions exempt from the Position Classification Plan that are used by the Office of the Governor.²²⁸

²²⁶ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 3.05 (b) (2).

²²⁷ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 3.05 (a).

²²⁸ General Appropriations Act (82nd Legislature, Regular Session), Article I, Office of the Governor, Riders 2 and 6.

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.²²⁹

Table 7-2 lists the agencies, positions, and salary groups for which the Governor is authorized to designate the compensation rate.

Table 7-2

Agencies Authorized to Have Exempt Positions Titles and Salaries set by the Governor ²³⁰		
Agency	Position	Salary Group
Fire Fighters’ Pension Commissioner	Commissioner	Group 1
Secretary of State	Secretary of State	Group 5
Office of State-Federal Relations	Executive Director	Group 3
Health and Human Services Commission	Executive Commissioner	Group 8
Texas Education Agency	Commissioner of Education	Group 8
Adjutant General’s Department	Adjutant General	Group 5
Department of Criminal Justice	Presiding Officer, Board of Pardons and Paroles	Group 4
Department of Criminal Justice	Parole Board Members (6)	Group 3
Commission on Environmental Quality	Commissioners (3)	Group 6
Department of Housing and Community Affairs	Executive Director	Group 5
Texas Workforce Commission	Commissioners (2)	Group 5
Texas Workforce Commission	Commission Chair	Group 6
State Office of Administrative Hearings	Chief Administrative Law Judge	Group 5
Department of Insurance	Commissioner of Insurance	Group 6
Office of Public Insurance Counsel	Public Counsel	Group 4
Public Utility Commission of Texas	Commissioners (3)	Group 6
Office of Public Utility Counsel	Public Counsel	Group 4
Bond Review Board	Executive Director	Group 3
Department of Insurance	Commissioner of Workers’ Compensation	Group 5

²²⁹ General Appropriations Act (82nd Legislature, Regular Session), Article I, Office of the Governor, Rider 3.

²³⁰ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 3.05 (b) (1).

Some state agencies have authority within the General Appropriations Act to request an increase in the authorized salary (NTE rate) for an exempt position by submitting a request to the Governor's Office and the Legislative Budget Board. (See Table 7-3 for a list of agencies and positions.) The request must include:

- The date that the board (when applicable for an agency with a governing board) approved the request.
- A statement that justifies the need to exceed the salary limitations in the agency's Schedule of Exempt Positions.
- The source(s) of funds to be used to pay the additional salary amount.

An agency's governing board may make this request no more than 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, the chairperson of the Senate Finance Committee, the Speaker of the House, and the Lieutenant Governor; and
- The 10th business day after the Governor's Office received the request for the increase.

If a proposed salary increase is approved, the Legislative Budget Board must notify the affected agency, the Governor's Office, and the Office of the Comptroller of Public Accounts.²³¹

Table 7-3 on the next page lists the agencies, positions, and salary groups that are authorized to request an increase in the salary (NTE rate) of an exempt position by submitting a request to the Governor's Office and the Legislative Budget Board.

²³¹ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 3.05 (c).

Table 7-3

Agencies Authorized to Request a Salary Increase for Exempt Positions within the General Appropriations Act ²³²		
Agency	Position	Salary Group
Department of State Health Services	Commissioner	Group 7
Department of Family and Protective Services	Commissioner	Group 7
Higher Education Coordinating Board	Commissioner	Group 8
Department of Aging and Disability Services	Commissioner	Group 7
Department of Information Resources	Executive Director	Group 6
Department of Assistive and Rehabilitative Services	Commissioner	Group 7
Texas Lottery Commission	Executive Director	Group 6
Juvenile Justice Department	Executive Director	Group 6
Preservation Board	Executive Director	Group 4
School for the Blind and Visually Impaired	Superintendent	Group 4
School for the Deaf	Superintendent	Group 4

In addition to all other requirements and limits established under an agency's bill pattern, requests for a salary increase for exempt positions listed in Tables 7-2 and 7-3 must be:

- In writing;
- Signed by the presiding officer of the governing board (for an agency with a governing board);
- Submitted to the Governor, the Legislative Budget Board, and the Comptroller; and
- Approved by the governing board (for an agency with a governing board) in a public meeting.²³³

²³² General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 3.05 (c) (6).

²³³ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 3.05 (d).

Salary Supplements for Exempt Positions

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.²³⁴

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.²³⁵
- Texas Medical Board, Executive Director: Salary supplement not to exceed \$12,000 annually if the executive director is a medical doctor and an attorney.²³⁶

Provisions for Salaries in the Judiciary Branch

Judges and justices in the Judicial Branch may have specific salaries. Table 7-4 provides an outline of those provisions.

Table 7-4

Provisions for Salaries in the Judiciary Branch ²³⁷		
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.		

²³⁴ Texas Government Code, Section 659.020.

²³⁵ General Appropriations Act (82nd Legislature, Regular Session), Article I, Cancer Prevention and Research Institute of Texas, Rider 4.

²³⁶ General Appropriations Act (82nd Legislature, Regular Session), Article VIII, Texas Medical Board, Rider 3.

²³⁷ Texas Government Code, Section 659.012.

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 must reduce the state salary by the excess amount.²³⁸

Appellate Court Salary Limits for Attorneys

Intermediate appellate courts may not pay more than one chief staff attorney promoted or hired after September 1, 2011, more than \$92,400 annually. In addition, no intermediate appellate court may pay other permanent legal staff hired or promoted after September 1, 2011, more than \$79,750 annually. This provision does not apply to appellate court law clerk positions.²³⁹

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 7-5 lists those rates and the positions to which they apply.

Table 7-5

Provisions for Salaries for Educational Institutions ²⁴⁰		
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 housing and utilities, when required.		

²³⁸ Texas Government Code, Section 659.012 (e).

²³⁹ General Appropriations Act (82nd Legislature, Regular Session), Article IV, Section 7.

²⁴⁰ General Appropriations Act (82nd Legislature, Regular Session), Article III, Special Provisions Relating Only to State Agencies of Higher Education, Section 5 (2) and (3); and General Appropriations Act (82nd Legislature, Regular Session), Article III, Special Provisions Relating only to Components of Texas State Technical College, Riders 10 and 11.

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 Position 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 must be submitted to all members of the Legislature and the director of the Legislative Budget Board no later than September 1, 2012.²⁴¹

²⁴¹ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 3.09.

Chapter 8 Salary Administration

General Information

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

- Classified positions paid in accordance with the Classification Salary Schedules.²⁴²
- 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.²⁴³

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

Part-time and Hourly Employees

Regular, full-time positions may be filled by part-time and hourly employees.²⁴⁴ 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.²⁴⁵ For benefits purposes, a part-time employee is an employee who works fewer than 40 hours per week.²⁴⁶

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.²⁴⁷ Initial employment includes rehires and interagency transfers.

Salary Limitations

State employees must be paid at a salary rate that falls within the salary range of the applicable salary group.²⁴⁸ Therefore, a promotion, reclassification, or other salary adjustment may not result in an employee receiving a salary in excess of the maximum rate or below the minimum rate authorized for his or her salary group.²⁴⁹

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' *Payroll Policies and Procedures Guide* and policy statements at the following Web site:
<https://fm.x.cpa.state.tx.us/fm/pubs/paypol/index.php>.

²⁴² General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 2.01.

²⁴³ Texas Government Code, Sections 654.012, 654.0125, and 659.011; and General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 3.05.

²⁴⁴ Texas Government Code, Section 658.009.

²⁴⁵ Texas Government Code, Section 659.019 (a).

²⁴⁶ Texas Insurance Code, Section 1551.003 (11).

²⁴⁷ Texas Government Code, Section 654.014 (b).

²⁴⁸ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 3.01 (d).

²⁴⁹ 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.²⁵⁰

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.²⁵¹

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.²⁵²

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 or the increase would take the employee's salary beyond the maximum of his or her new salary group.²⁵³

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.²⁵⁴

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 or the maximum rate of the employee's salary group.²⁵⁵

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.²⁵⁶

²⁵⁰ Texas Government Code, Section 659.020.

²⁵¹ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 3.02.

²⁵² Texas Government Code, Section 659.253 (b).

²⁵³ Texas Government Code, Section 659.253 (c).

²⁵⁴ Texas Government Code, Section 659.253 (d).

²⁵⁵ Texas Government Code, Section 659.253 (b).

²⁵⁶ Texas Government Code, Section 669.002.

Demotions

A demotion is a change from one classification title to another classification title in a salary group with a lower minimum salary rate.²⁵⁷ 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.²⁵⁸

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

- The demotion was accepted in lieu of a layoff that resulted from a 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.²⁵⁹

Equity Adjustments

A state agency can increase the salary of a classified employee to any rate within the employee's salary group as necessary to maintain desirable salary relationships between and among employees of the agency or between employees of the agency and employees who hold similar positions in relevant labor markets.²⁶⁰

A classified employee may receive an equity adjustment if the employee has worked in his or her 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.²⁶¹ State agencies must establish written rules regarding equity adjustments and must 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 must 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.²⁶²

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.²⁶³

²⁵⁷ Texas Government Code, Section 659.257 (b).

²⁵⁸ Texas Government Code, Section 659.257 (c) and (d); and *Reason Code Definitions and Restrictions for State Agencies*, Fiscal Year 2012-2013 (Salary Action Code 021), Comptroller of Public Accounts at <https://fmx.cpa.state.tx.us/fmx/payper/salsched/index.php>.

²⁵⁹ Texas Government Code, Section 659.257 (f) and (g).

²⁶⁰ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 3.08 (a).

²⁶¹ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 3.08 (c).

²⁶² General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 3.08 (b) and (d).

²⁶³ *Reason Code Definitions and Restrictions for State Agencies*, Fiscal Year 2012-2013 (Salary Action Code 040), Comptroller of Public Accounts at <https://fmx.cpa.state.tx.us/fmx/payper/salsched/index.php>.

Lateral Transfers

A lateral transfer is a change-in-duty assignment of an agency employee that moves the employee to another job classification title in the same salary group. An example might be an Accountant V (Salary Group B21) who moves to Accounts Examiner V (Salary Group 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 group.²⁶⁴ 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 chapter, "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.²⁶⁵

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.²⁶⁶

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.²⁶⁷

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.²⁶⁸

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.²⁶⁹ Annually, all agencies covered by the Position Classification Act are

²⁶⁴ Texas Government Code, Section 659.2531; and *Reason Code Definitions and Restrictions for State Agencies*, Fiscal Year 2012-2013 (Salary Action Code 046), Comptroller of Public Accounts at <https://fmx.cpa.state.tx.us/fmx/payper/salsched/index.php>.

²⁶⁵ Texas Government Code, Section 659.254 (b).

²⁶⁶ Texas Government Code, Section 659.254 (c) and (d).

²⁶⁷ Texas Government Code, Section 659.254 (c).

²⁶⁸ Texas Government Code, Section 659.254 (d).

²⁶⁹ Texas Government Code, Section 654.0156.

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.²⁷⁰

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.²⁷¹

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.²⁷² 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 his or her 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.²⁷³

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.²⁷⁴

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.²⁷⁵

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

²⁷⁰ Texas Government Code, Section 654.0155.

²⁷¹ Texas Government Code, Section 659.254 (c).

²⁷² Texas Government Code, Section 659.254 (d).

²⁷³ Texas Government Code, Section 659.258 (b).

²⁷⁴ Texas Government Code, Section 659.256 (b).

²⁷⁵ Texas Government Code, Sections 659.256 (c) and 659.256 (d); and *Reason Code Definitions and Restrictions for State Agencies*, Fiscal Year 2012-2013 (Salary Action Code 020), Comptroller of Public Accounts at <https://fm.xcpa.state.tx.us/fmx/payper/salsched/index.php>.

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.²⁷⁶

²⁷⁶ Texas Government Code, Section 659.260.

Chapter 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 chapter provides an overview of these statutes, but does not cover individual state agency or higher education institution 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.²⁷⁷

Recovering Excess Compensation Paid

State agencies and institutions of higher education are authorized to recover overpayments of compensation to employees.²⁷⁸ The Comptroller of Public Accounts may adopt rules and establish procedures to administer the recovery of overpayments.²⁷⁹ 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.²⁸⁰

If requesting recovery of an overpayment, the agency or institution of higher education must first notify the employee before collection action.²⁸¹ The agency or institution of higher education may request that the Comptroller of Public Accounts recover the overpayment.²⁸² No statute of limitations bars the State's recovery of employee indebtedness.²⁸³

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 Contribution 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:

²⁷⁷ General Appropriations Action (82nd Legislature, Regular Session), Article IX, Section 3.04.

²⁷⁸ Texas Government Code, Section 666.002 (a).

²⁷⁹ Texas Government Code, Section 666.008.

²⁸⁰ Texas Government Code, Section 666.001 (1).

²⁸¹ Texas Government Code, Sections 666.003 and 666.002 (a) (1).

²⁸² Texas Administrative Code, Title 34, Section 5.40; and Texas Government Code, Section 666.002 (b).

²⁸³ Texas Office of the Attorney General, Opinion GA-0171 (2004).

- 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.²⁸⁴

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.²⁸⁵ The benefit replacement pay for employees at institutions of higher education participating in the Teacher Retirement System may not exceed \$1,031.25.²⁸⁶

State agencies have the option of providing benefit replacement pay in equal installments during the calendar year. This practice is known as “leveling.” 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.²⁸⁷

An eligible employee who leaves state employment for 30 or more consecutive days becomes ineligible to receive benefit replacement pay upon re-employment with the State.²⁸⁸ 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.²⁸⁹

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).²⁹⁰ Those state employees eligible for hazardous duty pay include:

²⁸⁴ Texas Government Code, Section 659.121 (2).

²⁸⁵ Texas Government Code, Section 659.123.

²⁸⁶ Payroll Policies and Procedures Policy Statements, *Benefit Replacement Pay for Institutions of Higher Education*, Office of the Comptroller of Public Accounts’ Web site at <https://fm.x.cpa.state.tx.us/fm/pubs/paypol/index.php>.

²⁸⁷ Texas Government Code, Section 659.125; and Payroll Policies and Procedures Policy Statements, *Benefit Replacement Pay for State Agencies*, Office of the Comptroller of Public Accounts Web site at <https://fm.x.cpa.state.tx.us/fm/pubs/paypol/index.php>.

²⁸⁸ Texas Government Code, Section 659.126 (a).

²⁸⁹ Texas Government Code, Section 659.126 (d).

²⁹⁰ Texas Government Code, Section 659.302.

- 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.
- 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.
- 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.²⁹¹

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.²⁹²

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 2012-2013 biennium. Individuals hired after August 31, 1981, will not be eligible to receive hazardous duty pay unless so authorized by statute.²⁹³

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."²⁹⁴ 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.²⁹⁵ For a part-time employee, hazardous duty pay is proportional to the amount given to a full-time employee.²⁹⁶

²⁹¹ Texas Government Code, Section 659.301 (5).

²⁹² General Appropriations Act (82nd Legislature, Regular Session), Article V, Department of Criminal Justice, Rider 16.

²⁹³ General Appropriations Act (82nd Legislature, Regular Session), Article V, Alcoholic Beverage Commission, Rider 3.

²⁹⁴ Texas Administrative Code, Title 34, Section 5.39 (a) (6).

²⁹⁵ Texas Government Code, Section 659.302 (a).

²⁹⁶ Texas Government Code, Section 659.305 (f).

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.²⁹⁷ 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.²⁹⁸

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.²⁹⁹

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 or legislative hearing from the state or the judicial body, but not from both the state and the judicial body.³⁰⁰

²⁹⁷ Texas Government Code, Section 659.305 (a).

²⁹⁸ Texas Government Code, Section 659.306.

²⁹⁹ Texas Government Code, Section 659.005 (a).

³⁰⁰ Texas Government Code, Section 659.005 (b), (c), (d), and (e).

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. Part-time employees do not receive longevity pay on a proportional basis.³⁰¹ 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 who retired from state employment on or after June 1, 2005, and who receives an annuity based wholly or partly on service as a state officer or state employee.³⁰² The Comptroller of Public Accounts is responsible for issuing rules and procedures for the administration of longevity pay.³⁰³

Accrual of Lifetime Service Credit

Length of service for longevity pay is determined in the same manner as length of service for vacation leave. 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.

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 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.

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 Juvenile Justice Department, may pay to the employee.³⁰⁴

³⁰¹ Texas Government Code, Section 659.043 (a).

³⁰² Texas Government Code, Section 659.042.

³⁰³ Texas Government Code, Section 659.047.

³⁰⁴ Texas Government Code, Section 659.046.

Table 9-1 lists the amounts of longevity pay that eligible employees receive based upon years of service.³⁰⁵

Table 9-1

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

³⁰⁵ Texas Government Code, Section 659.044.

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. 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 justice completes 16 years of service for which credit is established in the applicable retirement system.³⁰⁶ 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.³⁰⁷

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 returned to state employment on or after September 1, 2005, is not entitled to receive longevity pay.³⁰⁸

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.³⁰⁹

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.³¹⁰ Each state agency must adopt policies to ensure that an employee's performance expectations are linked to the goals in the agency's strategic plan.³¹¹

For classified employees in Salary Schedules A and B, a merit increase consists of an increase within the range of the same salary group.³¹² For Salary Schedule A employees, the minimum amount for a merit increase or one-time merit increase is \$30 per month. Agencies should ensure that merit increases and one-time merit payments are distributed throughout the range of classified salary groups.³¹³

³⁰⁶ Texas Government Code, Section 659.0445 (a) and (b).

³⁰⁷ Texas Government Code, Section 659.0445 (e).

³⁰⁸ Texas Government Code, Section 659.044 (f).

³⁰⁹ Texas Government Code, Section 659.045.

³¹⁰ Texas Government Code, Section 659.255 (e) (4).

³¹¹ Texas Government Code, Section 659.2551.

³¹² Texas Government Code, Section 659.255 (a) (3).

³¹³ Texas Government Code, Section 659.255 (d) and *Reason Code Definitions and Restrictions for State Agencies*, Fiscal Year 2012-2013 (Salary Action Code 021), Comptroller of Public Accounts at <https://fmx.cpa.state.tx.us/fmx/payper/salsched/index.php>.

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, merit salary increase for performance in that position, or a one-time merit increase (including a one-time merit increase given for an employee's performance during a natural disaster or other extraordinary circumstance).
- 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.³¹⁴

One-Time Merit Increases

Employees may receive a one-time merit payment following the same criteria used to award merit salary increases.³¹⁵

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.³¹⁶

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.³¹⁷

Merits are also prohibited for all Juvenile Justice Department juvenile correctional officers who are eligible to receive career ladder adjustments.³¹⁸

³¹⁴ Texas Government Code, Section 659.255 (e) and (f).

³¹⁵ Texas Government Code, Section 659.255 (f).

³¹⁶ Texas Government Code, Section 659.255 (g).

³¹⁷ General Appropriations Act (82nd Legislature, Regular Session), Article V, Department of Criminal Justice, Rider 9.

³¹⁸ General Appropriations Act (82nd Legislature, Regular Session), Article V, Juvenile Justice Department, Rider 16.

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.³¹⁹ An institution of higher education may grant merit salary increases, including one-time merit payments, to employees.³²⁰

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. The required six-month lapse between merit increases does not apply to a one-time merit payment if the institution of higher education's chief administrative officer determines in writing that the one-time payment is made in relation to the employee's performance during a natural disaster or other extraordinary circumstances.³²¹

Salary increases for faculty or faculty-equivalent employees at institutions of higher education must be awarded on the basis of merit and job performance. This does not include salary adjustments designed to avoid salary inequities.³²²

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.³²³

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 must refund to the state agency the full amount of the recruitment payment.

³¹⁹ General Appropriations Act (82nd Legislature, Regular Session), Article III, Section 5.4.

³²⁰ Texas Education Code, Section 51.962.

³²¹ Texas Education Code, Section 51.962.

³²² General Appropriations Act (82nd Legislature, Regular Session), Article III, Section 5.5.

³²³ Texas Education Code, Section 51.0065.

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 must 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.³²⁴

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.³²⁵

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 \$5,000.³²⁶

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 added to the employee’s salary payment the month after the conclusion of the 12-month period of service under the deferred compensation contract.³²⁷

The chief administrator of a state agency must determine whether additional compensation is necessary on a case-by-case basis and must 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.³²⁸

³²⁴ Texas Government Code, Section 659.262 (b).

³²⁵ Texas Government Code, Section 659.262 (f) and (g).

³²⁶ Texas Government Code, Section 659.262 (c).

³²⁷ Texas Government Code, Section 659.262 (c) and (d).

³²⁸ Texas Government Code, Section 659.262 (e).

Before an agency provides or enters into a contract to provide additional compensation to an employee, 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.³²⁹

Retention bonuses do not constitute compensation or salary and wages for purposes of determining the amount of the State's contribution for retirement.³³⁰

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.³³¹

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 of higher education 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.

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

- Achieve or exceed targets for 80 percent of key performance measures.
- Have an unqualified certification 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 the innovative program, 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, House Appropriations Committee, and Senate Finance Committee 60 days prior to implementation detailing how the agency intends to use its increased flexibility to further its goals.³³²

³²⁹ Texas Government Code, Section 659.262 (f) and (g).

³³⁰ Texas Government Code, Section 811.001 (7).

³³¹ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 6.13 (b) and (c).

³³² General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 6.13 (d).

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 must 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 and Education Certification Level

- Intermediate – \$50 per month.
- Advanced – \$100 per month.
- 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.³³³

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.

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.

Specific agencies are provided authority in the General Appropriations Act to provide shift differential, standby, or on-call pay.

³³³ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 3.01 (g).

Chapter 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, Section 61.003, 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.³³⁴

The Comptroller of Public Accounts (Comptroller), in consultation with the State Auditor, must 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 Position 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.³³⁵

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.³³⁶

“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.³³⁷

³³⁴ Texas Government Code, Sections 658.001 (2) and 659.004 (a).

³³⁵ Texas Government Code, Sections 659.004 (b) and 654.036 (3).

³³⁶ Texas Government Code, Section 659.083 (a) and (b).

³³⁷ Texas Government Code, Section 659.083 (c).

Salaries for state officers and employees paid once a month must be paid through electronic funds transfer unless paid on warrant as permitted by state statute.³³⁸

Method and Frequency of Pay

Except as provided by state statute or the General Appropriations Act, annual salaries for state officers and employees must be paid once a month.³³⁹

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

- The employee is employed by:
 - ♦ Texas Facilities Commission,
 - ♦ Office of the Comptroller of Public Accounts,
 - ♦ Texas Veterans Commission,
 - ♦ Department of Transportation,
 - ♦ State Preservation Board,
 - ♦ Department of State Health Services,
 - ♦ Department of Aging and Disability Services,
 - ♦ Any other state agency designated by the Comptroller;
- 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.³⁴⁰

Employees of an institution of higher education as defined by the Texas Education Code, Section 61.003, may be paid twice a month at the election of the employing institution of higher education.³⁴¹

³³⁸ Texas Government Code, Section 659.084.

³³⁹ Texas Government Code, Section 659.081.

³⁴⁰ Texas Government Code, Section 659.082 (a); and *Payroll Policies and Procedures Policy Statements, Method and Frequency of Payrolls*, Office of the Comptroller of Public Accounts' Web site at <https://fm.xcpa.state.tx.us/fm/pubs/paypol/index.php>.

³⁴¹ Texas Government Code, Section 659.082 (b).

Determining Amounts for Part-time Pay

The amount of monthly salary for an 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, Section 61.003, 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.

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.³⁴²

Federal Insurance Contribution Act (FICA)

The State must 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 must make any required employer contributions in accordance with applicable federal law. The Comptroller must make payments in accordance with applicable state and federal law.³⁴³

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.

For 2011, the OASDI tax rate for wages paid is 4.2 percent for employees and 6.2 percent for employers. The Medicare tax rate is 1.45 percent for employees and employers and currently has no income limit. The maximum wage contribution for 2011 is \$106,800.³⁴⁴ All employees are subject to both types of FICA taxes.³⁴⁵

³⁴² Texas Government Code, Section 659.085.

³⁴³ Texas Government Code, Section 659.002 (d).

³⁴⁴ *Social Security*, U.S. Social Security Administration's Web site at <http://www.socialsecurity.gov>.

³⁴⁵ Title 26, United States Code, Section 3101.

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.³⁴⁶

Some of the authorized payroll deductions are explained below. For a complete list of authorized payroll deductions, state agencies and institutions of higher education should contact the Office of the Comptroller of Public Accounts.

Charitable Contribution 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.³⁴⁷

³⁴⁶ Texas Government Code, Section 659.002 (a), (b), and (c).

³⁴⁷ Texas Government Code, Section 659.132.

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.³⁴⁸

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.³⁴⁹ The Comptroller had approved five organizations for deductions of membership fees. Those 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 Employees Association (TPEA).
- Texas State Employees Union (TSEU).³⁵⁰

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 must designate eligible supplemental optional benefits programs 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.³⁵¹

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 or wage payment 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 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.

³⁴⁸ Texas Government Code, Section 659.103 (a).

³⁴⁹ Texas Government Code, Section 659.1031.

³⁵⁰ *Approved State Employee Organizations for Membership Fee Deduction*, Comptroller of Public Accounts' Web site, at <https://fmxcpa.state.tx.us/fmxcpa/payper/deduct/memberfees.php>.

³⁵¹ Texas Government Code, Section 659.102.

An employee of an institution of higher education may authorize in writing a deduction each pay period from the employee's salary or wage payment 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 must determine which fee or charge an employee may pay.³⁵²

The governing board of a university system or of an institution of higher education that is not a component institution of a university system may authorize employees of the system or institution to elect a payroll deduction for any purpose that the governing board determines serves a public purpose and benefits employees. The governing board also may adopt policies and procedures governing payroll deductions.

A payroll deduction must be at the written request of the employee and the request must state the amount to be deducted and the entity to which the deducted amount is to be transferred. A payroll deduction is in effect until the employee revokes the deduction in writing. A university system's or higher education institution's policies and procedures may provide for enrollment periods.

A university system or institution of higher education may collect an administrative fee to cover the costs of making a deduction. A payroll deduction is not authorized for dues or membership fees payable to a labor union or employees association.³⁵³

New Requirement
The 82nd Legislature enacted legislation allowing employees of a university system or an institution of higher education to authorize payroll deductions for any purpose that the university system's or higher education institution's governing board determines serves a public purpose and benefits employees.

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.³⁵⁴

³⁵² Texas Government Code, Section 659.202.

³⁵³ Texas Education Code, Section 51.9611, as amended by SB 5 (82nd Legislature, Regular Session).

³⁵⁴ Texas Government Code, Section 659.108.

Deductions for Prepaid Higher Education Tuition Program

The following prepaid tuition or college savings contracts can be paid through a payroll deduction:

- Texas Guaranteed Tuition Plan (formerly known as the Texas Tomorrow Fund)
- Texas Tuition Promise Fund
- Texas College Savings Plan, and
- LoneStar 529 Plan.

An employee of a state agency or institution of higher education may have one or more separate contracts in one or more of the available plans.³⁵⁵

³⁵⁵ *Payroll Policies and Procedures Policy Statements, Texas Prepaid Higher Education Tuition Program*, Office of the Comptroller of Public Accounts' Web site at https://fm.x.cpa.state.tx.us/fm/pubs/paypol/tuition_prepaid.php.

Chapter 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.³⁵⁶ These interpretations are advisory in nature.³⁵⁷

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.³⁵⁸ 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.³⁵⁹

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 vacation 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, vacation leave, other paid leave, leave without pay, or other absence.³⁶⁰

Vacation Leave

State employees are entitled to paid vacation leave (also referred to as 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 Juvenile Justice Department who worked less than 12 months during the year. Additionally, employees not entitled to vacation 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.³⁶¹ Employees of independent school districts and junior colleges are not considered state employees for purposes of this section.³⁶²

³⁵⁶ Texas Government Code, Section 661.151.

³⁵⁷ Texas Office of the Attorney General, Opinion M-984 (1971).

³⁵⁸ Texas Education Code, Section 51.961 (b).

³⁵⁹ Texas Education Code, Section 51.961 (c).

³⁶⁰ Texas Government Code, Section 661.908.

³⁶¹ Texas Government Code, Section 661.152 (a).

³⁶² Texas Office of the Attorney General, Opinions WW-1443 (1962), M-707 (1970), and MW-165 (1980).

Vacation Leave Accruals and Utilization

Employees begin to accrue vacation leave on their first day of employment and on the first calendar day of each succeeding month of state employment.³⁶³ However, vacation leave may not be taken until the employee has been employed with the State for six continuous months.³⁶⁴

A full calendar month of leave without pay does not constitute a break in state employment nor does it require the employee to start over in the calculation of the employee's continuous months of employment. However, the calendar month of leave without pay is not included in the calculation of the number of continuous months of employment for purposes of vacation leave.³⁶⁵ In addition, if the employee is on any type of paid leave that extends into the following month, the employee's accrual of leave will not be posted until the employee returns to duty, which means the employee may not take vacation leave accrued for that month until the employee returns to work. An employee forfeits this accrual if he or she does not return to duty.³⁶⁶

Vacation leave accruals for full-time employees are the same whether they are an hourly or salaried employees.³⁶⁷ Part-time hourly and salaried employees are also eligible for vacation leave, but their accrual rate is proportionate to the number of hours they work.³⁶⁸ The amount of vacation leave an employee accrues is also determined by his or her length of state service. To determine an employee's length of state service, state agencies and institutions of higher education should count actual days, months, and years of total state employment.³⁶⁹

Employees may carry unused vacation leave forward from one year to the next. The amount of allowable carryover hours depends on the length of state service and the number of hours worked (see Table 11-1 on the next page).³⁷⁰ State employees who are employed by multiple state agencies or institutions of higher education may not accrue vacation leave at a rate that exceeds that of a full-time employee.³⁷¹

³⁶³ Texas Government Code, Section 661.152 (e).

³⁶⁴ Texas Government Code, Section 661.152 (f).

³⁶⁵ Texas Government Code, Sections 661.909 (f) and (h).

³⁶⁶ Texas Government Code, Sections 661.152 (j).

³⁶⁷ Texas Government Code, Section 661.121.

³⁶⁸ Texas Government Code, Section 661.152 (c).

³⁶⁹ Texas Government Code, Section 661.152(d); and Texas Office of the Attorney General, Opinion H-341 (1974).

³⁷⁰ Texas Government Code, Section 661.152 (d).

³⁷¹ Texas Government Code, Sections 667.001 (b).

Table 11-1

Schedule of Vacation 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

Credit for the higher rate of accrual will be given on the first calendar day of each month only if the employee's anniversary falls on that day. Otherwise, the increase in vacation leave accrual will be given on the first calendar day of the following month.³⁷² All vacation leave hours in excess of the maximum allowable carryover remaining at the end of a fiscal year must be credited to the employee's sick leave balance.³⁷³

Accruals of vacation leave end on an employee's last day of duty, which is an employee's last physical day on the job.³⁷⁴

Appendices 3 and 4 contain tables that detail leave entitlements for state employees.

Vacation Leave for Legislative Employees

Vacation 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, vacation leave will be determined by the presiding officer of the appropriate house of the legislature.
- For employees of a legislative agency, vacation leave will be determined by the agency's administrative head.³⁷⁵

³⁷² Texas Government Code, Section 661.152 (g).

³⁷³ Texas Government Code, Section 661.152 (h).

³⁷⁴ Texas Government Code, Section 661.152 (e).

³⁷⁵ Texas Government Code, Section 661.154.

Vacation Leave and Employee Transfers and Separations

Employees who transfer directly from one state agency or institution of higher education to another will have their vacation leave balances transferred.³⁷⁶

If an employee separates from a state agency and is re-employed within 30 calendar days by another state agency or institution of higher education to a position that accrues vacation leave, his or her vacation leave balance will transfer to the new agency or institution of higher education.³⁷⁷

Separation includes, but is not limited to, (1) leaving one state agency to work for another, provided at least one workday passes between those employments and (2) moving from a position in a state agency or institution of higher education that accrues vacation leave to a position within the state agency or institution of higher education that does not accrue vacation leave if the agency or institution agrees to pay for the employee's accrued balance of vacation leave.³⁷⁸

State agency employees, who have accrued six months of continuous state employment, are entitled to be paid for the accrued balance of the employee's vacation leave as of the date of separation, if the employee is not reemployed by a state agency or institution of higher education in a position which accrues vacation leave during the 30-day period immediately following the date of separation from state employment. The six months of continuous state employment may have been accrued at anytime during the employee's lifetime, which means that it may have been accrued during a previous period of employment and not during the employment from which the employee is currently separating. Employees of institutions of higher education who do not directly transfer to another state agency or institution of higher education do not have a 30-day waiting period for payment of vacation leave and must be paid for accrued and unused vacation leave immediately upon the employee's separation.³⁷⁹

A terminating employee may, with the approval of the employing agency, remain on the payroll after separation to use accrued vacation leave rather than receive a lump-sum payment.³⁸⁰ No additional accruals will be made during this period. The employee may not use sick leave or accrue sick leave or vacation leave while exhausting vacation leave. However, an employee allowed to remain on an agency's payroll is entitled to continue to receive all compensation and benefits that the employee was receiving on the employee's last day of duty. Therefore, an employee is entitled to substitute jury duty for vacation leave when exhausting vacation leave on an agency's payroll following resignation and is entitled to any general salary increase for state employees that takes effect before the employee's accrued vacation leave is exhausted.³⁸¹

³⁷⁶ Texas Government Code, Section 661.153.

³⁷⁷ Texas Government Code, Section 661.152 (k).

³⁷⁸ Texas Government Code, Section 661.062 (b).

³⁷⁹ Texas Government Code, Section 661.062 (a).

³⁸⁰ Texas Government Code, Section 661.067 (a).

³⁸¹ Texas Government Code, Section 661.067 (b); and State Auditor's Office Leave Interpretation Letter, No. 99-01 (1998).

Upon separation, lump-sum payments for accrued but unused vacation 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 vacation leave is not entitled to added time for holidays that fall within the accrual period.³⁸² In no case is the employee entitled to receive longevity or hazardous duty pay for the accrual period.³⁸³

An employee who is restored to state employment following military service is entitled to have his or her vacation leave balance restored.³⁸⁴

Appendices 5 and 6 contain tables that detail the payment entitlements upon separation from state employment.

Vacation Leave Accruals and Retirees

Vacation 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 vacation leave based only on the employee's length of service earned after the employee's retirement date.³⁸⁵

Sick Leave

Sick leave is a benefit to state employees that allows for a paid absence from work under certain conditions.³⁸⁶ Exceptions include non-faculty employees who work at institutions of higher education less than 20 hours per week or less than 4.5 months and are employed in positions that require student status as a condition of employment.³⁸⁷

Sick Leave Accruals and Utilization

A full-time employee accrues sick leave at a rate of eight hours per month (or proportionately for part-time).³⁸⁸ 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.³⁸⁹ 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.³⁹⁰

³⁸² Texas Government Code, Section 661.064.

³⁸³ Texas Government Code, Section 661.063 (c) (2).

³⁸⁴ Texas Government Code, Section 661.904 (c).

³⁸⁵ Texas Government Code, Section 661.152 (l); and State Auditor's Office Leave Interpretation Letter, No. 97-07 (1997).

³⁸⁶ Texas Government Code, Section 661.202 (a).

³⁸⁷ Texas Government Code, Section 661.201 (b).

³⁸⁸ Texas Government Code, Section 661.202 (c).

³⁸⁹ Texas Government Code, Section 661.202 (b).

³⁹⁰ Texas Government Code, Section 661.202 (k).

Accrued, sick leave may be used immediately upon employment 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 employee's 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.³⁹¹ 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.³⁹² In addition, sick leave may be used for the adoption of a child under the age of three.³⁹³

An employee who will be absent from work must notify his or her supervisor as soon as possible.³⁹⁴ 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 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.³⁹⁵

While out on vacation leave, an employee may instead use sick leave, provided the employee would otherwise be eligible for sick leave.³⁹⁶

Appendices 3 and 4 contain tables that detail leave entitlements for state employees.

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.³⁹⁷

Sick Leave and Employee Transfers and Separations

Employees who transfer directly from one state agency or institution of higher education to another will have their sick leave balances transferred.³⁹⁸

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.³⁹⁹

³⁹¹ Texas Government Code, Section 661.202 (b) and (d).

³⁹² Texas Government Code, Section 661.202 (e); and State Auditor's Office Leave Interpretation Letter, No. 97-04 (1996).

³⁹³ State Auditor's Office Leave Interpretation Letter, No. 97-01 (1998); and Texas Office of the Attorney General, Opinion JM-1203 (1990).

³⁹⁴ Texas Government Code, Section 661.202 (f).

³⁹⁵ Texas Government Code, Section 661.202 (g).

³⁹⁶ State Auditor's Office Leave Interpretation Letter, 97-05 (1996).

³⁹⁷ Texas Government Code, Section 661.203.

³⁹⁸ Texas Government Code, Section 661.204.

³⁹⁹ Texas Government Code, Section 661.205 (a).

Employees separated for reasons other than a formal reduction in force and re-employed by a state agency or institution of higher education 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.⁴⁰⁰

There is no authority to pay out an employee's accrued but unused sick leave balance upon termination.⁴⁰¹

An employee who is restored to state employment following military service is entitled to have his or her sick leave balance restored.⁴⁰²

Extended Sick Leave

The administrative head of a state agency and institution of higher education may extend sick leave to an employee who has exhausted all other forms of paid leave after a thorough review of the merits of each individual case. State agencies and institutions of higher education that grant extended sick leave are required to have an extended sick leave policy. All agencies and institutions of higher education 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.⁴⁰³

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.⁴⁰⁴ The sick leave pool is intended to assist employees and their immediate families in dealing with catastrophic illnesses or injuries that force the employees to exhaust all of their available sick leave.⁴⁰⁵ An employee becomes eligible to withdraw time from the sick leave pool if the employee has exhausted his or her sick leave because of a catastrophic illness or injury of the employee or of a member of the employee's immediate family.⁴⁰⁶

⁴⁰⁰ Texas Government Code, Section 661.205 (b).

⁴⁰¹ Texas Office of the Attorney General, Opinion GA-0201 (2004).

⁴⁰² Texas Government Code, Section 661.904 (c).

⁴⁰³ Texas Government Code, Section 661.202 (i) and (j).

⁴⁰⁴ Texas Government Code, Section 661.002 (a).

⁴⁰⁵ Texas Government Code, Sections 661.004 (a) and 661.006 (a).

⁴⁰⁶ Texas Government Code, Sections 661.004 (a) and 661.005 (b).

Catastrophic Injury or Illness

The Employees Retirement System (ERS) has defined the following terms:

- **Catastrophic injury or illness** is a severe condition or combination of conditions affecting the mental or physical health of the employee or the employee's immediate family that requires the services of a licensed practitioner for a prolonged period of time and that forces the employee to exhaust all 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.⁴⁰⁷

Administering the Sick Leave Pool

The program must be administered by the executive director or his or her designee.⁴⁰⁸ State agencies and institutions of higher education should ensure that their sick leave pool policies do not conflict with their extended sick leave policies.

Contributions to the sick leave pool must be in increments of one or more days with the exception of retiring employees, who may designate the number of hours to be donated.⁴⁰⁹

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.⁴¹⁰ 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.⁴¹¹

⁴⁰⁷ Board of Trustees Meeting, Employees Retirement System, October 24, 1989.

⁴⁰⁸ Texas Government Code, Section 661.002.

⁴⁰⁹ Texas Government Code, Section 661.003 (a) and (c).

⁴¹⁰ Texas Government Code, Section 661.005 (a) and (b).

⁴¹¹ Texas Government Code, Section 661.006 (b).

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.⁴¹² Education Service Centers are not considered state agencies for benefits purposes; however, 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.⁴¹³

Vacation leave is not transferable to Education Service Centers; therefore, state employees transferring to Education Service Centers should be paid for accumulated vacation leave.

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.
- Vacation 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.⁴¹⁴

An employee who is on LWOP will have his or her compensation reduced for the pay period by an amount in accordance with the General Appropriations Act and rules adopted by the Comptroller.⁴¹⁵ 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).

⁴¹² Texas Education Code, Section 8.002.

⁴¹³ Texas Education Code, Section 8.007 (b).

⁴¹⁴ Texas Government Code, Section 661.909.

⁴¹⁵ Texas Government Code, Sections 659.085 (c).

Payment of Accrued Leave of Deceased Employees

In the event of the employee's death, the employee's estate is entitled to payment by the State for (1) all accumulated vacation leave and (2) one-half of accumulated sick leave or 336 hours, whichever is less.⁴¹⁶ The payment is calculated by multiplying the employee's hourly rate at the time of death by the total number of leave hours applicable. The calculation does not include longevity or hazardous duty pay.⁴¹⁷ The estates of appointed officers or employees of the State who normally work at least 900 hours per year are eligible for this benefit.⁴¹⁸

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.⁴¹⁹ In addition, for a state employee who at the time of death was working at least 40 hours a week, a state agency or higher education institution must allocate the deceased employee's accrued leave over the workdays following the employee's death. The state agency or institution of higher education must add eight hours to the employee's sick and vacation leave accruals for each state or national holiday scheduled during the time period to which the accrued leave was allocated. Employees who work fewer than 40 hours a week will receive a proportionate payment.⁴²⁰

Leave Policies and Provisions for Institutions of Higher Education

The governing board of an institution of higher education may adopt a leave policy for employees 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.⁴²¹

⁴¹⁶ Texas Government Code, Section 661.033.

⁴¹⁷ Texas Government Code, Section 661.034.

⁴¹⁸ Texas Government Code, Section 661.031 (2).

⁴¹⁹ Title 29, Code of Federal Regulations, Section 553.27; and Texas Office of the Attorney General, Opinion H-899 (1976).

⁴²⁰ Texas Government Code, Section 661.035.

⁴²¹ Texas Education Code, Section 51.961.

Chapter 12 *Miscellaneous Leave Provisions*

In addition to the vacation and sick leave provisions, the State offers leave to employees for specific situations. This chapter 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.

An employee of an institution of higher education may not be eligible to accrue or take paid leave listed within this chapter if: (1) the employee works fewer than 20 hours per week, (2) the employee is appointed for fewer than 4.5 months, or (3) the employee is in a position for which he or she must be a student as a condition of employment.⁴²²

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.⁴²³

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 vacation or sick leave, overtime leave, or state compensatory time. The amateur radio operator leave should be authorized by the employee's supervisor and with the approval of the governor.⁴²⁴

The number of amateur radio operators 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 is responsible for coordinating the establishment and maintenance of the list of employees eligible for this leave.⁴²⁵

Assistance Dog Training

A state employee with a disability as defined by Texas Human Resources Code, Section 121.002, will be granted paid leave of absence not to exceed 10 working days in a fiscal year to attend a training program to acquaint the employee with an assistance dog that the employee will use.⁴²⁶

⁴²² Texas Government Code, Section 661.901 (c).

⁴²³ Texas Government Code, Section 661.911.

⁴²⁴ Texas Government Code, Section 661.919 (a).

⁴²⁵ Texas Government Code, Section 661.919 (b).

⁴²⁶ Texas Government Code, Section 661.910.

Blood Donation

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 must 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.⁴²⁷

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 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.⁴²⁸

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 — without a deduction in salary or loss of vacation, sick leave, overtime leave, or state compensatory time — not to 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 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 is responsible for coordinating the establishment and maintenance of the list of eligible employees.⁴²⁹

Compliance with a Subpoena

An employer may not discharge, discipline, or penalize 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.⁴³⁰

Agencies should use their own discretion in instances of unofficial testimony to decide whether such an absence is considered good cause for emergency leave.⁴³¹

⁴²⁷ Texas Government Code, Section 661.917.

⁴²⁸ Texas Government Code, Section 661.916.

⁴²⁹ Texas Government Code, Section 661.907 (a) and (b).

⁴³⁰ Texas Labor Code, Section 52.051.

⁴³¹ Texas Office of the Attorney General, Opinion 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 leave, sick leave, overtime leave, or state compensatory time.⁴³²

Emergency Leave

An employee is entitled to leave with pay for a death in the employee's immediate 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.⁴³³

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. In addition, there is nothing in statute that requires an employee to attend a funeral to be entitled to emergency leave. The amount of leave is dependent on agency policy. There is no limit on the number of occurrences that emergency leave can be used for as long as it is for a qualified situation.⁴³⁴

Employees who are on emergency leave are considered to be in a "paid leave status." Therefore, they are eligible for holiday pay if a holiday occurs during the time they are on emergency leave.⁴³⁵

In addition to granting employees emergency leave for the death of an employee's family member, an agency head may grant emergency leave for other reasons determined to be for good cause.⁴³⁶

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, the Governor's Office must pre-approve any emergency leave granted for more than three days or 24 working hours for reasons other than a death in the immediate family; state active duty prescribed pursuant to Texas Government Code, Section 431.0825; or for the closure of a facility because of a natural or manmade disaster. These requirements do not apply to emergency leave used for the purposes of military differential pay.⁴³⁷

⁴³² Texas Government Code, Section 661.921.

⁴³³ Texas Government Code, Section 661.902 (a).

⁴³⁴ Texas Government Code, Section 661.151.

⁴³⁵ Texas Government Code, Section 662.010.

⁴³⁶ Texas Government Code, Section 661.902 (b).

⁴³⁷ General Appropriations Act (82nd Legislature, Regular Session), Article V, Adjutant General's Department, Rider 24.

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 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.⁴³⁸

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.⁴³⁹

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.⁴⁴⁰

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.⁴⁴¹ The maximum amount of leave allowed for all injuries occurring at one time is one year.⁴⁴²

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.⁴⁴³

Jury Service

An employee is entitled to serve on a jury without a deduction in salary, including a deduction for any fee or compensation the employee receives for jury service.⁴⁴⁴

Officers or employees of the Senate, the House of Representatives, or any agency in the legislative branch of state government may establish an exemption from jury service.⁴⁴⁵

⁴³⁸ Texas Government Code, Section 661.906.

⁴³⁹ Texas Government Code, Section 661.918 (a).

⁴⁴⁰ Texas Government Code, Section 661.918 (b).

⁴⁴¹ Texas Government Code, Section 661.918 (c).

⁴⁴² Texas Government Code, Section 661.918 (d).

⁴⁴³ Texas Government Code, Section 661.918 (e).

⁴⁴⁴ Texas Government Code, Section 659.005 (a).

⁴⁴⁵ Texas Government Code, Section 62.106 (a) (5).

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.⁴⁴⁶

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.⁴⁴⁷

Legislative leave is not considered a break in service and is treated as any other paid leave.⁴⁴⁸

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.⁴⁴⁹

Time Off to Vote

Employers shall allow sufficient time off to employees, without a deduction in salary or accrued leave, to vote in each national, state, or local election if there is not sufficient time to vote outside regular working hours.⁴⁵⁰ 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.

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 emergency fire or medical situations if the agency or institution of higher education has a policy for granting the leave.⁴⁵¹

⁴⁴⁶ Texas Government Code, Section 614.003.

⁴⁴⁷ Texas Government Code, Section 614.004.

⁴⁴⁸ Texas Government Code, Section 614.008.

⁴⁴⁹ Texas Government Code, Section 661.206.

⁴⁵⁰ Texas Government Code, Section 661.914 ; and Texas Office of the Attorney General, Opinion V-1532 (1952).

⁴⁵¹ Texas Government Code, Section 661.905.

Wellness Leave

A state agency may:

- Allow an employee up to 30 minutes during their normal working hours for exercise three times each week;
- Allow an employee to attend on-site wellness seminars;
- 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.⁴⁵²

⁴⁵² Texas Government Code, Section 664.061.

Chapter 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.⁴⁵³

Institutions of higher education can establish their own holiday schedules, as long as the total number of holidays observed does not exceed the number of holidays observed by an employee of a state agency. Eligible employees of institutions of higher education are entitled to a paid day off from work on the holidays observed by the institution.⁴⁵⁴

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).⁴⁵⁵

A state agency and institution of higher education must have enough state employees on duty during a state holiday to conduct the public business of the agency or institution with the exception of those state holidays that fall on a Saturday or Sunday, the Friday after Thanksgiving Day, December 24, or December 26.⁴⁵⁶

Employees who work on an observed state holiday will receive holiday compensatory time for those hours worked. (At times, those state holidays are referred to as “skeleton crew days.”) For additional information on holiday compensatory time, see Chapter 5 of the Inventory - State and Holiday Compensatory Time.

To be paid for a holiday that falls on a day 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.⁴⁵⁷

⁴⁵³ Texas Government Code, Sections 662.003 and 662.013.

⁴⁵⁴ Texas Government Code, Sections 662.011.

⁴⁵⁵ Texas Government Code, Section 662.005 (a) and (c).

⁴⁵⁶ Texas Government Code, Section 662.004.

⁴⁵⁷ Texas Government Code, Section 662.010.

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.

Source: Texas Government Code, Sections 662.001 and 662.002.

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.

Source: Texas Government Code, Sections 662.003 and 662.013.

However, 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.⁴⁵⁸

Table 13-1 provides examples of these types of scenarios.

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

⁴⁵⁸ Texas Government Code, Section 662.010.

Fiscal Year 2012-2013 Holiday Schedules

State employees receive most federal and state holidays, as well as optional holidays. Tables 13-2 and 13-3 list the state holiday schedules for fiscal years 2012 and 2013.

Table 13-2

State Holiday Schedule for Fiscal Year 2012			
Holiday	Agency Status	Date	Day of Week
Labor Day	All agencies closed.	09-05-11	Monday
<i>Rosh Hashanah</i>	<i>Optional Holiday</i>	<i>09-29-11</i>	<i>Thursday</i>
<i>Rosh Hashanah</i>	<i>Optional Holiday</i>	<i>09-30-11</i>	<i>Friday</i>
<i>Yom Kippur</i>		<i>10-08-11</i>	<i>Saturday</i>
Veterans Day	All agencies closed.	11-11-11	Friday
Thanksgiving Day	All agencies closed.	11-24-11	Thursday
Day after Thanksgiving	All agencies closed.	11-25-11	Friday
Christmas Eve Day		12-24-11	Saturday
Christmas Day		12-25-11	Sunday
Day after Christmas	All agencies closed.	12-26-11	Monday
New Year's Day		01-01-12	Sunday
Martin Luther King, Jr. Day	All agencies closed.	01-16-12	Monday
Confederate Heroes Day	Skeleton crew required.	01-19-12	Thursday
Presidents' Day	All agencies closed.	02-20-12	Monday
Texas Independence Day	Skeleton crew required.	03-02-12	Friday
Cesar Chavez Day		03-31-12	Saturday
<i>Good Friday</i>	<i>Optional Holiday</i>	<i>04-06-12</i>	<i>Friday</i>
San Jacinto Day		04-21-12	Saturday
Memorial Day	All agencies closed.	05-28-12	Monday
Emancipation Day	Skeleton crew required.	06-19-12	Tuesday
Independence Day	All agencies closed.	07-04-12	Wednesday
LBJ's Birthday	Skeleton crew required.	08-27-12	Monday

Table 13-3

State Holiday Schedule for Fiscal Year 2013			
Holiday	Agency Status	Date	Day of Week
Labor Day	All agencies closed.	09-03-12	Monday
Rosh Hashanah	<i>Optional Holiday</i>	09-17-12	Monday
<i>Rosh Hashanah</i>	<i>Optional Holiday</i>	09-18-12	Tuesday
<i>Yom Kippur</i>	<i>Optional Holiday</i>	09-26-12	Wednesday
Veterans Day		11-11-12	Sunday
Thanksgiving Day	All agencies closed.	11-22-12	Thursday
Day after Thanksgiving	All agencies closed.	11-23-12	Friday
Christmas Eve Day	All agencies closed.	12-24-12	Monday
Christmas Day	All agencies closed.	12-25-12	Tuesday
Day after Christmas	All agencies closed.	12-26-12	Wednesday
New Year's Day	All agencies closed.	01-01-13	Tuesday
Confederate Heroes Day		01-19-13	Saturday
Martin Luther King, Jr. Day	All agencies closed.	01-21-13	Monday
Presidents' Day	All agencies closed.	02-18-13	Monday
Texas Independence Day		03-02-13	Saturday
<i>Good Friday</i>	<i>Optional Holiday</i>	03-29-13	<i>Friday</i>
Cesar Chavez Day		03-31-13	Sunday
San Jacinto Day		04-21-13	Sunday
Memorial Day	All agencies closed.	05-27-13	Monday
Emancipation Day	Skelton crew required.	06-19-13	Wednesday
Independence Day	All agencies closed.	07-04-13	Thursday
LBJ's Birthday	Skelton crew required.	08-27-13	Tuesday

Optional Holidays

An employee who works for a state agency is entitled to observe Rosh Hashanah, Yom Kippur, Good Friday, and Cesar Chavez Day.⁴⁵⁹ A state agency 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.⁴⁶⁰

Holidays and Employee Separations

If a state agency or institution of higher education employee separates from the State and is exhausting unused vacation leave, the employee receives payment for any holidays that the employee would have observed had he or she remained on the payroll. The number of hours that is added to the employee's accrued vacation leave is to be proportionally reduced for part-time employees.⁴⁶¹

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.⁴⁶²

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.⁴⁶³

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.⁴⁶⁴

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.⁴⁶⁵

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.⁴⁶⁶

⁴⁵⁹ Texas Government Code, Sections 662.003 (c) and 662.013.

⁴⁶⁰ Texas Government Code, Section 662.006 (b) and (c).

⁴⁶¹ Texas Government Code, Section 661.064.

⁴⁶² Texas Government Code, Section 662.0071 (a); and Texas Office of the Attorney General, Opinion No. H-883.

⁴⁶³ Texas Government Code, Section 662.0072.

⁴⁶⁴ Texas Government Code, Section 662.009 (a).

⁴⁶⁵ Texas Government Code, Section 662.009 (b).

⁴⁶⁶ Texas Government Code, Section 662.009 (c).

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.⁴⁶⁷

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.⁴⁶⁸

Employees of institutions of higher education may be paid for working national or state holidays if taking holiday compensatory time off would be disruptive to teaching, research, or other critical functions.⁴⁶⁹

Holiday Time Payment for Deceased Employees

When an employee is deceased, their total leave balance (sick and vacation leave) must be allocated over the workdays following the date and time of the employee's death until the leave balance is completely allocated. In addition, eight hours must be added to the payment of the estate of a deceased state employee for each state and national holiday that is scheduled on workdays following the date of the employee's death until the deceased employee's leave balance is completely allocated. If the employee was normally scheduled to work at least 40 hours per week, then each workday consists of 8 hours.

Holiday pay for a part-time employee should be proportionate to the number of hours normally worked by the deceased employee.⁴⁷⁰

⁴⁶⁷ Texas Government Code, Section 662.011 (a) and (b).

⁴⁶⁸ Texas Government Code, Section 662.011 (c).

⁴⁶⁹ Texas Government Code, Section 662.007 (c).

⁴⁷⁰ Texas Government Code, Section 661.035.

Chapter 14
Family and Medical Leave and Parental Leave

Family and Medical Leave Act Overview

The Family and Medical Leave Act (FMLA) allows eligible employees to take unpaid leave, or to substitute appropriate paid leave, for an FMLA qualifying event without fear of being terminated from their jobs or being forced into a lower job upon their return.⁴⁷¹ The FMLA applies to all state agencies and institutions of higher education, with the exception of legislative agencies.

The U.S. Department of Labor's Wage and Hour Division, is responsible for administering and enforcing the FMLA, and agencies and institutions of higher education should address specific questions related to the FMLA to the Wage and Hour Division. Additional information on the FMLA can be found on the U.S. Department of Labor's Web site at: <http://www.dol.gov/dol/topic/benefits-leave/fmla.htm>.

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 institution of higher education 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 Services Employment and Reemployment Rights Act).⁴⁷² In addition, the employee must have worked a minimum of 1,250 hours during the 12 months immediately preceding the start date of family medical leave.⁴⁷³

For purposes of family and medical leave, the State is considered a single employer.⁴⁷⁴ Agencies and institutions of higher education should credit time worked for other state agencies and institutions of higher education when considering family and medical leave eligibility.

Family and Medical Leave Entitlement

The FMLA entitles all eligible employees to a total of 12 weeks of job-protected 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.

⁴⁷¹ Title 29, Code of Federal Regulations, Section 825.100.

⁴⁷² Title 29, Code of Federal Regulations, Section 825.110 (b).

⁴⁷³ Texas Government Code, Section 661.912 (a).

⁴⁷⁴ Title 29, Code of Federal Regulations, Section 825.108 (c)(1).

- The need to care for a spouse, child, or parent with a serious health condition. (A child includes a biological, adopted, or foster child, stepchild, a legal ward, or child of a person standing in loco parentis. A parent is defined as a biological, adoptive, step, or foster parent, or individual who stood in loco parentis to an employee when the employee was a child).
- 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.⁴⁷⁵ Examples of qualifying exigency may include: short-term deployment; military events and related activities; child care duties and school activities; financial and legal arrangements; counseling; rest and recuperation; and post-deployment activities.⁴⁷⁶

If the leave is for the birth and care of a child, or placement for adoption or foster care, it must conclude within 12 months of the birth or placement of the child.⁴⁷⁷

Military Caregiver Leave - State agencies and institutions of higher education must grant an eligible employee who is a spouse, son, daughter, parent, or next of kin of a current member of the U.S. Armed Forces (including a member of the National Guard or Reserves) with a serious 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.⁴⁷⁸ This is known as Military Caregiver Leave. This approach is required regardless of the method used by the employer to determine the employee’s 12 workweeks of leave entitlement for other FMLA qualifying reasons.⁴⁷⁹

Additional Resources

Answers to common questions about military family leave provisions of the FMLA regulations and a Fact Sheet summary can be found at:

- <http://www.dol.gov/whd/fmla/finalrule/MilitaryFAQs.pdf>.
- <http://www.dol.gov/whd/regs/compliance/whdfs28a.pdf>

In cases in which eligible spouses are employed by the same employer, the married employees are limited to a combined total of 12 weeks of family and medical leave for the following reasons:

- Birth of a child and care of a child after birth.
- Placement of a child with the employee for adoption or foster care and to care for a newly placed child.
- To care for a parent who has a serious health condition (or 26 workweeks if the leave is granted to care for a covered service member with a serious injury or illness).⁴⁸⁰

⁴⁷⁵ Title 29, Code of Federal Regulations, Section 825.100 (a); and Department of Labor Fact Sheet 28B and 28C at <http://www.dol.gov/whd/regs/compliance/whdfs28B.pdf> and <http://www.dol.gov/whd/regs/compliance/whdfs28C.pdf>.

⁴⁷⁶ *Military Family Leave Provisions of the FMLA*, Department of Labor, <http://www.dol.gov/whd/fmla/finalrule/MilitaryFAQs.pdf>.

⁴⁷⁷ Appendix F of the *FMLA Compliance Guide*, Department of Labor, <http://www.dol.gov/whd/fmla/APPENDIXF.htm>.

⁴⁷⁸ Title 29, Code of Federal Regulations, Sections 825.100 (a) and 825.127 (a) and (b).

⁴⁷⁹ Title 29, Code of Federal Regulations, Section 825.127 (c).

⁴⁸⁰ Title 29, Code of Federal Regulations, Sections 825.201, 825.121 (3), and 825.127 (d); and Department of Labor Wage and Hour Division Fact Sheet 28A at <http://www.dol.gov/whd/fmla/>.

Family and Medical Leave 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. If notice 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.⁴⁸¹

For the employer to determine whether FMLA 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.⁴⁸²

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.⁴⁸³

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.⁴⁸⁴

Employer Notice

State agencies and institutions of higher education are required to post in a location that can be seen by employees and applicants a notice that explains an employee's rights and responsibilities under the FMLA. Furthermore, employers must either include a general notice in the employee handbook or other written guidance provided to employees concerning family and medical leave benefits or distribute a general notice to each new employee upon hiring.⁴⁸⁵

Within five days, absent extenuating circumstances, of 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 that the employee is eligible to take family and medical leave. The employer's written notice must include details about the specific expectations for and obligations of the employee and explain any consequences of a failure to meet the obligations.⁴⁸⁶

⁴⁸¹ Title 29, Code of Federal Regulations, Section 825.302 (a) and (b).

⁴⁸² Title 29, Code of Federal Regulations, Sections 825.302 (c), and 825.303 (b).

⁴⁸³ Title 29, Code of Federal Regulations, Section 825.302 (c).

⁴⁸⁴ Title 29, Code of Federal Regulations, Section 825.302 (d).

⁴⁸⁵ Title 29, Code of Federal Regulations, Section 825.300 (a).

⁴⁸⁶ Title 29, Code of Federal Regulations, Section 825.300 (b), (c), and (d).

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.⁴⁸⁷ The employer may also request, at the employer's expense, second and third medical opinions.⁴⁸⁸ In addition, the employer may require periodic recertification of a serious health condition.⁴⁸⁹ 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.⁴⁹⁰

If the family and medical leave is for a qualifying exigency, an employer may require a statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which family medical leave is requested, including information on the type of qualifying exigency.⁴⁹¹

If the family and medical leave is to care for a covered service member, also known as military caregiver leave, an employer may require an employee to obtain a certification completed by an authorized health care provider of the covered service member. Included in the documentation should be a statement or description of appropriate medical facts, sufficient to support the need for leave, regarding the covered service member's health condition for which FMLA leave is requested.⁴⁹²

An employer may have a uniformly-applied policy requiring employees returning from leave for their own serious health condition to submit a certification that they are able to resume work. If reasonable safety concerns exist, an employer may, under certain circumstances, require such a certification for employees returning from intermittent family and medical leave.⁴⁹³

Family and Medical Leave and the Use of Paid Leave

The FMLA entitlement of job-protected leave is generally unpaid; however, vacation 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 (or 26 weeks of Military Caregiver Leave entitlement). State agencies and institutions of higher education can require an employee to use all vacation and sick leave prior to being placed on a leave without pay status.⁴⁹⁴

In addition, accrued Fair Labor Standards Act overtime for nonexempt employees may be counted against the 12-week FMLA entitlement (or 26 weeks of Military Caregiver Leave 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 family and medical leave reason, or if the employer requires accrued Fair Labor Standards Act compensatory time to be taken, the compensatory time taken may be counted against the employee's FMLA leave entitlement.⁴⁹⁵

⁴⁸⁷ Title 29, Code of Federal Regulations, Section 825.305 (a).

⁴⁸⁸ Title 29, Code of Federal Regulations, Section 825.307 (b) and (c).

⁴⁸⁹ Title 29, Code of Federal Regulations, Section 825.308.

⁴⁹⁰ Title 29, Code of Federal Regulations, Section 825.307 (a).

⁴⁹¹ Title 29, Code of Federal Regulations, Section 825.309 (b) (1).

⁴⁹² Title 29, Code of Federal Regulations, Section 825.310 (b) (4).

⁴⁹³ Title 29, Code of Federal Regulations, Section 825.312 (a) and (f).

⁴⁹⁴ Texas Government Code, Section 661.912 (b); and Title 29, Code of Federal Regulations, Section 825.207 (a).

⁴⁹⁵ Title 29, Code of Federal Regulations, Section 825.207 (f).

Employees on workers' compensation or receiving temporary disability benefits cannot be required, but may elect to use, paid leave prior to taking unpaid family and medical leave.⁴⁹⁶

Sick leave may be used in conjunction with family and medical leave when a child under the age of 3 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.⁴⁹⁷

Family and medical leave may be used intermittently if required by a physician to address a serious illness or because of a qualifying exigency. 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.⁴⁹⁸ Employees requesting intermittent leave after the birth of a child or placement of a child for adoption or foster care must get employer approval for the intermittent leave.⁴⁹⁹

As stated previously, for purposes of family and medical leave, the State is considered a single employer; therefore, agencies and institutions of higher education should research any leave taken by the employee while previously employed with the State.

Determining the 12-Month Leave Entitlement Period

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.⁵⁰⁰

State agencies and institutions of higher education wishing to change from one method of determining the 12-week leave entitlement to another method must give 60-days notice to all employees and employees retain the full benefit of 12 weeks of leave under whichever method yields the greatest benefit to employees during the 60-day transition period.⁵⁰¹

⁴⁹⁶ Texas Government Code, Section 661.912 (b); and Texas Office of the Attorney General, Opinion JC-0040 (1999).

⁴⁹⁷ State Auditor's Office Leave Interpretation Letter, No. 97-01 (1998); Texas Office of the Attorney General, Opinion JM-1203 (1990); and Texas Government Code, Section 661.202 (d).

⁴⁹⁸ Title 29, Code of Federal Regulations, Sections 825.202 and 825.203.

⁴⁹⁹ Title 29, Code of Federal Regulations, Section 825.202 (c).

⁵⁰⁰ Title 29, Code of Federal Regulations, Section 825.200 (b).

⁵⁰¹ Title 29, Code of Federal Regulations, Section 825.200 (d).

Job Restoration and Maintenance of Health Benefits

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.⁵⁰² If reasonable safety concerns exist, an employer may, under certain circumstances, require such a certification for employees returning from intermittent family and medical leave.⁵⁰³

An employee who takes family and medical leave must be returned to the same job or a job with equivalent status and pay, even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. Furthermore, the time that an employee was on such leave cannot be counted against the employee under a "no fault" attendance policy.⁵⁰⁴

During the time an employee is on family and medical leave, the employer must continue the employee's health benefits. An employee who takes family and medical leave is still responsible for paying his or her portion of health insurance premiums.⁵⁰⁵

For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within a week taken as family and medical leave has no effect; the week is counted as a week of family and medical 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 for two weeks during the Christmas/New Year holidays or for summer vacation), the days on which the employer's activities have ceased do not count against the employee's FMLA entitlement.⁵⁰⁶

An employee does not earn state service credit, vacation leave, or sick leave for any full calendar months of leave without pay while on family and medical leave.⁵⁰⁷

⁵⁰² Title 29, Code of Federal Regulations, Section 825.312 (a).

⁵⁰³ Title 29, Code of Federal Regulations, Section 825.312 (f).

⁵⁰⁴ Title 29, Code of Federal Regulations, Sections 825.214, 825.215, and 825.220 (c).

⁵⁰⁵ Title 29, Code of Federal Regulations, Sections 825.209 and 825.210.

⁵⁰⁶ Title 29, Code of Federal Regulations, Section 825.200 (h).

⁵⁰⁷ Texas Government Code, Section 661.909 (f).

Parental Leave

Employees who do not qualify for family and medical leave are entitled to parental leave not to exceed 12 weeks 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.

The employee must first use all available and applicable paid vacation and sick leave while taking parental leave prior to going on leave without pay. Parental leave is limited to, and begins on the date of, the birth of the employee's natural child or the adoption by or foster care placement with the employee of a child younger than three years of age.⁵⁰⁸

⁵⁰⁸ Texas Government Code, Section 661.913.

Chapter 15
Military Leave and Employment Rights

Military Leave Overview

Both state and federal law provide employment and re-employment rights to individuals who are called to military service. These laws provide income and job protection, as well as a means for employees to secure time off when called to military service.

The Uniformed Services Employment and Re-employment Rights Act (USERRA)

The Uniformed Services Employment and Re-employment Rights Act (USERRA) is the federal law intended to ensure that persons are not disadvantaged in their civilian careers because of their service in the U.S. Armed Forces Reserves, the National Guard, or other uniformed services.⁵⁰⁹ USERRA prohibits an employer from denying initial employment, reemployment, retention in employment, promotion, or 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.⁵¹⁰

**Uniformed Services Employment and
Re-employment Rights Act (USERRA)**

The Department of Labor has published an *Employers Resource Guide* that provides additional information on USERRA. This guide is located at:

http://www.esgr.org/files/toolkit/ESGR_HR_Guide_Final.pdf.

State agencies and institutions of higher education that have qualifying service members must provide the service members the following:

- Prompt job reinstatement.
- Accumulation of seniority, including pension plan benefits.
- Reinstatement of health insurance.
- Training/retraining of job skills, including accommodations for the disabled.
- Protection against discrimination.⁵¹¹

In addition, USERRA provides protection for disabled veterans, requiring employers to make reasonable efforts to accommodate the disability.⁵¹²

The U.S. Department of Labor's Veteran's Employment and Training Service (VETS) administers USERRA and all questions should be directed to that office. Contact and additional information about USERRA can be found at <http://www.dol.gov/vets/>.

⁵⁰⁹ Employer Support of the Guard and Reserve (ESGR) Web site at <http://www.esgr.org/site/USERRA.aspx>.

⁵¹⁰ Title 38, United States Code, Section 4311 (a); and Title 20, Code of Federal Regulations, Section 1002.18.

⁵¹¹ *Employers Resource Guide*, Department of Labor, Page 4, http://www.esgr.org/files/toolkit/ESGR_HR_Guide_Final.pdf.

⁵¹² Title 38, United States Code, Section 4313.

Military Leave Entitlements and Eligibility

State employees are eligible for 15 workdays in each federal fiscal year (October 1 through September 30) without loss of pay or benefits to accommodate authorized training or duty for the State's military forces, a reserve branch of the U.S. Armed Forces, or a state or federally authorized urban search and rescue team.⁵¹³

The 15 days of paid leave need not be consecutive. These days are considered business days, not calendar days.⁵¹⁴ In addition, if the employee does not use the 15 days of military leave in a federal fiscal year, the employee is entitled to carry the balance forward to the next federal fiscal year, not to exceed 45 workdays.⁵¹⁵

New Requirement
The 82nd Legislature enacted legislation to allow an employee to carry forward from one federal fiscal year to the next the net balance of unused military leave not to exceed 45 workdays.

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 a reserve branch of the U.S. Armed Forces so that two of the employee's days off each month coincide with two days of military duty.⁵¹⁶

An employee called to active duty during an emergency to serve in a reserve component of the U.S. Armed Forces under Title 10 or Title 32 of the United States Code is entitled to an unpaid leave of absence. The employee may choose (but is not required) to use all or some portion of another form of paid leave before he or she chooses to go on leave without pay while on military leave.⁵¹⁷

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 vacation leave.⁵¹⁸ This leave will be provided without a deduction in salary.⁵¹⁹ This time is not limited and does not count against the 15 days maximum military leave per federal fiscal year.⁵²⁰

⁵¹³ Texas Government Code, Section 431.005 (a).

⁵¹⁴ Texas Office of the Attorney General, Opinion C-679 (1966).

⁵¹⁵ Texas Government Code, Section 431.005 (a-1), as amended by SB 1737 (82nd Legislature, Regular Session).

⁵¹⁶ Texas Government Code, Section 658.008.

⁵¹⁷ Texas Government Code, Section 661.904.

⁵¹⁸ Texas Government Code, Section 431.0825 (a).

⁵¹⁹ Texas Government Code, Section 661.903.

⁵²⁰ State Auditor's Office Leave Interpretation, No. 98-06 (1998).

A state employee called to federal active duty for the purpose of providing assistance to civil authorities in a declared emergency or for training for that purpose is entitled to receive paid emergency leave for not more than 22 workdays without loss of military leave or vacation leave per calendar year.⁵²¹

New Requirement
The 82nd Legislature enacted legislation to allow for paid emergency leave for up to 22 workdays per calendar year for state employees called to federal active duty for the purpose of providing assistance to civil authorities in a declared emergency or for training.

A member of the state military forces who is ordered to active state duty by the Governor or by other proper authority under Texas law is entitled to the same benefits and protections provided:

- To persons performing service in the uniformed services in accordance with Title 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 in accordance with Title 50, United States Code, Appendix Sections 501–536, 560, and 580–594, as that law existed on April 1, 2003.⁵²²

Military Family Leave Entitlements

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.⁵²³

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. Those two new types of FMLA leave are known as the “military family leave entitlements.”⁵²⁴

See Chapter 14 of this Inventory, Family and Medical Leave and Parental Leave, for additional information.

⁵²¹ Texas Government Code, Section 431.0825 (b), as amended by SB 1737 (82nd Legislature, Regular Session).

⁵²² Texas Government Code, Section 431.017.

⁵²³ Title 29, Code of Federal Regulations, Section 825.100 (a); and *Revised Regulations Under the Family and Medical Leave Act*, Department of Labor, <http://www.dol.gov/whd/fmla/finalrule.htm>.

⁵²⁴ Title 29, Code of Federal Regulations, Section 825.127 (c); and *Fact Sheet 28*, Department of Labor, <http://www.dol.gov/whd/regs/compliance/whdfs28a.pdf>.

Paid Leave and State Service

Employees called to active duty during a national emergency to serve in a reserve component of the U.S. Armed Forces under Title 10 or 32 of the United States Code are entitled to state service for longevity purposes, vacation leave accruals, and sick leave accruals while on an unpaid leave of absence. This leave will be accrued but not posted until the employee returns to state employment. In addition, the employee retains their leave balances unless the employee chooses to use any accrued vacation leave, compensatory time, or overtime leave to maintain benefits for the employee or the employee's dependents while on military duty.⁵²⁵

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.⁵²⁶

Notice of Military Leave

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.⁵²⁷

Military Pay Differentials

The executive officer of a state agency or institution of higher education must 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.⁵²⁸

The state agency or institution of higher education should inform activated state employees of the agency's or institution'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 United States Code, Title 10 or Title 32) and whose military pay is less than their gross state pay are eligible for differential pay. Service members involved in routine military training or who are attending military schools are not entitled to this differential pay.⁵²⁹

Military Pay Differential Guidelines

The State Auditor's Office is required, in accordance with Texas Government Code, Section 661.9041 (c), to establish uniform guidelines for state agencies and institutions of higher education in determining the amount of emergency leave to grant to deployed military members for the purpose of providing differential pay. These guidelines are available at: <http://sao.hr.state.tx.us>.

⁵²⁵ Texas Government Code, Section 661.904 (a), (b), (c), and (d).

⁵²⁶ Texas Government Code, Section 661.904 (f); and Opinion, Texas Office of the Attorney General, No. MW-109 (1979).

⁵²⁷ VETS USERRA Fact Sheet 3 located at http://www.dol.gov/vets/programs/userra/userra_fs.htm.

⁵²⁸ Texas Government Code, Section 661.9041.

⁵²⁹ *Military Pay Differential Guidelines*, State Auditor's Office, October 4, 2005; Revised June 2011, <http://sao.hr.state.tx.us/>.

If emergency leave is granted to state employees activated for military duty, those employees will accrue sick leave and vacation leave each month they receive pay from the state agency or institution of higher education. The sick and vacation hours will be accrued but not posted until the employee returns to full employment with the state agency.⁵³⁰

Determining Eligibility

To determine eligibility, state agencies and institutions of higher education should request a copy of the employees' Military Leave and Earnings Statement 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; any increase in pay may reduce or cease the need for state military differential pay.⁵³¹

Returning Service Members

A state employee who (1) 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 (2) 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 or to a position of similar seniority, status, and pay.⁵³²

USERRA also requires that reasonable efforts (such as training or retraining) be made to enable returning service members to refresh or upgrade their skills to help them qualify for reemployment.⁵³³

Under state and federal law, to be eligible for reemployment, the employee must be discharged, separated, or released from active military service under honorable conditions no later than five years after induction, enlistment, or call to duty. In addition, under state law, the employee must be physically and mentally qualified to perform the duties of the job.⁵³⁴ If an employee 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 or the nearest possible seniority, status, and pay.⁵³⁵

Veterans whose employment has been restored may not be dismissed without cause within a year of their reinstatement.⁵³⁶

Applications for Reemployment

Under state law, eligible veterans must apply for reinstatement within 90 days after discharge or release from service. The application must be made in writing to the head of the agency or institution of higher education and must include evidence of discharge under honorable conditions.⁵³⁷

⁵³⁰ Texas Government Code, Sections 661.152 (j) and 661.202 (k).

⁵³¹ *Military Pay Differential Guidelines*, State Auditor's Office, October 4, 2005, Revised June 2011, <http://sao.hr.state.tx.us/>.

⁵³² Texas Government Code, Section 431.005 (c) and Section 613.002.

⁵³³ VETS USERRA Fact Sheet 3 located at http://www.dol.gov/vets/programs/userra/userra_fs.htm.

⁵³⁴ Texas Government Code, Section 613.002 (b).

⁵³⁵ Texas Government Code, Section 613.003.

⁵³⁶ Texas Government Code, Section 613.005.

⁵³⁷ Texas Government Code, Section 613.004.

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.⁵³⁸

Veteran's Employment Preference

An individual who qualifies for a veteran's employment preference is entitled to a preference in employment over other applicants who do not have a greater qualification for the same position.⁵³⁹ 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.⁵⁴⁰

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.⁵⁴¹

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.⁵⁴²

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.⁵⁴³

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.⁵⁴⁴

⁵³⁸ Texas Government Code, Section 613.006.

⁵³⁹ Texas Government Code, Section 657.003 (a).

⁵⁴⁰ Texas Government Code, Section 657.002 (c).

⁵⁴¹ Texas Government Code, Section 657.002 (a).

⁵⁴² Texas Government Code, Section 657.003 (d).

⁵⁴³ Texas Government Code, Section 657.003 (e).

⁵⁴⁴ 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 qualification.⁵⁴⁵ An "established service connected disability" means a disability that has been or may be established by official records.⁵⁴⁶

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.⁵⁴⁷

Employment Preference Requirements for Public Entities

A state agency or institution of higher education 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 state agency or institution of higher education 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.⁵⁴⁸

When possible, a state agency or institution of higher education is required to give 10 percent of the preferences it grants to qualified veterans discharged from the U.S. Armed Forces within the 18 months preceding the filling of the vacancy. If at least 40 percent of an agency's or institution's employees are entitled to the preference, the agency or institution is exempt from employment preference requirements.⁵⁴⁹

State Employment Forms

All state agency and institution of higher education employment forms prescribed by the Texas Workforce Commission must include a statement regarding the veteran's employment preference until the agency's or institution's workforce is composed of at least 40 percent veterans.⁵⁵⁰

⁵⁴⁵ Texas Government Code, Section 657.003 (b).

⁵⁴⁶ Texas Government Code, Section 657.001 (1).

⁵⁴⁷ Texas Government Code, Section 657.002 (b).

⁵⁴⁸ Texas Government Code, Section 657.004 (a).

⁵⁴⁹ Texas Government Code, Section 657.004 (b) and (c).

⁵⁵⁰ Texas Government Code, Section 656.027.

Employment Investigation

Prior to hiring an individual who qualifies for veteran's employment preference, a state agency or institution of higher education must 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 individual whose duty it is to make appointments or employment decisions must appoint or employ the applicant for the position. An applicant with an established service-connected disability must furnish the official records to the individual whose duty is to fill the position.⁵⁵¹

Competitive Examinations

If an agency or institution of higher education requires competitive examinations as part of a civil service plan or merit system 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 on the test. In such situations, the individual is entitled to have additional points added to the test score as provided by statute. In addition, an individual who has an established service-connected disability is entitled to have additional points added to the individual's test score.⁵⁵²

Reductions in Force

An individual who is entitled to a veteran's employment hiring preference is also entitled to a preference in retaining employment if the state agency or institution of higher education that employs the individual reduces its workforce. This applies only to workforce reductions of employees of a similar type or classification as the individual who qualifies for the veteran's preference and does not apply to veterans less qualified than employees who are not veterans.⁵⁵³

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 the 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 agency's or institution's governing body.⁵⁵⁴

The governing body that receives a written complaint is required to respond to the complaint no 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.⁵⁵⁵

⁵⁵¹ Texas Government Code, Section 657.005.

⁵⁵² Texas Government Code, Section 657.003 (c).

⁵⁵³ Texas Government Code, Section 657.007; and Texas Office of the Attorney General, Opinion DM-422 (1996).

⁵⁵⁴ Texas Government Code, Section 657.010 (a).

⁵⁵⁵ Texas Government Code, Section 657.010 (b).

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 veteran's preference.
- The percentage of the total number of employees who are entitled to a veteran's preference.
- The number of complaints filed with the governing body during that quarter and the number of complaints resolved by the governing body.⁵⁵⁶

Annually, the Comptroller of Public Accounts files a report with the Legislature that compiles and analyzes the information that the Comptroller of Public Accounts received from agencies' and higher education institutions' quarterly reports.⁵⁵⁷

⁵⁵⁶ Texas Government Code, Section 657.008 (a).

⁵⁵⁷ Texas Government Code, Section 657.008 (b).

Chapter 16 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) or the Teacher Retirement System (TRS). Exceptions include employees of the University of Texas and Texas A&M University systems, which provide their own insurance programs for employees.⁵⁵⁸

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.

State employees who have other health insurance comparable to what the State provides may drop the Texas Employees Group Benefits Program (GBP) health insurance and receive a Health Insurance Opt-Out Credit. Full-time employees may receive up to a \$60 credit per month and part-time employees may receive up to a \$30 credit to be used towards the cost of optional coverage.⁵⁵⁹

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.⁵⁶⁰ Except for the conditions discussed in the Texas Insurance Code, no employee of a state agency or institution of higher education 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.⁵⁶¹

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.

⁵⁵⁸ Texas Insurance Code, Section 1551.006 (b).

⁵⁵⁹ General Appropriations Act (82nd Legislature, Regular Session), Article I, Employees Retirement System, Rider 6 and *New Employee Benefits Guide*, Employees Retirement System Web site, <http://www.ers.state.tx.us>.

⁵⁶⁰ Texas Insurance Code, Section 1551.002 (1).

⁵⁶¹ Texas Insurance Code, Sections 1551.104 and 1551.1045.

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.⁵⁶²

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:

- A spouse.
- An unmarried or married child under the age of 26 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 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 has not lapsed; **and**
 - ♦ The child is 26 years of age or younger 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 26th birthday, or the child is at least 26 years old on the date that the child became eligible to participate in the group benefits program and was enrolled as the employee's dependent in health benefits coverage under Texas Insurance Code, Chapters 1575, 1579, or 1601, or in continuation of that dependent coverage under the Consolidated Omnibus Budget Reconciliation Act and its subsequent amendments.
- A ward, as defined by Texas Probate Code, Section 601, who is 26 years of age or younger.⁵⁶³

In addition, 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.⁵⁶⁴ 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

⁵⁶² Texas Insurance Code, Section 1551.1055 (a).

⁵⁶³ Texas Insurance Code, Section 1551.004 (a), as amended by SB 1664 (82nd Legislature, Regular Session).

⁵⁶⁴ Texas Insurance Code, Section 1551.004 (a) (4), as amended by SB 1664 (82nd Legislature, Regular Session).

subsequent year in which the child is enrolled as a dependent.⁵⁶⁵ 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.⁵⁶⁶

An unmarried child, whose coverage ended when the child became 26 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.⁵⁶⁷

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.⁵⁶⁸ To participate, each employee must be enrolled in the premium conversion benefit portion of the plan.⁵⁶⁹

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.⁵⁷⁰

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.⁵⁷¹ 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.⁵⁷² State contributions to group insurance costs can be found on the ERS Web site at <http://www.ers.state.tx.us>.

⁵⁶⁵ Texas Insurance Code, Section 1551.004 (b).

⁵⁶⁶ Texas Insurance Code, Section 1551.004 (c).

⁵⁶⁷ Texas Insurance Code, Section 1551.004 (a), as amended by SB 1664 (82nd Legislature, Regular Session); and Texas Insurance Code, Section 1551.158 (a) and (c).

⁵⁶⁸ Texas Insurance Code, Section 1551.206.

⁵⁶⁹ Texas Insurance Code, Section 1151.207.

⁵⁷⁰ Texas Insurance Code, Section 1551.003 (9) and (11).

⁵⁷¹ Texas Insurance Code, Section 1551.319 (a) and (b); and *New Employee Benefits Guide*, Employees Retirement System Web site, <http://www.ers.state.tx.us>.

⁵⁷² Texas Insurance Code, Section 1551.311.

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.⁵⁷³

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.⁵⁷⁴

Tobacco User Premium Differential

Each participant in a health benefit plan provided under the group benefit program who uses one or more tobacco products will be assessed a tobacco user premium differential to be paid in monthly installments. The amount of the monthly installments of the premium differential is \$30 per tobacco user covered by the state health plan per member tier.⁵⁷⁵ An employee or a covered family member who uses tobacco will pay \$30 per user per tier up to a maximum of \$90 more each month for health insurance.⁵⁷⁶

Effective January 1, 2012, the tobacco user monthly premium breaks down to \$30 per tobacco user (member, spouse, or child using tobacco); \$60 for a member and spouse or a member and child both using tobacco; and \$90 for a member, spouse, and child using tobacco. In addition, prescription drugs that aid participants in stopping the use of tobacco products will now be covered by the Group Benefit Program.⁵⁷⁷

A state contribution may not be made for or used to pay a tobacco user premium differential.⁵⁷⁸ Employees are responsible for paying the tobacco user premium differential.

Additional information on Cessation Programs can be found on ERS's website at <http://www.ers.state.tx.us/>.

New Requirement

The 82nd Legislature enacted legislation assessing a tobacco user premium differential, developing a plan for providing tobacco cessation programs, and providing assistance to participants in stopping the use of tobacco products.

⁵⁷³ Employees Retirement System Web site at <http://www.ers.state.tx.us/>.

⁵⁷⁴ Employees Retirement System Web site at <http://www.ers.state.tx.us/>.

⁵⁷⁵ General Appropriations Act (82nd Legislature, Regular Session), Article I, Employees Retirement System, Rider 11.

⁵⁷⁶ *Active Employee Guide*, Employees Retirement System.

⁵⁷⁷ Texas Insurance Code, Section 1551.226, as amended by SB 1664 (82nd Legislature, Regular Session).

⁵⁷⁸ Texas Insurance Code, Section 1551.314 (2), as amended by SB 1664 (82nd Legislature, Regular Session).

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.⁵⁷⁹

Accelerated Payment of Life Insurance Benefits

The board of trustees of the Texas Employees Group Benefits Program may adopt rules to pay accelerated life insurance benefits to terminally ill, terminally injured, or permanently disabled 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.⁵⁸⁰

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 who died as a result of a personal injury sustained in the line of duty.⁵⁸¹ 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 child, the surviving parents receive \$250,000 in equal shares.⁵⁸² 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.⁵⁸³

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.⁵⁸⁴

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.⁵⁸⁵

⁵⁷⁹ Employees Retirement System Web site at <http://www.ers.state.tx.us/>.

⁵⁸⁰ Texas Insurance Code, Section 1551.254.

⁵⁸¹ Texas Government Code, Sections 615.003 and 615.021.

⁵⁸² Texas Government Code, Section 615.022.

⁵⁸³ Department of Justice's Public Safety Officers Benefits Program Web site at http://www.ojp.usdoj.gov/BJA/grant/psob/psob_death.html.

⁵⁸⁴ Texas Education Code, Section 54.354.

⁵⁸⁵ Texas Government Code, Section 615.121 (a).

Liability Insurance

State agencies that own or operate motor vehicles, power equipment, aircraft, motor boat, or other watercrafts are authorized to provide liability insurance to employees who operate, maintain, or use the motor vehicle, power equipment, aircraft, motor boat, or other watercraft. If liability insurance is required but not provided, the employee may be reimbursed from agency funds for the amount spent on such insurance.⁵⁸⁶

⁵⁸⁶ Texas Government Code, Section 612.002 (a) and (c).

Chapter 17 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 employees of institutions of higher education may elect to participate in the Optional Retirement Program (ORP) governed by the Higher Education Coordinating Board. An ORP is an individualized defined contribution plan in which each participant selects from a variety of investments offered by several companies through annuity contracts or mutual fund investments.⁵⁸⁷

Most state agency 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 of the Judicial Retirement System, or who are independent contractors or employees of such contractors are not eligible to participate in the ERS retirement program.

The information below primarily focuses on ERS policies, rules, procedures, and governing laws. These requirements and options may apply in some cases to employees covered by TRS or the Judicial Retirement System. Due to the complex nature of retirement benefits, employers and employees should refer to ERS and TRS for complete information.

Employees Retirement System (ERS)

The ERS retirement program is a defined benefit plan, qualified under Section 401(a) of the Internal Revenue Code.⁵⁸⁸ 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.⁵⁸⁹

⁵⁸⁷ *Overview of TRS and ORP for Employees Eligible to Elect ORP*, Higher Education Coordinating Board, August 2009, page 4, <http://www.theccb.state.tx.us/reports/pdf/0869.pdf> and Texas Government Code, Section 830.002.

⁵⁸⁸ *Planning Your Retirement*, Employees Retirement System, January 2011, Page 3, <http://www.ers.state.tx.us/>; Texas Government Code, Section 815.507; and Title 26, United States Code, Section 401 (a).

⁵⁸⁹ Texas Government Code, Section 814.001.

State agency employees become members of this program starting on their 91st day of employment.⁵⁹⁰ Each employee who is a member of ERS is required to pay an annual membership fee.⁵⁹¹ However, the Legislature has continued a long-standing tradition of appropriating funds to pay the membership fee.⁵⁹²

Additional information regarding retirement can be found on ERS' Web site at www.ers.state.tx.us.

Retirement Contributions

Beginning the first month after a state agency employee's 90th day of employment with the State, 6.5 percent of the employee's salary (Texas legislators must contribute 8.0 percent of their pay) is deposited each month into an employee savings account. The State deposits an equal amount into a State Accumulation Account.⁵⁹³ However, for fiscal year 2012, the State will contribute 6.0 percent of payroll; the employee's contribution will remain at 6.5 percent. In fiscal year 2013, both the State and the employee will contribute 6.5 percent.⁵⁹⁴

New Requirement
The 82nd Legislature enacted legislation to allow the state contribution to retirement to be less than 6.5 percent in fiscal year 2012 and to maintain the employee's contribution rate at 6.5 percent.

The employing agency is responsible for deducting the amount of the employee's 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.⁵⁹⁵

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. However, for fiscal year 2012, the State will contribute 0.0 percent of payroll; the employee's contribution will remain at 0.5 percent. In fiscal year 2013, both the State and the employee will contribute 0.5 percent.⁵⁹⁶

⁵⁹⁰ Texas Government Code, Section 812.003 (d).

⁵⁹¹ Texas Government Code, Section 815.401.

⁵⁹² General Appropriations Act (82nd Legislature, Regular Session), Article I, Employee Retirement System, Rider 4.

⁵⁹³ Texas Government Code, Sections 815.312 and 815.402, as amended by SB 1664 (82nd Legislature, Regular Session).

⁵⁹⁴ Texas Government Code, Section 815.402 (a-1), as amended by SB 1664 (82nd Legislature, Regular Session) and General Appropriations Act (82nd Legislature, Regular Session), Article I, Employees Retirement System, Rider 4.

⁵⁹⁵ Texas Government Code, Section 815.402 (d) and (g).

⁵⁹⁶ Texas Government Code, Section 815.402 (h) and (h-1), as amended by SB 1664 (82nd Legislature, Regular Session) and General Appropriations Act (82nd Legislature, Regular Session), Article I, Employees Retirement System, Rider 14.

New Requirement

The 82nd Legislature enacted legislation regarding the State's and the employee's retirement contribution for members of the Law Enforcement and Custodial Officer Supplemental Retirement Fund.

Classes of Membership

After the 90 day waiting period discussed above, employees of state agencies or elected officials become a member in one of the following classes of membership:

Elected Class: Membership in the 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).⁵⁹⁷

Employee Class: Membership in the employee class includes employees and appointed officers of state agencies and can be broken out in the following two groups:

- Certified Peace Officer/Custodial Officer (CPO/CO) Class Service: employee class service rendered while a law enforcement officer, custodial officer, or parole officer or caseworker.
- Regular Employee Class: employee class service rendered that is not considered CPO/CO service.⁵⁹⁸

Within this chapter of the Inventory, we will refer mainly to the CPO/CO and regular class membership.

Withdrawal of Contributions

Upon termination of employment, an individual who is a member of the CPO/CO or regular 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). A member can initiate a withdrawal of contributions by filing an application for a refund with ERS or the agency with which the member most recently was employed.⁵⁹⁹

⁵⁹⁷ Texas Government Code, Section 812.002 (a).

⁵⁹⁸ *Actuarial Valuation, August 31, 2010 Table 13*, Employees Retirement System.

⁵⁹⁹ Texas Government Code, Sections 812.101 and 812.102.

Withdrawal of contributions cancels membership in the retirement plan, service credit, and all rights to benefits.⁶⁰⁰

Effective Date of Retirement

The effective date of a CPO/CO or regular employee 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.⁶⁰¹

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.⁶⁰²

Retirement Eligibility

An employee who is a CPO/CO or regular 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 amount is called an "annuity" and does not depend on the amount of money in the retiree's account.⁶⁰³

Regular Class Member Eligibility

For employees who were a regular employee class member or a state agency employee as of August 31, 2009 the following applies to retirement eligibility:

- An employee who is a regular 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; however, the employee will not be eligible for group insurance benefits unless the employee has 10 years of service credit and is at least 65 years old.⁶⁰⁴
- Employees may also retire if they meet the "rule of 80." The "rule of 80" is met when (1) the sum of the employee's age and amount of service credit equals or exceeds 80 and (2) the employee has at least five years of established service credit in the employee class. Under the "rule of 80," the employee would need at least 10 years of service credit to be eligible for group insurance benefits.⁶⁰⁵

⁶⁰⁰ Texas Government Code, Section 812.103.

⁶⁰¹ Texas Government Code, Section 814.003 (a).

⁶⁰² Texas Government Code, Section 814.003 (d).

⁶⁰³ *Planning Your Retirement*, Employee Retirement System, January 2011, Page 3, <http://www.ers.state.tx.us/>.

⁶⁰⁴ Texas Government Code, Section 814.104 (a); and *Planning Your Retirement*, Employee Retirement System, January 2011, Page 3, <http://www.ers.state.tx.us/>.

⁶⁰⁵ Texas Government Code, Section 814.104 (a); and *Planning Your Retirement*, Employees Retirement System, January 2011, Page 3, <http://www.ers.state.tx.us/>.

The following retirement eligibility requirements apply to employees who first began work on or after September 1, 2009, and to former employees who never contributed to the system or who pulled their ERS retirement account and then came back to the State on or after September 1, 2009:

- Is at least 65 years old and has at least 10 years of service credit in the employee class; or
- Has at least 10 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 80.⁶⁰⁶

New Requirement
The 82nd Legislature enacted legislation to amend the years of service credit needed for employees to meet the rule of 80 requirement if they were hired on or after September 1, 2009.

Commissioned Peace Officer and Custodial Officer Eligibility

A CPO/CO class 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 Juvenile Justice Department, or as a custodial officer, is eligible to retire and receive a service retirement annuity.⁶⁰⁷

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.⁶⁰⁸

For additional information on retirement annuities for commissioned peace officers and custodial officers, refer to Texas Government Code, Sections 814.104, 814.107 and 814.1075, and the ERS Web site at <http://www.ers.state.tx.us/>.

Custodial Officers are employees of the Texas Department of Criminal Justice 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.⁶⁰⁹

⁶⁰⁶ Texas Government Code, Section 814.104 (a) and (d), as amended by SB 1664 (82nd Legislature, Regular Session).

⁶⁰⁷ Texas Government Code, Section 814.104 (b).

⁶⁰⁸ Texas Government Code, Section 814.1075.

⁶⁰⁹ Texas Government Code, Section 811.001 (8).

Establishing Service Credit

Membership in ERS' CPO/CO or regular employee class begins on the 91st day after the first day a person is employed or holds office.⁶¹⁰ Employees receive a full month's retirement credit when a retirement contribution is deducted from a paycheck and deposited into ERS.⁶¹¹ However, service credit toward an employee's eligibility for retirement may be established in other ways. If eligible, these may include the use of vacation and sick leave, combined service credit, purchase of service credit, and the transfer of service credit.

Use of Vacation Leave and Sick Leave

Upon retiring, an employee has the option to designate accrued but unused vacation leave and sick leave as service credit.⁶¹² Employees who first started working for the State on or after September 1, 2009, or former employees 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 vacation leave toward service credit. However, these employees may use vacation and sick leave for the purpose of calculating their annuity.⁶¹³

For those employees who are eligible, vacation leave is credited at the rate of one month of service credit for each 20 days, or 160 hours, of vacation leave.⁶¹⁴ 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.⁶¹⁵ However, sick leave does not include credit granted under the agency's sick leave pool or under the Family Medical Leave Act.⁶¹⁶

The reporting agency must certify the amount of vacation and/or sick leave accrued 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 vacation leave and sick leave will affect the accrual of a month's service credit.⁶¹⁷

In addition to the additional service credit, employees may receive a lump sum payment for the unused vacation leave and may donate unused sick leave to the employer's sick leave pool.⁶¹⁸

⁶¹⁰ Texas Government Code, Section 812.003 (d).

⁶¹¹ *Planning Your Retirement*, Employees Retirement System, January 2011, Page 5, <http://www.ers.state.tx.us/>.

⁶¹² Texas Government Code, Sections 813.509 and 813.511.

⁶¹³ Texas Government Code, Sections 813.509 (k) and 813.511 (d).

⁶¹⁴ Texas Government Code, Section 813.511 (c).

⁶¹⁵ Texas Government Code, Section 813.509 (c).

⁶¹⁶ Texas Government Code, Section 813.509 (j).

⁶¹⁷ Texas Government Code, Sections 813.509 (f) and (g) and 813.511 (f) and (g).

⁶¹⁸ Texas Government Code, Sections 661.091 and 661.003 (c).

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-service requirements for retirement benefits, the person's combined service credit must be considered as if it were all credited in each system.⁶¹⁹

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.⁶²⁰

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 CPO/CO or regular employee class: refunded service credit, military service credit, and additional service credit.⁶²¹

Additional information regarding the purchase of service credit and payment options can be found on the Employees Retirement System Web site at <http://www.ers.state.tx.us/>.

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 the employee must have membership with ERS or with an entity that participates in the Proportionate Retirement System (PRS).⁶²²

Purchase of Military Service

A member that has credit in the ERS for membership service performed after the date the member is released from active military duty 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.⁶²³

⁶¹⁹ Texas Government Code, Sections 805.002 (a), 805.004, and 803.201; and *Planning Your Retirement*, Employees Retirement System, January 2011, Page 7, <http://www.ers.state.tx.us/>.

⁶²⁰ Texas Government Code, Section 803.201 (b).

⁶²¹ *Purchasing Service Credit*, Employees Retirement System, March 2011, Pages 1-3, <http://www.ers.state.tx.us/WorkArea/DownloadAsset.aspx?id=827>, and Texas Administrative Code, Title 34, Chapter 71.14.

⁶²² Texas Government Code, Sections 803.203 and 813.504.

⁶²³ Texas Government Code, Sections 813.301 and 813.302.

A member claiming credit in the employee class for military service not previously established must, 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 \$18.⁶²⁴

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.⁶²⁵

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.⁶²⁶

ASC can advance an active 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.⁶²⁷

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.⁶²⁸

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.⁶²⁹

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.⁶³⁰ 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.

⁶²⁴ Texas Government Code, Section 813.505 (b).

⁶²⁵ *Purchasing Service Credit*, Employees Retirement System, March 2011, Page 2, <http://www.ers.state.tx.us/WorkArea/DownloadAsset.aspx?id=827>.

⁶²⁶ Texas Government Code, Section 813.513 (a) and (b).

⁶²⁷ *Planning Your Retirement*, Employees Retirement System, January 2011, Page 6, <http://www.ers.state.tx.us>.

⁶²⁸ Texas Government Code, Sections 805.002 and 805.003.

⁶²⁹ *Purchasing Service Credit*, Employees Retirement System, March, 2011, Page 3, at <http://www.ers.state.tx.us/WorkArea/DownloadAsset.aspx?id=827>.

⁶³⁰ Texas Government Code, Section 805.002 (a).

Determining the Standard Service Retirement Annuity

The standard service retirement annuity for service credited in the employee class of ERS membership 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.⁶³¹

The standard service retirement annuity for an employee class 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 members, 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.⁶³²

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 member has at least 5 years of membership and 5 years of military service credited in the system; 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.⁶³³

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.⁶³⁴

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.⁶³⁵

⁶³¹ Texas Government Code, Section 814.105 (a).

⁶³² Texas Government Code, Section 814.105 (c) and (d).

⁶³³ Texas Insurance Code, Section 1551.102

⁶³⁴ Texas Insurance Code, Section 1551.3195.

⁶³⁵ Employees Retirement System Web site, <http://www.ers.state.tx.us/Retirees/Insurance/HealthSelect/>.

Table 18-1 provides examples of age and service credit combinations as they apply to the “rule of 80.”

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
60 years, 2 months	19 years, 10 months	80 years	Yes	Yes

Source: *Planning Your Retirement*, Employees Retirement System, January 2011, Page 4, <http://www.ers.state.tx.us/>.

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).⁶³⁶

A member is eligible to retire under an occupational disability, regardless of age or amount of service credit. A retirement contribution to ERS must have been made and an application must be filed within two years from the date of the injury.⁶³⁷

In the case of a non-occupational disability, a member must be currently employed by the State and have 10 years of creditable service credit (ORP credit cannot be used to meet the 10 years of service credit). In addition, an application must be filed within two years from the date of the diagnosis of terminal illness.⁶³⁸

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.⁶³⁹

⁶³⁶ *Planning Your Retirement*, Employees Retirement System, January 2011, Page 7, <http://www.ers.state.tx.us/>.

⁶³⁷ *Planning Your Retirement*, Employees Retirement System, April 2011, Page 7, <http://www.ers.state.tx.us/>.

⁶³⁸ *Planning Your Retirement*, Employees Retirement System, January 2011, Page 7, <http://www.ers.state.tx.us/>.

⁶³⁹ Texas Government Code, Section 814.202 (g).

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.⁶⁴⁰

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.⁶⁴¹

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.⁶⁴²

Resumption of State Service by a Retiree

Employees who retired 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.⁶⁴³

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.⁶⁴⁴

Retirees from another system, such as the Teacher Retirement System, who return to work for a state agency under ERS do contribute the employee portion of their monthly pay to an ERS retirement account.⁶⁴⁵

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.⁶⁴⁶

⁶⁴⁰ Texas Government Code, Sections 803.0021, 803.101, and 803.102.

⁶⁴¹ Texas Government Code, Sections 803.201 (a) and 803.302 (b).

⁶⁴² Texas Government Code, Section 803.001 (b).

⁶⁴³ Texas Government Code, Section 812.205.

⁶⁴⁴ Texas Government Code, Section 812.206.

⁶⁴⁵ *Retirees who Return to Work*, Employee Retirement System, February 2010, page 4, <http://www.ers.state.tx.us/>.

⁶⁴⁶ Texas Government Code, Sections 812.202 and 812.204.

Retirement must 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.⁶⁴⁷

Additional information on return-to-work retirees can be found on the ERS Web site at www.ers.state.tx.us.

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.

The Death Benefit Plan allows employees to choose how beneficiaries will receive the benefit based on one of four options:

- **Beneficiary's Choice** – Beneficiary can choose a life annuity, lump sum payment, or 10-year guaranteed annuity.
- **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.)⁶⁴⁸

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. In lieu of a death benefit plan, a refund of contributions may be elected by the beneficiary or representative of the estate.⁶⁴⁹ The death benefit beneficiary may use the deceased member's sick and/or vacation leave to qualify for making a death benefit plan selection if the decedent was a member or employee on August 31, 2009.⁶⁵⁰

Survivor Annuity 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 reduce the amount of annuity and will further be reduced if taken with a partial lump sum option.

⁶⁴⁷ Texas Administrative Code, Title 34, Section 73.7.

⁶⁴⁸ Employees Retirement System Web site, <http://www.ers.state.tx.us/dynamic.aspx?id=810&terms=death+benefit+plan>.

⁶⁴⁹ Texas Government Code, Section 814.302 (a).

⁶⁵⁰ Texas Government Code, Sections 813.509 (e) and 813.511 (e).

Retirees may choose one of the following five survivor's options to protect beneficiaries (percentages may vary from what is listed depending on the beneficiary's age):

- If retiree dies, beneficiary would get 100 percent of the monthly payment amount for life.
- If retiree dies, beneficiary would get 50 percent of the monthly payment amount for life.
- If retiree dies before they receive 5 years (60 months) of annuity payments, beneficiary receives the remainder of the 60 annuity payments, after which the monthly payments stop.
- If retiree dies before they receive 10 years (120 months) of annuity payments, beneficiary receives the remainder of those 120 payments, after which the monthly annuity payments stop.
- If retiree dies, beneficiary would receive 75 percent of the monthly payment amount for life.⁶⁵¹

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/>.

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 609.5021.⁶⁵²

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.⁶⁵³

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.⁶⁵⁴

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 2011, whichever is less. For employees who are 50 years of age or older the annual contribution limit is \$22,000. 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.⁶⁵⁵

⁶⁵¹ *Planning Your Retirement*, Employees Retirement System, January 2011, page 10, <http://www.ers.state.tx.us/>.

⁶⁵² Texas Government Code, Sections 609.502, 609.005, and 609.006.

⁶⁵³ Texas Government Code, Section 609.702.

⁶⁵⁴ *Planning Your Retirement*, Employees Retirement System, January 2011, Pages 23 and 24, <http://www.ers.state.tx.us/>.

⁶⁵⁵ *Planning Your Retirement*, Employees Retirement System, January 2011, Pages 23-27, <http://www.ers.state.tx.us/>.

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.⁶⁵⁶

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, or to contribute a different amount to the plan.⁶⁵⁷

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 must 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.⁶⁵⁸

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 2011, the maximum deferral is 99 percent of eligible compensation or \$16,500, whichever is less. Employees who are 50 years of age or older may contribute up to \$22,000.⁶⁵⁹ These numbers may change in the future; therefore, agencies will need to check with ERS for the 2012 deferral amounts.

⁶⁵⁶ Texas Government Code, Section 609.5025 (b) and (c).

⁶⁵⁷ Texas Government Code, Section 609.5025 (d).

⁶⁵⁸ Texas Government Code, Section 609.5025 (h).

⁶⁵⁹ *Planning Your Retirement*, Employees Retirement System, January 2011, Pages 23-25 and 27, <http://www.ers.state.tx.us/>.

Chapter 18 *Additional Benefits*

Awards and Gifts

State agencies and institutions of higher education are authorized to use appropriated funds to purchase and present awards to employees for professional achievement or outstanding service. The cost of each award must not exceed \$100.⁶⁶⁰

State agencies and institutions of higher education that have established a volunteer program may use appropriated funds to purchase awards for special achievements or outstanding service to be presented to a volunteer. Such awards must not exceed a value of \$50 and are limited to certificates, plaques, pins, or other similar awards.⁶⁶¹

Employee Health and Wellness Programs

Health Fitness and Education Programs

A state agency and institution of higher education may use available public 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.⁶⁶²

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.⁶⁶³

⁶⁶⁰ Texas Government Code, Section 2113.201.

⁶⁶¹ Texas Government Code, Section 2113.202.

⁶⁶² Texas Government Code, Section 664.004.

⁶⁶³ Texas Government Code, Section 664.002.

State agencies and institutions of higher education are encouraged to enter into agreements with other state, local, or federal agencies, including state-supported institutions of higher education, to present, join in presenting, or participate in health fitness education or activity programs for state employees.⁶⁶⁴

Wellness Programs

The Department of State Health Services must designate a wellness coordinator to create and develop a model statewide wellness program to improve the health and wellness of state employees.⁶⁶⁵

The statewide wellness coordinator is responsible for:

- Coordinating with other agencies and institutions of higher education 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 and institutions of higher education worksite wellness programs and report the findings to the Legislature.
- Organizing an annual conference for all state agency and institution of higher education wellness councils.⁶⁶⁶

State agencies and institutions of higher education must designate an employee to serve as the wellness liaison between the agency or institution of higher education and the statewide wellness coordinator. A state agency or institution of higher education may implement a wellness program based on the model program or components of the model program.⁶⁶⁷

The Executive Commissioner of the Health and Human Services Commission must create a worksite wellness advisory board consisting of 13 members.⁶⁶⁸ The board is responsible for advising the 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.

⁶⁶⁴ Texas Government Code, Section 664.005.

⁶⁶⁵ Texas Government Code, Section 664.053 (a).

⁶⁶⁶ Texas Government Code, Section 664.053 (b).

⁶⁶⁷ Texas Government Code, Section 664.053 (d) and (e).

⁶⁶⁸ Texas Government Code, Section 664.054 (a).

- Worksite wellness features and architecture for new state buildings similar to those used by the private sector.⁶⁶⁹

A state agency or institution of higher education 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 or institution of higher education infrastructure to allow for increased worksite wellness.
- Involving employees in worksite wellness programs.⁶⁷⁰

The wellness council may identify best practices for worksite wellness and report the practices to the wellness advisory board annually.⁶⁷¹

A state agency or institution of higher education may allow its employees to participate in wellness council activities for two or more hours each month.⁶⁷²

As part of agency or institution of higher education wellness policies, a state agency or institution of higher education 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.⁶⁷³

Health Services Pilot Program

To reduce the cost of health care and increase the wellness and productivity of state employees, the Employees Retirement System must 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.⁶⁷⁴

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.

⁶⁶⁹ Texas Government Code, Section 664.059.

⁶⁷⁰ Texas Government Code, Section 664.060 (a) and (b).

⁶⁷¹ Texas Government Code, Section 664.060 (f).

⁶⁷² Texas Government Code, Section 664.060 (d).

⁶⁷³ Texas Government Code, Section 664.061.

⁶⁷⁴ Texas Government Code, Section 671.001 (a).

- Appropriate office space and equipment to provide basic medical care to employees.
- Professional liability insurance covering services provided.⁶⁷⁵

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.⁶⁷⁶

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.

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.⁶⁷⁷

Child Care Services

The Texas Facilities Commission (Commission) is responsible for developing a child care program that provides child care services for state employees. The Commission may establish methods to administer and supervise the child care program, and it must report to the Legislature on the child care program's development and progress and describe additional child care services that state employees need.⁶⁷⁸

The Commission is responsible for setting the number of children that a child care facility may serve. In addition, the Commission is responsible for monitoring the activities and operations of a child care facility by conducting regular visits during operating hours to investigate, inspect, and evaluate the services provided.⁶⁷⁹

Capitol Complex Child Care
 The state employee Capitol Complex Child Care facility is located near the intersection of 15th and Lavaca streets. This facility is open to the public, but state employees are given preference when enrolling. Additional information can be found on the Texas Facilities Commission's Web site at <http://www.tfc.state.tx.us/divisions/commissionadmin/tools/capitol-complex-child-care/>.

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 or institution of higher education with which the employee is employed.⁶⁸⁰

⁶⁷⁵ Texas Government Code, Section 671.001 (b).

⁶⁷⁶ Texas Government Code, Section 671.001 (e).

⁶⁷⁷ Title 29, Code of Federal Regulations, Sections 785.18 and 785.19.

⁶⁷⁸ Texas Government Code, Sections 663.101 and 663.052.

⁶⁷⁹ Texas Government Code, Sections 663.107 and 663.109.

⁶⁸⁰ Texas Government Code, Section 610.011.

Memberships In and Dues for Professional Organizations

With the exception of a state library, a state agency or institution of higher education may not use appropriated money to pay for membership in or dues for a professional organization unless the administrative head or designee reviews and approves the expenditure.⁶⁸¹

Moving and Storage Expenses

A state agency or institution of higher education may use appropriated funds to pay expenses incurred in moving the household property of state employees who are:

- Reassigned from one headquarters to another if the agency or institution of higher education 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 or institution of higher education at another headquarters that is at least 25 miles from the facility that is being closed or undergoing a reduction in force.⁶⁸²

A state agency or institution of higher education must use State-owned equipment to move an employee if it is available. If not, the agency or institution of higher education may pay for the services of a transportation company or self-service vehicles to make the move.⁶⁸³

A state employee is entitled to be reimbursed for expenses incurred in traveling by a personally owned or a leased motor vehicle for a move described above for business-related travel by the employee.⁶⁸⁴

A state agency or institution of higher education 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.⁶⁸⁵

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.⁶⁸⁶

⁶⁸¹ Texas Government Code, Section 2113.104.

⁶⁸² Texas Government Code, Section 2113.204 (a).

⁶⁸³ Texas Government Code, Section 2113.204 (b).

⁶⁸⁴ Texas Government Code, Section 2113.204 (c).

⁶⁸⁵ Texas Government Code, Section 2113.204 (d).

⁶⁸⁶ General Appropriations Act (82nd Legislature, Regular Session), Article V, Department of Public Safety, Rider 13.

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.

Each state agency that provides employee housing must report annually to the Legislature 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.⁶⁸⁷

⁶⁸⁷ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 11.04 (c).

Chapter 19 Training

Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Awareness Education

Each state agency and institution of higher education must adopt and implement workplace guidelines 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.⁶⁸⁸

In addition, state agencies and institutions of higher education 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.⁶⁸⁹

This educational pamphlet should be provided to all newly hired state employees on their first day of employment.⁶⁹⁰ A model informational pamphlet can be obtained from the Department of State Health Services. The educational pamphlet must be based on the model developed by the Department of State Health Services and include the workplace guidelines adopted by the state agency or institution of higher education.⁶⁹¹

A state agency listed in Texas Health and Safety Code, Section 85.113, must make available HIV education for clients, inmates, patients, and residents of treatment, educational, correctional, or residential facilities under the agency's jurisdiction.⁶⁹²

For additional information, agencies and institutions of higher education can refer to the HIV/STD section of the Department of State Health Services' Web site at <http://www.dshs.state.tx.us/hivstd/default.shtm>.

Correctional and Juvenile Correctional Officers Training

The Department of Criminal Justice must provide at least 284 hours of training for new correctional officers.⁶⁹³ The Juvenile Justice Department must provide at least 300 hours of training for each juvenile correctional officer prior to the juvenile correctional officer independently commencing his or her duties.⁶⁹⁴

⁶⁸⁸ Texas Health and Safety Code, Sections 85.012 and 85.112; and Texas Administrative Code, Title 25, Section 97.143.

⁶⁸⁹ Texas Health and Safety Code, Section 85.111 (a).

⁶⁹⁰ Texas Health and Safety Code, Section 85.111 (b).

⁶⁹¹ Texas Health and Safety Code, Section 85.111 (c).

⁶⁹² Texas Health and Safety Code, Section 85.114.

⁶⁹³ General Appropriations Act (82nd Legislature, Regular Session), Article V, Department of Criminal Justice, Rider 40.

⁶⁹⁴ Texas Human Resources Code, Section 242.009 (b).

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 must be provided by the Civil Rights Division of the Texas Workforce Commission or by a person or entity approved by the Civil Rights Division. An agency or institution of higher education required to participate in the training must pay the cost of attending the training or reimburse the Texas Workforce Commission or state agency providing the training through an interagency contract. 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 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 Texas Workforce Commission determines the minimum standards for the training.⁶⁹⁵

Equal Employment Opportunity (EEO) Standards Training

Each state agency and institution of higher education must provide employment discrimination training, including employment discrimination involving sexual harassment, to its employees. New employees must 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 or institution of higher education must file the statement in the employee's personnel file.⁶⁹⁶

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.⁶⁹⁷

Coordinated Technology Training

In each calendar quarter, a state agency or institution of higher education must coordinate agency or institution information technology training with the technology training offered or coordinated by the Department of Information Resources. The agency or institution must use training offered or coordinated by the Department of Information Resources if the training meets agency or institution requirements and is cost-competitive.⁶⁹⁸

⁶⁹⁵ Texas Labor Code, Sections 21.556 and 21.556 (e); and Texas Administrative Code, Title 40, Section 819.25.

⁶⁹⁶ Texas Labor Code, Section 21.010; and Texas Administrative Code, Title 40, Section 819.24.

⁶⁹⁷ Texas Labor Code, Section 21.010 (c) and (d); and Texas Administrative Code, Title 40, Section 819.24.

⁶⁹⁸ Texas Government Code, Sections 2054.122 and 2054.003 (4).

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.⁶⁹⁹

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.⁷⁰⁰

A state agency or institution of higher education must 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.⁷⁰¹

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.⁷⁰²

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 and education to state employees. Such training or education is intended to be applicable to current or prospective duty assignments.⁷⁰³

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.⁷⁰⁴

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.⁷⁰⁵

⁶⁹⁹ Texas Government Code, Section 656.045.

⁷⁰⁰ Texas Government Code, Section 656.047.

⁷⁰¹ Texas Government Code, Section 656.048.

⁷⁰² Texas Government Code, Section 656.049.

⁷⁰³ Texas Government Code, Sections 656.044 and 656.041.

⁷⁰⁴ Official Memorandum from the Governor's Office: "Implementation of State Employees Training Act of 1969 (S.B. 653)," October 31, 1969.

⁷⁰⁵ Texas Government Code, Section 2113.205 (a).

A state agency's or higher education institution'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.⁷⁰⁶

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.⁷⁰⁷ 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 his or her regular duties for three or more months as a result of the training, the agency or institution of higher education must require the employee to agree, in writing before the training begins, to certain conditions. For an employee, the conditions state that they must:

- Work for the agency or institution of higher education for at least one month following training, for each month of the training period, or
- Reimburse the agency or institution of higher education for all costs related to the training that were paid during the training period, including salary for hours that were paid and were not accounted for as paid vacation leave or compensatory leave.⁷⁰⁸

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.⁷⁰⁹

By an order adopted in a public meeting, the agency or institution of higher education may waive these requirements if it is in the best interest of the agency or institution of higher education or is warranted because of personal hardship suffered by the employee.⁷¹⁰

⁷⁰⁶ Texas Government Code, Section 656.046.

⁷⁰⁷ Texas Government Code, Section 656.102.

⁷⁰⁸ Texas Government Code, Section 656.103 (a) and (b).

⁷⁰⁹ Texas Government Code, Section 656.104.

⁷¹⁰ Texas Government Code, Section 656.103 (c).

Chapter 20

Unemployment Insurance Compensation

Overview

Unemployment insurance (UI) is an insurance program paid by the employer to qualified individuals (referred to as claimants within this chapter) unemployed through no fault of their own. This program provides temporary, partial income replacement to eligible claimants while they are seeking other employment.⁷¹¹ With few exceptions, state employees are covered by unemployment insurance.⁷¹²

UI benefits are financed through a state unemployment tax and paid from the State's Unemployment Compensation Trust Fund (Fund). Most employers are subject to paying unemployment tax. Under Texas law, state agencies and institutions of higher education may elect to pay *reimbursements* for benefits instead of the tax.⁷¹³ As reimbursing employers, they pay to the Fund, in lieu of taxes, an amount equal to the amount of benefits that were paid to their former employees and attributable to service with the agency or institution.

The Texas Workforce Commission (TWC) is the agency responsible for managing the State's Unemployment Insurance Compensation programs.⁷¹⁴ Agencies and institutions of higher education should refer to the TWC for additional information regarding unemployment insurance compensation.

The TWC 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 must post and maintain the notices in places accessible to all employees.⁷¹⁵

Filing an Initial Claim for Unemployment Benefits

Individuals may file for UI benefits in two ways: on-line at TWC's "Apply for Benefits" Internet application or by calling one of TWC's Tele-Centers. Information about how to file a claim also is available on TWC's Web site at <http://www.texasworkforce.org>.

To be eligible to receive unemployment benefits, claimants must:⁷¹⁶

- Have earned sufficient benefit wage credits during their base period of employment. (The "base period" refers to the first four of the last five completed calendar quarters that an employee worked and earned wages in covered employment.). At a minimum, a claimant must have earned wages in at least two calendar quarters and in an amount not less than 37 times the claimant's weekly benefit amount.

⁷¹¹ Texas Workforce Commission Web site at <http://www.twc.state.tx.us/ui/bnfts/claimant1.html>.

⁷¹² Texas Labor Code, Section 201.063.

⁷¹³ Texas Labor Code, Section 205.001 (a).

⁷¹⁴ Texas Labor Code, Section 301.001.

⁷¹⁵ Texas Labor Code, Section 208.001 (b).

⁷¹⁶ Texas Labor Code, Section 207.021.

- Be unemployed or partially unemployed due to no fault of the claimant. An otherwise qualified claimant can be disqualified for unemployment benefits if the claimant quit or was fired for misconduct.⁷¹⁷ A claimant will not be disqualified if he or she left work due to a medically verifiable illness (claimant or claimant’s minor child), injury, disability, pregnancy, a move that was made with the claimant’s spouse who is a member of the armed forces, or an involuntary separation for any of the following reasons:
 - ♦ A work-related reason that made the claimant’s separation from employment urgent, compelling, and necessary.
 - ♦ The claimant left the workplace to protect himself or herself from family violence or stalking.
 - ♦ The claimant left the workplace to care for his or her terminally ill spouse, as evidenced by a physician’s statement or other medical documentation, for which reasonable, alternative care is not available.⁷¹⁸
- Be able to work.
- Be available for work.

Once a claim for unemployment benefits is filed, a notice of the initial claim is mailed to the most recent employer named on the claim. The most recent employer refers to the last person for whom the claimant actually worked, if the claimant worked for that person for at least 30 hours during a week; or that entity is an employer as defined by Texas Labor Code, Chapter 201, or as defined by the unemployment law of any other state.⁷¹⁹

New Definition
The 82nd Legislature enacted legislation clarifying the definition of “most recent employer” for purposes of initial claims.

The Texas Labor Code gives employers 14 days to respond to the notice of initial claim. If an employer fails to respond to the claim in a timely manner, the employer will not be a party of interest to the claim. This includes the loss of the employer’s appeal rights in connection with the claim.⁷²⁰ The employer’s response can be submitted online at <http://www.twc.state.tx.us/ui/er.html>.

⁷¹⁷ Texas Labor Code, Sections 207.044 (a) and 207.045.

⁷¹⁸ Texas Labor Code, Sections 207.045 (d) and 207.046.

⁷¹⁹ Texas Labor Code, Section 208.002 (a), as amended by SB 458 (82nd Legislature, Regular Session).

⁷²⁰ Texas Labor Code, Sections 208.003 and 208.004 (b).

Appeals Process

According to TWC, an employer who timely protests the initial claim has the right to submit a written appeal disagreeing with the TWC's decision to pay the claimant unemployment benefits. Conversely, a claimant may also appeal a TWC decision not to award benefits. During the appeals process, TWC will hold a hearing during which the claimant and the employer can present their cases.

Additional information about the unemployment appeals process can be found on TWC's Web site at http://www.twc.state.tx.us/ui/appl/employers_filing_appeal.html and <http://www.twc.state.tx.us/ui/bnfts/appeals.html>.

Continued Benefit Eligibility

An unemployment "benefit" refers to the money payable to a qualified claimant as compensation for weeks of unemployment.⁷²¹ To receive unemployment benefits for a benefit period (a week of unemployment), claimants must:⁷²²

- Have registered for work with TWC through WorkInTexas.com and continue to report the status of their work search to TWC, if required to do so.
- Have filed a claim for benefits and request payment of benefits for that week.
- Be able to work during that week.
- Be available for work during that week.
- Be actively seeking full-time work during that week.
- Be totally or partially unemployed for a waiting period of at least seven consecutive days. (However, the governor by executive order may suspend the waiting period requirement and authorize a claimant to receive benefits during the waiting period if the claimant is unemployed as a direct result of a natural disaster that results in a disaster declaration by the president of the United States.)⁷²³
- Participate in re-employment activities, such as a job search assistance service, if the claimant has been determined, according to a profiling system established by TWC, to be likely to exhaust eligibility for regular benefits and needs those services to obtain new employment. However, if the claimant has completed participation in such a service or there is reasonable cause for the claimant's failure to participate in those services, this requirement may be waived.

In addition, permanently disabled individuals who receive Social Security Disability Insurance and can work only part-time may be eligible for unemployment benefits if they meet certain conditions.⁷²⁴

⁷²¹ Texas Labor Code, Section 201.011 (2) and (4).

⁷²² Texas Labor Code, Section 207.021, and at <http://www.twc.state.tx.us/ui/bnfts/claimant3.html#eligibility>.

⁷²³ Texas Labor Code, Section 207.0212.

⁷²⁴ Texas Labor Code, Section 207.0211.

Payment of Benefits - Determining Weekly and Maximum Benefit Amount

An eligible claimant who is unemployed during 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 claimant's base period in which the claimant's wages were the highest.⁷²⁵ This means that TWC divides the highest quarter's total earnings by 25 to establish the claimant's weekly benefit amount.⁷²⁶ A claimant who is partially unemployed may still be eligible for benefits at a reduced amount.⁷²⁷ TWC cannot pay a weekly benefit amount that exceeds the annual maximum weekly benefit amount allowed by law.⁷²⁸

Claimants who exhaust their regular benefits may apply for extended benefits if such benefits are available.⁷²⁹

Extended Benefits

Extended benefits are additional payments of unemployment benefits equal to 50 percent of a claimant's regular benefits and may be made during a period of high unemployment after the claimant has exhausted all of his or her regular unemployment benefits. 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 federal and statewide factors.⁷³⁰

A publication titled "Understanding Extended Unemployment Benefits" can be found on TWC's Web site at <http://www.twc.state.tx.us/ui/bnfts/benefitextensions.pdf>.

Reimbursements to the Unemployment Compensation Fund

If a claim is approved for payment, a state agency or institution of higher education will be billed on a quarterly basis for all benefits based on wages it reported during the base period of the claim.⁷³¹

Coverage for State Employees Working Outside the State

TWC 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.⁷³² If TWC 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.⁷³³

⁷²⁵ Texas Labor Code, Section 207.002 (a).

⁷²⁶ Texas Workforce Commission Web site at <http://www.twc.state.tx.us/ui/bnfts/claimant1.html>.

⁷²⁷ Texas Labor Code, Section 207.003.

⁷²⁸ Texas Labor Code, Section 207.002 (a-2).

⁷²⁹ Texas Labor Code, Section 209.041.

⁷³⁰ Texas Workforce Commission Web site at <http://www.twc.state.tx.us/ui/bnfts/employer5.html#eb>; and Texas Labor Code, Sections 209.001 (2) and 209.062.

⁷³¹ Texas Labor Code, Section 205.013.

⁷³² Texas Labor Code, Sections 211.001 and 211.002.

⁷³³ Texas Labor Code, Section 205.042.

Chapter 21 *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 on the job.

The Texas Department of Insurance, Division of Workers' Compensation (Division) regulates the State's workers' compensation program.⁷³⁴ The Office of Injured Employee Counsel was established by the Legislature to represent the interests of workers' compensation claimants in Texas.⁷³⁵

Coverage for State Employees

For most state agencies and institutions of higher education, the State Office of Risk Management (Office) is responsible for administering state risk management programs and insurance services obtained by state agencies, including the state employees' workers' compensation insurance program and the state risk management programs.⁷³⁶

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 Correctional Industries contract.
- A client or patient of a state agency.
- A person employed by the Department of Transportation, The University of Texas System, or the Texas A&M University System.⁷³⁷

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 by or on behalf of state employees; determining whether a claim is compensable; paying income (frequently referred to as indemnity benefits) and medical benefits in accordance with the Workers' Compensation Act; and reviewing medical bills to determine reasonableness, necessity, and compliance with the Division of Workers' Compensation's (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 preparing reports for the Legislature and providing workers' compensation training for state agencies.

Sources: Texas Labor Code, Sections 412.011 and 412.0122; and Strategic Plan 2011-2015, State Office of Risk Management located at http://www.sorm.state.tx.us/Legislative/strategic_plan/Strategic%20Plan%202011-2015.pdf.

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, the employee's surviving legal beneficiary may be eligible for these remedies.⁷³⁸

⁷³⁴ Texas Labor Code, Section 402.001.

⁷³⁵ Texas Labor Code, Section 404.002 (a).

⁷³⁶ Texas Labor Code, Section 412.011.

⁷³⁷ Texas Labor Code, Section 501.024.

⁷³⁸ Texas Labor Code, Section 408.001 (a).

However, the 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 Texas Civil Practice and Remedies Code.⁷³⁹

Workers' Compensation Health Care Networks

Workers' compensation health care networks were established to provide health care services to injured employees through networks certified by the Texas Department of Insurance.⁷⁴⁰

For additional information on workers' compensation health care networks, please refer to the Texas Department of Insurance's Web page at <http://www.tdi.texas.gov/pubs/consumer/cb084.html>.

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.⁷⁴¹

According to the State Office of Risk Management, in situations in which an employee works outside of Texas, some states may require agencies to purchase separate workers' compensation insurance. If an employee elects to pursue remedies provided by the state in which the injury occurred, the employee is not entitled to workers' compensation benefits through the State Office of Risk Management.⁷⁴²

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.⁷⁴³

⁷³⁹ Texas Labor Code, Section 501.002 (d).

⁷⁴⁰ Texas Insurance Code, Section 1305.002.

⁷⁴¹ Texas Labor Code, Section 501.025 (a).

⁷⁴² Texas Labor Code, Section 501.025 (b).

⁷⁴³ Texas Labor Code, Sections 501.026 (a) and (b).

To qualify for benefits, the volunteer 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 an injury occurred. The person must comply with the notification requirements by providing notice of the injury to the Texas Department of Insurance, Division of Workers' Compensation or the state agency with which the officer or employee is associated.⁷⁴⁴

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 state agencies and institutions of higher education.⁷⁴⁵

Workers' Compensation Benefits

State employees with compensable injuries (injuries arising out of and in the course and scope of employment for which compensation is payable) are entitled to compensation by the State Office of Risk Management.⁷⁴⁶ However, the Texas Department of Insurance, Division of Workers' Compensation (Division) adjudicates income and medical benefit disputes for the State.⁷⁴⁷ 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 procedures established by state law.⁷⁴⁸

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.

Medical Benefits

An injured employee is entitled to all health care reasonably required to treat a compensable injury when needed.⁷⁴⁹ 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.⁷⁵⁰ The Division prescribes the criteria to be used in granting an employee the authority to select an alternative doctor.⁷⁵¹

⁷⁴⁴ Texas Labor Code, Section 501.026 (d).

⁷⁴⁵ Texas Labor Code, Section 412.011; and the State Office of Risk Management's Web site at www.sorm.state.tx.us/Risk_Management/Bonds_and_Insurance/volunteer.php.

⁷⁴⁶ Texas Labor Code, Section 501.021.

⁷⁴⁷ Texas Labor Code, Sections 402.001 and 410.002.

⁷⁴⁸ Texas Labor Code, Section 409.013.

⁷⁴⁹ Texas Labor Code, Section 408.021 (a).

⁷⁵⁰ Texas Labor Code, Section 408.022 (a) and (b).

⁷⁵¹ Texas Labor Code, Section 408.022 (c).

Income Benefits

In addition to medical payments, employees are eligible to receive income benefits, frequently referred to as indemnity benefits, to compensate an injured employee for the loss of income or earning capacity resulting from a work-related injury or illness. There are four types of income benefits, which include temporary income benefits, impairment income benefits, supplemental income benefits, and lifetime income benefits.⁷⁵²

To be eligible for income benefits, 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 does not begin immediately after the injury or within eight days of the injury but it does result subsequently, weekly income benefits accrue on the eighth day after the date on which the disability began. If the disability continues for two weeks or longer, compensation must be computed from the date the disability began.⁷⁵³ In the event of an employee's death, the entitlement for income benefits ends.⁷⁵⁴

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.⁷⁵⁵

The maximum weekly income benefit may not exceed 100 percent of the state average weekly wage rounded to the nearest whole dollar, as calculated by the Division.⁷⁵⁶

Temporary Income Benefits

Temporary income benefits are provided to the injured employee until he or she reaches maximum medical improvement.⁷⁵⁷ 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.⁷⁵⁸

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.⁷⁵⁹

⁷⁵² Texas Labor Code, Sections 408.082, 408.101, 408.121, 408.141, and 408.161; and *Impairment Income Benefits Fact Sheet*, Department of Insurance, <http://www.tdi.state.tx.us/pubs/factsheets/iibs.pdf>.

⁷⁵³ Texas Labor Code, Section 408.082.

⁷⁵⁴ Texas Labor Code, Section 408.081 (d).

⁷⁵⁵ Texas Labor Code, Section 408.083.

⁷⁵⁶ Texas Labor Code, Section 408.047 and *Impairment Income Benefits Fact Sheet*, Department of Insurance, <http://www.tdi.state.tx.us/pubs/factsheets/iibs.pdf>.

⁷⁵⁷ Texas Labor Code, Section 408.101 (a).

⁷⁵⁸ Texas Labor Code, Sections 401.011 (30) and 408.104.

⁷⁵⁹ Title 28, Texas Administrative Code, Section 129.3 (e).

Impairment Income Benefits

An employee's 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, whichever is earlier.⁷⁶⁰ An employee may not recover impairment income benefits unless evidence of the impairment that is based on an objective clinical or laboratory finding exists.⁷⁶¹ Typically, impairment income benefits are equal to 70 percent of the employee's average weekly wage.⁷⁶² 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 at least three months and is earning at least 80 percent of his or her average pre-injury weekly wage is entitled to request that their impairment benefits be paid in a lump sum.⁷⁶³

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.⁷⁶⁴
- Has not returned to work or has returned to work earning less than 80 percent of his or her average pre-injury weekly wage as a direct result of the impairment.⁷⁶⁵
- Has not elected to receive a portion of his or her impairment income benefits as a lump sum.⁷⁶⁶
- Has made a good-faith effort to find employment suitable for his or her ability to work.⁷⁶⁷

The amount of a supplemental income benefit for a week may not exceed 70 percent of the state average weekly wage (calculated by the Division) rounded to the nearest whole dollar.⁷⁶⁸ 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.⁷⁶⁹

⁷⁶⁰ Texas Labor Code, Section 408.121 (a).

⁷⁶¹ Texas Labor Code, Section 408.122.

⁷⁶² Texas Labor Code, Section 408.126.

⁷⁶³ Texas Labor Code, Section 408.128; and Title 28, Texas Administration Code, Section 147.10.

⁷⁶⁴ Texas Labor Code, Section 408.142 (1).

⁷⁶⁵ Texas Labor Code, Section 408.142 (2).

⁷⁶⁶ Texas Labor Code, Sections 408.128 and 408.142 (3).

⁷⁶⁷ Texas Labor Code, Section 408.1415.

⁷⁶⁸ Texas Labor Code, Section 408.061 (c).

⁷⁶⁹ Texas Labor Code, Section 408.1415 (a).

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.
- 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.⁷⁷⁰

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.⁷⁷¹ 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 must be paid in equal shares to surviving eligible parents of the deceased. If an employee is not survived by legal beneficiaries or eligible parents, the death benefits will be paid to the Division's Subsequent Injury Fund.⁷⁷²

If a legal beneficiary dies or otherwise becomes ineligible for death benefits, then the benefits will be redistributed to the remaining legal beneficiaries in accordance with Texas Labor Code, Sections 408.182 and 408.183.⁷⁷³

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. In addition, if the employee died while away from his or her usual place of employment, burial benefits will include the reasonable cost of transporting the body.⁷⁷⁴

⁷⁷⁰ Texas Labor Code, Section 408.161 (a).

⁷⁷¹ Texas Labor Code, Section 408.181 (a).

⁷⁷² Texas Labor Code, Section 408.182.

⁷⁷³ Texas Labor Code, Section 408.184 (a).

⁷⁷⁴ Texas Labor Code, Section 408.186.

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 or institution of higher education for one day.⁷⁷⁵ In addition, an agency or institution of higher education must notify the Office of an occupational disease reported by an employee.⁷⁷⁶ 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.⁷⁷⁷

Claims Coordinator Handbook

The State Office of Risk Management (Office) has published a guide to assist claims coordinators in the filing of workers' compensation claims. The handbook is located on the Office's Web site at:

http://www.sorm.state.tx.us/Claims_Coordinator_Handbook/handbook.php.

The following list is a summary of responsibilities for state agencies and institutions of higher education that are covered by these provisions.⁷⁷⁸

- **Sending timely notices, reports, and information** - Most agencies and institutions of higher education 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 or illnesses in a timely manner.⁷⁷⁹
- **Designating a claims coordinator** - Most agencies and institutions of higher education must designate one or more claims coordinators, and must report to the Office any change in this designation.⁷⁸⁰
- **Complying with rules** - Most agencies and institutions of higher education must comply with all rules enacted by the Office, as well as those of the Division. Agency and institution 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 and institutions of higher education 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.⁷⁸¹
- **Keeping adequate records** - Most agencies and institutions of higher education must make a record of all injuries sustained by employees in the course of employment. See Texas Labor Code, Section 409.006, and the Office's *Claims Coordinator Handbook* for additional details.⁷⁸²

⁷⁷⁵ Title 28, Texas Administrative Code, Section 251.207; and Texas Labor Code, Sections 409.005 (a) (1) and 501.001 (6).

⁷⁷⁶ Texas Labor Code, Section 409.005 (a) (2).

⁷⁷⁷ Texas Labor Code, Section 409.005 (b).

⁷⁷⁸ *Claims Coordinator Handbook*, State Office of Risk Management Web site at http://www.sorm.state.tx.us/Claims_Coordinator_Handbook/employer.php.

⁷⁷⁹ Title 28, Texas Administrative Code, Sections 110.101 and 251.207.

⁷⁸⁰ Title 28, Texas Administrative Code, Section 251.213.

⁷⁸¹ Texas Labor Code, Section 415.001; and Title 28, Texas Administrative Code, Section 45.30.

⁷⁸² Texas Labor Code, Section 409.006.

- **Immediately notifying the Office if an injury is severe or fatal** - Agencies and institutions of higher education 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.⁷⁸³
- **Posting required notices** - Agencies and institutions of higher education must post notices for workers' compensation insurance coverage in the workplace.⁷⁸⁴ Agencies employing law enforcement officers and correctional officers must post a notice regarding certain work-related communicable diseases and eligibility for workers' compensation benefits.⁷⁸⁵ Agencies and institutions of higher education 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).⁷⁸⁶
- **Maintaining an ombudsman program** - Agencies and institutions of higher education 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.⁷⁸⁷
- **Developing health and safety programs and return-to-work programs** - Agencies and institutions of higher education 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 programs must be a coordinated effort involving the Department of Insurance's Division of Workers' Compensation, state agencies and institutions of higher education, employees, and health care providers.⁷⁸⁸
- **Notifying employees of health care network requirements** - Agencies and institutions of higher education must provide employees with a notice of health care network requirements; obtain a signed acknowledgment from each employee; post a notice of the healthcare network requirements; and notify injured employees of the network requirements at the time of injury.⁷⁸⁹

For additional information on return to work programs, see the Facilitating an Injured Employee's Return to Work section below.

⁷⁸³ Title 28, Texas Administrative Code, Section 251.212.

⁷⁸⁴ Title 28, Texas Administrative Code, Section 110.101.

⁷⁸⁵ Title 28, Texas Administrative Code, Section 110.108 (a).

⁷⁸⁶ Title 28, Texas Administrative Code, Section 110.108 (b).

⁷⁸⁷ Texas Labor Code, Section 404.153.

⁷⁸⁸ Texas Labor Code, Sections 412.051 (a) and 412.0125; and the Department of Insurance's Web site at <http://www.tdi.state.tx.us/wc/rtw/index.html>.

⁷⁸⁹ Texas Insurance Code, Section 1305.005.

Workers' Compensation and State 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.⁷⁹⁰

After exhausting sick leave, the employee may also use accrued vacation leave. If making this choice, the employee may elect to use all or any number of weeks of vacation leave. The amount of vacation leave the employee elects to use must be exhausted before the employee is entitled to receive income benefits.⁷⁹¹

Employers may not require employees to exhaust state or Fair Labor Standards Act (FLSA) compensatory time balances before receiving income benefits. In addition, employers may not prohibit employees from using state or FLSA compensatory time while they are receiving income benefits.⁷⁹² State employees who are exhausting their leave as a result of a workers' compensation claim are prohibited from using sick and vacation leave hours that accrue after the first day of the month in which the employee became incapacitated unless they physically return to work.⁷⁹³

Workers' Compensation and Emergency Leave

The administrative head of an agency 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 or institution of higher education must attach a statement of the reasons for the authorization to its payroll voucher for the first payroll period affected by the leave.⁷⁹⁴

Employer's Rights

As the employer of record, state agencies and institutions of higher education 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.
- The right to contest the compensability of an injury if the employer's insurance carrier accepts liability for the payment of benefits.

⁷⁹⁰ Texas Labor Code, Section 501.044 (a).

⁷⁹¹ Texas Labor Code, Section 501.044 (b).

⁷⁹² Texas Office of the Attorney General, Opinion JC-0188 (2000).

⁷⁹³ State Auditor's Office Leave Interpretation Letter, No. 01-02 (2000).

⁷⁹⁴ Texas Labor Code, Section 501.045.

- 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.⁷⁹⁵

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 or injurious exposure might be related to the employment.⁷⁹⁶ 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.⁷⁹⁷

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.⁷⁹⁸ 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 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.⁷⁹⁹

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.⁸⁰⁰

Additional Injury Reporting Requirements

State agencies, excluding the Department of Transportation 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.
- The number of on-the-job injuries per 100 of its employees during each year of the preceding biennium.

⁷⁹⁵ Texas Labor Code, Section 409.011(b).

⁷⁹⁶ Texas Labor Code, Section 409.001 (a).

⁷⁹⁷ Texas Labor Code, Section 409.002.

⁷⁹⁸ Texas Labor Code, Section 409.003.

⁷⁹⁹ Texas Labor Code, Section 409.004.

⁸⁰⁰ Texas Labor Code, Section 409.007.

- 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.⁸⁰¹

Facilitating an Injured Employee's Return to Work

State agencies are required to develop, implement, and maintain a program designed to assist employees in returning to work after the employees have sustained a compensable injury. Such a program should include appropriate, detailed procedures that identify specific responsibilities and actions that should be taken by designated return-to-work coordinators, supervisors, and employees.⁸⁰²

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 for the injured employee to return to 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.⁸⁰³

An online *Return to Work Guide* published by the State Office of Risk Management can be found at: http://www.sorm.state.tx.us/Workers%27_Compensation/Return_To_Work/return_to_work.php.

In addition, a *Return-to-work Program Guide* published by the Department of Insurance's Division of Workers' Compensation can be found at <http://www.tdi.state.tx.us/wc/rtw/index.html>.

⁸⁰¹ Texas Labor Code, Section 501.048.

⁸⁰² Texas Labor Code, Section 412.051; and *Return to Work Guide*, the State Office of Risk Management's Web site at http://www.sorm.state.tx.us/Workers%27_Compensation/Return_To_Work/return_to_work.php.

⁸⁰³ Texas Labor Code, Section 408.0221.

Chapter 22 *Contract Workforce Provisions*

Contract Manager Training

Texas Procurement and Support Services (TPASS) within the Comptroller of Public Accounts is responsible for administering a training program for contract managers.⁸⁰⁴ 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.⁸⁰⁵ Each state agency is responsible for ensuring that the agency's contract managers complete the training administered by the Comptroller of Public Accounts.⁸⁰⁶

TPASS, 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.⁸⁰⁷ 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

Contract for Professional Services

A state agency or institution of higher education is required to provide written notice to the Legislative Budget Board of a contract for professional 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 state agency or institution of higher education enters into the contract.⁸⁰⁸

Contract for Consulting Services

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. Institutions of higher education are excluded from this requirement.⁸⁰⁹

⁸⁰⁴ Texas Government Code, Sections 2262.0011 and 2262.053 (a); and the Comptroller of Public Accounts' Web page at <http://www.window.state.tx.us/procurement/prog/training-cert/>.

⁸⁰⁵ Texas Government Code, Section 2262.001 (3).

⁸⁰⁶ Texas Government Code, Sections 2262.0011 (a) and 2262.053 (c).

⁸⁰⁷ Texas Government Code, Sections 2262.0011 and 2262.051 (a).

⁸⁰⁸ Texas Government Code, Section 2254.006.

⁸⁰⁹ Texas Government Code, Section 2254.0301, as amended by SB 5 (82nd Legislature, Regular Session).

Contracting with Former or Retired Agency Employees

A state agency or institution of higher education 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 or institution of higher education who was employed by the agency or institution of higher education within the last 12 months if appropriated money will be used to make payments under the contract.⁸¹⁰

An agency or institution of higher education may not enter into a contract with the following people unless its governing board votes in an open meeting 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 or institution of higher education.
- A person who, during the previous four years, served as the executive director of the agency or institution of higher education.
- A person who employs a current or former executive head of a state agency or institution of higher education.⁸¹¹

Agencies and institutions of higher education 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 or institution of higher education within one year of the employee's leaving the agency or institution of higher education. 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 or institution of higher education.⁸¹²

“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.⁸¹³

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 or institution of higher education employment, date of termination from employment, and annual compensation at the time of termination.⁸¹⁴

⁸¹⁰ Texas Government Code, Section 2252.901 (a).

⁸¹¹ Texas Government Code, Section 669.003.

⁸¹² Texas Government Code, Section 2252.901 (a).

⁸¹³ Texas Government Code, Section 2252.901 (d) (1).

⁸¹⁴ Texas Government Code, Section 2254.033 (a).

The U.S. Internal Revenue Service's definitions and rules distinguish between an independent contractor and an employee.⁸¹⁵ Agencies and institutions of higher education 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.⁸¹⁶

In addition, no appropriated funds can be used by state agencies or institutions of higher education to enter into a contract with an independent audit entity for audit services except as specified in Article IX, Section 6.20 (b), of the General Appropriations Act.⁸¹⁷

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:

- \$15,000 for a state agency.
- \$25,000 for an institution of higher education other than a public junior college.⁸¹⁸

Before a state agency or institution of higher education can enter into a major consulting services contract, the agency or institution of higher education must:

- Notify the Legislative Budget Board and the Governor's Budget and Planning Office that the agency or institution of higher education 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 or institution of higher education has complied or will comply with Texas Government Code, Sections 2254.026 and 2254.027 (summarized under "Use of Consultants by State Agencies and Institutions of Higher Education").

⁸¹⁵ *Independent Contractor or Employee*, Internal Revenue Service Publication 1779 (Rev 8-2008).

⁸¹⁶ Texas Government Code, Section 321.020 (a).

⁸¹⁷ General Appropriations Act (82nd Legislature, Regular Session), Article IX, Section 6.20.

⁸¹⁸ Texas Government Code, Section 2254.021(2).

- Obtain a finding of fact from the Governor’s Budget and Planning Office that the consulting services are necessary.⁸¹⁹

Institutions of higher education are not required to meet the preceding requirements for major consulting contracts if the institution of higher education includes in the invitation for consulting services, published under the Texas Government Code, Section 2254.029, an explanation of the finding by the chief executive officer of the institution of higher education that the consulting services are necessary.⁸²⁰

In addition, for major contracts, an agency or institution of higher education 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 or institution of higher education must send out invitations soliciting consultants to submit competitive bids. The invitation must provide the name of a contact within the agency or institution of higher education, the closing date for receipt of bids, and the procedures by which the award will be made.⁸²¹

No later than 20 days after a contract has been awarded, the agency or institution of higher education 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.⁸²²

Use of Consultants by State Agencies and Institutions of Higher Education

A state agency or institution of higher education may use a consultant only if there is a substantial need for such services and the agency’s or institution of higher education’s own staff or another agency’s or institution of higher education’s consulting services cannot adequately do the job.⁸²³ The 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.⁸²⁴

⁸¹⁹ Texas Government Code, Section 2254.028 (a).

⁸²⁰ Texas Government Code, Section 2254.028 (c), as amended by SB 5 (82nd Legislature, Regular Session).

⁸²¹ Texas Government Code, Section 2254.029 (a).

⁸²² Texas Government Code, Section 2254.030.

⁸²³ Texas Government Code, Sections 2254.026

⁸²⁴ Texas Government Code, Sections 2254.026 and 2254.027.

Chapter 23 *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.⁸²⁵ 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.⁸²⁶

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.⁸²⁷

⁸²⁵ Texas Government Code, Section 651.007 (b).

⁸²⁶ Texas Government Code, Section 651.007 (a).

⁸²⁷ Texas Government Code, Section 651.007 (b).

Exit Survey Reporting and Disclosure Requirements

Summarized quarterly reports are available for 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 Senate Committee on Finance and House Committee on Appropriations by December 15 before each year of a regular legislative session.⁸²⁸

Individual exit survey responses are not subject to disclosure under Texas Government Code, Chapter 552, including responses furnished to the agency. The responses may be disclosed only to a law enforcement agency in a criminal investigation or by court order.⁸²⁹

Human Resources Management Plan

The Department of Family and Protective Services is required to develop a Human Resources Management Plan designed to improve employee morale and retention. The plan must focus on reducing employee turnover through better management. In addition, 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.⁸³⁰

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.⁸³¹ 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.⁸³² 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.⁸³³

⁸²⁸ Texas Government Code, Section 651.007 (e) and (i).

⁸²⁹ Texas Government Code, Section 651.007 (g).

⁸³⁰ General Appropriations Act (82nd Legislature, Regular Session), Article II, Department of Family and Protective Services, Rider 11.

⁸³¹ Texas Government Code, Section 670.002.

⁸³² Texas Government Code, Section 670.001.

⁸³³ Texas Government Code, Section 670.003 (a).

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 state agency or institution of higher education. An employee's home may not be considered his or her regular place of business without the written approval of the administrative head of the state agency or institution of higher education.⁸³⁴ 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.⁸³⁵ A full-time salaried employee in a state agency or institution of higher education may not be employed in a position for less than 40 hours in a workweek.⁸³⁶

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.⁸³⁷ The chief administrator of a state agency or institution of higher education 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.⁸³⁸

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.⁸³⁹

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.⁸⁴⁰

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.⁸⁴¹

⁸³⁴ Texas Government Code, Section 658.010.

⁸³⁵ Texas Government Code, Section 658.005 (a).

⁸³⁶ Texas Government Code, Section 658.002 (a).

⁸³⁷ Texas Government Code, Section 658.005 (a).

⁸³⁸ Texas Government Code, Section 658.002 (b).

⁸³⁹ Texas Government Code, Section 658.005 (b) and (c).

⁸⁴⁰ Texas Government Code, Section 658.007 (a).

⁸⁴¹ Texas Government Code, Section 658.006; and Texas Office of the Attorney General, Opinion M-1058 (1972).

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.⁸⁴²

Voluntary Work Reduction Program

To increase state efficiency while reducing the cost of state government, a state agency or institution of higher education may create a work reduction program in which a full-time state employee of the state agency or institution of higher education agrees to accept reduced wages and benefits for a proportionate reduction in work hours. State agencies and institutions of higher education that have this program shall place a notice of the program's availability in common areas of the state agency or institution of higher education. 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.⁸⁴³

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 552.023.⁸⁴⁴ 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.⁸⁴⁵

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.⁸⁴⁶ 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.⁸⁴⁷ Unless specifically allowed by state law, an agency or institution of higher education may not charge an individual to correct his or her information.⁸⁴⁸

⁸⁴² Texas Government Code, Section 605.001.

⁸⁴³ Texas Government Code, Sections 658.003 and 658.004 (a).

⁸⁴⁴ Texas Government Code, Section 559.002.

⁸⁴⁵ Texas Government Code, Section 559.003 (a).

⁸⁴⁶ Texas Government Code, Section 559.003 (b).

⁸⁴⁷ Texas Government Code, Section 559.004.

⁸⁴⁸ Texas Government Code, Section 559.005 (a).

Workforce Planning

As part of their strategic plans, state agencies are required to conduct staffing analyses and develop workforce plans.⁸⁴⁹ 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, office of the governor and lieutenant governor, and agencies within the judicial and legislative branches are excluded from this requirement, but they are encouraged to conduct such planning.⁸⁵⁰

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/>.

⁸⁴⁹ Texas Government Code, Section 2056.0021.

⁸⁵⁰ Texas Government Code, Sections 2056.001 and 2056.0021.

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:

- Office of the Attorney General of Texas opinions and letter opinions.
- Office of the Comptroller of Public Account's *Payroll Policies and Procedures Guide*.
- General Appropriations Act (82nd Legislature, Regular Session).
- State Auditor's Office leave interpretation letters.
- Texas Administrative Code.
- Texas Code of Criminal Procedures.
- 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 Occupations Code.
- Code of Federal Regulations.
- Internal Revenue Code
- United States Code.
- United States Supreme Court cases.

Project Information

Fieldwork was conducted from May 2011 through October 2011. 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.

The following members of the State Auditor's staff were involved in creating this Inventory:

- Sharon Schneider, PHR (Project Manager)
- Juliette Torres, CCP, PHR
- Dana Musgrave, MBA (Quality Control Reviewer)
- 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 resources-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
	Comptroller of Public Accounts	(512) 463-3952, (512) 463-9009, or (512) 475-5615 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
Health Insurance	Employees Retirement System	(512) 867-7711 (877) 275-4377 (toll free) http://www.ers.state.tx.us/support/
Holidays	Comptroller of Public Accounts	(512) 463-3952, (512) 463-9009, or (512) 475-5615 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/twcnnumbers.html
Longevity	Comptroller of Public Accounts	(512) 463-3952, (512) 463-9009, or (512) 475-5615 http://www.cpa.state.tx.us/contact.html
Payroll	Comptroller of Public Accounts - Payroll	(512) 463-3952, (512) 463-9009, or (512) 475-5615 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/support/
	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
Unemployment Insurance	Texas Workforce Commission	(512) 340-4300 (800) 939-6631 (toll free) http://www.twc.state.tx.us/ui/bnfts/offices.html

Agencies Responsible for Human Resources-related Subjects		
Topic	Office to Contact	Phone Number
Veterans' Benefits	Texas Veterans Commission	(512) 463-5538 (800) 252-8387 (toll free) http://www.tvc.state.tx.us/ContactUs.html
Workers' Compensation	Division of Workers' Compensation at the 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 (877) 445-0006 (toll free) http://www.sorm.state.tx.us/About_Us/contact_us.php

Entitlements for State Agency Employees

Table B

Entitlements for State Agency Employees					
Employment Status ^a	Vacation Leave Accrual ⁸⁵¹	Sick Leave Accrual ⁸⁵²	State Service Credit ⁸⁵³	Longevity Pay ⁸⁵⁴	Holidays ⁸⁵⁵
Classified Full-time	Yes	Yes	Yes	Yes	Yes
Classified Part-time	Yes, proportionate to the number of hours scheduled to work.	Yes, proportionate to the number of hours scheduled to work.	Yes	No	Yes, proportionate to the number of hours scheduled to work.
Exempt Full-time	Yes	Yes	Yes	Yes	Yes
Exempt Part-time	Yes, proportionate to the number of hours scheduled to work.	Yes, proportionate to the number of hours scheduled to work.	Yes	No	Yes, proportionate to the number of hours scheduled to work.
Unclassified Full-time	Yes	Yes	Yes	Yes	Yes
Unclassified Part-time	Yes, proportionate to the number of hours scheduled to work.	Yes, proportionate to the number of hours scheduled to work.	Yes	No	Yes, proportionate to the number of hours scheduled to work.
Temporary Classified/Unclassified/Exempt (Full-time)	Yes	Yes	Yes	No	Yes
Temporary Classified/Unclassified/Exempt (Part-time)	Yes, proportionate to the number of hours scheduled to work.	Yes, proportionate to the number of hours scheduled to work.	Yes	No	Yes, proportionate to the number of hours scheduled to work.
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. Temporary positions also include seasonal employees. Contract positions are filled by independent contractors, temporary workers supplied by staffing companies, contract company workers, and consultants.					

⁸⁵¹ Texas Government Code, Section 661.152.

⁸⁵² Texas Government Code, Section 661.202.

⁸⁵³ Texas Government Code, Section 659.046.

⁸⁵⁴ Texas Government Code, Sections 659.041, 659.042, and 659.043.

⁸⁵⁵ Texas Government Code, Sections 662.005 and 662.008.

Entitlements for Employees of Institutions of Higher Education

Table C

Entitlements for Employees of Institutions of Higher Education ^a					
Employment Status	Vacation Leave Accrual ⁸⁵⁶	Sick Leave Accrual ⁸⁵⁷	State Service Credit ⁸⁵⁸	Longevity Pay ⁸⁵⁹	Holidays ⁸⁶⁰
Regular Staff Employee (Full-time)	Yes	Yes	Yes	Yes	Yes
Regular Staff Employee (Part-time)	Yes, proportionate to the number of hours scheduled to work.	Yes, proportionate to the number of hours scheduled to work.	Yes	No	Yes, proportionate to the number of hours scheduled to work.
Faculty (Full-Time or Part-Time) 20 Hours or More	No, except those employed for 12 calendar months.	Yes, proportionate to the number of hours scheduled to work.	Yes	No	Yes, proportionate to the number of hours scheduled to work.
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 Texas Office of the Attorney General, Opinion JM-407 (1985).

⁸⁵⁶ Texas Government Code, Section 661.152.

⁸⁵⁷ Texas Government Code, Section 661.202.

⁸⁵⁸ Texas Government Code, Section 659.046.

⁸⁵⁹ Texas Government Code, Sections 659.041, 659.042, and 659.043.

⁸⁶⁰ 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 besides his or her regular pay. Table D lists the various pay entitlements to which 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 in Which the Employee is Permitted to Remain on the Payroll to Expend Accrued Vacation	Any Separation in Which the Employee Is Not Permitted to Remain on the Payroll to Expend Accrued Vacation	Death (Payment to estate)
Lump-Sum Payment for Accrued Vacation Leave	No, since the employee is allowed to remain on the payroll to expend accrued vacation leave	Yes ^a	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	Yes, for ½ sick leave hours not to exceed 336 hours
Further Accrual of Vacation Leave	No	Not applicable	Not applicable
Further Accrual of Sick Leave	No	Not applicable	Not applicable
Lump-Sum Payment for Accrued State Compensatory Time ^b	No ^b	No ^b	No ^b
Lump-Sum Payment for Accrued FLSA Compensatory Time	Yes	Yes	Yes
Payment for Longevity or Hazardous Duty	Yes	Not applicable	No
Holiday	Yes	Yes ^c	Yes ^c
General Salary Increase	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 vacation and sick leave transferred to their new employer.⁸⁶¹ 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 vacation and sick leave reinstated, depending on the length of separation from the state.⁸⁶² Table E lists these entitlements, including the transfer or reinstatement of state compensatory time and Fair Labor Standards Act (FLSA) overtime. For additional information regarding leave balances and leave transfers (and for all references to related statutes), refer to the General Leave Provisions chapter 11 of this Inventory.

Table E

Transfer and Rehire Leave Reinstatement Entitlements				
Employment Status	Transfer or Reinstatement of Vacation 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 vacation 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. ^C
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 vacation leave balance upon termination.	Yes. As long as the employee is re-employed by another state agency or institution within 12 months.	No.	No. FLSA overtime must be paid by employer from which the employee transferred. ^C
Employee Transfers to Another State Agency as a Result of a Legislative Mandate.	Yes. All remaining vacation 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. ^d	Yes. ^d
<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 re-employed by the same agency or institution within 12 months may only have 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 must be paid unused FLSA compensatory time upon termination with an employer.</p> <p>^d Texas Government Code, Section 662.0071, provides the specific situations in which agencies may agree to transfer employee compensatory balances.</p>				

⁸⁶¹ Texas Government Code, Sections 661.153 and 661.204.

⁸⁶² Texas Government Code, Sections 661.062 and 661.205.

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