

# Texas Human Resources Management Statutes Inventory

2008-2009 Biennium

A Management Resource for State Agencies  
and Institutions of Higher Education



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# Foreword

The Texas Human Resources Management Statutes Inventory (Inventory) summarizes the human resource management statutes that apply to Texas state employees. It is provided by the State Auditor's Office as a guide to assist state agencies and institutions of higher education. The Inventory, first published in 1972 and updated every two years, is a compilation of state and federal laws that apply to human resource management. This 16th edition supersedes all previous editions and reflects changes made in the 80th Legislative Session.

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

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

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

**Additional information:** If you have questions concerning any of these statutes, policies, or procedures, please contact the Classification Analyst in the State Auditor's State Classification Team

## Intention of Inventory

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

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

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<sup>1</sup> Opinion, Texas Office of the Attorney General, No. M-984 (1971).

<sup>2</sup> Ibid.

assigned to your agency or institution of higher education. Contact information for the analysts and additional information is available on the State of Texas Human Resources Web site at <http://sao.hr.state.tx.us>.

# Contents

## *Foreword*

### ***Section 1 Standards of Conduct***

---

Ethics Policy .....	1
Nepotism .....	1
Off-Duty and Outside Employment .....	4
Physical Fitness Standards .....	5
Political Influence .....	6
Publicity .....	7
Representation by a Former Officer or Employee.....	7
Unacceptable Solicitations and Benefits .....	8
Use of Alcoholic Beverages .....	9
Use of State Property .....	9
Related Legislation .....	9

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

---

General Information .....	11
Texas Workforce Commission, Civil Rights Division .....	11
Workforce Diversity Programs .....	11
Age Discrimination in Employment Act of 1967 (ADEA) .....	12
Americans with Disabilities Act of 1990 (ADA) .....	12
ADA State Efforts .....	13
Bona-Fide Occupational Qualification (BFOQ) .....	13
The Civil Rights Act of 1964, Title VII .....	13
Religious Affiliation Discrimination .....	14
Sexual Harassment .....	14
Conflict Resolution and Employee Grievances .....	15
Alternative Dispute Resolution (ADR) .....	15
Employee Grievances .....	16
Faculty Grievances .....	16
Employee Polygraph Protection Act of 1988 (EPPA) .....	16
Polygraph Examinations for Officers and Employees in Certain Positions .....	16
Equal Pay Act of 1963 (EPA) .....	17
Federal Pregnancy Discrimination Act of 1978 .....	18
Genetic Testing Discrimination .....	18
Protections in Reporting Violations of Law .....	18
Reporting Discrimination .....	19
Reporting Child Abuse and Neglect .....	19
Texas Whistle Blower Act .....	19
Public Employee Labor Unions .....	19
Strikes .....	20

Workers' Compensation Claims History Discrimination .....	20
Related Legislation .....	20
Required Posters at the Workplace.....	21

### ***Section 3 Employee Recruitment and Selection***

---

At-Will Employment .....	22
Background and Criminal History Checks .....	23
Criminal History Checks .....	23
Dissemination of Criminal History Information .....	24
State Agency Access to Criminal History Information .....	24
Higher Education Access to Criminal History Information .....	26
Review of Background Check Procedures.....	26
Civilian Workforce Composition .....	27
Employees Working Out of State.....	27
Employment Contracts .....	27
Employment Contracts for Administrators .....	27
Employment Contracts for Faculty .....	28
Identification Cards for Peace Officers .....	28
Peace Officer Identification Cards.....	28
Retired Peace Officer Identification Cards.....	29
Limitations on State Employment Levels .....	30
Full-Time Equivalent Employees Reporting .....	31
Merit Selection Principles .....	32
Multiple Employment with the State .....	33
Special Provisions for Legislative Agencies.....	34
Special Provisions for University Systems.....	34
Appointments at State Institutions of Higher Education .....	34
Recruitment Plans.....	35
Posting Job Vacancies .....	35
Probationary Period .....	36
Selective Service Registration .....	36
Verification of Employment Eligibility .....	37
Workforce Analysis .....	37
Related Legislation .....	38

### ***Section 4 State Overtime Requirements***

---

Fair Labor Standards Act (FLSA) .....	39
Minimum Wage.....	39
Employees Not Subject to the FLSA .....	39
FLSA Non-Exempt Employees .....	40
Authorizations for Payment of FLSA Compensatory Time.....	41
FLSA Exempt Employees.....	41
Additional Resources.....	42
State Compensatory Time.....	43
State Compensatory Time for Non-Exempt Employees Subject to FLSA.....	43
State Compensatory Time for Employees Exempt from FLSA Overtime Provisions .....	44

Use of Compensatory Time before Lapsing.....	44
Notification of Compensatory Time Policy .....	45
Additional Resources.....	46
Holiday Compensatory Time.....	46
Transfer of Holiday Compensatory Time between State Agencies .....	47
Compensatory Time for Persons Governing State Agencies .....	47
Compensatory Time and Assigned Place of Employment .....	48
Additional Resources.....	48
Authorizations for Payment of Holiday and State Compensatory Time.....	49
Department of Agriculture.....	49
Department of Criminal Justice.....	49
Department of Transportation .....	49
Health and Human Services Agencies .....	49
Texas Engineering Extension Service.....	50
Texas Forest Service .....	50

### ***Section 5 Position Classification Plan***

---

Classification Plan Overview.....	51
Agencies Subject to the Position Classification Plan .....	51
Agencies' Use of the Plan .....	52
Bona Fide New Positions .....	52
Employee Job Classification .....	52
Classified Salary Schedules .....	53
Fiscal Year 2008-2009 Classified Salary Schedules A and B.....	53
Fiscal Year 2008-2009 Classified Salary Schedule for Schedule C .....	58
Classification Compliance Audits .....	58
Salary Studies .....	59
Additional Information .....	60

### ***Section 6 Salary Administration***

---

General Information .....	61
Part-time and Hourly Employees.....	61
Salary at the Time of Hire .....	61
Salary Limitations .....	61
Salary Supplementation .....	62
Additional Information.....	62
Conversion of Exempt Employees to Classified Positions .....	62
Reassignment of Executive Directors.....	63
Demotions .....	63
Equity Adjustments .....	63
Lateral Transfer .....	64
Reallocations.....	64
Reclassifications .....	65
Salary Reduction for Disciplinary Reasons.....	65
Promotions .....	66
Temporary Assignments .....	66

Fiscal Year 2008 and 2009 Salary Increases for Certain State Employees .....	66
Additional Information .....	68

***Section 7 Positions Exempt from Classification Plan***

---

Positions Exempt from the Classification Plan.....	69
Provisions for the Head of State Agencies.....	70
Not to Exceed Rates .....	70
Salary Groups .....	70
Salary Increases for Exempt Positions.....	72
Provisions for Salaries in the Judiciary Branch .....	72
Appellate Court Salary Limits for Attorneys .....	73
Provisions for Educational Institutions .....	73
Salary Study on Exempt Positions.....	73

***Section 8 Employee Compensation***

---

Employee Compensation Overview .....	75
Salary Limitations .....	75
Recovering Excess Compensation Paid .....	75
Additional Resources.....	75
Benefit Replacement Pay .....	76
Additional Resources.....	77
Hazardous Duty Pay .....	77
Hazardous Duty Pay Lifetime Service Credit.....	78
Amount of Hazardous Duty Pay .....	79
Hazardous Duty Pay for Department of Criminal Justice Correctional Officers.....	79
Hazardous Duty Pay for Youth Commission Employees.....	80
Additional Resources.....	81
Jury Service and Witness Fees .....	81
Authorized Witness Expenses, Texas Alcoholic Beverage Commission.....	82
Longevity Pay .....	82
Accrual of Lifetime Service Credit.....	82
Longevity Pay for Select Texas Youth Commission Employees.....	84
Longevity Pay for State Judges and Justices.....	84
Longevity Pay for Return-to-Work Retirees .....	84
Longevity Pay When Employee’s Status Changes.....	84
Additional Resources.....	84
Merit Increases for State Agency Employees.....	85
One-Time Merit Increases.....	86
Employees Not Eligible for Merit Increases.....	86
Additional Resources.....	87
Merit Increases at Institutions of Higher Education.....	87
Recruitment Bonuses .....	88
Retention Bonuses.....	88
Performance Rewards .....	89
Salary Stipends for Employees in Salary Schedule C.....	90
Education Level.....	90

Commission on Law Enforcement Officer Standards Certification Level .....	90
Bilingual Capabilities .....	90
Department of Public Safety Pay for Corporal Classification.....	91
Salary Stipends and Pay for Special Assignments.....	91
Animal Health Commission.....	91
Health and Human Services Agencies .....	91
Department of Public Safety .....	92
Department of Transportation .....	92
Office of State-Federal Relations.....	92
Shift Differentials, Standby, or On-Call Pay .....	93
Department of Transportation .....	93
Health and Human Service Agencies .....	93
Texas Facilities Commission .....	94
Texas Workforce Commission.....	94
Registered and Licensed Vocational Nurses .....	94
Additional Resources.....	95

### ***Section 9 Payroll and Personnel Reporting***

---

Payroll Overview .....	97
Payday.....	97
Method and Frequency of Pay .....	98
Determining Amounts for Part-time Pay.....	98
Federal Insurance Contribution Act .....	99
Payroll Deductions .....	99
Charitable Contributions .....	100
Credit Unions.....	100
Membership Feesfor Eligible State Employee Organizations .....	100
Supplemental Optional Benefits Program .....	101
Payroll Reductions or Deductions Authorized for Institutions of Higher Education .....	101
Withholding of Administrative Fee for Supplemental Deductions .....	101

### ***Section 10 General Leave Provisions***

---

Leave Records.....	102
Annual Leave .....	104
Annual Leave Accruals.....	105
Annual Leave Utilization .....	105
Annual Leave and Employee Transfers .....	107
Annual Leave and Employee Separations .....	108
Annual Leave Accruals and Retirees.....	112
Determining Length of State Service for Annual Leave and Longevity Pay .....	113
Sick Leave .....	115
Sick Leave Utilization.....	116
Sick Leave and Employee Separations .....	118
Extended Sick Leave .....	120
Sick Leave Pool .....	121
Catastrophic Injury or Illness.....	121
Administering the Sick Leave Pool.....	122

Education Service Centers and Leave .....	123
Leave without Pay.....	124
Payment of Accrued Leave of Deceased Employees .....	125
Paid Leave Bank for Institutions of Higher Education .....	126

### ***Section 11 State Holidays***

---

State Holiday Overview.....	127
Fiscal Year 2008-2009 Holiday Schedules.....	130
Optional Holidays.....	132
Holidays and Employee Transfers.....	132
Holidays for Employees Working Non-Traditional Schedules .....	132
Holidays for Institutions of Higher Education .....	133
Holiday Time Payment for Deceased Employees .....	134

### ***Section 12 Family and Medical Leave***

---

Family and Medical Leave Act Overview.....	135
Eligibility for Family and Medical Leave .....	137
Family and Medical Leave and the Use of State Paid Leave.....	138
Parental Leave .....	139

### ***Section 13 Miscellaneous Leave Provisions***

---

Administrative Leave for Outstanding Performance .....	141
Amateur Radio Operator Leave .....	141
Assistance Dog Training .....	142
Blood Donations.....	142
Bone Marrow and Organ Donation .....	142
Certified American Red Cross Activities .....	142
Compliance with a Subpoena .....	143
Emergency Leave .....	143
Foster Parent Leave.....	144
Injury Leave for Certain Peace Officers .....	145
Jury Service .....	145
Legislative Leave for Peace Officers or Fire Fighters.....	146
Parent-Teacher Conference Leave .....	146
Time Off to Vote .....	147
Volunteer Firefighters and Emergency Medical Services Training Leave .....	147
Wellness Leave.....	148
Related Legislation.....	149

### ***Section 14 Military Leave***

---

Military Leave Overview .....	150
Adjusted Work Schedule for Military Leave .....	151
Call to National Duty.....	151
Benefits and Protections for State Service .....	151

Related State Auditor’s Office Resources .....	152
Military Pay Differentials.....	152
Determining Eligibility .....	153
Additional Information .....	154

***Section 15 Military Employment and Re-employment Rights***

---

The Uniformed Services Employment and Re-employment Rights Act (USERRA) .....	156
Health and Pension Plan Coverage .....	156
Returning Service Members .....	156
State Re-employment Following Military Service .....	157
Applications for Re-employment.....	157
Re-employment to another Position Following Military Service .....	157
Entitlement to Retirement or Other Benefits.....	158
Veteran’s Employment Preference .....	158
Service-Connected Disabilities .....	158
Spouse and Orphans.....	159
Requirements for Public Entities.....	159
Appealing Employment Decisions under Veteran’s Preference .....	160
Veteran’s Preference Reporting Requirements.....	161
Related Legislation.....	161

***Section 16 Insurance Programs***

---

Insurance Overview .....	162
Employee Medical Insurance Benefits.....	162
Waiting Period for Coverage .....	162
Dependent Coverage.....	162
State Contributions for Health Insurance.....	163
Prescription Drug Benefits .....	164
Dental Insurance.....	164
Employee Life and Disability Insurance .....	164
Accelerated Payment of Life Insurance Benefits.....	164
Law Enforcement Officers and Firefighters Survivor Benefits.....	164
Liability Insurance.....	166
State Kids Insurance Program .....	166
Related Legislation.....	166

***Section 17 Retirement***

---

Retirement Overview .....	168
Employees Retirement System (ERS) .....	168
Retirement Contributions .....	169
Withdrawal of Contributions.....	169
Effective Date of Retirement.....	169
Retirement Eligibility .....	169
Class Member Eligibility .....	169
Commissioned Peace Officer and Custodial Officer Eligibility .....	170

Elected Class Eligibility .....	170
Establishing Service Credit .....	170
Use of Annual Leave and Sick Leave .....	171
Combined Service Credit .....	171
Purchase of Service Credit .....	172
Transfer of Service Credit .....	173
Health Insurance Benefits Eligibility .....	173
Insurance Coverage for Survivors .....	174
Optional Retirement Program Service .....	174
Disability Retirement Benefits .....	174
Proportionate Service Retirement Program .....	175
Resumption of State Service by a Retiree .....	175
Death and Survivor Benefits .....	176
Survivor Options at Retirement .....	176
Deferred Compensation .....	177
401(k) Plan .....	177
457(k) Plan .....	178
Related Legislation .....	179

### ***Section 18 Additional Benefits***

---

Awards and Gifts .....	180
Employee Health and Wellness Programs .....	180
Health Fitness and Education Programs .....	180
Wellness Programs .....	181
Health Services Pilot Program .....	183
Employee Assistance Programs .....	183
Employee Break and Meal Periods .....	183
Child Care Services .....	183
Clothing or Cleaning Allowances .....	184
Moving and Storage Expenses .....	184
Employee Meal Authorization .....	185
Medical Services .....	185
Health and Human Services Agencies .....	185
Department of Criminal Justice .....	186
Department of Public Safety .....	186
Texas Facilities Commission .....	186
Memberships In and Dues for Professional Organizations .....	186
Tuition and Mandatory Fees Assistance .....	187
State-Owned Housing .....	187
Related Legislation .....	188

### ***Section 19 Training***

---

Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Awareness Education .....	189
Correctional and Juvenile Correctional Officers Training .....	189
Equal Employment Opportunity (EEO) Compliance Training .....	189

Equal Employment Opportunity (EEO) Standards Training.....	190
Training and Education Programs.....	190
Training Policy Requirements .....	191
Additional Information .....	192

### ***Section 20 Unemployment Insurance Compensation***

---

Overview .....	194
Reimbursements to the Unemployment Compensation Fund .....	194
Claiming Unemployment Benefit.....	194
Benefit Eligibility .....	195
Unemployment Benefits .....	195
Payment of Benefits .....	195
Disqualification for Benefits .....	196
Coverage for State Employees Working Outside the State .....	196
Eligibility of Certain Disabled Persons .....	197
Related Legislation.....	198

### ***Section 21 Workers' Compensation***

---

Overview of Workers' Compensation.....	199
Coverage for State Employees .....	199
Out of State Assignments or Positions .....	200
Coverage for Services Provided by Volunteers.....	200
Additional Resources.....	200
Workers' Compensation Benefits .....	201
Medical Benefits .....	201
Income Benefits .....	202
Employer Responsibilities .....	204
Workers' Compensation and State Sick and Annual Leave Provisions.....	205
Workers' Compensation and Emergency Leave.....	206
Employer's Rights .....	206
Employee's Responsibilities .....	206
Additional State Agency Injury Reporting Requirements.....	207
Related Legislation.....	207

### ***Section 22 Contract Workforce Provisions***

---

Contract Manager Training.....	208
Contract Notification .....	208
Contracting with Former or Retired Agency Employees.....	208
Contracting with a Private Auditor .....	209
Major Consulting Services Contract .....	209
Use of Consultants by State Agencies .....	210

### ***Section 23 Miscellaneous Provisions***

---

Employee Exit Surveys.....	212
Exit Survey Employee Access .....	212

Exit Survey Reporting and Disclosure Requirements.....	212
Human Resources Staffing .....	213
Place of Work and Working Hours .....	213
Eight Hour Work Day for Certain Public Works Employees.....	214
Voluntary Work Reduction Program .....	214
Additional Resources.....	215
Public Information Responsibilities.....	215
Open Records Assistance .....	217
Reductions in Force .....	218
State Privacy Policy .....	218
Workforce Planning .....	218
Additional Human Resources-Related Legislation .....	220

## ***Appendices***

---

Appendix 1	
Objective, Scope, and Methodology.....	221
Appendix 2	
State Agency Responsibilities .....	223
Appendix 3	
Accrual Entitlements for State Agency Employees.....	224
Appendix 4	
Accrual Entitlements for Employees of Institutions of Higher Education .....	225
Appendix 5	
Pay Entitlements upon Separation from State Employment.....	226
Appendix 6	
Transfer and Rehire Leave Reinstatement Entitlements.....	227

<b><i>Index</i></b> .....	<b>228</b>
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*Section 1*  
***Standards of Conduct***

***Ethics Policy***

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

New Requirement
The 80th Legislature passed legislation requiring each state agency to adopt a written ethics policy by January 1, 2008.

***Nepotism***

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

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

Individuals are related by consanguinity if one is a descendant of the other, or if they share a common ancestor. An adopted child is considered to be the child of an adoptive parent for this purpose.<sup>7</sup> Individuals are related to each other by affinity if they are married to each other, or the spouse of one of the individuals is related by consanguinity to the other individual.<sup>8</sup>

A "public official" is:

- A political subdivision officer or board member.

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<sup>3</sup> Texas Government Code, Section 572.051 (c).

<sup>4</sup> Ibid., Section 572.051 (d).

<sup>5</sup> Ibid., Section 572.051 (b).

<sup>6</sup> Ibid., Section 573.041.

<sup>7</sup> Ibid., Section 573.023.

<sup>8</sup> Ibid., Section 573.024.

- A state officer or board member.
- A judge.<sup>9</sup>

A state agency may adopt a nepotism policy that is more restrictive than state law.<sup>10</sup>

Table 1-1

Consanguinity and Affinity Relationship Chart <sup>11</sup>					
From Public Official or Employee					
Consanguinity (Includes individuals related by blood to the Official or Employee)			Affinity (Includes an Official's or Employee's Spouse and individuals related to the Spouse)		
First Degree	Second Degree	Third Degree	First Degree	Second Degree	Third Degree
Father or Mother	Grandparents	Great Grandparents	Spouse	Grandparents	Great Grandparents
Son or Daughter (and spouse)	Grandchildren (and spouse)	Great Grandchildren (and spouse)	Father or Mother	Grandchildren	Great Grandchildren
	Uncle or Aunt (and spouse)	Great Uncle or Aunt (or spouse)	Son or Daughter	Uncle or Aunt	Great Uncle or Aunt
	First Cousin (and spouse)	Children of Great Uncle or Aunt (and spouse)		First Cousin	Children of Great Uncle or Aunt
	Nephew or Niece (and spouse)	Second Cousin (and spouse)		Nephew or Niece	Second Cousin
	Brother or Sister (and spouse)	Children of First Cousin (and spouse)		Brother or Sister	Children of First Cousin
		Grand Nephew or Niece (and spouse)			Grand Nephew or Niece

Exceptions to a nepotism policy include:

- An appointment as a notary public.
- An appointment as a personal attendant for any member of the Legislature or officer of the state or political subdivision.
- A confirmation of appointment to a term in the Legislature when no one related to the appointee within the prescribed degrees was a member or candidate.<sup>12</sup>

<sup>9</sup> Texas Government Code, Section 573.001 (3).

<sup>10</sup> Letter Opinion, Texas Office of the Attorney General, No. 93-30 (1993).

<sup>11</sup> Texas Government Code, Section 573.023.

<sup>12</sup> Ibid., Section 573.061.

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

- Thirty days, if the public official is appointed.
- Six months, if the public official is elected through an election other than the general election for state and county officers.
- One year, if the public official is elected through the general election for state and county officers.<sup>13</sup>

When an employee is allowed to continue in a position because of an exception to the nepotism rules, the appointing official (who is a relative) cannot participate in decision making regarding the employee unless such deliberations affect a class or category of employees.<sup>14</sup>

Table 1-2 provides a list of opinion letters from the Attorney General's Office related to nepotism within the state. The Office of the Attorney General also provides a publication, *2006 Texas Nepotism Laws Made Easy*; available for download on its Web site at [https://www.oag.state.tx.us/AG\\_Publications/pdfs/2006nepotism\\_easy.pdf](https://www.oag.state.tx.us/AG_Publications/pdfs/2006nepotism_easy.pdf).

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<sup>13</sup> Texas Government Code, Section 573.062 (a).

<sup>14</sup> Ibid., Section 573.062 (b).

Table 1-2

Nepotism Related Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
DM-46	Whether the Texas nepotism law is violated when the superintendent of a Texas Department of Mental Health and Mental Retardation school awards a merit salary to his spouse, who is employed at the same facility.
DM-76	Whether the Texas nepotism statute applies to individuals hired as independent contractors.
GA-0073	Whether the Texas Government Code prevents the hiring of a university president's spouse.
JM-1175	Whether the Department of Banking may hire the son of a member of the Finance Commission.
LO 90-030	Regarding the applicability of the Texas nepotism statute to relatives of half blood.
LO 93-30	Whether a home-rule city may adopt a nepotism rule that is more restrictive than state law.
LO 94-039	Whether the term 'child,' which defines a relationship by affinity for purposes of state nepotism prohibitions, includes an adult child who is no longer a dependent.
LO 96-142	Whether a member of the board of trustees of the Teacher Retirement System of Texas becomes ineligible to serve when his spouse (who is a member of the system) retires, and related questions.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

### *Off-Duty and Outside Employment*

State agencies may prohibit an employee from taking a second job without the prior approval of the executive director.<sup>15</sup> Institutions of higher education have even broader authority and may prohibit outside work even if that work is serving as an elected official.<sup>16</sup>

An officer of the Department of Public Safety is entitled to engage in any outside employment that does not adversely affect the operations or the reputation of the department.<sup>17</sup> If an officer is engaged in off-duty employment that is not explicitly prohibited by a Department of Public Safety guideline, the officer may continue with the off-duty employment until the director or the director's designee informs the officer in writing that the employment is not acceptable.<sup>18</sup>

Table 1-3 includes a list of opinion letters from the Attorney General's Office related to off-duty, outside, or multiple employment within the state.

<sup>15</sup> Opinion, Texas Office of the Attorney General, No. JM-93 (1983).

<sup>16</sup> Ibid., No. LO 96-109 (1996).

<sup>17</sup> Texas Government Code, Section 411.0077 (a).

<sup>18</sup> Ibid., Section 411.007 (c).

Table 1-3

Off Duty and Outside Employment Related Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
GA-0256	Whether a commissioned peace officer employed by the State violates the Texas Penal Code by working off duty for a private employer.
H-1317	Whether an administrative rule of the Texas Department of Human Resources prohibiting departmental personnel from being licensed as real estate brokers or salesmen is a valid employment rule.
JM-93	Whether the Texas Automated Information Systems Advisory Council may prohibit its employees from taking outside employment.
JM-188	Whether the Texas Department of Human Resources may prohibit workers from performing court-ordered social studies on their own time.
LO 89-067	Whether Sections 36.08 and 36.09 of the Texas Penal Code prevent dual employment for a public servant who is employed by the legislature or a legislative agency.
LO 90-043	Whether a state agency may adopt a personnel policy prohibiting its employees from engaging in counseling activities in a private capacity.
LO 90-106	Whether a state employee or an employee of a junior college district may receive compensation for serving as a city council member.
LO 93-33	Whether a state employee may serve on the board of directors of a municipal utility district.
LO 93-96	Whether a district attorney may simultaneously hold a compensated teaching position with a state university.
LO 94-072	Reconsideration of Letter Opinion No. 93-33 (1993) as to whether a state employee may serve on the board of directors of a municipal utility district.
LO 94-080	Whether an individual may 'be employed simultaneously in a full-time faculty position at both a public junior college and a state university.
LO 96-109	Whether a state university may prohibit its employees from engaging in outside employment.
LO 98-011	Regarding the service of state employees on the boards of water districts.
LO 98-054	Whether committee chairs or committee members of the Texas Physical Therapy Association may be members of the Texas Board of Physical Therapy Examiners.
LO 98-055	Whether a member of the Texas Board of Physical Therapy Examiners may simultaneously hold the office of county clerk.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

### *Physical Fitness Standards*

Law enforcement agencies shall adopt physical fitness standards that a commissioned law enforcement officer must meet to continue employment with the agency as a law enforcement officer.<sup>19</sup> The state law enforcement agencies covered under this provision include the following:

- Department of Public Safety.
- Alcoholic Beverage Commission.

<sup>19</sup> Texas Government Code, Section 614.152 (a).

- Parks and Wildlife Department.
- Department of Criminal Justice.<sup>20</sup>

The standards must directly relate to the officer's job duties and the law enforcement agencies shall use the services of a consultant to aid in the development of such standards. A violation of the adopted standards is just cause for dismissal or transfer to a position not compensated within Salary Schedule C of the position classification salary schedule prescribed by the General Appropriations Act. Law enforcement agencies, however, may exempt a law enforcement officer from a standard based on the facts and circumstances of the individual case, including whether an officer was injured in the line of duty.<sup>21</sup>

New Requirement
The 80th Legislature passed legislation requiring law enforcement agencies to adopt physical fitness standards.

### *Political Influence*

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A state agency may not use any money under its control to finance or support the candidacy of a person for an office in the legislative, executive, or judicial branch of state government or of the government of the United States.<sup>22</sup>

State officers and employees may not use official authority or influence to affect the result of an election or nomination of a candidate or to achieve any political purpose.<sup>23</sup> Employees may not coerce, restrict, or prevent contributions to candidates or political organizations.<sup>24</sup>

The use of state-owned vehicles to support the candidacy of a person running for office is prohibited.<sup>25</sup>

State agencies and institutions of higher education may not use appropriated funds to attempt to influence the passage or defeat of any legislation. However, this does not prohibit a state officer or employee from using state resources to provide public information or to provide information responsive to a request.<sup>26</sup>

Employees are permitted to testify on their own behalf on their own time, or during working hours on behalf of the agency, in support of or in opposition to specific legislation.<sup>27</sup>

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<sup>20</sup> Texas Government Code, Section 614.151 (1).

<sup>21</sup> Ibid., Section 614.152.

<sup>22</sup> Ibid., Section 556.004 (a).

<sup>23</sup> Ibid., Section 556.004 (c).

<sup>24</sup> Ibid., Section 556.004 (d).

<sup>25</sup> Ibid., Section 556.004 (b).

<sup>26</sup> Ibid., Section 556.006.

<sup>27</sup> Opinion, Texas Office of the Attorney General, No. H-566 (1975).

State employees are not allowed to be employed as paid lobbyists. Appropriated funds may not be used as compensation to employees who are required to register as lobbyists.<sup>28</sup> Appropriated funds may not be used to pay membership fees in organizations that pay all or part of the salary of a person required to register as a lobbyist.<sup>29</sup>

Each agency is required to provide all employees a copy of prohibited political activities and to maintain signed acknowledgements from employees. These acknowledgements must be made available for public inspection.<sup>30</sup>

Table 1-4 includes a list of opinion letters from the Attorney General’s Office related to political activity of state employees.

Table 1-4

Political Activity and Influence Related Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
H-566	Whether state employees may testify before legislative committees in favor of or in opposition to legislation.
JM-957	Regarding the political activity by employees of the Texas Department of Human Services.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

## Publicity

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A state agency may not use appropriated money to publicize or direct attention to a state employee.<sup>31</sup> In addition, a state agency may not use appropriated money to maintain a publicity office or department, employ an individual who has the title or duties of a public relations or press agent, or pay a public relations agent or business.<sup>32</sup>

## Representation by a Former Officer or Employee

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A former member of a governing body or executive head of a regulatory agency may not make any communication to or appearance before an employee of the agency in which the member or executive head served until two years after the member or executive has ceased employment with the agency if the communication or appearance is made with the intent to influence and on behalf of any person in connection with any matter on which the person seeks official action.<sup>33</sup>

<sup>28</sup> Texas Government Code, Section 556.005 (a).

<sup>29</sup> Ibid., Section 556.005 (b).

<sup>30</sup> Ibid., Section 556.009.

<sup>31</sup> Ibid., Section 2113.011 (a).

<sup>32</sup> Ibid., Section 2113.011 (b).

<sup>33</sup> Ibid., Section 572.054 (a).

A former state officer or employee of a regulatory agency who ceased service or employment with that agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered for a particular matter (a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding) in which the former officer or employee participated during their period of state service or employment.<sup>34</sup>

Table 1-5 includes a list of opinion letters from the Attorney General’s Office related to former state officers and employees.

Table 1-5

Limitations on Former Employees Related Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
DM-209	Whether a former employee of the Public Utility Commission who goes to work for an affiliate of a regulated utility violates Section 6, Article 1446c, Texas Civil Statutes.
JM-1031	Regarding the authority of the Department of Mental Health and Mental Retardation to impose certain requirements on contracts for community-based mental health and mental retardation services.
LO 92-024	Whether Section 3.102, Article 601 (b), Texas Civil Statutes, applies to a bid or contract that includes proposed financial participation by certain former state employees.
LO 97-047	Whether a former regent of the Texas State Technical College System may be appointed executive officer of the system.
LO 98-039	Whether a legislator may employ local public officials.
LO 98-109	Whether a former district judge sitting by assignment may hold a compensated teaching position with a state university.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

### *Unacceptable Solicitations and Benefits*

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

Employees and officers may not

- Accept or solicit any gift, favor, or service that might tend to influence an employee’s or officer’s discharge of official duties or is offered with the intent to influence official conduct.
- Accept employment or engage in a business or professional activity that might reasonably require the employee or officer to disclose confidential information acquired by reason of an official position.

#### **Texas Ethics Commission**

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

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

<sup>34</sup> Texas Government Code, Section 572.054 (b).

- Accept other employment or compensation that might impair the employee's or officer's independence of judgment in the performance of official duties.
- Make personal investments that might impair independence or judgment in the performance of official duties.
- Intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised official powers or performed official duties in favor of another.<sup>35</sup>

A state agency may not use appropriated money to compensate a state employee who violates a standard of conduct outlined above.<sup>36</sup> In addition, unless authorized by law, a state employee may not accept money for wages or travel expenses from a person that the employee's state agency intends to, or is currently, auditing, examining, or investigating.<sup>37</sup>

### *Use of Alcoholic Beverages*

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Except for legitimate law enforcement purposes, a state agency may not use appropriated funds to compensate an officer or state employee who uses alcoholic beverages on active duty, or to reimburse a travel expense for the purchase of an alcoholic beverage.<sup>38</sup>

### *Use of State Property*

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State property may be used only for official state purposes and should not be used for personal purposes. This includes the use of state-owned or state-leased motor vehicles, which may be used only for official state business. The use of such vehicles to commute to and from work is acceptable if it is approved by the administrative head of an agency.<sup>39</sup> The names and job titles of these employees and the reasons for authorization must be included in an annual report to the Office of the Governor, Legislative Reference Library, State Auditor's Office, and Legislative Budget Board.<sup>40</sup>

### *Related Legislation*

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Table 1-6 lists human resources-related bills that were passed by the 80th Legislature. This may not be a complete list and should be used only as a general summary of legislation related to standards of conduct that were addressed during the session.

<sup>35</sup> Texas Government Code, Section 572.051.

<sup>36</sup> Ibid., Section 2113.014 (a).

<sup>37</sup> Ibid., Section 660.016 (a).

<sup>38</sup> Ibid., Sections 2113.012 and 660.113 (e).

<sup>39</sup> Ibid., Section 2113.013.

<sup>40</sup> Ibid., Section 2101.0115 (a) and c (13).

Table 1-6

Standards of Conduct Related Legislation (80th Legislature) <sup>a</sup>	
Bill Number	Summary
HB 12	Implements physical fitness standards for certain law enforcement officers.
HB 590	Requires state agencies to adopt a written ethics policy.
HB 2460	Relates to the continuation and function of the Texas Commission of the Arts (Commission), including information on restrictions to membership on the Commission.
<sup>a</sup> Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at <a href="http://www.capitol.state.tx.us">www.capitol.state.tx.us</a> .	

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

***General Information***

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

**Texas Workforce Commission, Civil Rights Division**

The Texas Workforce Commission, Civil Rights Division (Division) is responsible for the education on and enforcement of certain state and federal employment laws. They serve as the state Fair Employment Practices agency that is authorized, with respect to unlawful employment practices, to seek relief, grant relief, and institute criminal proceedings related to state and federal employment laws. The Division provides training to help state agencies and institutions of higher education improve their understanding and compliance with Equal Employment Opportunity laws.<sup>41</sup>

Each state agency and institution of higher education is required to provide training to each new employee on policies and procedures regarding employment discrimination and sexual harassment no later than 30 days after the date of hire. In addition, supplemental training is required every two years. Training materials are available from the Civil Rights Division of the Texas Workforce Commission. A signed statement verifying attendance is required to be maintained in each employee's personnel file.<sup>42</sup>

A person claiming to be discriminated against or aggrieved by an unlawful employment practice, or the person's agent, may file a complaint with the Texas Workforce Commission's Civil Rights Division.<sup>43</sup>

**Workforce Diversity Programs**

State agencies and institutions of higher education are required to develop and implement personnel policies that comply with Chapter 21 of the Texas Labor Code (Employment Discrimination), including the development of a workforce diversity program.<sup>44</sup> The Texas Workforce Commission's Civil Rights Division is required to review these policies to ensure compliance with state statute. If the Civil Rights Division finds that these policies do not comply with state statute, it will recommend revisions.<sup>45</sup>

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<sup>41</sup> Texas Labor Code, Chapter 21.0015.

<sup>42</sup> Ibid., Section 21.010.

<sup>43</sup> Ibid., Section 21.201 (a).

<sup>44</sup> Ibid., Section 21.452.

<sup>45</sup> Ibid., Section 21.453.

An employer does not commit an unlawful employment practice by developing and implementing personnel policies that incorporate work force diversity programs.<sup>46</sup>

### ***Age Discrimination in Employment Act of 1967 (ADEA)***

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The Age Discrimination in Employment Act of 1967 (ADEA) and the Texas Labor Code prohibit discrimination against a person (employee or job applicant) because of his or her age with respect to any term, condition, or privilege of employment including, but not limited to, hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training. Employees aged 40 and older are protected from such age-related discrimination. In addition, employees are not required to retire at any specific age.<sup>47</sup>

### ***Americans with Disabilities Act of 1990 (ADA)***

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

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

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

- Has a physical or mental impairment that substantially limits one or more major life activities.
- Has a record of such impairment.
- Is regarded as having such impairment.<sup>48</sup>

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

#### **ADA Technical Assistance Manual**

The Department of Justice has issued a technical assistance manual designed to assist state and local officials improve compliance requirements for access to programs, services, activities, and facilities. The technical assistance manual can be found at:  
<http://www.ada.gov/pccatoolkit/toolkitmain.htm>.

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<sup>46</sup> Texas Labor Code, Section 21.121.

<sup>47</sup> Ibid., Section 21.051; and Age Discrimination in Employment Act of 1967, Title 29, United States Code, Chapter 621.

<sup>48</sup> *Americans with Disabilities Act Questions and Answers*, U.S. Equal Employment Opportunity Commission Web site at <http://www.usdoj.gov/crt/ada/q%26aeng02.htm>.

## ADA State Efforts

The Texas Governor's Committee on People with Disabilities (Committee) consists of 12 volunteer members appointed by the Governor, seven of whom must be persons with disabilities. The primary purpose of the Committee is to coordinate and monitor the State's compliance with the ADA and other federal and state statutes. State agencies and institutions of higher education should direct their concerns to the Committee and cooperate with and assist in its goal of improving opportunities for people with disabilities.<sup>49</sup>

### *Bona-Fide Occupational Qualification (BFOQ)*

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No person shall be subject to discriminatory employment practices based on race, color, disability, religion, sex, national origin, or age. However, there may be some exceptions based upon bona-fide occupational qualifications (BFOQ). A BFOQ is a requirement that is necessary and related to the performance of a job and which would otherwise be unlawful because of its discriminatory impact based on one's sex, religion, national origin, and other reasons. Examples may include requiring a minister of a particular religion to be a member of that religion or excluding men from being attendants in a women's locker room.<sup>50</sup> The concept of BFOQ is interpreted very narrowly by federal courts and the Equal Opportunity Employment Commission, and state agencies and institutions of higher education should consult with their general counsel before choosing to use a BFOQ.

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

- An employer hiring and employing an individual.
- An employment agency classifying or referring an individual for employment.
- A labor organization classifying its members or classifying or referring an individual for employment.
- An employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program admitting or employing an individual in its program.<sup>51</sup>

In addition, an employer does not commit an unlawful employment practice by imposing a minimum or maximum age requirement for peace officers or fire fighters.<sup>52</sup>

### *The Civil Rights Act of 1964, Title VII*

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Title VII of the Civil Rights Act of 1964, as well as Texas Labor Code, Chapter 21, prohibits employment discrimination because of race, sex, color, national origin, religion, age, and mental or

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<sup>49</sup> Texas Human Resources Code, Section 115.001; and Texas Governor's Office Web site at <http://www.governor.state.tx.us/divisions/disabilities/dcmembers>.

<sup>50</sup> *Especially for Texas Employers Policy Issues, Affirmative Action*, Texas Workforce Commission, Web site at [http://www.twc.state.tx.us/news/efte/affirmative\\_action.html](http://www.twc.state.tx.us/news/efte/affirmative_action.html).

<sup>51</sup> Texas Labor Code, Section 21.119.

<sup>52</sup> *Ibid.*, Section 21.104.

physical disability.<sup>53</sup> An employer commits an unlawful employment practice if, because of race, color, disability, religion, sex, national origin, or age, the employer:

- Fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment.
- Limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee.<sup>54</sup>

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

Title VII also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups. Title VII not only prohibits intentional discrimination, it also prohibits neutral job policies that disproportionately exclude minorities.<sup>55</sup>

### Religious Affiliation Discrimination

Texas Labor Code, Chapter 21 prohibits discrimination of an employee or applicant based on any aspect of religious observance, practice, or belief; unless an employer demonstrates that the employer is unable reasonably to accommodate the religious observance or practice of an employee or applicant without undue hardship to the conduct of the employer's business.<sup>56</sup>

### Sexual Harassment

Sexual harassment is a form of gender-based discrimination prohibited by Title VII of the Civil Rights Act of 1964. The two most common forms of sexual harassment are “quid pro quo” and “hostile work environment.” Quid pro quo harassment forces an employee to choose between the job and the demands. Quid pro quo means “something for something” or “this for that.” A hostile work environment exists when the employer allows the workplace to be permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive enough to alter the conditions of the victim’s employment and create an abusive working environment.<sup>57</sup>

#### Definition of Sexual Harassment

Sexual Harassment is defined as:

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

Source: Code of Federal Regulations, Title 29, Volume 4.

<sup>53</sup> Texas Labor Code, Section 21.110.

<sup>54</sup> Ibid., Section 21.051.

<sup>55</sup> *Race and Color Discrimination Questions and Answers*, U.S. Equal Employment Opportunity Commission Web site at <http://www.eeoc.gov/types/race.html>.

<sup>56</sup> Texas Labor Code, Section 21.108.

<sup>57</sup> *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993).

An employer is absolutely liable for hostile environment claims that include a tangible employment action. According to a ruling by the U.S. Supreme Court, “a tangible employment action constitutes a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.”<sup>58</sup> A constructive discharge claim can be a tangible employment action if working conditions are so intolerable that a reasonable person would have felt compelled to resign.<sup>59</sup>

If there is no tangible employment action, the employer may assert an affirmative defense. According to a U.S. Supreme Court ruling, “the defense comprises two necessary elements: (1) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (2) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.”<sup>60</sup>

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

## ***Conflict Resolution and Employee Grievances***

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### **Alternative Dispute Resolution (ADR)**

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

It is the policy of the State that disputes before governmental entities be resolved as fairly and expeditiously as possible and that each governmental body support this policy by developing and using alternative dispute resolution procedures in appropriate aspects of the governmental body's operations and programs.<sup>61</sup>

A governmental body may pay for costs necessary to meet the objectives of the Governmental Dispute Resolution Act, including reasonable fees for training, policy review, system design, evaluation, and the use of impartial third parties. The Governmental Dispute Resolution Act also authorizes governmental entities to obtain alternative dispute resolution services from other governmental entities, agency “pooling” agreements, community Dispute Resolution Centers, and private providers.<sup>62</sup>

The Governmental Dispute Resolution Act grants the State Office of Administrative Hearings and Administrative Law Judges the authority to conduct alternative dispute resolution proceedings and

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<sup>58</sup> *Burlington Industries, Inc. v. Ellerth*, 523 U.S. 742 (1998).

<sup>59</sup> *Pennsylvania State Police v. Suders*, 542 U.S. 129 (2004).

<sup>60</sup> *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).

<sup>61</sup> Texas Government Code, Section 2009.002.

<sup>62</sup> *Ibid.*, Section 2009.004.

refer contested cases to alternative dispute resolution. Binding arbitration is specifically excluded as a method of alternative dispute resolution.<sup>63</sup>

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

### **Employee Grievances**

The Texas Attorney General has ruled that state agencies should meet with their employees to hear grievances concerning wages, work hours, and work conditions.<sup>64</sup> State agencies and institutions of higher education may establish their own policies regarding the processing of employee grievances.

State funds cannot be used to pay expenses for salary, travel, or per diem of a public employee who represents another employee who filed a grievance in the presentation of grievances concerning wages, hours of work, or conditions of work. Such employees may, in accordance with agency policy, take annual leave, compensatory leave, or leave without pay for time associated with representing an employee who filed a grievance.<sup>65</sup>

### **Faculty Grievances**

A faculty member at an institution of higher education has a right to present a grievance, in person, to administration regarding non-renewal or termination of employment. This right is guaranteed and cannot be restricted. "Faculty members" are defined as individuals who are employed full-time with duties that include teaching, research, or administration or individuals who provide professional services. This right does not extend to faculty who spend the majority of their time dedicated to managerial or supervisory duties. Such positions include chancellor, vice chancellor, president, vice president, provost, assistant provost, dean, and assistant dean.<sup>66</sup>

## ***Employee Polygraph Protection Act of 1988 (EPPA)***

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The Employee Polygraph Protection Act of 1988 (EPPA) generally prevents employers from using lie detector tests, either for pre-employment screening or during the course of employment, with certain exemptions. Employers generally may not require or request any employee or job applicant to take a lie detector test, or discharge, discipline, or discriminate against an employee or job applicant for refusing to take a test or for exercising other rights under the Act. The Employment Standards Administration's Wage and Hour Division within the U.S. Department of Labor enforces the EPPA.<sup>67</sup>

### **Polygraph Examinations for Officers and Employees in Certain Positions**

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

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

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<sup>63</sup> Texas Government Code, Section 2009.005 (c).

<sup>64</sup> Opinion, Texas Attorney General, No. H-422 (1974) and No. M-719 (1970).

<sup>65</sup> General Appropriations Act (80th Legislature), Article IX, Section 16.03.

<sup>66</sup> Texas Education Code, Section 51.960.

<sup>67</sup> *Compliance Assistance*, U.S. Department of Labor Web site at <http://www.dol.gov/compliance/laws/comp-eppa.htm>.

- The federal agency requires that the officer or employee submit to a polygraph examination.

If an officer or employee does not submit to the administration of a polygraph examination, the agency may remove or refuse to assign the officer or employee to that position.<sup>68</sup>

New Requirement
The 80th Legislature passed legislation requiring polygraph examinations for certain officers and employees of the Department of Public Safety.

### Polygraph Examination Refusal

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

- The complainant submits to and passes a polygraph examination (provided that the complainant is physically and mentally capable of being polygraphed); or
- The head of the law enforcement organization requires the peace officer to submit to a polygraph examination on the basis of all of the following:
  - The subject matter of the complaint is confined to the internal operations of the organization employing or appointing the peace officer, and
  - The complainant is an employee or appointee of the organization employing or appointing the peace officer, and
  - The complaint does not appear to be invalid based on the information available when the polygraph is ordered; or
  - The head of the law enforcement organization considers the circumstances to be extraordinary and believes that the integrity of a peace officer or the law enforcement organization is in question. Under these circumstances the head of the organization shall provide the peace officer with a written explanation of the nature of the extraordinary circumstances and how the integrity of a peace officer or the law enforcement organization is in question.<sup>69</sup>

### *Equal Pay Act of 1963 (EPA)*

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

<sup>68</sup> Texas Government Code, Section 411.00741.

<sup>69</sup> Ibid., Section 614.063.

Pay differentials are permitted when they are based on seniority, merit, quantity or quality of production, or a factor other than sex. These are known as “affirmative defenses” and it is the employer’s burden to prove that they apply. In correcting a pay differential, no employee’s pay may be reduced. Instead, the pay of the lower paid employee(s) must be increased.<sup>70</sup>

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### ***Federal Pregnancy Discrimination Act of 1978***

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The Federal Pregnancy Discrimination Act of 1978 and the Texas Labor Code prohibit discrimination on the basis of pregnancy, childbirth, or related medical conditions.<sup>71</sup> Women affected by pregnancy or related conditions must be treated in the same manner as other employees or applicants who have medical conditions that place a similar limitation on their ability to or availability for work.<sup>72</sup>

The Texas Department of Public Safety (Department) is required to make reasonable efforts to accommodate the request of a commissioned officer who is determined by a physician to be partially physically restricted by a pregnancy if the request is related to the officer’s working conditions. If an officer’s physician certifies that, because of the officer’s pregnancy, the officer is unable to perform the duties of the officer’s permanent work assignment and a temporary work assignment that the officer may perform is available, the Department must, on request of the officer, assign the officer to the temporary work assignment.<sup>73</sup>

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### ***Genetic Testing Discrimination***

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State agencies and institutions of higher education are prohibited from discriminating against an individual on the basis of genetic information or an individual’s refusal to submit to a genetic test. Routine physical exams; chemical, blood, or urine analyses; tests to determine drug use; and tests for the presence of human immunodeficiency virus are excluded from this definition of genetic testing.<sup>74</sup>

An employee’s genetic information is confidential, regardless of the source, and cannot be disclosed without written authorization from the employee.<sup>75</sup> An individual who submits to a genetic test has the right to know the results. To obtain those results, individuals need to provide a written request to the entity that performed the test. Results should then be sent to the individual or a physician designated by the individual.<sup>76</sup>

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### ***Protections in Reporting Violations of Law***

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

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<sup>70</sup> *Facts about Compensation Discrimination*, U.S. Equal Employment Opportunity Commission Web site, <http://www.eeoc.gov/facts/fs-epa.html>.

<sup>71</sup> *Pregnancy Discrimination Questions and Answers*, U.S. Equal Employment Opportunity Commission Web site, <http://www.eeoc.gov/types/pregnancy.html>.

<sup>72</sup> Texas Labor Code, Section 21.106.

<sup>73</sup> Texas Government Code, Section 441.079.

<sup>74</sup> Texas Labor Code, Sections 21.401 and 21.402

<sup>75</sup> *Ibid.*, Sections 21.403, 21.4031, and 21.4032.

<sup>76</sup> *Ibid.*, Section 21.404.

## Reporting Discrimination

The same laws that prohibit discrimination also prohibit retaliation against individuals who oppose unlawful discrimination or participate in an employment discrimination proceeding. An employer may not fire, demote, harass, or otherwise “retaliate” against individuals for filing a charge of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination.<sup>77</sup>

## Reporting Child Abuse and Neglect

An employer may not take action against a professional who, in good faith, reports child abuse or neglect to the person’s supervisor, administrator, a regulatory agency, or law enforcement. In this situation, “professional” means an employee of a facility licensed, certified, or operated by the state and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers.<sup>78</sup>

Persons initiating or cooperating with an investigation are also extended this protection. This protection does not apply to a self-disclosure.<sup>79</sup>

## Texas Whistle Blower Act

A state agency or institution of higher education may not suspend, terminate, or take other adverse personnel action against an employee who, in good faith, reports a violation of the law by the employing governmental entity or another public employee to an appropriate law enforcement authority.<sup>80</sup> Agencies and institutions of higher education shall inform its employees of their rights by posting a sign in a prominent location in the workplace.<sup>81</sup> An employee who alleges that action taken against them is in violation of this provision may file suit against the State but not later than the 90th day after the date on which the alleged violation occurred or was discovered. The employee also must exhaust the appeals process during this 90-day period.<sup>82</sup>

## *Public Employee Labor Unions*

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

Employees may use automatic payroll deductions for the payment of membership fees in state employee organizations. Such organizations must have a minimum of 4,000 members to qualify for this service.<sup>83</sup>

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<sup>77</sup> Texas Labor Code, Section 21.055.

<sup>78</sup> Texas Family Code, Section 261.101

<sup>79</sup> Ibid., Section 261.110.

<sup>80</sup> Texas Government Code, Section 554.002 (a).

<sup>81</sup> Ibid., Section 554.009.

<sup>82</sup> Ibid., Sections 554.003, 554.004, 554.005, and 554.006.

<sup>83</sup> Ibid., Sections 403.0165 and 814.009.

Table 2-1 includes a list of opinion letters from the Attorney General’s Office related to labor relations and state employees.

Table 2-1

Labor Relations Related Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
LO 97-038	Whether Section 617.002 of the Texas Government Code prohibits public sector employers from meeting with union representatives to discuss matters affecting employee working conditions.
M-719	Whether the Adjutant General of Texas must comply with Federal Executive Order No. 11491 and Department of Defense Order No. 1426.1 even though doing so apparently conflicts with Article 5154c, Texas Civil Statutes.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

## Strikes

Public employees may not strike or engage in an organized work stoppage against the State. A public employee who violates this statute forfeits all civil service rights, re-employment rights, and any other rights, benefits, and privileges the employee enjoys as a result of public employment or former public employment. The right of an individual to cease work may not be abridged if the individual is not acting in concert with others in an organized work stoppage.<sup>84</sup>

## *Workers’ Compensation Claims History Discrimination*

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The Texas Workers Compensation Act enables an employee who has been injured at work or has a work-related illness to receive medical benefits as well as income benefits. In addition, it protects against discrimination based upon workers’ compensation claims history. Although the Texas Supreme Court has ruled that this statute applies only to employees and not to applicants, discriminating against applicants based upon workers’ compensation claims history is generally viewed by the U.S. Equal Employment Opportunity Commission as a violation of disability discrimination laws.<sup>85</sup>

## *Related Legislation*

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Table 2-3 lists human resources-related bills that were passed by the 80th Legislature. This may not be a complete list and should be used only as a general summary of legislation related to employment discrimination laws that were addressed during the session.

<sup>84</sup> Texas Government Code, Sections 617.003 and 617.005.

<sup>85</sup> *Especially for Texas Employers, Major Law Impacting the Hiring Process*, Texas Workforce Commission Web site at [http://www.twc.state.tx.us/news/efte/major\\_laws.html](http://www.twc.state.tx.us/news/efte/major_laws.html).

Table 2-3

Employment Discrimination Laws Related Legislation (80th Legislature) <sup>a</sup>	
Bill Number	Summary
SB 295	Relating to the administration of polygraph examinations to certain officers and employees of the Texas Department of Public Safety.
<sup>a</sup> Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at <a href="http://www.capitol.state.tx.us">www.capitol.state.tx.us</a> .	

### ***Required Posters at the Workplace***

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

Table 2-2

Required Workplace Posters	
Issuing Agency	Poster Title
Texas Workforce Commission	Texas Unemployment Compensation Act
Texas Workforce Commission	Texas Payday Law
Texas Workforce Commission, Civil Rights Division	The Law in Texas (optional poster)
Texas Department of Insurance, Officer of Injured Employee Counsel Division of Workers' Compensation	The Employer's Notification of the Ombudsman Program to Employees
Texas Department of Insurance, Officer of Injured Employee Counsel Division of Workers' Compensation	Workers' Compensation Posters
U.S. Department of Labor	The Uniformed Services Employment and Reemployment Rights Act (USERRA)
U.S. Department of Labor, Wage and Hour Division	Fair Labor Standards Act (FLSA)
U.S. Department of Labor, Wage and Hour Division	Employee Polygraph Protection Act (EPPA)
U.S. Department of Labor, Wage and Hour Division	Family Medical Leave Act (FMLA)
U.S. Department of Labor, Occupational Health and Safety Administration (OSHA)	Job Safety and Health Protection
U.S. Equal Employment Opportunity Commission	Equal Employment Opportunity Act
U.S. Equal Employment Opportunity Commission	Americans with Disabilities Act of 1990

*Section 3*  
*Employee Recruitment and Selection*

*At-Will Employment*

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Unless explicitly exempted by written contract, statute, or policy, all state employees are employed “at will” and there is no implied contract of employment.<sup>86</sup> “At-will” employment defines an employment relationship in which either party can terminate the relationship with no liability if there was no express contract for a definite term governing the employment relationship. Under this legal doctrine:

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

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

- The Department of Public Safety.<sup>87</sup>
- Texas Workforce Commission.<sup>88</sup>
- Health and Human Services Commission.
- Department of Family and Protective Services.
- Department of State Health Services.
- Department of Assistive and Rehabilitative Services.
- Department of Aging and Disability Services.<sup>89</sup>

Table 3-1 provides a list of opinion letters from the Attorney General’s Office related to at-will employment within the state.

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<sup>86</sup> Opinion, Texas Office of the Attorney General, No. JM-941 (1988).

<sup>87</sup> Texas Government Code, Sections 411.007(e) and 441.0071.

<sup>88</sup> Ibid., Section 655.001; and Title 42, United States Code, Section 503 (a) (1).

<sup>89</sup> Ibid., Sections 655.001 and 531.010; and Title 42, United States Code, Section 1396 (a) (4).

Table 3-1

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

## ***Background and Criminal History Checks***

An employer in the State that discloses information about a current or former employee is immune from civil liability for that disclosure or any damages caused by that disclosure unless it is proven that the information was known to be false or was made with reckless disregard for the truth.<sup>90</sup> This applies to a managerial employee or other representative of the employer who is authorized to provide and who provides this information.<sup>91</sup> An employer is not required to provide an employment reference to or about a current or former employee.<sup>92</sup>

Additionally, although the employer is not required to do so, the employer may disclose information about a current or former employee's job performance to a prospective employer at the request of either the prospective employer or the employee.<sup>93</sup>

An employer may not disclose information about a licensed nurse or licensed vocational nurse that relates to conduct that is protected under the Texas Occupations Code.<sup>94</sup> The employer must provide the nurse with an opportunity to submit information that would allow the nurse to establish their protection under this code.<sup>95</sup>

### **Criminal History Checks**

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

<sup>90</sup> Texas Labor Code, Section 103.001.

<sup>91</sup> Ibid., Section 103.004.

<sup>92</sup> Ibid., Section 103.005.

<sup>93</sup> Ibid., Section 103.003 (a).

<sup>94</sup> Texas Occupation Code, Sections 301.352 and 303.005.

<sup>95</sup> Texas Labor Code, Section 103.003 (b).

the Attorney General, among others, may access criminal history records of applicants for employment for certain positions. In addition to specific enabling statutes, agencies, departments, and employees should consult Texas Government Code, Sections 411.081 through 411.127, for more information and specific limitations on access to criminal history records.<sup>96</sup>

### **Dissemination of Criminal History Information**

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

- Criminal justice agencies.
- Non-criminal justice agencies authorized by federal statute or executive order or by state statute to receive criminal history record information.
- The person who is the subject of the criminal history record information.
- A person working on a research or statistical project that is funded in whole or in part by state funds; or meets the requirements of Part 22, Title 28, Code of Federal Regulations, and is approved by the Department.
- An individual or an agency that has a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice under that agreement, if the agreement:
  - Specifically authorizes access to the information.
  - Limits the use of information to the purposes for which it is given.
  - Ensures the security and confidentiality of the information.
  - Provides for sanctions if a requirement imposed is violated.
- A county or district clerk's office.
- The Office of Court Administration of the Texas Judicial System.<sup>97</sup>

The Department of Public Safety is not required to release or disclose criminal history record information to any person that is not in compliance with rules adopted by the Department or rules adopted by the Federal Bureau of Investigation that relate to the dissemination or use of criminal history record information.<sup>98</sup>

### **State Agency Access to Criminal History Information**

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

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<sup>96</sup> Texas Government Code, Section 411.081.

<sup>97</sup> Ibid., Section 411.083 (a) and (b).

<sup>98</sup> Ibid., Section 411.083 (d).

- Is an employee, applicant for employment, contractor, subcontractor, or intern or other volunteer with the state agency or with a contractor or subcontractor for the state agency; and
- Has access to information resources or information resources technologies, other than a desktop computer or telephone station assigned to that person.<sup>99</sup>

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

- By court order;
- With the consent of the person who is the subject of the information; or
- To the affected contractor or subcontractor, unless the information was obtained by the Department of Public Safety from the Federal Bureau of Investigation.<sup>100</sup>

State agencies and the affected contractor or subcontractor are required to destroy criminal history information that relates to a person (1) after the information is used to make an employment decision or (2) after taking a personnel action relating to the person who is the subject of the information.<sup>101</sup>

A state agency may not obtain criminal history record information unless the state agency first adopts policies and procedures that provide that evidence of a criminal conviction or other relevant information obtained from the criminal history record information does not automatically disqualify an individual from employment.<sup>102</sup> Employers may not provide a person with a copy of his or her criminal history.<sup>103</sup>

The Texas Office of Attorney General shall review the agency's policies and procedures for compliance with due process and other legal requirements before adoption by the state agency.<sup>104</sup> The Office of Attorney General has a model policy that is available for agencies to use.

The policies and procedures adopted by the agency must provide that the hiring official will determine, on a case-by-case basis, whether the individual is qualified for employment based on factors that include:

- The specific duties of the position.
- The number of offenses committed by the individual.
- The nature and seriousness of each offense.
- The length of time between the offense and the employment decision.
- The efforts by the individual at rehabilitation.

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<sup>99</sup> Texas Government Code, Section 411.1405 (b).

<sup>100</sup> Ibid., Section 411.1405 (c).

<sup>101</sup> Ibid., Section 411.1405 (d).

<sup>102</sup> Ibid., 411.1405 (e).

<sup>103</sup> Ibid., Section 411.085 (a)(2).

<sup>104</sup> Ibid., Section 411.1405 (e).

- The accuracy of the information on the individual's employment application.<sup>105</sup>

Strict guidelines govern the use of criminal history records.<sup>106</sup> It is a criminal offense to obtain, use, or disseminate a criminal history record in an unauthorized manner. Additionally, it is an offense to provide this information in exchange for money or to employ another person to do so. The Department of Public Safety (Department) must provide a copy of the penalties of unauthorized obtainment and the use of or disclosure of criminal history record information to a person who applies for access to criminal history record information maintained by the Department and to each private entity that purchases criminal history record information from the Department.<sup>107</sup>

### Higher Education Access to Criminal History Information

Institutions of higher education are entitled to obtain criminal history information from the Department of Public Safety for persons who are applicants for security-sensitive positions.<sup>108</sup> A security-sensitive position is held by an employee who:

- Handles currency;
- Has access to a computer terminal;
- Has access to a master key; or
- Works in a location designated as a security-sensitive area.<sup>109</sup>

The information obtained may not be released or disclosed to any person except through court order.<sup>110</sup>

### Review of Background Check Procedures

All state agencies currently conducting background checks shall submit to the State Auditor's Office (SAO), the Texas Department of Licensing and Regulation, the Department of Public Safety, and the Legislative Budget Board a report on their background check procedures by November 1, 2007. The SAO will determine the form in which the agencies will submit the reports.

The SAO will complete a review of all agencies conducting background checks. The SAO's review will include information on any deficiencies in background check procedures and determine if there are any state agencies that should be conducting background checks, but currently do not. The review conducted by the SAO will be submitted to Texas Department of Licensing and Regulation, the Department of Public Safety, and the Legislative Budget Board by April 1, 2008.

The Department of Public Safety will make a report to the 81st Legislature on the availability of background check information. The report will include a determination of what level of background

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<sup>105</sup> Texas Government Code, Section 411.1405 (e).

<sup>106</sup> Ibid., Section 411.084.

<sup>107</sup> Ibid., Section 411.085.

<sup>108</sup> Ibid., Section 411.094 (b).

<sup>109</sup> Ibid., Section 411.094 (a)(2).

<sup>110</sup> Ibid., Section 411.094 (d).

check is sufficient; what deficiencies exist in the current background check process; and recommendations for how the Legislature can improve background check procedures.<sup>111</sup>

New Requirement
The 80th Legislature included provisions in the General Appropriations Act requiring state agencies currently conducting background checks to submit a report to the State Auditor's Office on their procedures by November 1, 2007.

### *Civilian Workforce Composition*

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Each biennium, the Texas Workforce Commission's Civil Rights Division is required to audit the statewide civilian workforce and report the results of this audit to the Office of the Governor and the Legislature. This Minority Hiring Practices Report is due by the fifth day of each legislative session. The report includes percentages of African Americans, Hispanic Americans, and females within the workforce by job category.<sup>112</sup>

### *Employees Working Out of State*

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A state employee who is required to work outside of this state is entitled to the same benefits and is subject to the same restrictions provided by law for other state employees, including vacation, leave from employment, and the employment policies and restrictions provided by the General Appropriations Act.<sup>113</sup>

### *Employment Contracts*

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#### **Employment Contracts for Administrators**

Institutions of higher education may enter into an employment contract with an administrator who is to be paid in whole or in part from appropriated funds. Such a decision is left to an institution's governing board and must be based on the best interests of the institution.<sup>114</sup>

An administrator is defined as someone with administrative duties related to the operation of the institution, including operation of a department, college, program, or other subdivision.<sup>115</sup> Such a contract may not:

- Provide for employment for more than three years.
- Allow for severance or other payment on the termination of the contract to exceed an amount equal to the discounted net cash value of the contract on termination (at a market interest rate agreed upon in the contract).

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<sup>111</sup> General Appropriations Act (80th Legislature), Article IX, Section 19.68.

<sup>112</sup> Texas Labor Code, Section 21.0035.

<sup>113</sup> Texas Government Code, Section 651.002.

<sup>114</sup> Texas Education Code, Section 51.948 (a).

<sup>115</sup> Ibid., Section 51.948 (g) (1).

- Allow for development leave that is inconsistent with Texas Education Code, Section 51.105.
- Award tenure in any way that varies from the institution's general policy on the award of tenure.<sup>116</sup>

If an administrator is reassigned to a faculty or staff position, he or she may not be paid more than other employees with similar qualifications who are doing similar work.<sup>117</sup>

### Employment Contracts for Faculty

Institutions of higher education may enter into a contract with a faculty member for more than one academic year.<sup>118</sup>

An institution of higher education is not required to provide an annual contract to tenured or tenure-tracked faculty, but it must provide notification (according to the institution's tenure policy) of a change in a term of employment. This notification should be provided no later than 30 days before implementation of the change.<sup>119</sup>

Institutions of higher education that reappoint a faculty member for the next academic year are required to provide that faculty member a written contract at least 30 days before classes begin.<sup>120</sup> If the institution of higher education is unable to offer the contract prior to that deadline, the institution is required to inform the faculty member in writing that it is unable to comply, offer an explanation, and provide a time by which the contract will be offered.<sup>121</sup>

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## *Identification Cards for Peace Officers*

### Peace Officer Identification Cards

A law enforcement agency or other governmental entity that appoints or employs a commissioned peace officer is required to issue an identification card to its full-time or part-time peace officers.<sup>122</sup> The identification card must include:

- The full name of the peace officer.
- A photograph of the peace officer that is consistent with the peace officer's appearance.
- The name of the law enforcement agency or other governmental entity that appointed or employs the peace officer or that the peace officer was elected to serve.
- If applicable, the signature of the person appointing or employing the person as a peace officer on behalf of the law enforcement agency or other governmental entity.

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<sup>116</sup> Texas Education Code, Section 51.948 (b).

<sup>117</sup> Ibid., Section 51.948 (c).

<sup>118</sup> Ibid., Section 51.943 (f).

<sup>119</sup> Ibid., Section 51.943 (c).

<sup>120</sup> Ibid., Section 51.943 (b).

<sup>121</sup> Ibid., Section 51.943 (d).

<sup>122</sup> Texas Government Code, Section 614.122 (a).

- A brief description of the peace officer, including the peace officer's height, weight, and eye color.
- The thumbprint of the peace officer or a bar code with a unique identification label for the peace officer.
- The date the law enforcement agency or other governmental entity appointed or employed the peace officer.
- The date the law enforcement agency or other governmental entity issued the card to the peace officer.
- A phone number operational 24 hours a day, seven days a week that a person may call to verify the validity of the identification card.<sup>123</sup>

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

- “State of Texas” and the state seal.
- “This identification card certifies that *(name of peace officer)* is commissioned by *(name of law enforcement agency or other governmental entity that appoints or employs the peace officer)* as a *(“full-time peace officer” or “part-time peace officer”)*.”<sup>124</sup>
- Identification cards expire on a date specified by the law enforcement agency or other governmental entity issuing the card.<sup>125</sup> The head of a law enforcement agency or other governmental entity that appoints or employs a peace officer shall recover the identification card at the time of the peace officer's resignation or termination.<sup>126</sup>

New Requirement
The 80th Legislature passed legislation requiring the issuance of specific identification cards to commissioned peace officers working for law enforcement or other governmental entities.

### Retired Peace Officer Identification Cards

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

- Retiree’s full name.
- Photograph consistent with the retiree’s appearance.

<sup>123</sup> Texas Government Code, Section 614.122 (b).

<sup>124</sup> Ibid., Section 614.122 (c).

<sup>125</sup> Ibid., Section 614.125.

<sup>126</sup> Ibid., Section 614.122 (d).

- Name of law enforcement agency or governmental entity issuing the card.
- Signature of person authorizing the issuance of the card on behalf of the law enforcement agency or governmental entity, if applicable.
- Brief description of retiree, including the height, weight, and eye color.
- Thumbprint or a bar code with a unique identification label.
- Date retiree last served as a peace officer for the law enforcement agency or governmental entity.<sup>127</sup>

Identification cards expire on a date specified by the law enforcement agency or other governmental entity issuing the card.<sup>128</sup>

New Requirement
The 80th Legislature passed legislation allowing law enforcement or other governmental entities to issue specific identification cards to honorably retired commissioned peace officers.

### *Limitations on State Employment Levels*

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State agencies and institutions of higher education are not permitted to exceed the number of full-time equivalent (FTE) positions<sup>129</sup> authorized by the General Appropriations Act (GAA) The limit on FTEs for most entities:

- Is determined in accordance with the report filed pursuant to Texas Government Code, Section 2052.103.
- Includes only employees paid with funds appropriated through the General Appropriations Act.
- Does not include overtime hours.
- Includes positions filled by temporary or contract workers for more than half of the workdays of the year preceding the final day of the reporting period. Temporary or contract workers include workers employed under contract to fill specific positions customarily filled by state employees. The State Auditor is authorized to provide interpretations of this requirement.<sup>130</sup>

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

- The date on which the board approved the request.

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<sup>127</sup> Texas Government Code, Section 614.123 (a)

<sup>128</sup> Ibid., Section 614.124.

<sup>129</sup> General Appropriations Act (80th Legislature), Article IX, Section 6.10 (a).

<sup>130</sup> Ibid., Section 6.10 (d).

- A statement justifying the need to exceed or reduce the limitation.
- The source of funds to be used to pay any additional salaries.
- An explanation for why the functions of any proposed additional FTEs cannot be performed within current staffing levels.<sup>131</sup>

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

FTE limitations do not apply to employment that stems from the declaration of a disaster by the Governor. Each year, state agencies must notify the State Auditor's Office, Comptroller of Public Accounts, Legislative Budget Board, and Office of the Governor of any FTE positions created in response to a declared disaster.<sup>132</sup>

According to the General Appropriations Act, the limitations on FTEs do not apply to a state agency or institution in an instance of employment, including employment of a temporary or contract worker, associated with implementation of a project that is 100 percent federally funded. Specifically, the state agency or institution is exempt from the FTE limitation only for the duration of the federal funding for the employment related to the project. In addition, all salaries, benefits, and other expenses incurred related to employment must be paid from federal funds. Each state agency or institution is required to notify the State Auditor, Comptroller of Public Accounts, Legislative Budget Board, and Office of the Governor of any FTEs that are exempted because of these circumstances.<sup>133</sup>

If a program is transferred from a state agency or institution of higher education, then at any time during the biennium, the Legislative Budget Board and the Office of the Governor may agree to reduce the number of FTEs paid from funds appropriated by the General Appropriations Act for one or more fiscal quarters to a figure less than that indicated by the General Appropriations Act for that agency or institution.<sup>134</sup>

Certain state agencies may have specific riders in the General Appropriations Act (80th Legislature) that increase or decrease agency FTE limitations or provide specific exemptions from mandated FTE caps.

### Full-Time Equivalent Employees Reporting

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

- The number of individuals who performed services for the agency under contracts, including consultants and individuals employed under contracts for temporary help services.
- The number of managers, supervisors, and staff.<sup>135</sup>

<sup>131</sup> General Appropriations Act (80th Legislature), Article IX, Section 6.10 (b).

<sup>132</sup> Ibid., Section 6.10 (f).

<sup>133</sup> Ibid., Section 6.10(g).

<sup>134</sup> Ibid., Section 6.10 (h).

<sup>135</sup> Texas Government Code, Section 2052.103.

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

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

The State Auditor's Office publishes an annual Full-Time Equivalent report for the Legislative Budget Board, the Governor's Office, and the Comptroller of Public Accounts summarizing the results of the information provided by agencies.<sup>136</sup> The State Auditor's Office provides additional data analysis and reports from its Full-Time Equivalent (FTE) System through its Web site at <http://www.sao.state.tx.us/apps/ftesystem>.

### *Merit Selection Principles*

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Some state agencies may be required by federal law or regulation to use a merit system of personnel administration for the agency or for a program administered under the agency.<sup>137</sup> These agencies shall, by rule, establish intra-agency policies and procedures that ensure compliance with the federal requirements and the recruitment, selection, and advancement of highly competent agency personnel. The adopted rules must ensure the state agency:

- Recruits, selects, and promotes its employees according to the relative abilities, knowledge, and skills of the applicants or employees.
- Provides equitable and adequate compensation to an employee.
- Provides any employee training necessary to ensure performance of a high quality.
- Uses the adequacy of an employee's job performance to determine whether the employee will be retained.
- Treats a job applicant or employee fairly in all aspects of personnel administration.
- Complies fully with state and federal equal opportunity and nondiscrimination laws.
- Protects an employee against coercion for partisan political purposes and prohibits the employee from using employment status to interfere with or affect the result of an election or nomination for office.<sup>138</sup>

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<sup>136</sup> Texas Government Code, Section 2052.104.

<sup>137</sup> Ibid., Section 655.001.

<sup>138</sup> Ibid., Section 655.002.

A state agency shall implement any additional merit principles required by federal law or regulation. A state agency may create a separate division within the agency to administer merit selection policies and procedures if the chief executive of the agency considers the creation necessary.<sup>139</sup>

### ***Multiple Employment with the State***

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A person who is employed by more than one state agency or institution of higher education may not receive benefits from the State that exceed the benefits provided for one full-time employee.<sup>140</sup>

A person must be informed of the following requirements before he or she is employed by more than one agency or institution:<sup>141</sup>

- Separate vacation and sick leave records must be maintained for each employment.<sup>142</sup>
- Leave balance transfers are prohibited. For example, if the person separates from one employment, the person's leave balances that were accrued under that employment may not be transferred to the remaining employments.<sup>143</sup>
- The employee accrues state service credit for all purposes as if the employee had only one employment.<sup>144</sup>
- The total state contribution toward the employee's group insurance is limited to the amount specified in the General Appropriations Act for one full-time active employee.<sup>145</sup>

Overtime compensation accrues for each employment independently of every other employment. However, in most situations, for the purposes of the federal Fair Labor Standards Act (FLSA), the state is considered one employer. If an employee is subject to the overtime provisions of FLSA, the employing agencies and institutions of higher education are required to ensure that the person is compensated for all combined time actually worked that exceeds 40 hours per week. The agencies and institutions of higher education are required to cooperate to determine which agency or institution of higher education is responsible for ensuring that the employee is properly compensated according to those provisions.<sup>146</sup>

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

- Paying the employee for working more than 40 hours in a week instead of earning compensatory time in accordance with state law.

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<sup>139</sup> Texas Government Code, Sections 655.003 and 655.004.

<sup>140</sup> Ibid., Section 667.001 (a) and (b).

<sup>141</sup> Ibid., Section 667.001 (c).

<sup>142</sup> Ibid., Section 667.002.

<sup>143</sup> Ibid., Section 667.003.

<sup>144</sup> Ibid., Section 667.004.

<sup>145</sup> Ibid., Section 667.005.

<sup>146</sup> Ibid., Section 667.006 (a) and (b).

- Paying the employee a salary that is more than is allowed for either of the employee's positions of higher education.<sup>147</sup>

An employee must inform his or her employing state agency or institution of higher education before accepting additional employment with another agency or institution of higher education.<sup>148</sup>

State employees who are employed by multiple agencies and who work more than 40 hours per week may not accrue sick leave, vacation leave, or holidays at a rate that would exceed that for a full-time, 40 hour per week employee.<sup>149</sup> An employee who holds two part-time state jobs may not quit one part-time job and transfer the leave to the remaining part-time job.<sup>150</sup> However, an employee with two part-time jobs may quit both jobs at the same time, transfer to a new full-time position with another employer, and take his or her existing leave balances to the new position.<sup>151</sup>

### Special Provisions for Legislative Agencies

If a person's multiple employment involves only legislative agencies and if all employments are less than full-time, the person may use paid leave from leave balances in all employments. When such an employee separates from one employment, leave balances accrued under that employment will be transferred to the remaining employments.<sup>152</sup>

### Special Provisions for University Systems

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

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

The policy applies to a person only if the person is employed by more than one institution of higher education and all the employing institutions of higher education are within the same university system.<sup>153</sup>

### Appointments at State Institutions of Higher Education

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

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<sup>147</sup> Texas Government Code, Section 667.006 (c).

<sup>148</sup> Ibid., Section 667.007.

<sup>149</sup> State Auditor's Office Leave Interpretation, No. 01-03.

<sup>150</sup> Texas Government Code, Section 667.003.

<sup>151</sup> State Auditor's Office Human Resources Question-and-Answer, April 16, 2001.

<sup>152</sup> Texas Government Code, Section 667.008.

<sup>153</sup> Ibid., Section 667.009.

education are governed by separate boards, the employee is deemed to have more than one position.<sup>154</sup>

A full-time employee at an institution of higher education who has more than one position may receive pay for working more than 40 hours in a week if the institution determines that pay in lieu of compensatory time is in the best interest of the institution.<sup>155</sup>

Table 3-2 provides a list of Texas Office of Attorney General Opinion Letters related to multiple employment in the state.

Table 3-2

Multiple Employment Related Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
MW-311	Related to the overtime compensation for an employee of the Department of Mental Health and Mental Retardation who holds full-time and a part-time jobs at the same facility.
MW-418	Whether state employees may hold full-time and part-time jobs at the same facility.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

## Recruitment Plans

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Based upon workforce availability analyses or court-ordered remedies or agreements, state agencies and institutions of higher education are directed to develop and implement plans to recruit qualified African Americans, Hispanic Americans, and females (“protected classes”). The Civil Rights Division at the Texas Workforce Commission monitors employers to ensure that their plans are consistent with state statute. In addition, employers must report to the Civil Rights Division the number of protected class hires in each class title during the preceding fiscal year. This report is due no later than November 1 of each year.<sup>156</sup>

## Posting Job Vacancies

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State agencies with job vacancies are required to list these vacancies with the Texas Workforce Commission. This applies only to vacancies for which candidates from outside the agency will be considered.<sup>157</sup> Each notice of a job vacancy must be posted for a minimum of 10 working days unless the agency notifies the Texas Workforce Commission that the vacancy has been filled within this time frame.<sup>158</sup> In addition to using the statutorily required methods to announce job vacancies,

<sup>154</sup> Texas Government Code, Section 659.0411.

<sup>155</sup> Texas Education Code, Section 51.963.

<sup>156</sup> Ibid., Sections 21.502 and 21.504.

<sup>157</sup> Texas Government Code, Section 656.001.

<sup>158</sup> Ibid., Section 656.024.

agencies are encouraged to make other efforts to inform outside applicant recruitment sources of job vacancies.<sup>159</sup>

A state agency is not required to comply with job vacancy notice requirements when it transfers or reassigns an employee as part of a reorganization or merger mandated by the Legislature as long as the executive head of the agency certifies that the transfer or reassignment is necessary for the proper implementation of the reorganization or merger.<sup>160</sup>

### *Probationary Period*

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

### *Selective Service Registration*

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An agency in any branch of state government may not hire a person as an employee unless the person presents proof that they have registered for or are exempt from registration with the selective service system.<sup>161</sup> Individuals who are exempt from registration include:

- Females.
- Lawfully admitted nonimmigrant aliens on visas.
- Members of the armed forces on full-time active duty, including cadets and midshipmen at military academies.
- Student in Officer Procurement Programs at the Citadel, North Georgia College and State University, Norwick University, Virginia Military Institute, Texas A & M University, and Virginia Polytechnic Institute and State University.
- Males that are continually confined to a residence, hospital, or institution or who are hospitalized or institutionalized for a medical reason as well as those who are incarcerated.<sup>162</sup>

This requirement does not apply to a person employed by a state agency before September 1, 1999, as long as the person's employment by the agency is continuous.<sup>163</sup>

The Texas Office of the Attorney General issued an opinion that requires only those males who are between the ages of 18 and 25 years (inclusive) to furnish proof of either selective service registration or exemption from selective service as a condition of state employment.<sup>164</sup>

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<sup>159</sup> Texas Government Code, Section 656.025.

<sup>160</sup> Ibid., Section 656.026.

<sup>161</sup> Ibid., Section 651.005 (a).

<sup>162</sup> Title 50, Appendix, United States Code, Section 456.

<sup>163</sup> Texas Government Code, Section 651.005 (b).

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

### ***Verification of Employment Eligibility***

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An individual who is not a citizen of this country is protected from discrimination under the provisions of federal law and the Texas Labor Code.<sup>165</sup> It is unlawful to discriminate on the basis of citizenship or "intending citizen" status. Also, federal law prohibits an employer from knowingly hiring an individual who is not authorized to work in this country. To ensure compliance, employers are required to complete federal form I-9 upon hiring a person. This form must be completed within three business days of the hire.<sup>166</sup>

Additional information regarding the employment eligibility verification process can be found on the U.S. Citizenship and Immigration Web site at [www.uscis.gov](http://www.uscis.gov).

### ***Workforce Analysis***

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Each biennium, each state agency must analyze its current workforce and compare the numbers employed in each demographic group and job category to those available in the statewide civilian workforce. The intent of this analysis is to determine the percentage of exclusion or underutilization by each job category within each state agency.<sup>167</sup>

State agencies and institutions of higher education must develop recruitment plans based on the workforce availability analysis. The Texas Workforce Commission's Civil Rights Division monitors these plans to ensure that they comply with state statute and applicable rules.<sup>168</sup>

The workforce analysis percentages for the state civilian workforce are available on the Civil Rights Division's Web site within the Equal Employment Opportunity and Minority Hiring Practices Report, and are reported every biennium.<sup>169</sup>

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<sup>164</sup> Opinion, Texas Office of the Attorney General, No. JC-0183 (2000).

<sup>165</sup> Texas Labor Code, Section 21.051; and Immigration and Nationality Act, Title 8, United States Code, Section 274 (b).

<sup>166</sup> Texas Labor Code, Section 21.051; and Title 8, Code of Federal Regulations, Section 274 (a) (2).

<sup>167</sup> Texas Labor Code, Section 21.501.

<sup>168</sup> *Ibid.*, Section 21.502.

<sup>169</sup> *Ibid.*, Section 21.553.

## Related Legislation

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Table 3-3 contains a list of human resources-related bills that were passed by the 80th Legislature. This may not be a complete list and should be used only as a summary of general issues on this subject that were addressed during the session.

Table 3-3

Recruitment and Selection Related Legislation (80th Legislature) <sup>a</sup>	
Bill Number	Summary
HB 638	Relates to the issuance of identification cards to certain retired peace officers and to the eligibility of certain retired peace officers to obtain a weapons proficiency certificate.
HB 1303	Relates to certain requirements applicable to criminal history records and to the protection of information that is the subject of orders of expunction.
HB 2445	Relates to certain employment records and employee termination reports maintained by the Commission on Law Enforcement Officer Standards and Education.
HB 3613	Provides guidelines related to the issuance of identification cards to peace officers of a governmental entity.
SB 199	Relates to certain convictions that bars employment at certain facilities serving the elderly or persons with disabilities (includes the Department of Aging and Disability Services and Department of State Health Services).
<sup>a</sup> Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at <a href="http://www.capitol.state.tx.us">www.capitol.state.tx.us</a> .	

*Section 4*  
***State Overtime Requirements***

***Fair Labor Standards Act (FLSA)***

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The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments. In general, most employees working in state agencies and institutions of higher education are covered under this act.<sup>170</sup> The FLSA also allows government employers to choose whether to compensate their nonexempt employees for overtime in cash or in compensatory time off.<sup>171</sup> If compensation is paid to an employee for accrued compensatory time off, the compensation must be paid at the regular salary rate earned by the employee at the time the employee receives the payment.<sup>172</sup>

**Minimum Wage**

The minimum wage in Texas is linked to the federal minimum wage under the Fair Labor Standards Act of 1938.<sup>173</sup> Beginning July 24, 2007, the federal minimum wage increased to \$5.85 per hour. On July 24, 2008, the minimum wage will increase to \$6.55. A third increase will occur on July 24, 2009, raising the minimum wage to \$7.25.<sup>174</sup>

None of the job classifications within the State's Classification Plan will be impacted by these changes because the minimums of the salary schedules do not fall below the new federal thresholds.

**Employees Not Subject to the FLSA**

Staff members, appointees, or immediate advisors of an elected officeholder and employees in the Legislative branch are not subject to the FLSA.<sup>175</sup> These employees may be allowed compensatory time off under terms and conditions established by the officeholder as determined by the agency administrator by the employing officeholder.<sup>176</sup> Overtime pay and compensatory time off for House of Representatives and Senate employees shall be determined by the presiding officer of each body.<sup>177</sup> Employees of the Legislative Reference Library are not excluded by the provisions of the FLSA.<sup>178</sup>

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<sup>170</sup> Title 29, Code of Federal Regulations, Section 553.3.

<sup>171</sup> *Ibid.*, Section 553.20.

<sup>172</sup> *Ibid.*, Section 553.21.

<sup>173</sup> Texas Labor Code, Section 62.051.

<sup>174</sup> *Compliance Assistance — Fair Labor Standards Act (FLSA)*, Department of Labor, Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/flsa/index.htm>.

<sup>175</sup> Title 29, Code of Federal Regulations, Sections 553.11 and 553.12.

<sup>176</sup> Texas Government Code, Section 659.016 (h).

<sup>177</sup> *Ibid.*, Section 659.017.

<sup>178</sup> Title 29, Code of Federal Regulations, Section 553.12 (b).

## FLSA Non-Exempt Employees

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To be eligible for overtime pay, an employee must be considered non-exempt. The Department of Labor defines a non-exempt employee as an individual covered by the FLSA who must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than 1.5 times the employee's regular rate of pay. In general, the employer must total all the hours worked by the employee for that workweek (even though two or more unrelated job assignments may have been performed) and pay overtime compensation for each hour worked in excess of the overtime standard.<sup>179</sup>

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

- The agency can allow or require the employee to take compensatory time off at the rate of 1.5 hours for each hour over 40 hours worked during the workweek.<sup>180</sup> State agencies can require nonexempt employees who have requested leave to exhaust their FLSA overtime balances before using annual leave.<sup>181</sup>
- In addition, an employer remains free under the FLSA to decrease the number of hours that employees work. An employer may tell an employee to take off an afternoon, a day, or even an entire week to avoid the accumulation of additional overtime.<sup>182</sup>
- When granting FLSA compensatory time off is not practical, the employing agency has the discretion to compensate the employee at 1.5 times his or her regular rate of pay in effect at the time the work was performed for each hour worked over 40 during the workweek.<sup>183</sup>

Paid leave and holidays are not counted as hours worked for determining FLSA overtime hours.<sup>184</sup> However, if the total number of hours worked (if less than 40) plus the hours of paid leave or hours of paid holidays exceeds 40, the nonexempt employee shall be allowed state compensatory time off equal to the number of hours in excess of 40 hours.<sup>185</sup>

Nonexempt employees may accumulate an overtime credit up to 240 straight time hours of FLSA overtime (160 overtime hours converted to straight time). Those employees engaged in public safety, emergency response, or a seasonal activity may accumulate up to 480 hours of FLSA overtime.<sup>186</sup>

Nonexempt employees must be paid for any unused FLSA overtime at the time of separation from state employment.<sup>187</sup> State agencies must pay employees for any accumulated FLSA overtime prior to transferring that employee to another agency.<sup>188</sup>

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<sup>179</sup> Title 29, Code of Federal Regulations, Sections 778.101 and 778.2.

<sup>180</sup> Texas Government Code, Section 659.015 (c).

<sup>181</sup> *Christensen v. Harris County* (98-1167), 529 U.S. 576 (2000); 158 F.3d 241 affirmed; and Texas State Auditor's Technical Update 01-01.

<sup>182</sup> *Christensen v. Harris County* (98-1167), 529 U.S. 585 (2000).

<sup>183</sup> Texas Government Code, Section 659.015 (c).

<sup>184</sup> Title 29, Code of Federal Regulations, Section 778.218.

<sup>185</sup> Texas Government Code, Section 659.015 (f)

<sup>186</sup> *Ibid.*, Section 659.015 (e); and Title 29, Code of Federal Regulations, Section 553.24.

Additional information on the FLSA may be found on the United States Department of Labor's Web site at <http://www.dol.gov/esa/regs/compliance/whd/whdfs23.htm>.

### Authorizations for Payment of FLSA Compensatory Time

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

- The Department of Criminal Justice (Department) will provide compensation to a person employed by the Department for any overtime accrued by the non-exempt employee for which the employee is entitled to compensation within the same month the Department compensates employees at the regular rate of pay for the period in which the employee accrued the overtime.<sup>189</sup>
- The Texas Forest Services has been appropriated funds to pay mandatory overtime expenses of nonexempt employees of the Texas Forest Service when such overtime is incurred in emergency response activities. Payments from this appropriation are to be made only upon overtime payroll vouchers submitted to the State Comptroller's Office of Public Accounts.<sup>190</sup>

### *FLSA Exempt Employees*

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An exempt employee is one that the Department of Labor has exempted from FLSA minimum wage and overtime requirements because the employee is employed in a bona fide executive, administrative, or professional capacity.<sup>191</sup> An employee's exemption status cannot be determined by the job title of the employee and must be determined on the basis of whether the employee's salary and duties meet the exempt requirements defined by applicable federal regulations.<sup>192</sup> Additional information on the rules for the executive, administrative, and professional exemptions can be found in Title 29 of the Code of Federal Regulations or on the Department of Labor's Wage and Hour Division Web site (<http://www.dol.gov/esa/whd/>).

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

- Deductions may be made for full-day absences for personal reasons other than sickness or disability.
- While an employer cannot make deductions from pay for absences of an exempt employee occasioned by jury duty, witness at a judicial action, or military duty, the employer can offset any

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<sup>187</sup> Title 29, Code of Federal Regulations, Section 553.27.

<sup>188</sup> Opinion, Texas Office of the Attorney General, No. H-883 (1976).

<sup>189</sup> Texas Government Code, Section 659.0155.

<sup>190</sup> General Appropriations Act (80th Legislature, Regular Session) Article III, Texas Forest Service, Rider 3, Page III-208.

<sup>191</sup> Title 29, Code of Federal Regulations, Section 541.0.

<sup>192</sup> *Ibid.*, Section 541.2.

amounts received by an employee as jury fees, witness fees, or military pay for a particular week against the salary due for that particular week without loss of the exemption.

- Deductions may be made for full-day absences for sickness or disability after exhaustion of sick leave or workers' compensation benefits.
- Deductions may be made for penalties due to safety infractions of major significance. Safety infractions of major significance include those relating to the prevention of serious danger in the workplace or to other employees.
- Deduction from pay of exempt employees may be made for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed pursuant to a written policy applicable to all employees. Thus, for example, an employer may suspend an exempt employee without pay for three days for violating a generally applicable written policy prohibiting sexual harassment. Similarly, an employer may suspend an exempt employee without pay for 12 days for violating a generally applicable written policy prohibiting workplace violence.
- An employer is not required to pay the full salary in the initial or final week of employment. Rather, an employer may pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment.
- An employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act.<sup>193</sup>

State agencies may reduce the pay of FLSA-exempt employees for absences of less than a full day for personal reasons or because of injury or illness when permission to use leave was not sought or was denied, accrued leave was exhausted, or the employee chose to use leave without pay.<sup>194</sup>

### **Additional Resources**

Table 4-1 provides a list of State Auditor's Office's Human Resources Questions-and-Answers and Leave Interpretations related to FLSA.

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<sup>193</sup> Title 29, Code of Federal Regulations, Section 541.602.

<sup>194</sup> Texas Government Code, Section 659.016 (e) (4).

Table 4-1

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

## State Compensatory Time

In some situations, state employees may be eligible for state compensatory time. State compensatory time is accrued on a “straight” time basis, or one hour for one hour worked. State compensatory time off must be used within 12 months of the end of the workweek in which it was earned. State compensatory time differs from FLSA compensatory time because state compensatory time is based on hours worked plus any applicable leave time or holidays that occur within the workweek that totals more than 40 hours.<sup>195</sup>

### State Compensatory Time for Non-Exempt Employees Subject to FLSA

When a non-exempt employee takes leave or when a holiday occurs, the non-exempt employee is eligible for state compensatory time if the total number of hours worked (if less than 40 hours) plus any paid leave or paid holidays exceeds 40 in one workweek. If this occurs, the non-exempt employee shall be allowed compensatory time off for this additional time on an hour-for-hour basis.<sup>196</sup> The compensatory time off must be used within 12 months of the end of the workweek in which it was earned.

<sup>195</sup> Texas Government Code, Sections 659.016 and 659.017

<sup>196</sup> Ibid., Section 659.015 (f).

Employees will not be paid for any unused state compensatory time and there are no provisions in statutes or the General Appropriations Act that allow for the conversion of this time to any other type of leave. However, employees at institutions of higher education and those involved in public safety work (highway construction and maintenance, emergency response activities, etc.) may be paid for state compensatory time if taking the time off would be disruptive to teaching, research, or other critical functions.<sup>197</sup>

When a non-exempt employee subject to the FLSA does not work more than 40 hours in a workweek and the number of hours worked plus the number of hours of holiday or other paid leave taken during the week does not exceed 40 hours, the employee may not accrue state compensatory time for the week.<sup>198</sup> Non-exempt, part-time employees must be paid for hours worked over their designated hours (under 40 hours) and may not accrue state compensatory time in those instances.<sup>199</sup>

### State Compensatory Time for Employees Exempt from FLSA Overtime Provisions

At the discretion of the agency's executive director, an employee who is exempt from the overtime provisions of the FLSA may be allowed to accrue state compensatory time for work hours that exceed 40 in a workweek.<sup>200</sup> Work hours, for the purpose of accruing state compensatory time, consist of paid leave, holidays, and actual hours worked.<sup>201</sup> If an exempt employee does not use state compensatory time within 12 months of when it was earned, the employee loses this time.<sup>202</sup> An employee will not be paid for accrued but unused state compensatory time.<sup>203</sup>

Part-time FLSA-exempt employees may accrue state compensatory time when the number of work hours exceeds the number of hours the employee was designated to work.<sup>204</sup>

### Use of Compensatory Time before Lapsing

If an employee of a state agency (defined by the Texas Government Code, Section 658.001) submits a written request to use accrued compensatory time not later than the 90th day before the date on which the accrued compensatory time will lapse, the employer shall approve in writing the employee's request or provide the employee with an alternative date on which the employee may use the compensatory time.<sup>205</sup>

The employee may request permission to use the accrued compensatory time within 90 days of the date on which it will lapse, and the employing agency is encouraged to reasonably accommodate the employee's use of the accrued compensatory time before it lapses.<sup>206</sup>

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<sup>197</sup> Texas Government Code, Section 659.015 (g); and State Auditor's Office Technical Update Letter, No. 00-01 (1999).

<sup>198</sup> Texas Government Code, Section 659.015 (f).

<sup>199</sup> State Auditor's Office Leave Interpretation Letter, No. 89-03 (1989).

<sup>200</sup> Texas Government Code, Section 659.016 (b).

<sup>201</sup> *Ibid.*, Section 659.016 (b).

<sup>202</sup> *Ibid.*, Section 659.016 (c).

<sup>203</sup> *Ibid.*, Section 659.016 (c) and Opinion, Texas Office of the Attorney General, No. H-883 (1976).

<sup>204</sup> Texas Government Code, Section 659.016 (b).

<sup>205</sup> *Ibid.*, Section 659.022 (a).

<sup>206</sup> *Ibid.*, Section 659.022 (b).

## Notification of Compensatory Time Policy

A state agency shall notify its employees annually of the State's policy on compensatory time and shall accommodate to the extent practicable an employee's request to use accrued compensatory time.<sup>207</sup>

A state agency shall (1) provide an employee activated to military service as a member of the reserve component of the armed forces with a statement containing the balance of the employee's accrued state compensatory time and (2) accommodate an employee's request to use the balance of the employee's accrued state compensatory time before the compensatory time expires.<sup>208</sup>

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<sup>207</sup> Texas Government Code, Section 659.023 (a) and (b).

<sup>208</sup> Ibid., Section 659.023 (c).

## Additional Resources

Table 4-2 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers, Technical Updates, and Leave Interpretations related to state compensatory time.

Table 4-2

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

### *Holiday Compensatory Time*

Employees who must work on a designated national or state holiday will be allowed compensatory time off during the 12-month period following the date of the holiday if the state employee is entitled to a paid day off from working for a state agency on the holiday. Employees are required to give reasonable advance notice when taking holiday compensatory time; however, employees do not have to specify the reason for the request.<sup>209</sup> Holiday compensatory time is earned at the straight time rate of an employee’s hourly rate.

<sup>209</sup> Texas Government Code, Section 662.007 (a) and (b).

An institution of higher education, as defined by Section 61.003 of the Texas Education Code, may allow an employee who is required to work on a national or state holiday that does not fall on a Saturday or Sunday to take compensatory time off in accordance with this statute or may instead pay the employee at the employee's regular rate of pay for that time if the institution determines that allowing compensatory time off would disrupt normal teaching, research, or other critical functions.<sup>210</sup>

A state employee who is a peace officer commissioned by a state officer or state agency listed under Article 2.12 of the Texas Code of Criminal Procedure, and who is required to work on a national or state holiday that falls on a Saturday or Sunday is entitled to holiday compensatory time off at the rate of one hour for each hour worked on the holiday. In addition, an employee of the Department of Public Safety who performs communications or dispatch functions related to traffic law enforcement is entitled to one hour of holiday compensatory time off for each hour worked on a federal or state holiday that falls on a Saturday or Sunday.<sup>211</sup>

There are no statutory provisions that allow for the conversion of state compensatory time or holiday compensatory time to any other type of leave. If an employee does not use the accrued time within 12 months of earning it, the employee loses this time.<sup>212</sup>

### Transfer of Holiday Compensatory Time between State Agencies

State agencies are required to accept a transfer balance of holiday compensatory time if the employee transfers as a direct result of the Legislature's transfer of authority or duties from one agency to another. Additionally, if the employee's position was eliminated by the State Council on Competitive Government, the employee's holiday compensatory time would transfer. However, state agencies are not required to accept a transfer balance of holiday compensatory time if the transferring employee is required to apply for the new position.<sup>213</sup>

The Texas Attorney General has determined there is no authority that would authorize the transfer of compensatory time when an employee transfers from one agency to another or the payment of compensatory time when an employee terminates state employment<sup>214</sup>. The Attorney General has also ruled that the estate of a deceased employee may not be paid for the employee's earned, but unused, state compensatory time.<sup>215</sup>

### Compensatory Time for Persons Governing State Agencies

A member of the governing body of a state agency or a single state officer who governs a state agency may not accrue compensatory time.<sup>216</sup> This law applies not only to governing bodies but also to elected officials such as the Governor or Comptroller of Public Accounts and certain appointed officials such as the Secretary of State.

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<sup>210</sup> Texas Government Code, Section 662.007 (c).

<sup>211</sup> Ibid., Section 662.005 (b).

<sup>212</sup> Ibid., Sections 659.015 (g) and 659.016 (c). See also State Auditor's Office Technical Update Letter, No. 00-01 (1999).

<sup>213</sup> Texas Government Code, Section 662.0071.

<sup>214</sup> Opinion, Texas Office of the Attorney General, No. H-883.

<sup>215</sup> Ibid., No. H-899.

<sup>216</sup> Texas Government Code, Section 659.024 (c); and State Auditor's Office Human Resources Question-and-Answer, September 30, 2003.

This statute does not apply to an employee who acts as the administrative head of a state agency, including an executive director.<sup>217</sup> The statute does not prohibit executive directors, administrative heads of agencies, or people holding those positions in an acting capacity from accruing compensatory time.

### Compensatory Time and Assigned Place of Employment

An employee of a state agency in the executive branch may not, for hours worked during any calendar week, accumulate compensatory time off for work performed at a location other than the employee’s regular or temporarily assigned place of employment, except under circumstances specified in the General Appropriations Act. For compensatory time purposes, the employee’s personal residence may not be considered the employee’s regular or temporarily assigned place of employment.<sup>218</sup> The State Auditor’s Office has further interpreted that an employee who is authorized to work at the employee’s home through written authorization of the administrative head of the employing state agency does not accrue compensatory time if working on a holiday at his or her residence.<sup>219</sup>

### Work-at-Home Hearing Officers

The Texas Workforce Commission is authorized to grant state compensatory time to hearing officers and reviewing attorneys for overtime work performed at the employee’s personal residence and for work performed at the employee’s personal residence on state skeleton holidays. Work performed must be approved in advance by the Director of the Appeals Office and must be verified by automated records, which includes audiotapes and computer and telephone logs. State compensatory time is only granted when corresponding additional work is assigned.<sup>220</sup>

### Additional Resources

Table 4-3 provides a list of Leave Interpretations and Technical Updates from the State Auditor’s Office related to state compensatory time and place of employment.

Table 4-3

State Compensatory Time and Assigned Place of Employment Related State Auditor Resources <sup>a</sup>		
Type	Topic	Reference
Leave Interpretation	Whether an employee who is authorized to work at home during a holiday is allowed to earn state compensatory time.	98-05
Technical Update	Regarding state compensatory time leave accruals and telecommuting.	98-01
<sup>a</sup> Complete references can be found at: Leave interpretations: <a href="http://sao.hr.state.tx.us/Rules/leaveinterpretations.html">http://sao.hr.state.tx.us/Rules/leaveinterpretations.html</a> Technical updates: <a href="http://sao.hr.state.tx.us/Rules/technicalupdates.html">http://sao.hr.state.tx.us/Rules/technicalupdates.html</a> .		

<sup>217</sup> Texas Government Code, Section 659.024 (b).

<sup>218</sup> Ibid., Section 659.018.

<sup>219</sup> State Auditor’s Office Leave Interpretation Letter, No. 98-05.

<sup>220</sup> General Appropriations Act (80th Legislature, Regular Session) Article III, Rider 21, Page VII-20.

## ***Authorizations for Payment of Holiday and State Compensatory Time***

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

### **Department of Agriculture**

The Department of Agriculture is authorized to pay FLSA-non-exempt employees in classified positions who are stationed at Department of Agriculture livestock export pens for state compensatory time hours on a straight-time basis when the taking of compensatory time off would be disruptive to normal working activities and other critical functions relating to livestock export pen operations.<sup>221</sup>

### **Department of Criminal Justice**

The Department of Criminal Justice may authorize exceptions to the prohibition against substituting other days for holidays for employees who are required to work on holidays due to the continuing operation of the Department. Any employee who is required to work on any of the holidays and who does work on any of the said holidays is entitled to holiday compensatory time off to be taken on days that are mutually agreed upon by the employee and supervisor.<sup>222</sup>

### **Department of Transportation**

The Department of Transportation may pay FLSA-exempt and FLSA-non-exempt employees on a straight-time basis for work on a holiday or for regular compensatory time hours when the taking of regular compensatory time off would be disruptive to normal business functions.<sup>223</sup>

To operate in the most economical manner, when inclement weather or other circumstances beyond the control of the department prevent construction or maintenance employees from performing their normal duties, the Department of Transportation is authorized to grant such employees time off with pay with the hours charged to the Compensatory Time Taken account, provided that such advanced time must be repaid by the employee at a time and in the most appropriate manner as determined by the department within the following 12 months or at termination, whichever is sooner.<sup>224</sup>

### **Health and Human Services Agencies**

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

In addition, any health and human services agency, with the explicit approval of the Health and Human Services Executive Commissioner, to the extent permitted by law, may pay FLSA-exempt and FLSA-non-exempt employees required to provide support during a federally declared disaster on

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<sup>221</sup> General Appropriations Act (80th Legislature, Regular Session) Article III, Rider 5, Page VI-5.

<sup>222</sup> Ibid., Article V, Rider 19, Page V-16.

<sup>223</sup> Ibid., Article VII, Rider 23 (d), Page VII-25.

<sup>224</sup> Ibid., Article VII, Rider 23 (b), Page VII-25.

a straight-time basis for work on a holiday or for regular compensatory time hours when the taking of regular compensatory time off would be disruptive to normal business functions.<sup>225</sup>

### **Texas Engineering Extension Service**

The Texas Engineering Extension Service is authorized to pay its FLSA-exempt employees on a straight-time basis for work on a holiday or for state compensatory time hours when such time is worked in connection with a state or federal activation and when the taking of regular compensatory time off would be disruptive to normal business functions.<sup>226</sup>

### **Texas Forest Service**

The Texas Forest Service may use the appropriations to pay its FLSA-exempt employees on a straight-time basis for work on a holiday or for regular compensatory time hours when such time is worked in connection with an emergency and when the taking of regular compensatory time off would be disruptive to normal business functions.<sup>227</sup>

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<sup>225</sup> General Appropriations Act (80th Legislature, Regular Session) Article II, Special Provisions, Section 13, Page II-92.

<sup>226</sup> Ibid., Article III, Rider 4, Page III-206.

<sup>227</sup> Ibid., Article III, Rider 5, Page III-209.

*Section 5*  
***Position Classification Plan***

***Classification Plan Overview***

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The Position Classification Plan (Plan), established by the Position Classification Act,<sup>228</sup> requires state agencies to comply with the salary schedules and compensation provisions of Article IX of the General Appropriations Act.

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

The Plan establishes job classification titles for full-time, part-time, hourly, and temporary employees.<sup>229</sup> The job classifications within the Plan are defined as classified positions. Each job classification title is assigned to a salary group within a classified salary schedule. The classified salary schedules and job classification titles are contained in the most recent edition of the General Appropriations Act.<sup>230</sup>

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

**Agencies Subject to the Position Classification Plan**

State agencies that are subject to the Plan include:

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

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<sup>228</sup> Texas Government Code, Section 654.001.

<sup>229</sup> *Ibid.*, Section 654.011.

<sup>230</sup> General Appropriations Act (80th Legislature, Regular Session), Article IX, Section 2.01, Page IX-1.

- Agencies of public education (limited to the Texas Education Agency, School for the Blind and Visually Impaired, State Board for Educator Certification, and the School for the Deaf).<sup>231</sup>

### Agencies' Use of the Plan

Agencies may use any job classification title contained in the Plan that is appropriate to a position as long as it is not agency specific. Agencies may determine the appropriate rate of pay within the salary range for employees at the time of initial employment with the agency, which includes rehires and employees who transfer from another state agency or institution of higher education.<sup>232</sup> State agencies subject to the Position Classification Act are responsible for ensuring that all positions are classified properly on an annual basis and may perform a monthly review of job assignments.<sup>233</sup>

### Bona Fide New Positions

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

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

An exemption made during the first year of a biennium may be carried over to the second year. Pay may be adjusted during the second year, but this adjustment can be no higher than adjustments authorized for classified positions.<sup>234</sup>

### Employee Job Classification

Each state agency or other state entities subject to the Plan determines, at the time it hires an employee, the appropriate classification and the employee’s salary rate within the applicable salary group for the employee’s classified position.<sup>235</sup>

The Plan provides that whenever “General Qualification Guidelines” are specified for each job, they are only meant to represent the qualifications commonly wanted by employing officers of the State and do not have the force of law. This includes specifications for experience, training, education, knowledge, skills, abilities, and physical conditions.<sup>236</sup>

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

Responsibilities of the State Classification Office include:

- Maintaining the Plan and ensuring it is current and accurate.

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<sup>231</sup> Texas Government Code, Section 654.011.

<sup>232</sup> Ibid., Section 654.014 (b).

<sup>233</sup> Ibid., Section 654.0155.

<sup>234</sup> Ibid., Sections 654.012 (8) and 654.0125.

<sup>235</sup> Ibid., Section 654.014 (b).

<sup>236</sup> Ibid., Section 654.015.

- Advising and assisting state agencies to ensure equitable and uniform application of the Plan.
- Assisting with position classification audits to ensure conformity with the Plan.
- Making recommendations to the Governor and the Legislature as necessary and appropriate regarding the operation and improvement of the Plan.<sup>237</sup>

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

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

### ***Classified Salary Schedules***

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

#### **Fiscal Year 2008-2009 Classified Salary Schedules A and B**

Classification salary schedules for Schedules A and B were revised for the 2008–2009 biennium (see Table 5-1 through Table 5-4). Beginning September 1, 2007, these salary schedules for fiscal year 2008 were increased by 2 percent or a minimum of \$50 per month (whichever was greater) and will increase again by the same amount on September 1, 2008.<sup>238</sup> These increases are reflected on an annual basis in the salary schedules in Tables 5-3 and 5-4.<sup>239</sup> An employee hired by the State on or after September 1, 2007, including interagency transfers, must be paid at a salary rate that falls within the salary range of the applicable salary group.<sup>240</sup>

The classification salary schedules for the 2008–2009 biennium can also be found online by accessing the State of Texas Human Resources Web site at <http://sao.hr.state.tx.us/>.

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<sup>237</sup> Texas Government Code, Section 654.036.

<sup>238</sup> General Appropriations Act (80th Legislature, Regular Session) Article IX, Section 19.62 (a).

<sup>239</sup> *Ibid.*, Sections 2.01 and 19.62.

<sup>240</sup> *Ibid.*, Article IX, Section 3.01 (d).

Table 5-1

Classification Salary Schedule A			
Fiscal Year 2008 <sup>a</sup>			
Salary Group	Minimum Salary	Midpoint	Maximum Salary
A2	\$16,776	\$19,077	\$21,377
A3	\$17,508	\$19,943	\$22,378
A4	\$18,264	\$20,834	\$23,404
A5	\$19,056	\$21,768	\$24,480
A6	\$19,932	\$22,799	\$25,666
A7	\$20,844	\$23,879	\$26,914
A8	\$21,872	\$25,079	\$28,286
A9	\$23,046	\$26,439	\$29,831
A10	\$24,232	\$28,748	\$33,264
A11	\$25,580	\$30,425	\$35,270
A12	\$27,001	\$32,191	\$37,381
A13	\$28,546	\$34,104	\$39,662
A14	\$30,202	\$36,265	\$42,127
A15	\$31,972	\$38,348	\$44,723
A16	\$33,946	\$40,738	\$47,529
A17	\$36,043	\$43,255	\$50,466
A18	\$38,351	\$46,022	\$53,692

<sup>a</sup> This salary schedule reflects the 2 percent adjustment granted by the General Appropriations Act (80th Legislature, Regular Session), Article IX, Section 2.01.

Table 5-2

Classification Salary Schedule A			
Fiscal Year 2009 <sup>a</sup>			
Salary Group	Minimum Salary	Midpoint	Maximum Salary
A2	\$17,376	\$19,677	\$21,977
A3	\$18,108	\$20,543	\$22,978
A4	\$18,864	\$21,434	\$24,004
A5	\$19,656	\$22,368	\$25,080
A6	\$20,532	\$23,399	\$26,266
A7	\$21,444	\$24,479	\$27,514
A8	\$22,472	\$25,679	\$28,886
A9	\$23,646	\$27,039	\$30,431
A10	\$24,832	\$29,381	\$33,929
A11	\$26,180	\$31,078	\$35,975
A12	\$27,601	\$32,865	\$38,128
A13	\$29,146	\$34,801	\$40,455
A14	\$30,806	\$36,888	\$42,970
A15	\$32,611	\$39,115	\$45,618
A16	\$34,625	\$41,553	\$48,480
A17	\$36,764	\$44,120	\$51,475
A18	\$39,118	\$46,942	\$54,765

<sup>a</sup>This salary schedule reflects the 2 percent adjustment granted by the General Appropriations Act (80th Legislature, Regular Session), Article IX, Section 2.01.

Table 5-3

Classification Salary Schedule B			
Fiscal Year 2008 <sup>a</sup>			
Salary Group	Minimum Salary	Midpoint	Maximum Salary
B1	\$23,046	\$27,515	\$31,984
B2	\$24,232	\$28,984	\$33,736
B3	\$25,580	\$30,674	\$35,768
B4	\$27,001	\$32,460	\$37,918
B5	\$28,546	\$34,393	\$40,239
B6	\$30,202	\$36,466	\$42,730
B7	\$31,972	\$38,663	\$45,353
B8	\$33,946	\$41,072	\$48,198
B9	\$36,043	\$43,609	\$51,174
B10	\$38,351	\$48,229	\$58,307
B11	\$40,790	\$51,391	\$61,991
B12	\$43,386	\$54,669	\$65,951
B13	\$46,126	\$58,123	\$70,120
B14	\$49,089	\$61,860	\$74,631
B15	\$52,249	\$68,245	\$84,241
B16	\$55,671	\$72,710	\$89,748
B17	\$59,290	\$77,437	\$95,583
B18	\$63,171	\$82,504	\$101,837
B19	\$71,405	\$93,156	\$115,106
B20	\$80,767	\$105,482	\$130,197
B21	\$102,007	\$133,226	\$164,444
B22	\$129,030	\$168,522	\$208,014

<sup>a</sup>This salary schedule reflects the 2 percent adjustment granted by the General Appropriations Act (80th Legislature, Regular Session), Article IX, Section 2.01.

Table 5-4

Classification Salary Schedule B			
Fiscal Year 2009 <sup>a</sup>			
Salary Group	Minimum Salary	Midpoint	Maximum Salary
B1	\$23,646	\$28,135	\$32,624
B2	\$24,832	\$29,622	\$34,411
B3	\$26,180	\$31,332	\$36,484
B4	\$27,601	\$33,139	\$38,677
B5	\$29,146	\$35,095	\$41,044
B6	\$30,806	\$37,196	\$43,585
B7	\$32,611	\$39,436	\$46,260
B8	\$34,625	\$41,894	\$49,162
B9	\$36,764	\$44,481	\$52,198
B10	\$39,118	\$49,296	\$59,473
B11	\$41,606	\$52,419	\$63,231
B12	\$44,254	\$55,762	\$67,270
B13	\$47,049	\$59,286	\$71,523
B14	\$50,071	\$63,097	\$76,123
B15	\$53,294	\$69,610	\$85,926
B16	\$56,785	\$74,164	\$91,543
B17	\$60,476	\$78,985	\$97,494
B18	\$64,435	\$84,155	\$103,874
B19	\$72,833	\$95,121	\$117,408
B20	\$82,382	\$107,592	\$132,801
B21	\$104,048	\$135,891	\$167,733
B22	\$131,611	\$171,893	\$212,174

<sup>a</sup>This salary schedule reflects the 2 percent adjustment granted by the General Appropriations Act (80th Legislature, Regular Session), Article IX, Section 2.01.

## Fiscal Year 2008-2009 Classified Salary Schedule for Schedule C

Salary Schedule C contains salaries for the State's law enforcement positions and is part of the Plan (see Table 5-5). This schedule provides the salary structure only for peace officers licensed by the Texas Commission on Law Enforcement Officers Standards and Education who are employed at the following agencies:

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

Table 5-5

Classified Salary Schedule C Fiscal Years 2008 and 2009						
Salary Group	Years of Service					
	Less than 4	Equal to or More Than 4	Equal to or More Than 8	Equal to or More Than 12	Equal to or More Than 16	Equal to or More Than 20
C1	\$34,965					
C2	\$38,199					
C3	\$45,100	\$48,908	\$52,666	\$55,112	\$57,733	\$57,733
C4		\$55,616	\$59,374	\$61,664	\$64,285	\$64,285
C5		\$62,292	\$66,082	\$68,216	\$70,837	\$70,837
C6		\$69,035	\$72,790	\$74,768	\$77,389	\$77,389
C7		\$81,554	\$81,757	\$81,757	\$81,757	\$81,757
C8		\$86,026	\$86,125	\$86,125	\$86,125	\$86,125

### *Classification Compliance Audits*

As part of the requirements established in government code, the State Classification Office has a responsibility to conduct classification compliance audits.<sup>241</sup> The objective of these audits is to determine whether agencies conform to the State Classification Plan by ensuring proper classification of positions. The audits may focus on a classification series within the state, or all classifications within an agency or portion of an agency. If these audits reveal misclassifications, the State Classification Office provides written notice to the appropriate agency heads. The steps available to resolve misclassifications include:

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

<sup>241</sup> Texas Government Code, Section 654.036 (3).

- Obtaining a new class title and salary range.<sup>242</sup>

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

### *Salary Studies*

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The State Classification Office makes periodic studies of salary rates in other governmental units and in industry for similar work performed in state government. The results of these studies must be reported to the Governor's budget office and the Legislative Budget Board prior to October 1 preceding each regular session of the Legislature.<sup>243</sup>

In addition, before September 1 of each even-numbered year, the State Classification Office will survey the local law enforcement departments that employ more than 1,000 commissioned law enforcement officers to gather information about the total compensation provided by the departments to law enforcement officers. The results of this survey will be analyzed and reported to the Legislature before January 1 of each odd-numbered year. The report will contain information that identifies the five local law enforcement departments that provide the highest average total compensation to local law enforcement officers who have been employed by the local law enforcement departments at the maximum salary level.<sup>244</sup>

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

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<sup>242</sup> Texas Government Code, Section 654.038.

<sup>243</sup> *Ibid.*, Section 654.037 (a)

<sup>244</sup> *Ibid.*, Section 654.037 (b).

## Additional Information

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Table 5-6 provides a list of opinion letters from the Attorney General's office related to the classification of employees within the state.

Table 5-6

Classification of Employees Related Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
GA-0365	Whether a peace officer commissioned by the Texas Department of Safety is an "appointed officer" for purposes of Article XVI, Section 1 of the Texas Constitution.
M-707	Whether public junior college districts are political subdivisions of Texas.
MW-165	Regarding the classification of faculty members at Odessa College.
WW-565	Whether the Employees Retirement System and the Teacher Retirement System are administrative agencies for which administration expenses should be appropriated by the legislature, and related questions.
WW-1443	Whether Article 6252-4 Vernon's Texas Civil Statutes applies to employees of independent and common school districts.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

*Section 6*  
**Salary Administration**

**General Information**

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

- Classified positions paid in accordance with the Classification Salary Schedule (<http://sao.hr.state.tx.us/Compensation/schedules.html>).
- Positions that are exempted from the Classification Plan by authority of the Legislature or the Governor. Salaries for these positions must be set in accordance with the General Appropriations Act.<sup>245</sup>

**Administration by the Comptroller  
of Public Accounts**

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

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

**Part-time and Hourly Employees**

Regular, full-time positions may be filled by part-time and hourly employees.<sup>246</sup> The salary rates for part-time and hourly employees are to be proportionate to those of full-time employees. Part-time employees must be appropriately classified with titles from the Classification Plan or appropriate exempt titles.<sup>247</sup>

For benefits purposes, a part-time employee is an employee who works fewer than 40 hours per week.<sup>248</sup>

**Salary at the Time of Hire**

State agencies have the authority to determine, at the time of initial employment, the salary rate within the applicable salary group for all classified positions. Initial employment includes rehires and interagency transfers.<sup>249</sup>

**Salary Limitations**

State employees must be paid at a salary rate that falls within the salary range of the applicable salary group.<sup>250</sup> Therefore, a promotion, reclassification, or other salary adjustment may not result in an employee's receiving a salary in excess of the maximum rate authorized for his or her salary group.<sup>251</sup>

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<sup>245</sup> Texas Government Code, Sections 654.011, 659.011, and 654.0125; and General Appropriations Act (80th Legislature, Regular Session), Article IX, Section 3.05.

<sup>246</sup> Texas Government Code, Section 658.009.

<sup>247</sup> Ibid., Section 659.019 (a).

<sup>248</sup> Texas Insurance Code, Section 1551.003 (11).

<sup>249</sup> Texas Government Code, Section 654.014 (b).

<sup>250</sup> General Appropriations Act (80th Legislature, Regular Session) Article IX, Section 3.01 (d).

## Salary Supplementation

Classified employees or employees in exempt positions funded by the General Appropriations Act cannot receive a salary supplement from any source unless specifically authorized by statute or the General Appropriations Act.<sup>252</sup>

Additionally, appropriated funds to state agencies and institutions of higher education may not be expended until a report showing the salary supplements has been reported to the Secretary of State and Comptroller of Public Accounts (Comptroller).<sup>253</sup>

## Additional Information

Table 6-1 provides a list of State Auditor's Office's Human Resources Questions-and-Answers related to salary administration for classified positions.

Table 6-1

Salary Administration-General Information Related State Auditor Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether there is a mandatory time limit on how long an employee may be hired in a temporary position.	7/7/2005
HR Question	Whether a classified employee may be temporarily assigned to two different classified positions within a 12-month period.	5/30/2003
HR Question	Whether an agency may classify employees to a lower salary group to avoid paying a higher salary due to mandatory reallocations.	8/16/1999
HR Question	Whether an agency may hire an hourly employee at a rate that is higher than the salary range for a position in the State Classification Plan.	12/7/1998
HR Question	Whether there are restrictions on hiring a new employee and paying the employee more than the minimum salary rate.	10/26/1998
<sup>a</sup> Complete references can be found at: HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

## *Conversion of Exempt Employees to Classified Positions*

An employee who transfers from an exempt position to a classified position within an agency is entitled to receive an annual salary in the salary group to which the classified position is allocated. The employee's annual salary after the transfer may not exceed the rate received by the employee when holding the exempt position or the maximum rate of the salary group to which the classified position is allocated. The employee may receive his or her current salary or the maximum rate of the new salary group, whichever is lower.<sup>254</sup>

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

<sup>251</sup> Texas Government Code, Section 659.259 (b).

<sup>252</sup> Ibid., Section 659.020.

<sup>253</sup> General Appropriations Act (80th Legislature, Regular Session) Article IX, Section 3.02.

<sup>254</sup> Texas Government Code, Section 659.253 (b).

or the increase would take the employee's salary beyond the maximum of his or her new salary group<sup>255</sup>

The Legislative Budget Board and the Governor may approve, upon receiving the employing state agency's application, an exception to the salary limitation for a state employee who transfers from an exempt position to a classified position if the employee's job responsibilities with the agency have changed substantially during the biennium.<sup>256</sup>

A transfer from an exempt position to a classified position is not considered initial employment; therefore, agency heads can designate an employee's pay rate only in accordance with the provisions stating that the compensation rate must not exceed an employee's current salary rate.<sup>257</sup>

### Reassignment of Executive Directors

An executive director may not be reassigned to another position within the agency or at another agency that is controlled by the same governing body unless, in an open meeting, the governing body votes to approve the proposed reassignment.<sup>258</sup>

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### *Demotions*

A demotion is a change from one classification title to another classification title in a salary group with a lower minimum salary rate.<sup>259</sup> The salary of a demoted employee in Salary Schedule A will be reduced at least \$30 a month from the base salary for full-time employees. The salary of a demoted employee in Salary Schedule B will be reduced by at least 3.4 percent.<sup>260</sup>

An agency is not required to reduce a demoted employee's salary if the demotion was accepted in lieu of a layoff or if the employee applied for and accepted a position in a lower salary group.<sup>261</sup>

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### *Equity Adjustments*

A state agency can increase the salary of a classified employee to any rate within the employee's salary group as necessary to maintain desirable salary relationships between and among employees of the agency or between employees of the agency and employees who hold similar positions in relevant labor markets.<sup>262</sup>

A classified employee may receive an equity adjustment if the employee has worked in the current position for at least six months while maintaining a satisfactory level of job performance. An employee may not receive more than one equity adjustment during a fiscal year.<sup>263</sup> State agencies

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<sup>255</sup> Texas Government Code, Section 659.253 (c).

<sup>256</sup> Ibid., Section 659.253 (d).

<sup>257</sup> Ibid., Section 659.253 (b)(2).

<sup>258</sup> Ibid., Section 669.002.

<sup>259</sup> Ibid., Section 659.257 (b).

<sup>260</sup> Ibid., Section 659.257 (c) and (d); and *Reason Code Definitions for State Agencies* (Salary Action Code 021), Comptroller of Public Accounts Fiscal Policies and Procedures, September 2005.

<sup>261</sup> Texas Government Code, Section 659.257 (f).

<sup>262</sup> General Appropriations Act (80th Legislature, Regular Session) Article IX, Section 3.08 (a).

<sup>263</sup> Ibid., Section 3.08 (c).

must establish written rules regarding equity adjustments. These rules determine the procedures used to review and analyze the salary relationships.<sup>264</sup>

In providing an equity adjustment, the salary must increase but still remain within the same salary group without a change to the job classification or salary group.<sup>265</sup>

Table 6-2 lists State Auditor’s Office’s Human Resources Questions-and-Answers related to equity adjustments for classified positions.

Table 6-2

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

## *Lateral Transfer*

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A lateral transfer is a change-in-duty assignment of an agency employee that moves the employee to another classification title in the same salary group. An example might be an Accountant IV who moves to Accounts Examiner IV. When a lateral transfer occurs, the salary can be increased, it can remain the same, or it can decrease within the salary group. If an increase is provided, it can be no more than 3.4 percent above the employee’s salary prior to the transfer. If the salary decreases, it may not decrease below the minimum of the salary group. A state employee’s annual salary rate immediately after a transfer may not exceed the maximum rate for the salary group.<sup>266</sup> An increase in salary is not authorized for employees moving to a different position in the same job classification at the same agency. An example might be an Accountant IV in the Finance division who moves to an Accountant IV in the human resources division.

## *Reallocations*

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In this section, “higher salary group” means a salary group with a higher minimum salary rate, and “lower salary group” means a salary group with a lower minimum salary rate.<sup>267</sup>

<sup>264</sup> General Appropriations Act (80th Legislature, Regular Session) Article IX, Section 3.08 (d).

<sup>265</sup> *Reason Code Definitions and Restrictions for State Agencies*, (Salary Action Code 040), Comptroller of Public Accounts Fiscal Policies and Procedures, September 2005.

<sup>266</sup> Texas Government Code, Section 659.2531; and *Reason Code Definitions and Restrictions for State Agencies*, (Salary Action Code 046), Comptroller of Public Accounts Fiscal Policies and Procedures, September 2005.

<sup>267</sup> Texas Government Code, Section 659.254 (b).

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

A classified employee whose position is reallocated to a higher salary group will receive the minimum rate in the higher salary group or the salary he or she would have received without the reallocation, whichever is higher. Salaries of employees may not be increased more than 6.8 percent for the purpose of maintaining desirable salary relationships among employees in the affected positions.<sup>268</sup>

Employees whose positions are reallocated to lower salary groups will receive the salaries they would have received had their positions not been reallocated. However, the employees' salaries should not exceed the maximum rates for the lower salary groups.<sup>269</sup>

## ***Reclassifications***

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Reclassification is defined as a change in the classification of a position to another classification title as a result of a classification review or agency reorganization. The purpose of a reclassification is to properly classify a position based on the actual duties currently performed by an employee. It does not refer to a change in an employee's duty assignment. A position may be reclassified at any time to correct a discrepancy.<sup>270</sup> Annually, all agencies covered by the Position Classification Act must review individual job assignments to ensure that each employee is classified properly. In addition, an agency may perform a monthly review of job assignments.<sup>271</sup>

A classified employee whose position is reclassified to a higher salary group will receive the minimum rate in the higher salary group or the salary he or she would have received without the reclassification, whichever is higher. Salaries of employees may not be increased more than 6.8 percent for the purpose of maintaining desirable salary relationships among employees in the affected positions.<sup>272</sup>

Employees whose positions are reclassified to a lower salary group will receive the salaries they would have received had the positions not been reclassified. However, the employees' salaries should not exceed the maximum rates for the lower salary groups.<sup>273</sup> Consequently, if the employee's salary prior to the reclassification is above the maximum salary of the lower salary group, the employee will receive the maximum salary of the salary group.

## ***Salary Reduction for Disciplinary Reasons***

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Agency heads may reduce a classified employee's pay for disciplinary reasons if warranted by the employee's performance. The reduced salary cannot be lower than the minimum rate of the employee's current salary group. Pay may be restored to any rate within the same salary group, up to

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<sup>268</sup> Texas Government Code, Section 659.254 (c).

<sup>269</sup> Ibid., Section 659.254 (d).

<sup>270</sup> Ibid., Section 654.0156.

<sup>271</sup> Ibid., Section 654.0155.

<sup>272</sup> Ibid., Section 659.254 (c).

<sup>273</sup> Ibid., Section 659.254 (d).

and including the employee's prior rate, as performance improves without accounting for the increase as a merit increase.<sup>274</sup>

## ***Promotions***

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A promotion is a change in classification title that provides a higher minimum salary rate, requires higher qualifications, and involves a higher level of responsibility.<sup>275</sup>

An employee promoted to a position in Salary Schedule A will receive at least a \$30 per month increase to the base salary for a full-time employee or the minimum salary rate of the new salary group, whichever is higher. An employee promoted to a position in Salary Schedule B will receive at least a 3.4 percent increase or the minimum salary rate of the new salary group, whichever is higher. In addition, agency administrators have the discretion to grant a promoted employee a salary amount up to and including the maximum rate of the new salary group.<sup>276</sup>

## ***Temporary Assignments***

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To facilitate the work of state agencies during emergencies or special circumstances, an employee may be temporarily assigned to other duties for a period not to exceed six months. During that time, the employee will receive at least the same amount of pay he or she received prior to the reassignment. An employee may not be temporarily assigned to a position with a lower minimum salary rate. Temporary assignments will not exceed 6 months in a 12-month period. An employee temporarily designated to act as the administrative head of a state agency may continue to receive a salary for a classified position in an amount not to exceed the amount established by the General Appropriations Act for the administrative head of the agency. During the temporary assignment, an agency cannot award a merit increase to or promote or demote the employee.<sup>277</sup>

## ***Fiscal Year 2008 and 2009 Salary Increases for Certain State Employees***

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A salary increase of 2 percent (minimum of \$50 a month) is effective September 1, 2007, for certain state employees. Another salary increase is scheduled to occur on September 1, 2008, as an additional 2 percent increase (minimum of \$50 a month). The Comptroller's office will allocate the salary increase appropriations to each state agency and to the applicable benefit appropriations. The allocated appropriations may be used only for providing the salary increase and paying the associated employee benefit costs.

The increases generally cover employees of state agencies, including employees of the Texas Higher Education Coordinating Board and Texas A&M University System service agencies (Texas Cooperative Extension Service, Texas Agricultural Experiment Station, Texas Veterinary Medical Diagnostic Laboratory, Texas Forest Service, Texas Engineering Experiment Station, Texas Engineering Extension Service, and Texas Transportation Institute). The appropriations for a salary increase do not include the following:

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<sup>274</sup> Texas Government Code, Section 659.258 (b).

<sup>275</sup> Ibid., Section 659.256 (b).

<sup>276</sup> Ibid., Sections 659.256 (c) and 659.256 (d); and *Reason Code Definitions and Restrictions for State Agencies*, (Salary Action Code 020), Comptroller of Public Accounts Fiscal Policies and Procedures, September 2005.

<sup>277</sup> Texas Government Code, Section 659.260.

- Statewide elected officials.
- Justices and judges of the appellate and district courts.
- District attorneys.
- Criminal district attorneys.
- County attorneys performing the duties of a district attorney.
- Line-item exempt (non-classified) employees.
- Salary Schedule C personnel.
- Employees of institutions of higher education (except for employees of a Texas A&M University System service agency).
- Non-exempt staff at the Office of the State Prosecuting Attorney.
- Deputy clerks at the Supreme Court of Texas.
- Staff attorneys, law clerks, or employees whom a Court of Appeals designate as receiving salary increases from the block grant appropriated for the 14 Courts of Appeals.

The rider that appropriates the salary increase does not authorize a salary increase for an individual who holds an exempt position. The amount of that person's salary may be increased only in compliance with Article IX, Section 3.05 (a-c) and (d), of the General Appropriations Act.

The rider does not specifically authorize the increase for employees of the legislative agencies included in Article X of the General Appropriations Act. The boards or committees governing those agencies will determine if their employees are included in the salary increase.

The General Appropriations Act salary increase rider does not authorize any salary rate above the maximum rates specified in the classified salary schedules.<sup>278</sup>

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<sup>278</sup> General Appropriations Act (80th Legislature, Regular Session), Article IX, Section 19.62.

## Additional Information

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Table 6-3 lists State Auditor's Office's Human Resources Questions-and-Answers related to salary actions.

Table 6-3

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

*Section 7*  
*Positions Exempt from Classification Plan*

*Positions Exempt from the Classification Plan*

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

- A constitutional officer or official.
- An elected officer or official.
- An officer appointed by the Governor.
- The chief executive of a state agency.
- A teacher in public schools, a special school of the State, or state institution of higher education.
- Personnel employed by state institutions of higher education.
- A professional compensated for services on a fee basis.
- An employee excluded from the plan by executive order of the Governor or at the direction of the Legislature.<sup>279</sup>

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

- For the purpose of hiring a replacement in a key management position as certified by the chief administrator of the agency.
- If the current incumbent of the position has formally resigned or otherwise announced irrevocable plans to vacate the position.
- For a period of time not to exceed the equivalent of one month’s salary per fiscal year per terminating incumbent (excluding time spent on the payroll for the purpose of exhausting accrued annual leave or state compensatory time.
- If exceptions are reported as prescribed for payroll reporting procedures.<sup>280</sup>

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

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<sup>279</sup> Texas Government Code, Section 654.012.

<sup>280</sup> General Appropriations Act (80th Legislature, Regular Session) Article IX, Section 3.05d (2).

## *Provisions for the Head of State Agencies*

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The Legislature authorizes and designates the title and maximum compensation rate for each agency head in the General Appropriations Act. Unless specifically authorized, the administrative head may not receive a salary higher than the established salary, even if the administrative head performs duties assigned to a position title classified in the state's position classification plan that is assigned to a salary group that would pay a higher salary.

At the Governor's discretion, he or she is authorized, notwithstanding the rate listed for the Governor in the "Schedule of Exempt Positions" to establish the rate of compensation for the Governor at any amount below the listed authorization.<sup>281</sup> In addition, the Governor may designate the title and compensation rate of positions exempt from the Position Classification Plan that are used by the Office of the Governor.<sup>282</sup>

### **Not to Exceed Rates**

Exempt positions have not-to-exceed (NTE) salaries that are set by the Legislature each biennium. A position listed in a state agency's Schedule of Exempt Positions shall receive compensation at a rate not to exceed the amount indicated in that agency's Schedule of Exempt Positions.<sup>283</sup> If an agency's Schedule of Exempt Positions has a NTE rate that is less than the maximum salary listed in table 7-1, the NTE rate in the agency's schedule prevails.

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

### **Salary Groups**

The General Appropriations Act identifies the salary group and the agency head's assigned salary group in each agency's appropriations bill pattern. Each salary group has a minimum salary and a maximum salary (see Table 7-1). For some agencies, the Governor has the authority to set compensation in an amount not to exceed the maximum salary, but not less than the minimum.<sup>284</sup>

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<sup>281</sup> General Appropriations Act (80th Legislature, Regular Session) Article I, Rider 7, Page I-47.

<sup>282</sup> Ibid., Article I, Rider 2, Page I-47.

<sup>283</sup> Ibid., Article IX, Section 3.05(a).

<sup>284</sup> Ibid., Article IX, Section 3.05(3).

Table 7-1

Scheduled Exempt Position Salary Rates Fiscal Years 2008- 2009 <sup>285</sup>		
Group	Minimum Salary	Maximum Salary
1	\$49,080	\$75,828
2	\$58,092	\$89,749
3	\$68,772	\$106,260
4	\$81,480	\$125,880
5	\$96,468	\$149,052
6	\$114,288	\$214,236

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

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

After submission of the request, the agency can consider it approved if neither the Legislative Budget Board nor the Governor’s Office issues a written disapproval by:

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

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

- Commissioner for the Department of State Health Services.
- Commissioner for the Department of Family and Protective Services.
- Commissioner for the Higher Education Coordinating Board.
- Commissioner for the Department of Aging and Disability Services.
- Executive Director of the Department of Information Resources.
- Commissioner for the Department of Assistive and Rehabilitative Services.

<sup>285</sup> General Appropriations Act (80th Legislature, Regular Session), Article IX, Section 3.05.

- Executive Director of the Texas Lottery Commission.
- Executive Director of the Texas Youth Commission.<sup>286</sup>

### *Salary Increases for Exempt Positions*

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

- In writing;
- Signed by the presiding officer of the governing board;
- Submitted to the Governor, the Legislative Budget Board and the Comptroller; and
- Approved by the governing board in a public meeting.<sup>287</sup>

### *Provisions for Salaries in the Judiciary Branch*

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

Table 7-2

Provisions for Salaries in the Judiciary Branch <sup>288</sup>		
Title	Minimum Salary	Maximum Salary
District Judge	\$125,000	Combined salary (state and county sources) may not exceed the amount that is \$5,000 less than the salary provided for a justice of a court of appeals. <sup>a</sup>
Justice, Court of Appeals	110 percent of salary of district judge	Combined salary (state and county sources) may not exceed the amount that is less than \$5,000 less than the salary provided for a justice of the Texas Supreme Court.
Justice, Supreme Court and Judge, Criminal Court of Appeals <sup>a</sup>	120 percent of salary of district judge	None Listed
Chief Justice of Supreme Court, Presiding Judge of Criminal Court of Appeal, and Chief of a Court of Appeals	\$2,500 more than salary provided for other justices or judges of the court	Combined salary may not exceed the amount that is \$2,500 less than the salary provided for a justice of the Texas Supreme Court.
<sup>a</sup> This excludes chief justice positions.		

<sup>286</sup> General Appropriations Act (80th Legislature, Regular Session), Article IX, Section 3.05 (c).

<sup>287</sup> Ibid, Article IX, Section 3.05(d).

<sup>288</sup> Texas Government Code, Section 659.012.

## Appellate Court Salary Limits for Attorneys

Intermediate appellate courts may not pay more than one chief staff attorney promoted or hired after September 1, 2005, more than \$84,000 annually under this provision. Further, it is the intent of the Legislature that no intermediate appellate court may pay other permanent legal staff hired or promoted after September 1, 2005, more than \$72,500 annually. This provision does not apply to law clerk positions at any appellate court.<sup>289</sup>

## Provisions for Educational Institutions

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

Table 7-3

Provisions for Salaries for Educational Institutions <sup>290</sup>		
Title	Not To Exceed Rate (Paid from Appropriated Funds)	Not to Exceed Rate for Housing Allowance <sup>a</sup>
President, Higher Education Institution	\$65,945	\$7,200
Chancellor, Higher Education Institution	\$70,231	\$7,200
Campus President, Texas State Technical College	\$63,654	\$7,200
Chancellor, Texas State Technical College	\$70,231	\$7,200
<sup>a</sup> If a house owned by the institution, system, or program is not available, additional amounts from private or institutional funds may be provided in lieu of house and utilities, when required.		

## Salary Study on Exempt Positions

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

- Size of an agency's annual appropriations.
- Full-time equivalent (FTE) level.
- Market average compensation for similar executive positions.

<sup>289</sup> General Appropriations Act (80th Legislature, Regular Session), Article IV, Section 12.

<sup>290</sup> Ibid., Article III, Section 5, (2) and (3), and Sections 10 and 11.

- Exempt position salary as compared to classified positions within the agency.
- Other objective criteria the State Auditor's Office deems appropriate.

The study shall be submitted to all members of the Legislature and the director of the Legislative Budget Board no later than September 1, 2008.<sup>291</sup>

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<sup>291</sup> General Appropriations Act (80th Legislature, Regular Session), Article IX, Section 3.09.

## *Section 8*

# *Employee Compensation*

### *Employee Compensation Overview*

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

#### **Salary Limitations**

The General Appropriations Act does not limit the total amount agencies may expend for merit salary increases and promotions.<sup>292</sup>

#### **Recovering Excess Compensation Paid**

State agencies are authorized to recover overpayments of compensation to employees.<sup>293</sup> The Comptroller of Public Accounts may adopt rules and establish procedures to administer the recovery of overpayments.<sup>294</sup> Overpayments of compensation includes base salary or wages, longevity or hazardous duty pay, benefit replacement pay, payment for the balance of vacation and sick leave, payment for the accrued balance of vacation time, and an emolument in lieu of base salary or wages.<sup>295</sup>

If requesting recovery of an overpayment, the agency must first notify the employee.<sup>296</sup> The agency may request that the Comptroller of Public Accounts recover the overpayment.<sup>297</sup> No statute of limitations bars the State's recovery of employee indebtedness.<sup>298</sup>

#### **Additional Resources**

Table 8-1 provides a list of State Auditor's Office's Human Resources Questions-and-Answers related to state employee compensation.

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<sup>292</sup> General Appropriations Act (80th Legislature, Regular Session) Article IX, Section 3.04.

<sup>293</sup> Texas Government Code, Section 666.002.

<sup>294</sup> *Ibid.*, Section 666.008.

<sup>295</sup> *Ibid.*, Section 666.001(1).

<sup>296</sup> *Ibid.*, Section 666.003.

<sup>297</sup> Texas Administrative Code, Title 34, Chapter 5, and Texas Government Code, Section 666.005.

<sup>298</sup> Opinion, Texas Office of the Attorney General, No. GA-0171 (2004).

Table 8-1

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

### ***Benefit Replacement Pay***

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

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

- Eligible for the state-paid Social Security contribution under Section 606.064 of the Texas Government Code.
- Using unpaid leave from a position with a state agency, if the employee would have been otherwise eligible; or
- Not working because his or her employment customarily did not include summer months; he or she had contracted to resume employment before September 2, 1995; and such employment would have made the employee eligible for the state-paid tax if the employee had held that position at that time.<sup>299</sup>

Benefit replacement pay is equal to 5.85 percent of the FICA wages earned during the pay period and the additional retirement contribution that would have been paid by the employee because of receiving benefit replacement pay. The total paid out (not including the retirement contribution) may not exceed \$965.25 each calendar year for a state agency employee.<sup>300</sup> The benefit replacement pay for employees at institutions of higher education participating in the Teacher Retirement System may not exceed \$1,031.25.<sup>301</sup>

<sup>299</sup> Texas Government Code, Section 659.121.

<sup>300</sup> Ibid., Section 659.123.

<sup>301</sup> *Notice to State Agencies, FM-96-37*, Comptroller of Public Accounts, November 13, 1995.

Regular state agencies have the option of providing benefit replacement pay in equal installments during the calendar year. This practice is known as “leveling.” The Comptroller’s *Payroll Policy and Procedures Guide* states that this option exists if the employee’s wages are anticipated to be at least \$16,500 during the year in which the leveling would occur. If an employee chooses to receive benefit replacement pay in equal installments and then terminates his or her employment before year end, the employee will not be paid the difference between the benefit replacement pay received and the amount the employee would have received had the installment plan not been chosen.<sup>302</sup>

An eligible employee who leaves state employment for 30 or more consecutive days after August 31, 2005, becomes ineligible to receive benefit replacement pay upon re-employment with the State.<sup>303</sup>

An eligible state employee who retired from state employment on or after June 1, 2005, and who receives an annuity based wholly or partly on services as a state officer or state employee in a public retirement system, is ineligible to receive benefit replacement pay upon re-employment with the State.<sup>304</sup>

### Additional Resources

Table 8-2 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers related to benefit replacement pay.

Table 8-2

Benefit Replacement Pay Related State Auditor Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Regarding benefit replacement pay eligibility and payment procedures.	7/31/2000
HR Question	Whether a retired employee is eligible for benefit replacement pay if they are re-employed within a year.	3/1/1999
HR Question	Whether an employee who has been on leave without pay for more than 12 months because of military leave is still eligible for benefit replacement pay when he or she returns to work.	9/8/1998
<sup>a</sup> Complete references can be found at: HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

### *Hazardous Duty Pay*

A state employee is eligible for hazardous duty pay if he or she has completed at least 12 months of lifetime service credit (by the last day of the preceding month).<sup>305</sup> Those state employees eligible for hazardous duty pay include:

<sup>302</sup> Texas Government Code, Section 659.125.

<sup>303</sup> Ibid., Section 659.126 (a).

<sup>304</sup> Ibid., Section 659.126 (d).

<sup>305</sup> Ibid., Section 659.302.

- A commissioned law enforcement officer of the Department of Public Safety, the Texas Facilities Commission, the Alcoholic Beverage Commission, or the institution division of the Department of Criminal Justice.
- A commissioned security officer of the Comptroller of Public Accounts.
- A law enforcement officer commissioned by the Parks and Wildlife Department.
- A commissioned peace officer of an institution of higher education.
- An employee or official of the Board of Pardons and Paroles if the employee or official has routine, direct contact with inmates or with administratively released prisoners.
- An individual certified as having begun employment as a law enforcement officer or custodial officer unless the employee ceased that employment.<sup>306</sup>
- An employee who received hazardous duty pay before May 29, 1987, based on the terms of any state law if the individual holds a position designated under that law as eligible for pay.<sup>307</sup>

The Department of Criminal Justice is authorized to use appropriated funds to continue funding hazardous duty pay to all employees that received it as of August 31, 1985. However, all persons hired after August 31, 1985, must occupy positions approved by the Texas Board of Criminal Justice and meet statutory criteria to receive hazardous duty pay.<sup>308</sup>

The Alcoholic Beverage Commission is authorized to pay hazardous duty pay to any commissioned law enforcement personnel as prescribed by law. It is further provided that individuals who had received hazardous duty pay as of August 31, 1981, will continue to receive hazardous duty pay for the 2008-2009 biennium. Individuals hired after August 31, 1981, will not be eligible to receive hazardous duty pay unless so authorized by statute.<sup>309</sup>

### Hazardous Duty Pay Lifetime Service Credit

The amount of an employee's hazardous duty pay is based on the number of months served in a hazardous duty position, which is also known as "lifetime service credit."<sup>310</sup> The number of months is determined on the last day of the preceding month. To be considered a full-time employee, the employee must be an employee for a portion of the first workday of the month.<sup>311</sup> For a part-time employee, hazardous duty pay is proportional to the amount given to a full-time employee.<sup>312</sup>

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<sup>306</sup> Texas Government Code, Section 659.302(5).

<sup>307</sup> Ibid., Section 659.301 (g).

<sup>308</sup> General Appropriations Act (80th Legislature, Regular Session) Article V, Rider 20.

<sup>309</sup> Ibid., Article V, Rider 3, Page V-7.

<sup>310</sup> Texas Administrative Code, Title 34, Chapter 5.

<sup>311</sup> Texas Government Code, Section 659.302.

<sup>312</sup> Ibid., Section 659.305 (f).

## Amount of Hazardous Duty Pay

In most cases, the amount of a full-time employee's hazardous duty pay for a particular month is \$10 for each 12-month period of lifetime service credit accrued by the employee.<sup>313</sup> The state agency that employs the individual at the beginning of the first workday of the month is responsible for paying hazardous duty pay for that month.<sup>314</sup>

New Requirement
The 80th Legislature passed legislation removing the cap on the maximum hazardous duty pay, with the exception of Department of Criminal Justice employees.

Table 8-5 provides examples of hazardous duty pay.

Table 8-5

Hazardous Duty Pay Table <sup>a</sup>	
Years of Service	Monthly Hazardous Duty Pay
More Than 1 and fewer than 2 years	\$10
More Than 2 and fewer than 3 years	\$20
More Than 3 and fewer than 4 years	\$30
More Than 4 and fewer than 5 years	\$40
More Than 5 and fewer than 6 years	\$50
More Than 6 and fewer than 7 years	\$60
More Than 7 and fewer than 8 years	\$70
More Than 8 and fewer than 9 years	\$80
More Than 9 and fewer than 10 years	\$90
More Than 10 and fewer than 11 years	\$100
<sup>a</sup> With the exception of the Department of Criminal Justice Correctional Officers, there is no cap on hazardous duty pay. For purposes of this table, the amount of hazardous duty pay has been calculated only through 10 years.	

## Hazardous Duty Pay for Department of Criminal Justice Correctional Officers

A full-time correctional officer employed by the Department of Criminal Justice is eligible to receive hazardous duty pay at a rate of \$12 per month for each 12-month period of lifetime service credit up to a maximum of \$300 per month.<sup>315</sup>

New Requirement
The 80th Legislature passed legislation increasing hazardous duty pay for correctional officers employed by the Department of Criminal Justice.

<sup>313</sup> Texas Government Code, Section 659.305 (a).

<sup>314</sup> Ibid., Section 659.306.

<sup>315</sup> Ibid., Section 659.305 (h).

Table 8-6 provides examples of hazardous duty pay.

Table 8-6

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

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

### Hazardous Duty Pay for Youth Commission Employees

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

- Placed in a residential facility of the Commission, or
- Released under the Commission’s supervision.<sup>316</sup>

An individual who has routine direct contact with youth on any portion of the first workday of a month is considered to have routine direct contact with youth for the entire month.<sup>317</sup> The Commission may not pay hazardous duty pay from funds authorized for payment of an across-the-board employee salary increase or to an employee who works at the Commission’s central office.<sup>318</sup> The amount of a full-time employee’s hazardous duty pay for a particular month is \$10 per month for each 12-month period of lifetime service credit accrued by the employee.<sup>319</sup>

<sup>316</sup> Texas Government Code, Section 659.303 (a).

<sup>317</sup> Ibid., Section 659.303 (b).

<sup>318</sup> Ibid., Section 659.303 (d).

<sup>319</sup> Ibid., Section 659.305 (a).

## Additional Resources

Table 8-7 provides a list of Office of the Attorney General Opinion Letters related to hazardous duty pay for state employees.

Table 8-7

Hazardous Duty Pay Related Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
JM-713	Whether prior state service in a non-hazardous duty assignment may be used in calculating hazardous duty pay, and related questions.
LO 90-007	Whether employees of the Board of Pardons and Paroles whose positions have been reclassified to allow them to collect hazardous duty pay are entitled to receive that pay immediately or whether they must serve in a hazardous duty pay position for one year before receiving that pay.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

## *Jury Service and Witness Fees*

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A deduction may not be made from the salary or wages of a state employee because the employee is called for jury service, including a deduction for any fee or compensation the employee receives for the jury service.<sup>320</sup>

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

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

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

A state officer or employee may receive reimbursement for travel and a per diem or reimbursement for expenses connected to an appearance in an official capacity as a witness in a judicial proceeding or legislative hearing from the state or the judicial body, but not from both the state and the judicial body.<sup>321</sup>

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<sup>320</sup> Texas Government Code, Section 659.005(a).

<sup>321</sup> Ibid, Section 659.005(e).

## Authorized Witness Expenses, Texas Alcoholic Beverage Commission

There are no provisions preventing the payment of salaries and expenses incurred by representatives of the Texas Alcoholic Beverage Commission to attend state or federal grand jury proceedings, and who may be called as witnesses in a trial of criminal or civil cases in state or federal courts involving offenses of state or federal liquor regulatory or revenue laws. Any fees collected by such representatives in performing such duties shall be deposited in the State Treasury to the credit of the agency.<sup>322</sup>

## *Longevity Pay*

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Longevity pay is provided to all full-time employees who are not on leave without pay the first workday of the month and who have at least two years of lifetime service credit.<sup>323</sup> Part-time employees do not receive longevity pay on a proportional basis. Those ineligible for longevity pay include members of the Legislature, individuals elected to public office, an independent contractor or an employee of an independent contractor, temporary workers, officers or employees of public junior colleges, academic employees of institutions of higher education, and employees receiving hazardous duty pay.<sup>324</sup> The Comptroller of Public Accounts is responsible for issuing rules and procedures for the administration of longevity pay.<sup>325</sup>

### Accrual of Lifetime Service Credit

For the purposes of longevity pay, an employee accrues lifetime service credit for the period in which the employee:

- Serves as a full-time, part-time, or temporary state employee or otherwise serves as an employee of the state;
- Serves as a member of the legislature;
- Holds a statewide office that is normally filled by a vote of the people; or
- Serves as an academic employee of a state institution of higher education.<sup>326</sup>

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

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

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<sup>322</sup> General Appropriations Act (80th Legislature, Regular Session) Article V, Rider 4, Page V-7.

<sup>323</sup> Texas Government Code, Section 659.043(a).

<sup>324</sup> Ibid., Section 659.042.

<sup>325</sup> Ibid., Section 659.047.

<sup>326</sup> Ibid., Section 659.046

An employee does not accrue lifetime service credit for a period in which the employee serves as an officer or employee of a public junior college.<sup>327</sup>

The amount of an employee's lifetime service credit does not include the period served in a hazardous duty position if the employee is entitled to receive hazardous duty pay or is receiving the maximum amount of hazardous duty pay that the Texas Youth Commission may pay to the employee.<sup>328</sup>

Table 8-3 lists the amounts of longevity pay that eligible employees receive based upon years of service.<sup>329</sup>

Table 8-3

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

<sup>327</sup> Texas Government Code, Section 659.046.

<sup>328</sup> Ibid., Section 669.046(f).

<sup>329</sup> Ibid., Section 659.044.

## Longevity Pay for Select Texas Youth Commission Employees

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

- \$4 for each year of lifetime service credit, which may not include any period served in a hazardous duty position; and
- The lesser of \$4 for each year served in a hazardous duty position, or the difference between \$7 for each year served in a hazardous duty position and the amount paid by the commission for each year served in a hazardous duty position.<sup>330</sup>

## Longevity Pay for State Judges and Justices

A judge or justice who receives a salary paid by the State, is a member of the Judicial Retirement System of Texas Plan I or the Judicial Retirement System of Texas Plan II, and is an active judge (as defined by Texas Government Code, Section 74.041) is entitled to longevity pay as provided by this section. The monthly amount of longevity pay to which a judge or justice is entitled is \$20 for each year of service credited in the applicable retirement system. A judge or justice may not receive longevity pay for more than 16 years of service credited in the applicable retirement system.<sup>331</sup>

New Requirement
The 80th Legislature passed legislation providing longevity pay for state judges and justices.

## Longevity Pay for Return-to-Work Retirees

A state employee who retired from state employment before June 1, 2005, and who returned to state employment before September 1, 2005, is entitled to receive longevity pay. The monthly amount of longevity pay the employee is entitled to receive equals the amount of longevity pay that the employee was entitled to receive immediately before September 1, 2005. A state employee who retired from state employment before June 1, 2005, and who returns to state employment on or after September 1, 2005, is not entitled to receive longevity pay.<sup>332</sup>

## Longevity Pay When Employee's Status Changes

If an employee ceases being from a full-time state employee after the first workday of a month to another status (for example, a part-time employee), but otherwise qualifies for longevity pay, the employee's compensation for the month includes full longevity pay.<sup>333</sup>

## Additional Resources

Table 8-4 provides a list of Office of the Attorney General Opinion letters related to longevity pay for state employees.

<sup>330</sup> Texas Government Code, Section 659.044 (e).

<sup>331</sup> Ibid., Section 659.0445.

<sup>332</sup> Ibid., Section 659.044 (f).

<sup>333</sup> Ibid., Section 659.045.

Table 8-4

Longevity Pay Related Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
LO 97-010	Whether longevity pay and benefit replacement pay are included within the capped salary rate for Texas Youth Commission teachers.
MW-100	Regarding the application of Article 6813d, Texas Civil Statutes, to state employees after military service and to prior service of National Guard technicians.
MW-282	Whether a retiring employee is entitled to be paid longevity or hazardous duty pay in addition to accumulated leave if he takes the accumulated leave in a lump sum.
MW-334	Whether teachers employed by the Texas Youth Council are entitled to longevity pay under Article 6813d, Texas Civil Statutes.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

### *Merit Increases for State Agency Employees*

State agencies may award merit salary increases to employees whose job performance and productivity is consistently above that normally expected and required.<sup>334</sup> Each state agency shall adopt policies to ensure that an employee's performance expectations are linked to the goals in the agency's strategic plan.<sup>335</sup>

For classified employees in Salary Schedules A and B, a merit increase consists of an increase within the range of the same salary group.<sup>336</sup> There are no specific minimum or maximum amounts for either a merit salary increase or a one-time merit payment. Agencies should ensure that merit increases and one-time merit payments are distributed throughout the range of classified salary groups.<sup>337</sup> A merit salary increase should not be confused with a promotion, because a merit salary increase rewards an employee for performance in the same job.<sup>338</sup>

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

- The employee has been employed by the agency for six months of continuous employment by the agency in a classified position before the effective date of the increase.
- The effective date of the increase is at least six months after the employee's last promotion or merit salary increase for performance in that position.
- The agency has established a procedure for determining the eligibility of a classified employee to receive a merit salary increase or a one-time merit payment.

<sup>334</sup> Texas Government Code, Section 659.255 (e) (4).

<sup>335</sup> *Ibid.*, Section 659.2551.

<sup>336</sup> *Ibid.*, Section 659.255(a) (3).

<sup>337</sup> *Ibid.*, Section 659.255 (d).

<sup>338</sup> Opinion, Texas Office of the Attorney General, H-405 (1974).

- The employee's job performance and productivity in that position are consistently above that normally expected or required.
- The effective date of the increase is at least six months after the effective date of the agency's last payment to the employee of an enhanced compensation award or one-time merit payment for performance in that position.<sup>339</sup>

### One-Time Merit Increases

Employees may receive a one-time merit payment following the same criteria used to award merit salary increases.<sup>340</sup> The Employees Retirement System has indicated that such a payment is not considered compensation or wages for purposes of determining the amount of the State's contribution for retirement for employees of state agencies.<sup>341</sup> Employees at the maximum of their salary groups are eligible to receive one-time merit payments.<sup>342</sup>

### Employees Not Eligible for Merit Increases

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

- Correctional officers.
- Sergeants, Lieutenants, Captains, and Majors of correctional officers.
- Food service managers.
- Laundry managers.
- Parole case managers and parole officers.<sup>343</sup>
- Merits are also prohibited for all Youth Commission juvenile correctional officers who are eligible to receive career ladder adjustments.<sup>344</sup>

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<sup>339</sup> Texas Government Code, Section 659.255 (e) and (f).

<sup>340</sup> *Ibid.*, Section 659.255 (f).

<sup>341</sup> *Payroll and Policies and Procedures Guide*, Office of the Comptroller of Public Accounts, August 2000, Page 2.21.

<sup>342</sup> State Auditor's Office Human Resources Question and Answer, October 11, 1999, and November 22, 1999.

<sup>343</sup> General Appropriations Act (80th Legislature, Regular Session), Article V, Rider 10, Page V-14-15.

<sup>344</sup> *Ibid.*, Article V, Rider 18, Page V-18.

## Additional Resources

Table 8-8 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers related to merit increases for state employees.

Table 8-8

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

### *Merit Increases at Institutions of Higher Education*

Merit salary increases are awarded to employees whose job performance and productivity is consistently above that normally expected or required.<sup>345</sup> An institution of higher education may grant merit salary increases, including one-time merit payments, to employees. A merit salary increase is compensation and is considered salary and wages and member compensation for purposes of the state’s retirement system. One-time merit payments for employees of institutions of higher education are considered compensation or wages and are subject to retirement plan contributions.<sup>346</sup>

An institution of higher education may pay merit salary increases from any funds. Before awarding a merit salary increase, an institution of higher education must adopt criteria for the granting of merit salary increases. To be eligible for a merit salary increase, an employee must have been employed by the institution of higher education for the six months immediately preceding the effective date of the increase and at least six months must have elapsed since the employee’s last merit salary increase.<sup>347</sup>

<sup>345</sup> General Appropriations Act (80th Legislature, Regular Session), Article III, Section 5.4.

<sup>346</sup> Texas Education Code, Section 51.962; and Texas Government Code, Section 822.201.

<sup>347</sup> Texas Education Code, Section 51.962.

Salary increases for faculty or faculty-equivalent employees at institutions of higher education shall be awarded on the basis of merit and job performance. This does not include salary adjustments designed to avoid salary inequities.<sup>348</sup>

An institution of higher education that has adopted a pay-for-performance program that is in effect when an across-the-board salary increase for state employees takes effect may use the amount appropriated for (1) an across-the-board salary increase or (2) increases in compensation under the institution's pay-for-performance program.<sup>349</sup>

### ***Recruitment Bonuses***

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

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

- Subtracting from 12 months the number of complete calendar months the employee worked after the date of receiving the recruitment payment;
- Dividing the number of months above by 12 months; and
- Multiplying the fraction computed by the amount of the recruitment payment.<sup>350</sup>

Before an agency provides or enters into a contract to provide additional compensation to an employee under this section, the chief administrator of the state agency must certify in writing to the Comptroller of Public Accounts the reasons the additional compensation is necessary. Additional compensation paid to an employee in accordance with the statute is specifically exempted from any limitation on salary or salary increases.<sup>351</sup>

### ***Retention Bonuses***

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To enhance the retention of employees who are employed in classified positions that are considered "essential for the state agency's operations," an agency head may enter into a deferred compensation contract to provide a one-time payment not to exceed \$5,000.<sup>352</sup>

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

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<sup>348</sup> General Appropriations Act (80th Legislature, Regular Session), Article III, Section 5.4.

<sup>349</sup> Texas Education Code, Section 51.0065.

<sup>350</sup> Texas Government Code, Section 659.262 (a) and (b).

<sup>351</sup> *Ibid.*, Section 659.262 (f) and (g).

<sup>352</sup> *Ibid.*, Section 659.262 (c).

added to the employee's salary payment the month after the conclusion of the 12-month period of service under the deferred compensation contract.<sup>353</sup>

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

- The criticality of the employee position in the operation of the agency.
- Evidence of high turnover rates among employees filling the position for an extended period.
- Evidence of a shortage of employees qualified to fill the position or a shortage of qualified applicants.
- Other relevant factors.<sup>354</sup>

Before an agency provides or enters into a contract to provide additional compensation to an employee under this section, the agency head must certify in writing to the Comptroller of Public Accounts the reasons the additional compensation is necessary. Additional compensation paid to an employee in accordance with this statute is specifically exempted from any limitation on salary or salary increases.<sup>355</sup>

Retention bonuses do not constitute compensation or salary and wages for purposes of determining the amount of the State's contribution for retirement.<sup>356</sup>

### *Performance Rewards*

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The Legislature has provided a system of performance rewards and penalties for state agencies and institutions of higher education to encourage them to make use of appropriations in the most efficient and effective manner. Agencies and institutions of higher education were tasked with establishing key performance milestones. Based on the achievement of these milestones, the Legislative Budget Board and the Governor may adopt a budget execution order, which may include positive incentives and rewards for the agency. These incentives could include: increased funding, exemption from reporting requirements, increased funding transferability, formalized recognition or accolades, awards or bonuses, expended responsibility, or expanded contracting authority.<sup>357</sup>

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

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

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<sup>353</sup> Texas Government Code, Section 659.262 (c) and (d).

<sup>354</sup> Ibid., Section 659.262 (e).

<sup>355</sup> Ibid., Section 659.262 (f) and (g).

<sup>356</sup> Ibid., Section 811.001 (7).

<sup>357</sup> General Appropriations Act (80th Legislature, Regular Session), Article IX, Section 6.15.

- Achieve or exceed targets for 80 percent of key performance measures.
- Have an unqualified certification by the State Auditor’s Office for at least 70 percent of performance measures as shown by the agency’s most recent certification review by the State Auditor’s Office.
- File a report with the Comptroller of Public Accounts, Legislative Budget Board, Governor, House Appropriations Committee, and Senate Finance Committee describing the success of any innovative program used to justify the award, as well as the criteria used to assess the improvements.
- In addition, a qualifying agency must file a report with the Comptroller of Public Accounts, Legislative Budget Board, Governor’s Office of Budget and Planning, House Appropriations Committee, and Senate Finance Committee 60 days prior to implementation detailing how the agency intends to use its increased flexibility to further the goals.<sup>358</sup>

### ***Salary Stipends for Employees in Salary Schedule C***

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

These salary stipends for skills and certifications include:

#### **Education Level**

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

#### **Commission on Law Enforcement Officer Standards Certification Level**

- Intermediate – \$50 per month.
- Advanced – \$100 per month.
- Masters – \$150 per month.

#### **Bilingual Capabilities**

Commissioned peace officers can receive a salary stipend of \$50 per month for the ability to speak a language other than English.<sup>359</sup>

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<sup>358</sup> General Appropriations Act (80th Legislature, Regular Session), Article IX, Section 6.15(d).

<sup>359</sup> Ibid., Article IX, Section 3.01 (g).

## Department of Public Safety Pay for Corporal Classification

The Department of Public Safety may pay its employees assigned to a Corporal position at rates that exceed the maximum rated designated in Salary Schedule C by up to \$600 per fiscal year.<sup>360</sup>

### *Salary Stipends and Pay for Special Assignments*

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

#### **Animal Health Commission**

The Animal Health Commission is authorized to provide an allowance not to exceed \$50 per employee per day for each Commission employee whose duties require the use of a personally-owned horse.<sup>361</sup>

#### **Health and Human Services Agencies**

##### **Fire Prevention and Safety Assignments**

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

- Fire Chief—\$75 per month.
- Assistant Fire Chief—\$65 per month.
- Fire Brigade Member—\$50 per month.<sup>362</sup>

##### **Language Interpreter Services**

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

This increase shall be granted only for the regular provision of interpreter services above and beyond the regular duties of the position, and shall be removed when these services are, for whatever reason, no longer provided by the employee or when these services are no longer needed by the facility. Salary increases provided for this purpose are not merit increases and shall not affect an employee's

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<sup>360</sup> General Appropriations Act (80th Legislature, Regular Session), Article IX, Section 3.01 (e).

<sup>361</sup> *Ibid.*, Article VI, Rider 10, Page VI-10.

<sup>362</sup> *Ibid.*, Article II, Rider 30, Page II-101.

eligibility to receive a merit increase. This authorization also includes employees who provide interpreter services in American Sign Language.<sup>363</sup>

### **Protective Service Investigators**

The Department of Family and Protective Services is authorized to provide an annual amount of \$5,000 authorized by the Legislature for child protective services investigation caseworkers and supervisors. The pay is paid at the rate of \$416.67 per month, or pro-rata portion if a partial month is worked in the position. This pay is in addition to the salary rates stipulated by the Position Classification Act relating to the position classifications and assigned salary ranges.<sup>364</sup>

In addition, the Department of Family and Protective Services is authorized to pay child and adult protective services program caseworkers, supervisors, directors, and residential child-care licensing investigators an amount not to exceed \$50 per month for work-related use of their personal cellular telephones.<sup>365</sup>

### **Maximum Security Salaries**

The Department of State Health Services and the Department of Aging and Disability Services are authorized to pay employees working in designated maximum security units or designated specialized behavioral management units of state mental health and mental retardation facilities up to a 6.8 percent increase over those salary rates provided by the General Appropriations Act.<sup>366</sup>

### **Department of Public Safety**

The Department of Public Safety is authorized to designate 40 hardship stations across the state based on excessive vacancies in the Texas Highway Patrol Division. The department provides additional incentives to commissioned peace officers who accept positions at these posts.<sup>367</sup>

### **Department of Transportation**

**Hazardous Duty Pay for Employees Performing Underwater Bridge Inspections.** To more adequately compensate employees who perform hazardous duties for the State, the Department of Transportation is authorized to compensate employees who perform underwater bridge inspections an additional rate of pay of up to \$25 per hour for actual time spent performing underwater bridge inspections.<sup>368</sup>

### **Office of State-Federal Relations**

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

Any state agency or institution of higher education that assigns an employee to work in the Washington, D.C. office of the OSFR on a permanent basis and also designates that employee's duty

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<sup>363</sup> General Appropriations Act (80th Legislature, Regular Session), Article II, Rider 33, Pages II-101 and II-102.

<sup>364</sup> *Ibid.*, Article II, Rider 34, Pages II-38 and II-39.

<sup>365</sup> *Ibid.*, Article II, Rider 14, Page II-33.

<sup>366</sup> *Ibid.*, Article II, Rider 29, Page II-101.

<sup>367</sup> *Ibid.*, Article V, Rider 32, Page V-52.

<sup>368</sup> *Ibid.*, Article VII, Rider 23(e), Page VII-25.

station as Washington, D.C., is authorized to pay that employee a salary supplement not to exceed \$1,200 per month. This salary supplement is in addition to the salary rate authorized for the position. In the event that an employee is assigned works on a less than full-time basis, the maximum salary supplement will be set on a proportionate basis.<sup>369</sup>

### ***Shift Differentials, Standby, or On-Call Pay***

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

#### **Department of Transportation**

The Department of Transportation may pay an additional evening shift or night shift differential not to exceed 15 percent of the pay rate to employees who work the 3 p.m. to 11 p.m. shift or the 11 p.m. to 7 a.m. shift (or their equivalents). An additional weekend shift salary differential not to exceed 5 percent of the pay rate may be paid to employees. The weekend shift salary differential may be paid to an eligible individual in addition to the evening shift or night shift salary differential.<sup>370</sup>

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

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

This credit is in addition to actual hours worked during normal duty hours or while on call. Nonexempt employees who work a normal 40-hour work week and also work on-call duty will receive Fair Labor Standards Act (FLSA) overtime rates for the on-call duty.<sup>371</sup>

#### **Health and Human Service Agencies**

The Department of State Health Services and the Department of Aging and Disability Services are authorized to pay a night shift salary differential to clinical and support personnel in addition to their regular pay to those who work either the 3 p.m. to 11 p.m. shift or the 11 p.m. to 7 a.m. shift (or their equivalents). This salary differential may not exceed 15 percent of the employee's monthly pay rate. A weekend shift salary differential not to exceed 5 percent of the monthly pay rate may be paid to persons who work weekend shifts. The evening or night shift salary differential may be paid to an eligible individual in addition to the weekend shift salary differential.<sup>372</sup>

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<sup>369</sup> General Appropriations Act (80th Legislature, Regular Session), Article I, Rider 2, Page I-80.

<sup>370</sup> *Ibid.*, Article VII, Rider 23 (f), Page VII-25.

<sup>371</sup> *Ibid.*, Article VII, Rider 23 (c), Page VII-25.

<sup>372</sup> *Ibid.*, Article II, Section 2 (a).

Employees involved in data processing or printing operations in these agencies as well as the Health and Human Services Commission and the Department of Family and Protective Services are also eligible for these differentials.<sup>373</sup>

The Department of Family and Protective Services is authorized to pay an evening or night shift salary differential not to exceed 15 percent of the monthly pay rate to statewide intake personnel who work the 3 p.m. to 11 p.m. shift or the 11 p.m. to 7 a.m. shift (or their equivalents). A weekend shift salary differential not to exceed 5 percent of the monthly pay rate may be paid to persons who work weekend shifts. The evening or night shift salary differential may be paid in addition to the weekend shift salary differential for persons working weekend, evening, or night shifts.<sup>374</sup>

### **Texas Facilities Commission**

The Texas Facilities Commission (formerly the Texas Building and Procurement Commission) is authorized to pay an additional night shift differential to Facilities Management Division employees.<sup>375</sup>

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

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

This credit is in addition to actual hours worked during normal duty hours and actual hours worked during on-call status. For employees subject to the FLSA, an hour of on-call service shall be considered to be an hour worked during the week for purposes of the FLSA only to the extent required by federal law.<sup>376</sup>

### **Texas Workforce Commission**

The Texas Workforce Commission is authorized to pay an additional night shift salary differential not to exceed 15 percent of the monthly pay rate to employees who work the 3 p.m. to 11 p.m. shift or 11 p.m. to 7 a.m. shift (or their equivalents). A weekend shift salary differential not to exceed 5 percent of the employee's monthly pay rate may be paid to personnel who work weekend shifts. The evening or night shift salary differential may be paid to an eligible individual in addition to the weekend shift salary differential.<sup>377</sup>

### **Registered and Licensed Vocational Nurses**

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

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<sup>373</sup> General Appropriations Act (80th Legislature, Regular Session), Article II, Section 2 (b).

<sup>374</sup> *Ibid.*, Article II, Section 2 (c).

<sup>375</sup> *Ibid.*, Article I, Rider 14, Page I-19.

<sup>376</sup> *Ibid.*, Article I, Rider 11, Page I-18.

<sup>377</sup> *Ibid.*, Article VII, Rider 20, Page VII-40.

registered nurses and licensed vocational nurses. The weekend shift salary differential may be paid to an eligible individual in addition to the evening shift or night shift salary differential.<sup>378</sup>

### ***Additional Resources***

Table 8-9 provides a list of Office of the Attorney General Opinion letters related to employee compensation in the state.

Table 8-9

Awards and Incentive Pay Related Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
H-405	Regarding the promotion and merit salary increases under the General Appropriations Act for the 1974-75 Biennium.
JM-459	Whether awards to state employees under the State Employee Incentive Program contravene Article III, Section 44, of the Texas Constitution.
LO 92-47	Whether the Board of Trustees of the Teacher Retirement System of Texas may contract with an employee to provide incentive pay in addition to a regular salary.
LO 96-132	Whether the Texas Water Development Board may purchase a savings bond as an employee service award pursuant to the 1995 General Appropriations Act, Article IX, Section 11, if the bond has a maturity value of more than \$50.
M-949	Regarding the authority of the Board of Trustees of the Teacher Retirement System of Texas to grant merit increases to salaried employees, and the authority of the board to pay certain insurance premiums for employees.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

<sup>378</sup> General Appropriations Act (80th Legislature, Regular Session), Section 3.06.

Table 8-10 lists human resources-related bills that were passed during by the 80th Legislature. This may not be a complete list and should be used only as a summary of general issues on employee compensation that were addressed during the session.

Table 8-10

Employee Compensation Related Legislation (80th Legislature) <sup>a</sup>	
Bill Number	Summary
HB 2498	Regarding the hazardous duty pay for correctional officers employed by the Department of Criminal Justice.
SB 310	Regarding the Texas Veterans Commission's authority to make performance incentive awards to an individual or entity for providing services to veterans.
SB 737	Increases the amount of hazardous duty pay for certain employees.
SB 909	Regarding the continuation and functions of the Board of Criminal Justice, the Department of Criminal Justice, and the Correctional Managed Health Care Committee; and to the functions of the Board of Pardons and Paroles, including payment of overtime pay to employees and career ladders for parole officers.
SB 1519	Regarding longevity pay for state judges and justices.
<sup>a</sup> Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at <a href="http://www.capitol.state.tx.us">www.capitol.state.tx.us</a> .	

*Section 9*  
***Payroll and Personnel Reporting***

***Payroll Overview***

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

- A board, commission, department, institution, office, or other agency in the executive branch of state government that is created by the constitution or a statute of this state, including an institution of higher education as defined by the Texas Education Code, other than a public junior college; or
- The Supreme Court of Texas, the Texas Court of Criminal Appeals, a court of appeals, or other agency in the State’s judicial branch.<sup>379</sup>

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

- Facilitate the auditing of payrolls.
- Facilitate a classification compliance audit for agencies covered by the State’s Classification Plan.
- Assure conformity with state statute and the General Appropriations Act.
- Provide the legislative audit committee with current information on employment and wage rate practices in state government.<sup>380</sup>

**Payday**

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

“Working day” for payroll purposes means a day other than Saturday, Sunday, or a national holiday as listed in the General Appropriations Act or state statute. A day does not cease to be a national holiday because a state agency maintains or is required to maintain a minimum working staff on the holiday.<sup>381</sup>

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<sup>379</sup> Texas Government Code, Section 658.001.

<sup>380</sup> *Ibid.*, Section 659.004.

<sup>381</sup> *Ibid.*, Section 659.083.

Salaries for state officers and employees paid once a month shall be paid through electronic funds transfer unless paid on warrant as permitted by state statute.<sup>382</sup>

### Method and Frequency of Pay

Except as provided by state statute or the General Appropriations Act, annual salaries for state officers and employees shall be paid once a month.<sup>383</sup>

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

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

Employees of an institution of higher education as defined by the Texas Education Code may be paid twice a month at the election of the employing institution of higher education.<sup>384</sup>

### Determining Amounts for Part-time Pay

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

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

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<sup>382</sup> Texas Government Code, Section 659.084.

<sup>383</sup> Ibid., Section 659.081.

<sup>384</sup> Ibid., Section 659.082.

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

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

An agency that may contract with its employees for employment for less than a 12-month period may make equal monthly salary payments under the contract during the contract period or during the fiscal year in accordance with the General Appropriations Act and rules adopted by the Comptroller.<sup>385</sup>

### ***Federal Insurance Contribution Act***

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The State shall withhold money from salaries and wages paid to state officers and employees in accordance with applicable federal law, including federal law relating to withholding for purposes of the federal income tax. The State shall make any required employer contributions in accordance with applicable federal law. The Comptroller shall make payments in accordance with applicable state and federal law.<sup>386</sup>

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

The OASDI rate is 6.2 percent of a base amount that changes each year due to an increase in the Consumer Price Index. The maximum wage contribution for 2007 is \$97,500.

The Medicare rate is 1.45 percent and currently has no income limit.

All employees are subject to both types of FICA taxes.<sup>387</sup>

### ***Payroll Deductions***

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

For payroll deduction purposes, "state agency" means:

- A board, commission, department, office, or other agency in the executive branch of state government and that was created by the constitution or a statute of this state, including an institution of higher education other than a public junior college;
- The legislature or a legislative agency; or
- The Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of appeals, the State Bar of Texas, or another state judicial agency.

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<sup>385</sup> Texas Government Code, Section 659.085.

<sup>386</sup> *Ibid.*, Section 659.002 (d).

<sup>387</sup> Title 26, United States Code, Chapter 21.

To the extent that the laws, regulations, and rules of Texas or the United States do not specify the priority of deductions, the Comptroller by rule may determine the priority for compensation paid by a state governmental body.<sup>388</sup>

### Charitable Contributions

A state employee may authorize a deduction each pay period from the employee's salary or wage payment for a charitable contribution as authorized by state law. In most cases, a state employee may authorize a deduction only during a state employee charitable campaign. However, a state employee who begins working for the State when a campaign is not being conducted may authorize a deduction according to the Comptroller's requirements.

A state agency other than an institution of higher education is not required to permit an employee to authorize a deduction until the first full payroll period after the agency converts to a system in which uniform statewide payroll procedures are followed. In such situations, a state employee who works for a state agency that does not allow deduction authorizations may authorize a deduction that is effective with the first full payroll period after the agency is converted to a system in which uniform statewide payroll procedures are followed.

A state employee who authorized a deduction while working for a state agency may continue the deduction after transferring to another state agency if the Comptroller's rules for continuing the deduction are followed.

An authorization must direct the Comptroller to distribute the deducted funds to a participating federation or fund and a local campaign manager as prescribed by rule. Deductions must be in the form prescribed by the Comptroller. The Comptroller by rule may establish a reasonable minimum deduction for each pay period.<sup>389</sup>

### Credit Unions

An employee of a state agency may provide written authorize to make a deduction each pay period from the employee's salary to an account with a credit union.<sup>390</sup>

### Membership Fees for Eligible State Employee Organizations

An employee of a state agency may provide written authorization to make a deduction each pay period from the employee's salary or wage payment for payment to a membership fee of an eligible state employee organization. Currently, there are four organizations certified by the Comptroller's office for deductions of membership fees.<sup>391</sup> These organizations included:

- Texas Public Employee Association (TPEA).
- Texas State Employee Union (TSEU).
- American Federation of State, County, and Municipal Employees (AFSCME).

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<sup>388</sup> Texas Government Code, Section 659.002 (a), (b), and (c).

<sup>389</sup> Ibid., Section 659.132.

<sup>390</sup> Ibid., Section 659.103.

<sup>391</sup> Ibid., Sections 403.0165 and 659.1031.

- Department of Public Safety Officers Association.<sup>392</sup>

### **Supplemental Optional Benefits Program**

An employee of a state agency may authorize in writing a deduction each pay period from the employee's salary or wage payment for coverage of the employee under an eligible supplemental optional benefits program. A deduction may be made each pay period from the employee's salary or wage payment without authorization in writing from the employee for participation in a 401(k) plan as provided by state law.

The Employees Retirement System of Texas shall designate supplemental optional benefits programs that are eligible under this section and that promote the interests of the State and state agency employees. The supplemental optional benefits program may include permanent life insurance, catastrophic illness insurance, disability insurance, prepaid legal services, or a qualified transportation benefit.<sup>393</sup>

### **Payroll Reductions or Deductions Authorized for Institutions of Higher Education**

An institution of higher education employee may provide written authorization to reduce the employee's salary each pay period for the payment of any fee or charge for parking, a parking permit, a transportation pass, or other qualified transportation benefit authorized under by the federal Internal Revenue Code. An authorization for a reduction by the employee must be voluntary. The institution determines the fee or charge an employee may pay.

An employee of an institution of higher education may authorize in writing a deduction each pay period from the employee's salary for the payment of any fee or charge for parking or for a club membership, recreational sports membership, or similar activity or program. An authorization for a deduction by the employee must be voluntary. The institution shall determine which fee or charge an employee may pay.<sup>394</sup>

### **Withholding of Administrative Fee for Supplemental Deductions**

The state may withhold from the employee's salary or wage payment an administrative fee for making a supplemental deduction. In addition, an institution of higher education that is authorized to operate a payroll system reimbursable from the state treasury may withhold from the employee's salary or wage payment an administrative fee for making a supplemental deduction.

The administrative fee may not exceed the lower of the actual administrative cost of making the deduction or the highest fee charged by the state or institution, as appropriate, for making another similar deduction.<sup>395</sup>

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<sup>392</sup> *Approved State Employee Organizations for Membership Fee Deduction*, Comptroller of Public Accounts' Web site, October 2004, <https://fm.xcpa.state.tx.us/fmx/payper/deduct/memberfees.php>.

<sup>393</sup> Texas Government Code, Section 659.102.

<sup>394</sup> *Ibid.*, Section 659.202.

<sup>395</sup> *Ibid.*, Section 659.108.

*Section 10*  
***General Leave Provisions***

The State Auditor's Office is responsible for providing uniform interpretation of certain leave provisions and for reporting any exceptions made by individual agencies to the Governor and Legislature.<sup>396</sup> These interpretations are advisory in nature.<sup>397</sup>

The governing board of a institution of higher education may adopt a comprehensive leave policy that applies to employees of the university system or any component institution of the system.<sup>398</sup>

***Leave Records***

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Each state agency must keep a record of time and attendance for each of its employees. Such records include:

- The accrual and use of annual and sick leave.
- The reason an employee takes leave if the law requires the employee to inform the agency of the reason.
- Whether any leave taken is accounted for as sick leave, annual leave, other paid leave, leave without pay, or other absence.<sup>399</sup>

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<sup>396</sup> Texas Government Code, Section 661.151.

<sup>397</sup> Opinion, Texas Office of the Attorney General, No. M-984 (1971).

<sup>398</sup> Texas Education Code, Section 51.961 (b).

<sup>399</sup> Texas Government Code, Section 661.908.

Table 10-1 provides a list of Texas Office of the Attorney General Opinions related to general leave provisions within the State.

Table 10-1

General Leave Provisions Related Office of the Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
H-502	Whether residents and patients at Department of Mental Health and Mental Retardation facilities are entitled to the benefits of state employees when they engage in institution-maintaining labor.
JM-204	Whether temporary and part-time employees of the Texas Employment Commission accrue vacation, sick leave, and holiday time.
JM-205	Regarding the benefits available to employees of schools for inmates that are operated by Department of Corrections.
M-1014	Regarding the extent that part-time monthly and hourly employees of the Texas Highway Department are entitled to fringe benefits such as vacation, sick leave, holidays, and group insurance.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

Table 10-2 provides a list of State Auditor's Office Leave Interpretations related to general leave provisions within the State.

Table 10-2

General Leave Provisions Related State Auditor's Office Resources <sup>a</sup>		
Type	Topic	Reference
Leave Interpretation	Whether a state employee who holds positions totaling more than 40 hours per week is eligible for additional leave accruals and/or holidays.	01-03
Leave Interpretation	Whether state employees who are exhausting their leave as a result of a workers' compensation claim can use the leave hours they accrue before they physically return to work.	01-02
Leave Interpretation	Regarding the prohibition on negative sick leave, vacation leave, and compensatory time balances.	97-03
Leave Interpretation	Regarding the accrual of sick leave and annual leave when a leave continues from the end of one month through the beginning of another month.	91-02
Leave Interpretation	Regarding the relationship between employees working a scheduled 10-hour day and paid annual, sick, and compensatory leave.	85-02
Leave Interpretation	Regarding the accrual of sick and annual leave while an employee is on leave.	84-04
<sup>a</sup> Complete references can be found at <a href="http://sao.hr.state.tx.us/Rules/leaveinterpretations.html">http://sao.hr.state.tx.us/Rules/leaveinterpretations.html</a> .		

## Annual Leave

State employees are entitled to paid annual leave each year. Exceptions to this policy include faculty members of institutions of higher education who worked less than 12 months during the year and instructors at the School for the Blind and Visually Impaired, the School for the Deaf, or the Youth Commission who worked less than 12 months during the year.<sup>400</sup> Employees of independent school districts and junior colleges are not considered state employees.<sup>401</sup>

Any appointed officer or employee who normally works 900 hours or more per year is allowed to accrue annual and sick leave.<sup>402</sup> Annual leave accrual rates are the same for both hourly and salaried employees.<sup>403</sup> Part-time employees are also eligible for annual leave, but their accrual rate and maximum annual leave carryover amounts are proportionate to the number of hours they work.<sup>404</sup> For example, half-time employees earn and carry over annual leave at one-half the rate authorized for full-time employees.

State employees who are employed by multiple state agencies may not accrue annual leave at a rate that exceeds that of a full-time employee.<sup>405</sup>

An employee accrues annual leave and may carry annual leave forward from one fiscal year to the next in accordance with the schedule detailed in Table 10-3.<sup>406</sup>

Table 10-3

Schedule of Annual Leave Accruals for Full-Time Employees			
Length of Service	Hours Accrued per Month	Days Accrued per Year	Allowable Carryover (Hours)
Less than 2 years	8	12.0	180
At least 2 but less than 5 years	9	13.5	244
At least 5 but less than 10 years	10	15.0	268
At least 10 but less than 15 years	11	16.5	292
At least 15 but less than 20 years	13	19.5	340
At least 20 but less than 25 years	15	22.5	388
At least 25 but less than 30 years	17	25.5	436
At least 30 but less than 35 years	19	28.5	484
At least 35 years or more	21	31.5	532

<sup>400</sup> Texas Government Code, Section 661.152 (a).

<sup>401</sup> Opinions, Texas Office of the Attorney General, No. WW-1443 (1962), No. M-707 (1970), and No. MW-165 (1980).

<sup>402</sup> *Ibid.*, No. JM-19 (1983).

<sup>403</sup> Texas Government Code, Section 661.121.

<sup>404</sup> *Ibid.*, Section 661.152 (c).

<sup>405</sup> State Auditor's Office Leave Interpretation Letter No. 01-03 (2000).

<sup>406</sup> Texas Government Code, Section 661.152 (d).

All annual leave hours in excess of the maximum allowable carryover remaining at the end of a fiscal year shall be credited to the employee's sick leave balance.<sup>407</sup> In computing annual leave taken by an employee, absences due to holidays are not charged.<sup>408</sup>

### Annual Leave Accruals

The amount of annual leave accrued by an employee is based on his or her employment status on the first day of the month. Credit for the higher rate of accrual will be given on the first calendar day of the month only if the employee's anniversary falls on that day. Otherwise, the increase in annual leave accrual will be given on the first calendar day of the following month.<sup>409</sup>

Employees begin to accrue annual leave from their first day of employment. Accruals of annual leave end on an employee's last day of duty, which is an employee's last physical day on the job. Credit for annual leave is given for each month or fraction of a month of state employment. The employee receives this credit on the first day of the month.<sup>410</sup> If the employee is on any type of paid leave that extends into the following month, the accrual will not be posted until the employee returns to duty.<sup>411</sup> An employee forfeits this accrual if he or she fails to return to duty.<sup>412</sup>

### Annual Leave Utilization

Annual leave may not be taken until the employee has been continuously employed with a state agency for six months.<sup>413</sup> An employee who separates from state employment for any reason during that six-month period is not eligible for any accruals made during that period. While a full calendar month of LWOP does not constitute a break in employment nor does it cause the employee to start over in the calculation of the number of continuous months of employment, the time is not included in the calculation of the number of continuous months of employment for purposes of annual leave.<sup>414</sup>

The six-month eligibility requirement must be met only once. After an employee has accrued six months of continuous state employment and separates from state employment, he or she is entitled to be paid for accrued annual leave.<sup>415</sup>

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<sup>407</sup> Texas Government Code, Section 661.152 (h).

<sup>408</sup> Ibid., Section 661.152 (i).

<sup>409</sup> Ibid., Section 661.152 (g).

<sup>410</sup> Ibid., Section 661.152 (e).

<sup>411</sup> Ibid., Section 661.152 (j).

<sup>412</sup> State Auditor's Office Leave Interpretation Letter, No. 91-02 (1991).

<sup>413</sup> Texas Government Code, Section 661.152 (f).

<sup>414</sup> Ibid., Section 661.909 (f), (g), and (h).

<sup>415</sup> Ibid., Section 661.062 (a).

Table 10-4 provides a list of Office of the Attorney General Opinions related to annual leave provisions within the state.

Table 10-4

Annual Leave Provisions Related Office of the Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
GA-0300	Whether payment for annual leave that is paid as salary is creditable for purposes of determining benefits in the Teacher's Retirement System.
H-341	Regarding the computation of annual leave under the General Appropriations Act (63rd Legislature).
H-1305	Regarding the annual leave entitlement of professional librarians.
JC-40	Regarding the use of annual leave by employees receiving workers' compensation benefits.
JM-19	Whether the commissioner of insurance is an 'employee' or 'officer' for purposes of Article 6252-8b, Texas Civil Statutes.
JM-76	Whether a faculty member at Southwest Texas State University may take annual leave or lump sum payment for accrued annual leave.
JM 204	Whether temporary and part-time employees of the Texas Employment Commission accrue vacation, sick leave and holiday time.
M-984	Regarding questions concerning compensation and accumulation of annual leave for state employees.
M-1156	Regarding the determination of accumulated annual leave under Article 6252-a, Texas Civil Statutes.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

Table 10-5 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to annual leave provisions within the state.

Table 10-5

Annual Leave Provisions Related State Auditor’s Office Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether the amount of annual leave each employee receives is determined separately for time worked at an institution of higher education and a state agency.	5/29/2007
HR Question	Regarding annual leave accrual rates earned by legislative employees.	11/24/2001
HR Question	Whether the time an employee spent working in a temporary capacity at an agency counts towards the six months of continuous employment required before an employee may use annual leave.	7/16/2001
HR Question	Whether an employee’s status change from part-time to full-time in the middle of a month has an effect on that month’s annual leave accrual.	1/29/2001
HR Question	Regarding the time at which an employee who works less than six months at one agency, is terminated, and then is hired by a different agency is allowed to take annual leave.	5/8/2000
HR Question	Whether an agency can require an employee to use compensatory time before using annual leave.	11/15/1999
HR Question	Regarding the maximum annual leave carryover for part-time employees.	8/31/1998
Leave Interpretation	Regarding a one-time exception for the maximum hours that an employee may carry forward from one fiscal year to the next fiscal year for the leave balance on August 31, 1991.	92-03
Leave Interpretation	Whether a state employer can deny vacation leave on a date specifically requested by the employee, and, if such denial is possible, under what circumstances would it be proper?	91-01
Leave Interpretation	Regarding the allowable carryover of annual leave of an employee whose anniversary date is in August.	86-06
Leave Interpretation	Regarding the accrual of vacation leave for an employee who holds part-time positions as both a faculty member and as a staff member.	84-03
<sup>a</sup> Complete references can be found at: Leave interpretations: <a href="http://sao.hr.state.tx.us/Rules/leaveinterpretations.html">http://sao.hr.state.tx.us/Rules/leaveinterpretations.html</a> HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

## Annual Leave and Employee Transfers

Employees who transfer directly from one state agency to another will have their annual leave balances transferred.<sup>416</sup> If an employee separates from employment and is re-employed within 30 calendar days by a state agency to a position that accrues annual leave, his or her annual leave balance

<sup>416</sup> Texas Government Code, Section 661.153.

will transfer to the new agency.<sup>417</sup> Separation includes, but is not limited to, leaving one state agency to work for another, provided at least one workday passes between those employments.<sup>418</sup>

Table 10-6 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to annual leave and the transfer of employees.

Table 10-6

Annual Leave and Employee Transfers Related State Auditor’s Office Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether a full-time employee who transfers to a part-time position on September 1 can carry over annual leave hours as a full-time employee.	2/1/2005
HR Question	Whether the House of Representatives or Senate can refuse to accept an employee’s accrued annual leave if the employee transfers directly from a state agency.	12/30/2004
HR Question	Regarding annual and sick leave accruals for an employee who terminates from one state agency, but is allowed to remain on the payroll to exhaust annual leave and is then hired by another agency.	8/1/2003
HR Question	Whether a state agency may zero out an employee’s annual leave balance if those hours were paid out at an institution of higher education.	7/30/2001
HR Question	Whether an employee with part-time status at two agencies may transfer to a third agency in a full-time status and take his leave with him.	4/16/2001
HR Question	Whether an employee who transfers to another state agency after a break of service can transfer annual and sick leave balances.	10/23/2000
HR Question	Regarding an agency’s responsibility to accept annual leave balances for transferred employees.	7/19/1999
Leave Interpretation	Regarding the payment of annual leave when transferring from an annual leave accruing position to a non-accruing position.	96-06
Leave Interpretation	Regarding the payment of leave time when a University of Texas System employee transfers from a position that accrues annual leave to a non-accruing position.	96-04
Leave Interpretation	Regarding the transfer of an employee from an annual leave vacation accruing position to a non-accruing position with the same agency and providing lump sum payments for accrued vacation time.	92-00
Leave Interpretation	Regarding the certification for credit of unused balances of accumulated annual and sick leave for employees transferring between agencies; and the transfer of leave balances for employees of the House or Senate.	89-00
<sup>a</sup> Complete references can be found at: Leave interpretations: <a href="http://sao.hr.state.tx.us/Rules/leaveinterpretations.html">http://sao.hr.state.tx.us/Rules/leaveinterpretations.html</a> HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

## Annual Leave and Employee Separations

Employees are entitled to be paid for the accrued balance of the employee’s annual leave as of the date of separation, if the employee is not reemployed by the state in a position which accrues annual leave during the 30 day period immediately following the date of separation from state employment. Employees of institutions of higher education who do not directly transfer to another state agency or

<sup>417</sup> Texas Government Code, Section 661.152 (k).

<sup>418</sup> Ibid., Section 661.062 (b) (1).

institution of higher education must be paid for accrued and unused annual leave immediately upon an employee's separation.<sup>419</sup>

A terminating employee may, with the approval of the employing agency, remain on the payroll after separation to use accrued annual leave rather than receive a lump-sum payment.<sup>420</sup> No additional accruals will be made during this period. The employee may not use sick leave or accrue sick leave or annual leave while exhausting annual leave.<sup>421</sup>

Upon separation, lump-sum payments for accrued but unused annual leave will include payment for any holidays that the employee would have observed had he or she remained on the payroll. Eight hours per holiday will be added for employees who are normally scheduled to work 40 hours per week. Employees who are normally scheduled to work less than 40 hours per week will receive a proportionate payment. An employee moving to a position in a state agency that does not accrue annual leave is not entitled to added time for holidays that fall within the accrual period.<sup>422</sup> In no case is the employee entitled to receive longevity or hazardous duty pay for the accrual period.<sup>423</sup>

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

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<sup>419</sup> Texas Government Code, Section 661.062 (a).

<sup>420</sup> Ibid., Section 661.067 (a).

<sup>421</sup> Ibid., Section 661.067 (b)(3), and State Auditor's Office Leave Interpretation Letter, No. 99-01 (1998).

<sup>422</sup> Texas Government Code, Section 661.064.

<sup>423</sup> Ibid., Section 661.063 (c) (2).

Table 10-7 provides a list of Office of the Attorney General Opinions related to annual leave entitlements upon separation from the State.

Table 10-7

Annual Leave Entitlements Upon Separation from the State Related Office of the Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
H-126	Whether House Bill 139 (63rd Legislature) authorizes payment of accrued vacation pay to an employee who separates or is separated from state employment.
H-408	Whether a separated employee is entitled to be retained on the payroll until he has been paid for vacation time accrued during the initial six months of his employment if he is separated from state service before he has been continuously employed for six months.
JC-302	Related to the validity of Texas Government Code, Section 661.063 with regard to payment of vacation balances accrued prior to September 1, 1997.
M-731	Regarding the proper method of determining the payment for accumulated vacation and sick leave to be paid to the estates of deceased state employees.
M-1075	Whether state employees covered under specific provisions of the appropriation bill are entitled to be compensated for accumulated vacation in the event of the employees' resignation, dismissal, or separation from state employment.
M-1252	Whether a state employee who resigns, is dismissed, or is separated from state employment must be paid for all duly accrued vacation time, and related questions.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

Table 10-8 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to leave entitlements upon separation from the State.

Table 10-8

Annual Leave Entitlements Upon Separation from the State Related State Auditor’s Office Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether a deceased employee may remain on the payroll to exhaust annual leave.	5/31/2005
HR Question	Whether an employee who resigns on August 31 but has annual leave hours that will be converted to sick leave on September 1 will get paid for those hours if the check for vacation balance will not be cut until after September 1.	5/3/2005
HR Question	Whether an employee who resigns on September 1 must have the annual leave balance reduced to the maximum allowable carry-over.	12/18/2000
HR Question	Regarding the transfer of various kinds of leave to an education service center.	8/18/2000
HR Question	Whether an employee who resigned and remains on the payroll to exhaust annual leave can take sick leave.	8/9/1999
HR Question	Whether separating employees receive payment for accrued annual leave if the employee has worked for the State for less than six months.	9/21/1998
Leave Interpretation	Whether an employee is allowed to substitute jury duty for annual leave when exhausting annual leave on an agency's payroll following resignation.	99-01
<sup>a</sup> Complete references can be found at: Leave interpretations: <a href="http://sao.hr.state.tx.us/Rules/leaveinterpretations.html">http://sao.hr.state.tx.us/Rules/leaveinterpretations.html</a> Technical updates: <a href="http://sao.hr.state.tx.us/Rules/technicalupdates.html">http://sao.hr.state.tx.us/Rules/technicalupdates.html</a> HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

## Annual Leave Accruals and Retirees

Annual leave accruals for return-to-work retirees are based on retirement and rehire dates.<sup>424</sup> Table 10-9 provides examples of the different annual leave accruals for return-to-work retirees who retired on June 1, 2005, or later.

Table 10-9

Annual Leave Accruals for Return-to-work Retirees			
Retirement Date	Rehire Date	Accrual Rate	Example
On or Before May 31, 2005	Prior to September 1, 2005	Accruals based on total state service (no change).	If the retiree retired on May 31, 2005, and returned to work on July 1, 2005, his or her July, August, and September annual leave accruals would use his or her total state service in the calculation just as before retirement.
On or Before May 31, 2005	After September 1, 2005	Accruals based on total state service (no change).	If the retiree retired on May 31, 2005, and returned to work on October 1, 2005, his or her October annual leave accrual would be based on his or her total state service just as before retirement.
On or After June 1, 2005	Prior to September 1, 2005	Split accrual rates.	If the retiree retired on June 30, 2005, and returned on August 1, 2005, his or her August annual leave accrual would be calculated on his or her total state service, but his or her annual leave accruals for September and thereafter would be calculated based on state service since August 1, 2005.
On or After June 1, 2005	On September 1, 2005, or later.	Accruals based on state service since retirement.	If the retiree retired on June 30, 2005, and returned on October 1, 2005, his or her annual leave accruals for October and thereafter would be based on his or her state service since October 1, 2005.
<sup>a</sup> Return-to-work retirees are not required to re-establish the six months continuous service requirement in order to take annual leave with pay.			

<sup>424</sup> Texas Government Code, Section 661.152 (l).

Table 10-10 provides a list of State Auditor’s Technical Updates, Human Resources Questions-and-Answers, and Leave Interpretations related to annual leave and return-to-work retirees.

Table 10-10

Annual Leave for Return-to-Work Retirees Related State Auditor’s Office Resources <sup>a</sup>		
Type	Topic	Reference
Technical Update	Whether an employee who retires under the Employees Retirement System (ERS) may choose whether to be paid for accrued vacation time or to transfer that time to another state agency.	01-02
HR Question	Whether an employee who retires under the Employees Retirement System (ERS) may choose whether to be paid for accrued annual leave or to transfer that time to another agency.	9/6/2000
HR Question	Regarding the rate at which an employee is paid for annual leave balances upon retirement from a non-leave accruing position when the leave was earned during previous time in a leave accruing position.	3/29/1999
Leave Interpretation	Whether retired state employees who return to state employment are eligible for leave accruals.	97-07
<sup>a</sup> Complete references can be found at: Leave interpretations: <a href="http://sao.hr.state.tx.us/Rules/leaveinterpretations.html">http://sao.hr.state.tx.us/Rules/leaveinterpretations.html</a> HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

### *Determining Length of State Service for Annual Leave and Longevity Pay*

The amount of annual leave each employee receives is determined by his or her length of state service. To determine the length of service, count the actual days, months, and years of employment.<sup>425</sup>

Length of service for longevity pay is determined in the same manner as length of service for annual leave. Legislative service is included in determining lifetime service credit for purposes of longevity pay.<sup>426</sup>

Table 10-11 provides a list of Office of the Attorney General Opinions related to determining state service for the purpose of annual leave and longevity pay.

<sup>425</sup> Opinion, Texas Office of the Attorney, No. H-341 (1974); and State Auditor’s Office Interpretation Letters Nos. 80-01 (1979) and 87-02 (1987).

<sup>426</sup> Texas Government Code, Section 659.046 (a).

Table 10-11

Length of State Service Related Office of the Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
DM-376	Whether a Texas Youth Commission employee in a hazardous duty position but not receiving hazardous duty pay accrues service credits for purposes of longevity pay.
GA-0312	Whether service while employed by the district attorney of another state qualifies as service credit for longevity pay in Texas.
H-105	Regarding the meaning of 'total continuous service.'
H-1096	Whether a short period between employment by two different state agencies constitutes a break in state employment.
JM-407	Regarding the allowable credit for prior state service of student employees.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

Table 10-12 provides a list of State Auditor's Office's Human Resources Questions-and-Answers and Leave Interpretations related to determining state service for the purposes of annual leave and longevity pay.

Table 10-12

Length of State Service Related State Auditor's Office Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether an agency is responsible for recalculating longevity and annual leave accruals for an employee who failed to identify all state service at the time of hire.	2/28/2005 and 12/1/2001
HR Question	Whether military time that has been purchased counts as state service when calculating leave accruals and longevity pay.	11/26/2003
HR Question	Whether prior junior college service counts towards the determination of longevity accruals with a state agency.	2/27/2003
HR Question	Whether one year of part-time service equates to one year of full-time service for calculating annual leave accruals.	6/26/2000
Leave Interpretation	Whether entitlement for leave accrual or longevity pay purposes is based solely upon total service as an employee of the State of Texas.	96-02
Leave Interpretation	Regarding the clarification of "initial employment by the agency."	96-01
Leave Interpretation	Regarding state service credit for annual leave and longevity purposes.	88-02
Leave Interpretation	Regarding the determination of total state service credit.	87-02
Leave Interpretation	Regarding the computation of state service to determine eligibility for longevity benefits.	80-01
<sup>a</sup> Complete references can be found at: Leave interpretations: <a href="http://sao.hr.state.tx.us/Rules/leaveinterpretations.html">http://sao.hr.state.tx.us/Rules/leaveinterpretations.html</a> HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

## Sick Leave

State employees are entitled to sick leave. An employee accrues sick leave at a rate of eight hours per month (or proportionately for part-time employees).<sup>427</sup> An employee accrues sick leave beginning on the first day of state employment and ending on the last duty day of state employment. Duty day means an employee's last physical day on the job.<sup>428</sup> Workers employed by multiple agencies cannot accrue sick leave at a rate that exceeds that of a full-time, 40-hour-per-week employee.<sup>429</sup> An employee who is on leave the first day of the month may not use that month's accrual until he or she returns to duty.<sup>430</sup> An employee may use sick leave while he or she is on annual leave.<sup>431</sup>

Table 10-13 provides a list of State Auditor's Office's Human Resources Questions-and-Answers and Leave Interpretations related to sick leave provisions within the State.

Table 10-13

Sick Leave Provisions Related State Auditor's Office Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether an employee who has exhausted all of his sick leave balance may use accrued annual leave for sickness.	11/27/2002
HR Question	Whether an agency or institution of higher education may require an employee to use state compensatory time or Fair Labor Standards Act (FLSA) overtime in place of sick leave.	8/28/2000
HR Question	Whether sick leave must be exhausted prior to an employee taking a leave of absence without pay.	5/15/2000
HR Question	Whether an agency must allow an employee to use his or her remaining sick leave even after exhausting family and medical leave.	2/1/1999
HR Question	Whether an agency may require an employee to provide documentation for a sick leave absence.	11/16/1998
HR Question	Whether an employee may have a negative balance on sick leave hours.	10/19/1998
Leave Interpretation	Regarding the use of sick leave while on vacation and medical documentation requirements.	97-05
Leave Interpretation	Regarding the clarification of whether supervisors should be allowed to request a physician's statement from an employee when the appropriate use of sick leave is in question.	96-00
Leave Interpretation	Regarding the use of sick leave while on annual leave.	87-01
<sup>a</sup> Complete references can be found at: Leave interpretations: <a href="http://sao.hr.state.tx.us/Rules/leaveinterpretations.html">http://sao.hr.state.tx.us/Rules/leaveinterpretations.html</a> HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

<sup>427</sup> Texas Government Code, Section 661.202 (c).

<sup>428</sup> Ibid., Section 661.202 (b).

<sup>429</sup> State Auditor's Office Leave Interpretation Setter, No. 01-03 (2001).

<sup>430</sup> Texas Government Code, Section 661.202 (k).

<sup>431</sup> State Auditor's Office Leave Interpretation Letter, No. 87-01 (1986) and No. 97-05 (1996).

## Sick Leave Utilization

Sick leave may be used when an employee is prevented from performing his or her job due to sickness, injury, pregnancy, or confinement. It may also be used to care for an immediate family member who is ill. "Immediate family" is defined as individuals related by kinship, adoption, or marriage who live in the same household; foster children who reside in the same household; and minor children regardless of whether they live in the same household.<sup>432</sup> Sick leave may be used to care for immediate family members who do not reside in the same household only for a documented medical condition. In this instance only, "immediate family" is interpreted as spouse, parent, or child.<sup>433</sup>

An employee who will be absent from work must notify his or her supervisor as soon as possible.<sup>434</sup> An absence of more than three days requires the employee to provide the administrative head of the agency a doctor's certification or a written statement of the facts surrounding the absence and the nature of the illness. The need to provide such documentation for absences of three days or fewer is done at the discretion of the administrative head of the agency.<sup>435</sup>

An employee who is the legal guardian of a child by court appointment may use sick leave to care for the child.<sup>436</sup> Sick leave may be used for the adoption of a child under the age of three.<sup>437</sup>

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<sup>432</sup> Texas Government Code, Section 661.202 (d).

<sup>433</sup> Ibid., Section 661.202 (e); and State Auditor's Office Leave Interpretation Letter, No. 97-04 (1996).

<sup>434</sup> Texas Government Code, Section 661.202 (f).

<sup>435</sup> Ibid., Section 661.202 (g).

<sup>436</sup> State Auditor's Office Leave Interpretation Letter, No. 01-04 (2001).

<sup>437</sup> Ibid., No. 97-01 (1998); and Opinion, Texas Office of the Attorney General, No. JM-1203 (1990).

Table 10-14 provides a list of Office of the Attorney General Opinions related to sick leave utilization in the State.

Table 10-14

Sick Leave Utilization Related Office of the Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
GA-0201	Whether the Texas Military Facilities Commission may make a lump sum payment for accumulated sick leave when an employee has been terminated.
H-684	Regarding the entitlement of part-time employees to sick leave benefits.
H-775	Whether teachers employed by the Texas Youth Council are state employees for purposes of receiving pay for accumulated sick leave.
H-1083	Whether the Commissioner of the Savings and Loan Department is eligible for payment for accumulated sick leave.
JM-401	Regarding the validity and interpretation of a rider passed in the General Appropriations Act (69th Legislature) relating to a sick leave provision that excludes faculty members at institutions of higher education who have appointments of less than 12 months.
JM-1203	Regarding sick leave for adopting parents.
LO 90-092	Whether sick leave with pay may be taken when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty, or when the employee is needed to care for and assist a member of his immediate family who is ill.
LO 92-15	Whether an employee of the Department of Health and Human Services may take sick leave to care for an ill child that is not a member of the employee's 'immediate family.'
M-1222	Regarding the determination of eligibility for maternity leave.
MW-427	Regarding the sick leave entitlement of state employees.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

Table 10-15 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to sick leave utilization.

Table 10-15

Sick Leave Utilization Related State Auditor’s Office Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether sick leave may be used to care for a grandparent.	2/19/2001
HR Question	Whether a state employee may use sick leave to care for a step-child whose primary residence is not full-time with that parent.	6/19/2000
HR Question	Whether an employee may use sick leave while awaiting an Americans with Disabilities Act (ADA) accommodation.	10/4/1999
HR Question	Whether an employee may use sick leave for cosmetic surgery.	9/14/1998
Leave Interpretation	Whether a state employee who is the legal guardian of a child may use sick leave to care for the child.	01-04
Leave Interpretation	Whether Texas School for the Blind and Visually Impaired employees who are not regularly employed during the summer months and not under contract for a summer session are allowed to use accrued sick leave during those months.	97-08
Leave Interpretation	Related to the use of sick leave for parent-in-laws not residing in the same household.	97-04
<sup>a</sup> Complete references can be found at: Leave interpretations: <a href="http://sao.hr.state.tx.us/Rules/leaveinterpretations.html">http://sao.hr.state.tx.us/Rules/leaveinterpretations.html</a> HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

## Sick Leave and Employee Separations

Employees who separate from state employment under a formal reduction in force are entitled to have their sick leave balances restored if they are re-employed by the State within 12 months.<sup>438</sup>

Employees separated for reasons other than a formal reduction in force and re-employed by the same state agency may have their sick leave balances restored only if:

- The employee is re-employed by the same state agency or institution of higher education within 12 months after the end of the month in which the employee separates from state employment, and if there has been a break in employment with the State of at least 30 calendar days; or
- The employee is re-employed by a different state agency or institution of higher education within 12 months after the end of the month in which the employee separates from state employment.<sup>439</sup>

There is no authority to pay out an employee’s accrued but unused sick leave balance upon termination.<sup>440</sup>

An employee who is restored to state employment following military service is entitled to have his or her sick leave balance restored.<sup>441</sup>

<sup>438</sup> Texas Government Code, Section 661.205 (a).

<sup>439</sup> Ibid., Section 661.205 (b).

<sup>440</sup> Opinion, Texas Office of the Attorney General, No. GA-0201 (2004).

Table 10-16 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to sick leave and employee separations.

Table 10-16

Sick Leave and Employee Separations Related State Auditor’s Office Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether a retiree of the Employee’s Retirement System (ERS) must use his or her entire sick leave balance toward retirement. If not, whether the employee may choose to have the sick leave balance transferred to another state agency or university.	9/6/2000
HR Question	Regarding the restoration of sick leave for an employee who left a state agency on April 30, 1999, and started at another state agency on May 1, 2000.	5/30/2000
HR Question	Whether an employee who terminated from a state agency on April 30, 1981, and returned to the same agency on April 19, 1982, may now ask to have his sick leave balance restored.	8/2/1999
Leave Interpretation	Regarding the contribution of accrued sick leave in increments of eight hours and the exception of a retiring state employee who may contribute accrued sick leave in increments of less than eight hours.	97-02a
Leave Interpretation	Regarding the use of sick leave at time of termination.	90-01
<sup>a</sup> Complete references can be found at: Leave interpretations: <a href="http://sao.hr.state.tx.us/Rules/leaveinterpretations.html">http://sao.hr.state.tx.us/Rules/leaveinterpretations.html</a> HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

Employee Retirement System (ERS) retirees who return to state employment will not have their sick leave balances restored as there is no provision that allows a retiring employee to store or bank accumulated sick leave for use after retirement.<sup>442</sup>

<sup>441</sup> Opinion, Texas Office of the Attorney General, No. MW-109 (1979).

<sup>442</sup> State Auditor’s Office Technical Update Letter, No. 01-02 (2000).

Table 10-17 provides a list of Office of the Attorney General Opinions related to sick leave for terminated employees.

Table 10-17

Sick Leave for Terminated Employees Related Office of the Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
H-766	Whether a General Appropriation Act provision (64th Legislature) for paying employees one-half accumulated sick leave upon termination of employment is applicable to institutions of higher education.
H-996	Regarding the entitlement of Department of Banking employees to be paid for accumulated sick leave on separation.
H-1055	Whether faculty members of the University of Texas are entitled to payment for sick leave on termination.
JM-956	Regarding the use of sick leave by employees who are involuntarily terminated.
MW-247	Whether a terminated employee of the State Commission for the Blind is entitled to be paid for accrued sick leave (Affirmed in Attorney General Opinion Letter MW-427).
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

### *Extended Sick Leave*

The administrative head of a state agency may extend sick leave to an employee only after a thorough review of the merits of each individual case. He or she may also grant, on a case-by-case basis, exceptions to the amount of sick leave an employee may take. All agencies are required to submit policies addressing extended sick leave to the State Auditor's Office. Such policies must also be made available to all agency employees.<sup>443</sup>

Table 10-18 provides a list of Office of the Attorney General Opinions related to extended sick leave within the State.

Table 10-18

Extended Sick Leave Related Office of the Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
H-421	Whether an employee of the Texas Highway Department is entitled to extended sick leave due to pregnancy.
H-701	Regarding the effect of a state agency's granting extended sick leave to an employee.
H-1036	Regarding the validity of a personnel policy denying extended sick leave for pregnancy-related disabilities.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

<sup>443</sup> Texas Government Code, Section 661.202 (i) and (j).

Table 10-19 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to extended sick leave.

Table 10-19

Extended Sick Leave Related State Auditor’s Office Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether an agency or institution of higher education must have an extended sick leave policy.	3/26/2001
Leave Interpretation	Whether an employer can require an employee to "pay back" extended sick leave.	01-01
<sup>a</sup> Complete references can be found at: Leave interpretations: <a href="http://sao.hr.state.tx.us/Rules/leaveinterpretations.html">http://sao.hr.state.tx.us/Rules/leaveinterpretations.html</a> HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

### ***Sick Leave Pool***

Each state agency is required to establish a program that allows employees to voluntarily transfer sick leave to a sick leave pool. The sick leave pool is intended to assist employees and their immediate families in dealing with catastrophic illnesses or injuries that force them to exhaust all sick leave.<sup>444</sup>

#### **Catastrophic Injury or Illness**

The Employees Retirement System has defined a *catastrophic injury or illness* as:

- A severe condition or combination of conditions affecting the mental or physical health of the employee or the employee’s immediate family that requires the services of a licensed practitioner for a prolonged period of time and that forces the employee to exhaust all leave time earned by that employee and to lose sick leave compensation from the State for the employee.
- Licensed practitioner means practitioner, as defined in the Texas Insurance Code, who is practicing within the scope of his or her license.
- Immediate family is defined as those individuals related by kinship, adoption, marriage, or foster children who are so certified by the Texas Department of Human Services [now the Texas Health and Human Services Commission] who are living in the same household, or if not in the same household are totally dependent upon the employee for personal care or services on a continuing basis.<sup>445</sup>
- Although the ERS definition of catastrophic injury or illness states an employee must exhaust all leave before becoming eligible for the agency’s sick leave pool, the State Auditor’s Office believes that the specific language of the statute can be followed and agencies may only require employees to exhaust their sick leave before being eligible for the sick leave pool. Agencies who

<sup>444</sup> Texas Government Code, Section 661.004 (a).

<sup>445</sup> Board of Trustees Meeting, Employees Retirement System, October 24, 1989.

are concerned about the potential conflict in the language should consult their internal legal counsel for additional assistance.<sup>446</sup>

### **Administering the Sick Leave Pool**

The program must be administered by the executive director or his or her designee.<sup>447</sup> Agencies should ensure that their sick leave pool policies do not conflict with their extended sick leave policies.<sup>448</sup>

Contributions to the sick leave pool must be in increments of eight hours with the exception of retiring employees, who may contribute any unused balance.<sup>449</sup>

An employee may draw from the sick leave pool only with the approval of the pool administrator. Supporting documentation from a medical practitioner must be submitted to the pool administrator. The documentation must contain sufficient information to allow the pool administrator to evaluate the employee's eligibility.<sup>450</sup> An employee may not receive sick leave in excess of one-third of the total time in the pool or 90 days, whichever is less.<sup>451</sup>

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<sup>446</sup> State Auditor's Office Human Resource Question-and-Answer, September 19, 2007.

<sup>447</sup> Texas Government Code, Section 661.002.

<sup>448</sup> *Ibid.*, Section 661.202 (j).

<sup>449</sup> *Ibid.*, Section 661.003 (a) and (c).

<sup>450</sup> *Ibid.*, Section 661.005 (a) and (b).

<sup>451</sup> *Ibid.*, Section 661.006 (b).

Table 10-20 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers related to sick leave pool.

Table 10-20

Sick Leave Pool Related State Auditor’s Office Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether state holidays are counted toward the amount of time that an employee receives from a sick leave pool.	3/12/2001
HR Question	Whether an employee may donate hours to the sick leave pool for a specific individual’s use.	1/8/2001
HR Question	Whether an agency may bank in the sick leave pool a retiree’s sick leave that has been certified to the Employee’s Retirement System for service credit.	9/11/2000
HR Question	Whether sick leave that was donated to the sick leave pool at the time an employee resigns may be restored if the employee returns to state employment.	4/24/2000
HR Question	Whether an employee who has donated hours to the sick leave pool and then becomes ill may retrieve those hours.	5/3/1999
HR Question	Regarding the minimum or maximum number of hours that may be granted to an employee who wants to use the sick leave pool.	1/11/1999
HR Question	Whether there is any formal documentation required for an employee who wants to use the sick leave pool.	1/4/1999
<sup>a</sup> Complete references can be found at: HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

### *Education Service Centers and Leave*

Education Service Centers were established to assist school districts in improving student performance and increasing the efficiency and effectiveness of school operations.<sup>452</sup> Education Service Centers are not considered state agencies for benefits purposes. However, certain allowances have been made for the transfer of personal leave and sick leave.

An Education Service Center is required to accept the transfer of personal leave for prior state service. This leave will be converted to sick leave by the Education Service Center.<sup>453</sup> The exception to this policy involves employees in the schools of the Department of Criminal Justice, who are not considered state employees.<sup>454</sup> Sick leave may be transferred from Education Service Centers to a state agency at a rate not to exceed five days per year of employment.<sup>455</sup>

Annual leave is not transferable to Education Service Centers because these centers are not considered state agencies. State employees transferring to Education Service Centers should be paid for accumulated leave. Sick leave may not be transferred to an Education Service Center. Any accumulated sick leave balance would be forfeited by the employee. Some Education Service

<sup>452</sup> Texas Education Code, Section 8.002.

<sup>453</sup> Ibid., Section 8.007 (a).

<sup>454</sup> Ibid., Section 19.009.

<sup>455</sup> Ibid., Section 8.007 (b).

Centers have policies allowing credit for this leave as a hiring incentive for employees who were formerly employed by the State.

### *Leave without Pay*

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State agencies or institutions of higher education may grant a leave of absence (leave without pay, or LWOP) subject to the following provisions:

- The leave is unpaid.
- The leave may not exceed 12 months.
- Annual leave and sick leave, if appropriate, must be exhausted except in instances of disciplinary suspension, workers' compensation, or military situations.
- Subject to fiscal constraints, approval of LWOP constitutes a guarantee of employment for a specified period of time.
- The administrative head of an agency or institution of higher education may allow for exceptions to these limitations.
- Any full or partial calendar month of LWOP does not constitute a break in employment, but also does not count for purposes of state service credit, with the exception of an employee returning from military leave without pay. This time is also not included in the calculation of the number of continuous months of employment for purposes of merit increases and leave entitlement.<sup>456</sup>

An employee who is on LWOP will have his or her compensation reduced for the pay period at the hourly rate of pay times the number of hours on LWOP.<sup>457</sup> Please refer to the statutes cited in this section for specific guidelines concerning salary reductions for employees who are exempt from the Fair Labor Standards Act (FLSA).

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<sup>456</sup> Texas Government Code, Section 661.909.

<sup>457</sup> *Ibid.*, Sections 659.085 (c) and 659.016 (e).

Table 10-21 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to leave without pay.

Table 10-21

Leave Without Pay Related State Auditor’s Office Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether a leave without pay status may effect an employee’s six months of continuous employment for the purpose of using annual leave.	1/18/2000
HR Question	Whether a faculty member currently on leave without pay at one university and is working at another university is allowed to transfer sick leave from their current employer.	2/8/1999
HR Question	Whether an employee on leave without pay can receive compensatory time for a holiday that falls during the time that the employee is not at work.	11/9/1998
Leave Interpretation	Regarding a leave of absence without loss of pay for a state employee who is a foster parent to a child for the purpose of attending staffing meetings held by the Department of Human Services (now Department of Protective Services).	92-02
Leave Interpretation	Whether leave without pay during the first six months of state employment constitutes a break in service.	89-02
<sup>a</sup> Complete references can be found at: Leave interpretations: <a href="http://sao.hr.state.tx.us/Rules/leaveinterpretations.html">http://sao.hr.state.tx.us/Rules/leaveinterpretations.html</a> HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

### *Payment of Accrued Leave of Deceased Employees*

The estate of an employee who dies while employed by the State is entitled to payment for all accumulated annual leave and one-half of accumulated sick leave or 336 hours, whichever is less.<sup>458</sup> The payment is calculated at the employee’s salary rate at the time of death and will not include longevity or hazardous duty pay.<sup>459</sup> The estates of appointed officers or employees of the State who normally work at least 900 hours per year are eligible for this benefit.<sup>460</sup>

A deceased employee’s estate is entitled to receive payment for earned but unused overtime, but it is not entitled to payment for earned but unused state compensatory time.<sup>461</sup>

<sup>458</sup> Texas Government Code, Section 661.033.

<sup>459</sup> Ibid., Section 661.034.

<sup>460</sup> Ibid., Section 661.031 (2).

<sup>461</sup> Title 29, Code of Federal Regulations, Section 553.27; and Opinion, Texas Office of the Attorney General, No. H-899 (1976).

Table 10-22 provides a list of Office of the Attorney General Opinions related to leave and other benefits for deceased employees within the State.

Table 10-22

Leave and Other Benefits for Deceased Employees Related Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
H-899	Whether the estate of a deceased employee may be paid for compensatory time.
LO 97-040	Regarding the continuation of health insurance benefits for survivors of deceased public safety officers.
M-811	Regarding the right of estates of deceased state regular 'hourly employees' to recover vacation and sick leave due to the deceased employee.
O-5803	Regarding the liability of the State for pay to an employee or a department head after the death of such employee or department head.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

### *Paid Leave Bank for Institutions of Higher Education*

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The governing board of an institution of higher education may adopt a leave policy for employees working in a hospital or clinic of a medical or dental unit that combines annual, sick, and holiday leave. This policy must include provisions for payment of accrued leave to:

- The estates of heirs of deceased employees.
- Separating employees.
- Retirees.
- Awards of accrued leave to employees who are transferring to other state agencies.

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

Chapters 661 and 662 of the Texas Government Code do not apply to employees covered by a paid leave bank adopted by an institution of higher education.<sup>462</sup>

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<sup>462</sup> Texas Education Code, Section 51.961.

## Section 11 State Holidays

### State Holiday Overview

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State agency employees are entitled to a paid day off from work on national, state, and optional holidays observed by the State.<sup>463</sup> Employees who work for multiple agencies may not accrue holiday leave at a rate greater than that of a full-time, 40-hour-per-week employee.<sup>464</sup>

An employee is eligible to a paid day off for a holiday if:

- The holiday does not fall on a weekend.
- The employee is not on leave without pay (LWOP).<sup>465</sup>

A state agency must have enough state employees on duty during a state holiday to conduct the public business of the agency with the exception of those state holidays that fall on a Saturday or Sunday, the Friday after Thanksgiving Day, December 24, or December 26.<sup>466</sup>

Employees who work on an observed holiday will receive holiday compensatory time for those hours worked. Holiday compensatory time must be used within 12 months following the date that the hours were earned. Employees are required to give reasonable notice to their employers when taking this compensatory time.<sup>467</sup>

To be paid for a holiday that falls in mid-month (other than the first or last workday of the month), the employee must be a state employee (the legal definition of which is someone who is employed by the State and not on leave without pay) on the day before and the day after the holiday. If the holiday falls on the first workday of a month, the employee must be a state employee on the day immediately after the holiday to be paid. If the holiday falls on the last workday of the month, the employee must be a state employee on the day immediately before the holiday to be paid.<sup>468</sup>

In situations where an employee works before or after a holiday and takes a partial leave without pay day, the employee will receive credit for working the entire day if he or she works any part of it. The Office of the Comptroller of Public Accounts has determined that only employees who use unpaid leave for the entire workday will be considered to be on leave without pay for the day.<sup>469</sup>

#### Applicability of State Holiday Section

Unless specifically stated, the information in this section regarding holidays pertains only to state agencies and does not pertain to institutions of higher education.

The applicability of holidays for state employees of the Texas House of Representatives or the Senate applies only at the discretion of the presiding officer or the administration committee of each house.

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<sup>463</sup> Texas Government Code, Sections 662.003 and 662.013.

<sup>464</sup> State Auditor's Office Leave Interpretation Letter, No. 01-03 (2000).

<sup>465</sup> Texas Government Code, Section 662.005.

<sup>466</sup> *Ibid.*, Section 662.004.

<sup>467</sup> *Ibid.*, Section 662.007 (a) and (b).

<sup>468</sup> *Ibid.*, Section 662.010; and *Payroll Policies and Procedures Guide*, Office of the Comptroller of Public Accounts, August 2000, Page 2.15.

<sup>469</sup> *Payroll Policies and Procedures Guide*, Office of the Comptroller of Public Accounts, August 2000, Page 2.13.

Table 11-1 provides examples of these types of scenarios.

Table 11-1

Scenarios in which a State Agency Would or Would Not Pay an Employee for a Holiday						
<p>In the first example, a new employee begins work on January 2. This employee <b>would be paid</b> for the holiday observed on January 1 because it falls on the first workday of the month and the employee is a state employee on the day after the holiday.</p>						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
23	24	25	26	27	28	29
30	31	1 Holiday	2 Employee Begins Work	3	4	5
<p>In the second example, an employee works December 31 and then terminates employment. This employee <b>would not be paid</b> for the January 1 holiday because it fell on the first workday of the month, and the employee was not a state employee on the day after the holiday.</p>						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
23	24	25	26	27	28	29
30	31 Employee Terminates Employment	1 Holiday	2	3	4	5

Table 11-2 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Technical Updates related to state holidays.

Table 11-2

Holidays - General Information Related State Auditor’s Office Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Relating to how an agency accounts for an employee being absent for part of a workday on a skeleton crew state or national holiday.	9/15/2000
HR Question	Whether an agency may require an employee to work on a federal or state holiday.	5/17/1999
HR Question	Whether an agency may close early on the day before a holiday.	12/21/1998
HR Question	Relating to a new employee who starts work in a month in which the first day of the month is a holiday.	12/14/1998
Technical Update	Related to holiday hours for employees in state agencies and institutions of higher education.	97-03
<sup>a</sup> Complete references can be found at: Technical Updates: <a href="http://sao.hr.state.tx.us/Rules/technicalupdates.html">http://sao.hr.state.tx.us/Rules/technicalupdates.html</a> HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

## *Fiscal Year 2008-2009 Holiday Schedules*

State employees receive both federal and state holidays, as well as optional holidays. Tables 11-3 and 11-4 provide a list of holidays for fiscal years 2008 and 2009.

Table 11-3

State Holiday Schedule for Fiscal Year 2008			
Holiday	Agency Status	Date	Day of Week
Labor Day	All agencies closed.	09-03-07	Monday
<i>Rosh Hashanah</i>	<i>Optional Holiday</i>	<i>09-13-07</i>	<i>Thursday</i>
<i>Rosh Hashanah</i>	<i>Optional Holiday</i>	<i>09-14-07</i>	<i>Friday</i>
<i>Yom Kippur</i>		<i>09-22-07</i>	<i>Saturday</i>
Veterans Day		11-11-07	Sunday
Thanksgiving Day	All agencies closed.	11-22-07	Thursday
Day after Thanksgiving	All agencies closed.	11-23-07	Friday
Christmas Eve Day	All agencies closed.	12-24-07	Monday
Christmas Day	All agencies closed.	12-25-07	Tuesday
Day after Christmas	All agencies closed.	12-26-07	Wednesday
New Year's Day	All agencies closed.	01-01-08	Tuesday
Confederate Heroes Day		01-19-08	Saturday
Martin Luther King, Jr. Day	All agencies closed.	01-21-08	Monday
Presidents Day	All agencies closed.	02-18-08	Monday
Texas Independence Day		03-02-08	Sunday
<i>Good Friday</i>	<i>Optional Holiday</i>	<i>03-21-08</i>	<i>Friday</i>
<i>Cesar Chavez Day</i>	<i>Optional Holiday</i>	<i>03-31-08</i>	<i>Monday</i>
San Jacinto Day	Skelton Crew Required	03-21-08	Monday
Memorial Day	All agencies closed.	05-26-08	Monday
Emancipation Day	Skeleton crew required.	06-19-08	Thursday
Independence Day	All agencies closed.	07-04-08	Friday
LBJ's Birthday	Skeleton crew required.	08-27-08	Wednesday

Table 11-4

State Holiday Schedule for Fiscal Year 2009			
Holiday	Agency Status	Date	Day of Week
Labor Day	All agencies closed.	09-01-08	Monday
<i>Rosh Hashanah</i>	<i>Optional Holiday</i>	<i>09-30-08</i>	<i>Tuesday</i>
<i>Rosh Hashanah</i>	<i>Optional Holiday</i>	<i>10-01-08</i>	<i>Wednesday</i>
<i>Yom Kippur</i>	<i>Optional Holiday</i>	<i>10-09-08</i>	<i>Thursday</i>
Veterans Day	All agencies closed.	11-11-08	Tuesday
Thanksgiving Day	All agencies closed.	11-27-08	Thursday
Day after Thanksgiving	All agencies closed.	11-28-08	Friday
Christmas Eve Day	All agencies closed.	12-24-08	Wednesday
Christmas Day	All agencies closed.	12-25-08	Thursday
Day after Christmas	All agencies closed.	12-26-08	Friday
New Year's Day	All agencies closed.	01-01-09	Thursday
Martin Luther King, Jr. Day	All agencies closed.	01-19-09 <sup>a</sup>	Monday
Confederate Heroes Day	All agencies closed.	01-19-09 <sup>a</sup>	Monday
Presidents Day	All agencies closed.	02-16-09	Monday
Texas Independence Day	Skelton crew required.	03-02-09	Monday
<i>Cesar Chavez Day</i>	<i>Optional Holiday</i>	<i>03-31-09</i>	<i>Tuesday</i>
<i>Good Friday</i>	<i>Optional Holiday</i>	<i>04-10-09</i>	<i>Friday</i>
San Jacinto Day	Skelton Crew Required	04-21-09	Tuesday
Memorial Day	All agencies closed.	05-25-09	Monday
Emancipation Day	Skeleton crew required.	06-19-09	Friday
Independence Day		07-04-09	Saturday
LBJ's Birthday	Skeleton crew required.	08-27-09	Thursday

<sup>a</sup> When two holidays fall on the same day, only one holiday will be observed. All state agencies will be closed on January 19, 2009, in observance of Martin Luther King, Jr. Day.

## Optional Holidays

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A state employee is entitled to observe Rosh Hashanah, Yom Kippur, Good Friday, and Cesar Chavez Day.<sup>470</sup> A state employee is entitled to each optional holiday if the employee qualifies for the paid day off and agrees to give up during the same fiscal year an equivalent number of state holidays provided that the employee does not agree to give up the Friday after Thanksgiving Day, December 24 or December 26. Optional holidays cannot be substituted for a National Holiday.<sup>471</sup>

## Holidays and Employee Transfers

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With the exception of a transfer directed by the Legislature or the State Council on Competitive Government, there is no authority to transfer accrued holiday compensatory time between state agencies.<sup>472</sup>

In the event that a state holiday falls between the periods an employee transfers from one state agency or institution of higher education to another without a break in service, the receiving agency or institution of higher education must pay for the holiday regardless of whether the agency or institution of higher education recognizes that particular holiday.<sup>473</sup>

Table 11-5 provides a list of State Auditor's Office's Human Resources Questions-and-Answers related to state holidays and transferring employees.

Table 11-5

Transferring Employees and Holidays Related State Auditor Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether holiday compensatory time may be transferred to another state agency.	7/3/2000
HR Question	Whether an employee who transfers (without a break in service) from one agency to another would get paid for a holiday that falls in between the date of termination at one agency and start date at the next.	6/14/1999
<sup>a</sup> Complete references can be found at: HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

## Holidays for Employees Working Non-Traditional Schedules

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A state employee who works 40 hours a week on a schedule other than Monday through Friday is entitled to paid holiday time off during the fiscal year equal to eight hours multiplied by the number of national and state holidays in the fiscal year.<sup>474</sup>

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<sup>470</sup> Texas Government Code, Sections 662.003 (c) and 662.013.

<sup>471</sup> Ibid., Section 662.006 (b) and (c).

<sup>472</sup> Ibid., Section 662.0071.

<sup>473</sup> Ibid., Section 662.0072.

<sup>474</sup> Ibid., Section 662.009 (a).

A state employee who works less than the entire fiscal year is entitled to paid holiday time off during the fiscal year equal to eight hours multiplied by the number of national and state holidays that occur during the time period worked by the employee.<sup>475</sup>

Holiday pay for a part-time employee is proportionate to the number of hours normally worked by the employee.<sup>476</sup>

A state agency can establish a “holiday bank” for employees working a non-standard workweek. The bank can include the total number of holiday hours observed by state employees that fiscal year.<sup>477</sup>

Table 11-6 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers related to holidays for employees working non-traditional schedules.

Table 11-6

Holidays for Employees Working Non-Traditional Schedules Related State Auditor Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether an employee who works Tuesday through Saturday is entitled to holiday time off for a holiday that falls on a Saturday.	12/1/2006
HR Question	Whether an employee who works a compressed work week of four ten-hour days may be paid for a holiday that falls on the weekday that the employee has off.	10/5/1998
<sup>a</sup> Complete references can be found at: HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

### *Holidays for Institutions of Higher Education*

Institutions of higher education may establish their own holidays in accordance with academic schedules. However, the number of observed holidays may not exceed the number of holidays observed by state agencies.<sup>478</sup>

There are three options regarding an institution of higher education’s determination of holidays:

- Establish all holidays and mandate those holidays for all employees.
- Establish some holidays and allow each employee to take the remainder as “floating” holidays.
- Establish no holidays and allow each employee to take his or her holiday time off in the form of “floating” holidays that would be unique for each employee.<sup>479</sup>

<sup>475</sup> Texas Government Code, Section 662.009 (b).

<sup>476</sup> Ibid., Section 662.009 (c).

<sup>477</sup> State Auditor’s Office Technical Update Letter, No. 97-03 (1997).

<sup>478</sup> Texas Government Code, Section 662.011 (a) and (b).

<sup>479</sup> State Auditor’s Office Technical Update Letter, No. 00-02 (1999).

Non-student employees who work 20 hours per week or more and are employed for a period of at least four-and-one-half months are eligible for paid holidays.<sup>480</sup>

Employees of institutions of higher education may be paid for holiday compensatory time if taking holidays would be disruptive to teaching, research, or other critical functions.<sup>481</sup>

Table 11-7 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Technical Updates related to holidays and institutions of higher education.

Table 11-7

Holidays and Institutions of Higher Education Related State Auditor Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether student employees of institutions of higher education may get paid leave for holidays.	3/27/2000
HR Question	Whether a university may create floating holidays in which each employee picks his or her holidays.	9/13/1999
Technical Update	Whether a university may create floating holidays in which each employee picks his or her holidays.	00-02
<sup>a</sup> Complete references can be found at: Leave interpretations: <a href="http://sao.hr.state.tx.us/Rules/technicalupdates.html">http://sao.hr.state.tx.us/Rules/technicalupdates.html</a> HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

### *Holiday Time Payment for Deceased Employees*

Eight hours is to be added to the payment of the estate of a deceased state employee for each state and national holiday that is scheduled to fall within the period after the date of death and during which the employee could have used. To determine the period during which could have been used and the number of state or national holidays, the employee’s leave is allocated over the workdays after the employee’s death and eight hours is added as a state or a national holiday occurs during the period. Holiday pay for a part-time employee should be proportionate to the number of hours normally worked by the deceased employee.

<sup>480</sup> Texas Government Code, Section 662.011 (c).

<sup>481</sup> Ibid., Section 662.007 (c).

*Section 12*  
***Family and Medical Leave***

***Family and Medical Leave Act Overview***

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The Family and Medical Leave Act (FMLA) generally ensures that employees are able to take extended leaves of absence from work to handle family issues or illness without fear of being terminated from their jobs or being forced into a lower job upon their return. The leave guaranteed by the FMLA is unpaid and employers can require the employee to provide a doctor's certification.<sup>482</sup>

The FMLA provides all eligible employees a total of 12 weeks of unpaid leave during a 12-month period for the following:

- The birth and subsequent care of a newborn child.
- The placement of a child for adoption or foster care.
- The need to care for a spouse, child, or parent with a serious health condition.
- A serious health condition that renders the employee unable to work.<sup>483</sup>

**Additional Resources**

A valuable resource for managing family medical leave is the Family and Medical Leave section of the U.S. Department of Labor's Web site at:  
[http://www.dol.gov/dol/allcfr/ESA/Title\\_29/Part\\_825/toc.htm](http://www.dol.gov/dol/allcfr/ESA/Title_29/Part_825/toc.htm).

Additionally, an employee who takes family and medical leave must be returned to the same job or a job with equivalent status and pay,<sup>484</sup> and the employer must continue the employee's health benefits during the absence.<sup>485</sup> An employee who takes family and medical leave is still responsible for paying his or her portion of health insurance premiums.<sup>486</sup>

For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, if for some reason the employer's business activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks (for example, a school closing two weeks for the Christmas/New Year holiday or the summer vacation), the days the employer's activities have ceased do not count against the employee's FMLA leave entitlement.<sup>487</sup>

An employee does not earn state service credit, annual leave, or sick leave for any full calendar months of leave without pay while on family and medical leave.<sup>488</sup>

Family and medical leave may be used intermittently if required by a physician to address a serious illness.<sup>489</sup> Employees requesting intermittent leave to care for a child that is a newborn, during adoption, or during foster care must get employer approval for the intermittent leave.<sup>490</sup>

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<sup>482</sup> Title 29, Code of Federal Regulations, Section 825.305.

<sup>483</sup> *Ibid.*, Section 825.112 (a).

<sup>484</sup> *Ibid.*, Section 825.214 (a).

<sup>485</sup> *Ibid.*, Section 825.209 (a).

<sup>486</sup> *Ibid.*, Section 825.210 (a).

<sup>487</sup> *Ibid.*, Section 825.200 (f).

<sup>488</sup> Texas Government Code, Section 661.909 (f).

State agencies may use any one of the following periods to administer the 12-week leave entitlement:

- A calendar year.
- Any fixed 12-month period such as a fiscal year or anniversary date to anniversary date.
- A 12-month period measured forward from the date an employee first uses family and medical leave.
- A rolling 12-month period measured backward from the date an employee uses any family and medical leave.<sup>491</sup>

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<sup>489</sup> Title 29, Code of Federal Regulations, Section 825.203 (c).

<sup>490</sup> Ibid., Section 825.203 (b).

<sup>491</sup> Ibid., Section 825.200 (b).

Table 12-1 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to general family and medical leave issues.

Table 12-1

Family and Medical Leave (FMLA), General Information Related State Auditor Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether a parent must take all family and medical leave at once after the birth of a child.	4/4/2005
HR Question	Related to when family and medical leave must be exhausted for the birth of a child or the placement of a child for adoption or foster care.	12/31/2002
HR Question	Related to information on how to apply Family Medical Leave Act, Americans with Disabilities Act and Worker’s Compensation leave together.	1/15/2001
HR Question	Whether a holiday and/or business closing day that occurs while an employee is out on family and medical leave counts against his or her 12 week entitlement.	11/6/2000
HR Question	Whether an employee may combine parental leave with family and medical leave for the birth of a natural child or the adoption or foster care placement of a child.	7/26/1999
Leave Interpretation	Related to the agency's responsibility to designate leave as family and medical leave.	97-06
<sup>a</sup> Complete references can be found at: Leave interpretations: <a href="http://sao.hr.state.tx.us/Rules/leaveinterpretations.html">http://sao.hr.state.tx.us/Rules/leaveinterpretations.html</a> HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

### *Eligibility for Family and Medical Leave*

Eligibility for family and medical leave is limited to employees who have worked for the State at least 12 months. The 12 months need not be consecutive or continuous. In addition, the employee must have worked a minimum of 1,250 hours during the 12 months immediately preceding the start of leave.<sup>492</sup>

Eligible employees must first use all available and applicable paid vacation and sick leave while taking family and medical leave, with the exception of an employee who is receiving temporary disability benefits or workers’ compensation benefits and is not required to use paid leave while receiving those benefits.<sup>493</sup>

For purposes of family and medical leave, the State is considered a single employer. Agencies should credit time worked for other state agencies when considering family and medical leave eligibility. Consequently, agencies should research any leave taken by the employee while previously employed with the State.

Table 12-2 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers related to family and medical leave eligibility.

<sup>492</sup> Texas Government Code, Section 661.912(a).

<sup>493</sup> Ibid., Section 661.912(b).

Table 12-2

Family and Medical Leave (FMLA) Eligibility Related State Auditor Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether the parent of an adult child who has complications as a result of pregnancy is eligible for family and medical leave to care for the child.	8/27/2001
HR Question	Whether the host parent of a foreign exchange student is eligible for family and medical leave, and whether the parent may use accrued sick leave to care for the child.	6/25/2001
HR Question	Whether an employee may take family and medical leave for an ill father-in-law or mother-in-law who resides in the same household.	4/9/2001
HR Question	Whether there is an age limit for a child when an employee wants to use family and medical leave.	12/11/2000
HR Question	Whether a state employee may take family and medical leave if he has worked less than 1,250 hours with one state agency but has several years of uninterrupted state service.	7/17/2000
HR Question	Whether a part-time employee who is unable to work 1,250 hours in a 12-month period is ineligible for family and medical leave.	6/12/2000
<sup>a</sup> Complete references can be found at: HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

### *Family and Medical Leave and the Use of State Paid Leave*

State compensatory time, holiday time, and administrative leave that are benefits of the State may be counted toward the entitlement.<sup>494</sup> Employees on workers' compensation or receiving temporary disability benefits cannot be required to use, but may elect to use, paid leave prior to taking unpaid family and medical leave.<sup>495</sup> However, Fair Labor Standards Act (FLSA) compensatory time cannot be used concurrently with family and medical leave.

FLSA compensatory time is not a form of accrued paid leave that an employee may use to substitute for unpaid family medical leave. Employees may elect to use FLSA compensatory time while out on family and medical leave; however that time may not be counted against the employee's 12-week family and medical leave entitlement.<sup>496</sup>

Sick leave may be used in conjunction with family and medical leave when a child under the age of three is adopted, regardless of whether the child is ill at the time of adoption. However, a state employee on family and medical leave who is the father of a child may use his sick leave only if the child is ill due to childbirth or to care for his spouse while she is recovering from labor and delivery.<sup>497</sup>

In all circumstances, it is the employer's responsibility to designate leave, paid or unpaid, as FMLA-qualifying and to give notice of the designation to the employee. In the case of intermittent leave or

<sup>494</sup> Title 29, Code of Federal Regulations, Sections 553.25 and 553.28.

<sup>495</sup> Texas Government Code, Section 661.912 (b); and Opinion, Texas Office of the Attorney General, No. JC-0040 (1999).

<sup>496</sup> Title 29, Code of Federal Regulations, Section 825.207 (i).

<sup>497</sup> State Auditor's Office Leave Interpretation Letter, No. 97-01 (1998).

leave on a reduced schedule, only one such notice is required unless the circumstances regarding the leave have changed. The employer's designation decision must be based only on information received from the employee or the employee's spokesperson (for example, if the employee is incapacitated, the employee's spouse, adult child, parent, doctor, or other appropriate spokespeople may provide notice to the employer of the employee's need to take family and medical leave).

In any circumstance where the employer does not have sufficient information about the reason for an employee's use of paid leave, the employer should inquire further of the employee or the spokesperson to ascertain whether the paid leave is potentially FMLA-qualifying. Family and medical leave eligibility is not for the employee to decide.<sup>498</sup>

Table 12-3 provides a list of State Auditor's Office's Human Resources Questions-and-Answers and Leave Interpretations related to the use of paid leave and family and medical leave.

Table 12-3

Family and Medical Leave (FMLA) and the Use of Paid Leave Related State Auditor Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Related to what state paid leave counts towards family and medical leave when an employee has a FMLA-qualifying event and requests paid leave.	10/31/2002
HR Question	Whether time that an employee would not have been required to report for duty is counted against the employee's FMLA leave entitlement.	9/1/2002
HR Question	Whether an employee who has accrued sick and annual leave may choose which time he will exhaust while out on family and medical leave.	10/30/2000
HR Question	Whether FMLA eligible employees may use compensatory or holiday time as part of their FMLA entitlement.	6/1/1999
Leave Interpretation	Related to the father's use of sick leave and Family and Medical Leave (FMLA) in the event of the birth of a child.	97-01
Leave Interpretation	Related to the clarification of the rules related to the use of paid leave before unpaid leave for a Family and Medical Leave Act (FMLA) covered event.	96-03
<sup>a</sup> Complete references can be found at: Leave interpretations: <a href="http://sao.hr.state.tx.us/Rules/leaveinterpretations.html">http://sao.hr.state.tx.us/Rules/leaveinterpretations.html</a> HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

## Parental Leave

Employees who do not qualify for family and medical leave are entitled to parental leave for the birth of a child or the adoption or foster care placement of a child under the age of three. Parental leave cannot exceed 12 weeks. The employee must first use all available and applicable paid vacation and sick leave while taking the leave, with the remainder of the leave unpaid. Parental leave is limited to and begins on the date of the birth of a natural child of the employee or the adoption by or foster care placement with the employee of a child younger than three years of age.<sup>499</sup>

<sup>498</sup> Title 29, Code of Federal Regulations, Section 825.208 (a).

<sup>499</sup> Texas Government Code, Section 661.913.

Eligibility time requirements are different for parental leave (less than 12 months of state service) and family and medical leave (12 months [1,250 hours] or more of state service). An employee can only meet the requirements for parental leave or family and medical leave, but not both at the same time. Circumstances can exist that would allow an employee to take parental leave, return to duty, and subsequently be eligible for family and medical leave. The employee could then take family and medical for the birth, adoption, or foster placement of a child or for another reason.<sup>500</sup>

Table 12-4 provides a list of Attorney General Opinions related to parental leave in the state.

Table 12-4

Parental Leave Related Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
JM-337	Whether a state employee is entitled to paternity leave.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

<sup>500</sup> State Auditor's Office, Human Resource Question-and-Answer, July 26, 1999.

*Section 13*  
**Miscellaneous Leave Provisions**

In addition to the annual and sick leave provisions, the State offers leave to employees for specific situations. This section of the inventory covers various leave provisions that may be granted to state employees. Agencies and institutions of higher education should review these provisions carefully to determine if employees are eligible to use these leave types.

***Administrative Leave for Outstanding Performance***

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Administrative leave with pay may be granted by the head of an agency as a reward for outstanding performance. This performance should be documented by the agency. The total amount of leave granted may not exceed 32 hours per employee during a fiscal year.<sup>501</sup>

Table 13-1 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to administrative leave for outstanding performance.

Table 13-1

Administrative Leave for Outstanding Performance Related State Auditor Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether a state employee is required to use administrative leave for outstanding performance prior to being eligible for sick leave pool or being granted leave without pay.	3/5/2001
HR Question	Whether an employee may be allowed to remain on payroll to exhaust administrative leave for outstanding performance.	12/4/2000
HR Question	Whether executive directors and employees of institutions of higher education are eligible for administrative leave for outstanding performance.	12/13/1999
Leave Interpretation	The administration of administrative leave for outstanding performance.	98-02
<sup>a</sup> Complete references can be found at: Leave interpretations: <a href="http://sao.hr.state.tx.us/Rules/leaveinterpretations.html">http://sao.hr.state.tx.us/Rules/leaveinterpretations.html</a> HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

***Amateur Radio Operator Leave***

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A state employee with an amateur radio station license issued by the Federal Communications Commission may be granted leave not to exceed 10 days each fiscal year to participate in specialized disaster relief services without a deduction in salary or loss of annual or sick leave, overtime leave, or state compensatory time. The amateur radio operator leave should be authorized by the employee’s supervisor and with the approval of the governor.<sup>502</sup>

<sup>501</sup> Texas Government Code, Section 661.911; and State Auditor’s Office Leave Interpretation Letter, No. 98-02 (1997).

<sup>502</sup> Texas Government Code, Section 661.919 (a).

The number of amateur radio operators eligible for this type of leave may not exceed 350 state employees during a fiscal year. The division of emergency management in the Governor's Office is responsible for coordinating the establishment and maintenance of the list of employees eligible for this leave.<sup>503</sup>

New Requirement
The 80th Legislature passed legislation allowing agencies to grant leave to certain employees engaged as amateur radio operators.

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### ***Assistance Dog Training***

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An employee with a disability as defined by Texas Human Resources Code, Section 121.002, will be granted paid leave not to exceed 10 days in a fiscal year to attend training necessary to provide the employee with an assistance dog to be used by the employee.<sup>504</sup>

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### ***Blood Donations***

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A state agency shall allow employees sufficient time off, without a deduction in salary or accrued leave, to donate blood. An employee may not receive time off to donate blood unless the employee obtains approval from his or her supervisor before taking time off. Upon returning to work, the employee shall provide his or her supervisor with proof that the employee donated blood during the time off. If an employee fails to provide proof that he or she donated blood during the time off, the agency shall deduct the time off from the employee's salary or accrued leave, whichever the employee chooses. An employee may receive time off to donate blood not more than four times in a fiscal year.<sup>505</sup>

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### ***Bone Marrow and Organ Donation***

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A state employee is entitled to a leave of absence without a deduction in salary for the time necessary to permit the employee to serve as a bone marrow or organ donor. The leave of absence provided by this section may not exceed:

- Five working days in a fiscal year to serve as a bone marrow donor; or
- 30 working days in a fiscal year to serve as an organ donor.<sup>506</sup>

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### ***Certified American Red Cross Activities***

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Employees who are certified disaster service volunteers of the American Red Cross or are in training to become a volunteer may be granted paid leave, not exceed 10 days each fiscal year, to participate in specialized disaster relief services for the American Red Cross. The employee must have the

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<sup>503</sup> Texas Government Code, Section 661.919 (b).

<sup>504</sup> Ibid., Section 661.910.

<sup>505</sup> Ibid., Section 661.917.

<sup>506</sup> Ibid., Section 661.916.

approval of his or her supervisor and the Governor and a formal request from the American Red Cross. The number of certified disaster relief service volunteers who are eligible for this type of leave may not exceed 350 state employees at any one time during a fiscal year. The division of emergency management in the governor's office shall coordinate the establishment and maintenance of the list of eligible employees.<sup>507</sup>

### *Compliance with a Subpoena*

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An employee testifying in an official capacity is considered to be on "special assignment," and would not be required to use his or her own leave to be absent from work. An employee who testifies as an expert witness is authorized to use emergency leave for his or her absence. An employer may not take action against an employee for complying with a subpoena to appear in a civil, criminal, legislative, or administrative proceeding. Agencies should use their own discretion in instances of unofficial testimony to decide whether such an absence is considered good cause for emergency leave.<sup>508</sup>

### *Emergency Leave*

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An employee is entitled to leave with pay for a death in the employee's family. An employee's family is defined as the employee's spouse; the employee's and spouse's parents, children, brothers, sisters, grandparents, and grandchildren. There is nothing in statute that requires an agency to provide a specific number of days of emergency leave for a death in the employee's family. The amount of leave is dependent on agency policy. An agency head may grant this leave for other reasons determined to be for good cause.<sup>509</sup>

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<sup>507</sup> Texas Government Code, Section 661.907.

<sup>508</sup> Texas Labor Code, Section 52.051; See also Opinion, Texas Office of the Attorney General, No. JM-785 (1987).

<sup>509</sup> Texas Government Code, Section 661.902.

Table 13-2 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers related to emergency leave.

Table 13-2

Emergency Leave Related State Auditor Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether common law marriages are covered for the purposes of bereavement and emergency leave.	10/1/2004
HR Question	Whether an employee may be granted emergency leave for a death in the family if the employee is on leave without pay.	4/29/2003
HR Question	Whether funeral leave may be used for an in-law if the employee’s spouse is also deceased.	5/22/2000
HR Question	Whether an employee is allowed emergency leave for jury duty for a full day even if the employee is not selected.	2/28/2000
HR Question	Whether an employee may be granted emergency leave to attend the funeral of a great-grandchild.	2/15/1999
HR Question	Whether an executive director may grant emergency leave to an employee who has exhausted all annual leave and needs emergency leave for good reason.	1/25/1999
<sup>a</sup> Complete references can be found at: HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

### *Foster Parent Leave*

An employee who is a foster parent to a child under the protection of the Department of Family and Protective Services (Department) is entitled to a paid leave of absence to attend staff meetings held by the Department regarding the foster child. In addition, the employee may use this entitlement to attend admission, review, and dismissal meetings held by a school district regarding the foster child.<sup>510</sup>

<sup>510</sup> Texas Government Code, Section 661.906.

Table 13-3 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to foster parent leave.

Table 13-3

Foster Parent Leave Related State Auditor Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether an employee who wishes to be a foster parent may take foster parent leave to attend trainings and meetings for potential foster parents.	4/2/2001
Leave Interpretation	Related to a leave of absence with full pay for a state employee who is a foster parent to a child.	92-02
<sup>a</sup> Complete references can be found at: HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> Leave Interpretations: <a href="http://sao.hr.state.tx.us/rules/leaveinterpretations.html">http://sao.hr.state.tx.us/rules/leaveinterpretations.html</a> .		

### *Injury Leave for Certain Peace Officers*

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Peace officers injured in the course of duty are entitled to paid injury leave without a deduction in salary. This covers peace officers commissioned by the Public Safety Commission or the directors of the Department of Public Safety, the Parks and Wildlife Department, or the Alcoholic Beverage Commission.<sup>511</sup>

Peace officers who are injured in the line of duty as a result of an assault offense are entitled to paid injury leave.<sup>512</sup> To be eligible for injury leave, the peace officer must submit evidence of a medical examination and a recommendation for a specific period of leave from his or her physician.<sup>513</sup> The maximum amount of leave allowed for all injuries occurring at one time is one year.<sup>514</sup>

The injured peace officer may simultaneously be on injury leave and receive workers’ compensation medical benefits but is not eligible for disability retirement benefits during the leave period. The injured peace officer is entitled to workers’ compensation indemnity benefits after the discontinuation or exhaustion of injury leave.<sup>515</sup>

### *Jury Service*

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An employee is entitled to serve on a jury without a deduction in salary.<sup>516</sup> Officers or employees of the Senate, the House of Representatives, or any organization in the legislative branch of state government may establish an exemption from jury service.<sup>517</sup>

<sup>511</sup> Texas Government Code, Section 661.918 (a).

<sup>512</sup> Ibid., Section 661.918 (b).

<sup>513</sup> Ibid., Section 661.918 (c).

<sup>514</sup> Ibid., Section 661.918 (d).

<sup>515</sup> Ibid., Section 661.918 (e).

<sup>516</sup> Ibid., Section 659.005 (a).

<sup>517</sup> Ibid., Section 62.106 (5).

## Legislative Leave for Peace Officers or Fire Fighters

A peace officer or fire fighter is entitled to legislative leave to serve in, appear before, or petition a governmental body during a regular or special legislative session.<sup>518</sup>

To be eligible for legislative leave, a peace officer or fire fighter must submit a written application to his or her employer on or before the 30th day before the employee intends to begin the legislative leave. The application must state the length of the requested leave and that the peace officer or fire fighter is willing to reimburse the employer for any wages, pension, or other costs the employer will incur as a result of the leave. The length of requested leave may not exceed the length of the session.<sup>519</sup>

Legislative leave is not considered a break in service and is treated as any other paid leave.<sup>520</sup>

## Parent-Teacher Conference Leave

An employee may use up to eight hours of sick leave each fiscal year to attend parent-teacher conference sessions for the employee's children who are in pre-kindergarten through twelfth grade. The employee must give reasonable notice of his or her intention to use this leave.<sup>521</sup> Part-time employees receive this leave on a proportionate basis.<sup>522</sup>

Table 13-4 provides a list of State Auditor's Office's Human Resources Questions-and-Answers related to parent-teacher conference leave.

Table 13-4

Parent-Teacher Conference Leave Related State Auditor Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether a state employee who has her child in a home school may use sick leave for a conference with the home school teacher.	3/19/2001
HR Question	Whether an employee may use sick time for a parent-teacher conference that only involves a phone call.	10/16/2000
HR Question	Whether an employee who works part time may receive four hours or eight hours of parent teacher leave each year.	8/30/1999
HR Question	Whether an employee may use a total of eight hours of sick leave for parent teacher conferences or may they use eight hours of sick leave per child for parent teacher conferences.	7/12/1999
<sup>a</sup> Complete references can be found at: HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

<sup>518</sup> Texas Government Code, Section 614.003.

<sup>519</sup> Ibid., Section 614.004.

<sup>520</sup> Ibid., Section 614.008.

<sup>521</sup> Ibid., Section 661.206.

<sup>522</sup> State Auditor's Office, Human Resource Question-and-Answer, August 30, 1999.

## *Time Off to Vote*

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Employers shall allow sufficient time off to employees, without a deduction in salary, to vote in each national, state, or local election.<sup>523</sup> There is no consistent standard or formal guidance regarding how much time should be provided to employees for this purpose. State law does not differentiate between regular and runoff elections.

Early voting enables an employee to vote (before or after work, including the weekends) prior to an election. If an employee has been unable to vote during the early voting period, time off to vote on Election Day is clearly allowed.

Table 13-5 provides a list of Texas Office of the Attorney General Opinions related to employees taking time off to vote.

Table 13-5

Time Off to Vote Related Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
O-6242	Regarding the construction of Penal Code, Article 209, on the right of an employee to absent himself or herself to vote, and related questions.
V-1475	Regarding employers deducting from employees' wages for the time that employees are absent for the purpose of voting.
V-1532	Regarding the necessity that an employer allow employees time off to vote when the employees have sufficient time to vote outside working hours.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

## *Volunteer Firefighters and Emergency Medical Services Training Leave*

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Volunteer firefighters and emergency medical services volunteers are entitled to paid leave not to exceed five working days each fiscal year for attending training services conducted by a state agency or institution of higher education. Also, a state agency or institution of higher education may grant paid leave to a volunteer firefighter or an emergency medical services volunteer for the purpose of responding to emergencies if a policy for granting the leave exists.<sup>524</sup>

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<sup>523</sup> Texas Government Code, Section 661.914.

<sup>524</sup> *Ibid.*, Section 661.905.

Table 13-6 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers related to volunteer firefighter leave.

Table13-6

Volunteer Firefighters Related State Auditor Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether paid leave may be granted to an employee who attends volunteer firefighter training in another state.	6/5/2000
HR Question	Whether an agency may grant paid leave to an employee who worked as a volunteer firefighter on his normal paid day off.	3/20/2000
HR Question	Whether a volunteer paramedic may receive paid leave to respond to medical situations.	2/14/2000
<sup>a</sup> Complete references can be found at: HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

### *Wellness Leave*

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A state agency may provide eight hours of leave time each year to an employee who receives a physical examination and completes an online health risk assessment tool or similar health risk assessment conducted in person by a wellness coordinator.<sup>525</sup>

New Requirement
The 80th Legislature passed legislation allowing agencies to grant wellness leave to employees meeting specific criteria.

<sup>525</sup> Texas Government Code, Section 664.061 (3).

## Related Legislation

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Table 13-7 provides a list of human resource related bills that were passed by the 80th Legislature. This may not be a complete list and should only be used as a summary of general issues on leave provisions that were addressed during the session.

Table 13-7

Employee Leave Related Legislation (80th Legislature) <sup>a</sup>	
Bill Number	Summary
HB 1297	Creates new wellness leave benefits.
SB 11	Provides for a leave of absence for urban search and rescue teams and for amateur radio operators, as well as mandatory emergency management training for certain public officials.
<sup>a</sup> Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at <a href="http://www.capitol.state.tx.us">www.capitol.state.tx.us</a> .	

## Section 14 Military Leave

### *Military Leave Overview*

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A state employee who is called to active duty or authorized military training is entitled to a leave of absence of 15 workdays in each federal fiscal year (October 1 through September 30) without loss of pay or benefits.<sup>526</sup> State employees are eligible for military leave to accommodate:

- Authorized training or duty for the state’s military forces, a reserve branch of the U.S. Armed Forces, or state or federally authorized urban search and rescue team.<sup>527</sup>
- National emergency activation for members of a reserve branch of the U.S. Armed Forces.<sup>528</sup>

The 15 days of paid leave need not be consecutive. These days are considered business days, not calendar days.<sup>529</sup> After exhausting the 15 days, the employee may use accrued annual leave or be placed on leave without pay status (LWOP) (or a combination of the two) for the remainder of the active duty period.<sup>530</sup> State agencies cannot force employees to use their annual and sick leave accruals. However, employees may choose to use all or some portion of annual leave or state compensatory time prior to going on leave without pay.

New Requirement
The 80th Legislature passed legislation allowing agencies to grant leave to certain employees engaged in urban search and rescue teams.

A state employee who is a member of the state military forces, a reserve component of the U.S. Armed Forces, or a member of a state or federally authorized urban search and rescue team and who is ordered to duty by the proper authority is entitled, when relieved from duty, to be restored to the position that the employee held when ordered to duty.<sup>531</sup>

All deployed military members are entitled to an unpaid leave of absence from their state positions, with no loss of years-of-service accrual and secure a return to their former positions or a position with similar seniority, status, and pay upon return to duty.<sup>532</sup>

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<sup>526</sup> Texas Government Code, Section 431.005 (a); and State Auditor’s Office Leave Interpretation Letter, No. 98-03 (1988).

<sup>527</sup> Texas Government Code, Section 431.005 (a).

<sup>528</sup> Ibid., Section 661.904.

<sup>529</sup> Opinion, Texas Office of the Attorney General, No. C-679 (1966).

<sup>530</sup> State Auditor’s Office Leave Interpretation Letter, No. 79-01 (1979).

<sup>531</sup> Texas Government Code, Section 431.005 (c).

<sup>532</sup> Ibid., Section 613.002.

## Adjusted Work Schedule for Military Leave

State agencies are required to adjust the work schedule of an employee who is a member of the Texas National Guard or United States Armed Forces Reserve so that two of the employee's days off each month coincide with two days of military duty.<sup>533</sup>

## Call to National Duty

A state employee called to state active duty as a member of the state military forces by the Governor because of an emergency is entitled to receive emergency leave without loss of military or annual leave.<sup>534</sup> This leave is not limited and will be provided without a deduction in salary.<sup>535</sup>

A member of the National Guard or any reserve branch of the U.S. Armed Forces called to federal active duty during a national emergency is entitled to an unpaid leave of absence after exhausting the 15 days of paid military leave. The employee retains any accrued sick or annual leave. The employee does not earn sick or annual leave during this period; he or she does accrue state service credit. The employee may use any accrued annual leave, compensatory time, or overtime leave to maintain benefits for the employee or the employee's dependents while on military duty. Additionally, the employee may continue to accrue service credit with the Employees Retirement System by receiving at least one hour of state pay during each month of active military service. The employee may use any combination of paid leave to qualify for state pay.<sup>536</sup>

## Benefits and Protections for State Service

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

- To persons performing service in the uniformed services by 38 United States Code, Sections 4301–4313 and Sections 4316–4319, as that law existed on April 1, 2003; and
- To persons in the military service of the United States by 50, Appendix United States Code, Sections 501–536, 560, and 580–594, as that law existed on April 1, 2003.

This applies only to persons serving on active state duty on or after the June 18, 2003 of this statute without regard to the date on which the person was initially ordered to active state duty.<sup>537</sup>

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<sup>533</sup> Texas Government Code, Section 658.008.

<sup>534</sup> *Ibid.*, Section 431.0825.

<sup>535</sup> *Ibid.*, Section 661.903.

<sup>536</sup> *Ibid.*, Section 661.904; and Opinion, Texas Office of the Attorney General, No. MW-109 (1979).

<sup>537</sup> Texas Government Code, Section 431.017.

## Related State Auditor’s Office Resources

Table 14-1 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers and Leave Interpretations related to military leave.

Table 14-1

Military Leave Related State Auditor Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether an employee who works four 10-hour days is entitled to 150 hours (15 10-hour days) of military leave as opposed to 120 hours (12 8-hour days)	9/17/2001
HR Question	Whether graduate assistants are eligible for paid military leave.	7/9/2001
HR Question	Whether an agency is required to grant weekend time off for military leave to an employee who works various shifts, including the weekend.	5/29/2001
HR Question	Whether an employee who has used their 15 days of military leave and has documentation for another request for military training may use compensatory time instead of annual leave or leave without pay.	8/21/2000
HR Question	Whether military leave for part-time employees is proportional to their hours worked.	7/31/1998
Leave Interpretation	Whether an employee may receive paid leave for duty with the National Guard if the leave exceeds 15 days.	98-06
Leave Interpretation	Whether an employee is entitled to another 15 days of paid military leave if the length of active service crosses two federal fiscal years.	98-03
Leave Interpretation	Military leave and its relation to sick leave, annual leave, and leave without pay.	79-01
<sup>a</sup> Complete references can be found at: Leave interpretations: <a href="http://sao.hr.state.tx.us/Rules/leaveinterpretations.html">http://sao.hr.state.tx.us/Rules/leaveinterpretations.html</a> HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

## Military Pay Differentials

The administrative head of a state agency shall grant emergency leave to provide a pay differential if an employee’s military pay is less than the employee’s state gross pay. The combination of military pay and emergency leave may not exceed the employee’s actual state gross pay. Pay received while assigned to a combat zone, hardship duty pay, and family separation pay is excluded when computing military differential pay.<sup>538</sup>

The agency should inform activated state employees of the agency's intent to use emergency leave to supplement their

### Military Pay Differential Guidelines

The State Auditor’s Office is required to establish uniform guidelines for state agencies in determining the amount of emergency leave to grant to deployed military members for the purposes of providing differential pay. These guidelines, available online, include specific definitions and examples of how to treat various situations in regards to military pay differentials.

The guidelines are available at:  
[http://sao.hr.state.tx.us/WhatsHappening/Military\\_guidelines.pdf](http://sao.hr.state.tx.us/WhatsHappening/Military_guidelines.pdf).

<sup>538</sup> Texas Government Code, Section 661.9041.

military pay to raise it to a rate comparable to the state pay received prior to activation.

Only state employees called to active duty in support of a national emergency or Homeland Security mission (under U.S. Code, Title 10 or Title 32) and whose military pay is less than their gross state pay are eligible for differential pay. Only state employees called to active duty in support of the Homeland Security mission under U.S. Code, Title 10 or Title 32 are entitled to military differential pay. Service members involved in routine military training or who are attending military schools are not entitled to this differential pay.<sup>539</sup>

If emergency leave is granted to state employees activated for military duty, those employees will accrue sick and vacation leave each month they receive pay from the state agency. The sick and vacation hours will be accrued but not posted until they return to full employment with the state agency.<sup>540</sup>

### Determining Eligibility

To determine eligibility, state agencies should request a copy of the employees' Military Leave and Earnings Statements each month that emergency leave is going to be granted to look at the total entitlement of military pay received by the service members. The service members' pay may change during the period of active duty because of a promotion or change in entitlements, an increase in their pay, or the reduction or ceasing of the need for state military differential pay.<sup>541</sup>

Information on the Leave and Earnings Statements is available at <http://www.dfas.mil/militarypay/militaryemploymentverification.html> (see Field 20 Total Entitlements).

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<sup>539</sup> *Military Pay Differential Guidelines*, State Auditor's Office, October 4, 2005.

<sup>540</sup> Texas Government Code, Sections 661.152(e) and 661.202(k).

<sup>541</sup> *Military Pay Differential Guidelines*, State Auditor's Office, October 4, 2005.

## Additional Information

Table 14-2 provides a list of opinion letters from the Office of Attorney General related to military leave.

Table 14-2

Military Service Related Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
C-679	Whether the 15-day leave of absence allowed for purposes of military service training or duty is dependent upon such training or duty being for a period of 15 consecutive days, and related questions.
DM-422	Regarding the applicability of specific statutes, which relate to veterans' employment preference.
H-941	Regarding the vacation entitlement of state employees who return to state employment after service in the armed forces.
LO 94-007	Whether a city may deny military leave to an employee called up by the Texas National Guard for special service.
LO 90-096	Whether a state or district officer called into military service may waive his salary and emoluments and authorize their payment to any person temporarily serving in his office.
M-886	Whether a city fireman, upon returning from military leave, is entitled to credit for pay purposes for that time he served in military service.
MW-29	Regarding the rights of the state employee on active duty for training with the Texas National Guard.
MW-109	Regarding the rights of state employees to accrued sick leave when returning to state service after military leave.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

Table 14-3 lists human resources-related bills that were passed by 80th Legislature. This may not be a complete list and should be used only as a general summary of legislation related to military leave that was addressed during the session.

Table 14-3

Military Service and Leave Related Legislation (80th Legislature) <sup>a</sup>	
Bill Number	Summary
SB 11	Provides for a leave of absence for urban search and rescue teams and for amateur radio operators, as well as mandatory emergency management training for certain public officials.
SB 311	Prevents a private employer from terminating the employment of a permanent employee who is a member of the state military forces of Texas or any other state because the employee is ordered to authorized training or duty.
SB 685	Relates to the exemption from tuition and mandatory fees for certain members of the Texas National Guard.
<sup>a</sup> Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at <a href="http://www.capitol.state.tx.us">www.capitol.state.tx.us</a> .	

*Section 15*  
***Military Employment and Re-employment Rights***

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

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The Uniformed Services Employment and Re-employment Rights Act (USERRA) prohibits discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services. USERRA prohibits an employer from denying any benefit of employment on the basis of an individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

The Act protects the right of veterans, reservists, National Guard members, and certain other members of the uniformed services to reclaim their civilian employment after being absent due to military service or training. The U.S. Department of Labor Veteran's Employment and Training Service (VETS) administers USERRA.

Eligible individuals may be absent from work for military duty and retain re-employment rights for a cumulative time of five years. Exceptions to the five-year limit include initial enlistments lasting more than five years, periodic National Guard and Reserve training duty, and involuntary active duty extensions and recalls, especially during a time of national emergency. Re-employment protection does not depend on the timing, frequency, duration, or nature of an individual's service as long as the basic eligibility criteria are met.

USERRA provides protection for disabled veterans, requiring employers to make reasonable efforts to accommodate the disability. Service members recovering from injuries received during service or training may have up to two years from the date of completion of service to return to their jobs or apply for re-employment.<sup>542</sup>

### **Health and Pension Plan Coverage**

Under USERRA, individuals performing military duty of more than 30 days may elect to continue employer-sponsored health care for up to 24 months; however, they may be required to pay up to 102 percent of the full premium. For military service of less than 31 days, health care coverage is provided as if the service member had remained employed. USERRA also provides specific protection related to eligibility and participation in pension plans.

### **Returning Service Members**

Returning service-members are re-employed in the job that they would have attained had they not been absent for military service under USERRA, with the same seniority, status, and pay, as well as other rights and benefits determined by seniority. Employers are required to make reasonable efforts (such as training or retraining) to enable returning service members to refresh or upgrade their skills to help them qualify for re-employment. The law also provides for alternative re-employment positions if the service member cannot qualify for some positions.

The period in which an individual has to apply for re-employment or report back to work after military service is based on the time spent on military duty. For military service of less than 31 days,

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<sup>542</sup> *Overview of The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)*, The U.S. Department of Labor Web site, <http://www.dol.gov/elaws/vets/userra/userra.asp>.

the service member must return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel home plus an eight-hour rest period. For military service of more than 30 days but less than 181 days, the service member must submit an application for re-employment within 14 days of release from service. For military service of more than 180 days, an application for re-employment must be submitted within 90 days of release from service.

USERRA also requires that service members provide advance written or verbal notice to their employers for all military duty unless giving notice is impossible, unreasonable, or precluded by military necessity. An employee should provide notice as far in advance as is reasonable under the circumstances. Additionally, service members are able (but are not required) to use accrued annual leavewhile performing military duty.<sup>543</sup>

For more information about U.S. Department of Labor employment and training programs for veterans, contact the Veterans' Employment and Training Service office. The U. S. Department of Labor Web site may also provide valuable information:  
<http://www.dol.gov/vets/aboutvets/contacts/main.htm>.

### ***State Re-employment Following Military Service***

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State law provides that an employee who separates from state service to enlist in the U. S. armed forces, Texas State Guard, Texas National Guard, or federal military reserves is entitled to restoration of employment.

The employee is entitled to be re-employed in the same position held at the time when he or she began military service or in a position of similar seniority, status, and pay.

To be eligible for re-employment at the conclusion of military service, the employee must be honorably discharged no later than five years after induction, enlistment, or call to duty and must be physically and mentally qualified to perform the duties of the job.<sup>544</sup>

#### **Applications for Re-employment**

Eligible veterans must apply for reinstatement within 90 days after discharge or release from service. The application must be made to the agency's head and must include evidence of discharge.<sup>545</sup>

#### **Re-employment to another Position Following Military Service**

If a veteran is unable to perform the duties of the previous job due to a service-related disability, the veteran is entitled to be restored to a position that he or she can perform with similar (same or nearest) seniority, status, and pay.<sup>546</sup> Veterans whose employment has been restored may not be dismissed without cause within a year of their reinstatement.<sup>547</sup>

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<sup>543</sup> *VETS USERRA Fact Sheet 3*, The Uniformed Services Employment and Re-employment Rights Act of 1994, Title 38, United States Code, Sections 4301-4334.

<sup>544</sup> Texas Government Code, Section 613.002.

<sup>545</sup> *Ibid.*, Section 613.004.

<sup>546</sup> *Ibid.*, Section 613.003.

<sup>547</sup> *Ibid.*, Section 613.005.

## Entitlement to Retirement or Other Benefits

An individual re-employed is considered to have been on furlough or leave of absence during the time that the individual was in military service and may participate in retirement or other benefits to which a public employee is or may be entitled.<sup>548</sup>

## *Veteran's Employment Preference*

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An individual who qualifies for a veteran's employment preference is entitled to a preference in employment over other applicants for the same position who do not have a greater qualification.<sup>549</sup> A veteran is defined as an individual who served in the U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard or in an auxiliary service of one of those branches of the U.S. armed forces.

A veteran qualifies for a veteran's employment preference if the veteran meets all of the following conditions:

- Served in the military for not less than 90 consecutive days during a national emergency declared in accordance with federal law or was discharged from military service for an established service-connected disability.
- Was honorably discharged from military service.
- Is competent.<sup>550</sup>

Individuals entitled to veteran's employment preference are not disqualified from holding positions with state agencies because of age or an established service-connected disability if the age or disability does not make the individual incompetent to perform the duties of the position.<sup>551</sup>

Veteran's employment preference does not apply to private secretaries or deputies of state officials, nor does it apply to people holding a strictly confidential relationship to the appointing or employing official.<sup>552</sup>

Agencies are required to provide to the Texas Workforce Commission information regarding an open position that is subject to the hiring preference.<sup>553</sup>

## Service-Connected Disabilities

An individual who has an established service-connected disability and who qualifies for a veteran's employment preference is entitled to preference for employment or appointment in a position for which a competitive examination is not held over all other applicants for the same position without a

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<sup>548</sup> Texas Government Code, Section 613.006.

<sup>549</sup> Ibid., Section 657.003.

<sup>550</sup> Ibid., Section 657.002.

<sup>551</sup> Ibid., Section 657.003 (d)

<sup>552</sup> Ibid., Section 657.003 (e).

<sup>553</sup> Ibid., Section 657.009.

service-connected disability and who do not have a greater qualifications.<sup>554</sup> An “established service connected disability” means a disability that has been or may be established by official records.<sup>555</sup>

### **Spouse and Orphans**

A veteran’s surviving spouse who has not remarried and an orphan of a veteran qualify for a veteran’s employment preference if all of the following conditions are met:

- The veteran was killed while on active duty.
- The veteran served in the military for not less than 90 consecutive days during a national emergency declared in accordance with federal law.
- The spouse or orphan is competent.<sup>556</sup>

### **Requirements for Public Entities**

An individual whose duty is to appoint or employ individuals for the State is required to give preference in hiring to individuals entitled to a veteran’s employment preference so that at least 40 percent of the employees are selected from individuals given that preference. In filling vacancies, a public entity that does not have 40 percent of its employees who are entitled to the preference is required to give preference to individuals entitled to a veteran’s employment preference until at least 40 percent of its employees are entitled to the preference.

When possible, a public entity is required to give 10 percent of the preferences it grants to qualified veterans discharged from the armed services of the United States within the preceding 18 months. If at least 40 percent of an agency’s employees are entitled to the preference, the agency is exempt from employment preference requirements.<sup>557</sup>

### **State Employment Forms**

All state agency employment forms prescribed by the Texas Workforce Commission must include a statement regarding the veteran’s employment preference until the agency workforce is composed of at least 40 percent veterans.<sup>558</sup>

### **Applicant Qualifications**

Prior to hiring an individual who qualifies for veteran’s employment preference, a state agency shall investigate the qualifications of the applicant for the position. If the applicant is of good moral character and can perform the duties of the position, the officer, chief executive, or individual whose duty it is to appoint or employ shall appoint or employ the applicant for the position.

An applicant with an established service-connected disability shall furnish the official records to the individual whose duty is to fill the position.<sup>559</sup>

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<sup>554</sup> Texas Government Code, Section 657.003 (b).

<sup>555</sup> Ibid., Section 657.001.

<sup>556</sup> Ibid., Section 657.002 (b)

<sup>557</sup> Ibid., Section 657.004.

<sup>558</sup> Ibid., Section 656.027.

<sup>559</sup> Ibid, Section 657.005.

## Competitive Examinations

If an agency requires competitive examinations as part of a civil service plan when selecting or promoting an employee, an individual is entitled to a veteran's employment preference if the individual has received at least the minimum required score for the test. In such situations, the individual is entitled to have additional points added to the test score as provided by statute.<sup>560</sup>

## Reductions in Force

An individual who is entitled to a hiring preference is also entitled to a preference in retaining employment if the public entity that employs the individual reduces its workforce. This applies only to the extent that a reduction in workforce by an employing public entity involves other employees of a similar type or classification.<sup>561</sup>

## Appealing Employment Decisions under Veteran's Preference

An individual entitled to a veteran's employment preference that is aggrieved by a decision of a state agency relating to hiring of the individual, or relating to the retaining of the individual if the entity reduces its workforce, may appeal the agency's decision by filing a written complaint with the governing body of the state agency.

The governing body of the state agency that receives a written complaint is required to respond to the complaint not later than the 15th business day after it receives the complaint. The governing body may render a different hiring decision than the decision that is the subject of the complaint if the governing body determines that the veteran's preference was not applied.<sup>562</sup> The governing body should resolve the complaint rather than delegating the decision making to staff.<sup>563</sup>

Agency staff can acknowledge receipt of the complaint within 15 business days and assist in investigating the complaint. Further, the complaint does not have to be resolved within 15 business days, but it can be an agenda item at the governing body's next scheduled board meeting.<sup>564</sup> Deliberation of the complaint can be considered in a closed meeting followed by final action in an open meeting.<sup>565</sup> A similar open meetings opinion by the Texas Office of the Attorney General suggests that the non-employee complainant is not allowed to be present in the closed meeting nor is the non-employee complainant entitled to request an open meeting.<sup>566</sup>

State agencies without governing bodies must determine whether these provisions do not apply to their agencies or create a compliant process through some authority that was not involved in the disputed hiring decision. The alternative approach could be to address the complaint through the human resources director, an ombudsman, an ethics advisor, any other review by a detached, neutral party.

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<sup>560</sup> Texas Government Code, Section 657.003 (c).

<sup>561</sup> *Ibid.*, Section 657.007.

<sup>562</sup> *Ibid.*, Section 657.010.

<sup>563</sup> *Moody v. Texas Water Commission*, 373 S.W.2d 793 (3rd Court of Civil Appeals - Austin 1963, writ ref'd n.r.e.); and Texas Office of the Attorney General Opinion No. H-884 (1976).

<sup>564</sup> *Railroad Commission of Texas v. Lone Star Gas Co.*, 656 S.W.2d 421 (Texas Supreme Court, 1983).

<sup>565</sup> Texas Government Code, Sections 551.074 (a) (1) and 551.102.

<sup>566</sup> Texas Office of the Attorney General Opinion, No. GA-0511 (2006); and Texas Government Code, Section 551.074 (b).

New Requirement
The 80th Legislature passed legislation providing individuals who are entitled to veteran's preference with an option to appeal hiring decisions.

### ***Veteran's Preference Reporting Requirements***

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An agency must file quarterly reports with the Comptroller of Public Accounts that state:

- The percentage of the total number of employees hired during the reporting period that are entitled to a preference.
- The percentage of the total number of employees who are entitled to a preference.
- The number of complaints filed with the governing body during that quarter and the number of complaints resolved by the governing body.<sup>567</sup>

Annually, the Comptroller of Public Accounts files a report with the Legislature that compiles and analyzes information that the Comptroller of Public Accounts received from agencies' quarterly reports.<sup>568</sup>

### ***Related Legislation***

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Table 15-1 contains a list of bills related to veteran's preference that were passed by the 80th Legislature. This may not be a complete list and should be used only as a summary of general issues on veteran's preference that were addressed during the session.

Table 15-1

Veteran's Preference Related Legislation (80th Legislature) <sup>a</sup>	
Bill Number	Summary
HB 1275	Provides individuals who are entitled to veteran's employment preference with an option to appeal hiring decisions.
<sup>a</sup> Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at <a href="http://www.capitol.state.tx.us">www.capitol.state.tx.us</a> .	

<sup>567</sup> Texas Government Code, Section 657.008 (a).

<sup>568</sup> Ibid., Section 657.008 (b).

## *Section 16* **Insurance Programs**

### ***Insurance Overview***

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The State of Texas provides a comprehensive benefits program for employees in state agencies and institutions of higher education. Health insurance for most employees is available through the Employees Retirement System (ERS). Exceptions include employees of the University of Texas and Texas A&M University systems, which provide their own health insurance programs for employees.

In addition to health insurance, state employees have access to other types of insurance such as dental, vision, life, supplemental life, dependent life, short- and long-term disability insurance, and flexible medical savings accounts. Although the majority of these programs are paid for by the employee, the State negotiates and coordinates benefits for which the employees may participate.

Detailed information on state insurance programs is available through the ERS Web site at [www.ers.state.tx.us](http://www.ers.state.tx.us).

### ***Employee Medical Insurance Benefits***

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The Texas Employees Uniform Group Insurance Program is intended to provide life, accident, and health insurance benefits to all employees of the State and their dependents.<sup>569</sup> Except for the conditions discussed in the Texas Insurance Code, no employee may be denied coverage unless the employee waives this coverage in writing by demonstrating that the employee is covered by another health benefit plan that provides substantially equivalent coverage or is eligible for benefits under the TRICARE Military Health System.<sup>570</sup>

There are two medical plans in the Group Benefits Program: HealthSelect and health maintenance organizations (HMOs). When employees enroll in either of these plans, they automatically receive a basic group term life insurance policy paid for by the State.

#### **Waiting Period for Coverage**

Employees hired on or after September 1, 2003, are subject to a waiting period that will delay their health insurance. Eligibility begins on the first day of the calendar month that begins after the 90th day after the date the employee performs services for a state agency or is qualified for and begins to hold elected or appointed office.<sup>571</sup>

#### **Dependent Coverage**

An employee or retiree can secure for his or her dependents any uniform coverage provided for employees by the Texas Employees Group Benefits Program. A dependent is the spouse of an active or retired employee, or an unmarried child under the age of 25, including:

- An adopted child.

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<sup>569</sup> Texas Insurance Code, Section 1551.002 (1).

<sup>570</sup> *Ibid.*, Sections 1551.104 and 1551.1045.

<sup>571</sup> *Ibid.*, Section 1551.1055 (a).

- A stepchild whose primary residence is the participant's household.
- A foster child whose primary residence is the participant's household and who is not covered under another government health plan.
- A child in a parent-child relationship with the employee whose primary residence is the participant's household.<sup>572</sup>

In addition, a dependent also means any child of any age who the ERS' Board of Trustees determine lives with or has the child's care provided by the individual on a regular basis if:

- The child is mentally retarded or physically incapacitated and dependent upon the employee for support.
- The child's coverage under this chapter has not lapsed.
- The child is at least 25 years old and was enrolled as a participant in the health benefits coverage under the group benefits program on the date of the child's 25th birthday.<sup>573</sup>

An unmarried child, whose coverage ended when the child became 25 years of age, is eligible for reinstatement of coverage upon the expiration of his or her benefits under the Consolidated Omnibus Budget Reconciliation Act (COBRA), but at a rate sufficient to cover the entire cost of the coverage. The cost of this coverage will be paid by the child or the child's participating parent. Coverage terminates at the end of the month in which the child marries.<sup>574</sup>

The Texas Employees Group Benefit Program may also include a cafeteria plan that allows the employee to pay premiums, health care expenses, and dependent care expenses on a pre-tax basis. If the cost of coverage exceeds the amount of the State's contribution, the difference will be deducted from the employee's pay or retirement benefits.<sup>575</sup> All other participants will be billed directly by ERS. State contributions to group insurance costs can be found on the ERS Web site at <http://www.ers.state.tx.us>.

### State Contributions for Health Insurance

An employee is considered full time if he or she is designated to work 40 hours in a workweek. A part-time employee is defined as a person designated to work less than 40 hours in a workweek.<sup>576</sup>

For full-time employees, the State pays all of the health care and basic life premiums and 50 percent of dependents' health premium. The State pays half of the health care and basic life premiums for part-time employees and 25 percent of the dependents' health premium.<sup>577</sup>

<sup>572</sup> Texas Insurance Code, Section 1551.004 (b).

<sup>573</sup> Ibid., Section 1551.004 (3).

<sup>574</sup> Ibid., Sections 1551.004 (4) and 1551.158 (a) and (c).

<sup>575</sup> Ibid., Section 1551.206.

<sup>576</sup> Ibid., Section 1551.003 (9) and (11).

<sup>577</sup> Ibid., Section 1551.319 (a) and (b).

## Prescription Drug Benefits

All individuals who are covered by state insurance plans have access to prescription drug benefits. Each individual must satisfy a \$50 deductible during each plan year before benefits and co-payments begin. The amount of each co-payment depends upon the category or tier of prescription drugs covered in each plan.<sup>578</sup>

## Dental Insurance

All individuals who are covered by state insurance plans have access to dental insurance. There are two plans available to employees with different costs, benefits, service areas, and participating dentists. Neither plan requires evidence of insurability.<sup>579</sup>

## *Employee Life and Disability Insurance*

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State employees have the option of enrolling in various life and disability insurance plans. New employees (within the first 31 days on the job) may sign up for these benefits without evidence of insurability. Current employees may have to provide additional information prior to participating in these plans.

The State provides basic group term life coverage of \$5,000 for current employees and \$2,500 for retirees at no cost. Optional group and dependent term life programs may be purchased to supplement this plan. Accidental death and dismemberment, and short- and long-term disability insurance are also available. All of these plans include provisions in the event of the death of an employee or retiree.<sup>580</sup>

## Accelerated Payment of Life Insurance Benefits

The board of trustees of the Texas Employees Group Benefits Program may adopt rules to pay accelerated life insurance benefits to terminally ill, terminally injured, or permanently disabled participants including an annuitant participating in optional term life insurance in amounts that benefit the participant without increasing the cost of providing the benefits. The amount of any payment will be deducted from the amount of the death benefit.<sup>581</sup>

## Law Enforcement Officers and Firefighters Survivor Benefits

The Legislature is empowered to provide assistance payments to survivors of eligible peace officers, parole officers, correctional officers, firefighters, chaplains, and other employees due to the hazardous nature of the employees' duties.<sup>582</sup> A surviving spouse may receive \$250,000 from the State. If there is no eligible spouse, the payment will be distributed in equal shares to the children. Without a spouse or children, a surviving parent may receive \$250,000. If there are two surviving parents, each will receive equal shares.<sup>583</sup> Additional benefits may be available from the federal government

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<sup>578</sup> Employees Retirement System Web site, <http://www.ers.state.tx.us/htdocs/insurance/drugs/default.aspx>.

<sup>579</sup> Ibid., <http://www.ers.state.tx.us/htdocs/insurance/dental/default.aspx>.

<sup>580</sup> Ibid., <http://www.ers.state.tx.us/htdocs/insurance/life/default.aspx>.

<sup>581</sup> Texas Insurance Code, Section 1551.254.

<sup>582</sup> Texas Government Code, Sections 615.003 and 615.021.

<sup>583</sup> Ibid., Section 615.022.

through the Public Safety Officer's Benefits Program managed through the U.S. Department of Justice.

A surviving spouse or child is eligible to receive education benefits. An eligible beneficiary may enroll as a full-time student at a public institution of higher education and be exempt from all tuition and fees until the student receives a bachelor's degree or 200 credit hours, whichever comes first. This benefit extends to on-campus housing, meals, and the cost of textbooks.<sup>584</sup>

Additionally, the State will pay for funeral expenses and an annuity to an eligible beneficiary of an employee killed in the line of duty who had not qualified for payment under a retirement plan. The annuity will consist of monthly payments that equal the greater of:

- The monthly payment had the employee survived and retired on the last day of the month (if eligible for retirement); or
- The monthly payment had the employee survived, had been employed by the State for 10 years, had been paid a salary at the lowest amount provided by the General Appropriations Act, and had been eligible to retire under the ERS.<sup>585</sup>

The surviving spouse may receive these payments until:

- The date the surviving spouse remarries;
- The date the surviving spouse becomes eligible to retire under a state retirement plan; or
- The date the surviving spouse becomes eligible for Social Security benefits.<sup>586</sup>

Survivor benefits under this provision are administered by the ERS Board of Trustees and are available to the eligible survivors of the following:

- Individuals who are elected, appointed, or employed as peace officers under Article 2.12, Texas Code of Criminal Procedure, or other law.<sup>587</sup>
- A parole officer employed by the pardons and paroles division of the Texas Department of Criminal Justice who has the duties set out in Texas Government Code, Section 508.001, and the qualifications set out in Texas Government Code, Section 508.113.
- Custodial employees of Texas Department of Criminal Justice.
- Juvenile correctional employees of the Texas Youth Commission.
- Paid aircraft crash and rescue firefighters.
- Any employees of the State or a political or legal subdivision who are subject to certification by the Texas Commission on Fire Protection.

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<sup>584</sup> Texas Government Code, Section 615.0225.

<sup>585</sup> Ibid., Section 615.121 (a).

<sup>586</sup> Ibid., Section 615.121 (b).

<sup>587</sup> Texas Code of Criminal Procedures, Article 2.12.

- Paid jailers.
- Employees of the Department of State Health Services or the Department of Aging and Disability Services who work at the Department of State Health Services' maximum security unit or who provide services for Texas Department of Criminal Justice.<sup>588</sup>

### *Liability Insurance*

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State agencies that own or operate motor vehicles, power equipment, aircraft, or boats are authorized to provide liability insurance to employees. If liability insurance is required but not provided, the employee may be reimbursed from agency funds for the amount spent on such insurance.<sup>589</sup>

### *State Kids Insurance Program*

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The States Kids Insurance Program (SKIP) provides primary and preventative health care to low-income, uninsured children, who are not served by or eligible for other state-assisted health insurance programs.<sup>590</sup>

SKIP is available to state employees participating in the state insurance program who meet all of the following criteria:

- Have children under the age of 19 eligible for state insurance and living with them in Texas.
- Are not eligible for Medicaid.
- Meet eligibility criteria regarding family income and size.
- Are U.S. citizens or legal residents.<sup>591</sup>

If an employee meets the eligibility requirements and his or her children are approved for SKIP, the employee will get a subsidy to pay most of the children's health insurance premiums based on the employee's status (full time or part time), the family size and income, and health care plan and coverage.<sup>592</sup>

State agencies are required to provide employees information regarding SKIP and Medicaid. This must be done at least annually during open enrollment.<sup>593</sup>

### *Related Legislation*

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Table 16-1 contains a list of human resources-related bills that were passed by the 80th Legislature. This may not be a complete list and should be used only as a summary of general issues on insurance that were addressed during the session.

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<sup>588</sup> Texas Government Code, Section 615.003.

<sup>589</sup> Ibid., Section 612.002 (a) and (c).

<sup>590</sup> Texas Health and Safety Code, Section 62.001.

<sup>591</sup> Ibid., Section 62.101 (a).

<sup>592</sup> Ibid., Sections 62.059 (e) and 62.101 (b).

<sup>593</sup> General Appropriations Act (80th Legislature, Regular Session), Article IX, Section 10.03 (a).

Table 16-1

Insurance Related Legislation (80th Legislature) <sup>a</sup>	
Bill Number	Summary
HB 155	Establishes requirements for Employees Retirement System to notify employees before attempting to recover a benefits overpayment.
HB 973	Regarding the eligibility of certain educational employees to participate or be enrolled in certain group health benefit programs.
HB 2365	Regarding financial accountability reporting and accounting for post-employment benefits, and requires state systems to inform its members about the extent of the system's commitments regarding other post-employment benefits.
HB 3470	Regarding the program of supplemental health coverage for individuals who are eligible under the TRICARE military health system offered through the Employees Retirement System.
<sup>a</sup> Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at <a href="http://www.capitol.state.tx.us">www.capitol.state.tx.us</a> .	

## *Section 17* **Retirement**

### ***Retirement Overview***

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The State offers defined benefit and defined contribution retirement plans to employees. Most employees are covered under a defined benefit plan (or traditional pension plan) through the Employees Retirement System (ERS), the Teacher Retirement System (TRS), or the Judicial Retirement System of Texas (Plan I or Plan II). In some cases, eligible employees of institutions of higher education may elect to participate in the Optional Retirement Program (ORP).

Most state employees are covered through ERS. These employees also have the opportunity to contribute to defined contribution plans such as 401(k) or 457(k) accounts. These accounts can supplement the current state retirement plan and offer employees the option of choosing how they will invest their money. The purpose of this chapter is to introduce these plans and provide a brief overview of eligibility and plan benefits.

Retirement benefits for most higher education employees are processed through TRS. Employees who are covered by TRS, by Plan I or Plan II, or who are independent contractors or employees of such contractors are not eligible to participate in the ERS retirement program. For specific information, these employees should be directed to the appropriate agency responsible for administering their retirement plan.

### ***Employees Retirement System (ERS)***

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The ERS retirement program is a defined benefit plan, qualified under Section 401(a) of the Internal Revenue Code. This plan provides a lifetime level of retirement income based on a formula authorized by the State Legislature. The types of benefits payable by the retirement system are:

- Service retirement benefits.
- Disability retirement benefits (occupational or non-occupational disability).
- Death benefits.<sup>594</sup>

State agency employees become members of this program starting on the first of the month after their 90th day of agency employment.<sup>595</sup> Each employee who is a member of ERS is required to pay an annual membership fee.<sup>596</sup> However, since 1973 the Legislature has continued a long-standing tradition of appropriating funds to pay the membership fee.<sup>597</sup>

Additional information regarding retirement can be found through ERS' Web site at [www.ers.state.tx.us](http://www.ers.state.tx.us).

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<sup>594</sup> Texas Government Code, Section 814.001.

<sup>595</sup> Ibid., Section 812.003 (d).

<sup>596</sup> Ibid., Section 815.401.

<sup>597</sup> General Appropriations Act (80th Legislature, Regular Session), Article I, Rider 4, Page I-37.

## Retirement Contributions

Employees participating in ERS must contribute 6 percent of their pay into the system while the State contributes 6.45 percent of an employee's total compensation. Texas Legislators must contribute 8 percent of their pay.<sup>598</sup>

The employing agency is responsible for deducting the amount of this contribution from the employee's pay. The deduction process requires no employee consent since the employee consents to the automatic deduction when he or she becomes a member of the ERS program.<sup>599</sup>

## Withdrawal of Contributions

Upon termination of employment, an individual who is a member of the employee class may receive a refund of his or her contributions to the retirement plan. In order to receive this refund, the member must not resume employment in this class during the 30 days following termination and must file an application for the refund with ERS.<sup>600</sup> Withdrawal of contributions cancels membership in the retirement plan, service credit, and all rights to benefits.<sup>601</sup> The amount of the refund includes total monthly contributions, service credit contributions, and any accumulated interest.<sup>602</sup>

## Effective Date of Retirement

The effective date of a class member's service retirement is the date that the member designates at the time the member applies for retirement, but the date must be the last day of a calendar month.<sup>603</sup>

The effective date of a member's disability retirement is the date designated on the application for retirement filed by or for the member as provided by state statute, but the date must be the last day of a calendar month.<sup>604</sup>

## *Retirement Eligibility*

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### Class Member Eligibility

An employee who is an ERS employee class member and retires from the State of Texas receives a check based on his or her selection of an retirement annuity option. This is called an "annuity."<sup>605</sup> An employee who is an ERS employee class member is eligible to retire and receive an annuity if he or she is at least 60 years old with 5 years of service credit or meets the "rule of 80." The "rule of 80" is met when the sum of the employee's age and amount of service credit equals or exceeds 80. A minimum of five years of service credit is required to "vest" in the system or meet the requirements to be securely qualified to receive a lifetime of retirement annuity.<sup>606</sup>

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<sup>598</sup> Texas Government Code, Sections 815.402 (a) and 815.403.

<sup>599</sup> Ibid., Section 815.402 (g).

<sup>600</sup> Ibid., Sections 812.101 and 812.102.

<sup>601</sup> Ibid., Section 812.103.

<sup>602</sup> Ibid., Section 812.104 (b) .

<sup>603</sup> Ibid., Section 814.003.

<sup>604</sup> Ibid., Section 814.003 (d).

<sup>605</sup> Ibid., Section 814.003 (c).

<sup>606</sup> Ibid., Section 814.104 (a).

## Commissioned Peace Officer and Custodial Officer Eligibility

A member who is at least 55 years old and who has at least 10 years of service credit as a commissioned peace officer engaged in criminal law enforcement activities of the Department of Public Safety, the Alcoholic Beverage Commission, the Parks and Wildlife Department, or the office of inspector general at the Texas Youth Commission, or as a custodial officer, is eligible to retire and receive a service retirement annuity.<sup>607</sup> Custodial Officers are employees of the Texas Department of Criminal Justice, Institutional Division who are certified as having normal duties that require direct contact with inmates or a parole officer or caseworker employed and certified by the Board of Pardons and Paroles or the Department of Criminal Justice.<sup>608</sup>

New Requirement
The 80th Legislature (Regular Session) enacted legislation that added certain employees of the office of inspector general at the Texas Youth Commission to the list of commissioned peace officers eligible for a service retirement annuity.

## Elected Class Eligibility

Membership in an elected class is limited to:

- Members of the State Legislature.
- Persons who hold state offices normally filled by a statewide election and not included for coverage under the Judicial Retirement System of Texas Plan I or Judicial Retirement System of Texas Plan II.
- District and criminal district attorneys (to the extent that they receive salaries from the state general revenue fund).<sup>609</sup>

An employee who is an elected class member of ERS is eligible to retire and collect a retirement annuity if the employee:

- Is at least 60 years old and has at least 8 years of service credit in that class; or
- Is at least 50 years old and has 12 years of service credit in that class.<sup>610</sup>

## *Establishing Service Credit*

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Membership in the ERS' employee class begins on the 91st day after the first day a person is employed or holds office.<sup>611</sup> Employees receive a full month's retirement credit when a retirement

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<sup>607</sup> Texas Government Code, Section 814.104 (b).

<sup>608</sup> Ibid., Section 813.506; and *Commissioned Peace Officer and Custodial Officer*, Employees Retirement System, [http://www.ers.state.tx.us/retirement/cpo\\_co/documents/cpo\\_co\\_booklet.pdf](http://www.ers.state.tx.us/retirement/cpo_co/documents/cpo_co_booklet.pdf).

<sup>609</sup> Texas Government Code, Sections 811.001 (13) and 812.002; and *Retirement Benefits for Members of the Elected Class*, Employees Retirement System of Texas, February 2006.

<sup>610</sup> Texas Government Code, Section 814.102.

<sup>611</sup> Ibid., Section 812.003 (d).

contribution is deposited from a paycheck and reported to ERS.<sup>612</sup> However, service credit toward an employee's eligibility for retirement may be established in other ways. These include the use of annual and sick leave, combined service credit, purchase of service credit, and the transfer of service credit.

### Use of Annual Leave and Sick Leave

Upon retiring, an employee has the option to designate accrued but unused annual leave and sick leave as service credit. Annual leave is credited at the rate of one month of service credit for each 20 days, or 160 hours, of annual leave.<sup>613</sup> In addition, sick leave is credited at the rate of one month of service credit for each 20 days, or 160 hours, of sick leave.<sup>614</sup> However, sick leave does not include credit granted under the agency's sick leave pool or under the Family Medical Leave Act.<sup>615</sup>

The reporting agency must certify the amount of annual and/or sick leave to accrue through the effective month of retirement or death. Certification may not be made more than 90 days prior to or 11 days after the member's retirement date. The agency must notify ERS immediately when any change in the projected annual leave and sick leave will affect the accrual of a month's service credit.<sup>616</sup>

In addition to the additional service credit, employees may receive a lump sum payment for the unused annual leave and may donate unused sick leave to the employer's sick leave pool.<sup>617</sup> Such a donation to the sick leave pool must be made prior to certification of service credit.<sup>618</sup>

Contributing members of TRS who transfer their service credits to ERS at retirement are not eligible to convert their annual and sick leave to ERS service credit.<sup>619</sup>

### Combined Service Credit

Eligible members of ERS may transfer TRS-credited service to ERS and visa versa. The transfer of service takes place at the time a member retires. A person who has membership in two or more retirement systems to which this chapter of the inventory applies is subject to the laws governing each of those systems for determination of the person's eligibility for service retirement benefits from each system. However, for the purpose of determining whether a person meets a system's length-of-service requirements for retirement benefits, the person's combined service credit must be considered as if it were all credited in each system.<sup>620</sup>

A person's combined service credit is useable only in determining eligibility for service retirement benefits and may not be used in determining:

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<sup>612</sup> *Planning Your Retirement*, Employee Retirement System of Texas, October 2005, Page 4.

<sup>613</sup> Texas Government Code, Section 813.511.

<sup>614</sup> *Ibid.*, Section 813.509 (c).

<sup>615</sup> *Ibid.*, Section 813.509 (j).

<sup>616</sup> *Ibid.*, Section 813.509 (f) and (g); and *Certification Instructions*, Employees Retirement System of Texas, January 2002.

<sup>617</sup> Texas Government Code, Sections 661.091 and 661.003 (c).

<sup>618</sup> *Planning Your Retirement*, Employees Retirement System of Texas, October 2005, Page 4.

<sup>619</sup> *Ibid.*, Page 5.

<sup>620</sup> Texas Government Code, Section 814.002 (a).

- Eligibility for disability retirement benefits, death benefits, or any type of benefit other than service retirement benefits.
- The amount of any type of benefit.<sup>621</sup>

### **Purchase of Service Credit**

In addition to the monthly service credit earned by employees, there are four types of service credit that may be purchased by members of the employee class:

#### **Purchase of Refunded Service Credit**

Employees may purchase previously refunded service credit by depositing with ERS the amount refunded plus interest. At least six months must have elapsed since the date of the refund and employee must have membership with ERS or with an entity that participates in the Proportionate Retirement System (PRS).<sup>622</sup>

#### **Purchase of Military Service**

Employees may purchase service credit for military service on a month-for-month basis for up to 60 months. Employees cannot purchase active duty military service if they are eligible for military retirement based on 20 or more years of active military duty or its equivalent. In addition, the employee must not have received a dishonorable discharge.<sup>623</sup>

A member claiming credit in the employee class for military service not previously established shall, for each month of the service, pay a contribution in an amount equal to the greater of the amount that the member contributed for the first full month of membership service that is after the member's date of release from active military duty and that is credited in the retirement system or \$18.<sup>624</sup>

Employees in either the elected class or employee class may not purchase more than 60 months of service credit.<sup>625</sup>

#### **Purchase of Additional Service Credit**

Additional Service Credit (ASC) allows eligible members to purchase up to 36 months of equivalent membership service credit in either the elected class or the employee class if they have at least 10 years of actual membership service of the type of service that the member seeks to establish.<sup>626</sup>

ASC can advance an employee's retirement eligibility date and/or increase the value of the employee's standard annuity upon retirement. Employees must purchase all service for which they may be eligible, such as refunded ERS service, military service, etc., before being allowed to purchase ASC.<sup>627</sup>

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<sup>621</sup> Texas Government Code, Section 803.201 (b).

<sup>622</sup> Ibid., Sections 813.102, 813.104 and 813.504.

<sup>623</sup> Ibid., Sections 813.301, 813.302, and 813.304.

<sup>624</sup> Ibid., Section 813.505.

<sup>625</sup> Ibid., Section 813.301 (b) .

<sup>626</sup> Ibid., Section 813.513.

<sup>627</sup> Texas Administrative Code, Title 1, Section 71.29 (b) (3).

Employees may also buy back TRS service to transfer to ERS at retirement to increase their annuity. The cost of reinstating or purchasing service credit is determined according to the statutes that govern the reinstatement or purchase of the type of service credit in the system in which it is to be reinstated or purchased. All payments for service credit reinstated or purchased must be made before retirement or before a later date, if allowed, for members of the retirement system in which the credit is to be reinstated or purchased. In order to do this, the employee must have at least three years of service credit in the system from which he or she is retiring.<sup>628</sup>

### Service Credit Payment Options

Retirement plan members can purchase service credit from ERS in one of two ways:

- A lump sum payment, such as a personal check; or
- A “rollover” of funds from a retirement account such as a 401(k) or an IRA.

Service credit cannot be purchased through a payroll deduction.

### Transfer of Service Credit

Upon retirement, employees can transfer creditable service between ERS and TRS. To do this, the employee must have at least three years of service credit in the system from which he or she is retiring.<sup>629</sup> The transfer of service that has been actively maintained or reinstated takes place under the rules of the system to which the credit is transferred.

## *Health Insurance Benefits Eligibility*

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A retirement plan member employee is eligible for group health insurance in retirement if:

- The member is at least 65 years old and has 10 years of service credit in the employee class; or
- The sum of the member’s age and amount of service credit equals 80 and the member has at least 10 years of service credit in the employee class.<sup>630</sup>

Employees who are receiving a part-time state contribution (50 percent) for their health insurance when they file for retirement will receive that same part-time contribution when they retire.<sup>631</sup>

Health and other insurance benefits for members and retirees are subject to change based on available state funding. The Texas Legislature determines the level of funding for such benefits and has no continuing obligation to provide those benefits beyond each fiscal year.<sup>632</sup>

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<sup>628</sup> Ibid., Section 805.003.

<sup>629</sup> Ibid., Section 805.002.

<sup>630</sup> Texas Insurance Code, Section 1551.102; and *Planning Your Retirement*, Employees Retirement System of Texas, October 2005, Page 13.

<sup>631</sup> Texas Insurance Code, Section 1551.3195

<sup>632</sup> Employees Retirement System of Texas Web site, <http://www.ers.state.tx.us/insurance/default.aspx>.

New Requirement
The 80th Legislature passed legislation requiring state retirement systems to inform members that they are not obligated to provide benefits beyond existing statutory or legal requirements.

Table 17-1 provides examples of age and service credit combinations as they apply to the “rule of 80.”

Table 17-1

Rule of 80 Example Combinations				
Age	Service Credit at Retirement	Total	Eligible to Retire?	Eligible to Retire with Insurance?
53 years, 5 months	26 years, 7 months	80 years	Yes	Yes
75 years, 6 months	4 years, 6 months	80 years	No	No
49 years, 6 months	30 years, 6 months	80 years	Yes	Yes

Source: Employees Retirement System.

### Insurance Coverage for Survivors

At the time of a retiree’s death, the retiree’s spouse and eligible dependent children may continue the health and dental coverage in which they were enrolled. Additional information concerning insurance coverage for survivors should be directed to the ERS.<sup>633</sup>

### *Optional Retirement Program Service*

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Some employees who work at colleges and institutions of higher education have the choice of paying into a TRS retirement account or an Optional Retirement Program (ORP) governed by the Higher Education Coordinating Board. Employees may use ORP service credit to help them meet the “rule of 80” or “65 and 10” (65 years of age and 10 years of service), but it will not increase their annuity.<sup>634</sup>

Additional information is available through the Higher Education Coordinating Board’s “Overview of TRS and ORP for Employees Eligible to Elect ORP” available online at <http://www.theccb.state.tx.us/reports/PDF/0869.PDF>.

### *Disability Retirement Benefits*

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Two types of disability retirement benefits are available to ERS members; however, benefits are a reduced amount and are not calculated like a standard annuity:

<sup>633</sup> Texas Insurance Code, Section 1551.155; and *Planning Your Retirement*, Employees Retirement System of Texas, October 2005, Page 14.

<sup>634</sup> *Planning Your Retirement*, Employees Retirement System of Texas, October 2005, Page 6.

- Occupational (for example, a commissioned peace officer is injured in the line of duty, resulting in a permanently disabling injury).
- Non-occupational (for example, an employee is diagnosed with a terminal illness and is unable to continue working).<sup>635</sup>

A member is eligible to retire under an occupational disability, regardless of age or amount of service credit. In the case of a non-occupational disability, a member must be currently employed by the State and have 10 years of service credit (ORP credit cannot be used to meet the 10 years of service credit).<sup>636</sup>

### ***Proportionate Service Retirement Program***

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The State provides proportionate retirement benefits to qualified members who have service credit in more than one retirement system. These participating retirement systems are the ERS, the TRS, and the Judicial Retirement System of Texas Plan I and Plan II. Certain municipal employees may also elect to join this program.<sup>637</sup>

A person who has membership in two or more retirement systems is subject to the laws governing each system for determining eligibility for retirement benefits. Each retirement system will only pay benefits based upon the service and salaries established in that system.<sup>638</sup>

Service credit may not be re-established in a municipality or subdivision participating in a state retirement program if the person seeking the credit is excluded from participation by that respective retirement system under Texas Government Code, Section 803.103.

### ***Resumption of State Service by a Retiree***

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Returning to state employment after the employee retires does not affect their ERS retirement annuity, as long as they have waited at least one full calendar month before returning to work. Employees who retired from another statewide retirement system should refer to that system to find out if returning to state employment will affect their annuity.

Retirees must notify their employer that they are a retiree and are no longer eligible to be an active member of the ERS. Both the retiree and his/her employer must notify ERS in writing of the date that the retiree returns to work. An employee taking a position in another class of membership or serving as an independent contractor may continue to receive retirement benefits.<sup>639</sup>

A retirement shall be canceled and membership in a retirement system reinstated if the member holds a position in the class from which he or she retired during the calendar month following retirement. If a person establishes that service credit received after retirement was the result of an oversight or an

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<sup>635</sup> *Overview of Disability Retirement Benefits*, Employees Retirement System of Texas Web site, <http://www.ers.state.tx.us/retirement/disability/overview.aspx>.

<sup>636</sup> Texas Government Code, Section 814.202.

<sup>637</sup> *Ibid.*, Sections 803.101 and 803.102.

<sup>638</sup> *Ibid.*, Section 803.201.

<sup>639</sup> *Ibid.*, Sections 812.204 and 812.202.

error on the part of the employee's department, the member may petition the executive director for relief.<sup>640</sup>

Additional information on return-to-work retirees can be found on the ERS Web site at [www.ers.state.tx.us](http://www.ers.state.tx.us) (see the flyer "*Working for the State after You Retire*").

## ***Death and Survivor Benefits***

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The Death Benefit Plan is for employees who contribute to the ERS retirement fund and have at least 10 years of ERS service credit. A Death Benefit Plan enables employees to choose someone to receive their retirement benefits if they die before they retire under ERS. The benefit is based on an employee's salary and service.

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

- Beneficiary's choice of a life annuity, lump sum payment, or 10-year guaranteed annuity.
- Life annuity – Beneficiary receives a monthly annuity check for the rest of his/her life.
- Lump sum payment – Beneficiary receives a refund of the employee's retirement contributions in a lump sum payment, minus applicable taxes.
- 10-year guaranteed annuity – Beneficiary is paid an annuity once a month for 10 years. (This amount will likely be different from the lifetime annuity amount.)

If a member who is eligible to choose a death benefit dies without selecting a death benefit plan, the designated beneficiary or personal representative of the estate may select a death benefit plan.<sup>641</sup> In lieu of a death benefit plan, a refund of contributions may be elected by the beneficiary or representative of the estate. The designee may use the deceased member's sick and/or annual leave to qualify for making a death benefit plan selection.<sup>642</sup>

### **Survivor Options at Retirement**

Employees who retire under ERS may choose between the standard annuity (with no survivor benefits) or one of five survivor options. Choosing one of these options will permanently reduce the amount of annuity and will further be reduced if taken with a partial lump sum option.

- Equal benefits for beneficiaries.
- 50 percent benefits for beneficiaries.
- Five years of payments for beneficiaries. If retiree dies before they receive five years (60 months) of annuity payments, their beneficiary receives the remainder of those 60 payments.
- Ten years of payments for beneficiaries. If retiree dies before they receive five years (120 months) of annuity payments, their beneficiary receives the remainder of those 120 payments.

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<sup>640</sup> Texas Administrative Code, Title 34, Part 4, Rule 73.7.

<sup>641</sup> Texas Government Code, Section 814.302 (a).

<sup>642</sup> *Ibid.*, Sections 813.509, 813.511, and 814.302.

- 75 percent of benefits for beneficiaries.<sup>643</sup>

Additional information, including detailed explanations of these survivor benefit options, can be found on the ERS Web site at [http://www.ers.state.tx.us/retirement/survivors/survivor\\_options.aspx](http://www.ers.state.tx.us/retirement/survivors/survivor_options.aspx).

## *Deferred Compensation*

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State employees have the opportunity to participate in a deferred compensation plan in addition to an established benefit plan for purposes of retirement. Under such a plan, employees may defer a part of their pay for investment in a qualified “investment product” and will not be taxed on this amount until they receive a distribution from the plan.<sup>644</sup>

An institution of higher education may create and administer a 457 plan. Institutions of higher education may contract with other institutions of higher education to create a single plan for their employees.<sup>645</sup>

The deferred compensation plans also have “catch-up” provisions that allow employees who meet the eligibility requirements to make up for lost time. For state employees, there are two types of plans available: a 401(k) and a 457(k).

### **401(k) Plan**

The 401(k) plan allows employees to defer from 1 percent to 99 percent of 401(k) eligible compensation or \$15,500 in 2007, whichever is less. This plan allows employees to borrow against these funds as well as roll them over to another investment vehicle such as an individual retirement account.

An employee who begins state employment on or after January 1, 2008, automatically participates in a 401(k) plan unless the employee elects not to participate in the plan. The contribution is made by automatic payroll deduction and represents 1 percent of an employee’s pay. Unless otherwise directed by the employee, this contribution is placed in a default investment product selected by the board of trustees for ERS.<sup>646</sup>

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<sup>643</sup> *Planning Your Retirement*, Employees Retirement System of Texas, October 2005, [http://www.ers.state.tx.us/htdocs/retirement/survivors/survivor\\_options.aspx](http://www.ers.state.tx.us/htdocs/retirement/survivors/survivor_options.aspx).

<sup>644</sup> Texas Government Code, Section 609.502.

<sup>645</sup> *Ibid.*, Section 609.702.

<sup>646</sup> *Ibid.*, Sections 659.102 (a) and 609.5025.

New Requirement
The 80th Legislature established provisions for the automatic enrollment of new state employees in a 401(k) plan.

Employees participating in a 401(k) plan under this new legislation may elect to end participation in the 401(k) plan, to contribute to a different investment product, or to contribute a different amount to the plan.<sup>647</sup>

A state agency participating in a 401(k) plan is required to inform new hires of their automatic enrollment in a 401(k) account and their right to opt-out of enrollment. This information should be included as part of the new employee orientation process. State agencies participating in a 401(k) plan shall maintain a record of a new hire's acknowledgement of receipt of information regarding the ability to opt-out of enrollment in a 401(k) plan.<sup>648</sup>

#### 457(k) Plan

The 457(k) plan is a voluntary retirement plan that allows employees to defer a dollar amount of their salary toward retirement savings and pay taxes later on the contributions and earnings. Employees decide how to invest their contributions among choices offered in the plan. Employees must elect a dollar amount for a 457 plan with a minimum of \$20 per month. Deferrals must not exceed the yearly maximum set by the IRS. For 2007, the maximum deferral is \$15,500.

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<sup>647</sup> Texas Government Code, Section 609.5025.

<sup>648</sup> *Ibid.*, Section 609.5025 (h).

## Related Legislation

Table 17-2 contains a list of bills that were passed by the 80th Legislature related to retirement. This may not be a complete list and should be used only as a summary of general issues on this subject that were addressed during the session.

Table 17-2

Retirement Related Legislation (80th Legislature)	
Bill Number	Summary
HB 957	Provides for a 1 percent automatic participation in a 401(k) deferred compensation plan for all new state agency employees unless the employee chooses to opt out of the program.
HB 2365	Allows the State to report "other post-employment benefits" on a pay-as-you-go basis. Also requires state retirement systems to inform their members that they are not obligated to provide benefits beyond existing statutory, constitutional, or legal requirements.
HB 2427	Regarding the continuation and functions of the TRS, requiring TRS to provide equal access to retirement counseling services across the state, and restructuring TRS' disability retirement program.
HB 3322	Regarding a plan-to-plan transfer of certain assets from the TexaSaver 457 plan administered by the ERS to a 457 plan created by an institution of higher education.
SB 103	Relates to the inclusion of inspector general positions commissioned by the Youth Commission as officers for the purposes of service retirement annuities.
SB 1846	Regarding the funding for benefits provided under the TRS.
SB 1877	Regarding the determination of compensation under the TRS.
<sup>a</sup> Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at <a href="http://www.capitol.state.tx.us">www.capitol.state.tx.us</a> .	

*Section 18*  
***Additional Benefits***

***Awards and Gifts***

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State agencies are authorized to purchase and present awards to employees for professional achievement or outstanding service. The cost of each award must not exceed \$100.<sup>649</sup>

There is no limit on the number of awards per employee that may be provided during a fiscal year. The only limitation is on the amount of the award.

Savings bonds with a maturity value in excess of the award maximum may be given as a gift as long as the purchase price does not exceed the award maximum.<sup>650</sup>

State agencies that have established a volunteer program may also present awards for special achievements or outstanding service. Such awards must not exceed a value of \$50 and are limited to pins, certificates, plaques, or other similar awards.<sup>651</sup>

Table 18-1 provides a list of State Auditor’s Office’s Human Resources Questions-and-Answers related to awards for outstanding performance.

Table 18-1

Awards for Outstanding Performance Related State Auditor Resources <sup>a</sup>		
Type	Topic	Reference
HR Question	Whether there is a limit on the number of awards for outstanding service or professional achievement that can be given to an employee per fiscal year.	10/13/2006
HR Question	Regarding the amount an agency may spend to award a volunteer in recognition of a special achievement or outstanding service as part of a volunteer program.	5/1/2006
<sup>a</sup> Complete references can be found at: HR questions: <a href="http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html">http://sao.hr.state.tx.us/Rules/hrquestionsandanswers.html</a> .		

***Employee Health and Wellness Programs***

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**Health Fitness and Education Programs**

A state agency may use available funds for health fitness education and activities and other costs related to health fitness. In addition, available facilities may be used for health fitness programs.<sup>652</sup>

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<sup>649</sup> Texas Government Code, Section 2113.201.

<sup>650</sup> Letter Opinion, Texas Office of the Attorney General, No. 96-132 (1996).

<sup>651</sup> Texas Government Code, Section 2113.202.

<sup>652</sup> *Ibid.*, Section 664.004.

Such programs are designed to encourage and create a condition of health fitness in employees and serve important purposes including:

- An understanding and diminution of the risk factors associated with society's most debilitating diseases.
- The development of greater work productivity and capacity.
- A reduction in absenteeism.
- A reduction of health insurance costs.
- An increase in the general level of fitness.<sup>653</sup>

State agencies are encouraged to enter into agreements with other state, local, or federal agencies to present, join in presenting, or participate in health fitness education or activity programs for state employees.<sup>654</sup>

### Wellness Programs

The Department of State Health Services shall designate a wellness coordinator to create and develop a model statewide wellness program to improve the health and wellness of state employees.<sup>655</sup>

The statewide wellness coordinator is responsible for:

- Coordinating with other agencies that administer a health benefits program to develop the model wellness program, preventing duplication of efforts, providing information and resources to employees, and encouraging the use of wellness benefits included in the health benefits program.
- Maintaining a set of Internet links to health resources for use by employees.
- Designing an outreach campaign to educate employees about health and fitness-related resources.
- Studying the implementation and participation rates of state agency worksite wellness programs and report the findings to the legislature,
- Organizing an annual conference for all state agency wellness councils.<sup>656</sup>

State agencies must designate an employee to serve as the wellness liaison between the agency and the statewide wellness coordinator. A state agency may implement a wellness program based on the model program or components of the model program.<sup>657</sup>

The Executive Commissioner of the Health and Human Services Commission shall create a worksite wellness advisory board consisting of 13 members.<sup>658</sup> The board is responsible for advising the

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<sup>653</sup> Texas Government Code , Section 664.002.

<sup>654</sup> Ibid., Section 664.005.

<sup>655</sup> Ibid., Section 664.053 (a).

<sup>656</sup> Ibid., Section 664.053 (b).

<sup>657</sup> Ibid., Section 664.053 (d) and (e).

<sup>658</sup> Ibid., Section 664.054 (a).

Department of State Health Services, Executive Commissioner of the Health and Human Services Commission, and wellness coordinator on worksite wellness issues including:

- Funding and resource development for worksite wellness programs.
- Identifying food service vendors that successfully market healthy foods.
- Best practices for worksite wellness used by the private sector.
- Worksite wellness features and architecture for new state buildings similar to those used by the private sector.<sup>659</sup>

A state agency may develop a wellness council composed of employees and managers to promote worksite wellness. The worksite council may undertake the following:

- Increasing employee interest in worksite wellness.
- Developing and implementing policies to improve agency infrastructure to allow for increased worksite wellness.
- Involving employees in worksite wellness programs.<sup>660</sup>

The wellness council may identify best practices for worksite wellness and report the practices to the wellness advisory board annually.<sup>661</sup>

A state agency may allow its employees to participate in wellness council activities for two or more hours each month.<sup>662</sup>

As part of agency wellness policies, a state agency may:

- Allow each employee 30 minutes during normal working hours to exercise three times a week.
- Allow all employees to attend on-site wellness seminars when offered.
- Provide eight hours of additional leave time each year to an employee who receives a physical examination and completes either an online health risk assessment tool or a similar health risk assessment.<sup>663</sup>

New Requirement
The 80th Legislature established provisions for the creation of a Worksite Wellness Advisory board, a statewide wellness coordinator, the creation of new wellness leave benefits and the establishment of wellness liaisons at state agencies and institutions of higher education.

<sup>659</sup> Texas Government Code, Section 664.059.

<sup>660</sup> Ibid., Section 664.060 (a) and (b).

<sup>661</sup> Ibid., Section 664.060 (f).

<sup>662</sup> Ibid., Section 664.060 (d).

<sup>663</sup> Ibid., Section 664.061.

## Health Services Pilot Program

To reduce the cost of health care and increase the wellness and productivity of state employees, the Employees Retirement System shall develop and implement a pilot program to provide on-site health services at a selected location to state employees who choose to use the services.<sup>664</sup>

The pilot program will provide the following:

- A licensed advanced practice nurse or licensed physician assistant who is employed or contracted by the state who will be located at a state office complex.
- A licensed physician who is employed by a state governmental entity for purposes other than the pilot program or is contracted by the State who will perform supervisory functions.
- Appropriate office space and equipment to provide basic medical care to employees.
- Professional liability insurance.<sup>665</sup>

The Employees Retirement System may continue or expand the pilot program to cover more state office complexes if the pilot program proves beneficial in meeting the health care needs of state employees and is economically beneficial.<sup>666</sup>

New Requirement
The 80th Legislature amended legislation regarding pilot programs to provide health services to state employees in state office complexes.

## Employee Assistance Programs

An employee assistance program (EAP) offers employees help with personal concerns that may adversely affect job performance. An EAP is discretionary and is not required to be provided by a state agency or institution of higher education.

## *Employee Break and Meal Periods*

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There is no state or federal law that requires or prohibits the establishment of breaks or meal periods. State agencies and institutions of higher education are free to generate their own policies in this area. Meal periods of 30 minutes or longer are not considered work time.<sup>667</sup>

## *Child Care Services*

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The Texas Facilities Commission shall develop a child care program that provides child care services for state employees. The Texas Facilities Commission may establish methods to administer and supervise the child care program.<sup>668</sup>

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<sup>664</sup> Texas Government Code, Section 671.001 (a).

<sup>665</sup> Ibid., Section 671.001 (b).

<sup>666</sup> Ibid., Section 671.001 (e).

<sup>667</sup> Title 29, Code of Federal Regulations, Sections 785.18 and 785.19.

The Texas Facilities Commission shall appoint a child care advisory committee composed of individuals who are interested in child care services for state employees. The committee shall advise the Texas Facilities Commission on the location, size, and design of the child care facilities and the child care facility curriculum.<sup>669</sup> The Texas Facilities Commission shall report to the Legislature the development and progress of the child care program and describe additional child care services needed by state employees.<sup>670</sup>

To establish a child care facility, the Texas Facilities Commission shall acquire property or build, renovate, repair, or equip a building that the State owns.<sup>671</sup> The Texas Facilities Commission shall set the number of children that a child care facility may serve.<sup>672</sup> The Texas Facilities Commission shall monitor the activities and operations of a child care facility by conducting regular visits during operating hours to investigate, inspect, and evaluate the services provided.<sup>673</sup>

The State may enter into an agreement with a state employee to reduce the employee's salary by an amount to be paid for child care expenses. A state employee may request the salary reduction agreement by filing a written request for the reduction with the agency with which the employee is employed.<sup>674</sup>

### *Clothing or Cleaning Allowances*

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Clothing or cleaning allowances are authorized for certain commissioned officers assigned to the Alcoholic Beverage Commission<sup>675</sup>, the Department of Public Safety<sup>676</sup>, and the Parks and Wildlife Department<sup>677</sup> as well as specific employees working at the Department of Criminal Justice<sup>678</sup> and Department of Transportation.<sup>679</sup>

### *Moving and Storage Expenses*

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A state agency may use appropriated money to pay expenses incurred in moving the household property of state employees who are:

- Reassigned from one headquarters to another if the agency determines that the best interests of the State will be served and the distance between headquarters is at least 25 miles; or

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<sup>668</sup> Texas Government Code, Section 663.101.

<sup>669</sup> Ibid., Section 663.051 (a) and (c).

<sup>670</sup> Ibid., Section 663.052.

<sup>671</sup> Ibid., Section 663.104.

<sup>672</sup> Ibid., Section 663.107.

<sup>673</sup> Ibid., Section 663.109.

<sup>674</sup> Ibid., Section 610.011.

<sup>675</sup> General Appropriations Act (80th Legislature, Regular Session), Article V, Rider 9; Page V-8.

<sup>676</sup> Ibid, Article V, Rider 29, Page V-52.

<sup>677</sup> Ibid, Article VI, Rider 10, Page VI-33.

<sup>678</sup> Ibid, Article V, Rider 16, Page V-15.

<sup>679</sup> Ibid, Article VII, Rider 19, Page VII-22.

- Employed at a facility that is being closed or is undergoing a reduction in force if the employee accepts a position with the agency at another headquarters that is at least 25 miles from the facility that is being closed or undergoing a reduction in force.<sup>680</sup>

A state agency may use State-owned equipment to move an employee if it is available. If not, the agency may pay for the services of a transportation company or self-service vehicles to make the move.<sup>681</sup>

A state employee is entitled to be reimbursed for expenses incurred in traveling by personally owned or a leased motor vehicle for a move.<sup>682</sup>

A state agency may also pay for or reimburse a state employee for storage expenses incurred if the employee is required to live in state-owned housing and the housing is not available when the move is made.<sup>683</sup>

### ***Employee Meal Authorization***

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State agencies, including the Department of Criminal Justice, the Department of Aging and Disability Services, the Department of State Health Services, the Texas Youth Commission, the School for the Blind and Visually Impaired, and the School for the Deaf, may provide meals to employees working in institutional settings. These agencies may charge employees a fee that does not exceed the cost of food preparation.<sup>684</sup>

The Department of State Health Services and the Department of Aging and Disability Services may provide free meals to employees of state mental health and mental retardation facilities who are required to eat meals with clients.<sup>685</sup>

### ***Medical Services***

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Additional medical services and benefits are offered to select state employees.

#### **Health and Human Services Agencies**

Appropriated money may be expended for any immunization that is required of the Department of State Health Services employees at risk in performance of their duties.<sup>686</sup>

The Department of State Health Services and Department of Aging and Disability Services may expend appropriated money for providing first aid or other minor medical attention to employees injured during the course of their employment and for the repair and/or replacement of employees' personal property that is damaged or destroyed during the course of their employment, provided that

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<sup>680</sup> Texas Government Code, Section 2113.204 (a).

<sup>681</sup> Ibid., Section 2113.204 (b).

<sup>682</sup> Ibid., Section 2113.204 (c).

<sup>683</sup> Ibid., Section 2113.204 (d).

<sup>684</sup> General Appropriations Act (80th Legislature, Regular Session), Article IX, Section 13.01.

<sup>685</sup> Ibid., Article II, Section 28.

<sup>686</sup> Ibid., Article II, Rider 33, Page II-54.

such items are medically prescribed equipment. Expenditures may not exceed \$500 per employee per incident.<sup>687</sup>

### **Department of Criminal Justice**

The Department of Criminal Justice may use appropriated funds to provide medical attention and hospitalization by correctional medical staff and the correctional hospital facilities, or to pay necessary medical expenses for employees injured while performing the duties of any hazardous position that are not reimbursed by workers' compensation and/or employees' state insurance. Appropriated funds may also be used for medical tests and procedures on employees that are required by federal or state law or regulations when the tests or procedures are required as a result of the employee's job assignment or when considered necessary due to potential or existing litigation.<sup>688</sup>

### **Department of Public Safety**

The Department of Public Safety may use appropriated funds for drugs, medical, hospital, laboratory, and funeral costs of law enforcement employees or other employees performing duties involving unusual risk when injury or death occurs in the performance of such duties. Appropriated funds shall not be expended for drugs, medical, hospital, laboratory, or funeral costs of employees who are not actively engaged in the performance of law enforcement or other hazardous duties or of law enforcement employees when injury or death occurs in the performance of clerical or office duties as distinguished from law enforcement or other duties involving unusual risk. Appropriated funds may also be expended for physical examinations and testing when such examinations and tests are a condition of employment or exposure to infectious diseases or hazardous materials occurs in the line of duty.<sup>689</sup>

### **Texas Facilities Commission**

The Texas Facilities Commission is authorized to pay for medical testing for employees or prospective employees that work in high-risk environment areas (for example, asbestos removal, sewage). Appropriated funds may also be expended for immunizations that are required of employees at risk in the performance of their duties. Such testing must be approved by the executive director.<sup>690</sup>

## ***Memberships In and Dues for Professional Organizations***

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With the exception of a state library, a state agency may not use appropriated money to pay for membership in or dues for a professional organization unless the administrative head of the agency or designee reviews and approves the expenditure.<sup>691</sup>

Table 18-2 provides a list of Office of the Attorney General Opinion letters related to the payment of professional fees for state employees.

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<sup>687</sup> General Appropriations Act (80th Legislature, Regular Session), Article II, Section 3.

<sup>688</sup> Ibid., Article V, Rider 17, Page V-15.

<sup>689</sup> Ibid., Article V, Rider 15, Page V-49.

<sup>690</sup> Ibid., Article I, Rider 6, Page I-18.

<sup>691</sup> Texas Government Code, Section 2113.104.

Table 18-2

Payment of Professional Fees Related Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
JM-1063	Whether a state agency may pay the temporary fees assessed against accountants and engineers in its employ.
MW-251	Whether the State can pay notary license fees of its employees.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

### *Tuition and Mandatory Fees Assistance*

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Members of the State's military forces are authorized to receive tuition and mandatory fees assistance for vocational, technical, undergraduate, or graduate level courses offered by public or private institutions of higher education. This assistance may not exceed 12 semester credit hours in any semester or more than 5 academic years or 10 semesters, whichever comes first.

Tuition and mandatory fees is provided to eligible members to encourage voluntary membership, to improve the education level of its members, to diversify the composition of the forces, and to enhance the state's workforce.

To be eligible, a person must:

- Be an enlisted member.
- Be a warrant officer in grades one through three.
- Be a commissioned officer in grades Second Lieutenant through Captain.
- Meet any additional qualifications established by the Adjutant General.<sup>692</sup>

### *State-Owned Housing*

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There are certain situations in which the State provides housing for employees. This housing may be at a reduced cost or at no cost to employees based upon provisions in the General Appropriations Act. Agencies that have authority to provide state housing to certain individuals include the Texas Facilities Commission (formerly the Texas Building and Procurement Commission),<sup>693</sup> Department of Criminal Justice,<sup>694</sup> Texas Youth Commission,<sup>695</sup> and the Parks and Wildlife Department.<sup>696</sup>

<sup>692</sup> Texas Government Code, Section 431.090.

<sup>693</sup> General Appropriations Act (80th Legislature, Regular Session) Article I, Rider 13, Page I-19.

<sup>694</sup> Ibid, Article V, Rider 15, Page V-15.

<sup>695</sup> Ibid, Article V, Rider 14, Page V-62.

<sup>696</sup> Ibid, Article VI, Rider 12, Page VI-34.

Each state agency that provides employee housing shall report to the Legislature annually all employees who receive agency housing, the fair market rental value of housing supplied by the agency, and the amount of revenue recovered to meet mandated goals.<sup>697</sup>

### ***Related Legislation***

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Table 18-3 contains a list of human resources-related bills that were passed by the 80th Legislature. This may not be a complete list and should be used only as a summary of general issues on benefits that were addressed during the session.

Table 18-3

<b>Other Benefits Related Legislation (80th Legislature) <sup>a</sup></b>	
Bill Number	Summary
HB 125	Regarding tuition and fee exemptions for the children of certain military personnel.
HB 741	Regarding an exemption from tuition and mandatory fees at public institutions of higher education for children of certain volunteer peace officers who are killed or disabled in the line of duty.
HB 1260	Exempts certain military personnel from certain state and local governmental fees.
HB 1297	Creates a Worksite Wellness Advisory Board; establishes a statewide wellness coordinator; creates new leave benefits; and requires state agencies and institutions of higher education to designate a wellness liaison.
SB 457	Regarding the eligibility for education benefits of surviving minor children of certain public employees killed in the line of duty.
SB 1761	Regarding a pilot program to provide health services to state employees in state office complexes.
<sup>a</sup> Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at <a href="http://www.capitol.state.tx.us">www.capitol.state.tx.us</a> .	

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<sup>697</sup> General Appropriations Act (80th Legislature, Regular Session), Article IX, Section 11.05(c).

## *Section 19* *Training*

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

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State agencies shall provide newly hired employees with educational information on AIDS and HIV. Additionally, state agencies must distribute this information annually to all employees. This information should include:

- Methods of transmission and prevention of HIV infection;
- State laws related to the transmission of HIV infection; and
- Conduct that may result in the transmission of HIV infection.<sup>698</sup>
- Workplace guidelines should also be adopted concerning persons with AIDS and HIV infection.<sup>699</sup>

State agencies shall also provide HIV education for clients, inmates, patients or residents of treatment, educational, correctional, or residential facilities under the agency's jurisdiction.<sup>700</sup>

State agencies are also required to develop and implement guidelines regarding the confidentiality of AIDS and HIV-related medical information.<sup>701</sup>

### *Correctional and Juvenile Correctional Officers Training*

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The Department of Criminal Justice shall provide at least 284 hours of training for new correctional officers.<sup>702</sup> The Texas Youth Commission shall provide at least 300 hours of training for juvenile correctional officers.<sup>703</sup>

New Requirement
The 80th Legislature established minimum training hours for juvenile correctional officers.

### *Equal Employment Opportunity (EEO) Compliance Training*

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State agencies and institutions of higher education that receive three or more discrimination complaints with merit in a fiscal year must provide comprehensive equal employment opportunity

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<sup>698</sup> Health and Safety Code, Chapter 85, Section 111.

<sup>699</sup> Ibid., Section 112.

<sup>700</sup> Ibid., Section 114.

<sup>701</sup> Ibid., Section 115.

<sup>702</sup> General Appropriations Act (80th Legislature), Article V, Rider 52, Page V-21.

<sup>703</sup> Human Resources Code, Section 61.0356.

training to managers and supervisors. The training shall be provided by the Civil Rights Division of the Texas Workforce Commission or by a person or agency approved by the Civil Rights Division. If the training is not provided by the Civil Rights Division, documentation verifying this training must be provided to the Civil Rights Division. The documentation should include the dates that the training was provided, the names of the persons attending the training, an agenda for the training program, and the name of the entity or person providing the training. The minimum standards for training are determined by the Texas Workforce Commission.<sup>704</sup>

### ***Equal Employment Opportunity (EEO) Standards Training***

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Each state agency and institution of higher education is required to provide training to each new employee on policies and procedures related to employment discrimination and sexual harassment no later than 30 days after the date of hire. The minimum standards for the training are determined by the Texas Workforce Commission. Each state agency shall require an employee of the agency who completes the training to sign a statement verifying the employee's completion of the training program. The agency shall file the statement in the employee's personnel file.

Additional employment discrimination and sexual harassment training is required for each employee every two years after employment. The minimum standards for the training are determined by the Texas Workforce Commission. Each state agency shall require an employee of the agency who completes the training to sign a statement verifying the employee's completion of the training program. The agency shall file the statement in the employee's personnel file.<sup>705</sup>

### ***Training and Education Programs***

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A state agency may require an employee to attend a training or education program if the training and education is related to the employee's duties or prospective duties.<sup>706</sup>

A state agency may spend appropriated funds to pay the salary, tuition and other fees, travel and living expenses, training expenses, expense of training materials, and other necessary expenses of an instructor, student, or other participant in a training or education program.<sup>707</sup>

A state agency shall adopt rules relating to the eligibility of employees for training and education supported by the agency, as well as rules relating to the obligations assumed by the employees receiving the training and education.<sup>708</sup>

A state agency may contract with another state, local, or federal department, agency, or institution of higher education to train or educate its employees or may join in presenting a training or educational program.<sup>709</sup>

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<sup>704</sup> Texas Labor Code, Section 21.556; and Texas Administrative Code, Title 40, Section 819.25.

<sup>705</sup> Texas Labor Code, Section 21.010; and Texas Administrative Code, Title 40, Section 819.24.

<sup>706</sup> Texas Government Code, Section 656.045.

<sup>707</sup> Ibid., Section 656.047.

<sup>708</sup> Ibid., Section 656.048.

<sup>709</sup> Ibid., Section 656.049.

## *Training Policy Requirements*

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The State Employees Training Act authorizes a state agency or an institution of higher education to use public funds to provide training to state employees. Such training is intended to be applicable to current or prospective duty assignments.<sup>710</sup> The Governor's Office has provided general guidelines for the approval of the following:

- College degree programs, both undergraduate and graduate.
- Interagency training.
- Out-of-agency training.
- Internship training.<sup>711</sup>

A state agency may use public funds for a given fiscal year to pay expenses for training if it occurs during the fiscal year. To the extent that it is cost-effective, a state agency may use money appropriated for a particular fiscal year to pay expenses for training that will occur partly or entirely during a different fiscal year.<sup>712</sup> A state agency's training and educational program may include the following:

- Preparing for technological and legal developments.
- Increasing work capabilities.
- Increasing the number of qualified employees in areas designated by institutions of higher education as having an acute faculty shortage.
- Increasing the competence of state employees.<sup>713</sup>

Agencies and institutions of higher education must adopt a policy that requires training to specifically relate to an employee's duties before funds may be expended.<sup>714</sup> If a state employee receives training that is paid for by a state agency, and during the training period the employee does not perform their regular duties for three or more months as a result of the training, the agency shall require the employee to agree, in writing before the training begins to certain conditions. For an employee, the conditions state that they must:

- Work for the agency for at least one month following training, for each month of the training period.

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<sup>710</sup> Texas Government Code, Section 656.044.

<sup>711</sup> Opinion, Texas Office of the Attorney General, No. MW-116 and No. M-1141; and Texas Government Code, Section 656.046; *See also* Official Memorandum from the Governor's Office: "Implementation of State Employees Training Act of 1969 (S.B. 653)," October 31, 1969.

<sup>712</sup> Texas Government Code, Section 2113.205 (a).

<sup>713</sup> *Ibid.*, Section 656.046.

<sup>714</sup> *Ibid.*, Section 656.102.

- Reimburse the State for all costs related to the training, including salary for hours not considered vacation or compensatory leave.<sup>715</sup>
- If a state employee does not provide the required services or reimburse the State for all costs associated with the training, the employee is liable to the state agency for all costs associated with training and for the agency's expenses incurred in obtaining payment, including attorney fees.<sup>716</sup>

These requirements may be waived by the agency or institution of higher education if it is in the best interest of the agency or institution or is warranted because of personal hardship.<sup>717</sup>

### *Additional Information*

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Table 19-1 includes a list of opinion letters from the Attorney General's Office related to the training of state employees.

Table 19-1

Training Related Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
GA-0281	Whether the Texas Workforce Commission is properly interpreting the Equal Employment Opportunity training requirement of the Texas Labor Code, Section 21.556.
LO 90-086	Whether the Polygraph Examiners Board may allow its executive director and its investigator to maintain their peace officer licenses by meeting the continuing education requirements during their working hours.
M-1141	Regarding the construction of Article 6252-11a, Texas Civil Statutes relating to programs for training and education of state administrators and employees.
MW-116	Regarding the payment of tuition fees under the State Employees Training Act.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

<sup>715</sup> Texas Government Code, Section 656.103 (a).

<sup>716</sup> Ibid., Section 656.104.

<sup>717</sup> Ibid., Section 656.103 (c).

Table 19-2 contains a list of human resource related bills that were passes by the 80th Legislature related to training. This may not be a complete list and should be used only as a summary of general issues on this subject that were addressed during the session.

Table 19-2

Training Related Legislation (80th Legislature) <sup>a</sup>	
Bill Number	Summary
SB 103	Relates to the Texas Youth Commission, at will employment, minimal training for juvenile correctional officers, requirements for annual performance evaluations, and the treatment of commission employees who cooperate with an independent ombudsman.
<sup>a</sup> Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at <a href="http://www.capitol.state.tx.us">www.capitol.state.tx.us</a> .	

*Section 20*  
***Unemployment Insurance Compensation***

***Overview***

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Unemployment insurance compensation is an insurance program paid by the employer. This program provides compensation to workers, while they are seeking another job, who became unemployed through no fault of their own. With few exceptions, state employees are covered by unemployment insurance in Texas.<sup>718</sup> The Texas Workforce Commission (Commission) is the agency responsible for managing the State's Unemployment Insurance Compensation programs.

The Commission supplies employers, without cost, printed notices that provide general information about filing a claim for unemployment benefits. A state agency or institution of higher education shall post and maintain the notices in places accessible to all employees.<sup>719</sup>

***Reimbursements to the Unemployment Compensation Fund***

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The State has elected to reimburse the unemployment compensation fund administered by the Commission for benefits paid to former employees rather than to pay taxes into the fund.<sup>720</sup> If a claim is approved for payment, a state agency will be billed on a quarterly basis for all benefits based on wages it reported during the base period of the claim.<sup>721</sup> In general, a base period refers to the first four of the last five completed calendar quarters that an employee worked for an organization. The beginning and ending date of the base period will change based upon an employee's work history.

State agencies and institutions of higher education may elect to pay reimbursements for benefits instead of contributions.<sup>722</sup> A reimbursing employer shall pay the reimbursement to the Commission according to the provisions of applicable laws and the Commission's rules.<sup>723</sup>

***Claiming Unemployment Benefit***

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To claim unemployment benefits, claimants must register for work at a state employment office. The claimant's registration for work gives the Commission an opportunity to help the claimant find a job.<sup>724</sup> After registering for work, individuals may then file an initial claim for unemployment compensation showing the name of the employer for whom they worked most recently and the reason for their unemployment.

A notice of the initial claim is mailed to the most recent employer named on the claim. The law requires employers to respond to the notice of initial claim within 14 days of the mailing date of the

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<sup>718</sup> Texas Labor Code, Section 201.063.

<sup>719</sup> *Ibid.*, Section 208.001.

<sup>720</sup> *Ibid.*, Sections 201.011 and 205.001.

<sup>721</sup> *Ibid.*, Section 205.013.

<sup>722</sup> *Ibid.*, Section 205.001.

<sup>723</sup> *Ibid.*, Section 205.012.

<sup>724</sup> *Ibid.*, Section 208.001.

claim. A failure to respond to the claim in a timely manner results in a waiver of all rights in connection with the claim.<sup>725</sup>

### ***Benefit Eligibility***

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To receive unemployment benefits, claimants must:

- Have registered for work at an employment office and continue to report the status of a work search to an employment office.
- Have filed a claim for benefits.
- Be able to work and be available for work.
- For the individual's base period, have benefit wage credits in at least two calendar quarters and in an amount not less than 37 times the individual's benefit amount.
- Have earned wages totaling at least six times the claimants' weekly benefit amount since the beginning date of their most recent prior benefit year.
- Be totally or partially unemployed for a waiting period of at least seven consecutive days.
- Participate in re-employment activities, such as a job search assistance service, if the individual has been determined, according to a profiling system established by the commission, to be likely to exhaust eligibility for regular benefits and needs those services to obtain new employment. However, if the individual has completed participation in such a service or there is reasonable cause for the individual's failure to participate in those services this may be waived.<sup>726</sup>

### ***Unemployment Benefits***

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Unemployment benefits are based on the wages reported to the Commission by employers during the base period of the initial claim. In general, a base period refers to the first four of the last five completed calendar quarters that an employee worked for an organization. The beginning and ending date of the base period will change based upon an employee's work history. Individuals precluded from working during a major part of a calendar year because of a medically verifiable injury or illness may have their base period calculated differently.<sup>727</sup>

These wages are known as the "benefit wage credit." These wages are the sum of all quarters' wages reported by an employer, or compiled by the Commission from the best information obtained, and are used to determine an individual's right to benefits.<sup>728</sup>

### ***Payment of Benefits***

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An eligible individual who is totally unemployed in a benefit period is entitled to benefits for that benefit period at the rate of 1/25 of the past wages received during the quarter in the individual's base

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<sup>725</sup> Texas Labor Code, Sections 208.003 and 208.004.

<sup>726</sup> Ibid., Section 207.021.

<sup>727</sup> Ibid., Section 201.011.

<sup>728</sup> Ibid., Section 207.004.

period in which wages were the highest. This means that the Commission divides the highest quarter's total earnings by 25 to get an employee's weekly benefit amount.<sup>729</sup> An individual who is partially unemployed may still be eligible for benefits at a reduced amount.<sup>730</sup>

The maximum amount of benefits payable to an eligible individual during a benefit year is the smaller of 26 times the weekly amount or 27 percent of the individual's wages in the base period.<sup>731</sup> Individuals who exhaust their regular benefits may apply for extended benefits if such benefits are available.<sup>732</sup>

Extended benefits are additional payments of unemployment benefits equal to 50 percent of an individual's regular benefits and may be made to a claimant during a period of high unemployment after all of his or her regular unemployment benefits are exhausted.<sup>733</sup> The period of time during which these additional payments may be made is called an "extended benefit period." Whether an extended benefit period exists is determined by several statewide factors.<sup>734</sup>

### *Disqualification for Benefits*

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An otherwise qualified claimant can be disqualified for unemployment benefits if the claimant quit or was fired for gross misconduct.<sup>735</sup> A claimant will not be disqualified if he or she left work due to a medically verifiable illness (claimant or child), injury, disability or pregnancy, or if an involuntary separation was for any of the following reasons:

- A work-related reason that made the individual's separation from employment urgent, compelling, and necessary.
- The individual leaves the workplace to protect himself or herself from family violence or stalking.
- The individual leaves the workplace to care for his or her terminally ill spouse, as evidenced by a physician's statement or other medical documentation, in which reasonable, alternative care is not available.<sup>736</sup>

### *Coverage for State Employees Working Outside the State*

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The State may enter into agreements with agencies of other states to cover an employee who performs his or her duties outside of Texas.<sup>737</sup> If the Commission is unable to execute a reciprocal agreement with another state, the employing Texas state agency shall become a reimbursing employer if permitted by the laws of the state in which the employee works. If the agency is not permitted to be a

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<sup>729</sup> Texas Labor Code, Section 207.002.

<sup>730</sup> Ibid., Section 207.003.

<sup>731</sup> Ibid., Section 207.005.

<sup>732</sup> Ibid., Section 209.041.

<sup>733</sup> Ibid., Section 209.042.

<sup>734</sup> Ibid., Sections 209.021, 209.022, and 209.024.

<sup>735</sup> Ibid., Sections 207.044 and 207.045.

<sup>736</sup> Ibid., Section 207.046.

<sup>737</sup> Ibid., Sections 211.001 and 211.002.

reimbursing employer, it may pay the required contributions for that employee from funds available for that purpose.<sup>738</sup>

### *Eligibility of Certain Disabled Persons*

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Permanently disabled individuals who receive Social Security Disability Insurance (SSDI) and can work only part-time may be eligible for unemployment insurance benefits if they meet certain conditions. Specifically, these individuals must:

- Be able to work and be available for work.
- Be unable to work full time.
- Have worked part-time during a substantial part of the individual's base period.
- Seek part-time work consistent with the limitations imposed by the individual's disability.
- Receive disability insurance benefits under Title 42, United States Code, Section 423.<sup>739</sup>

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<sup>738</sup> Texas Labor Code, Section 205.042.

<sup>739</sup> *Ibid.*, Section 207.0211.

## Related Legislation

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Table 20-1 contains a list of unemployment related bills that were passed by the 80th Legislature. This may not be a complete list and should be used only as a summary of the general issues on unemployment compensation subject that were addressed during the session.

Table 20-1

Unemployment Compensation Related Legislation (80th Legislature) <sup>a</sup>	
Bill Number	Summary
HB 2120	Relates to the computing of unemployment compensation benefits.
SB 228	Relates to suits affecting the parent-child relationship, including proceedings for the establishment, modification, and enforcement of child support; parentage; possession of and access to a child; and withholding of unemployment benefits.
SB 1619	Relates to the confidentiality of certain employment information, including unemployment compensation information.
<sup>a</sup> Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at <a href="http://www.capitol.state.tx.us">www.capitol.state.tx.us</a> .	

*Section 21*  
***Workers' Compensation***

***Overview of Workers' Compensation***

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Workers' compensation is a form of insurance that provides wage replacement benefits, medical treatment, vocational rehabilitation, and other benefits to workers who are injured on the job or acquire an occupational disease.

The Texas Department of Insurance, Division of Workers' Compensation (Division) regulates the State's workers' compensation program.<sup>740</sup> The Office of Injured Employee's Counsel was established to represent the interests of workers' compensation claimants in Texas.<sup>741</sup>

**Coverage for State Employees**

For most state agencies, the State Office of Risk Management (Office) is responsible for administering state risk management and insurance services obtained by state agencies, including the government employees' workers' compensation insurance program and the state risk management programs.<sup>742</sup>

State agencies and institutions of higher education that are excluded from the workers' compensation coverage provided by the Office include the Department of Transportation, University of Texas System, and the Texas A&M University System.

Other individuals excluded from workers' compensation coverage provided by the Office include:

- A person performing personal services for the State as an independent contractor or volunteer.
- A person who at the time of injury was performing services for the federal government and who is covered by some form of federal workers' compensation insurance.
- A prisoner or inmate of a correctional institution other than a work program participant in a Texas Correction Industries contract.
- A client or patient of a state agency.<sup>743</sup>

Recovery of workers' compensation benefits is the exclusive remedy of an employee covered by workers' compensation insurance coverage. For the death of an employee as a result of a work-

**State Office of Risk Management**

The State Office of Risk Management (Office) is responsible for operating a self-insured workers' compensation program for the State. Duties of the Office include receiving and investigating reports of an injury filed on behalf of state employees; determining whether a claim is compensable; paying income and medical benefits as due; and reviewing medical bills to determine reasonableness, necessity, and compliance with Division fee guidelines. In addition, the Office may appear as an adversary before the Division and the courts, presenting the legal defenses and positions of the State's workers' compensation program, as well as prepare reports for the Legislature and provide workers' compensation training for state agencies.

Sources: Texas Government Code, Section 412.001; and Strategic Plan 2007-2011, State Office of Risk Management, Page 12.

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<sup>740</sup> Texas Labor Code, Section 402.001.

<sup>741</sup> Ibid., Section 404.002.

<sup>742</sup> Ibid., Section 412.011.

<sup>743</sup> Ibid., Section 501.024.

related injury, this may include a legal beneficiary, or an agent of the employee.<sup>744</sup> However, the Texas Labor Code does not authorize a cause of action for damages against the State, a state agency, or an employee of the State beyond the actions and damages authorized by Chapter 101 of the Civil Practice and Remedies Code.<sup>745</sup>

### **Out of State Assignments or Positions**

A state employee who performs services outside Texas is entitled to workers' compensation benefits from the State of Texas even if the person:

- Is hired or not hired in Texas;
- Does not work in Texas;
- Works both in Texas and out of the state;
- Is injured outside Texas; or
- Has been outside Texas for more than one year.

If an employee elects to pursue remedies in the state where the injury occurred, the employee is not entitled to workers' compensation benefits through the Texas State Office of Risk Management.<sup>746</sup>

### **Coverage for Services Provided by Volunteers**

A person who performs volunteer services for the State in a disaster or in scheduled emergency response training under the direction of an officer or employee of the State is entitled to medical benefits for an injury sustained in the course of providing those services. A disaster in this situation means a condition for which the governor has issued a declaration of a state of disaster or another occurrence that initiates the state emergency management plan.

To receive the workers' compensation benefits, the person must seek medical attention from a doctor for the injury not later than 48 hours after the occurrence of the injury or after the date the person knew or should have known the injury occurred. The person shall comply with the notification requirements by providing notice of the injury to the Texas Department of Insurance, Division of Workers' Compensation (Division) or the state agency with which the officer or employee is associated.<sup>747</sup>

### **Additional Resources**

Table 21-1 includes a list of opinion letters from the Texas Office of the Attorney General related to workers' compensation for state employees.

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<sup>744</sup> Texas Labor Code, Section 408.001(a).

<sup>745</sup> Ibid., Section 501.002(d).

<sup>746</sup> Ibid., Section 501.025.

<sup>747</sup> Ibid., Section 501.026.

Table 21-1

Workers' Compensation Related Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
DM-214	Regarding the impact of leave without pay provisions of the Workers' Compensation Act.
H-1105	Regarding the computation of benefits due to a state employee with a specific injury under the workers' compensation statutes.
JC-188	Whether a state agency may require an employee to exhaust compensatory leave before receiving workers' compensation benefits.
JM-497	Regarding the validity of General Appropriations Act rider requiring reimbursement to the General Revenue Fund for workers' compensation benefits paid to certain employees.
LO 93-023	Whether certain disabled individuals in a state university vocational training program are "employees" under Texas Civil Statutes, Article 8309g (relating to workers' compensation coverage).
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

## *Workers' Compensation Benefits*

State employees with compensable injuries are entitled to compensation by the director of the State Office of Risk Management.<sup>748</sup> However, the Texas Department of Insurance, Division of Workers' Compensation (Division) adjudicates income and medical benefit disputes for the State.<sup>749</sup> Upon receipt of a report of injury, the Division contacts the affected employee by mail or by telephone to provide information on the benefit process and the compensation established by state law.<sup>750</sup>

Several types of workers' compensation benefits are available to employees for work-related injuries or illnesses. The following sections provide a brief overview of each type.

### **Medical Benefits**

An injured employee is entitled to all health care reasonably required to treat an injury or illness when needed.<sup>751</sup> The injured employee is entitled to his or her choice of treating physicians; however, the physician must be one of the doctors listed on the Division's approved doctor list.<sup>752</sup> If an employee is dissatisfied with the initial choice of a doctor from the Division's list, the employee may notify the Division and request authority to select an alternative doctor.<sup>753</sup> The Division prescribes the criteria to be used in granting an employee the authority to select an alternative doctor.<sup>754</sup>

<sup>748</sup> Texas Labor Code, Section 501.021.

<sup>749</sup> Ibid., Chapter 410.

<sup>750</sup> Ibid., Section 409.013.

<sup>751</sup> Ibid., Section 408.021.

<sup>752</sup> Ibid., Section 408.022 (a).

<sup>753</sup> Ibid., Section 408.022 (b).

<sup>754</sup> Ibid., Section 408.022 (c).

## Income Benefits

In addition to medical payments, employees are eligible to receive income benefits for time lost from work as the result of an injury. To be eligible, an injury must result in disability for at least one week. Income benefits begin to accrue on the eighth day after the disabling injury. If the disability continues for two weeks or longer, compensation shall be computed from the date the injury or disability began. In the event of an employee's death, the entitlement for income benefits ends.<sup>755</sup>

Eligibility for other income benefits (for example, temporary income, impairment increment, or supplemental income) expires 401 weeks after the date of the disabling injury. In the case of an occupational disease, the employee's eligibility for temporary income benefits, impairment income benefits, and supplemental income benefits terminates 401 weeks after the date on which benefits began to accrue.<sup>756</sup>

There are five types of income benefits available to employees: temporary, impairment, supplement, lifetime, and death and burial benefits.

### Temporary Benefits

Temporary benefits are provided to the injured employee until he or she reaches maximum medical improvement.<sup>757</sup> Maximum medical improvement refers to the earlier of:

- The earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated;
- The expiration of 104 weeks from the date on which income benefits began to accrue; or
- The date determined by the maximum medical improvement ordered for the extension of such benefits if the employee has had spinal surgery.<sup>758</sup>

### Impairment Benefits

Impairment benefits begin the day after an employee reaches maximum medical improvement and end on the date of the employee's death or after a period equal to three weeks for each percentage point of impairment.<sup>759</sup> An employee may not recover impairment income benefits unless evidence of the impairment that is based on an objective clinical or laboratory finding exists.<sup>760</sup> Typically, an impairment income benefit is equal to 70 percent of the employee's average weekly wage.<sup>761</sup>

### Supplemental Benefits

Supplemental benefits are paid out when impairment benefits have expired and the employee:

- Has an impairment rating of 15 percent or more.

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<sup>755</sup> Texas Labor Code, Sections 408.081 and 408.082.

<sup>756</sup> Ibid., Section 408.083.

<sup>757</sup> Ibid., Section 408.101; and Title 28, Texas Administrative Code, Section 130.4(a).

<sup>758</sup> Texas Labor Code, Sections 401.011(30) and 408.104.

<sup>759</sup> Ibid., Section 408.121.

<sup>760</sup> Ibid., Section 408.122.

<sup>761</sup> Ibid., Section 408.126.

- Has not returned to work or has returned to work earning less than 80 percent of his or her average pre-injury weekly wage.
- Has made a good-faith effort to find employment suitable for his or her ability to work.<sup>762</sup>

The amount of a supplemental income benefit for a week may not exceed 70 percent of the state average weekly wage.<sup>763</sup> The Commissioner of Workers' Compensation has established compliance standards for supplemental income benefit recipients. These standards require recipients of supplemental income benefits to demonstrate an active effort to obtain employment, including participation in a vocational rehabilitation program and active participation in work-search efforts.<sup>764</sup>

### Lifetime Benefits

Lifetime benefits are paid until the death of an employee for the following specific illnesses:

- Total and permanent loss of sight in both eyes.
- Loss of both feet at or above the ankle.
- Loss of both hands at or above the wrist.
- Loss of one foot at or above the ankle and one hand at or above the wrist.
- Injury to the spine resulting in complete paralysis of both arms, both legs, or one arm and one leg.
- Injury to the brain resulting in incurable insanity or imbecility.
- Third-degree burns over 40 percent of the body that require grafting or third-degree burns covering the majority of both hands or one hand and the face.

The employee receives this lifetime benefit until his or her death.<sup>765</sup> A weekly lifetime income benefit may not exceed 100 percent of the state average weekly wage.<sup>766</sup>

### Death and Burial Benefits

Death benefits are paid to the beneficiaries of a deceased employee if the employee died because of a compensable injury.<sup>767</sup> Distribution of death benefits is based on criteria identified in state law.<sup>768</sup> Beneficiaries may include eligible spouses, children, grandchildren, or dependents. If there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased, the death benefits shall be paid in equal shares to surviving eligible parents of the deceased. A payment of death

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<sup>762</sup> Texas Labor Code , Sections 408.142, 408.061 , 408.144, and 408.1415.

<sup>763</sup> Ibid., Section 408.061(c).

<sup>764</sup> Ibid., Section 408.1415 (a).

<sup>765</sup> Ibid., Section 408.161 (a).

<sup>766</sup> Ibid., Section 408.061.

<sup>767</sup> Ibid., Section 408.181 (a).

<sup>768</sup> Ibid., Section 408.182.

benefits may not exceed one payment per household and may not exceed 104 weeks of workers' compensation benefits.<sup>769</sup>

Burial benefits are provided if the death of an employee results from a compensable injury. These benefits are paid to the person who incurred the cost of the burial and are the lesser of the costs incurred for reasonable burial expenses or \$6,000.<sup>770</sup>

## *Employer Responsibilities*

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A state agency or institution of higher education covered under Texas Labor Code, Chapter 501, must report to the State Office of Risk Management (Office) an injury that results in the absence of an employee of the agency for more than one day. In addition, an agency must notify the Office of an occupational disease reported by an employee.<sup>771</sup> The initial report of injury must not be made later than the eighth day after the employee's absence from work for more than one day due to an injury; or the day on which the employer receives notice that the employee has contracted an occupational disease.<sup>772</sup>

The following list is a summary of responsibilities for state agencies and institutions of higher education that are covered by these provisions (specific details and information can be found in the Claims Coordinator Handbook provided by the Office.):

- Agencies are required to give notices, make reports, and otherwise transmit information to the Office and to the Texas Department of Insurance, Division of Workers' Compensation (Division) concerning on-the-job injuries and occupational diseases/illnesses in a timely manner.<sup>773</sup>
- Agencies must designate one or more claims coordinators, and must report to the Office any change in this designation.<sup>774</sup>
- Agencies must comply with all rules enacted by the Office, as well as those of the Division. Agency policies, guidelines, or instructions must not vary from Division rules, the Office's rules, or with the Texas Workers' Compensation Act (Act). As the employer of record, state agencies are subject to administrative penalties for violations of the Act that may be assessed against the employer by the Division's Compliance and Practices Division.<sup>775</sup>
- Agencies must make a record of all injuries sustained by employees in the course of employment.<sup>776</sup>
- Agencies must immediately notify the Office by telephone if the injury is severe or results in death, in addition to filing the required first report of injury.<sup>777</sup>

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<sup>769</sup> Texas Labor Code, Sections 408.181, 408.061, and 408.182.

<sup>770</sup> Ibid., Section 408.186.

<sup>771</sup> Ibid., Section 409.005 (a).

<sup>772</sup> Ibid., Section 409.005 (b).

<sup>773</sup> Title 28, Texas Administrative Code, Section 110.101.

<sup>774</sup> Ibid., Section 251.213.

<sup>775</sup> Texas Labor Code, Chapter 415.

<sup>776</sup> Ibid., Section 409.006.

- Agencies must post notices for workers' compensation insurance coverage in the workplace.<sup>778</sup>
- Agencies employing law enforcement officers and correctional officers must post a notice regarding certain work-related communicable diseases and eligibility for workers' compensation benefits.
- Agencies must post a notice in the workplace to inform employees about requirements that may affect qualifying for workers' compensation benefits following a work-related exposure to human immunodeficiency virus (HIV).<sup>779</sup>
- Agencies are required by the Act<sup>780</sup> to inform employees of the Office of Injured Employee Counsel's Ombudsman program. Failure to inform employees of this program is an administrative violation.<sup>781</sup>
- Agencies must have programs in place to promote the health and safety of the employees and to assist injured employees with returning to work and comply with the Office's guidelines. Return-to-work programs will be a coordinated effort involving the Office's Risk Assessment and Loss Prevention Section, the employing state agency, and the medical provider.<sup>782</sup>

### Workers' Compensation and State Sick and Annual Leave Provisions

An employee may elect to use accrued sick leave prior to receiving workers' compensation income benefits. If the employee makes the election to use accrued sick leave, the employee must exhaust all accrued sick leave before the employee is entitled to use income benefits.

After exhausting sick leave, the employee may also use accrued annual leave. If making this choice, the employee may elect to use all or any number of weeks of annual leave. The amount of annual leave the employee elects to use must be exhausted before the employee is entitled to receive income benefits.<sup>783</sup>

Employers may not require employees to exhaust state or FLSA compensatory time balances before receiving income benefits. Employers also may not prohibit employees from using compensatory time while they are receiving income benefits.<sup>784</sup> State employees who are exhausting their leave as a result of a workers' compensation claim are prohibited from using sick and annual leave hours that accrue after the first day of the month in which the employee became incapacitated unless they physically return to work.<sup>785</sup>

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<sup>777</sup> Title 28, Texas Administrative Code, Section 251.212.

<sup>778</sup> *Ibid.*, Section 110.101.

<sup>779</sup> *Ibid.*, Section 110.108.

<sup>780</sup> Texas Labor Code, Section 401.001.

<sup>781</sup> *Ibid.*, Section 404.15.

<sup>782</sup> *Ibid.*, Section 412.0513.

<sup>783</sup> *Ibid.*, Section 501.044.

<sup>784</sup> Opinion, Texas Office of the Attorney General, No. JC-0188 (2000).

<sup>785</sup> State Auditor's Office, Leave Interpretation Letter No. 01-02 (2000).

## Workers' Compensation and Emergency Leave

The administrative head of an agency, department, or institution of higher education may authorize emergency leave with pay to an employee receiving workers' compensation benefits. The emergency leave payment may not exceed an amount equal to the difference between the basic monthly wage of the employee and the amount of income benefits that the employee received for the month.

Emergency leave payments may not extend beyond six months. If emergency leave is authorized, the state agency must attach a statement of the reasons for the authorization to its payroll voucher for the first payroll period affected by the leave.<sup>786</sup>

## *Employer's Rights*

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As the employer of record, state agencies are entitled to certain rights under the Texas Workers' Compensation Act. These rights include:

- The right to be present at all administrative proceedings relating to an employee's claim.
- The right to present relevant evidence relating to an employee's claim at any proceeding.
- The right to report suspected fraud.
- The right to contest the compensability of an injury if the employer's insurance carrier accepts liability for the payment of benefits.
- The right to receive notice, after making a written request to the insurance carrier, of:
  - ♦ A proposal to settle a claim; or
  - ♦ An administrative or a judicial proceeding relating to the resolution of a claim.<sup>787</sup>

## *Employee's Responsibilities*

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An employee or party representing the employee must notify the employer within 30 days after an injury occurred or, if the injury is an occupational disease, as soon as the employee knew that the injury might be related to the employment.<sup>788</sup> Failure to notify the employer may relieve that employer of any liability in the matter unless the employer has actual knowledge of the injury, the Texas Department of Insurance, Division of Workers' Compensation (Division) determines that good cause exists for failure to provide notice, or the employer or its insurance carrier does not contest the claim.<sup>789</sup>

Claims for compensation must normally be filed within one year from the date of injury. Failure to file a claim for compensation with the Division as required by statute relieves the employer and the employer's insurance carrier of liability unless the Division determines that good cause exists for

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<sup>786</sup> Texas Labor Code, Section 501.045.

<sup>787</sup> Ibid., Section 409.011(b).

<sup>788</sup> Ibid., Section 409.001.

<sup>789</sup> Ibid., Section 409.002.

failure to file a claim in a timely manner or the employer or the employer's insurance carrier does not contest the claim.<sup>790</sup>

Claims for death benefits generally must be filed within one year of the employee's death. Failure to file bars the claim unless the person is a minor or incompetent, or if good cause exists for the failure to file. Separate claims must be filed for each beneficiary unless the claim expressly includes other parties.<sup>791</sup>

### ***Additional State Agency Injury Reporting Requirements***

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State agencies are required to submit in the administrative statement of its biennial budget request a summary containing:

- The number of first reports of injury filed by the agency during the preceding biennium.
- The amount of workers' compensation indemnity and medical benefits paid to or for employees during the preceding biennium.
- The number of on-the-job injuries per 100 of its employees during each year of the preceding biennium.
- A description of the efforts made by the agency to increase job safety and to reduce job injuries, including the participation of the head of the agency and the executive staff of the agency in training programs offered by the Division and others.<sup>792</sup>

### ***Related Legislation***

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Table 21-2 contains a list of human resources-related bills that were passed by the 80th Legislature. This may not be a complete list and should be used only as a summary of general issues on workers' compensation that were addressed during the session.

Table 21-2

Workers' Compensation Related Legislation (80th Legislature) <sup>a</sup>	
Bill Number	Summary
HB 888	Relates to the cost of obtaining copies of an injured employee's medical records for use by an ombudsman under the Office of Injured Employee Counsel's Ombudsman program.
<sup>a</sup> Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at <a href="http://www.capitol.state.tx.us">www.capitol.state.tx.us</a> .	

<sup>790</sup> Texas Labor Code, Sections 409.003 and 409.004.

<sup>791</sup> Ibid., Section 409.007.

<sup>792</sup> Ibid., Section 501.048.

*Section 22*  
***Contract Workforce Provisions***

***Contract Manager Training***

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The Texas Procurement and Support Services within the Comptroller of Public Accounts is responsible for administering a training program for contract managers.<sup>793</sup> A contract manager is defined as a person who is employed by a state agency and has significant contract management duties for the state agency.<sup>794</sup> Each state agency is responsible for ensuring that the agency's contract managers complete the training administered by the Comptroller of Public Accounts.<sup>795</sup>

The Texas Procurement and Support Services within the Comptroller of Public Accounts, in consultation with the Office of the Attorney General, the Department of Information Resources, and the State Auditor's Office, developed and periodically updates a *Contract Management Guide* for use by state agencies. This document can be viewed on the Texas Comptroller of Public Accounts Web site: <http://www.window.state.tx.us/procurement/pub/contractguide/>.

***Contract Notification***

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A state agency is required to provide written notice to the Legislative Budget Board of a contract for consulting services if the amount of the contract, including amendments, modifications, renewals, or extensions of the contract, exceeds \$14,000. The notice must be on a form prescribed by the Legislative Budget Board and filed no later than the 10th day after the date the agency enters into the contract.<sup>796</sup>

***Contracting with Former or Retired Agency Employees***

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A state agency may not enter into an employment contract, a professional services contract, or a consulting services contract under Texas Government Code, Chapter 2254, with a former or retired employee of the agency who was employed by the agency within the last 12 months if appropriated money will be used to make payments under the contract.<sup>797</sup>

An agency may not enter into a contract with the following people unless its governing board votes to approve the contract and notifies the Legislative Budget Board, at least five days before the governing board votes, of the terms of the contract:

- The executive director of an agency.
- A person who, during the previous four years, served as the executive director of the agency.

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<sup>793</sup> Texas Labor Code , Section 2262.053 (a).

<sup>794</sup> Ibid., Section 2262.001 (3).

<sup>795</sup> Ibid., Section 2262.053 (c).

<sup>796</sup> Ibid., Section 2254.0301.

<sup>797</sup> Ibid., Section 2252.901 (a).

- A person who employees a current or former executive head of a state agency.<sup>798</sup>

Agencies are not prohibited from entering into a professional services contract with a corporation, firm, or other business entity that employs a former or retired employee of the agency within one year of the employee's leaving the agency. However, the former or retired employee cannot perform services on projects for the corporation, firm, or other business entity that the employee worked on while employed by the agency.<sup>799</sup>

“Employment contract” includes a personal services contract, regardless of whether the performance of the contract involves the traditional relationship of employer and employee. The phrase “employment contract” does not apply to an at-will employment relationship that involves the traditional relationship of employer and employee.<sup>800</sup>

A former state employee (if terminated within the previous two years) who bids on a contract is required to disclose the nature of his or her previous employment, date of termination, and annual compensation at the time of termination.<sup>801</sup>

The U.S. Internal Revenue Service's definitions and rules distinguish between an independent contractor and an employee. Agencies should consult these definitions and rules to clarify their positions regarding the use of independent contractors. Additional information on this topic may be found in the State Auditor's Office report *An Audit Report on the State's Contract Workforce Use and Contract Workforce Data Collection* (SAO Report No. 01-023, March 2001).

### ***Contracting with a Private Auditor***

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A state agency, or a corporation that is dedicated to the benefit of a state agency and that meets the criteria specified by Section B, Article 2.23B, of the Texas Non-Profit Corporation Act (Article 1396-2.23B, Vernon's Texas Civil Statutes), may employ a private auditor to audit the state agency or corporation only if:

- The agency or corporation is authorized to contract with a private auditor through a delegation of authority from the State Auditor.
- The scope of the proposed audit has been submitted to the State Auditor for review and comment.
- The services of the private auditor are procured through a competitive selection process in a manner allowed by law.<sup>802</sup>

### ***Major Consulting Services Contract***

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Major consulting services contracts are defined as contracts for which it is reasonably foreseeable that the value of the contract will exceed:

- \$15,000 for a state agency.

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<sup>798</sup> Texas Labor Code, Section 669.003.

<sup>799</sup> Ibid., Section 2252.901 (a).

<sup>800</sup> Ibid., Section 2252.901 (d).

<sup>801</sup> Ibid., Section 2254.033.

<sup>802</sup> Ibid., Section 321.020 (a).

- \$25,000 for an institution of higher education other than a public junior college.<sup>803</sup>

Before a state agency can enter into a major consulting services contract, the agency must:

- Notify the Legislative Budget Board and the Governor's Budget and Planning Office that the agency intends to contract with a consultant.
- Provide information to the Legislative Budget Board and the Governor's Budget and Planning Office to demonstrate that the agency has complied or will comply with Texas Government Code, Sections 2254.026 and 2254.027 (summarized under “Use of Consultants by State Agencies”).
- Obtain a finding of fact from the Governor's Budget and Planning Office that the consulting services are necessary.<sup>804</sup> Institutions of higher education, other than a public junior college, do not have to obtain a finding of fact from the Governor’s Budget and Planning Office for a major consulting services contract if the following criteria is met:
  - ♦ The institution of higher education includes in the invitation for consulting services, published under the Texas Government Code, Section 2254.029, an explanation of the finding by the chief executive officer of the institution of higher education that the consulting services are necessary.<sup>805</sup>

In addition, for major contracts, an agency must file with the *Texas Register* no later than 30 days prior to entering into a contract for services. The agency must send out invitations soliciting private consultants to submit competitive bids. The invitation must provide the name of a contact within the agency, the closing date for receipt of bids, and the procedures by which the award will be made.<sup>806</sup>

No later than 10 days after a contract has been awarded, the agency must once again file with the *Texas Register* and provide:

- A description of the services to be performed.
- The name and address of the consultant.
- The total value of the contract.
- The beginning and ending dates of service.
- The delivery dates of all items and services the consultant is required to provide.<sup>807</sup>

### *Use of Consultants by State Agencies*

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A state agency may use a private consultant only if there is a substantial need for such services and the agency’s own staff or another agency’s consulting services cannot adequately do the job. The selection of a consultant must be based on the consultant’s demonstrated competence, qualifications,

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<sup>803</sup> Texas Labor Code , Section 2254.021.

<sup>804</sup> Ibid., Section 2254.028.

<sup>805</sup> Ibid., Section 2254.028.

<sup>806</sup> Ibid., Section 2254.029.

<sup>807</sup> Ibid., Section 2254.030.

and knowledge, as well as the reasonableness of the cost of services. If other considerations are equal, preference should be given to a business headquartered in Texas or one that will manage the consulting engagement wholly from one of its offices within the state.<sup>808</sup>

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<sup>808</sup> Texas Government Code, Sections 2254.026 and 2254.027.

*Section 23*  
**Miscellaneous Provisions**

***Employee Exit Surveys***

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Each state agency must provide all employees, who are terminating their employment voluntarily, access to the State Auditor's Office online exit survey.<sup>809</sup> This includes all employee types (i.e., classified full-time, classified part-time, non-classified full-time, and non-classified part-time). The objective of this online system is to offer a direct means through which employees can provide information about why they decided to leave employment with their agency. Institutions of higher education are exempt from this requirement.<sup>810</sup>

The State Auditor's Office considers the following reason codes used by Public Accounts' Human Resource Information System (HRIS), the Uniform Statewide Payroll/Personnel System (USPS), and the Standardized Payroll/Personnel Reporting System (SPRS) as voluntary terminations:

- Voluntary separation from agency.
- Transfer to a different state agency or institution of higher education with no break in service.
- Retirement.

The exit survey instrument can be accessed at: <https://www.sao.state.tx.us/apps/exit/>.

**Exit Survey Employee Access**

The agency must provide each exiting employee who voluntarily leaves employment with their agency a unique ID, a computer with Internet access (although employees may complete the survey at another location if they wish), and the Web address for the survey.

There are several methods that can be used to distribute the unique ID. These include printing out the unique ID to give to the employee, copying and pasting the unique ID into an e-mail to send to the exiting employee with the link to the Web site, or mailing the unique ID along with an employee acknowledgment form. Once employees enter the system, they complete an employee acknowledgment form that allows the employee to indicate whether or not they elect to complete the survey. It also allows them to share their responses with the governor and/or their agency's executive director.<sup>811</sup>

**Exit Survey Reporting and Disclosure Requirements**

Summarized quarterly reports are sent to executive directors and human resources directors. In addition, the State Auditor's Office is required to provide a report summarizing exit survey responses to the governor, lieutenant governor, speaker of the House of Representatives, and members of the

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<sup>809</sup> Texas Government Code, Section 651.007 (b).

<sup>810</sup> Ibid., Section 651.007 (a).

<sup>811</sup> Ibid., Section 651.007 (b).

Senate Committee on Finance and House Committee on Appropriations by December 15 before each year of a regular legislative session.<sup>812</sup>

Individual responses may be disclosed only to a law enforcement agency in a criminal investigation or on order of a court.

### *Human Resources Staffing*

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State agencies with 500 or more full-time-equivalent employees are required to have one human resources employee for every 85 staff members.<sup>813</sup> The phrase “human resources employee” does not include an employee whose primary job function is enforcement of Title VI or Title VII of the Civil Rights Act of 1964. The phrase “state agency” means a department, commission, board, office, authority, council, or other governmental entity in the executive branch of government. The term does not include a university system or institution of higher education.<sup>814</sup> The State Council on Competitive Government shall determine the cost-effectiveness of consolidating the human resources functions of or contracting with private entities to perform the human resources functions of state agencies that employ fewer than 500 full-time equivalent employees.<sup>815</sup>

### *Place of Work and Working Hours*

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Employees must, during normal working hours, conduct agency business only at their regular place of business or assigned duty point unless they are on travel status or have received prior written authorization from the administrator of the employing agency. An employee’s home may not be considered his or her regular place of business without the written approval of the agency head.<sup>816</sup> A full-time salaried employee in a state agency or institution of higher education may not be authorized to work less than 40 hours in a calendar week.<sup>817</sup>

Office hours for state agencies are 8:00 a.m. to 5:00 p.m., Monday through Friday. These are considered the regular working hours for a full-time state employee. All state agencies are required to remain open with at least one person on duty during the lunch hour to accept calls, receive visitors, and conduct business.<sup>818</sup> The chief administrator of a state agency that must maintain certain services 24 hours a day may require essential employees who perform those services to be on duty for a workweek that exceeds 40 hours in necessary or emergency situations. This does not apply to a houseparent who is employed by and lives at a Texas Youth Commission facility.<sup>819</sup>

The chief administrator also has the authority to:

- Make exceptions to the minimum length of the workweek to take care of any emergency or public necessity that the chief administrator finds to exist.

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<sup>812</sup> Texas Government Code, Section 651.007 (i).

<sup>813</sup> Ibid., Section 670.002.

<sup>814</sup> Ibid., Section 670.001 (2).

<sup>815</sup> Ibid., Section 670.003.

<sup>816</sup> Ibid., Section 658.010.

<sup>817</sup> Ibid, Section 658.002 (a).

<sup>818</sup> Ibid., Section 658.005 (a.).

<sup>819</sup> Ibid., Section 658.002.

- Keep the agency open during other hours and on other days, with the time worked counting toward the 40 hours a week that are required for full-time employees.<sup>820</sup>

The governing board of an institution of higher education or a university system may make exceptions to the minimum length of the workweek and the maximum length of a workday established by this chapter to achieve and maintain operational efficiency at the institution of higher education, university system, or an office, department, or division of either.<sup>821</sup>

State agencies and institutions of higher education may consider the use of alternative work schedules such as compressed work weeks, flexible work schedules, and staggered work hours.<sup>822</sup>

### **Eight Hour Work Day for Certain Public Works Employees**

Eight hours of work in a calendar day constitute a day's work for a laborer, worker, or mechanic employed by or on behalf of the State or a political subdivision of the State for the construction, repair, or improvement of a building, bridge, road, highway, stream, or levee or for other similar work.<sup>823</sup>

### **Voluntary Work Reduction Program**

To increase state efficiency while reducing the cost of state government, a state agency may create a work reduction program in which a full-time state employee of the agency agrees to accept reduced wages and benefits for a proportionate reduction in work hours. Agencies that have this program shall place a notice of the program's availability in common areas of the agency. Participation by the employee is strictly voluntary and must be for a period of no less than six months.<sup>824</sup> In addition, the agreement must be in writing and signed by the employee.<sup>825</sup> Temporary and exempt employees are not permitted to participate in this program.

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<sup>820</sup> Texas Government Code, Section 658.005.

<sup>821</sup> Ibid., Section 658.007 (b) and (c).

<sup>822</sup> Ibid., Section 658.006; See also Opinion, Texas Office of the Attorney General, No. M-1058 (1972).

<sup>823</sup> Texas Government Code, Section 605.001.

<sup>824</sup> Ibid., Section 658.003.

<sup>825</sup> Ibid., Section 658.003 (d).

## Additional Resources

Table 23-1 provides a list of Office of the Attorney General Opinion letters related to working hours for state employees.

Table 23-1

Working Hours Related Attorney General Opinion Letters <sup>a</sup>	
Opinion Number	Topic
H-465	Regarding the method of computing an hourly rate of payment to state employees under the U.S. Fair Labor Standards Act.
M-1058	Whether certain maintenance and operations employees of the University of Houston may work on the basis of a 10-hour day, 4-day work week.
<sup>a</sup> Detailed references can be found at <a href="http://www.oag.state.tx.us/opinopen/opinhome.shtml">http://www.oag.state.tx.us/opinopen/opinhome.shtml</a> .	

## Public Information Responsibilities

The Texas Public Information Act (Act) gives the public the right to access records of state agencies and institutions of higher education, with the exception of judicial agencies. Under this act, documentation that deals with government affairs and official business conducted by employees of the State is available to the general public.<sup>826</sup> Whether or not the record is in a paper or electronic format does not affect its status as a public record. Such information includes, among other things:

- Completed reports, audits, evaluations, and investigations.
- Name, sex, ethnicity, salary, title, and dates of employment.
- Information in an account, voucher, or contract relating to the receipt or expenditure of public funds (unless deemed confidential by law).
- Name of official and the final record of voting on all proceedings of a governmental body.
- Working papers, research materials, and other information used as a basis to estimate the need for, or expenditure of, public funds after the estimate is complete.
- Information related to persons who report or pay sales and use taxes.
- Organization descriptions and charts.
- Agency staff manuals and various policies and procedures.
- Final opinions and orders in the determination of cases.
- Other information regarded as open to the public under an agency's policies.<sup>827</sup>

<sup>826</sup> Texas Government Code, Sections 552.001, 552.002, and 552.022.

<sup>827</sup> Ibid., Section 552.022.

In addition, the Attorney General has identified the following items as generally being subject to public disclosure:

- Settlement terms of an equal employment claim.<sup>828</sup>
- An employee's letter of resignation.<sup>829</sup>
- Names and dates associated with sick leave usage.<sup>830</sup>
- A hearing officer's reports concerning an employee's termination.<sup>831</sup>
- Letters written to an employee's supervisor about the employee. The correspondence can be released to the employee involved.<sup>832</sup>
- An employee's educational background and work experience.<sup>833</sup>
- Information about a public employee's job performance, dismissal, demotion, promotion, resignation, and salary information.<sup>834</sup>

An individual or designated representative may access records that relate to that individual and that contain information that is ordinarily protected from disclosure by privacy laws. Consent to release this information must be in writing and signed by the individual or the individual's representative.<sup>835</sup>

Records pertaining to the following may not be withheld from public disclosure:

- Reassignment of an executive head of a state agency.
- Terms of consulting contracts with current or former agency heads.
- Documents related to the settlement, compromise, or other resolution of differences between the State and a current or former agency head.<sup>836</sup>

Such information, even if its age is past the required retention schedule, is still subject to open records requests. Once accessed, information cannot be destroyed, altered, or removed from employee records.<sup>837</sup>

The following types of information may be withheld from the general public:

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<sup>828</sup> Texas Open Records Decision, No. 245 (1980).

<sup>829</sup> *Ibid.*, No. 278 (1981).

<sup>830</sup> *Ibid.*, No. 336 (1982).

<sup>831</sup> *Ibid.*, No. 325 (1982).

<sup>832</sup> *Ibid.*, No. 218 (1978).

<sup>833</sup> *Ibid.*, No. 67 (1975).

<sup>834</sup> Texas Government Code, Section 552.022(a)(2); Texas Open Records Decisions, No. 444 (1986) and No. 405 (1983).

<sup>835</sup> Texas Government Code, Sections 552.023 and 552.229.

<sup>836</sup> *Ibid.*, Section 669.004.

<sup>837</sup> Opinion, Texas Office of the Attorney General, No. DM-40 (1991) and No. MW-327 (1981).

- Information deemed confidential by law.<sup>838</sup>
- Information in personnel files that, if accessed, would be considered a clear invasion of privacy.<sup>839</sup>
- Interagency and intra-agency correspondence or letters that would not be available to a party in litigation.<sup>840</sup>
- Home address, home telephone number, and social security number of a current or former official or employee of a governmental body who elects confidentiality for such information.<sup>841</sup>
- Information regarding litigation of a civil or criminal nature to which the State, or an employee of the State as a consequence of his/her office or employment, is involved.<sup>842</sup> (Open Records Decision No. 555, May 17, 1990, asserts that the provision for withholding information applies only if the information relates to litigation that is pending or reasonably anticipated.)

The Attorney General has determined that the following information may be confidential by law:

- Information concerning matters relating to marriage, contraception, family relationships, raising children, and education.
- Any highly intimate or embarrassing fact, the publication of which would be highly objectionable and not the legitimate concern of the public.<sup>843</sup>

An agency may be allowed to withhold advice, opinions, and recommendations contained in inter-agency or intra-agency memoranda.<sup>844</sup> State statute requires that the Social Security number of a living person is exempted from the requirements of Texas Government Code, Section 552.021. A governmental body may redact the Social Security number of a living person from any information the governmental body discloses without requesting a decision from the Attorney General.<sup>845</sup>

Additional information can be found in a document published by the Office of the Attorney General titled “Texas Public Information Act Made Easy.” The document can be found at: [http://www.oag.state.tx.us/AG\\_Publications/pdfs/2006pia\\_easy.pdf](http://www.oag.state.tx.us/AG_Publications/pdfs/2006pia_easy.pdf).

### Open Records Assistance

A governmental body is required to designate a public information officer. The public information officer is responsible for posting a sign that informs the public about its right to access public information.<sup>846</sup> The Open Records Division of the Office of the Attorney General issues rulings and

<sup>838</sup> Texas Government Code, Section 552.101.

<sup>839</sup> Ibid., Section 552.102.

<sup>840</sup> Ibid., Sections 552.110 and 552.111.

<sup>841</sup> Ibid., Section 552.117.

<sup>842</sup> Ibid., Section 552.103.

<sup>843</sup> Texas Open Records Decision, No. 361 (1983) and No. 260 (1980).

<sup>844</sup> Opinion, Texas Office of the Attorney General, No. MW-372 (1981).

<sup>845</sup> Texas Government Code, Section 552.147.

<sup>846</sup> Ibid., Section 552.205.

decisions that determine whether information is open to the public under the Texas Public Information Act and other applicable laws. Additional information can be found on the Office of the Attorney General's Web site at [www.oag.state.tx.us](http://www.oag.state.tx.us).

### *Reductions in Force*

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Agencies undergoing reorganizations may institute reductions in force.<sup>847</sup> An employee who is separated from employment with the State under a formal reduction in force can have his or her sick leave balance restored if he or she is re-employed by the State within 12 months of termination.<sup>848</sup>

### *State Privacy Policy*

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Members of the public are entitled to be notified about information that the State has collected about them, unless such information is protected under Texas Government Code, Section 552.023.<sup>849</sup> With few exceptions, an individual is entitled to:

- Be notified about information the State has collected.
- Receive and review the information.
- Correct inaccurate information.<sup>850</sup>

Information collection efforts using online sources must ensure that individuals using a monitored Internet site or computer network are aware that information is being collected.<sup>851</sup> Each state agency is required to establish a reasonable correction procedure that cannot unduly burden an individual using the procedure.<sup>852</sup> Unless specifically allowed by state law, an agency may not charge an individual to correct his or her information.<sup>853</sup>

### *Workforce Planning*

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As part of their strategic plans, state agencies are required to conduct staffing analyses and develop workforce plans. The workforce planning process helps agencies:

- Identify the number of employees and types of employee skill sets required to meet agency goals and strategic objectives.
- Develop a plan of action to ensure that the appropriate workforce will be available to provide quality services to the citizens of Texas.

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<sup>847</sup> Texas Government Code, Section 651.006.

<sup>848</sup> Ibid., Section 661.205.

<sup>849</sup> Ibid., Section 559.002.

<sup>850</sup> Ibid, Section 559.003(a).

<sup>851</sup> Ibid, Section 559.003(b).

<sup>852</sup> Ibid, Section 559.004.

<sup>853</sup> Ibid, Section 559.005.

The workforce plans must be based on guidelines established and provided by the State Auditor. Institutions of higher education, university systems, and agencies within the judicial and legislative branches are excluded from this requirement, but they are encouraged to conduct such planning.<sup>854</sup>

The State Auditor's Office has published a workforce planning guide to assist agencies with developing their workforce plans. This guide can be found at: <http://sao.hr.state.tx.us/Workforce/06-704.pdf>

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<sup>854</sup> Texas Government Code, Section 2056.0021.

## *Additional Human Resources-Related Legislation*

Table 23-2 contains a list of human resources-related bills that were passed by the 80th Legislature. This may not be a complete list and should be used only as a summary of general issues on this subject that were addressed during the session.

Table 23-2

Miscellaneous Provisions Related Legislation (80th Legislature) <sup>a</sup>	
Bill Number	Summary
HB 921	Relates to the sharing of information among state agencies; strategies and procedures for sharing and transferring information; and the security and protection of personally identifiable information from inappropriate release.
HB 2061	Provides guidelines relating to the acquisition or disclosure of the Social Security number of a living person by a governmental body, including by a district or county clerk.
HB 2564	Provides authority of a governmental body to require payment of a charge before complying with certain public information requests.
HB 3106	Amends and transfers the responsibility of enterprise resource planning from the Department of Information Resources to the Comptroller of Public Accounts (Comptroller) and requires the Comptroller to ensure that the statewide accounting project includes enterprise resource planning at state agencies.
HB 3560	Transfers to the Comptroller the duties of the Building and Procurement Commission (Commission) that do not primarily concern state facilities; renames the Commission the Texas Facilities Commission; and includes conflict-of-interest guidelines for certain contract issues.
SB 175	Relates to the calculation of deadlines under the public information act.
SB 309	Regarding the requirement that a career school or college adopt a refund policy for students called to active military service.
SB 740	Regarding personnel records of commissioned officers of the Department of Public Safety.
SB 908	Regarding the coordination of state agency-level business continuity plans with the State Office of Risk Management; return to work coordination and case management services; and training programs for board members.
SB 1310	Regarding the reimbursement of travel expenses for state employees.
<sup>a</sup> Detailed information on changes to statutes as a result of these bills can be found in the text of the enrolled bills at <a href="http://www.capitol.state.tx.us">www.capitol.state.tx.us</a> .	

# Appendices

## Appendix 1

### **Objective, Scope, and Methodology**

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#### **Objective**

The objective of this inventory was to summarize state and federal human resource management laws that apply to Texas state employees in state agencies and institutions of higher education.

#### **Methodology**

Information collected and reviewed included the following:

- Texas Education Code.
- Texas Family Code.
- Texas Government Code.
- Texas Health and Safety Code.
- Texas Human Resources Code.
- Texas Insurance Code.
- Texas Labor Code.
- Texas Occupational Code.
- Texas Code of Criminal Procedures.
- General Appropriations Act (80th Legislature, Regular Session).
- Texas Administrative Code.
- Title 29, Code of Federal Regulations.
- Title 8, Code of Federal Regulations.
- Title 42, United States Code.
- Attorney General of Texas Opinions.
- Comptroller's Payroll Policy and Procedures.
- State Auditor's Office Leave Interpretation Letters.
- State Auditor's Office Technical Updates.
- State Auditor's Office Human Resources Questions and Answers.

## Project Information

Fieldwork was conducted from June 2007 through September 2007. This project is a general reference guide on the State's human resources management statutes; therefore, the information in this statutes inventory was not subjected to all the tests and confirmations that would be performed in an audit. However, the information in this report was subject to certain quality control procedures to ensure accuracy and compliance with the generally accepted compensation practices.

The following members of the State Auditor's staff performed the review:

- Christine Bailey, CCP, GRP (Project Manager)
- La Tonya Dansby
- Julie Leung
- Stacey Robbins McClure, MBA, PHR
- Anca Pinchas, Macy, CPA
- Sharon Schneider, PHR
- Juliette Torres, CCP, PHR
- Charles P. Dunlap, Jr., CPA (Quality Control Reviewer)
- J. Scott Killingsworth, CIA (Quality Control Reviewer)
- Nicole M. Guerrero, MBA, CGAP (Audit Manager)

**State Agency Responsibilities**

Table A lists subject areas and the corresponding responsible agencies for various human resource-related subjects. Agencies should contact the appropriate office with questions.

Table A

Agencies Responsible for Human Resources-related Subjects		
Topic	Office to Contact	Phone Number
Salary Administration	State Auditor's Office - State Classification Office Comptroller of Public Accounts	(512) 936-9500 (512) 463-9009 or (512) 463-4021
Discrimination in Employment	Texas Workforce Commission - Civil Rights Division	(512) 463-2642
Vacations and Leave	State Auditor's Office - State Classification Office	(512) 936-9500
Health Insurance	Employees Retirement System	(512) 867-7711
Holidays	Comptroller of Public Accounts	(512) 463-4600
Job Vacancy Posting	Texas Workforce Commission	(512) 463-2222
Longevity	Comptroller of Public Accounts	(512) 463-4600
Payroll	Comptroller of Public Accounts - Payroll	(512) 463-4021
Retirement	Employees Retirement System Teacher Retirement System	(512) 867-7711 (512) 542-6400
Travel	Comptroller of Public Accounts - Claims	(512) 463-4600
Unemployment Insurance	Texas Workforce Commission	(512) 340-4300
Veterans' Benefits	Texas Veterans Commission	(512) 475-2395
Workers' Compensation	Division of Workers' Compensation at the Texas Department of Insurance State Office of Risk Management	(512) 463-6169 (512) 475-1440

**Accrual Entitlements for State Agency Employees**

Table B

Accrual Entitlements for State Agency Employees					
Employment Status <sup>a</sup>	Annual Leave Accrual	Sick Leave Accrual	State Service Credit	Longevity Pay	Holidays
Classified Full-time	Yes	Yes	Yes	Yes	Yes
Classified Part-time	Yes, proportionate to the number of hours appointed.	Yes, proportionate to the number of hours appointed.	Yes	No	Yes, proportionate to the number of hours appointed.
Exempt Full-time	Yes	Yes	Yes	Yes	Yes
Exempt Part-time	Yes, proportionate to the number of hours appointed.	Yes, proportionate to the number of hours appointed.	Yes	No	Yes, proportionate to the number of hours appointed.
Unclassified Full-time	Yes	Yes	Yes	Yes	Yes
Unclassified Part-time	Yes, proportionate to the number of hours appointed.	Yes, proportionate to the number of hours appointed.	Yes	No	Yes, proportionate to the number of hours appointed.
Temporary Classified/Unclassified/Exempt (Full-time)	Yes	Yes	Yes	No	Yes
Temporary Classified/Unclassified/Exempt (Part-time)	Yes, proportionate to the number of hours appointed.	Yes, proportionate to the number of hours appointed.	Yes	No	Yes, proportionate to the number of hours appointed.
Contract Employee	No	No	No	No	No

<sup>a</sup> Classified positions are those that are subject to the State's Position Classification Plan. Exempt positions are excluded from the State's Position Classification Plan and are listed in the General Appropriations Act. Unclassified positions are not subject to the State's Position Classification Plan. Contract positions are filled by independent contractors, temporary workers supplied by staffing companies, contract company workers, and consultants. Temporary positions are those limited in duration and established for a specific period of time.

**Accrual Entitlements for Employees of Institutions of Higher Education**

Table C

Accrual Entitlements for Employees of Institutions of Higher Education					
Employment Status <sup>a</sup>	Annual Leave Accrual	Sick Leave Accrual	State Service Credit	Longevity Pay	Holidays
Regular Staff Employee (Full-time)	Yes	Yes	Yes	Yes	Yes
Regular Staff Employee (Part-time)	Yes, proportionate to the number of hours appointed	Yes, proportionate to the number of hours appointed	Yes	No	Yes, proportionate to the number of hours appointed
Faculty (Full-Time or Part-Time) 20 Hours or More	No, except those employed for 12 calendar months	Yes	Yes	No	Yes
Non-Faculty (less than 20 hours and/or less than 4.5 month appointment)	No	No	Yes	No	No
Positions Requiring Student Status as a Condition of Employment	No	No	Yes <sup>b</sup>	No	No

<sup>a</sup> For institutions of higher education, a regular staff employee is defined as one who is employed to work at least 20 hours per week for a period of at least four-and-one-half months, excluding students employed in positions that require student status as a condition of employment. A faculty member employed for a period of less than 12 months is not eligible for vacation accrual.

<sup>b</sup> Opinion, Texas Office of the Attorney General, No. JM-407 (1985).

## Pay Entitlements upon Separation from State Employment

An employee who separates from state employment may be entitled to additional pay beside his or her regular pay. Table D lists the various pay entitlements an employee may be entitled upon separating from state employment.

Table D

Pay Entitlements upon Separation from State Employment					
Pay Entitlements	Type of Separation				
	Any Separation Where the Employee is Permitted to Remain on the Payroll to Expend Accrued Vacation	Any Separation Where the Employee Is Not Permitted to Remain on the Payroll to Expend Accrued Vacation	Any Separation Where the Employee Is Permitted to Remain on the Payroll to Expend Accrued State or FLSA Compensatory Time	Any Separation Where the Employee Is Not Permitted to Remain on the Payroll to Expend Accrued State or FLSA Compensatory Time	Death (Payment to estate)
Lump-Sum Payment for Accrued Vacation Leave	No, but may expend accrued vacation prior to separation	Yes <sup>a</sup>	Yes, at the time of separation	Yes	Yes
Lump-Sum Payment for Accrued Sick Leave	No, also not eligible to use sick leave while remaining on the payroll to expend vacation	No	No, also may not use sick leave while remaining on payroll to expend state or FLSA compensatory time	No	Yes, for ½ sick leave hours not to exceed 336 hours
Further Accrual of Vacation Leave	No	n/a	No	n/a	n/a
Further Accrual of Sick Leave	No	n/a	No	n/a	n/a
Lump-Sum Payment for Accrued State Compensatory Time <sup>b</sup>	No <sup>b</sup>	No <sup>b</sup>	No <sup>b</sup>	No <sup>b</sup>	No <sup>b</sup>
Lump-Sum Payment for Accrued FLSA Compensatory Time	Yes	Yes	Yes	Yes	Yes
Payment for Longevity or Hazardous Duty	Yes	n/a	Yes	n/a	No
Holiday Entitlement	Yes	Yes <sup>c</sup>	Yes	No	Yes <sup>c</sup>
General Salary Increase Entitlement	Yes	No	Yes	No	No

<sup>a</sup> Requires six months of continuous state service.

<sup>b</sup> The Legislature has made exceptions to allow for the payment of state compensatory time to employees of certain agencies and institutions of higher education under certain circumstances.

<sup>c</sup> Applicable for the period beginning on the day following the last day of employment and ending on the last working day through which the accrued leave would have extended.

## Transfer and Rehire Leave Reinstatement Entitlements

Employees who separate from their current state agency or institution of higher education and then directly transfer to another state agency or institution without a break in service may be entitled to have their remaining leave transferred to their new employer.<sup>855</sup> In addition, employees who have separated from state employment and then are rehired by a state agency or institution may be entitled to have their leave reinstated, depending on the length of separation from the state.<sup>856</sup> Table E lists these entitlements.

For additional information regarding leave balances and leave transfers (and for all references to related statutes) refer to the Employee Leave section of this inventory.

Table E

Transfer and Rehire Leave Reinstatement Entitlements				
Employment Status	Transfer or Reinstatement of Annual Leave	Transfer or Reinstatement of Sick Leave	Transfer or Reinstatement of State Compensatory Time	Transfer or Reinstatement of FLSA Overtime
Employee Directly Transfers From one State Agency or Institution to Another State Agency or Institution Without a Break In Service.	Yes. All remaining annual leave should be transferred to the new state employer.	Yes. All remaining sick leave should be transferred to the new state employer.	No	No. FLSA overtime must be paid by employer from which the employee transferred from.
Employee Terminates Employment from a State Agency and then Returns to State Employment after a Break in Service.	Yes, as long as the employee returns to state employment within 30 days of such separation. <sup>a</sup>	Yes, as long as the employee returns to state employment within 12 months after the end of the month following their termination. <sup>b</sup>	No	No. FLSA overtime must be paid by employer from which the employee transferred from.
Employee Terminates Employment from an Institution and then Returns to State Employment after a Break in Service.	No. Employees who separate employment with the institution are entitled to be paid their annual leave balance upon termination.	Yes. As long as the employee is re-employed by another state agency or institution within 12 months.	No	No
Employee Transfers to Another State Agency as a Result of a Legislative Mandate.	Yes. All remaining annual leave should be transferred to the new state employer.	Yes. All remaining sick leave should be transferred to the new state employer.	Yes, if that is the agreement between the agencies.	Yes, if that is the agreement between agencies. Otherwise the employee must be paid for the remaining balance.
<p><sup>a</sup> As long as the employee has had continuous employment for at least six months.</p> <p><sup>b</sup> Employees who are separated for reasons other than a formal reduction in force and who are employed by the same agency or institution may only have their sick leave balance restored if they have had a break in service of at least 30 calendar days since their date of termination.</p>				

<sup>855</sup> Texas Government Code, Sections 661.153 and 661.204.

<sup>856</sup> Ibid., Sections 661.062 and 661.205.

# Index

## A

<b>Additional Service Credit (ASC) .....</b>	<b>171, 172</b>
<b>Administrative Leave.....</b>	<b>138</b>
Outstanding Performance.....	141
<b>Adoption, and</b>	
Family Medical Leave .....	135
Insurance Coverage.....	162
Nepotism.....	1
Parental Leave .....	139
Sick Leave .....	116, 138
<b>Affinity .....</b>	<b>1, 2, 4</b>
<b>Affirmative Defense</b>	
Equal Pay Act .....	18
Sexual Harassment.....	15
<b>Age Discrimination in Employment Act (ADEA) .....</b>	<b>12</b>
<b>Agency Head</b>	
Salary Provisions .....	70
State Compensatory Time.....	48
<b>AIDS and HIV Training.....</b>	<b>189</b>
<b>Alcoholic Beverages .....</b>	<b>9</b>
<b>Alternative Dispute Resolution (ADR) .....</b>	<b>15</b>
<b>Amateur Radio Operator Leave.....</b>	<b>141</b>
<b>Americans with Disabilities Act (ADA) .....</b>	<b>12</b>
Poster .....	21
State Efforts .....	13
<b>Annual Leave.....</b>	<b>104</b>
Accruals.....	103, 104, 105
Attorney General Opinion Letters.....	106
Carryover Hours .....	104
Conversion to Sick Leave .....	105
Deceased Employees .....	125, 176
Determining State Service .....	113
Education Service Centers .....	123
Employee Separations.....	108
Exhaustion of.....	109
Family Medical Leave .....	135
FLSA Overtime Balances .....	40
Leave Without Pay .....	124
Lump Sum Payments .....	105, 108, 109, 171
Military Leave .....	150, 151, 157
Records .....	102
Reinstatement .....	227
Retirement Service Credit.....	171
Return-to-Work Retirees.....	112
State Auditor's Resources.....	107, 108, 110, 111, 113
Transfers .....	107, 227
Use of Sick Leave and .....	115
Utilization .....	105

Worker's Compensation .....

205

## Annual Salary

Computing Hourly Rate .....	99
Exempt Positions .....	62
Initial Employment .....	61
Lateral Transfers .....	64
Promotions .....	66
Reclassifications .....	65

## Appellate Court Salary Limits.....73

## Assistance Dog Training Leave .....

142

## At-Will Employment .....

22, 36

    Attorney General Opinion Letters.....

23

## Authorized Witness Expenses.....82

## Awards

Enhanced Compensation.....	89
Performance .....	89, 180
Professional Achievement.....	180

## Awards and Incentive Pay

    Attorney General Opinion Letters.....

95

## B

## Background Checks.....23

Report to the Legislature.....	26
Review of Procedures .....	26

## Benefit Replacement Pay.....76, 77

Leveling .....	77
Overpayments .....	75
State Auditor's Resources .....	77

## Benefits .....

194

Attorney General Opinion Letters.....	188
Death.....	168, 176
Deceased Employees.....	126
Dental.....	164
Dependent Coverage .....	162
Disability Retirement .....	174
Education Service Centers .....	123
Family Medical Leave .....	135, 138
Foster Children.....	163
Law Enforcement Officers.....	164
Life and Disability Insurance .....	164
Life Insurance .....	164
Medical Insurance.....	162
Military Leave.....	150, 151, 156
Multiple Employment .....	33
Out of State Employees.....	27
Part-Time Employees.....	61
Prescription Drug .....	164
Retirement.....	163, 168, 173
Waiting Period .....	162

## Benefit-Wage Credits .....

195

## Bona Fide New Position.....52

## Bona-Fide Occupational Qualification

    (BFOQ) .....

13

## Bone Marrow Leave .....

142

<b>Bonus</b>	
Performance .....	89
Recruitment .....	88
Retention.....	88

## C

<b>Catastrophic Illness .....</b>	<b>101, 121</b>
<b>Charitable Contributions .....</b>	<b>100</b>
<b>Child Abuse, Reporting .....</b>	<b>19</b>
<b>Child Care Services.....</b>	<b>183</b>
<b>Children, and</b>	
Family Medical Leave .....	135
Foster Parent Leave .....	144
Parent Teacher Conference Leave .....	146
Sick Leave .....	116
<b>Civil Rights Act .....</b>	<b>13, 14, 213</b>
<b>Civilian Workforce Composition.....</b>	<b>27</b>
<b>Classification</b>	
Attorney General Opinion Letters.....	60
Changes to .....	53
Compliance Audits .....	58
Plan.....	<i>See</i> Position Classification Plan
Salary Schedules.....	51, 53, 61
Salary Studies .....	59
<b>Classified Positions .....</b>	<b>51, 61</b>
Agency Review of .....	52
Conversion from Exempt Positions .....	62
Salary Administration .....	62
Salary Schedules.....	53
<b>Clothing and Cleaning Allowance ...</b>	<b>184</b>
<b>Combined Service Credit .....</b>	<b>171</b>
<b>Commissioned Law Enforcement</b>	
<b>Officers .....</b>	<i>See</i> Peace Officers
<b>Compensatory Time.....</b>	<i>See</i> State Compensatory Time
<b>Compliance with a Subpoena.....</b>	<b>143</b>
<b>Condition of Employment .....</b>	<b>225</b>
<b>Confidential Information, Disclosure of</b>	
.....	8
<b>Conflict Resolution .....</b>	<b>15</b>
<b>Consanguinity.....</b>	<b>1, 2</b>
<b>Consolidated Omnibus Budget</b>	
<b>Reconciliation Act (COBRA).....</b>	<b>163</b>
<b>Constructive Discharge Claim .....</b>	<b>15</b>
<b>Consultants</b>	
FTE Reporting .....	31
Major Services Contract .....	209
Physical Fitness Standards.....	6
Soliciting Bids .....	210
State Agency Use.....	210, 211
<b>Contract</b>	
Deferred Compensation Plan .....	177
Employment.....	27
Former Employees.....	208
Full-Time Equivalents .....	30
Major Consulting Services.....	209
Management Guide.....	208
Manager Training .....	208

Notification .....	208
Private Auditors .....	209
Recruitment Bonus.....	88
Retention Bonus.....	88
Salary Payments.....	99
Training.....	190
Workers.....	31
Workforce Provisions .....	208
<b>Corporal Position Pay .....</b>	<b>91</b>
<b>Cost of Living Salary Stipend .....</b>	<b>92</b>
<b>Credit Unions .....</b>	<b>100</b>
<b>Criminal History</b>	
Agency Policy .....	25
Checks.....	23
Disclosure .....	25
Higher Education Access .....	26
Information .....	24
Model Policy.....	25
State Agency Access.....	24
<b>Custodial Officers .....</b>	<b>170</b>

## D

<b>Death Benefit Plan .....</b>	<b>176</b>
<b>Deceased Employees</b>	
Attorney General Opinion Letters.....	126
Holiday Time Payment .....	134
Payment of Accrued Leave .....	125
State Compensatory Time.....	47
Worker's Compensation Benefits .....	203
<b>Deductions .....</b>	<b>42</b>
FLSA Exempt Employees.....	42
<b>Deferred Compensation .....</b>	<b>177</b>
401(k) Plan.....	177
457(k) Plan.....	178
<b>Delegation of Authority .....</b>	<b>209</b>
<b>Demotions .....</b>	<b>63</b>
<b>Dental Insurance.....</b>	<b>164</b>
<b>Disabilities, Individuals with.....</b>	<b>12</b>
<b>Disability Retirement Benefits..</b>	<b>145, 174</b>
<b>Discrimination</b>	
Age.....	12
Civil Rights Act .....	13
Disabilities .....	12
Employment Laws .....	11
Exceptions.....	13
Gender-Based.....	14
Genetic Testing .....	18
Non-Citizens .....	37
Pregnancy.....	18
Protection against Retaliation .....	18, 19
Related Legislation .....	21
Religious Affiliation .....	14
Required Training .....	11
Sexual Harassment.....	14
Workers Compensation Claims History....	20
<b>Dispute Resolution Centers.....</b>	<b>15</b>
<b>Donation of Blood .....</b>	<b>142</b>
<b>Dual Employment .....</b>	<i>See</i> Multiple Employment

<b>Duty Assignment</b>	
Change in.....	64, 65

## E

<b>Education Service Centers, Leave ...</b>	<b>123</b>
<b>Educational Institutions</b>	
Salary Provisions .....	73
<b>Eight Hour Work Day .....</b>	<b>214</b>
<b>Elected Class Eligibility.....</b>	<b>170</b>
<b>Emergency Leave.....</b>	<b>143</b>
State Auditor's Resources .....	144
<b>Emergency Medical Services Training</b>	
Leave.....	147
<b>Employee Assistance Program.....</b>	<b>183</b>
<b>Employee Awards and Gifts .....</b>	<b>180</b>
<b>Employee Break and Meal Periods .</b>	<b>183</b>
<b>Employee Compensation .....</b>	<b>75</b>
Related Legislation .....	96
State Auditor's Resources .....	76
<b>Employee Polygraph Protection Act</b>	
(EPPA) .....	16
Poster .....	21
<b>Employees Group Benefit Program</b>	<b>163</b>
<b>Employment Contracts.....</b>	<b>27</b>
Administrators .....	27
Faculty .....	28
<b>Employment Eligibility, Verification of</b>	
.....	37
<b>Employment References.....</b>	<i>See</i>
<b>Background Checks</b>	
<b>Enhanced Compensation Awards.....</b>	<b>89</b>
<b>Equal Employment Opportunity (EEO)</b>	
Commission .....	20, 21
Compliance Training .....	189
Laws .....	11
Poster .....	21
Standards Training .....	190
<b>Equal Pay Act (EPA) .....</b>	<b>17</b>
<b>Equity Adjustments .....</b>	<b>63</b>
State Auditor's Resources .....	64
<b>Ethics Policy .....</b>	<b>1</b>
Model.....	1
<b>Excess Compensation, Recovering ....</b>	<b>75</b>
<b>Executive Directors</b>	
Reassignment of.....	63
<b>Executive Head.....</b>	<i>See Agency Head</i>
<b>Exempt Positions.....</b>	<b>62, 69</b>
Conversion of .....	62
Not-to-Exceed Rates .....	70
Request to Exceed Schedule .....	71
Salary Groups .....	70
Salary Increases .....	72
Salary Schedule .....	71
Salary Study on.....	73
Schedule of .....	69, 70
<b>Exit Survey .....</b>	<b>212</b>
Employee Access.....	212
Reporting and Disclosure.....	212

<b>Extended Sick Leave.....</b>	<b>120</b>
Attorney General Opinion Letters.....	120
State Auditor's Resources.....	121

## F

<b>Faculty .....</b>	<b>16, 28, 88, 225</b>
<b>Fair Employment Practices Agency ...</b>	<b>11</b>
<b>Fair Labor Standards Act (FLSA) ....</b>	<b>39, 40</b>
Deductions for Exempt Employees.....	41
Employees Exempt from.....	39
Exempt Employees .....	41
Multiple Employment .....	33
Non-Exempt Employees .....	40
Overtime .....	40
Overtime Payments.....	40
Payment of .....	40
Poster .....	21
State Auditor Resources.....	43
<b>Family and Medical Leave</b>	
Eligibility .....	137
Intermittent.....	135
State Auditor's Resources.....	137, 138, 139
Use of State Paid Leave .....	138
<b>Family Medical Leave Act (FMLA) .</b>	<b>135</b>
FLSA Exempt Employees.....	42
Poster .....	21
<b>Federal Insurance Contribution Act</b>	
(FICA).....	76, 99
<b>Fire Prevention and Safety</b>	
Assignments.....	91
<b>FLSA Compensatory Time</b>	
Reinstatement.....	227
Transfers .....	227
<b>FMLA ...</b>	<i>See Family Medical Leave Act</i>
<b>Former Employee</b>	
Attorney General Opinion Letters.....	8
Representation by.....	7
<b>Foster Children, and</b>	
Sick Leave.....	116
<b>Foster Parent Leave.....</b>	<b>144</b>
State Auditor's Resources.....	145
<b>FTE</b>	
Caps .....	30
Federally Funded .....	31
Limitations.....	30
Online System.....	32
Reports.....	31, 32
Transfer of.....	31
<b>Full-Time Equivalent.....</b>	<i>See FTE</i>

## G

<b>Genetic Testing.....</b>	<b>18</b>
<b>Gifts, Acceptance of.....</b>	<b>8</b>
<b>Governmental Dispute Resolution Act</b>	
.....	15

<b>Governor's Committee on People with Disabilities .....</b>	<b>13</b>
<b>Grievances .....</b>	<b>16</b>
Employee .....	15, 16
Faculty .....	16

## H

<b>Hardship Stations .....</b>	<b>92</b>
<b>Hazardous Duty Pay .....</b>	<b>77, 109</b>
Attorney General Opinion Letters.....	81
Department of Criminal Justice .....	79
Employees Eligible for .....	77
Lifetime Service Credit.....	78
Monthly Payment.....	79
Table .....	79
Texas Youth Commission.....	80
Underwater Bridge Inspections.....	92
Youth Commission Employees.....	80
<b>Health and Wellness Programs.....</b>	<b>180</b>
<b>Health Fitness and Education .....</b>	<b>180</b>
<b>Health Insurance.....</b>	<b>162</b>
<b>Health Services Pilot Program.....</b>	<b>183</b>
<b>Holidays .....</b>	<b>127</b>
Compensatory Time.....	46, 127
Conversion of Compensatory Time .....	47
Employee Transfers .....	132
FY 2008 Schedule.....	130
FY 2009 Schedule.....	131
Institutions of Higher Education .....	133
Non-Traditional Work Schedules .....	132
Optional .....	132
Payment for Deceased Employees .....	134
Payment of Compensatory Time.....	49
State Auditor's Resources 129, 132, 133, 134	
Transfer of Compensatory Time .....	47
<b>Hostile Work Environment.....</b>	<b>14</b>
<b>Housing Allowance .....</b>	<b>73</b>
<b>Human Resources Staffing.....</b>	<b>213</b>

## I

<b>I-9 .....</b>	<b><i>See Employment Eligibility, Verification</i></b>
<b>Identification Cards</b>	
Peace Officers .....	28
Retired Peace Officers .....	29
<b>Impairment of Duties.....</b>	<b>9</b>
<b>Incentives and Rewards.....</b>	<b>89</b>
<b>Insurance</b>	
Benefits.....	162
Related Legislation .....	167
State Contributions .....	163
Survivor Coverage .....	174
<b>Introductory Period...<i>See Probationary Period</i></b>	

## J

<b>Job Classification .....</b>	<b>51, 52</b>
<b>Job Vacancy Posting.....</b>	<b>35</b>
<b>Judicial Salaries .....</b>	<b>72</b>
<b>Jury Service.....</b>	<b>81, 145</b>
FLSA Exempt Employees.....	41

## L

<b>Labor Relations.....</b>	<b>20</b>
Attorney General Opinions .....	20
<b>Labor Unions</b>	
Public Employee .....	19
<b>Language Interpreter Services .....</b>	<b>91</b>
<b>Lateral Transfers .....</b>	<b>64</b>
<b>Law Enforcement Agencies.....</b>	<b>5</b>
Identification Cards.....	28, 29
Polygraph Examination.....	17
<b>Law Enforcement Officers and Firefighters Survivor Benefits .....</b>	<b>164</b>
<b>Leave .....</b>	<b>102</b>
Assistance Dog Training .....	142
Attorney General Opinion Letters.....	103
Blood Donations .....	142
Bone Marrow .....	142
Emergency .....	143
Emergency Medical Services.....	147
Entitlements for Transfer and Rehire .....	227
Foster Parents.....	144
Jury Service.....	145
Legislative.....	146
Organ Donation.....	142
Parent-Teacher .....	146
Peace Officer Injuries.....	145
Radio Operator.....	141
Records .....	102
Red Cross Activities .....	142
State Auditor's Resources.....	103, 149
Volunteer Firefighters .....	147
Wellness.....	148
<b>Leave Accrual Entitlements</b>	
Institutions of Higher Education .....	225
State Agencies.....	224
<b>Leave Interpretations .....</b>	<b>102</b>
<b>Leave Without Pay .....</b>	<b>124, 150</b>
Break in Employment .....	124
Holidays .....	127
Lifetime Service Credit.....	82
State Auditor's Resources.....	125
<b>Legislation related to</b>	
Employee Compensation .....	96
Employee Leave.....	149
Employment Discrimination Laws.....	21
General Human Resource Information....	220
Insurance.....	167
Military Service and Leave .....	155
Recruitment and Selection .....	38
Retirement.....	179
Standards of Conduct.....	10

Training .....	193
Unemployment Compensation.....	198
Veteran's Preference .....	161
Worker's Compensation.....	207
<b>Liability Insurance.....</b>	<b>166</b>
<b>Lie Detector .....</b>	<i>See Polygraph Examination</i>
<b>Life and Disability Insurance.....</b>	<b>164</b>
<b>Life Insurance Benefits.....</b>	<b>164</b>
<b>Lobbyist .....</b>	<b>7</b>
<b>Longevity Pay .....</b>	<b>82, 224, 225</b>
Attorney General Opinion Letters.....	85
Employee Status Change .....	84
Monthly Rates.....	83
Return-to-Work Retirees.....	84
State Judges and Justices .....	84
Texas Youth Commission.....	84
<b>LWOP .....</b>	<i>See Leave Without Pay</i>

## M

<b>Major Life Activities.....</b>	<b>12</b>
<b>Management-to-Staff Ratio.....</b>	<b>32</b>
<b>Maximum Security Salaries .....</b>	<b>92</b>
<b>Meals .....</b>	<b>185</b>
<b>Medical Insurance Benefits.....</b>	<b>162</b>
<b>Medical Services.....</b>	<b>185</b>
<b>Medical Testing.....</b>	<b>186</b>
<b>Medicare .....</b>	<i>See Federal Insurance Contribution Act</i>
<b>Membership Dues</b>	
Employee Organizations .....	100
Professional Organizations .....	186
<b>Merit Increases</b>	
Employees Not Eligible for .....	86
Institutions of Higher Education .....	87
One-Time.....	86
State Agency Employees .....	85
State Auditor's Resources .....	87
<b>Merit Selection System .....</b>	<b>32</b>
<b>Military Duty.....</b>	<b>151</b>
FLSA Exempt Employees.....	41
<b>Military Leave.....</b>	<b>150</b>
Adjusted Work Schedule .....	151
Attorney General Opinion Letters.....	154
Benefits and Protections for State Service .....	151
Call to National Duty .....	151
Pay Differentials .....	152
State Auditor's Resources .....	152
<b>Military Service.....</b>	<b>151, 156</b>
Re-employment.....	157
Returning Members .....	156
<b>Military Service and Leave</b>	
Related Legislation .....	155
<b>Minimum Wage, Federal.....</b>	<b>39</b>
<b>Minority Hiring Practices Report 27, 37</b>	
<b>Moving and Storage Expenses .....</b>	<b>184</b>
<b>Multiple Employment.....</b>	<b>33</b>

Attorney General Opinion Letters.....	35
Higher Education Appointments .....	34
Legislative Agencies .....	34
University Systems .....	34

## N

<b>Nepotism .....</b>	<b>1, 2, 3</b>
Adult Child .....	4
Affinity .....	1
Attorney General Opinion Letters.....	4
Attorney General Publication.....	3
Consanguinity .....	1
Exceptions.....	2, 3
Public Officials .....	1, 3
<b>Night Shifts.....</b>	<b>93</b>
<b>Not to Exceed Rates .....</b>	<b>70</b>

## O

<b>OASDI.....</b>	<i>See Federal Insurance Contribution Act</i>
<b>Off-Duty and Outside Employment .....</b>	<b>4</b>
Attorney General Opinion Letters.....	5
<b>Office of the Attorney General .....</b>	<b>22, 147</b>
<b>On-Call Pay .....</b>	<b>93</b>
<b>One-Time Merit Increase.....</b>	<b>85</b>
<b>Open Records .....</b>	<b>215</b>
Attorney General Assistance.....	217
Items Not Subject to.....	216
Items Subject to.....	216
<b>Optional</b>	
Benefits Program .....	101
Holidays .....	132
Retirement Program .....	168
Retirement Program Service .....	174
<b>Organ Donation .....</b>	<b>142</b>
<b>Out of State Employees .....</b>	<b>27</b>
<b>Overpayments to Employees.....</b>	<b>75</b>
<b>Overtime</b>	
Fair Labor Standards Act (FLSA).....	40
<b>Overtime Compensation</b>	
Multiple Employment .....	33

## P

<b>Paid Leave Bank for Institutions of Higher Education.....</b>	<b>126</b>
<b>Parental Leave .....</b>	<b>139</b>
State Auditor's Resources.....	140
<b>Parent-Teacher Conference Leave...146</b>	
State Auditor's Resources.....	146
<b>Part-Time Employees</b>	
Annual Leave .....	104
Benefits .....	61
Determining Hourly Rates .....	98
Exit Surveys.....	212
Fair Labor Standards Act .....	39
Hazardous Duty Pay.....	78

Health Insurance Contributions .....	163, 173
Holiday Pay .....	133
Lifetime Service Credit.....	82
Longevity Pay.....	82
Multiple Employment.....	34
Parent-Teacher Conference Leave .....	146
Peace Officers.....	28, 29
Salary Rates .....	61
Sick Leave .....	115
State Compensatory Time.....	44
Status Change .....	84
Unemployment Insurance.....	197
<b>Pay Entitlements upon Separation ..</b>	<b>226</b>
<b>Payday.....</b>	<b>97</b>
<b>Payroll and Personnel Reporting.....</b>	<b>97</b>
<b>Payroll Deductions.....</b>	<b>99</b>
Charitable Contributions.....	100
Credit Unions.....	100
Employee Organizations.....	19
Employee Organizations.....	100
Institutions of Higher Education.....	101
Supplemental Benefits.....	101
<b>Peace Officers.....</b>	<b>28</b>
Disability Retirement.....	175
Holidays.....	47
Identification Cards.....	28, 29
Injury Leave.....	145
Physical Fitness Standards.....	5
Polygraph Examination.....	17
Retirement .....	170
<b>Performance Rewards .....</b>	<b>89</b>
<b>Personnel Policies, Review of .....</b>	<b>11</b>
<b>Physical Fitness Standards.....</b>	<b>5</b>
Exemptions .....	6
<b>Place of Work .....</b>	<b>213</b>
<b>Political Activities</b>	
Prohibited.....	7
<b>Political Influence .....</b>	<b>6</b>
Attorney General Opinion Letters.....	7
<b>Polygraph Examination.....</b>	<b>16, 17</b>
<b>Position Classification Plan.....</b>	<b>51</b>
Agencies Subject to .....	51
Positions Exempt from.....	61
Positions Exempt From.....	69
Recommendations.....	53
<b>Posters, Required Workforce.....</b>	<b>21</b>
<b>Pregnancy .....</b>	<b>18</b>
Sick Leave .....	116
<b>Pregnancy Discrimination Act, Federal .....</b>	<b>18</b>
<b>Prescription Drug Benefits.....</b>	<b>164</b>
<b>Probationary Period .....</b>	<b>36</b>
<b>Professional Fees</b>	
Attorney General Opinion Letters.....	187
<b>Promotions.....</b>	<b>61, 66</b>
<b>Proportionate Service Retirement .....</b>	<b>175</b>
<b>Program.....</b>	<b>175</b>
<b>Public Information Responsibilities</b>	<b>215</b>
<b>Public Official</b>	

Definition.....	1
Nepotism.....	1
<b>Publicity.....</b>	<b>7</b>
<b>Purchase of</b>	
Additional Service Credit.....	172
Military Service .....	172
Refunded Service Credit.....	172
Service Credit .....	172

## Q

<b>Quid Pro Quo.....</b>	<b>14</b>
--------------------------	-----------

## R

<b>Rate of Pay</b>	
FLSA.....	40
Holidays .....	47
Initial Employment .....	52
<b>Reallocations .....</b>	<b>64</b>
<b>Reclassification.....</b>	<b>65</b>
<b>Recruitment</b>	
Bonus .....	88
Plans.....	35, 37
<b>Recruitment and Selection</b>	
Related Legislation .....	38
<b>Red Cross Activities.....</b>	<b>142</b>
<b>Reduction in Force</b>	
Veteran's Preference.....	160
<b>Reduction in Force.....</b>	<b>118, 218</b>
<b>Relationship, Degrees of</b>	
Chart .....	2
<b>Relatives, Employing .....</b>	<b>See Nepotism</b>
<b>Required Workforce Posters .....</b>	<b>21</b>
<b>Retaliation .....</b>	<b>See Whistle Blower</b>
<b>Retention Bonus .....</b>	<b>88</b>
<b>Retirees</b>	
Longevity Pay .....	84
Resumption of State Service .....	175
Return-to-Work.....	112
<b>Retirement.....</b>	<b>112, 168</b>
Benefits .....	168
Combined Service Credit.....	171
Contributions .....	169
Death and Survivor Benefits .....	176
Death Benefits.....	168
Disability Benefits .....	168, 174
Effective Date .....	169
Elected Class.....	170
Eligibility .....	169
Establishing Service Credit.....	170
Health Insurance Benefits Eligibility .....	173
Peace Officers.....	170
Proportionate Service.....	175
Purchase of Service Credit.....	172
Related Legislation .....	179
Survivor Benefits .....	176
Use of Annual and Sick Leave.....	171
Withdrawal of Contributions .....	169
<b>Right-to-Work.....</b>	<b>19</b>

<b>Rule of 80 .....</b>	<b>174</b>
-------------------------	------------

**S**

**Salary Actions**

Demotions.....	63
Equity Adjustments .....	63
Lateral Transfers.....	64
Promotions.....	66
Reallocations .....	64
Reclassifications .....	65
State Auditor's Resources .....	68
Temporary Assignments .....	66

**Salary Administration ..... 61**

State Auditor's Resources .....	62
---------------------------------	----

**Salary Increases**

FY 2008-2009.....	66
-------------------	----

**Salary Limitations.....61, 75**

**Salary Rates**

Initial Employment .....	61
--------------------------	----

**Salary Reduction for Disciplinary**

<b>Reasons .....</b>	<b>65</b>
----------------------	-----------

**Salary Schedule A**

FY 2008.....	54
FY 2009 .....	55

**Salary Schedule B**

FY 2008.....	56
FY 2009 .....	57

**Salary Schedule C**

FY 2008-2009.....	58
-------------------	----

**Salary Schedules ..... 51**

**Salary Stipends.....91, 92**

Bilingual Capabilities .....	90
Commission on Law Enforcement Standards Certification .....	90
Education Level.....	90
Schedule C Employees .....	90
Special Assignments .....	91

**Salary Supplements**

Classified Employees.....	62
---------------------------	----

**Second Job.....See Off-Duty and Outside Employment**

**Selective Service Registration ..... 36**

**Sexual Harassment .....14, 15**

Definition.....	14
Required Training.....	11

**Shift Differentials.....93, 94**

**Sick Leave..105, 109, 115, 218, 224, 225, 227**

Attorney General Opinion Letters.....	117
Attorney General Opinion Letters.....	120
Deceased Employees .....	125
Education Service Centers .....	123
Extended .....	120
Family Medical Leave .....	138
FLSA Exempt Employees.....	42
Leave Without Pay .....	124
Military Service .....	118
Multiple Employment.....	33
Parent Teacher Conference .....	146

Payment of.....	118
Records .....	102
Reinstatement.....	227
Retirees .....	119
State Auditor's Resources.....	115, 118, 119
Transfers .....	227
Transfers to Sick Leave Pool .....	121
Utilization .....	116

**Sick Leave Pool .....121**

Administration .....	122
Contributions .....	122
State Auditor's Resources.....	123
Withdrawals.....	122

**Social Security Disability Insurance.197**

**Social Security Tax .....See Federal Insurance Contribution Act**

**Social Security, State Paid....See Benefit Replacement Pay**

**Standards of Conduct.....1, 8**

Related Legislation .....	10
---------------------------	----

**Standby Pay.....93**

**State Agency Responsibilities .....223**

**State Compensatory Time.....43, 44**

Agency Heads .....	48
Conversion of.....	47
Deceased Employees.....	125
Fair Labor Standards Act (FLSA).....	40
FLSA Exempt Employees.....	44
FLSA Non-Exempt Employees.....	43
Governing Bodies .....	47
Payment for.....	44
Payment of .....	49
Place of Employment.....	48
Policies for Agencies .....	45
Reinstatement.....	227
State Auditor's Resources.....	46, 48
Transfers .....	227
Using Time Before Lapsing .....	44

**State Employees Training Act .....191**

**State Kids Insurance Program .....166**

**State Privacy Policy .....218**

**State Property .....9**

**State Service**

Attorney General Opinions .....	114
State Auditor's Resources.....	114

**State-Owned Housing .....187**

**Strikes .....20**

**Studies of Salary Rates.....59**

**Survivor Options at Retirement .....176**

**T**

**Tangible Employment Action .....15**

**Temporary Assignment.....66**

**Termination**

Employment Contract .....	27
Exit Survey .....	212
Faculty .....	16
Leave Reinstatements .....	227

Recovery of Identification Cards .....	29
Refund of Retirement Contributions .....	169
Restoration of Sick Leave .....	218
Sick Leave Balances .....	118
Violation of Ethics Policy .....	1
<b>Testimony .....</b>	<b>6</b>
<b>Texas Employees Uniform Group</b>	
<b>Insurance Act .....</b>	<b>162</b>
<b>Texas Payday Law Poster .....</b>	<b>21</b>
<b>Texas Public Information Act.....</b>	<b>215</b>
<b>Texas Workforce Commission.....</b>	<b>159</b>
<b>Time Off to Vote .....</b>	<b>147</b>
Attorney General Opinion Letters.....	147
<b>Title VII .....</b>	<i>See Civil Rights Act</i>
<b>Training .....</b>	<b>189</b>
Attorney General Opinion Letters.....	192
Contract Manager .....	208
Correctional Officers .....	189
Policy Requirements .....	191
Related Legislation .....	193
<b>Training and Education Programs..</b>	<b>190</b>
<b>Travel Expense .....</b>	<b>9</b>
<b>Tuition Assistance .....</b>	<b>187</b>

## U

<b>U.S. Department of Labor ....</b>	<b>16, 21, 156, 157</b>
<b>Unacceptable Solicitations and Benefits .....</b>	<b>8</b>
<b>Underwater Bridge Inspections .....</b>	<b>92</b>
<b>Unemployment Insurance Benefits</b>	
Disqualification for Benefits.....	196
<b>Unemployment Insurance Compensation.....</b>	<b>194</b>
Benefits .....	195
Benefits Eligibility .....	195
Benefits for Disabled Persons .....	197
Claiming Benefits .....	194
Out of State Employees .....	196
Payment of Benefits.....	195
Reimbursements to the Fund .....	194
Related Legislation .....	198
<b>Unemployment Insurance Compensation Act (Texas)</b>	
Poster .....	21
<b>Uniformed Services Employment and Re-employment Rights Act (USERRA) .....</b>	<b>156</b>
Poster .....	21

## V

<b>Vacation Leave.....</b>	<i>See Annual Leave</i>
<b>Veteran's Preference.....</b>	<b>158</b>
Appealing Employment Decisions.....	160
Reductions in Force .....	160
Related Legislation .....	161

Reporting Requirements .....	161
Requirements for Public Entities.....	159
Service Connected Disabilities.....	158
Spouse and Orphans.....	159
<b>Voluntary Separation</b>	
Exit Survey .....	212
<b>Voluntary Work Reduction Program .....</b>	<b>214</b>
<b>Volunteer Firefighters</b>	
Leave.....	147
State Auditor's Office.....	148
<b>Voting.....</b>	<b>147</b>

## W

<b>Weekend Shifts.....</b>	<b>93</b>
<b>Wellness</b>	
Advisory Board.....	181
Coordinator, Statewide.....	181
Programs .....	180, 181
<b>Wellness Leave .....</b>	<b>148</b>
<b>Whistle Blower .....</b>	<b>18</b>
Act (Texas) .....	19
<b>Withdrawal of Retirement Contributions .....</b>	<b>169</b>
<b>Witness Fees .....</b>	<b>81</b>
<b>Workers' Compensation .....</b>	<b>199</b>
Act (Texas) .....	20
Annual Leave Provisions .....	205
Attorney General Opinion Letters.....	201
Claims .....	206
Coverage for State Employees .....	199
Coverage for Volunteers .....	200
Death and Burial Benefits .....	203
Death Benefits.....	207
Emergency Leave.....	206
Employer Responsibilities .....	204
FLSA Exempt Employees.....	42
Impairment Benefits.....	202
Income Benefits .....	202
Lifetime Benefits .....	203
Medical Benefits .....	201
Out of State Assignments.....	200
Poster .....	21
Related Legislation .....	207
Sick Leave Provisions .....	205
Supplemental Benefits .....	202
Temporary Benefits .....	202
<b>Workers' Compensation Act (Texas) .....</b>	<b>206</b>
<b>Workforce</b>	
Diversity Programs .....	11
Planning .....	218
Planning Guide.....	219
<b>Workforce Analysis .....</b>	<b>37</b>
<b>Working Day .....</b>	<b>97</b>
<b>Working Hours .....</b>	<b>213</b>
Attorney General Opinion Letters.....	215