

**Texas Tech University System  
Regulation 07.12**

**Employee Leave**

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## 1. Purpose

- a. The Texas Tech University System (“System”) and its component universities (each a “University”) are committed to the recruitment, development, and retention of an effective workforce and compliance with applicable federal and state employment laws and regulations. The purpose of this regulation is to establish policies for all forms of leave available to all System and University employees.

## 2. General Provisions

- a. *Applicability.* University employees are entitled to leave pursuant to this regulation and applicable federal and state law. Throughout this regulation, applicability is set forth at the beginning of each section for each type of leave. For Employees with employment contracts, the provisions of this regulation will apply except to the extent they are in conflict with the express written terms of the Employee’s contract. Each University shall adopt this regulation through an Operating Policy and Procedure expressly referencing this regulation.
- b. *System Administration Employees.* Texas Tech University provides human resources services for the Texas Tech University System Administration. For purposes of this regulation, employees of the Texas Tech University System Administration are considered employees of Texas Tech University.
- c. *Controlling Law.* The Universities provide all forms of employee leave as required or permitted by applicable federal and Texas law. In the event of any conflict between this regulation and the requirements of applicable law, the law shall control.
- d. *Right to Change Policy.* The System reserves the right to interpret, change, modify, amend, or rescind this regulation, in whole or in part, at any time, without prior notice or consent of employees.

## 3. University Policies and Procedures

- a. *Reporting Leave.* Employees are required to report hours worked and leave usage in a manner and form prescribed by their employing University in order to meet the payroll processing deadlines.
- b. *University Leave Policies.* Each University has adopted an Operating Policy and Procedure (“OP”) that adopts this regulation and may, at the University’s discretion, set forth additional information regarding the reporting or other implementation hereof (including the attachment or links to relevant forms). These OPs are available at the following links:

<b>UNIVERSITY</b>	<b>OPERATING POLICY/PROCEDURE</b>
<i>Angelo State University</i>	<a href="#">ASU OP 52.01</a>
<i>Midwestern State University</i>	<a href="#">MSU OP 52.75</a>
<i>Texas Tech University (and System Administration)</i>	<a href="#">TTU OP 70.01</a>
<i>Texas Tech University Health Sciences Center</i>	<a href="#">TTUHSC OP 70.01</a>
<i>Texas Tech University Health Sciences Center El Paso</i>	<a href="#">TTUHSC El Paso OP 70.01</a>

#### 4. Holidays

- a. *Applicability.* This Section 4 applies to the University’s Regular Employees.<sup>1</sup> This holiday policy is provided pursuant to, and is subject to the provisions of, Texas Government Code § 662.011 and other applicable provisions of Texas Government Code, Chapter 662.
- b. *Annual University Holiday Schedule.* The holiday schedule for each University is approved annually or biannually by the System Board of Regents. Holiday schedules may, at the Board’s discretion, vary among the Universities and differ from those of other Texas state agencies. University holiday schedules are made available after Board approval at the following links:

<b>UNIVERSITY</b>	<b>LINK</b>
<i>Angelo State University</i>	<a href="https://www.angelo.edu/faculty-and-staff/human-resources/holidayschedule/">https://www.angelo.edu/faculty-and-staff/human-resources/holidayschedule/</a>
<i>Midwestern State University</i>	<a href="https://msutexas.edu/human-resources/">https://msutexas.edu/human-resources/</a>
<i>Texas Tech University (and System Administration)</i>	<a href="https://www.depts.ttu.edu/hr/EmpBenefits/HolidaySchedule.php">https://www.depts.ttu.edu/hr/EmpBenefits/HolidaySchedule.php</a>
<i>Texas Tech University Health Sciences Center (Including Regional Sites)</i>	<a href="https://www.ttuhscc.edu/human-resources/holidays/default.aspx">https://www.ttuhscc.edu/human-resources/holidays/default.aspx</a>

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<sup>1</sup> For purposes of this Section 4, a *Regular Employee* is a benefits-eligible employee employed to work at least 20 hours per week for a period of at least four and one-half months, but excluding students employed in a position that requires student status as a condition of employment and excluding faculty on less than 12-month appointments, who follow the applicable University’s academic calendar.

Texas Tech University Health Sciences Center El Paso	<a href="https://el Paso.ttuhsc.edu/the-scope/excellence/2021-2022-holiday-schedule.aspx">https://el Paso.ttuhsc.edu/the-scope/excellence/2021-2022-holiday-schedule.aspx</a>
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c. *Paid Holiday Eligibility.* Regular Employees are eligible for paid holidays as provided herein:

- i. Non-exempt Regular Employees who are required to work on an official holiday will, at the University's sole discretion: (1) be paid for the hours worked and will be paid holiday pay at their regular rate of pay or (2) receive equivalent compensatory time off during the twelve-month period following the date of the holiday worked.<sup>2</sup> A non-exempt Regular Employee is entitled to the same holidays with pay as an exempt Regular Employee. An employee working an irregular schedule during a workweek in which a holiday occurs is entitled to the same number of holiday hours as an employee working the schedule that is normal for most University employees. A part-time Regular Employee is entitled to holiday hours on a pro rata basis, proportional to their assigned FTE.
- ii. A new employee who begins working for the University on the first Workday<sup>3</sup> of a month is entitled to be paid for an official University holiday that occurs before the first Workday if the holiday occurs during the month of hire and does not fall on a Saturday or Sunday.
- iii. An employee who stops working for the University on the last Workday of a month is entitled to be paid for an official University holiday that occurs after the last Workday if the holiday occurs during the month of termination and does not fall on a Saturday or Sunday.
- iv. If a state or national holiday occurs between the dates an employee terminates from the University and begins employment with another state agency or institution of higher education without a break in service, the agency or institution of higher education to which the employee transfers is responsible for paying the employee for the holiday, regardless of whether the agency or institution of higher education that receives the new employee recognizes the holiday.
- v. When an official University holiday occurs during an employee's approved leave with pay, it shall not be charged against the employee's accrued leave. Official University holidays occurring during an employee's approved leave without pay will not be paid and will not interrupt the leave without pay status.

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<sup>2</sup> If the University elects to grant employees compensatory time, the employee and their supervisor must mutually agree on the date and time that the employee will take such compensatory time.

<sup>3</sup> For purposes of this Section 4, *Workday* means a day on which an employee is normally scheduled to work. The term does not include a national or state holiday.

- vi. An employee is entitled to be paid for an official University holiday that falls mid-month, provided the employee is in a paid status (work or paid leave) for any portion of both the Workday before and the Workday after the holiday.
- vii. An employee is entitled to be paid for an official University holiday that falls on the first Workday of a month, provided the employee is in a paid status (work or paid leave) for any portion of the first Workday after the holiday.
- viii. An employee is entitled to be paid for an official University holiday that falls on the last Workday of a month, provided the employee is in a paid status (work or paid leave) for any portion of the last Workday before the holiday.
- ix. An employee is entitled to observe Rosh Hashanah, Yom Kippur, Cesar Chavez Day, and/or Good Friday as optional holidays, provided the holidays do not fall on a Saturday or Sunday. Any work time missed must be made up pursuant to Texas Government Code § 662.006, charged to accrued vacation leave, or taken as leave without pay if no applicable leave is available.
- x. An individual must be an employee on the Workday before and after an official University holiday in order to be paid for that holiday, unless the holiday falls on the employee's first or last Workday of the month.

d. *Holiday Comp for TTUHSC and TTUHSC El Paso Employees.*

- i. Regular Employees of Texas Tech University Health Sciences Center (“TTUHSC”) and Texas Tech University Health Sciences Center El Paso (“TTUHSC El Paso”) receive three (3) fewer pre-set holidays than employees of the System’s general academic institutions in the Board-approved holiday calendars. In lieu of such pre-set holidays, Regular Employees of TTUHSC and TTUHSC El Paso will accrue two (2) hours of holiday comp each month (24 hours annually).
- ii. Holiday comp must be used within 12 months of the actual accrual; therefore, an employee’s holiday comp balance will never exceed 24 hours. Part-time benefit eligible employees will receive a pro-rata accrual based on FTE. Upon separation from employment, the employee will be paid for any holiday comp balance.
- iii. Holiday comp leave is to be requested in advance, in compliance with departmental procedures, and must be approved and scheduled by the employee’s department administrator or designee in consideration of the needs of the department and the preferences of the employee to the extent possible.

5. Vacation Leave

- a. *Applicability.* This Section 5 applies to the University’s Regular Employees.<sup>4</sup> This leave is provided pursuant to, and subject to the provisions of, Texas Government Code § 662.152, *et seq.*
- b. *Accrual of Vacation Leave by Full-Time Employees.* Full-time Regular Employees, other than regular faculty employees with appointments of less than 12 months, will earn vacation leave in accordance with the following schedule:

<b>Total State Employment</b>	<b>Hours Accrued per Month</b>	<b>Maximum Hours to Carry Forward to Next FY</b>
More than 0 but less than 2 years	8	180
At least 2 but less than 5 years	9	244
At least 5 but less than 10 years	10	268
At least 10 but less than 15 years	11	292
At least 15 but less than 20 years	13	340
At least 20 but less than 25 years	15	388
At least 25 but less than 30 years	17	436
At least 30 but less than 35 years	19	484
At least 35 years	21	532

- c. *Accrual of Vacation Leave by Part-Time Employees.* Part-time Regular Employees, other than regular faculty employees with appointments of less than 12 months, will earn a pro rata vacation leave based upon the percent of time worked.
- d. *Accrual of Vacation Leave by Certain Return-to-Work Retirees.* The vacation leave accruals for a regular return-to-work retiree who retired on or after June 1, 2005, and who receives an annuity based wholly or partly on state service, are based upon the length of state employment after the date of retirement.
- e. *Accrual of Vacation Leave by Faculty with Full-Time, 12-Month Appointment.* A regular faculty member with a full-time appointment for 12 months (as faculty, staff, or a combination) who observes the administrative work schedule may also earn

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<sup>4</sup> For purposes of this Section 5, a *Regular Employee* is a benefits-eligible employee 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.

vacation leave on the total appointment in accordance with the above schedule, subject to the approval of the appropriate academic dean.

- f. *Accrual of Leave Time by Other Faculty.* In lieu of accruing vacation leave, a faculty member appointed on a less than 12-month basis is granted leave time at the end of each semester and observes the student holiday schedule.
- g. *Commencement of Accrual.* An employee will earn vacation leave beginning on the first day of employment and terminating on the employee's last physical day on the job. A person who begins work on the first workday of the month will be considered to have an employment date of the first day of the month. Credit for one month's accrual will be given for each month or fraction of a month of employment with the state. Service in a public school district, community, or junior college is not considered state service.
- h. *Accrual Rate Increase.* Credit for the higher rate of accrual as shown on the chart above will be given on the first calendar day of the month if the employee's anniversary date falls on the first calendar day of the month; otherwise, the increase will occur on the first calendar day of the following month. If an employee begins working in a position that accrues vacation leave on the first workday of the month, the employee is deemed to have begun working on the first calendar day of the month.
- i. *Six Month Vacation Leave Waiting Period.* Vacation leave may not be granted until the employee has had continuous employment with the state (whether benefits-eligible or not) for six (6) months, although credit will be accrued during that period. Any full calendar month of leave without pay will not be included in the calculation of the six months of continuous employment. An employee who has completed six (6) months of continuous state employment and leaves state employment is eligible to take vacation as it is earned upon re-employment without completion of another six-month eligibility period.
- j. *Use of Vacation Leave.* Vacation leaves are to be requested in advance and will be scheduled by the employee's administrative officer according to the needs of the department, with consideration for the employee's preference whenever possible. Vacation leave taken in excess of the employee's accrued balance is not allowed. Exempt employees who have otherwise worked 40 hours in a workweek do not need to record minor increments of vacation leave (3 hours or less); but the exempt employee is responsible for securing approval from their supervisor prior to taking such leave. An employee's regular work hours and schedule are set, and may be temporarily adjusted, in accordance with applicable University operating policies and with the approval of the employee's supervisor.
- k. *Holidays Not Charged Against Vacation Accrual.* Time during which an employee is excused from work for an official University holiday will not be charged against the employee's vacation accrual.

- l. *Maximum Use.* An employee may not have a negative vacation leave balance at any time. In the event an employee does not have enough time accruals to cover an absence, it must be reported as leave without pay.
- m. *Use of Leave Accrued While on Leave.* An employee who is on leave on the first workday of a month may not take vacation leave accrued for that month until the employee has returned to duty.
- n. *Carry Forward of Unused Balance.* The net balance of unused accumulated vacation leave, not to exceed the maximum cited above, will be carried forward from one fiscal year to the next fiscal year. The maximum carry-over for a regular part-time employee will be proportional to the percent of time worked. All hours of unused accumulated vacation that are in excess of the maximum cited above will be credited to the employee's sick leave balance as of the first day of the next fiscal year, effective September 1, 1992.
- o. *Eligibility for Accrued Vacation Payout Upon Separation.* A Regular Employee, continuously employed with the state for six (6) months, will be paid for vacation time duly accrued at the time of separation from state employment. An employee who separates before completing six (6) months of continuous state employment will lose any accumulated vacation credit. For purposes of this section, separation from state employment occurs when an employee:
  - i. Leaves one state agency to begin working for another state agency, if one (1) or more workdays occur between the two (2) employments;
  - ii. Moves from a position in a state agency that accrues vacation time to a position in that agency that does not accrue vacation time, if the agency agrees to pay the employee for the accrued balance of the employee's vacation time;
  - iii. Moves from a position in a state agency that accrues vacation time to a position in another state agency that does not accrue vacation time, if the other state agency refuses to credit the employee for the balance of the employee's vacation time as of the date of the move;
  - iv. Moves from a position in a state agency that does not accrue vacation time to a position in another state agency that does not accrue vacation time, if the other state agency is not authorized or refuses to credit the employee for the balance of the employee's vacation time as of the date of the move; or
  - v. Holds two (2) or more positions and separates from one (1) that accrues vacation time, if the agency agrees to pay the employee for the accrued balance of the employee's vacation time.
- p. *Procedure for Payout of Accrued Vacation Upon Separation.* Vacation time paid upon separation (defined above) will be paid in a lump sum, but not before the final regular



paycheck is issued. Exceptions to this policy may be approved by the University's chief human resources officer or their designee in accordance with the following principles:

- i. In lieu of a lump sum payment, vacation leave may be used to extend the employee's separation date to facilitate the payment of the employee in cases where a salary check has already been prepared, and the payment of the accrued vacation credit by lump sum would require reissuing a salary check. Vacation leave may be extended beyond the last calendar day of the month or pay period in which the employee last worked only if approved by human resources in agreement with the department.
  - ii. In lieu of a lump sum payment, vacation leave may be used to extend the employee's separation date to facilitate a transfer between Universities or any other State of Texas agency without a break in service. In such cases, the vacation leave may be extended into the next month, if necessary, to facilitate uninterrupted state service.
- q. *Payout in Certain Transfer Circumstances.* An employee who transfers from a vacation-accruing status to a status that does not accrue vacation should use all accumulated vacation leave before the transfer. If it is not possible to do so, the employee will be paid for accrued, but unused, accumulated vacation. The vacation payment will not include any holidays that would fall within the period covered by the vacation time. The rate of pay to be used in the calculation is the rate at the time the person ceases to accrue vacation. An employee transferring between two University departments or state agencies will have their accrued, but unused, vacation leave balance transferred if their employment with the state is uninterrupted and they have not been paid for their vacation leave under the preceding subsection.
- r. *Payout of Accrued Vacation Upon Death.* Upon the death of an employee, all accrued vacation will be paid to the employee's estate as a death benefit, provided the employee has had continuous employment with the state for six (6) months.

## 6. Sick Leave

### a. *General Provisions.*

- i. *Applicability.* Unless expressly stated otherwise, this Section 6 applies only to the University's Regular Employees.<sup>5</sup> This leave is provided pursuant to, and subject to the provisions of, Texas Government Code § 661.201, *et seq.*
- ii. *Eligibility for Sick Leave Accrual.* Regular Employees will earn sick leave beginning on the first day of employment and terminating on the last day of duty.

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<sup>5</sup> For purposes of this Section 6, a *Regular Employee* is a benefits-eligible employee 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.

- iii. *Sick Leave Accrual.* A full-time Regular Employee will earn sick leave at the rate of eight (8) hours for each month or fraction of a month of employment. Unused sick leave will be accumulated and carried forward each month. Part-time Regular Employees will earn sick leave on a proportionate basis. Sick leave accrual will terminate on the employee's last physical day on the job. Workers employed by multiple agencies cannot accrue sick leave at a rate that exceeds that of a full-time, 40-hour-per-week employee.
  
- iv. *Definitions.* For purposes of sick leave under this Section 6.a, the following terms shall have the described meanings:
  - 1. *Documented Medical Condition.* A Documented Medical Condition exists when the employee submits a licensed practitioner's certification to the University's human resources office or their designee, or their supervisor, as applicable, as to the nature of the sickness, injury, or confinement due to pregnancy.
  
  - 2. *Immediate Family Member.* For sick leave purposes, "Immediate Family" is defined as those individuals who reside in the same household and are related by kinship, adoption, or marriage, as well as foster children certified by the Texas Department of Protective and Regulatory Services; and minor children of the employee, whether or not living in the same household. An employee's use of sick leave for family members not residing in that employee's household is strictly limited to the time necessary to provide care and assistance to a spouse, child, or parent of the employee who needs such care and assistance as direct result of a Documented Medical Condition.
  
  - 3. *Sickness or Injury.* For purposes of using sick leave, sickness or injury includes an absence required for medical, dental, or optical examination or treatment; or for physical therapy and laboratory work or tests as ordered by a licensed practitioner.
  
- v. *Use of Sick Leave.* Regular employees will be entitled, without deduction in salary, to use sick leave when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty or when the employee is needed to care for and assist a member of the employee's Immediate Family who is sick, subject to the following conditions:
  - 1. Sick leave with pay may be taken when sickness, injury, or pregnancy prevents an employee's performance of duty or when the employee is needed to care for and assist a member of their Immediate Family who is actually ill. An employee who has been awarded leave under the Family and Medical Leave Act (FMLA) may use sick leave for the birth

of a child or adoption of a child under three (3) years of age, regardless of whether the child is ill at birth or at the time of adoption.

2. An employee's use of sick leave to care for and assist family members not included in the definition of Immediate Family Member, above, is strictly limited to the time necessary to provide care and assistance to a spouse, child, or parent of the employee who needs the care and assistance as a direct result of a Documented Medical Condition.
3. An employee who is on leave on the first day of a month may not use the sick leave the employee accrues for that month until after the employee returns to duty.
4. To be eligible for accumulated sick leave with pay during a continuous period of more than three (3) working days, the employee must provide to their University's human resources office or their designee, or their supervisor as applicable, a statement from a health care provider or another written statement of the facts concerning the condition that indicates the employee was required to be off work due to sickness, injury, or pregnancy that prevented the employee from performing their duty, or that the employee was needed to care for and assist a member of their Immediate Family who is actually ill. This statement must further identify the dates the employee was unavailable to work. If the reason for the absence from work involves a serious health condition or a disability or there is some other administrative need for additional information, human resources may require additional documentation or information. If continued absence is expected, the statement should come from a health care provider and set forth the expected duration of the absence and reason for it. Absences lasting longer than three (3) days or that are expected to happen on an intermittent basis for the same reason over a period of time may be eligible under the Family and Medical Leave Act (FMLA). An employee or the employee's supervisor may request that human resources send an FMLA packet at any time based on a request to use sick leave.
5. When an official holiday occurs during a paid sick leave, the holiday will not be charged against sick leave if the employee is eligible for holiday pay in accordance with the holiday policy set forth above. The University police departments do not observe the official holiday schedule and, therefore, are excluded from this provision.
6. Malingering and other abuses of sick leave may constitute grounds for dismissal from employment subject to Texas Tech University System Regulation 07.07 *Employee Conduct, Coaching, Corrective Action, and Termination*. Taking sick leave to work for another employer will be considered abuse of sick leave. Taking sick leave for vacation days or

for purposes other than permitted in this policy is prohibited and may constitute grounds for disciplinary action, up to and including dismissal for employment. The University's human resources office or their designee, or employee's supervisor may require a physician's statement for absences of three (3) working days or less.

7. An employee who is the parent of a child who is a student attending a grade from prekindergarten through 12th may use up to eight (8) hours of sick leave each fiscal year to attend educational activities of their children, in accordance with the *Educational Activities Leave* policy set forth below.
  8. Exempt employees who have otherwise worked 40 hours in a workweek do not need to record minor increments of sick leave (3 hours or less); but the exempt employee is responsible for securing approval from their supervisor prior to taking such leave. An employee's regular work hours and schedule are set, and may be temporarily adjusted, in accordance with applicable University operating policies and with the approval of the employee's supervisor.
- vi. *Required Sick Leave Notice and Reporting.* An employee who must be absent from duty because of sickness, injury, or pregnancy shall notify their supervisor at the earliest practicable time and in accordance with departmental call-in procedures. The employee should make a reasonable effort to schedule health care provider appointments to minimize disruptions to the department's operations and should notify their supervisor as soon as possible after the appointment is made. Unless, otherwise agreed upon, the employee will report their status to their supervisor at least every two (2) weeks or more frequently if instructed to do so. This applies to all types of sick leave usage, including Sick Leave Pool, Family and Medical Leave, Parental Leave, etc. Failure to report will be grounds for termination of employment. Each University may adopt University-level and department-level procedures and policies regarding required sick leave notice and reporting (e.g., the number of consecutive sick leave days used by a Regular Employee before reporting to human resources).
- vii. *Employee Separation and Sick Leave Accruals.*
1. An employee transferring between University departments or state agencies will retain unused sick leave, provided service is uninterrupted.
  2. An employee separated from state employment under a formal Reduction in Force<sup>6</sup> is entitled to have their sick leave balances restored if re-employed by the state within twelve (12) months after the end of the month in which they were separated from state employment if they

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<sup>6</sup> Reductions in Force are governed by [Texas Tech University System Regulation 07.08](#).

do not contribute the unused balance to the Sick Leave Pool when they leave employment.

3. An employee separated from state employment for reasons other than a Reduction in Force who has not contributed any unused sick leave balances to the Sick Leave Pool is entitled to have their sick leave balances restored if they are re-employed by the same state agency or institution of higher education within twelve (12) months after the end of the month in which they were separated from state employment (but only if there has been a break in employment with the state of at least thirty [30] calendar days) or they are re-employed by a different state agency or institution of higher education within twelve (12) months after the end of the month in which they were separated from state employment.
4. An employee who retires and returns to state employment will not have their sick leave balance restored.
5. In the event of an employee's death, one-half of the employee's unused sick leave accumulation, not to exceed 336 hours, will be paid to the employee's estate as a death benefit, provided the employee has completed six (6) months of continuous employment with the state before death.
6. A member of the Teacher Retirement System, upon retirement, may be permitted to purchase one (1) additional year of membership service credit if the employee has 50 days or 400 hours of unused state sick and/or personal leave accumulated at no more than five (5) days per year. For more information about eligibility, employees should contact the Teacher Retirement System.

b. *Sick Leave Pool.*

- i. *Policy.* Each University's Sick Leave Pool is established in accordance with, and subject to the provisions of, Texas Government Code, Chapter 661, Subchapter A. The sick leave pool is intended to assist an Employee and their Immediate Family Members in dealing with Catastrophic Illnesses or Injuries that force an Employee to exhaust all available leaves.
- ii. *Definitions.* For purposes of this Section 6.b, Sick Leave Pool policy, the terms defined in the sick leave policy in Section 6.a, above, shall apply, and the following additional terms shall have the described meanings:
  1. *Catastrophic Illness or Injury* means a Severe Condition or Combination of Conditions affecting the mental or physical health of the Employee or the Employee's Immediate Family (as defined in

Section 6.a, above) that requires the services of a Licensed Practitioner for a prolonged period of time and forces the employee to exhaust all accrued leave and lose compensation.

2. *Employee* means an individual, other than a state officer,<sup>7</sup> employed by a University.
3. *Licensed Practitioner* means a practitioner, as defined in the Texas Insurance Code, who is practicing within the scope of their license.
4. *Severe Condition or Combination of Conditions* is one (or more, together) that has been designated as terminal, or one that will result in death or is a severely debilitating condition that will result in the individual not meeting the essential functions of their job if not treated promptly or at regularly scheduled intervals (e.g., stroke with residual paralysis or weakness; severe heart attack; major surgery, such as heart bypass surgery; cancer-related surgery or treatments, including but not limited to chemotherapy and radiation treatments; potentially fatal tumors; amputations; etc.).

iii. *Eligibility for Sick Leave Pool.*

1. *General Eligibility.* An Employee is eligible to use time contributed to the Sick Leave Pool if the Employee has exhausted the Employee's sick leave because of a Catastrophic Illness or Injury or a previous donation to the pool. An Employee who is off work due to an on-the-job injury or illness is not eligible to use the Sick Leave Pool.
2. *Six-Month Service Minimum.* An Employee must have completed six (6) months of state service to be eligible to utilize the Sick Leave Pool.
3. *Maximum Use of Sick Leave Pool.* An Employee may not withdraw time from the sick leave pool in an amount that exceeds the lesser of (a) one-third of the total time in the pool, or (b) 90 working days during the Employee's lifetime.
4. *Pregnancy.* Pregnancy is not considered a Catastrophic Illness or Injury unless severe illness and prolonged complications arise to either the mother or the child. Time off following the birth of a child is considered normal regardless of the method of delivery and will not be considered for Sick Leave Pool unless medical documentation shows complications that are classified as a Catastrophic Illness or Injury or a Severe

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<sup>7</sup> Texas Government Code § 661.001 defines a *state officer* as an elected or appointed officer of a state agency or executive director, and defines *executive director* to include the System chancellor and University presidents.

Condition or Combination of Conditions, as defined above, to the mother or the child after the delivery.

5. *Elective Surgeries.* Sick Leave Pool may not be used for time off for cosmetic, elective, or other non-medically necessary surgery except when life threatening conditions arise from them.
  6. *Failure to Return to Work.* If an Employee elects not to return to work for a reason not related to the Catastrophic Illness or Injury, Sick Leave Pool benefits will end.
  7. *Mandatory Refund of Sick Leave Pool Time if Ineligible.* Employees who take leave using the Sick Leave Pool are not normally required to pay back such leave. If, however, after receiving Sick Leave Pool benefits it is determined that the Employee was ineligible for those benefits, all such leave must be refunded by the Employee to the Sick Leave Pool.
- iv. *Contributing Sick Leave to the Sick Leave Pool.* Contributions to the Sick Leave Pool are strictly voluntary and must be in increments of eight (8) hours, with the exception of a retiring Employee who may contribute any unused balance. A retiring Employee may designate the number of accrued sick leave hours to be used for Teacher Retirement System service credit and the number of hours to be donated, upon retirement, to the Sick Leave Pool. An employee who contributes sick leave to the Sick Leave Pool, and then uses all of their sick leave balance in the same fiscal year may receive back and use the number of hours contributed to the Sick Leave Pool that fiscal year without suffering a catastrophic illness or injury. Otherwise, the hours contributed to the Sick Leave Pool cannot be reclaimed.
- v. *Requesting Hours from the Sick Leave Pool.*
1. A Regular Employee may apply for hours from the Sick Leave Pool by submitting completed application and physician's certification forms to human resources. The documentation must contain sufficient information to allow the sick leave pool administrator to evaluate the employee's eligibility. If eligibility cannot be determined from the documentation submitted, the application will be denied.
  2. It is the Employee's responsibility to notify their supervisor that they apply for Sick Leave Pool and their expected length of absence.
  3. Sick Leave Pool benefits cannot be used for an injury, illness, or family member other than those set forth in this policy. An Employee will not receive more than the maximum allowable Sick Leave Pool hours

during their employment with the University. Awarded Sick Leave Pool may be used only for the particular condition approved.

4. An Employee must use all of their accrued sick leave and compensatory time, and all vacation leave in excess of 80 hours, before utilizing any approved Sick Leave Pool hours.
5. The Employee must provide human resources, prior to the date the Employee is approved for the Sick Leave Pool, a written physician's certification that includes the expected duration of the absence and anticipated date of return to work as a result of the Catastrophic Illness or Injury. In addition to certification, the employee must contact their supervisor at least once every two weeks to keep the supervisor advised of the employee's situation and intent to return to work. The lack of such certification and contact with the University will be considered job abandonment.
6. The University, at its discretion, may require a second or third medical opinion from an independent health care provider of the University's choosing when reason exists to question the necessity of the employee's sick leave. All second and third medical opinions will be paid for by the University. If a third medical opinion is sought, the health care provider selected must be mutually acceptable to the Employee and the University. The third opinion will be the final opinion, and the opinion rendered will be binding on both the employee and University.
7. An Employee utilizing hours from the Sick Leave Pool will continue to accrue vacation and sick leaves but may not use the accrued leave until returning to work following the leave.
8. An Employee with a Catastrophic Illness or Injury is not required to contribute to the Sick Leave Pool before being granted leave from the pool. An employee who is granted hours from the Sick Leave Pool is not required to pay the pool back for the leave used.
9. Any unused balance of hours granted to an Employee from the Sick Leave Pool will be returned to the Sick Leave Pool if the Employee returns to work before using all hours granted. If intermittent treatment is required for the Catastrophic Illness or Injury, unused approved Sick Leave Pool benefits will be provided on an as-needed basis until the Employee recovers from that Catastrophic Illness or Injury or the benefit ends, whichever is earlier. The Employee does not need to satisfy the Catastrophic Illness or Injury definition more than once per approved application for the same Catastrophic Illness or Injury.



10. The estate of a deceased Employee is not entitled to payment for approved unused Sick Leave Pool hours.
11. Intent to return to work is not required for an employee to be eligible for the Sick Leave Pool.
12. If an Employee has more than one Sick Leave Pool event within a 12-month period, all qualifying criteria and application requirements must be met for each event in order to utilize the available hours.

vi. *Administration of the Sick Leave Pool.*

1. A single Sick Leave Pool will be administered for all Regular Employees of each University (provided, however, Texas Tech University and the Texas Tech University System Administration will administer one joint Sick Leave Pool). The University's chief human resources officer, or their designee, is responsible for administration of the University's Sick Leave Pool.
2. Requests for sick leave from the Sick Leave Pool will be submitted to the University's chief human resources officer or their designee. Human resources will have fifteen (15) workdays from the date a request and physician certification is received in which to approve all or part of the request or to deny the request.
3. Human resources will determine the number of hours granted for each Catastrophic Illness or Injury. The amount granted for each Catastrophic Illness or Injury cannot exceed one-third of the balance of hours in the pool or the maximum allowable, whichever is less. Further, an Employee may not simultaneously utilize sick Leave Pool and state or federal benefits entitlements including short or long-term disability insurance, disability, and/or retirement payments from the TRS, the Social Security Administration, or any other applicable program. All Employees utilizing Sick Leave Pool must inform human resources of qualification for disability or retirement payments and of the date such benefits begin.
4. The University's chief human resources officer, or their designee, will notify the Employee's department of the hours granted or denied. Sick Leave Pool hours will be applied to the Employee's sick leave accrual beginning the first workday following expiration of the Employee's earned paid leaves.
5. All Sick Leave Pool decisions of the University's chief human resources officer or their designee are final. However, a staff and/or faculty employee may request re-consideration of a decision to the University's

chief human resources officer or their designee on the basis of new evidence or additional medical information. Assuming the employee has exhausted all available leave, during the pendency of a re-consideration request, the employee will be on unpaid status. However, if it is determined upon re-consideration that the employee was eligible to withdraw Sick Leave Pool hours, paid status shall be applied retroactively to the original request, subject to the limitations outlined in this regulation, including, but not limited to, the employee's lifetime limit of withdrawable sick leave pool hours.

c. *Sick Leave Donation.*

- i. *Policy.* Pursuant to Texas Government Code § 661.207, a University Employee may voluntarily donate any amount of their accrued sick leave to another state Employee within the same University for reason of a Permitted Donation and Use, as defined below. The recipient Employee must (1) be employed by the same University as the donor Employee; and (2) have exhausted the Employee's sick leave, including any time the individual may be eligible to withdraw from a sick leave pool pursuant to Section 6.b, above, and sick leave received by previous donation. An Employee is expressly prohibited from providing or receiving remuneration or a gift in exchange for donated sick leave.
- ii. *Definitions.* In this Section 6.c, Sick Leave Donation policy, the following terms shall have the described meanings:
  1. *Documented Medical Condition* exists when the Employee submits a licensed practitioner's certification to the Employee's University human resources office or designee, as applicable, as to the nature of the sickness, injury, or confinement due to pregnancy.
  2. *Employee* means an individual, other than a state officer,<sup>8</sup> employed by a University.
  3. *Employee's Immediate Family* means all of the following: (a) an individual who resides in the same household as the Employee and is related to the employee by kinship, adoption, or marriage; (b) a foster child of the Employee who resides in the same household as the Employee and who is under the conservatorship of the Texas Department of Protective and Regulatory Services; and (c) a minor child of the Employee, regardless of whether the child lives in the same household.
  4. *Licensed Practitioner* means a practitioner, as defined in the Texas Insurance Code, who is practicing within the scope of their license.

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<sup>8</sup> Texas Government Code § 661.001 defines a *state officer* as an elected or appointed officer of a state agency or executive director, and defines *executive director* to include the System chancellor and University presidents.

5. *Permitted Donation and Use* includes only the following circumstances where the donor Employee may donate sick leave, and a recipient Employee may receive and use donated sick leave, when: (a) sickness, injury, or pregnancy and confinement prevent the Employee's performance of duty or when the Employee is needed to care for and assist a member of the Employee's Immediate Family who is sick; or (b) to care for and assist members of the Employee's family who are not included in the definition of Employee's Immediate Family, however, strictly limited to the time necessary to provide care and assistance to a spouse, child, or parent of the Employee who needs the care and assistance as a direct result of a Documented Medical Condition.
- iii. *Taxable Event to Donor for Donated Hours.* Sick leave donations will be considered a taxable event to the donor, unless the situation qualifies as a catastrophic illness or injury pursuant to IRS guidelines.<sup>9</sup> The donating Employee is solely responsible for the tax consequences of donated sick leave, and all Employees are advised to consult their independent attorney, accountant, or tax professional regarding tax implications prior to donating sick leave.
- iv. *Eligible Use of Donated Hours.* Employees may donate and use donated hours only for Permitted Donation and Use. Without expanding the foregoing limitation, donated sick leave will be applied in accordance with the sick leave policy set forth in Section 6.a, above, with the exception that donated hours cannot be used for service credit in the Employees Retirement System of Texas.
- v. *Solicitation of Sick Leave Donations Prohibited.* Donation of sick leave is voluntary, and employees have sole discretion in determining whether to donate their sick leave. Employees are expressly prohibited from soliciting, requesting, encouraging, or suggesting donation of sick leave from an individual that the Employee has, as part of their job duties (or should reasonably anticipate having such responsibility in the future) a duty or obligation to supervise, manage, oversee, direct, or evaluate in any way. This prohibition shall also extend to prohibit employees within human resources, payroll, or other similarly-situated departments, from soliciting, requesting, encouraging or suggesting donation of sick leave by an Employee separating from employment with the University to themselves or any other Employee within such departments. This prohibition on solicitation does not permit a University employee or department from interfering with an Employee's discretion regarding voluntary donation of sick leave.
- vi. *Procedures to Apply for Sick Leave Donation.*

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<sup>9</sup> According to PLR-152644-06, the IRS non-exhaustively lists "heart attack, cancer, etc." as major illnesses or other medical conditions requiring prolonged absence from work.

1. *Donor.* An Employee electing to donate sick leave directly to another Employee will submit a completed Sick Leave Donation Donor Form to the University's payroll department. The donor Employee can elect one of two options: (a) to donate sick leave only if such donation is considered tax exempt, or (b) to donate regardless of whether the donation qualifies as tax exempt. If donating regardless of tax exempt qualification and the donation is determined taxable, the donor Employee will be taxed for such donation on their next on-cycle payroll up to the maximum amount required by law, including Internal Revenue Code §§ 1401, 3101, and 3111.<sup>10</sup> The dollar value of the donated sick leave will be included in the donor's income reported by the University on the employee's annual Form W-2. The donor will receive notification from the University payroll department when the donation has processed, sick leave hours adjusted, and any applicable taxes applied to the next on-cycle payroll.
2. *Recipient.* The University's payroll department will notify the recipient Employee and recipient Employee's supervisor of approved eligible donated hours. The notification to the recipient Employee will include how to report donated sick leave hours used (non-exempt) or donated sick leave hours taken (exempt). A recipient Employee receiving and utilizing donor tax-exempt hours will have donated sick leave hours treated as regular pay. The recipient's Employee's standard and optional deductions will be withheld when donated sick leave hours are used and paid out. Unused sick leave donation hours cannot transfer to another agency or employee and cannot be paid out upon termination of job.
3. *Review, Approval, and Application of Donated Sick Leave Hours.* The University's human resources department will review the recipient Employee's eligibility for sick leave donation and provide a determination based on criteria provided above. The University's chief human resources officer or designee must certify the recipient Employee's eligibility for sick leave donation, and the University's payroll and tax services office must certify taxability for sick leave donation prior to the posting of any donated sick leave hours to the donor Employee and recipient Employee's sick leave balances. In the event any sick leave is so approved to an Employee within the University's human resources or payroll department, the chief human resources officer or designee will send notice to the chief financial

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<sup>10</sup> For illustrative purposes only: if donating regardless of tax exemption and the donation is determined taxable, the donor will be taxed on their next on-cycle payroll up to 29.65%, with an additional tax of 0.9% if the additional Medicare wage threshold has been met for the calendar year. Tax withholding applies as follows:

- 22% - Federal Income Tax Withholding (FIT)
- 6.2% - Social Security tax (FICA)
- 1.45% - Medicare tax (FICA)

\*Tax rates are set forth in IRC § [1401](#), [3101](#), and [3111](#) and are current for 2020.

officer at least three (3) business days prior to notice to the donor Employee and recipient Employee. The University's payroll department will determine taxability of donation once human resources approves eligibility and will apply eligible donated sick leave hours to the recipient Employee's sick leave balance. The sick leave balance will not be available for view in the employee's time sheet/leave report. The University's payroll department will notify the Employee, Employee's supervisor, and human resources office of available donated sick leave and procedures for reporting donated sick leave used. If the University's payroll department determines the donation is taxable to the donor Employee, the applicable taxes will be calculated and applied to the donor Employee's next on-cycle payroll as well as including the value of the sick leave donation in the donor Employee's reportable wage income. The donor's labor FOP(s) will be charged with the proportional FICA match, including grant funds.

vii. *Review Procedures After Sick Leave Donation Applied.* The University's payroll department will perform the following reviews to ensure sick leave donation reported meets eligibility requirements and is paid correctly:

1. Review each payroll process that includes sick leave donation hours to ensure that recipient has exhausted available Sick Leave and Sick Leave Pool.
2. Remove Sick Leave Donation available hours upon job transfer between Texas Tech University System component institutions (each an independent state agency) or upon termination.
3. Exclude sick leave donation hours from payout upon death.
4. Adjust the recipient Employee's sick leave donation balance if the recipient Employee has a pay rate change, if the donation was taxable to the donor Employee. Adjustment is required to ensure the recipient Employee's sick leave donation hours are equivalent to the gross taxable benefit given from donor Employee.

d. *Family Leave Pool.*

- i. *Policy.* Each University's Family Leave Pool is established in accordance with, and subject to the provisions of, Texas Government Code, Chapter 661, Subchapter A-1. The Family Leave Pool is intended to provide an Employee more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement; caring for a seriously ill family member or the Employee, including pandemic-related illnesses or complications caused by a pandemic; and to allow Employees to apply for leave time under the Family Leave Pool. Under this program, an Employee may

voluntarily transfer sick or vacation leave earned by the Employee to the Family Leave Pool.

ii. *Definitions.* For purposes of this Section 6.d, Family Leave Pool policy, the terms defined in the Sick Leave and Sick Leave Pool policies in Sections 6.a and 6.b, above, shall apply unless specified otherwise, and the following additional terms shall have the described meanings:

1. *Immediate Family Member* means, for the purposes of this Section only, an individual for whom the Employee is listed on the other person's birth certificate, birth facts, or adoption or foster paperwork for a child under eighteen (18) years of age, including being listed as the mother, father, adoptive parent, foster parent, or partner of the child's mother, adoptive parent, or foster parent; or for whom the Employee is the guardian of a person who is eighteen (18) years of age or older and requiring guardianship.
2. *Serious Illness* means a Severe Condition or Combination of Conditions affecting the mental or physical health of the Employee or the Employee's Immediate Family, including a pandemic related illness, that requires the services of a Licensed Practitioner for a prolonged period of time and forces the Employee to exhaust all accrued leave and lose compensation.
3. *Licensed Practitioner* means a practitioner, as defined in the Texas Insurance Code, who is practicing within the scope of their license.

iii. *Eligibility for Family Leave Pool.*

1. *General Eligibility.* An Employee is eligible to use time contributed to the Family Leave Pool if the Employee has exhausted the Employee's sick and vacation leave because of the birth of a child; the placement of a foster child or adoption of a child under 18 years of age; the placement of any person 18 years of age or older requiring guardianship; a Serious Illness to an Immediate Family Member or the Employee, including a pandemic-related illness; an extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member; or a previous donation of time to the pool (each which may be referred to herein as a Qualifying Event for Family Leave Pool eligibility).
2. An Employee who applies to use time from the Family Leave Pool to care for another person under subsection iii(1), *supra*, must submit documentation to human resources to indicate the person for whom care is being provided qualifies as an Immediate Family Member of the Employee.

3. An Employee who is off work due to an on-the-job injury or illness is not eligible to use the Family Leave Pool.
  4. *Six-Month Service Minimum.* An Employee must have completed six (6) months of state service to be eligible to utilize the Family Leave Pool.
  5. *Maximum Use of Family Leave Pool.* An Employee may not withdraw time from the Family Leave Pool in an amount that exceeds the lesser of (a) one-third of the total time in the pool, or (b) 90 working days during the Employee's lifetime.
  6. *Pregnancy.* Pregnancy is not considered a Serious Illness unless severe illness and prolonged complications arise to either the mother or the child, in which case, medical documentation must show complications that are classified as a Serious Illness, as defined above, to the mother or the child after the delivery.
  7. *Elective Surgeries.* Family Leave Pool may not be used for time off for cosmetic, elective, or other non-medically necessary surgery except when life threatening conditions that meet the definition for Serious Illness or another Qualifying Event for Family Leave Pool eligibility arise from them.
  8. *Failure to Return to Work.* If an Employee elects not to return to work for a reason not related to a Qualifying Event for Family Leave Pool eligibility, Family Leave Pool benefits will end.
  9. *Mandatory Refund of Family Leave Pool Time if Ineligible.* Employees who take leave using the Family Leave Pool are not normally required to pay back such leave. If, however, after receiving Family Leave Pool benefits it is determined that the Employee was ineligible for those benefits, all such leave must be refunded by the Employee to the Family Leave Pool.
- iv. *Contributing Sick or Vacation Leave to the Family Leave Pool.* Contributions from an Employee's accrued sick or vacation leave to the Family Leave Pool are strictly voluntary and must be in increments of eight (8) hours, with the exception of a retiring Employee who may contribute any unused balance. Family Leave Pool donations may be considered a taxable event to the donor. The donating Employee is solely responsible for the tax consequences of donated leave to the Family Leave Pool, and all Employees are advised to consult their independent attorney, accountant, or tax professional regarding tax implications prior to donating leave. The Family Leave Pool administrator shall credit the Family Leave Pool with

the amount of time contributed by an Employee and deduct a corresponding amount of time from the Employee's earned sick or vacation leave as if the Employee had used the time for personal purposes. A retiring Employee may designate the number of accrued sick leave hours to be used for Teacher Retirement System service credit and the number of hours to be donated, upon retirement, to the Family Leave Pool. An Employee who contributes sick leave to the Family Leave Pool, and then uses all of their sick leave balance in the same fiscal year may receive back and use the number of sick leave pool hours contributed to the Family Leave Pool that fiscal year without having a Qualifying Event for Family Leave Pool eligibility. Otherwise, the sick leave hours contributed to the Family Leave Pool cannot be reclaimed.

v. *Requesting Hours from the Family Leave Pool.*

1. A Regular Employee may apply for hours from the Family Leave Pool by submitting a completed application and the required forms related to the reason for requesting hours to human resources.
2. If the Employee is requesting hours because of a Serious Illness, including a pandemic-related illness, of an Immediate Family Member or the Employee, and does not qualify for or has exhausted time available in the Sick Leave Pool, the Employee must provide to human resources with a written statement from the Licensed Practitioner who is treating the Employee or the Employee's Immediate Family Member. The Employee must provide human resources, prior to the date the Employee is approved for the Family Leave Pool, a written physician's certification that includes the expected duration of the absence and anticipated date of return to work as a result of the Serious Illness.
3. If the Employee is requesting hours because of an extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member, the Employee must provide any applicable documentation to human resources, including an essential caregiver designation, proof of closure of a school or daycare, or other appropriate determination.
4. The documentation must contain sufficient information to allow the Family Leave Pool administrator to evaluate the Employee's eligibility. If eligibility cannot be determined from the documentation submitted, the application will be denied.
5. It is the Employee's responsibility to notify their supervisor that they have applied for Family Leave Pool and their expected length of absence.



6. Family Leave Pool benefits cannot be used for an injury, illness, or family member other than those set forth in this policy under the Qualifying Events for Family Leave Pool eligibility. An Employee will not receive more than the maximum allowable Family Leave Pool hours during their employment with the University. Awarded Family Leave Pool may be used only for the particular approved Qualifying Event for Family Leave Pool eligibility.
7. An Employee must use all of their accrued sick leave and compensatory time, and all vacation leave before utilizing any approved Family Leave Pool hours.
8. The Employee must provide human resources, prior to the date the Employee is approved for the Family Leave Pool, medical or other applicable documentation that shows the nature of the Qualifying Event for Family Leave Pool eligibility, the expected duration of the Qualifying Event for Family Leave Pool eligibility, and an anticipated date of return to work as a result of the Qualifying Event for Family Leave Pool eligibility. In addition, the Employee must contact their supervisor at least once every two weeks to keep the supervisor advised of the Employee's situation and intent to return to work. The lack of such documentation and contact with the University will be considered job abandonment.
9. The University, at its discretion, may require a second or third medical opinion from an independent health care provider of the University's choosing when reason exists to question the necessity of the Employee's Family Leave Pool use. All second and third medical opinions will be paid for by the University. If a third medical opinion is sought, the health care provider selected must be mutually acceptable to the Employee and the University. The third opinion will be the final opinion, and the opinion rendered will be binding on both the Employee and University.
10. An Employee utilizing hours from the Family Leave Pool will continue to accrue vacation and sick leaves but may not use the accrued leave until returning to work following the leave.
11. An Employee absent while using time withdrawn from the Family Leave Pool may use the time as sick leave earned by the Employee. The Employee shall be treated for all purposes as if the Employee is absent on earned sick leave.
12. An Employee with a Qualifying Event for Family Leave Pool eligibility is not required to contribute to the Family Leave Pool

before being granted leave from the pool. An Employee who is granted hours from the Family Leave Pool is not required to pay the pool back for the leave used.

13. Any unused balance of hours granted to an Employee from the Family Leave Pool will be returned to the Family Leave Pool if the Employee returns to work before using all hours granted. If intermittent treatment is required for the Qualifying Event for Family Leave Pool eligibility, unused approved Family Leave Pool benefits will be provided on an as-needed basis until the Employee recovers from the Qualifying Event for Family Leave Pool eligibility or the benefit ends, whichever is earlier. The Employee does not need to satisfy the Qualifying Event for Family Leave Pool eligibility definition more than once per approved application for the same Qualifying Event for Family Leave Pool eligibility.
14. The estate of a deceased Employee is not entitled to payment for approved unused Family Leave Pool hours.
15. Intent to return to work is not required for an Employee to be eligible for the Family Leave Pool.
16. If an Employee has more than one Family Leave Pool event within a 12-month period, all qualifying criteria and application requirements must be met for each event in order to utilize the available hours.

vi. *Administration of the Family Leave Pool.*

1. A single Family Leave Pool will be administered for all Regular Employees of each University (provided, however, Texas Tech University and the Texas Tech University System Administration will administer one joint Family Leave Pool) allowing Regular Employees to voluntarily transfer sick or vacation leave earned by the Employee to the Family Leave Pool. The University's chief human resources officer, or their designee, is responsible for administration of the University's Family Leave Pool.
2. Requests for leave from the Family Leave Pool will be submitted to the University's chief human resources officer or their designee. Human resources will have fifteen (15) workdays from the date a request and physician certification, if applicable, is received in which to approve all or part of the request or to deny the request.
3. If human resources determines the applying Employee is eligible, human resources will determine the number of hours granted for

each Qualifying Event for Family Leave Pool eligibility use and transfer the of hours from the Family Leave Pool to the Employee and credit the time to the Employee. Subject to the limitations outlined under *Maximum Use of Family Leave Pool*, the Family Leave Pool administrator shall determine the amount of time an Employee may withdraw from the Family Leave Pool. The amount granted for each Qualifying Event for Family Leave Pool use cannot exceed one-third of the balance of hours in the pool or the maximum allowable, whichever is less. Further, an Employee may not simultaneously utilize Family Leave Pool and state or federal benefits entitlements including short or long-term disability insurance, disability, and/or retirement payments from the TRS, the Social Security Administration, or any other applicable program. All Employees utilizing Family Leave Pool must inform human resources of qualification for disability or retirement payments and of the date such benefits begin.

4. The University's chief human resources officer, or their designee, will notify the Employee's department of the hours granted or denied. Family Leave Pool hours will be applied to the Employee's leave accrual beginning the first workday following expiration of the Employee's earned paid leaves.
5. All Family Leave Pool decisions of the University's chief human resources officer or their designee are final. However, a staff and/or faculty employee may request re-consideration of a decision to the University's chief human resources officer or their designee on the basis of new evidence or additional medical information. Assuming the employee has exhausted all available leave, during the pendency of a re-consideration request, the employee will be on unpaid status. However, if it is determined upon re-consideration that the employee was eligible to withdraw Family Leave Pool hours, paid status shall be applied retroactively to the original request, subject to the limitations outlined in this regulation.

## 7. Miscellaneous Leave

- a. *Applicability.* Unless expressly stated otherwise, this Section 7 applies only to the University's Regular Employees.<sup>11</sup>
- b. *Agency Investigative Leave.* The University president may grant leave without a deduction in salary to a Regular Employee who is the subject of an investigation being conducted by the University or a Regular Employee who is a victim, or witness to, an

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<sup>11</sup> For purposes of this Section 7, a *Regular Employee* is a benefits-eligible employee employed to work at least 20 hours per week for a period of at least four and one-half months, excluding students employed in a position that require student status as a condition of employment.

act or event that is the subject of an investigation being conducted by the University. An employee who is the subject of an investigation being conducted by the University is ineligible to receive leave for that reason under any other provision of this regulation; provided however, this shall not prohibit the employee from using their vacation leave or sick leave. This leave is provided pursuant to, and subject to the provisions of, Texas Government Code § 661.923.

- c. *Amateur Radio Operator Leave.* A Regular Employee who holds an amateur radio station license issued by the Federal Communications Commission may be granted leave not to exceed ten (10) days each fiscal year to participate in specialized disaster relief services without a deduction in salary or loss of vacation leave, sick leave, earned overtime credit, or compensatory time if the leave is taken with the authorization of the employee's supervisor and with approval of the governor. This leave is provided pursuant to, and subject to the provisions of, Texas Government Code § 661.919.
- d. *Assistance Dog Training Leave for Employees with a Disability.* A Regular Employee who is a person with a disability, as defined by Texas Human Resources Code § 121.002, is entitled to a leave of absence, not to exceed ten (10) working days in a fiscal year, without a deduction in salary for the purpose of attending a training program to acquaint the employee with an assistance dog to be used by the employee. This leave is provided pursuant to, and subject to the provisions of, Texas Government Code § 661.910.
- e. *Blood Donor Leave.* A Regular Employee is allowed sufficient time off, not more than four (4) times in a single fiscal year, without a deduction in salary or accrued leave, to donate blood. Provided, however, an employee may not receive time off under this section unless the employee obtains approval from their supervisor before taking time off. On returning to work, an employee shall provide their supervisor with proof that the employee donated blood during the time off. This leave is provided pursuant to, and subject to the provisions of, Texas Government Code § 661.917.
- f. *Bone Marrow Transplant Leave.* A Regular Employee is entitled to a leave of absence, not to exceed five (5) working days in a fiscal year, without a deduction in salary for the time necessary to permit the employee to serve as a bone marrow donor. This leave is provided pursuant to, and subject to the provisions of, Texas Government Code § 661.916.
- g. *Compliance with a Subpoena.* Pursuant to Texas Labor Code § 52.051, the University will not discharge, discipline, or penalize in any manner a Regular Employee because they comply with a valid subpoena to appear in a civil, criminal, legislative, or administrative proceeding. This policy in this subsection is provided pursuant to, and is subject to the provisions of, Texas Government Code § 659.005 and Texas Labor Code § 52.051.
  - i. *Employees Testifying in an Official Capacity.* An employee who is complying with a subpoena in an official capacity for the University is considered to be on

"special assignment," and the time is considered regular hours worked. An 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 their appearance.

- ii. *Employees Not Testifying in an Official Capacity.* An employee who is complying with a subpoena in any capacity other than their official capacity for the University will be allowed to use vacation time for the absence. If the employee does not have enough vacation time accrued, the time off will be leave without pay. The employee should notify his or her supervisor upon receiving the subpoena.
- iii. *Employees Testifying as Expert Witness.* An employee who is retained to testify as an expert witness will be required to use vacation time or, if no vacation time is available, with the permission of the employee's supervisor, may be placed on leave without pay.
- h. *Court Appointed Special Advocates (CASA) Volunteer Leave.* A Regular Employee may be granted leave not to exceed five (5) hours each month to participate in mandatory training or perform volunteer services for Court Appointed Special Advocates without a deduction in salary or loss of vacation time, sick leave, earned overtime credit, or state compensatory time. This leave is provided pursuant to, and subject to the provisions of, Texas Government Code § 661.921.
- i. *Educational Activities Leave.* A Regular Employee who is a parent of a child who is a student attending a grade from prekindergarten through 12th grade may use up to eight (8) hours of sick leave each fiscal year to attend educational activities of the employee's children (a school-sponsored activity, including a parent-teacher conference, tutoring, a volunteer program, a field trip, a classroom program, a school committee meeting, an academic competition, and an athletic, music, or theater program). The employee shall give reasonable advance notice of their intention to use the sick leave to attend an educational activity. This leave is provided pursuant to, and subject to the provisions of, Texas Government Code § 661.206.
- j. *Emergency Leave.* A Regular Employee may be granted an emergency leave only after all applicable leave has been exhausted and when it is determined that there is good cause for such leave. Such leave normally will not exceed three (3) workdays per fiscal year. For purposes of this subsection, an "emergency" is defined as an unforeseen combination of circumstances calling for immediate action, such as a natural disaster, which if not responded to immediately would present imminent danger to human life or substantial damage to property. When an employee must leave work because of an emergency, the employee's immediate supervisor should be notified as early as possible. Emergency leaves require approval by the appropriate vice chancellor, vice president, or vice provost and the University president. Inclement weather conditions or natural disasters will not constitute just cause for an emergency leave unless

approved by the University president. This leave is provided pursuant to, and subject to the provisions of, Texas Government Code § 661.902.

- k. *Foster Parent Leave.* A Regular Employee who is a foster parent to a child under the conservatorship of the Texas Department of Protective and Regulatory Services (“DPRS”) is entitled to a leave of absence without a deduction in salary for the purpose of attending meetings held by the DPRS regarding the child under the foster care of the employee or an admission, review, and dismissal meeting held by a school district regarding the child under the foster care of the employee. This leave is provided pursuant to, and subject to the provisions of, Texas Government Code § 661.906.
- l. *Funeral Leave.* A Regular Employee is entitled to leave without a deduction in salary because of a death in the employee’s Family (as defined below). This leave is provided pursuant to, and subject to the provisions of, Texas Government Code § 661.902(a).
  - i. *Definition of Family.* For purposes of this subsection, an employee’s *Family* means the employee’s spouse or a parent, brother, sister, grandparent, grandchild, child, great-grandparent, stepparent, stepchild, stepbrother, stepsister, step-grandparent, or step-grandchild of the employee or of the employee’s spouse.
  - ii. *Time Granted.* The amount of time granted for funeral leave normally shall not exceed three (3) days. A full three days is not automatically granted since it is intended that such leave be limited to the reasonable amount of time necessary for travel, funeral arrangements, funeral services, grieving, or being with other family members during the immediate period of bereavement.
  - iii. *Other Family Members and Extended Leave.* Vacation leave will be used for time off for a funeral for persons other than a Family member listed in subsection (i), above, or for extended time off. If the employee does not have sufficient vacation leave and if additional time off is granted, it will be taken as leave without pay. Requests for funeral leave for a person other than a Family member included in the definition above, or for a period greater than three (3) days, are subject to approval of the appropriate vice chancellor, vice president, or vice provost and the University president when it is determined the employee shows good cause.
- m. *Jury Leave.* A Regular Employee summoned for jury service will be given reasonable time off for the hours required for rendering such public service. No deduction will be made from the salary or wages of an employee because the employee is called for jury service, and time away from work for jury service will not be deducted from accrued leave. Day shift employees are to report for work any time during normal duty hours when service to the court is not required. This leave is provided pursuant to, and subject to the provisions of, Texas Government Code § 659.005(a).

- i. *Required Notice of Summons; Qualification for Pay During Jury Service.* Employees should notify their supervisor upon receiving a jury summons. In order to qualify for pay during periods of such service, the employee must furnish documentary proof of service to his or her supervisor. An employee shall not be required to account to Texas Tech for any fee or compensation received for jury service.
  - ii. *Employees Working Other than Regular Day Shifts.* For an employee working other than the regular day shifts, the department will provide time off equivalent to the time necessary to fulfill such obligation, pay straight time in an amount equivalent to the time that was necessary to fulfill such obligation, or reassign the employee to the day shift for the period they are required to serve and assign a replacement for the later shift, as needed.
- n. *Legislative Leave for Peace Officers.* A certified peace officer is entitled to a legislative leave to appear before or to petition a governmental body during a regular or special session of that body. An eligible employee desiring to apply for such leave must submit an *Application for Legislative Leave for Peace Officers* to the Chief of Police at least thirty (30) days in advance of the leave and make reimbursement to the University for the cost of granting the leave before the leave starts. A legislative leave will not be construed as a break in service, and the employee will remain in a paid status during such leave. The length of the leave may not exceed the length of the session, or 624 work hours, during any fiscal year. This leave is provided pursuant to, and subject to the provisions of, Texas Government Code §§ 614.001–614.010.
- o. *Mental Health Leave for Peace Officers.* A certified peace officer is entitled to mental health leave if they have experienced a traumatic event in the scope of their employment. Each University police department shall adopt a police department operating policy consistent with the provisions of Texas Government Code § 614.015, which must provide clear and objective guidelines establishing the circumstances under which a peace officer is granted and may use mental health leave; entitles a peace officer to mental health leave without a deduction in salary or other compensation; enumerates the number of mental health leave days available to a peace officer; details the level of anonymity for a peace officer who takes mental health leave; and provides a list of mental health services available to peace officers in the geographic area of the University.
- p. *Medical and Mental Health Care Leave for Certain Veterans.* A Regular Employee who is a veteran, as defined by Texas Government Code § 434.023(a), and is eligible for health benefits under a program administered by the Veterans Health Administration of the United States Department of Veterans Affairs, including physical rehabilitation, may be granted leave of up to fifteen (15) days each fiscal year without a deduction in salary or loss of vacation leave, sick leave, earned overtime credit, or state compensatory time to obtain medical or mental health care administered by the Veterans Health Administration of the United States Department of Veterans Affairs, including physical rehabilitation. The University president may annually grant

additional days of leave under this subsection as the president determines appropriate for the employee. This leave is provided pursuant to, and subject to the provisions of, Texas Government Code § 661.924.

q. *Military Leave.*

- i. *Authorized Training or Active Duty.* An employee who is a member of the state's military forces or member of any reserve component of the United States armed forces who is called to active duty or authorized training is entitled to a leave of absence of not more than fifteen (15) workdays in each federal fiscal year (October 1 through September 30) without loss of pay or benefits. The fifteen (15) days need not be consecutive. After exhausting the fifteen (15) workdays of paid military leave, the employee may use accrued vacation leave or be placed on leave without pay for the remainder of the active duty period.
- ii. *Call to State Duty by the Governor.* This subsection applies only to persons serving on active state duty on or after May 27, 2003, without regard to the date on which the person was initially ordered to active state duty. An employee who is a member of the state military forces who is called to active state duty by the governor because of a state emergency is entitled to receive emergency leave without loss of military or annual leave. This leave is not limited and will be provided with full pay. A member of the state military forces who is ordered to active state duty by the governor or by other proper authority under the law of this state is entitled to the same benefits and protections provided:
  1. To persons performing service in the uniformed services by 38 U.S.C., Sections 4301- 4313 and 4316-4319, as that law existed on April 1, 2003; and
  2. To persons in the military service of the United States by 50 App. U.S.C., Sections 501-536, 560, and 580-594, as that law existed on April 1, 2003.
- iii. *Call to National Duty.* An employee who is a member of the state's military forces or a member of any reserve component of the U. S. armed forces called to federal active duty during a national emergency is entitled to an unpaid leave of absence after exhausting the fifteen (15) days of paid military leave. The employee will continue to accrue state service credit for purposes of longevity pay while on military duty, but does not accrue vacation or sick leave during this period. The employee may retain any accrued vacation or sick leave and is entitled to be credited with those balances upon returning to active University employment from military duty. Leave earned while in a University-paid status is credited to the employee's balances when the employee returns to active University employment.



1. An employee may use any accrued vacation leave to maintain benefits for the employee or the employee's dependents while on military duty. Before the employee departs for military service, the employee should contact human resources to review any issues relating to maintaining health insurance coverage, including what the employee must do to maintain their health insurance coverage, how their health insurance coverage is affected by paid or unpaid leave, and how to pay any premium required for the insurance coverage.
  2. An employee may continue to accrue service credit with TRS by receiving at least one (1) hour of pay from the University during each month of active military service. An employee may use any combination of paid leave, including vacation leave, military leave, or military emergency leave differential pay to qualify for this pay.
- iv. *Differential Pay.* A Regular Employee who is a member of the state's military forces or a member of any reserve component of the United States armed forces who is called to federal active duty during a national emergency will be granted sufficient emergency leave to provide a pay differential if their military gross pay is less than their state gross pay. The combination of emergency leave and military pay may not exceed the employee's actual state gross pay. See *Military Emergency Leave*, below, for additional information.
- v. *Restoration of Employment.* An employee who is a member of the state's military forces or of any reserve component of the United States armed forces ordered to duty by proper authority is entitled, when relieved from duty, to be restored to the position that they held when ordered to duty or to a position of similar seniority, status, and pay, if they are still physically and mentally qualified to perform the essential duties of such job.
1. If the employee has a disability, as defined by the Americans with Disabilities Act (“ADA”), the employee must be able to perform the essential functions of the job with or without a reasonable accommodation.
  2. If the veteran employee is not qualified to perform the duties of the same position held before the military service because of a military-connected disability, the employee must be re- employed in any other position of similar seniority, status, and pay, which, with reasonable accommodation by the University, the employee could perform; or the nearest approximate position consistent with the individual's circumstances.
  3. To be eligible for restoration of employment at the conclusion of military service, the employee must be honorably discharged no later

than five (5) years after induction, enlistment, or call to duty and must be able to perform the essential duties of the position.

4. A Regular Employee eligible for re-employment under state or federal law must apply for employment no later than the ninetieth (90th) day after the date the veteran is discharged or released from active military service. An application for re-employment must: (1) be made to the head of the department, office, commission, or board of this state, the state institution, or the local governmental entity that employed the veteran before the veteran entered military service; (2) be in writing; and (3) have attached to it evidence of the veteran's discharge, separation, or release from military service under honorable conditions.
  5. An employee who is restored to employment will be considered as having been on leave of absence without pay, and the employee will be entitled to participate in all benefits to which employees of the University may be entitled upon return to work. Such active military service will be considered service with University for purposes of the number of vacation days an employee is entitled to accrue upon returning to work and not as past accrued vacation days, longevity pay entitlement, and retirement vesting purposes.
  6. Restored employees also have the opportunity to make any mandatory or elective retirement contributions for the period of military service. After the employee makes up the missed contributions, the University will make any matching contributions that ordinarily would have been made for such contributions. Such contributions will be based on the salary the employee would have received had the employee remained at work and must be made within a period three (3) times the length of the absence, not to exceed five (5) years.
  7. An employee who is re-employed under this provision will not be discharged without cause before the first anniversary date of re-employment.
- r. *Military Emergency Leave.* Any University employee called to active duty during a national emergency to serve in a reserve component of the armed forces of the United States under Titles 10 or 32, United States Code, is entitled to an unpaid leave of absence.
- i. *Leave Accrual.* During such an unpaid leave of absence due to emergency military duty, the employee will continue to accrue state service credit for purposes of longevity pay, vacation leave, and sick leave.
  - ii. *Differential Pay.* Faculty and staff employees on such unpaid military leave will be granted sufficient emergency leave as differential pay by the University

president and System chancellor if the employee's military pay is less than the employee's gross University salary at the time of call to active duty. The combination of emergency leave and military pay may not exceed the employee's actual state gross pay. Military emergency leave will be granted in accordance with the Texas Government Code. Normal military training or attendance of military schools does not qualify for the granting of military emergency leave.

iii. *Procedure.*

1. An employee who is called to active military service as described above must provide a copy of their orders to active duty to their department administrator.
2. Annual military or emergency mobilization leave under the *Military Leave* policy, above, may be used prior to being granted military emergency leave.
3. When appropriate, the department will prepare a leave without pay form and route it according to procedure.
4. Any vacation time used prior to reporting to active duty must be submitted in a manner and form prescribed by the University in order to meet the payroll processing deadlines.
5. The employing department will instruct the employee called to active duty to contact human resources, who will advise the employee of information needed by the University during the employee's active military duty and coordinate the review of University insurance coverage. Human resources will review with the employee any issues relating to maintaining state health insurance coverage during the employee's military duty, including what the employee needs to do to maintain state health insurance coverage, how health insurance coverage is affected by paid or unpaid leave, and how to pay any premium required for the insurance coverage.
6. The employee is responsible for furnishing copies of their military leave and earnings statements ("LES") for each military pay period to the University's payroll department.
7. Upon receipt of the LES, the difference between the employee's military pay and their regular University pay for each pay period will be calculated in accordance with instructions from the State Auditor's Office and directives from the Comptroller. The University's payroll department will assist the employing department in processing the payment as appropriate.

8. An employee who is granted military emergency leave will accrue vacation and sick leave. Leave earned will be credited to the employee's balance when the employee returns to active employment with the University.
  9. The employee who is granted military emergency leave may use any accrued vacation leave to maintain benefits for the employee or the employee's dependents while the employee is on military leave.
  10. Upon release from active duty, the employee should present a copy of the orders releasing them from active duty; the department will submit the appropriate documentation to reinstate the employee to regular employment with the University and will attach a copy of such orders.
- s. *Organ Donor Leave.* A Regular Employee is entitled to a leave of absence, not to exceed thirty (30) working days in a fiscal year, without a deduction in salary for the time necessary to permit the employee to serve as an organ donor. This leave is provided pursuant to, and subject to the provisions of, Texas Government Code § 661.916.
  - t. *Texas Voluntary Organizations Active in Disaster Volunteer Leave.* A Regular Employee who is a volunteer of an organization that is a member of the Texas Voluntary Organizations Active in Disaster may be granted leave, not to exceed ten (10) days each fiscal year, to participate in specialized disaster relief services without a deduction in salary or loss of vacation leave, sick leave, earned overtime credit, or state compensatory time if the leave is taken with the approval of the University president, with the authorization of the employee's supervisor, and with the approval of the governor by declaration of a state of disaster under Texas Government Code, Chapter 418. This leave is provided pursuant to, and subject to the provisions of, Texas Government Code § 661.9075.
  - u. *Reserve Law Enforcement Officer Training Leave.* A Regular Employee who is a reserve law enforcement officer (as defined in Texas Occupations Code § 1701.001) is entitled to a leave of absence, not to exceed five (5) working days every fiscal biennium, without a deduction in salary to attend training required under Texas Occupations Code § 1701.351. This leave is provided pursuant to, and subject to the provisions of, Texas Government Code § 661.922.
  - v. *Service Excellence Leave Award.* A University may adopt an operating policy and procedure, consistent with the provisions of Texas Government Code § 661.911, permitting a University president to grant administrative leave without a deduction in salary to an employee as a reward for outstanding performance as documented by employee performance appraisals (or equivalent for TTUHSC). The total amount of leave an employee may be granted under such policy may not exceed thirty-two (32) hours during a fiscal year.

w. *Volunteer Firefighters, Emergency Medical Service Volunteers, and Search and Rescue Volunteers Leave.* This leave is provided pursuant to, and subject to the provisions of, Texas Government Code § 661.905.

i. *Leave for Training.* A Regular Employee who is a volunteer firefighter, an emergency services volunteer (as defined by Texas Health and Safety Code § 773.003), or a search and rescue volunteer (defined as an individual who without remuneration, except reimbursement for expenses, provides services for or on behalf of an organization that conducts search and rescue activities) is entitled to a leave of absence, not to exceed five (5) working days in a fiscal year, without a deduction in salary to attend fire service, emergency medical services, or search and rescue training conducted by a state agency or institution of higher education.

ii. *Leave for Emergency.* An employee who is a certified volunteer firefighter or EMS volunteer will be granted a paid leave of absence to respond to fire or medical emergency situations. To be eligible for this leave, the employee must provide in advance to their supervisor and department head documentation of being a certified volunteer firefighter or EMS volunteer. This documentation is to be forwarded to the University's human resources department for obtaining administrative approval for the employee to respond to emergencies. The time spent responding to an emergency situation will be reported as "Firefighter EMS leave."

x. *Voting Leave.* The University will provide Regular Employees sufficient time off, without a deduction in salary or accrued leave, to vote in each national, state, or local election. The employee's supervisor may designate the time to be taken as long as the employee has sufficient time to travel to the voting location and cast their vote. This leave is provided pursuant to, and subject to the provisions of, Texas Government Code § 661.914.

y. *Wellness Program Leave.* A University may adopt an operating policy and procedure, consistent with the provisions of Texas Government Code § 664.061, permitting the University to provide eight (8) hours of additional leave time each year to an employee who receives a physical examination and completes either an online health risk assessment tool provided by the department or a similar health risk assessment conduct in person by a worksite wellness coordinator.

## 8. Family and Medical Leave Act

a. *Policy.* The Family and Medical Leave Act ("FMLA") entitles eligible University employees to take up to twelve (12) workweeks of unpaid, job-protected leave for serious health conditions and/or specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. The University requires the use of sick leave, vacation

leave, and any other applicable leave accruals while on Family and Medical Leave (“FML”).

- b. *Employees Required to Apply for FML.* Employees are required to utilize FMLA coverage as outlined in this policy for any qualifying conditions/events requiring absence from work. Employees who do not qualify for leave under the FMLA are eligible to take Parental Leave, not to exceed twelve (12) workweeks, for the birth of a natural child or the adoption or foster care placement of a child under three (3) years of age, as set forth below.
- c. *FMLA Eligibility Requirements.* To be eligible for FMLA benefits, the employee must meet all of the following requirements:
  - i. Must have been employed by the state for at least twelve (12) months;<sup>12</sup> and
  - ii. Must have worked at least 1,250 hours during the twelve (12) months preceding the first date of requested leave.
- d. *FMLA Entitlements.* Eligible employees are entitled to:
  - i. Twelve (12) workweeks of leave in a 12-month period for:
    - 1. The birth of a child and to care for the newborn child within one (1) year of birth;
    - 2. The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one (1) year of placement;
    - 3. To care for the employee's spouse, child, or parent who has a serious health condition;
    - 4. A serious health condition that prevents the employee from performing the essential functions of his or her job; or
    - 5. Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on covered active duty.
  - ii. Twenty-six (26) workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible

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<sup>12</sup> While the twelve (12) months of employment need not be consecutive, employment periods prior to a break in service of seven (7) years or more will not be counted unless the break is occasioned by the employee's fulfillment of their uniformed services (as protected under the Uniformed Services Employment and Reemployment Rights Act (USERRA)), or a written agreement exists concerning the employer's intention to rehire the employee after a break in service.

employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

- iii. In cases where both spouses are employed by the same University or the same state agency, each spouse individually shall be entitled to take twelve (12) workweeks of leave during any 12-month period for:
  - 1. The birth of a child and to care for the newborn child within one (1) year of birth;
  - 2. The placement with the employee of a child for adoption or foster care and to care for a newly placed child within one (1) year of placement; or
  - 3. To care for a parent who has a serious health condition.
- iv. The 12-month period noted in this policy is a "rolling" 12-month period, measured backward from the first date an employee uses any FML. Each time an employee takes FML, the remaining leave entitlement would be any balance of the twelve (12) weeks which has not been used during the twelve (12) months preceding the leave begin date.

e. *Eligible Family Members.*

- i. *Spouse.* A "spouse" means a husband or wife. This definition includes an individual in a same-sex or common law marriage. Unmarried partners do not qualify.
- ii. *Son or Daughter.* For FML taken for the birth, adoption, or to take care of a family member with a serious health condition, a "son or daughter" is defined as a biological child, adopted child, foster child, stepchild, legal ward, or child of an employee standing *in loco parentis*, who is either under eighteen (18) years of age, or eighteen (18) years of age or older and is incapable of self-care because of a mental or physical disability at the time that FML is to commence.
- iii. *Parent.* A "parent" is defined broadly as a biological, adoptive, step, or foster parent, or an individual who stood *in loco parentis* to an employee when the employee was a child. An employee's parents-in-law are not included in the definition of parent for purposes of FML.
- iv. *Next of Kin of a Covered Service Member.* "Next of kin of a covered service member" means the nearest blood relative other than the covered service member's spouse, parent, son, or daughter. This provision is only applicable for military family leave to care for a member of the armed forces with a serious injury or illness incurred in the line of duty. Proof of next of kin should be provided as required by law.

- f. *Definition of Serious Health Condition.* For the purpose of this policy, a “serious health condition” is an illness, injury, impairment, or physical or mental condition that involves any of the following:
- i. *Physical or Mental Disability.* A physical or mental disability means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR §§ 1630.2(h), (i), and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (“ADA”), 42 U.S.C. 12101, et seq., define these terms.
  - ii. *Incapable of Self-care.* Incapable of self-care is defined as requiring active assistance or supervision to provide daily self-care in three or more activities of daily living or instrumental activities of daily living. Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, and so forth.
  - iii. *Inpatient Care.* Inpatient care refers to an overnight stay in a hospital, hospice, or residential medical-care facility, including any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care.
  - iv. *Continuing Treatment.* Continuing treatment by a health care provider, which includes any of the following five scenarios:
    1. A period of incapacity lasting more than three (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes treatment two (2) or more times by or under the supervision of a health care provider (i.e., in-person visits, the first within seven [7] days and both within thirty [30] days of the first day of incapacity) or one (1) treatment by a health care provider (i.e., an in-person visit within seven [7] days of the first day of incapacity) with a continuing regimen of treatment (e.g., prescription medication, physical therapy).
    2. Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence.
    3. Any period of incapacity or treatment for a chronic serious health condition that continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may



involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence.

4. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment.
  5. Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three (3) days if not treated.
- g. *Exclusions from the Definition of Serious Health Condition.* Conditions for which cosmetic treatments are administered, such as most treatments for acne or plastic surgery, are not "serious health conditions" unless complications develop and inpatient hospital care is required. Ordinarily, unless complications arise, the common cold, flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontic problems, periodontal disease, etc., do not meet the definition of serious health condition and do not qualify for FMLA leave.
- h. *Intermittent or Reduced Work Schedule Leave.* FML may be taken intermittently or on a reduced schedule under certain circumstances. If an employee needs leave intermittently or a reduced schedule for planned medical treatment, the employee must make a reasonable effort to schedule the treatment so as not to unduly disrupt the employer's operations. In addition, employees are also expected to give reasonable notice before scheduled treatment. Examples of intermittent or reduced work schedule leave include medical appointments, chemotherapy, prenatal examinations, severe morning sickness, asthma attack, and migraine headache. Employees may elect to take FML on an intermittent basis for the birth of a child or for placement with the employee of a child for adoption or foster care. Intermittent FML leave not taken for medical reasons is subject to the approval of the employee's supervisor. An employee's eligibility for intermittent leave for the birth of a child or for placement for adoption or foster care ends one (1) year after birth or placement of the child.
- i. *Military Family Leave.* There are two types of military family leave available under FMLA:
- i. *Qualifying Exigency Leave.* An employee who meets the eligibility requirements described above may be entitled to use up to twelve (12) workweeks of their basic FMLA leave entitlement to address certain qualifying exigencies. Leave may be used because of any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the National Guard or Reserves. Qualifying exigencies may include:
    1. Short-notice deployment (up to seven [7] days of leave);

2. Attending certain military events;
  3. Arranging for alternative childcare;
  4. Addressing certain financial and legal arrangements;
  5. Periods of rest and recuperation for the service member (up to fifteen [15] calendar days of leave);
  6. Attending certain counseling sessions;
  7. Attending post-deployment activities (available for up to ninety [90] days after the termination of the covered service member's covered active duty status); or
  8. Other activities arising out of the service member's covered active duty or call to active duty and agreed upon by the company and the employee.
- ii. *Military Caregiver Leave.* There is also a special leave entitlement that permits eligible employees to take up to twenty-six (26) workweeks of FML during any single 12-month period if the employee is the spouse, son, daughter, parent, or next of kin caring for a covered military service member recovering from an injury or illness. When both husband and wife work for the State of Texas, the aggregate amount of leave that can be taken by the husband and wife to care for a covered service member is twenty-six (26) workweeks in a single 12-month period. A covered service member is either:
1. A current member of the armed forces, including a member of the National Guard or Reserves, who is receiving medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list for a serious injury or illness.
  2. A veteran of the armed forces (including the National Guard or Reserves) discharged within the five (5) year period before the family member first takes military caregiver leave to care for the veteran and who is undergoing medical treatment, recuperation, or therapy for a qualifying serious injury or illness. A veteran who was dishonorably discharged does not meet the FMLA definition of a covered service member.
- iii. *Serious Injury or Illness.* For Military Family Leave "serious injury or illness" means:
1. For a current member of the armed forces (including a member of the National Guard or Reserves), an injury or illness that was incurred by a

service member in the line of duty on active duty that may cause the service member to be medically unfit to perform the duties of his or her office, grade, rank, or rating. A serious injury or illness also includes injuries or illnesses that existed before the service member's active duty and that were aggravated by service in the line of duty on active duty.

2. For a veteran, a serious injury or illness is one that rendered the veteran medically unfit to perform his or her military duties, or an injury or illness that qualifies the veteran for certain benefits from the Department of Veterans Affairs or substantially impairs the veteran's ability to work. For veterans, it includes injuries or illnesses that were incurred or aggravated during military service but that did not manifest until after the veteran left active duty.
- j. *Outside Employment and Other Activities.* An employee who is on FML, including FML for workers' compensation leave, is prohibited from attending work-related educational and training classes, or performing work with an outside employer when the functions of that position are outside of the restrictions stated by the health care provider.
- k. *Benefit Status During FMLA Leave Without Pay.* An employee will utilize eligible leave accruals while on FML. After all eligible leave accruals have been exhausted, the employee will be placed on a leave without pay status. Leave without pay status will be reported by the departmental representative by completing the appropriate documentation and forwarding it through the proper channels in order to meet payroll processing deadlines.
- i. *Health Benefits During FML Without Pay.* The University encourages an employee who is on approved FML, and goes into leave without pay status, to continue health benefits at the same level and conditions. The University will continue employer contributions at the same level during such leave, provided any employee-paid premiums are kept current. The employee must pay premiums due, if any, to the University or to ERS, as applicable.
  - ii. *Reinstatement of Coverage.* An employee who returns to work directly from unpaid FML may reinstate all reduced or canceled coverages that were in effect prior to going on FML, provided the employee contacts ERS or human resources within thirty (30) days of returning. Such reinstatement will be effective the date the employee returns to work without penalty for pre-existing conditions and without the requirement to show evidence of insurability. In addition, employees may add newly eligible dependents to the group benefits plan within thirty (30) days of the qualifying life event. If an employee does not reinstate coverage within thirty (30) days of returning to work, the next opportunity will be during annual enrollment.

- iii. *Intent Not to Return.* If the department becomes aware, and verifies that an employee on approved FML does not intend to return to work at the conclusion of his or her leave, the employee's entitlement to leave under FMLA and employer-paid premiums will cease. The employee's department representative will be responsible for submitting an electronic personnel Action Form (ePAF) to separate employment. The University may recover any employer-paid premiums during any period of unpaid FML from the employee if the employee does not return to work at the conclusion of an approved FML.
  - iv. *Leave Accruals.* An employee on FML is not entitled to accrue state service credit for any full calendar month(s) of FML without pay and shall not accrue vacation or sick leave for such months.
- 1. *Concurrent Paid Leave.* The employee is required to first use all available and applicable leave accruals while taking FML, except for certain circumstances regarding employees receiving temporary disability benefits and workers' compensation benefits. The use of leave accruals runs concurrent with FML. The employee is required to report leave using the electronic leave reporting system in accordance with applicable leave policies, including sick leave, vacation leave, and compensatory leave. After the employee has exhausted all eligible accrued and granted leave, the employee will go into a leave without pay status.
- m. *Misrepresentation Prohibited.* Intentionally misrepresenting the reasons for requesting family and medical leave may lead to disciplinary action up to and including termination.
  - n. *Procedures.*
    - i. *Employee Responsibilities.*
      - 1. An employee is required to notify their supervisor of any events that require an extended absence from work. Employees must provide their supervisor thirty (30) days' advanced notice when the leave is foreseeable. When thirty (30) days' notice is not practicable, the employee must provide notice as soon as practicable (within two [2] business days, if feasible), and follow the normal departmental call-in procedures.
      - 2. An individual undergoing planned treatment or doctor appointments is required to consult with his or her supervisor and make a reasonable effort to schedule the treatment to minimize disruptions to the department's operations. If need for leave is not foreseeable, the employee must request it as soon as practicable, no later than two (2) business days after the need for leave arises.

3. An employee on intermittent leave must follow departmental call-in procedures when taking leave.
4. An employee requesting to use intermittent FML or parental leave for birth, adoption, or placement of a child for foster care must receive the immediate supervisor's approval prior to beginning intermittent leave. A copy of the approval must be provided to the human resources FMLA manager.
5. An employee has thirty (30) days from the qualifying event to enroll newly eligible dependents in the group benefits plan.

ii. *Employer Responsibilities.*

1. If an employee notifies a supervisor about a condition that may qualify under the FMLA or parental leave, it is the supervisor's responsibility to refer the employee to human resources to determine eligibility for FML or parental leave. In addition, the supervisor should notify human resources when an employee has notified the supervisor of a qualifying FMLA or parental leave absence.
2. When an employee requests leave, the employee will be informed whether he or she is eligible for leave under the FMLA. If the employee is eligible for leave under the FMLA, the employee will be given a written notice that includes details on any additional information he or she will be required to provide. If the employee is not eligible for leave under the FMLA, the employee will be provided a written notice indicating the reason for ineligibility.
3. If leave will be designated as leave under the FMLA, the employee will be informed in writing and provided information on the amount of leave that will be counted against the employee's entitlement.

iii. *Medical Certification.*

1. If leave is requested because of the employee's own or a family member's serious health condition, the employee must submit appropriate medical certification to human resources from a health care provider to support the request for leave. The employee will be informed of the requirement for medical certification and when it is due (no more than fifteen [15] calendar days after leave is requested). The employee is responsible for submitting the required documentation on or before the due date given by human resources.
2. The medical certification must include the date on which the condition began and its probable duration. It is the responsibility of the employee,

not the University or the health care provider, to ensure the required medical certification is submitted to human resources. Failure to provide requested medical certification in a timely manner may result in denial of leave until it is provided.

3. The University, at its sole discretion, may also require a second opinion or third opinion regarding certification of a serious health condition at the expense of the employer. The University maintains sole discretion in selecting a provider to render the second opinion. If a third medical opinion is sought, the health care provider selected must be mutually acceptable to the employee and University. The third opinion will be the final opinion, and the opinion rendered will be binding on both the employee and University.
  4. All certifications received by human resources will be treated as confidential medical records and kept separate from personnel records in a locked or secured area.
- iv. *Adoption of a Child and Foster Care.* For adoption of a child or foster care placement, the employee must submit an FMLA application and the Adoption or Foster Care Placement Certification at least thirty (30) days in advance if the leave is foreseeable. In cases in which the leave is unforeseeable, the documentation must be submitted with as much notice as practicable (within two [2] business days).
- v. *Reporting While on Leave.* If an employee takes leave because of the employee's own serious health condition or to care for a covered relation, the employee must contact his or her supervisor at least every two (2) weeks, or as instructed by the department, regarding the status of his or her leave and intention to return to work. If the employee fails to contact his or her supervisor to report his or her status, the employee may be contacted by the University for this purpose. A family member may call in for the employee only if the employee is medically unable to do so. In addition, the employee must give notice as soon as practicable (within two [2] business days, if feasible) if the dates of the leave change, are extended, or were unknown initially and provide supporting medical documentation.
- vi. *Returning to Work.*
1. Prior to returning to work from FML due to his or her own serious medical condition, an employee is required to present medical certification of fitness-for-duty indicating that the employee is able to resume work. Failure to provide a medical certificate of fitness-for-duty may result in a denial of job reinstatement until a medical certificate release is provided.

2. An employee who returns to work from FML, except for certain highly compensated employees, will be returned to their same job or an equivalent position, subject to the rules of the FMLA. Failure to return to work at the conclusion of FML without notifying the employing department and human resources will be considered job abandonment and may result in termination.
  3. A highly compensated and key employee may not be returned to their former or equivalent position following a leave if restoration of employment will cause substantial economic injury to the University. This fact-specific determination will be made by the University on a case-by-case basis. The employee will be notified if they qualify as a "highly compensated and key employee" if the University intends to deny reinstatement, and of employee's rights in such instances.
- o. *Documenting Relationships.* For purposes of confirmation of family relationship, the University may require the employee to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, a child's birth certificate, a court document, etc. The University is entitled to examine documentation such as a birth certificate, but the employee is entitled to the return of the official document submitted for this purpose
- p. *Family and Medical Leave Tracking Timelines for 9-month Faculty.* Faculty members who are on a 9-month appointment will only report FML absences covering periods for which they are required to be on duty. Faculty members appointed on a less than 12-month basis observe the student holiday schedule. Faculty members on 9-month appointments who are on FML at the beginning of the fall semester will begin reporting FML on the first day faculty are required to be on duty for the fall semester.
- i. *Nine-month Faculty Reporting Periods.* 9-month faculty members will report FMLA absences for the following periods:
1. Fall semester:
    1. FMLA reporting begins on the first day faculty are required to be on duty for the fall semester.
    2. FMLA reporting ends on the day final grades are due for the fall semester.
    3. FMLA will not be reported for the period between the day final grades are due for the fall semester and the first day faculty are required on duty for the spring semester.
  2. Spring semester:
    1. FMLA reporting begins on the on the first day faculty are required to be on duty for the spring semester.
    2. FMLA reporting will not be required during spring vacation.
    3. FMLA reporting will resume the Monday following spring vacation.

4. FMLA reporting will end on the day final grades are due for the spring semester.
  - ii. *Faculty on FMLA at the Conclusion of Spring.* Faculty members on 9-month appointments who are on FMLA at the end of the spring semester will not report nor be charged FMLA leave days during the summer semester. If the faculty member is not able to return to work on the first day faculty are required to be on duty for the fall semester, FMLA will resume at that time.
  - iii. *Applicability of Academic Calendar.* The Annual Academic Calendar will be used to determine the exact dates for FMLA tracking.

## 9. Parental Leave

- a. *General Policy.* A state employee who has been employed for fewer than twelve (12) months by the state or has worked fewer than 1,250 hours during the 12-month period preceding the beginning of leave is eligible to take a parental leave of absence not to exceed twelve (12) workweeks. If an employee becomes eligible for FML while out on parental leave, the employee will receive only a combined total of twelve (12) workweeks. This leave is provided pursuant to, and subject to the provisions of, Texas Government Code § 661.913 and the FMLA.
- b. *Required Use of Accrued Leave.* The employee must exhaust all available and applicable sick leave, vacation leave, and compensatory leave. After all such paid leaves have been exhausted, the remainder of the leave is unpaid.
- c. *Eligibility.* The leave authorized by this section is limited to, and begins on the date of, the birth of a natural child of the employee or the adoption or foster care placement with the employee of a child younger than three (3) years of age.
- d. *Intermittent Leave.* An employee may elect to take parental leave on an intermittent basis for the birth of a child or for placement with the employee of a child younger than three (3) years of age for adoption or foster care, subject to the approval of the employee's supervisor. An employee's eligibility for intermittent parental leave for the birth of a child or for the adoption or foster care placement of a child younger than three (3) years of age ends one (1) year after birth or placement of the child.
- e. *Health Insurance Premiums.* An employee on parental leave is not entitled to receive the state-paid portion of the group health insurance premium during any full calendar months of leave without pay. The employee is responsible for the entire cost of the insurance premiums.

## 10. Leave Without Pay



- a. *General Provisions.* This Section sets for the University's leave without pay policy. This leave is provided pursuant to, and subject to the provisions of, Texas Government Code § 661.909 and other applicable law.
- i. *Intent to Return.* Approved leave without pay implies intent from the employee to return to work and intent from the University to return the employee to work.
  - ii. *Required Use of Accumulated Paid Leave.* Except for disciplinary suspensions, military leave, workers' compensation leave, or University-initiated leave, all accumulated paid leaves must be used before going on leave without pay status. Provided, however, sick leave must first be used only if the employee is taking leave for a reason for which the employee is eligible to take sick leave.
  - iii. *Break in Service.* Any full or partial calendar month of leave without pay does not constitute a break in continuity of employment. However, except for an employee who returns from military leave without pay under Texas Government Code § 661.904, a full calendar month during which an employee is on leave without pay is not counted in computing (1) total state service for purposes related to longevity pay or the rate of accrual of vacation leave or (2) continuous state service for purposes related to merit salary provisions or vacation leave.
  - iv. *Time Limitation.* The duration of leave without pay may not exceed twelve (12) months. Provided, however, the University president may grant exceptions to this limit if the employee is taking leave for a reason such as to work for another state governmental entity under an interagency agreement, educational purposes, or compliance with applicable law.
  - v. *Reinstatement.* For leave without pay not designated as FMLA leave, the employing department must reinstate the employee to some position, but not necessarily the same position, upon expiration of a leave without pay, subject to fiscal constraints. For leave without pay taken pursuant to FMLA, the employing department is required to reinstate the employee to the same position or a substantially similar position upon expiration of the leave. For leave without pay granted as a reasonable accommodation for qualified individuals with a disability, reinstatement will be in compliance with state and federal laws.
  - vi. *Failure to Return.* An employee who fails to return to work upon expiration of a leave without pay may be terminated from the University.
- b. *Medical Leave Without Pay (other than FMLA).* Medical leave without pay is not granted automatically. If an employee or family member (as defined in the Sick Leave policy, above) of the employee has a serious medical condition and the employee has exhausted all other available leaves, the department head may request the employee be placed on leave without pay for up to ninety (90) calendar days at a time. The employee

must provide medical documentation that shows the nature of the condition, the expected duration of the condition, and an anticipated return to work date. The department head should submit a written recommendation to the appropriate vice chancellor, vice president, or vice provost. If approved by the vice chancellor, vice president, or vice provost, it will be forwarded to the University's chief human resources officer or designee for review and approval. Nothing in this provision entitles an employee to leave in addition to FMLA or the Sick Leave Pool.

- c. *Leave Without Pay as an Accommodation for a Disability.* An employee with a disability may also request leave without pay as an accommodation for their disability. Requests for leave without pay as an accommodation for a disability should be directed to the University's human resources office. An indefinite leave without pay will not be considered as a reasonable accommodation.
- d. *Other Leave Without Pay.* After all accumulated paid leaves have been used, a Regular Employee may be granted leave without pay for reasons other than medical or disability for a period not to exceed one (1) year, with the approval of the employee's administrative officer and the University's chief human resources officer or designee. If leave without pay is granted for a shorter, specific period of time, it may be extended, at the discretion of the employee's administrative officer and with the approval of the University's chief human resources officer or designee, for a combined period of time not to exceed one (1) year. In granting such leaves, the interests of the employing department and the University will be given priority consideration.
- e. *Benefit Status During Leave Without Pay.* An employee is solely responsible for contacting any appropriate agency or entity to make special arrangements for payment or continuation of applicable benefits during leave without pay. If an employee is in leave without pay status for a full calendar month, the following changes to the employee's benefits status will occur:
  - i. Vacation leave, sick leave, and state service accruals are suspended.
  - ii. Group insurance premium-sharing contributions are suspended unless the leave is because of a lack of work between terms or the employee is on FMLA leave (group insurance coverage may be continued, provided the applicable premium payments are made to the University or the Employees Retirement System of Texas). If the employee is in leave without pay status and will not be receiving a paycheck so that premiums may be withheld, the employee will be solely responsible for the timely payment of all premiums. Failure to pay any premiums will result in cancellation, and reinstatement to insurance plans is subject to the state employees group benefits program rules.
  - iii. Regarding Flexible Spending Accounts (FSA):
    - 1. An employee who is participating in a health flexible spending account is required to pay his or her monthly pledge directly to ERS while on

leave without pay. Claims for expenses incurred during the months in which an employee does not fulfill his or her monthly pledge requirement are not eligible for reimbursement.

2. Contributions for an employee who is participating in the dependent flexible spending account will be suspended while the employee is in leave without pay status and claims for expenses incurred during the month are not eligible for reimbursement.
- iv. Tax sheltered annuities become inactive.
  - v. Membership in the Teacher Retirement System (TRS) or Optional Retirement Program (ORP) becomes inactive and contributions cannot be withdrawn.

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