

Texas Human Resources Management Statutes Inventory

2018-2019 Biennium

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



SAO No. 18-303

Foreword

The Texas Human Resources Management Statutes Inventory (Inventory) is provided by the State Auditor's Office as a guide to assist state agencies and institutions of higher education. The Inventory, first published in 1972 and updated every two years, is a compilation of major state and federal laws that apply to human resources management. This 21st edition supersedes all previous editions and reflects changes made in the 85th Legislative Session.

Applicability of the Inventory: The Inventory is a general reference guide for state entities and organizations 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, the judiciary, and legislative agencies. State entities should consult with their legal counsel to ensure compliance with all applicable federal and state laws and regulations.

Intention of Inventory

This guide does not create a contract between a state entity or organization and any employee. Unless explicitly exempted by written contract, statute, or policy, **state employees are employed "at-will."**

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, case law, Texas Office of the Attorney General Opinions, and other source documents takes precedence over the content of the Inventory.

Interpretation of the human resources management provisions: The Inventory draws state human resources statutes, policies, and procedures primarily from four sources: general laws enacted by the Legislature, the General Appropriations Act, federal laws, and Texas Office of the Attorney General Opinions. Texas Government Code, Section 661.151, grants the State Auditor the authority to provide a uniform interpretation of Texas Government Code, Chapter 661, Subchapter F, General Provisions for Vacation Leave for State Employees; Subchapter G, General Provisions for Sick Leave for State Employees; and Subchapter Z, Miscellaneous Leave Provisions for State Employees. Please be advised that State Auditor interpretations are advisory in nature and should not be construed as legal advice. State entities are responsible for consulting with their legal counsel to determine the best course of action and to ensure compliance with all applicable federal and state laws.

Additional information: Questions concerning this Inventory should be directed to the Classification Analyst in the State Auditor's Office's State Classification Team assigned to your agency or institution of higher education. Contact information for the analysts is at <http://www.sao.texas.gov/Contact/AgencyContactManagers>.

Contents

<i>Foreword</i>	<i>i</i>
<i>Chapter 1 Standards of Conduct</i>	<i>1</i>
Ethics Policy	1
Nepotism	1
Physical Fitness Programs and Standards	3
Political Influence.....	4
Publicity	5
Employment Restrictions for Former Officers or Employees.....	5
Unacceptable Solicitations and Benefits.....	6
Use of Alcoholic Beverages	7
Use of State Property.....	7
<i>Chapter 2 Employment Discrimination and Anti-Retaliation Laws</i>	<i>8</i>
General Information	8
Texas Workforce Commission	8
Workforce Diversity Programs.....	8
Age Discrimination in Employment Act of 1967 (ADEA).....	9
Americans with Disabilities Act of 1990 (ADA) and the Americans with Disabilities Act Amendments Act of 2008 (ADAAA)	9
Bona-Fide Occupational Qualification (BFOQ)	9
The Civil Rights Act of 1964, Title VII	10
Religious Affiliation Discrimination	10
Sexual Harassment	10
Equal Pay Act of 1963 (EPA)	11
Federal Pregnancy Discrimination Act of 1978.....	11
Genetic Information Nondiscrimination Act of 2008 (GINA)	11
Genetic Testing Discrimination	12
Lilly Ledbetter Fair Pay Act of 2009.....	12
Protections in Reporting Violations of Law	12
Reporting Discrimination.....	12
Reporting Child Abuse and Neglect	12
Texas Whistle Blower Act	13
Public Employee Labor Unions	13
Strikes	13
Right to Express Breast Milk	13
Required Posters at the Workplace.....	14

Chapter 3 Employee Recruitment and Selection 15

At-Will Employment.....	15
Reference Checks	15
Criminal History Checks	16
Dissemination of Criminal History Information.....	16
Criminal History Checks on Information Technology Employees.....	17
Criminal History Checks on Security Sensitive Positions in Higher Education	19
Equal Employment Opportunity Commission (EEOC) Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII	19
Employees Working Out of State.....	19
Employment Preference for Former Foster Children	20
Employment Preference for Veterans.....	20
Military Occupational Specialty Codes on Employment Openings.....	21
Report on Transition from Military Service to Employment.....	21
Identification Cards for Peace Officers	22
Merit Selection Principles - Federal Laws or Regulations	22
Multiple Employment with the State	23
Appointments at State Institutions of Higher Education	24
Posting Job Vacancies	25
Online State Agency Employment Applications.....	25
Probationary or Introductory Period.....	25
Selective Service Registration.....	26
Verification of Employment Eligibility	26
Volunteer Programs.....	26
Civilian Workforce Composition.....	27
Workforce Analysis.....	27
Recruitment Plans.....	28

*Chapter 4 Federal Requirements: Fair Labor Standards Act and the
Family and Medical Leave Act* 29

Fair Labor Standards Act (FLSA)	29
FLSA Nonexempt Employees.....	29
FLSA-Exempt Employees	31
Family and Medical Leave Act (FMLA).....	32
Family and Medical Leave Eligibility	32
Family and Medical Leave Entitlement.....	33
Military Caregiver Leave	34
Spouses Employed by Same Employer	34
Family and Medical Leave Notice and Certification.....	34
Family and Medical Leave and the Use of Paid Leave	36
Determining the 12-Month Leave Entitlement Period	37
Job Restoration and Maintenance of Health Benefits.....	37

<i>Chapter 5 State and Holiday Compensatory Time</i>	39
State Compensatory Time	39
State Compensatory Time for Nonexempt Employees Subject to FLSA.....	39
State Compensatory Time for Employees Exempt from FLSA Overtime Provisions	39
State Compensatory Time for Emergency Services Personnel.....	40
Payment of State Compensatory Time in Certain Situations	40
Use of Compensatory Time before Lapsing	41
Notification of Compensatory Time Policy.....	41
Compensatory Time for Persons Governing State Agencies and Institutions of Higher Education	42
Compensatory Time and Assigned Place of Employment	42
Holiday Compensatory Time.....	42
Transfer of Holiday Compensatory Time between State Agencies	43
Authorizations for Payment of Holiday and State Compensatory Time	43
<i>Chapter 6 Position Classification Plan</i>	44
Position Classification Plan Overview	44
Agencies Subject to the Position Classification Plan.....	44
Agencies' Use of the Position Classification Plan	45
Bona Fide New Positions	45
State Job Descriptions.....	46
Classification Salary Schedules.....	46
Fiscal Year 2018-2019 Classification Salary Schedules A and B	46
Fiscal Year 2018-2019 Classification Salary Schedule C	49
Classification Compliance Audits	49
Salary Studies.....	50
<i>Chapter 7 Positions Exempt from the Position Classification Plan</i> ..	51
Positions Exempt from the Position Classification Plan	51
Salary Groups and Not-to-Exceed Rates for Exempt Positions.....	52
Salary Groups.....	52
Not-to-Exceed Rates	52
Exempt Employees Salaries.....	52
Salary Supplements for Exempt Positions	55
Provisions for Educational Institutions	56
Salary Study on Exempt Positions.....	56
<i>Chapter 8 Salary Administration</i>	57
General Information	57
Part-time and Hourly Employees	57
Salary at the Time of Hire	57
Salary Limitations	57
Salary Supplementation	58
Conversion of Exempt Employees to Classified Positions.....	59
Reassignment of Executive Directors	59
Demotions	60

Equity Adjustments	60
Lateral Transfers	61
Reallocations.....	61
Reclassifications.....	62
Salary Reduction for Disciplinary Reasons.....	62
Promotions	63
Temporary Assignments	63
<i>Chapter 9 Employee Compensation</i>	<i>64</i>
Employee Compensation Overview	64
Salary Limitations	64
Recovering Excess Compensation Paid	64
Information Regarding Staff Compensation.....	64
Benefit Replacement Pay	65
Hazardous Duty Pay.....	66
Hazardous Duty Pay Lifetime Service Credit	67
Amount of Hazardous Duty Pay	67
Jury Service and Witness Fees	68
Longevity Pay	68
Accrual of Lifetime Service Credit	69
Longevity Pay for State Judges and Justices	70
Longevity Pay for Return-to-Work Retirees.....	71
Longevity Pay When Employee’s Status Changes	71
Merit Salary Increases and One-time Merit Payments	71
Employees Not Eligible for Merit Increases	72
Merit Increases at Institutions of Higher Education	73
Recruitment Bonuses	74
Retention Bonuses	74
Performance Rewards	75
Savings Incentive Program for State Agencies	76
Salary Stipends for Employees in Classification Salary Schedule C	76
Education Level.....	77
Commission on Law Enforcement Certification Level.....	77
Bilingual Capabilities	77
Salary Stipends and Pay for Special Assignments.....	77
Shift Differentials, Standby, or On-Call Pay.....	77
<i>Chapter 10 Payroll and Personnel Reporting</i>	<i>78</i>
Payroll Overview	78
Payday.....	78
Method and Frequency of Pay.....	79
Determining Amounts for Part-time Pay	79
Federal Insurance Contributions Act (FICA)	80
Payroll Deductions	80
Charitable Contribution Deductions.....	81
Credit Unions Deductions	81

Deductions for Membership Fees for Eligible State Employee Organizations.....	81
Deductions for Supplemental Optional Benefits Program	81
Payroll Reductions or Deductions Authorized for Institutions of Higher Education.....	82
Withholding of Administrative Fee for Supplemental Deductions	82
Deductions for Prepaid Higher Education Tuition Program	83
Limitations on State Employment Levels	83
Full-Time Equivalent Employees Reporting.....	85
<i>Chapter 11 General Leave Provisions.....</i>	<i>87</i>
Employee Leave Policies	87
Leave Records	88
Leave Reporting	88
Reporting of Emergency Leave and Leave During an Investigation.....	88
Vacation Leave	89
Vacation Leave Accruals and Utilization	89
Vacation Leave for Legislative Employees	91
Vacation Leave and Employee Transfers and Separations	92
Vacation Leave Accruals and Retirees.....	93
Sick Leave	93
Sick Leave Accruals and Utilization	93
Sick Leave Records for Faculty at Institutions of Higher Education	94
Sick Leave and Employee Transfers and Separations	94
Extended Sick Leave.....	95
Sick Leave Pool	95
Catastrophic Injury or Illness.....	95
Administering the Sick Leave Pool	96
Donation of Sick Leave to Another Employee	96
Parental Leave.....	97
Education Service Centers and Leave	97
Leave without Pay	97
Payment of Accrued Leave of Deceased Employees	98
Leave Policies and Provisions for Institutions of Higher Education	99
<i>Chapter 12 Miscellaneous Leave Provisions.....</i>	<i>100</i>
Administrative Leave for Outstanding Performance	100
Amateur Radio Operator Leave	100
Assistance Dog Training	101
Blood Donation	101
Bone Marrow and Organ Donation	101
Certified American Red Cross Activities	101
Court Appointed Special Advocate (CASA) Volunteers.....	102
Emergency Leave.....	102
Death of an Employee's Family Member	102
Good Cause	102
Reporting of Emergency Leave.....	102
Foster Parent Leave	103

Injury Leave for Certain Peace Officers	104
Leave During an Agency Investigation.....	104
Medical and Mental Health Care Leave for Certain Veterans.....	105
Sick Leave for Educational Activities.....	106
Time Off to Vote	106
Volunteer Firefighters and Emergency Medical Services Training Leave.....	107
Reserve Law Enforcement Officer Training Leave.....	107
Additional Miscellaneous Leave Types Provided Under Texas Labor Code and Texas Government Code	107
Compliance with a Subpoena.....	107
Jury Service	107
Wellness Leave.....	108
<i>Chapter 13 State Employee Holidays.....</i>	<i>109</i>
Overview of Holidays for State Employees	109
Fiscal Years 2018 and 2019 Holiday Schedules.....	111
Optional Holidays	113
Holidays and Employee Separations.....	113
Holidays and Employee Transfers.....	113
Holidays for Employees Working Non-Traditional Schedules.....	113
Holidays for Institutions of Higher Education	114
Holiday Time Payment for Deceased Employees	114
<i>Chapter 14 Military Leave and Employment Rights</i>	<i>115</i>
Military Leave Overview.....	115
Veterans' Liaisons	115
The Uniformed Services Employment and Reemployment Rights Act (USERRA)	115
Military Leave Entitlements and Eligibility	116
Military Family Leave Entitlements	117
Paid Leave and State Service.....	117
Notice of Military Leave.....	118
Military Pay Differentials.....	119
Determining Eligibility.....	119
Returning Service Members	120
Applications for Reemployment	120
Entitlement to Retirement or Other Benefits	120
Veterans' Employment Preference	121
Veteran Employment Goal for State Agencies	122
Designation of Open Positions for, and Immediate Hiring of, Individuals Entitled to a Veterans' Employment Preference	122
Interviews.....	122
State Employment Forms	123
Employment Investigation	123
Competitive Examinations	123
Reductions in Force	123

Appealing Employment Decisions Under Veterans' Preference	124
Veterans' Preference Reporting Requirements	124
<i>Chapter 15 Insurance Programs</i>	125
<hr/>	
Insurance Overview	125
Employee Insurance Benefits	125
Waiting Period for Health Insurance Coverage	126
Dependent Coverage	126
State Contributions for Health Insurance	126
Dental Insurance	127
Vision Insurance	127
Tobacco User Premium Differential	127
Employee Life and Disability Insurance	127
Accelerated Payment of Life Insurance Benefits	127
<i>Chapter 16 Retirement</i>	128
<hr/>	
Retirement Overview	128
Employees Retirement System (ERS)	128
Retirement Contributions	129
Withdrawal of Contributions	130
Classes of Membership	130
Retirement Eligibility	131
Establishing Service Credit	131
Determining the Standard Service Retirement Annuity	132
Proportionate Retirement Program	132
Resumption of State Service by a Retiree	132
Deferred Compensation	133
401(k) Plan Automatic Enrollment	134
<i>Chapter 17 Additional Benefits</i>	135
<hr/>	
Awards and Gifts	135
Employee Health and Wellness Programs	135
Health Fitness and Education Programs	135
Wellness Programs	136
Wellness Council	137
Employee Assistance Programs	137
Child Care Expenses	137
Memberships In and Dues for Professional Organizations	137
Moving and Storage Expenses	138
State-Owned Housing	138
<i>Chapter 18 Training</i>	139
<hr/>	
Equal Employment Opportunity (EEO) Compliance Training	139
Equal Employment Opportunity (EEO) Standards Training	139
Coordinated Technology Training	139

Cybersecurity Awareness Training	140
Training and Education Programs	140
Training Policy Requirements	141
Contract Management and Purchasing Training	143
Reporting of Contract Management and Procurement Staff	144
Training in Contract Negotiation for Purchase of Information Resources Technologies	144
<i>Chapter 19 Unemployment Insurance Compensation</i>	<i>145</i>
Overview	145
Filing an Initial Claim for Unemployment Benefits and Notice of Initial Claim	145
Appeals Process	146
Reimbursements to the Unemployment Compensation Fund	146
Coverage for State Employees Working Outside the State	147
<i>Chapter 20 Workers' Compensation</i>	<i>148</i>
Overview of Workers' Compensation	148
Coverage for State Employees	148
Workers' Compensation Health Care Networks	149
Out of State Assignments or Positions	149
Coverage for Services Provided by Volunteers	150
Workers' Compensation Benefits	150
Employer Responsibilities	151
Workers' Compensation and State Leave Provisions	153
Workers' Compensation and Emergency Leave	153
Employer's Rights	153
Employee's Responsibilities	154
Additional Injury Reporting Requirements	155
Facilitating an Injured Employee's Return to Work	155
<i>Chapter 21 Miscellaneous Provisions</i>	<i>156</i>
Employee Exit Surveys	156
Exit Survey Employee Access	156
Exit Survey Reporting and Disclosure Requirements	157
Human Resources Staffing	157
Place of Work and Working Hours	157
Eight-Hour Work Day for Certain Public Works Employees	158
Voluntary Work Reduction Program	158
Workforce Planning	159
Designated Information Security Officer	159

Appendices..... 160

Appendix 1
Objective, Scope, and Methodology.....160

Appendix 2
State Agency Responsibilities162

Appendix 3
Entitlements for State Agency Employees.....164

Appendix 4
Entitlements for Employees of Institutions of Higher Education165

Appendix 5
Pay Entitlements Upon Separation from State Employment.....166

Appendix 6
Transfer and Rehire Leave Reinstatement Entitlements167

Chapter 1 Standards of Conduct

Ethics Policy

Each state agency and institution of higher education is required to adopt a written ethics policy outlining standards of conduct for employees. The ethics policy should be distributed to each new employee no later than the third business day after the date of employment with the agency.¹ The Office of the Attorney General is responsible for developing and distributing a model policy that state agencies may use.² A state employee who violates an agency's ethics policy is subject to termination.³

Nepotism

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

- If the relationship is within the third degree by consanguinity or within the second degree by affinity (see Table 1-1 on the next page); or
- The public official holds the appointment or confirmation authority as a member of a state or local board, the Legislature, or a court and the individual is related to another member of that board, Legislature, or court within a degree described within Table 1-1.⁴

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.⁵ 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.⁶

¹ Texas Government Code, Section 572.051 (c).

² Texas Government Code, Section 572.051 (d).

³ Texas Government Code, Section 572.051 (b).

⁴ Texas Government Code, Sections 573.002 and 573.041.

⁵ Texas Government Code, Section 573.022.

⁶ Texas Government Code, Section 573.024 (a).

A “public official” is:

- A political officer.
- An officer or board member.
- A judge.⁷

A state agency may adopt a nepotism policy that is more restrictive than state law.⁸

Table 1-1

Consanguinity and Affinity Relationship Chart From Public Official or Employee ⁹					
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
Parent	Grandparent	Great Grandparent	Spouse	Grandparent	Great Grandparent
Child	Grandchild	Great Grandchild	Parent	Grandchild	Great Grandchild
	Brother or Sister	Uncle or Aunt	Child	Brother or Sister	Uncle or Aunt
		Nephew or Niece			Nephew or Niece

Exceptions to a nepotism policy include:

- An appointment as a notary public.
- An appointment as a page, secretary, personal attendant, or any other person employed by the Legislature to attend to a member of the Legislature who, because of physical infirmities, is required to have a personal attendant.
- 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.¹⁰

⁷ Texas Government Code, Section 573.001 (3).

⁸ Texas Office of the Attorney General, Opinion MW-540 (1982).

⁹ Texas Government Code, Sections 573.023 and 573.025.

¹⁰ Texas Government Code, 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.¹¹

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.¹²

The Texas Office of the Attorney General opinions on nepotism are available at <https://www.texasattorneygeneral.gov/opin/opinions.php?headingID=69>.

Physical Fitness Programs and Standards

State agencies with commissioned law enforcement officers are required to adopt physical fitness programs in which commissioned law enforcement officers must participate and physical fitness standards that the officers must meet. The standards must directly relate to the officer's job duties and include individual fitness goals specific to the officer's age and gender. The agencies must use the services of a consultant to aid in the development of such standards. Each agency is required to adopt policies and procedures to provide reward incentives in the form of administrative leave to officers who participate in the physical fitness program and meet the standards. The total administrative leave offered as reward incentives is limited to four days per year.¹³ For a list of state agencies covered under this provision, see Texas Government Code, Section 614.171.

A violation of the adopted standards is just cause for dismissal or transfer to a position not compensated within Classification Salary Schedule C prescribed by the General Appropriations Act. The agencies, however, may exempt a law enforcement officer from participating in a physical fitness program or meeting a standard based on the facts and circumstances of the individual case, including whether an officer was injured in the line of duty. Each agency may adopt physical readiness standards independent of the other agencies.¹⁴

¹¹ Texas Government Code, Section 573.062 (a).

¹² Texas Government Code, Section 573.062 (b).

¹³ Texas Government Code, Section 614.172 (a) and (a-1).

¹⁴ Texas Government Code, Section 614.172 (a-2), (b), and (c).

A state agency or institution of higher education may not use any money under its control to finance or support the candidacy of a person for an office in the legislative, executive, or judicial branch of state government or of the government of the United States.¹⁵

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.¹⁶ Employees may not coerce, command, restrict, or prevent contributions to candidates or political organizations.¹⁷

The use of state-owned or state-leased vehicles to support the candidacy of a person running for office is prohibited.¹⁸

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.¹⁹

State agencies and institutions of higher education may not use appropriated funds to employ as a regular or contract employee a person who is required by Texas Government Code, Chapter 305, to register as a lobbyist. In addition, a state agency may not use any money under its control to employ or contract with an individual who is required by Texas Government Code, Chapter 305, to register as a lobbyist.²⁰ State agencies and institutions of higher education also may not use appropriated funds to pay membership dues to an organization that pays part or all of the salary of a person who is required by Texas Government Code, Chapter 305, to register as a lobbyist.²¹

Each agency and institution of higher education 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.²²

¹⁵ Texas Government Code, Section 556.004 (a).

¹⁶ Texas Government Code, Section 556.004 (c).

¹⁷ Texas Government Code, Section 556.004 (d).

¹⁸ Texas Government Code, Section 556.004 (b).

¹⁹ Texas Government Code, Section 556.006.

²⁰ Texas Government Code, Section 556.005 (a).

²¹ Texas Government Code, Section 556.005 (b).

²² Texas Government Code, Section 556.009.

Publicity

A state agency or institution of higher education may not use appropriated money to publicize or direct attention to a state officer or employee.²³ In addition, a state agency or institution of higher education may not use appropriated money to maintain a publicity office or department, employ an individual who has the title or duties of a public relations or press agent, or pay a public relations agent or business.²⁴

Employment Restrictions for Former Officers or Employees

A former member of a governing body or executive head of a regulatory agency may not make any communication to or appearance before an officer or employee of the agency in which the member or executive head served until two years after the member or executive head 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.²⁵

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.²⁶

A former state officer or employee of a state agency or institution of higher education who during the period of state service or employment participated on behalf of a state agency or institution of higher education in a procurement or contract negotiation involving a person or business entity may not accept employment from that person or entity before the second anniversary of the date on which the contract is signed or the procurement is terminated or withdrawn.^{27 28}

²³ Texas Government Code, Section 2113.011 (a).

²⁴ Texas Government Code, Section 2113.011 (b).

²⁵ Texas Government Code, Section 572.054 (a).

²⁶ Texas Government Code, Section 572.054 (b), (c), and (h).

²⁷ Texas Government Code, Section 572.069, as amended by Senate Bill 533 (85th Legislature, Regular Session).

²⁸ Previously adopted statutory language prohibited a former state officer or employee who during the period of state service or employment participated on behalf of a state agency or institution of higher education in a procurement or contract negotiation involving a person or business entity from accepting employment from that person or entity before the second anniversary of the date that the officer's or employee's service with the state agency or institution of higher education ended.

New Requirement

The 85th Legislature enacted legislation prohibiting a former state officer or employee of a state agency or institution of higher education who during the period of state service or employment participated on behalf of a state agency or institution of higher education in a procurement or contract negotiation involving a person or business entity from accepting employment from that person or entity before the second anniversary of the date on which the contract was signed or the procurement was terminated or withdrawn.

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 should not:

- Accept or solicit any gift, favor, or service that might tend to influence the employee's or officer's discharge of official duties or that is offered with the intent to influence official conduct.
- Accept other employment or engage in a business or professional activity that might reasonably require the employee or officer to disclose confidential information acquired by reason of an official position.
- Accept other employment or compensation that might impair the employee's or officer's independence of judgment in the performance of official duties.
- Make personal investments that might create a conflict between the employee's or officer's private interest and the public's interest.
- Intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised official powers or performed official duties in favor of another.²⁹

Texas Ethics Commission

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

Written opinions are available on the **Texas Ethics Commission's Web site** at <http://www.ethics.state.tx.us>.

A state agency or institution of higher education may not use appropriated money to compensate a state employee who violates a standard of conduct.³⁰ 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.³¹

²⁹ Texas Government Code, Section 572.051 (a).

³⁰ Texas Government Code, Section 2113.014 (a).

³¹ Texas Government Code, Section 660.016 (a).

Use of Alcoholic Beverages

Except for legitimate law enforcement purposes, a state agency or institution of higher education may not use appropriated funds to compensate an officer or state employee who uses alcoholic beverages on active duty, or to reimburse a travel expense for the purchase of an alcoholic beverage.³²

Use of State Property

State property may be used only for official state purposes and should not be used for personal purposes.³³ This includes the use of state-owned or state-leased motor vehicles, which may be used only for official state business. The use of such vehicles to commute to and from work is acceptable if it is approved by the administrative head of a state agency or institution of higher education. The names and job titles of these employees and the reasons for authorization must be included in an annual report to the Office of the Governor, Legislative Reference Library, State Auditor's Office, and Legislative Budget Board.³⁴ The reporting requirement does not apply to institutions of higher education.³⁵

³² Texas Government Code, Sections 660.113 (e), 2113.012, and 2113.101.

³³ Texas Government Code, Section 2203.004.

³⁴ Texas Government Code, Sections 2101.0115 (a) and (c) (13), and 2113.013.

³⁵ Texas Government Code, Section 2101.0115 (e).

Chapter 2
Employment Discrimination and
Anti-Retaliation Laws

General Information

Employment discrimination laws make it illegal for employers to treat employees and applicants adversely based on race, color, sex, religion, national origin, mental or physical disability, age, or genetic information. This chapter summarizes some major federal and state laws that are applicable to state agencies and institutions of higher education.

Texas Workforce Commission

The Texas Workforce Commission (Commission) is responsible for the education on and enforcement of certain state and federal employment laws. The Commission serves as the State's 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 Commission provides training to help state agencies and institutions of higher education improve their understanding and compliance with Equal Employment Opportunity laws.³⁶

Each state agency and institution of higher education is required to provide training to each new employee on policies and procedures relating to employment discrimination, including employment discrimination involving sexual harassment no later than 30 days after the date of hire. In addition, supplemental training is required every two years. Training materials are available from the Commission. A signed statement verifying attendance is required to be maintained in each employee's personnel file.³⁷

A person, or the person's agent, claiming to be discriminated against by an unlawful employment practice may file a complaint with the Commission.³⁸

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.³⁹ The Commission is required to review these policies to ensure compliance with state statute. If the Commission finds that these policies do not comply with state statute, it will recommend revisions.⁴⁰

³⁶ Texas Labor Code, Sections 21.0015 and 21.003 (a) (2), (5), and (8).

³⁷ Texas Labor Code, Section 21.010.

³⁸ Texas Labor Code, Section 21.201 (a).

³⁹ Texas Labor Code, Section 21.452.

⁴⁰ Texas Labor Code, Section 21.453 (a) and (c).

An employer does not commit an unlawful employment practice by developing and implementing personnel policies that incorporate workforce diversity programs.⁴¹

Age Discrimination in Employment Act of 1967 (ADEA)

The Age Discrimination in Employment Act of 1967 (ADEA) and the Texas Labor Code prohibit discrimination against a person (employee or job applicant) because of his or her age with respect to any term, condition, or privilege of employment including, but not limited to, hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training. Employees aged 40 and older are protected from such age-related discrimination.⁴²

Americans with Disabilities Act of 1990 (ADA) and the Americans with Disabilities Act Amendments Act of 2008 (ADAAA)

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

This law applies to state agencies and institutions of higher education and prohibits discrimination in all employment practices, including job application procedures, hiring, firing, advancement, compensation, training, and other terms, conditions, and privileges of employment.⁴³

The ADA has been amended several times since its passage in 1990, including changes effective January 1, 2009, that clarified and broadened the definition of disability and expanded the population eligible for protections under the ADA.⁴⁴ The ADA undergoes continuous interpretation in the court systems; therefore, an agency or institution of higher education should consult with their legal counsel or subject matter experts in regard to these matters.

ADA Best Practices Tool Kit

The U.S. Department of Justice's Civil Rights Division has issued an *ADA Best Practices Tool Kit for State and Local Governments* designed to assist state and local government officials improve compliance requirements for access to programs, services, activities, and facilities. The tool kit is available at

<http://www.ada.gov/pcatoolkit/toolkitmain.htm>.

Bona-Fide Occupational Qualification (BFOQ)

No person must be subject to discriminatory employment practices based on race, color, disability, religion, sex, national origin, or age. However, there may be some exceptions based upon bona-fide occupational qualifications (BFOQ). A BFOQ is a requirement that is necessary and related to the performance of a job and which would otherwise be unlawful because of its discriminatory impact

⁴¹ Texas Labor Code, Section 21.121.

⁴² Texas Labor Code, Sections 21.051 and 21.101; and Title 29, United States Code, Section 621 (b) (Age Discrimination in Employment Act of 1967).

⁴³ *A Guide to Disability Rights Laws*, U.S. Department of Justice's Web site at <http://www.ada.gov/cguide.htm>.

⁴⁴ *The ADA Amendments Act of 2008: Frequently Asked Questions*, U.S. Department of Labor's Web site at <http://www.dol.gov/ofccp/regs/compliance/faqs/ADAfaqs.htm>.

based on one's sex, religion, race, and other reasons.⁴⁵ The concept of BFOQ is interpreted very narrowly by federal courts and the U.S. Equal Opportunity Employment Commission, and state agencies and institutions of higher education should consult with their legal counsel before choosing to use a BFOQ.

The Civil Rights Act of 1964, Title VII

Title VII of the Civil Rights Act of 1964, as well as Texas Labor Code, Chapter 21, prohibits employment discrimination because of race, sex, color, national origin, religion, age, and mental or physical disability.⁴⁶ 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.⁴⁷

Title VII also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups. Title VII not only prohibits intentional discrimination, it also prohibits neutral job policies that disproportionately impact minorities.⁴⁸

Religious Affiliation Discrimination

Texas Labor Code, Chapter 21, prohibits discrimination of an employee or applicant based on any aspect of religious observance, practice, or belief; unless an employer demonstrates that the employer is unable to reasonably accommodate the religious observance or practice of an employee or applicant without undue hardship to the conduct of the employer's business.⁴⁹

Sexual Harassment

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

“Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's

⁴⁵ *Especially for Texas Employers Policy Issues, Affirmative Action*, Texas Workforce Commission's Web site at http://www.twc.state.tx.us/news/efte/affirmative_action.html.

⁴⁶ Texas Labor Code, Sections 21.051 and 21.110; and Title 42, United States Code, Section 2000e-2 (Title VII of Civil Rights Act of 1964).

⁴⁷ Texas Labor Code, Section 21.051; and Title 42, United States Code, Section 2000e-2 (a) (Title VII of Civil Rights Act of 1964).

⁴⁸ *Questions and Answers about Race and Color Discrimination in Employment*, U.S. Equal Employment Opportunity Commission's Web site at http://www.eeoc.gov/policy/docs/qanda_race_color.html.

⁴⁹ Texas Labor Code, Section 21.108.

employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."⁵⁰

Equal Pay Act of 1963 (EPA)

The Equal Pay Act (EPA) of 1963 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.⁵¹

Federal Pregnancy Discrimination Act of 1978

The Federal Pregnancy Discrimination Act of 1978 and Texas Labor Code, Chapter 21, prohibit discrimination on the basis of pregnancy, childbirth, or related medical conditions. Women affected by pregnancy, childbirth, or related conditions must be treated in the same manner as other employees or applicants who have medical conditions that place a similar limitation on their ability or inability to work.⁵²

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.⁵³

Genetic Information Nondiscrimination Act of 2008 (GINA)

The Genetic Information Nondiscrimination Act of 2008 (GINA) is a federal law that prohibits discrimination in health coverage and employment based on genetic information. GINA prohibits group health plans and health insurers from denying health insurance coverage or charging higher premiums based solely on a genetic predisposition. GINA also prohibits employers from using an individual's genetic information when making hiring, firing, job placement, or promotion decisions.⁵⁴

⁵⁰ Title 29, Code of Federal Regulations, Section 1604.11 (a).

⁵¹ *The Equal Pay Act of 1963*, Public Law 88-38; and the U.S. Equal Employment Opportunity Commission's Web site at <http://www.eeoc.gov/laws/statutes/epa.cfm>.

⁵² Texas Labor Code, Section 21.106; *The Pregnancy Discrimination Act*, Public Law 95-555; and the U.S. Equal Employment Opportunity Commission's Web sites at <http://www.eeoc.gov/eeoc/publications/fs-preg.cfm> and <http://www.eeoc.gov/laws/statutes/pregnancy.cfm>.

⁵³ Texas Government Code, Section 411.0079.

⁵⁴ *The Genetic Information Nondiscrimination Act of 2008*, Public Law 110-233; and the U.S. Equal Employment Opportunity Commission's Web site at <http://www.eeoc.gov/laws/statutes/gina.cfm>.

Genetic Testing Discrimination

State agencies and institutions of higher education are prohibited from discriminating against an individual on the basis of genetic information or an individual's refusal to submit to a genetic test. Routine physical exams; cholesterol, blood, or urine analyses; and tests to determine drug use are excluded from this definition of genetic testing.⁵⁵

Unless specifically exempted by law, an employee's genetic information is confidential, regardless of the source, and cannot be disclosed without written authorization from the employee.⁵⁶

Lilly Ledbetter Fair Pay Act of 2009

The Lilly Ledbetter Fair Pay Act of 2009 amends Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967, and it modifies the operation of the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973. The Lilly Ledbetter Fair Pay Act of 2009 clarifies that a discriminatory compensation decision or other practice occurs each time compensation is paid pursuant to the discriminatory compensation decision or other practice. Also, it allows pay discrimination complaints to be filed 180 days (or 300 days in jurisdictions that have a local or state law prohibiting the same form of compensation discrimination) after any discriminatory paycheck.⁵⁷

Protections in Reporting Violations of Law

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

Reporting Discrimination

The same laws that prohibit discrimination also prohibit retaliation against individuals who oppose unlawful discrimination or participate in an employment discrimination proceeding. An employer may not fire, demote, harass, or otherwise "retaliate" against individuals for filing a charge of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination.⁵⁸

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

⁵⁵ Texas Labor Code, Sections 21.401 and 21.402.

⁵⁶ Texas Labor Code, Sections 21.403, 21.4031, and 21.4032.

⁵⁷ *Lilly Ledbetter Fair Pay Act of 2009*, Public Law 111-2; and the U.S. Equal Employment Opportunity Commission's Web site at http://www.eeoc.gov/laws/statutes/epa_ledbetter.cfm.

⁵⁸ Texas Labor Code, Section 21.055.

employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers.⁵⁹

Persons initiating or cooperating with an investigation are also extended this protection. This protection does not apply to a self-disclosure of the person's own abuse or neglect of a child or who initiates or cooperates with an investigation or proceeding by a governmental entity relating to an allegation of the persons' own abuse or neglect of a child.⁶⁰

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.⁶¹ Agencies and institutions of higher education must inform its employees of their rights by posting a sign in a prominent location in the workplace.⁶² A copy of this sign may be obtained online from the Texas Office of the Attorney General at https://www.texasattorneygeneral.gov/files/agency/whistleblower_poster.pdf.

Public Employee Labor Unions

Texas is a "right-to-work" state. As such, no person can be denied public employment due to membership or non-membership in a labor union.⁶³

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.⁶⁴

Right to Express Breast Milk

State agencies and institutions of higher education are required to develop a written policy that supports the practice of expressing breast milk and make reasonable accommodations for the needs of employees who express breast milk.⁶⁵

⁵⁹ Texas Family Code, Section 261.101 (b), as amended by House Bill 249 (85th Legislature, Regular Session), and Section 261.110 (b).

⁶⁰ Texas Family Code, Section 261.110 (b) (2) and (m).

⁶¹ Texas Government Code, Section 554.002 (a).

⁶² Texas Government Code, Section 554.009 (a).

⁶³ Texas Labor Code, Section 101.052; and Texas Government Code, Section 617.004.

⁶⁴ Texas Government Code, Section 617.003.

⁶⁵ Texas Government Code, Section 619.003.

In addition, a state agency and institution of higher education must:

- Provide a reasonable amount of break time for an employee to express breast milk as needed.
- Provide a place, other than a multiple user bathroom, that is shielded from view and free from intrusion from other employees and the public where the employee can express breast milk.⁶⁶

A state agency or institution of higher education may not discriminate against, suspend or terminate the employment of an employee for asserting the employee’s rights regarding the expression of breast milk.⁶⁷

Required Posters at the Workplace

Various laws require employers to display posters communicating employment rights for individuals in the workplace. These posters are available, free of charge, from various state and federal agencies. Table 2-1 provides a list of posters that may be required as well as the agency responsible for their distribution. Additional information, as well as links to these resources, is available through the Texas Workforce Commission’s Web site at <http://www.twc.state.tx.us/businesses/posters-workplace>.

Table 2-1

Required Workplace Posters ⁶⁸	
Issuing Agency	Poster Title
Texas Office of Injured Employee Counsel	<i>Employer’s Notice of Ombudsman Program</i>
Texas Department of Insurance	<i>Workers’ Compensation Posters</i>
Texas Department of State Health Services	<i>Texas Hazard Communication Act</i>
Texas Office of the Attorney General	<i>You Have the Right to Not Remain Silent</i>
Texas Workforce Commission	<i>The Law in Texas (optional poster)</i>
U.S. Department of Labor, Employment and Training Administration	<i>Job Service Complaint System</i>
U.S. Department of Labor, Occupational Safety and Health Administration (OSHA)	<i>Job Safety and Health-It’s the Law</i>
U.S. Department of Labor, Veterans’ Employment and Training Service	<i>Your Rights Under USERRA</i>
U.S. Department of Labor, Wage and Hour Division	<i>Employee Rights Under the Fair Labor Standards Act</i>
U.S. Department of Labor, Wage and Hour Division	<i>Employee Rights Under the Family and Medical Leave Act</i>
U.S. Department of Labor, Wage and Hour Division	<i>Migrant and Seasonal Agricultural Worker Protection Act</i>
U.S. Equal Employment Opportunity Commission	<i>Equal Employment Opportunity Is the Law</i>

⁶⁶ Texas Government Code, Section 619.004.

⁶⁷ Texas Government Code, Section 619.005.

⁶⁸ *Posters for the Workplace*, Texas Workforce Commission’s Web site at <http://www.twc.state.tx.us/businesses/posters-workplace>.

Chapter 3
Employee Recruitment and Selection

At-Will Employment

Unless explicitly exempted by written contract, statute, or policy, all state employees are employed “at-will” and there is no implied contract of employment.⁶⁹ “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.

Some state agencies may have segments of their employees who are subject to federal and state statutory provisions and regulations that may affect the “at-will” relationship.⁷⁰ Agencies should consult their general counsel to determine if they are subject to any state or federal laws or regulations that would affect the “at-will” status of their employees.

Reference Checks

An employer in the State that discloses information about a current or former employee’s job performance to a prospective employer is immune from civil liability for that disclosure or any damages caused by that disclosure unless it is proven that the information was known to be false or was made with reckless disregard for the truth.⁷¹ This applies to a managerial employee or other representative of the employer who is authorized to provide and who provides this information.⁷² An employer is not required to provide an employment reference to or about a current or former employee.⁷³

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.⁷⁴

⁶⁹ Texas Office of the Attorney General, Opinion JM-941 (1988).

⁷⁰ Texas Government Code, Section 655.001.

⁷¹ Texas Labor Code, Sections 103.001 and 103.004 (a).

⁷² Texas Labor Code, Section 103.004 (b).

⁷³ Texas Labor Code, Section 103.005.

⁷⁴ Texas Labor Code, Section 103.003 (a).

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.⁷⁵ The employer must provide the nurse with an opportunity to submit information that would allow the nurse to establish his or her protection under this code.⁷⁶

Criminal History Checks

Texas Government Code, Chapter 411, establishes limitations on agency access to criminal history record information maintained by the Department of Public Safety (Department). The limitations in this chapter do not apply to all types of criminal history information. Agencies should consult Texas Government Code, Sections 411.089 through 411.1409, for more information on agency-specific access and limitations.

Dissemination of Criminal History Information

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

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

⁷⁵ Texas Occupations Code, Sections 301.352 and 303.005; and Texas Labor Code, Section 103.003 (b).

⁷⁶ Texas Labor Code, Section 103.003 (b).

- ◆ Specifically authorizes access to the information.
 - ◆ Limits the use of information to the purposes for which it is given.
 - ◆ Ensures the security and confidentiality of the information.
 - ◆ Provides for sanctions if a requirement imposed is violated.
 - ◆ Requires the individual or agency to perform the applicable services in a manner prescribed by the Department.
- A county or district clerk's office.
 - The Office of Court Administration of the Texas Judicial System.⁷⁷

The Department is not required to release or disclose criminal history record information to any person that is not in compliance with rules adopted by the Department or rules adopted by the Federal Bureau of Investigation that relate to the dissemination or use of criminal history record information.⁷⁸

Criminal history record information is for the exclusive use of the authorized recipient of the information and may be disclosed or used by the authorized recipient only if, and only to the extent that, disclosure or use is appropriately authorized or directed.⁷⁹ It is a criminal offense to obtain, use, or disclose a criminal history record in an unauthorized manner. Additionally, it is an offense to provide this information in exchange for money or to employ another person to do so. The Department 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.⁸⁰

Criminal History Checks on Information Technology Employees

A state agency or institution of higher education can obtain the criminal history record information maintained by the Department that relates to a person who:

- Is an employee, applicant for employment, contractor, subcontractor, or intern or other volunteer with the state agency or institution of higher education or with a contractor or subcontractor for the state agency or institution of higher education; and
- Has access to information resources or information resources technologies, other than a desktop computer or telephone station assigned to that person.⁸¹

⁷⁷ Texas Government Code, Section 411.083 (a) and (b).

⁷⁸ Texas Government Code, Section 411.083 (d).

⁷⁹ Texas Government Code, Section 411.084.

⁸⁰ Texas Government Code, Section 411.085.

⁸¹ Texas Government Code, Section 411.1405 (b).

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

- By court order;
- With the consent of the person who is the subject of the information; or
- To the affected contractor or subcontractor, unless the information was obtained by the Department from the Federal Bureau of Investigation.⁸²

A state agency or institution of higher education and the affected contractor or subcontractor are required to destroy criminal history information that relates to a person (1) after the information is used to make an employment decision or (2) after taking a personnel action relating to the person who is the subject of the information.⁸³

A state agency or institution of higher education may not obtain criminal history record information unless the state agency or institution of higher education first adopts policies and procedures that provide that evidence of a criminal conviction or other relevant information obtained from the criminal history record information does not automatically disqualify an individual from employment.⁸⁴

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

- The specific duties of the position.
- The number of offenses committed by the individual.
- The nature and seriousness of each offense.
- The length of time between the offense and the employment decision.
- The efforts by the individual at rehabilitation.
- The accuracy of the information on the individual's employment application.⁸⁵

⁸² Texas Government Code, Section 411.1405 (c).

⁸³ Texas Government Code, Section 411.1405 (d).

⁸⁴ Texas Government Code, Section 411.1405 (e).

⁸⁵ Texas Government Code, Section 411.1405 (e).

Criminal History Checks on Security Sensitive Positions in Higher Education

Institutions of higher education and the Higher Education Coordinating Board are also entitled to obtain criminal history information from the Department for persons who are applicants for security-sensitive positions.⁸⁶

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

- Handles currency;
- Has access to a computer terminal;
- Has access to the personal information or identifying information of another person;
- Has access to the financial information of the employer or another person;
- Has access to a master key; or
- Works in a location designated as a security-sensitive area.⁸⁷

The information obtained may not be released or disclosed to any person except through court order or with the consent of the person who is the subject of the criminal history information.⁸⁸

Equal Employment Opportunity Commission (EEOC) Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII

In April 2012, the EEOC issued its *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*.

Employers should ensure that their policies and procedures are in compliance with this guidance to reduce the risk of liability. The enforcement guidance is available on the EEOC's Web site at http://www.eeoc.gov/laws/guidance/qa_arrest_conviction.cfm.

Employees Working Out of State

A state employee who is required to work outside of this state is entitled to the same benefits and is subject to the same restrictions provided by law for other state employees, including vacation, leave from employment, and the employment policies and restrictions provided by the General Appropriations Act.⁸⁹

⁸⁶ Texas Government Code, Section 411.094 (b).

⁸⁷ Texas Government Code, Section 411.094 (a) (2).

⁸⁸ Texas Government Code, Section 411.094 (d).

⁸⁹ Texas Government Code, Section 651.002.

Employment Preference for Former Foster Children

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

- The individual was under the permanent managing conservatorship of the Department of Family and Protective Services on the day preceding the individual's 18th birthday,⁹⁰ and
- The individual is under the age of 25.⁹¹

These provisions apply to a department, commission, board, office, or other agency in the executive branch of state government, including an institution of higher education.⁹² It does not apply to the position of private secretary, deputy to an official or department, or a position that has a strictly confidential relation to the employing officer.⁹³

An individual entitled to the former foster child employment preference that is aggrieved by a state agency's hiring decision or a workforce reduction that affects the individual may appeal the agency's decision by filing a written complaint with the agency's governing board. The governing board is required to respond to a written complaint no later than 15 business days after the date the governing body received the complaint. The governing board may render a different hiring decision if the governing board determines that the former foster child employment preference was not properly applied.⁹⁴

Employment Preference for Veterans

An individual who qualifies for a veterans' employment preference is entitled to a preference in employment over other applicants who do not have a greater qualification for the same position.⁹⁵ See Chapter 14 (Military Leave and Employment Rights) for additional information on veterans' employment preferences.

⁹⁰ Texas Government Code, Section 672.002 (a).

⁹¹ Texas Government Code, Section 672.005.

⁹² Texas Government Code, Section 672.001.

⁹³ Texas Government Code, Section 672.002 (b).

⁹⁴ Texas Government Code, Section 672.004.

⁹⁵ Texas Government Code, Section 657.003 (a).

Military Occupational Specialty Codes on Employment Openings

Each fiscal biennium the State Auditor's Office must research and identify the military occupational specialty codes for each branch of the U.S. Armed Forces that corresponds to each position contained in the State's Position Classification Plan.⁹⁶

State agencies must include on all forms and notices related to a state agency employment opening the military occupational specialty codes for each branch of the U.S. Armed Forces that corresponds to the employment opening if the duties of the available position correlate with a military occupational specialty.⁹⁷

Report on Transition from Military Service to Employment

No later than September 1 of each year, the Texas Workforce Commission (Commission), in consultation with the Texas Coordinating Council for Veterans Services, must submit a report on the transition of service members and veterans from military service to employment to the Office of the Governor, the Office of the Lieutenant Governor, the Speaker of the House of Representatives, and the chairs of the legislative committees with appropriate jurisdiction that identifies:

- The five most common military occupational specialties of service members who are transitioning from military service to employment, and
- The five occupations from those military occupational specialties that best offer transferable skills that meet the needs of employers, and any industry-based certifications that align with those military occupational specialties.

The report must also include any other data or information identified by the Commission in administering the College Credit for Heroes program as useful for supporting the transition of service members and veterans into the occupations identified as offering the best transferable skills that meet the needs of employers. The first report must be submitted no later than September 1, 2018.⁹⁸

New Requirement

The 85th Legislature enacted legislation requiring the Texas Workforce Commission to prepare an annual report regarding the transition of service members and veterans from military service to employment.

⁹⁶ Texas Government Code, Section 654.0375 (a).

⁹⁷ Texas Government Code, Section 656.003, as redesignated by House Bill 1488 (85th Legislature, Regular Session).

⁹⁸ Texas Labor Code, Section 302.020, as added by House Bill 257 (85th Legislature, Regular Session).

Identification Cards for Peace Officers

A law enforcement agency or other governmental entity that appoints or employs a commissioned peace officer or reserve law enforcement officer is required to issue an identification card to its full-time or part-time peace officers or reserve law enforcement officers.⁹⁹

The head of a law enforcement agency or other governmental entity that appoints or employs a peace officer or reserve law enforcement officer must recover the identification card at the time of the peace officer's or law enforcement officer's resignation or termination.¹⁰⁰

In addition, honorably retired peace officers and qualified retired law enforcement officers who hold a certificate of proficiency under Texas Occupations Code, Section 1701.357, are also eligible to receive identification cards in accordance with Texas Government Code, Sections 614.124 and 614.1241. The head of a law enforcement agency or governmental entity that issued the identification card must recover the identification card on the date that the identification card expires.¹⁰¹

Identification cards expire on a date specified by the law enforcement agency or other governmental entity issuing the card.¹⁰²

Merit Selection Principles - Federal Laws or Regulations

Some state agencies may be required by federal law or regulation to use a merit system of personnel administration for the agency or for a program administered under the agency.¹⁰³ These agencies must, by rule, establish intra-agency policies and procedures to ensure compliance with the federal requirements and the recruitment, selection, and advancement of highly competent agency personnel.¹⁰⁴

A state agency must implement any additional merit principles required by federal law or regulation.¹⁰⁵ 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.¹⁰⁶

⁹⁹ Texas Government Code, Sections 614.122 (a) and 614.123 (a).

¹⁰⁰ Texas Government Code, Sections 614.122 (d) and 614.123 (d).

¹⁰¹ Texas Government Code, Sections 614.124 and 614.1241.

¹⁰² Texas Government Code, Section 614.125.

¹⁰³ Texas Government Code, Section 655.001.

¹⁰⁴ Texas Government Code, Section 655.002.

¹⁰⁵ Texas Government Code, Section 655.003.

¹⁰⁶ Texas Government Code, Section 655.004.

Multiple Employment with the State

A person who is employed by more than one state agency or institution of higher education may not receive benefits from the State that exceed the benefits provided for one full-time employee.¹⁰⁷ 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.¹⁰⁸ 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.¹⁰⁹

A person must be informed of the following requirements before he or she is employed by more than one agency or institution of higher education:¹¹⁰

- Separate vacation and sick leave records must be maintained for each employment.¹¹¹
- 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.¹¹²
- The employee accrues state service credit for all purposes as if the employee had only one employment.¹¹³
- 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.¹¹⁴

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.¹¹⁵

¹⁰⁷ Texas Government Code, Section 667.001 (a) and (b).

¹⁰⁸ Texas Government Code, Section 667.001 (b).

¹⁰⁹ Texas Government Code, Section 667.003.

¹¹⁰ Texas Government Code, Section 667.001 (c).

¹¹¹ Texas Government Code, Section 667.002.

¹¹² Texas Government Code, Section 667.003.

¹¹³ Texas Government Code, Section 667.004.

¹¹⁴ Texas Government Code, Section 667.005.

¹¹⁵ Texas Government Code, Section 667.006 (a) and (b).

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

- Paying the employee for working more than 40 hours in a week instead of earning compensatory time in accordance with state law.
- Paying the employee a salary that is more than is allowed for either of the employee's positions.¹¹⁶

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.¹¹⁷

A university system may establish a policy that defines a person's employment as the total hours the person is assigned to one component of the system or to 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.¹¹⁸

Appointments at State Institutions of Higher Education

An institution of higher education is required to determine whether employees who have more than one appointment with the institution of higher education hold only one position or one position for each appointment. The institution of higher education's board of regents has the responsibility to determine whether an employee who holds more than one appointment at separate institutions of higher education (under the same board of regents) holds one position or one position for each appointment. If the two institutions of higher education are governed by separate boards, the employee is deemed to have more than one position.¹¹⁹

A full-time employee at an institution of higher education who has more than one position may receive pay for working more than 40 hours in a week if the institution of higher education determines that pay in lieu of compensatory time is in the best interest of the institution of the higher education.¹²⁰

¹¹⁶ Texas Government Code, Section 667.006 (c).

¹¹⁷ Texas Government Code, Section 667.007.

¹¹⁸ Texas Government Code, Section 667.009.

¹¹⁹ Texas Government Code, Section 659.0411.

¹²⁰ Texas Education Code, Section 51.963.

Posting Job Vacancies

State agencies and institutions of higher education with job vacancies are required to list these vacancies with the Texas Workforce Commission in the WorkinTexas.com system. This applies only to vacancies for which candidates from outside the agency will be considered.¹²¹ 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.¹²² In addition to using the statutorily required methods to announce job vacancies, state agencies and institutions of higher education are encouraged to make other efforts to inform outside applicant recruitment sources of job vacancies.¹²³

A state agency or institution of higher education is not required to comply with job vacancy notice requirements when it transfers or reassigns an employee as part of a reorganization or merger mandated by the Legislature as long as the executive head of the agency or institution certifies that the transfer or reassignment is necessary for the proper implementation of the reorganization or merger.¹²⁴

Online State Agency Employment Applications

The online system for listing state agency employment openings, excluding institutions of higher education or a university system, that the Texas Workforce Commission maintains must allow an applicant for employment to complete a single state application online and to enter the application into an online database from which the applicant may electronically send the application to multiple state agencies. The Texas Workforce Commission must ensure that the online system allows an applicant to submit, and a state agency to receive, an online application for state agency employment. State agencies must accept an application for an employment opening from the online system, but they are not prohibited from accepting an application for an employment opening in another form.¹²⁵

Probationary or Introductory Period

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

¹²¹ Texas Government Code, Section 656.001.

¹²² Texas Government Code, Section 656.024.

¹²³ Texas Government Code, Section 656.025.

¹²⁴ Texas Government Code, Section 656.026.

¹²⁵ Texas Government Code, Section 656.002.

Selective Service Registration

A state agency in any branch of state government may not hire a person as an employee unless the person presents proof that they have registered for or are exempt from registration with the selective service system.¹²⁶

The Texas Office of the Attorney General issued an opinion stating that only those males who are between the ages of 18 and 25 years (inclusive) are required to furnish proof of either selective service registration or exemption from selective service as a condition of state employment.¹²⁷

Additional information regarding selective service registration, including a list of individuals exempt from registration, is available on the Selective Service System's Web site at <https://www.sss.gov>.

Verification of Employment Eligibility

An individual who is not a citizen of this country is protected from discrimination in hiring and in employment under the provisions of federal law and the Texas Labor Code. It is unlawful to discriminate on the basis of citizenship.¹²⁸ Federal law also prohibits an employer from knowingly hiring an individual who is not authorized to work in this country. To ensure compliance, employers are required to complete federal form I-9 upon hiring a person. This form must be completed within three business days of the hire.¹²⁹ A state agency or institution of higher education must register and participate in the E-verify program to verify information of all new employees.¹³⁰

Additional information regarding the employment eligibility verification process is available on the U.S. Citizenship and Immigration Services' Web site at <http://www.uscis.gov>.

Volunteer Programs

State agencies may use volunteer programs to assist the agency in providing quality services. A state agency that provides basic human mental or physical needs is required to consider volunteers as a resource, if feasible.¹³¹

A volunteer program must include:

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

¹²⁶ Texas Government Code, Section 651.005 (a).

¹²⁷ Texas Office of the Attorney General, Opinion JC-0183 (2000).

¹²⁸ Texas Labor Code, Section 21.051; and Title 8, United States Code, Section 1324b.

¹²⁹ Title 8, Code of Federal Regulations, Sections 274a.2 (a) (2) and 274a.2 (b) (B) (ii).

¹³⁰ Texas Government Code, Sections 673.001 and 673.002.

¹³¹ Texas Government Code, Sections 2109.001, 2109.002, and 2109.003.

- Follow-up studies to determine the effectiveness of the volunteer program.

State agencies with volunteer programs may:

- Reimburse volunteers for actual and necessary expenses incurred in the performance of volunteer services.
- Establish an insurance program to protect volunteers in the performance of services.
- Cooperate with private organizations that provide services that are similar to those provided by the state agency.
- Purchase engraved certificates, plaques, pins, or awards of a similar nature, with a value that does not exceed \$75 for each volunteer, to recognize special achievement and outstanding services of volunteers.¹³²

A state agency that has a volunteer program must consider the use of volunteers in determining merit pay increases and performance evaluations.¹³³

Civilian Workforce Composition

Each biennium, the Texas Workforce Commission is required to determine the composition of the statewide civilian workforce and report this information to the Office of the Governor and the Legislature. This report is due by the fifth day of each regular legislative session. The report includes percentages of Caucasian Americans, African Americans, Hispanic Americans, females, and males within the state workforce by job category.¹³⁴

Workforce Analysis

Each biennium, each state agency and institution of higher education must analyze its current workforce and compare the numbers employed in each demographic group and job category to those available in the statewide civilian workforce. The intent of this analysis is to determine the percentage of exclusion or underutilization by each job category within each state agency.¹³⁵

In addition, state agencies and institutions of higher education must report equal employment opportunity information to the Texas Workforce Commission (Commission) no later than November 1 of each year. The report must be submitted in the form prescribed by the Commission. The Commission will conduct an analysis of the equal employment opportunity information and report the results of the analysis to the Legislature, the Legislative Budget Board, and the Office of the Governor no later than January 1 of each odd-numbered year. The workforce analysis percentages

¹³² Texas Government Code, Section 2109.004.

¹³³ Texas Government Code, Section 2109.005.

¹³⁴ Texas Labor Code, Section 21.0035.

¹³⁵ Texas Labor Code, Section 21.501.

for the state civilian workforce are available in the Commission's *Equal Employment Opportunity and Minority Hiring Practices Report*.¹³⁶

Recruitment Plans

Based on workforce availability analyses or court-ordered remedies or agreements, state agencies and institutions of higher education must develop and implement plans to recruit qualified African Americans, Hispanic Americans, and females ("protected classes"). The Texas Workforce Commission (Commission) monitors state agencies and institutions of higher education to ensure that the required plans are consistent with state statute. In addition, state agencies and institutions of higher education must report to the Commission the number of protected class hires in each class title that the agency and institution made during the preceding fiscal year. This report is due no later than November 1 of each year.¹³⁷

¹³⁶ Texas Labor Code, Sections 21.552 (a) and 21.553 (b); and *Equal Employment Opportunity and Minority Hiring Practices Report*, Texas Workforce Commission's Web site at <http://www.twc.state.tx.us/agency/reports-plans-publications>.

¹³⁷ Texas Labor Code, Sections 21.502 and 21.504.

Chapter 4
*Federal Requirements: Fair Labor Standards Act
and
the Family and Medical Leave Act*

The Fair Labor Standards Act (FLSA) and the Family and Medical Leave Act (FMLA) are federal laws that establish workplace requirements that may be applicable to state agencies and institutions of higher education. Specifically:

- FLSA establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments.
- FMLA allows eligible employees to take unpaid leave, or to substitute appropriate paid leave, for an FMLA qualifying event without fear of being terminated from their jobs or being forced into a lower job upon their return.

Fair Labor Standards Act (FLSA)

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting full-time and part-time workers in the private sector and in federal, state, and local governments. The U.S. Department of Labor's Wage and Hour Division is responsible for providing guidance on and enforcing the FLSA. Additional information about the FLSA is available at <http://www.dol.gov/whd/flsa/index.htm>.

The minimum wage in Texas is linked to the federal minimum wage under the Fair Labor Standards Act of 1938.¹³⁸ As of July 24, 2009, the federal minimum wage is \$7.25 per hour.¹³⁹

In general, most employees working in state agencies and institutions of higher education are covered under the FLSA.¹⁴⁰

FLSA Nonexempt Employees

To be eligible for FLSA overtime pay, an employee must be considered nonexempt. A nonexempt employee covered by the FLSA must receive overtime pay for hours worked in excess of 40 in a workweek at a rate not less than 1.5 times the employee's regular rate of pay. In general, the employer must total all the hours worked by the employee for that workweek and pay overtime compensation for each hour worked in excess of the overtime standard.¹⁴¹ However, the FLSA

Compliance Assistance

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

- Handy Reference Guide to the Fair Labor Standards Act at <http://www.dol.gov/whd/regs/compliance/hrg.htm>.
- Fact Sheets at <http://www.dol.gov/whd/fact-sheets-index.htm>.

¹³⁸ Texas Labor Code, Section 62.051.

¹³⁹ *Compliance Assistance - Wages and the Fair Labor Standards Act (FLSA)*, U.S. Department of Labor's Wage and Hour Division's Web site at <http://www.dol.gov/whd/flsa/index.htm>.

¹⁴⁰ Title 29, Code of Federal Regulations, Section 553.3.

¹⁴¹ Texas Government Code, Section 659.015; and Title 29, Code of Federal Regulations, Sections 778.101 and 778.110.

allows government employers to choose whether to compensate their nonexempt employees for overtime in cash or in compensatory time off.¹⁴² In some situations, state agencies must pay FLSA overtime rather than providing FLSA compensatory time. These provisions are located in the Texas Government Code and in General Appropriations Act riders.

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

- The agency can allow or require the employee to take compensatory time off at the rate of 1.5 hours for each hour over 40 hours worked during the workweek.
- 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.¹⁴³

State agencies can require nonexempt employees who have requested leave to exhaust their FLSA overtime balances before using vacation leave. In addition, an employer remains free under the FLSA to decrease the number of hours that employees work. An employer may tell an employee to take off an afternoon, a day, or even an entire week to avoid the accumulation of additional overtime.¹⁴⁴

Paid leave and holidays are not counted as hours worked for determining FLSA overtime hours.¹⁴⁵ However, if the total number of hours worked (if less than 40) plus the hours of paid leave or hours of paid holidays exceeds 40, the nonexempt employee must be allowed state compensatory time off equal to the number of hours in excess of 40 hours.¹⁴⁶

Nonexempt employees may accumulate an overtime credit up to 240 hours of FLSA overtime (160 overtime hours converted to straight time). Those employees engaged in public safety, emergency response, or a seasonal activity may accumulate up to 480 hours of FLSA overtime (320 overtime hours converted to straight time).¹⁴⁷

Nonexempt employees must be paid for any unused FLSA overtime at the time of separation from state employment. Upon separation from employment, an employee must be paid for unused FLSA compensatory time at either the final regular salary rate at the time of the employee's separation or the average regular salary rate during the last three years of employment immediately prior to separation, whichever is higher.¹⁴⁸ State agencies must pay employees for any accumulated FLSA overtime prior to transferring that employee to another agency.¹⁴⁹

¹⁴² Title 29, Code of Federal Regulations, Section 553.20.

¹⁴³ Texas Government Code, Section 659.015 (c).

¹⁴⁴ *Christensen v. Harris County* (98-1167), 529 U.S. 576 (2000).

¹⁴⁵ Title 29, Code of Federal Regulations, Section 778.218.

¹⁴⁶ Texas Government Code, Section 659.015 (f).

¹⁴⁷ Texas Government Code, Section 659.015 (e); and Title 29, Code of Federal Regulations, Section 553.24.

¹⁴⁸ Title 29, Code of Federal Regulations, Section 553.27 (b).

¹⁴⁹ Texas Office of the Attorney General, Opinion H-883 (1976).

See the section on Family and Medical Leave and the Use of Paid Leave in this chapter for additional information regarding FLSA compensatory time as it relates to the Family and Medical Leave Act. See Chapter 20 (Workers' Compensation) for additional information regarding FLSA compensatory time use in relation to workers' compensation income benefits.

FLSA-Exempt Employees

An exempt employee is one that the U.S. 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.¹⁵⁰ 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.¹⁵¹

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

- Deductions may be made for full-day absences for personal reasons other than sickness or disability.
- Deductions may be made for full-day absences for sickness or disability after the exhaustion of sick leave or workers' compensation benefits.
- While an employer cannot make deductions from pay for absences of an exempt employee occasioned by jury duty, witness at a judicial action, or military duty, the employer can offset any amounts received by an employee for jury fees, witness fees, or military pay for a particular week against the salary due for that particular week without loss of the exemption.
- Deductions may be made for penalties due to safety infractions of major significance. Safety infractions of major significance include those relating to the prevention of serious danger in the workplace or to other employees.
- Deduction from pay of exempt employees may be made for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed pursuant to a written policy applicable to all employees. Thus, for example, an employer may suspend an exempt employee without pay for three days for violating a generally applicable written policy prohibiting sexual harassment. Similarly, an employer may suspend an exempt employee without pay for 12 days for violating a generally applicable written policy prohibiting workplace violence.

¹⁵⁰ Title 29, Code of Federal Regulations, Section 541.0.

¹⁵¹ Title 29, Code of Federal Regulations, Section 541.2. Please note that the U.S. Department of Labor updated the regulations governing which executive, administrative, and professional employees (white collar workers) are entitled to the Fair Labor Standards Act's minimum wage and overtime pay protections. With the final rule, the Department updated the salary and compensation levels required for exemption and to simplify the identification of nonexempt employees. For more information and updates on this final rule, see the U.S. Department of Labor Wage and Hour Division (WHD) Final Rule: Overtime at <https://www.dol.gov/whd/overtime/final2016/index.htm>.

- 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.¹⁵²

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.¹⁵³

Family and Medical Leave Act (FMLA)

The Family and Medical Leave Act (FMLA) allows eligible employees to take unpaid leave, or to substitute appropriate paid leave, for an FMLA qualifying event without fear of being terminated from their jobs or being forced into a lower job upon their return.¹⁵⁴ The FMLA applies to all state agencies and institutions of higher education, with the exception of legislative agencies.

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

Employees who do not qualify for family and medical leave may be entitled to parental leave. See Chapter 11 (General Leave Provisions) for information about state parental leave.

Family and Medical Leave Eligibility

Eligibility for family and medical leave is limited to employees who have worked for the State for at least 12 months. The 12 months of employment do not need to be consecutive or continuous. However, an agency or institution of higher education does not have to include employment prior to a break in service of seven or more years unless the break is occasioned by the employee's fulfillment of his or her covered service obligation (as protected under the Uniformed Services Employment and Reemployment Rights Act).¹⁵⁵ In addition, the employee must have worked a minimum of 1,250 hours during the 12 months immediately preceding the start date of family and medical leave.¹⁵⁶

¹⁵² Title 29, Code of Federal Regulations, Section 541.602 (a) and (b).

¹⁵³ Texas Government Code, Section 659.016 (e) (4).

¹⁵⁴ Title 29, Code of Federal Regulations, Section 825.100.

¹⁵⁵ Title 29, Code of Federal Regulations, Section 825.110 (b).

¹⁵⁶ Texas Government Code, Section 661.912 (a).

For purposes of family and medical leave, the State is considered a single employer.¹⁵⁷ Agencies and institutions of higher education should credit time worked for other state agencies and institutions of higher education when considering family and medical leave eligibility.

Family and Medical Leave Entitlement

The FMLA entitles all eligible employees to a total of 12 weeks of job-protected unpaid leave during a 12-month period for one or more of the following reasons:

- The birth and subsequent care of a newborn child.
- The placement of a child into the home of an employee or with the employee for adoption or foster care.
- The need to care for a spouse, child, or parent with a serious health condition. (A child includes a biological, adopted, or foster child, stepchild, a legal ward, or child of a person standing in loco parentis. A parent is defined as a biological, adoptive, step, or foster parent, or individual who stood in loco parentis to an employee when the employee was a child.)¹⁵⁸
- A serious health condition that renders the employee unable to work.
- A qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty), or is in support of a contingency operation for covered members of a reserve component. Examples of a qualifying exigency may include: short notice deployment; military events and related activities; childcare duties and school activities; care of the military member's parent who is incapable of self-care; financial and legal arrangements; counseling; rest and recuperation; and post-deployment activities.¹⁵⁹

If the leave is for the birth and care of a child, or placement for adoption or foster care, it must conclude within 12 months of the birth or placement of the child.¹⁶⁰

¹⁵⁷ Title 29, Code of Federal Regulations, Section 825.108 (c) (1).

¹⁵⁸ U.S. Department of Labor Fact Sheets #28B and #28C at <http://www.dol.gov/whd/regs/compliance/whdfs28B.pdf> and <http://www.dol.gov/whd/regs/compliance/whdfs28C.pdf>.

¹⁵⁹ Title 29, Code of Federal Regulations, Section 825.100 (a); U.S. Department of Labor Fact Sheet #28M(c) at <http://www.dol.gov/whd/regs/compliance/whdfs28mc.pdf>; and the *Military Frequently Asked Questions*, U.S. Department of Labor's Web site at http://www.dol.gov/whd/fmla/2013rule/militaryFR_FAQs.htm.

¹⁶⁰ Title 29, Code of Federal Regulations, Sections 825.120 (a) (2) and 825.121 (a) (2).

Military Caregiver Leave

State agencies and institutions of higher education must grant an eligible employee who is a spouse, son, daughter, parent, or next of kin of a current member of the U.S. Armed Forces (including a member of the National Guard or Reserves) with a serious injury or illness up to a total of 26 workweeks of unpaid leave during a “single 12-month period” to care for the service member.¹⁶¹ This is known as military caregiver leave. This approach is required regardless of the method used by the employer to determine the employee’s 12 workweeks of leave entitlement for other FMLA qualifying reasons.¹⁶²

Spouses Employed by Same Employer

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

- Birth of a child and care of a child after birth.
- Placement of a child with the employee for adoption or foster care and to care for a newly placed child.
- To care for a parent who has a serious health condition (or 26 workweeks if the leave is granted to care for a covered service member with a serious injury or illness).¹⁶³

Family and Medical Leave Notice and Certification

Employee Notice

If the need for family and medical leave is foreseeable, an employee seeking to use family and medical leave is required to provide a 30-day advance notice of the need for the leave. If notice cannot be provided 30 days in advance, the employee should notify his or her employer as soon as practicable. In most cases, this means the same day or the next business day; however, the determination of when an employee could practicably provide notice should take into consideration the individual facts and circumstances.¹⁶⁴

For the employer to determine whether FMLA applies to a leave request, the employee must provide sufficient information regarding the nature of the request. If an employee is seeking leave for the first time for a family and medical leave qualifying event, the employee does not need to expressly assert his or her family and medical leave rights or even mention family and medical leave.

Additional Resources

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

- http://www.dol.gov/whd/fmla/2013rule/militaryFR_FAQs.htm
- <http://www.dol.gov/whd/regs/compliance/whdfs28a.pdf>
- <http://www.dol.gov/whd/regs/compliance/whdfs28f.pdf>
- <http://www.dol.gov/whd/fmla/2013rule/fs-military.htm>
- <http://www.dol.gov/whd/regs/compliance/whdfs28m.pdf>
- <http://www.dol.gov/whd/regs/compliance/whdfs28ma.pdf>
- <http://www.dol.gov/whd/regs/compliance/whdfs28mb.pdf>
- <http://www.dol.gov/whd/regs/compliance/whdfs28mc.pdf>

¹⁶¹ Title 29, Code of Federal Regulations, Sections 825.100 (a) and 825.127 (a), (b), and (e).

¹⁶² U.S. Department of Labor Fact Sheet #28M(a) at <http://www.dol.gov/whd/regs/compliance/whdfs28ma.pdf>.

¹⁶³ Title 29, Code of Federal Regulations, Sections 825.201, 825.121 (a) (3), and 825.127 (d) and (e); and U.S. Department of Labor Fact Sheet #28F at <http://www.dol.gov/whd/regs/compliance/whdfs28f.pdf>.

¹⁶⁴ Title 29, Code of Federal Regulations, Section 825.302 (a) and (b).

The employee’s verbal request may be sufficient to make the employer aware that the employee may qualify for family and medical leave.¹⁶⁵

However, when an employee seeks leave due to a family and medical leave qualifying event for which the employer has previously provided the employee with family and medical leave protection, the employee must specifically reference either the qualifying reason for the leave or the need for family and medical leave.¹⁶⁶

Unless unusual circumstances exist, an employer may require an employee to comply with the employer’s usual and customary notice and procedural requirements for requesting leave.¹⁶⁷

Employer Notice

State agencies and institutions of higher education are required to post in a location that can be seen by employees and applicants a notice that explains an employee’s rights and responsibilities under the FMLA. Furthermore, employers must either include a general notice in the employee handbook or other written guidance provided to employees concerning family and medical leave benefits or distribute a general notice to each new employee upon hiring.¹⁶⁸

Within five days, absent extenuating circumstances, of when an employee requests family and medical leave or when the employer acquires knowledge that an employee’s leave may be for a family and medical leave qualifying event, the employer must notify the employee verbally or in writing that the employee is eligible to take family and medical leave. The employer’s written notice must include details about the specific expectations for and obligations of the employee and explain any consequences of a failure to meet the obligations.¹⁶⁹

Certification

A state agency or institution of higher education may require that an employee’s request for leave due to a serious health condition affecting the employee or a covered family member be supported by a health care provider’s certification.¹⁷⁰ The employer may also request, at the employer’s expense, second and third medical opinions.¹⁷¹ In addition, the employer may require periodic recertification of a serious health condition.¹⁷² An employer may use a health care provider, a human resource professional, a leave administrator, or a management official—but not the employee’s direct supervisor—to authenticate or clarify a medical certification of a serious health condition.¹⁷³

¹⁶⁵ Title 29, Code of Federal Regulations, Sections 825.302 (c) and 825.303 (b).

¹⁶⁶ Title 29, Code of Federal Regulations, Section 825.302 (c).

¹⁶⁷ Title 29, Code of Federal Regulations, Section 825.302 (d).

¹⁶⁸ Title 29, Code of Federal Regulations, Section 825.300 (a).

¹⁶⁹ Title 29, Code of Federal Regulations, Section 825.300 (b), (c), and (d).

¹⁷⁰ Title 29, Code of Federal Regulations, Section 825.305 (a).

¹⁷¹ Title 29, Code of Federal Regulations, Section 825.307 (b) and (c).

¹⁷² Title 29, Code of Federal Regulations, Section 825.308.

¹⁷³ Title 29, Code of Federal Regulations, Section 825.307 (a).

If the family and medical leave is for a qualifying exigency, an employer may require a statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency for which family medical leave is requested, including information on the type of qualifying exigency.¹⁷⁴

If the family and medical leave is to care for a covered service member, also known as military caregiver leave, an employer may require an employee to obtain a certification completed by an authorized health care provider of the covered service member. Included in the documentation should be a statement or description of appropriate medical facts, sufficient to support the need for leave, regarding the covered service member's health condition for which FMLA leave is requested.¹⁷⁵

An employer may have a uniformly-applied policy or practice requiring employees returning from leave for their own serious health condition to submit a certification that they are able to resume work. If reasonable safety concerns exist, an employer may, under certain circumstances, require such a certification for employees returning from intermittent family and medical leave.¹⁷⁶

Family and Medical Leave and the Use of Paid Leave

The FMLA entitlement of job-protected leave is generally unpaid; however, vacation leave, sick leave, state compensatory time, administrative leave, and banked holiday time are considered state benefits and can be counted toward an employee's 12-week FMLA entitlement (or 26 weeks of military caregiver leave entitlement). State agencies and institutions of higher education can require an employee to use all vacation and sick leave prior to being placed on a leave without pay status.¹⁷⁷

In addition, accrued Fair Labor Standards Act overtime for nonexempt employees may be counted against the 12-week FMLA entitlement (or 26 weeks of military caregiver leave entitlement). If an employee requests and is permitted to use accrued Fair Labor Standards Act compensatory time to receive pay for time taken off for a family and medical leave reason, or if the employer requires accrued Fair Labor Standards Act compensatory time to be taken, the compensatory time taken may be counted against the employee's FMLA leave entitlement.¹⁷⁸

Employees on workers' compensation or receiving temporary disability benefits cannot be required, but may elect to use, paid leave prior to taking unpaid family and medical leave.¹⁷⁹

Family and medical leave may be used intermittently or on a reduced leave schedule when medically necessary due to the serious health condition of a covered family member, the employee, or a service member, or because of a qualifying exigency. If the request to use intermittent leave is for a planned medical treatment, the employee must make a reasonable effort to schedule the treatment in a manner that does not unduly disrupt the employer's business operations.¹⁸⁰

¹⁷⁴ Title 29, Code of Federal Regulations, Section 825.309 (b) (1).

¹⁷⁵ Title 29, Code of Federal Regulations, Section 825.310 (a) and (b) (4).

¹⁷⁶ Title 29, Code of Federal Regulations, Section 825.312 (a) and (f).

¹⁷⁷ Texas Government Code, Section 661.912 (b); and Title 29, Code of Federal Regulations, Section 825.207 (a).

¹⁷⁸ Title 29, Code of Federal Regulations, Section 825.207 (f).

¹⁷⁹ Texas Government Code, Section 661.912 (b); and Texas Office of the Attorney General, Opinion JC-0040 (1999).

¹⁸⁰ Title 29, Code of Federal Regulations, Sections 825.202 and 825.203.

Employees requesting intermittent leave after the birth of a child or placement of a child for adoption or foster care must get employer approval for the intermittent leave.¹⁸¹

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

Determining the 12-Month Leave Entitlement Period

State agencies and institutions of higher education may use any one of the following periods to administer the 12-week leave entitlement:

- A calendar year.
- Any fixed 12-month period, such as a fiscal year or anniversary date to anniversary date.
- A 12-month period measured forward from the date an employee first uses family and medical leave.
- A rolling 12-month period measured backward from the date an employee uses any family and medical leave.¹⁸²

State agencies and institutions of higher education wishing to change from one method of determining the 12-week leave entitlement to another method must give at least 60-days notice to all employees. Employees retain the full benefit of 12 weeks of leave under whichever method yields the greatest benefit to employees during the 60-day transition period.¹⁸³

Job Restoration and Maintenance of Health Benefits

An employer may have a uniformly applied policy requiring employees returning from leave for their own serious health conditions to submit a certification that they are able to resume work.¹⁸⁴ If reasonable safety concerns exist, an employer may, under certain circumstances, require such a certification for employees returning from intermittent family and medical leave.¹⁸⁵

An employee who takes family and medical leave must be returned to the same job or a job with equivalent status and pay, even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. Furthermore, the time that an employee was on such leave cannot be counted against the employee under a "no fault" attendance policy.¹⁸⁶

¹⁸¹ Title 29, Code of Federal Regulations, Section 825.202 (c).

¹⁸² Title 29, Code of Federal Regulations, Section 825.200 (b).

¹⁸³ Title 29, Code of Federal Regulations, Section 825.200 (d).

¹⁸⁴ Title 29, Code of Federal Regulations, Section 825.312 (a).

¹⁸⁵ Title 29, Code of Federal Regulations, Section 825.312 (f).

¹⁸⁶ Title 29, Code of Federal Regulations, Sections 825.214, 825.215, and 825.220 (c).

During the time an employee is on family and medical leave, the employer must continue the employee's health benefits. An employee who takes family and medical leave is still responsible for paying his or her portion of health insurance premiums.¹⁸⁷

For purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within a week taken as family and medical leave has no effect; the week is counted as a week of family and medical leave. However, if for some reason the employer's business activity has temporarily ceased and employees generally are not expected to report for work for one or more weeks (for example, a school closing for two weeks during the Christmas/New Year holidays or for summer vacation), the days on which the employer's activities have ceased do not count against the employee's FMLA entitlement.¹⁸⁸

An employee, excluding an employee returning from unpaid military leave during a national emergency, does not earn state service credit, vacation leave, or sick leave for any full calendar months of leave without pay while on family and medical leave.¹⁸⁹

¹⁸⁷ Title 29, Code of Federal Regulations, Sections 825.209 and 825.210.

¹⁸⁸ Title 29, Code of Federal Regulations, Section 825.200 (h).

¹⁸⁹ Texas Government Code, Sections 661.904 and 661.909 (f) and (g).

Chapter 5
State and Holiday Compensatory Time

State Compensatory Time

In some situations, state employees may be eligible for state compensatory time. State compensatory time is accrued on a “straight” time basis, or one hour for one hour worked.¹⁹⁰

State Compensatory Time for Nonexempt Employees Subject to FLSA

When a nonexempt employee takes leave or when a holiday occurs, the nonexempt employee is eligible for state compensatory time if the total number of hours worked (if less than 40 hours) plus any paid leave or paid holidays exceeds 40 in one workweek. If this occurs, the nonexempt employee must be allowed state compensatory time off for this additional time on an hour-for-hour basis. The state compensatory time off must be used within 12 months of the end of the workweek in which it was earned or it lapses.¹⁹¹ This is different from FLSA overtime in which the nonexempt employee earns FLSA overtime by physically working more than 40 hours in a workweek. See Chapter 4 (Federal Requirements: Fair Labor Standards Act and the Family and Medical Leave Act) for additional information regarding FLSA overtime provisions.

State compensatory time off earned by Department of Criminal Justice correctional officers must be taken during the 24-month period following the end of the workweek in which the compensatory time was accrued or the compensatory time lapses.¹⁹²

Generally, employees will not be paid for any unused state compensatory time and there are no provisions in statutes or the General Appropriations Act that allow for the conversion of this time to any other type of leave.¹⁹³ However, there are some situations in which the payment for state compensatory time can be authorized. Those situations are identified and summarized below.

State Compensatory Time for Employees Exempt from FLSA Overtime Provisions

At the discretion of the agency’s executive director, an employee who is exempt from the overtime provisions of the FLSA may be allowed to accrue state compensatory time for work hours that exceed 40 in a workweek. Work hours, for the purpose of accruing state compensatory time, consist of paid leave, holidays, and actual hours worked. Part-time, FLSA-exempt employees may accrue state compensatory time when the number of actual work hours exceeds the number of hours that the employee was designated to work.¹⁹⁴

¹⁹⁰ Texas Government Code, Sections 659.015 (f) and 659.016 (b).

¹⁹¹ Texas Government Code, Section 659.015 (f) and (g).

¹⁹² Texas Government Code, Section 659.015 (k).

¹⁹³ Texas Government Code, Section 659.015 (g).

¹⁹⁴ Texas Government Code, Section 659.016 (b).

If an exempt employee does not use state compensatory time within 12 months of when it was earned, the employee loses this time.¹⁹⁵

Generally, an employee will not be paid for accrued but unused state compensatory time.¹⁹⁶ However, there are some situations where the payment of state compensatory time can be authorized. These situations are identified and summarized below.

State Compensatory Time for Emergency Services Personnel

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

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

In those situations in which an emergency personnel employee provides services during emergency situations, the employee may also be paid at the employee's regular hourly salary rate for all or part of the compensatory hours accrued during the disaster in the preceding 18 months. The employee's compensatory time balance must be reduced by one hour for each hour for which the employee is paid.¹⁹⁷

Payment of State Compensatory Time in Certain Situations

In certain situations, with the authorization of the administrative head or designee, an employee may be paid for state compensatory time that the employee earned for work directly related to a disaster or an emergency declared by the appropriate officer of the state or federal government.¹⁹⁸ In addition, an employee of a state mental health facility may be paid for state compensatory time if the agency determines that taking the compensatory time off would disrupt the business functions of the agency.¹⁹⁹

¹⁹⁵ Texas Government Code, Section 659.016 (c).

¹⁹⁶ Texas Government Code, Section 659.016 (i); and Texas Office of the Attorney General, Opinion H-883 (1976).

¹⁹⁷ Texas Government Code, Section 659.025.

¹⁹⁸ Texas Government Code, Sections 659.015 (i) and 659.016 (i).

¹⁹⁹ Texas Government Code, Sections 659.015 (j) and 659.016 (j).

Employees at institutions of higher education and those involved in public safety work (for example, highway construction, highway maintenance, and emergency response activities) may be paid for state compensatory time if the employing agency or institution of higher education determines that taking the time off would be disruptive to normal teaching, research, or other critical functions.²⁰⁰

Use of Compensatory Time before Lapsing

If an employee of a state agency, as defined by 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 employing state agency must approve in writing the employee's request or provide the employee with an alternative date on which the employee may use the compensatory time.²⁰¹

The employing agency is encouraged to reasonably accommodate the employee's use of the accrued compensatory time before it lapses.²⁰²

There are no statutory provisions that allow for the conversion of state compensatory time or holiday compensatory time to any other type of leave. Subject to the exceptions noted above, if an employee does not use the accrued time within 12 months of earning it, the employee loses this time.²⁰³

Notification of Compensatory Time Policy

A state agency must notify its employees annually of the State's policy on compensatory time and must accommodate to the extent practicable an employee's request to use accrued compensatory time.²⁰⁴

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

- Provide a statement containing the balance of the employee's accrued state compensatory time, and
- Accommodate the employee's request to use the balance of his or her accrued state compensatory time before the compensatory time expires.²⁰⁵

²⁰⁰ Texas Government Code, Section 659.015 (g).

²⁰¹ Texas Government Code, Section 659.022 (a).

²⁰² Texas Government Code, Section 659.022 (b).

²⁰³ Texas Government Code, Sections 659.015 (g) and 659.016 (c).

²⁰⁴ Texas Government Code, Section 659.023 (a) and (b).

²⁰⁵ Texas Government Code, Section 659.023 (c).

Compensatory Time for Persons Governing State Agencies and Institutions of Higher Education

A member of the governing body of a state agency or institution of higher education or a single state officer who governs a state agency or institution of higher education may not accrue compensatory time.²⁰⁶

An employee who acts as the administrative head of a state agency, including an executive director, or institution of higher education is not prohibited from accruing compensatory time.²⁰⁷

Compensatory Time and Assigned Place of Employment

Except under circumstances specified in the General Appropriations Act, employees of a state agency or institution of higher education may not accumulate compensatory time for hours worked during any calendar week at a location other than the employee's regular or temporarily assigned place of employment. However, for compensatory time purposes, an employee may accumulate compensatory time for hours worked during any calendar week at the employee's personal residence if the employee obtains advance approval from the agency's administrative head or designee.²⁰⁸

Holiday Compensatory Time

State employees who must work on a designated national or state holiday will be allowed holiday compensatory time off during the 12-month period following the date of the holiday if the 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 of their intention to use holiday compensatory time; however, employees do not have to specify how the compensatory time will be used.²⁰⁹ Holiday compensatory time is earned on an hour per hour basis.

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

The following state employees are entitled to one hour of holiday compensatory time off for each hour worked on a federal or state holiday that falls on a Saturday or Sunday:

- A peace officer commissioned under Article 2.12 of the Texas Code of Criminal Procedure.
- A Department of Public Safety employee who performs communications or dispatch functions related to traffic law enforcement.

²⁰⁶ Texas Government Code, Section 659.024 (c).

²⁰⁷ Texas Government Code, Section 659.024 (b).

²⁰⁸ Texas Government Code, Section 659.018.

²⁰⁹ Texas Government Code, Section 662.007 (a) and (b).

²¹⁰ Texas Government Code, Section 662.007 (c).

- A public security officer as defined by Section 1701.001 of the Texas Occupations Code.
- A Parks and Wildlife Department employee who performs communications and dispatch services to assist law enforcement officers in performing law enforcement duties.²¹¹

Transfer of Holiday Compensatory Time between State Agencies

State agencies are required to accept a transfer balance of holiday compensatory time if the employee transfers as a direct result of the Legislature transferring authority or duties from one agency to another. 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.²¹²

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 separates from state employment.²¹³ The Attorney General has also ruled that the estate of a deceased employee may not be paid for the employee's earned, but unused, compensatory time.²¹⁴

Authorizations for Payment of Holiday and State Compensatory Time

In most cases, state agencies are not allowed to pay for accrued holiday and state compensatory time; however, in certain circumstances the General Appropriations Act provides for payment of holiday and state compensatory time.

²¹¹ Texas Government Code, Section 662.005 (b).

²¹² Texas Government Code, Section 662.0071, as amended by Senate Bill 706 (85th Legislature, Regular Session).

²¹³ Texas Office of the Attorney General, Opinion H-883 (1976).

²¹⁴ Texas Office of the Attorney General, Opinion H-899 (1976).

Chapter 6
Position Classification Plan

Position Classification Plan Overview

The Position Classification Plan (Plan), established by the Position Classification Act, requires most state agencies to comply with the salary schedules and compensation provisions of Article IX of the General Appropriations Act.²¹⁵

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

Responsibilities of the State Classification Team include:

- Maintaining the Plan and ensuring that it is current.
- Advising and assisting state agencies to ensure equitable and uniform application of the Plan.
- Conducting position classification compliance 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.²¹⁶

The Plan establishes job classification titles for full-time, part-time, hourly, and temporary employees.²¹⁷ The job classifications within the Plan are defined as classified positions. Each job classification title is assigned to a salary group within a classification salary schedule. The classification salary schedules and job classification titles are contained in the most recent edition of the General Appropriations Act.²¹⁸

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

Agencies Subject to the Position Classification Plan

State agencies that are subject to the Plan include:

- General government agencies.
- Health and human services agencies.
- The judiciary (except for judges, district attorneys, and assistant district attorneys).
- Public safety and criminal justice agencies.

²¹⁵ Texas Government Code, Sections 654.001 and 654.011 (a).

²¹⁶ Texas Government Code, Sections 654.036 and 654.031.

²¹⁷ Texas Government Code, Section 654.011 (a).

²¹⁸ General Appropriations Act (85th Legislature), Article IX, Section 2.01.

- Natural resources agencies.
- Business and economic development agencies.
- Regulatory agencies.
- Agencies of public education (limited to the Texas Education Agency, School for the Blind and Visually Impaired, and the School for the Deaf).²¹⁹

Agencies' Use of the Position Classification Plan

Agencies should use an occupationally specific job classification title contained in the Plan that is appropriate to a position and is not agency specific.

Agencies may determine the appropriate rate of pay within the appropriate salary range for employees at the time of initial employment with the agency, which includes rehires and employees who transfer from another state agency or institution of higher education.²²⁰ 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.²²¹

Information and guidance on reviewing jobs and conducting job analyses is available in the *Job Classification Review Guide* on the State Auditor's Office's State Classification Team Web site at <http://www.hr.sao.texas.gov/Resources/Guides/>.

Bona Fide New Positions

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

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

An exemption made in the first year of a biennium may continue into the second year. The salary rate established for the position may be adjusted for the second year of the biennium, but the adjustment can be no higher than adjustments authorized for classified positions.²²²

²¹⁹ Texas Government Code, Section 654.011 (a).

²²⁰ Texas Government Code, Section 654.014.

²²¹ Texas Government Code, Section 654.0155.

²²² Texas Government Code, Section 654.0125.

State Job Descriptions

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

The Plan provides that whenever “General Qualification Guidelines” are specified for each job, they are only meant to represent the qualifications commonly wanted by employing officers of the State and do not have the force of law. This includes specifications for experience, training, education, knowledge, skills, abilities, and physical conditions.²²³

Classification Salary Schedules

The Plan has three salary schedules: Schedules A, B, and C. Schedule A includes paraprofessional, administrative support, maintenance, service, and technical positions. Schedule B includes primarily professional and managerial positions, while Schedule C covers commissioned law enforcement officers who are employed by the Department of Public Safety, the Parks and Wildlife Department, the Alcoholic Beverage Commission, the Department of Criminal Justice, and the Office of the Attorney General.²²⁴ Only executive directors and specific positions remain exempt from the Plan.²²⁵

Fiscal Year 2018-2019 Classification Salary Schedules A and B

The classification salary schedules for Schedules A and B for the 2018–2019 biennium are listed in Tables 6-1 and 6-2 (on the next two pages), respectively.²²⁶

Classification Salary Schedule A
The 85th Legislature removed Salary Group A3 from Classification Salary Schedule A effective September 1, 2017 (fiscal year 2018).

²²³ Texas Government Code, Section 654.015.

²²⁴ State Auditor’s Office’s State Classification Team Web site at <http://www.hr.sao.texas.gov/CompensationSystem/SalarySchedules>.

²²⁵ Texas Government Code, Section 654.012.

²²⁶ General Appropriations Act (85th Legislature), Article IX, Section 2.01.

Table 6-1

Classification Salary Schedule A Fiscal Years 2018-2019			
Salary Group	Minimum Salary	Midpoint	Maximum Salary
A4	\$18,893	\$23,209	\$27,525
A5	\$19,777	\$24,309	\$28,840
A6	\$20,706	\$25,464	\$30,221
A7	\$21,681	\$26,679	\$31,677
A8	\$22,705	\$27,967	\$33,229
A9	\$23,781	\$29,320	\$34,859
A10	\$24,910	\$30,741	\$36,571
A11	\$26,332	\$33,844	\$41,355
A12	\$27,840	\$35,819	\$43,798
A13	\$29,439	\$37,914	\$46,388
A14	\$31,144	\$40,139	\$49,134
A15	\$32,976	\$42,511	\$52,045
A16	\$34,918	\$45,024	\$55,130
A17	\$36,976	\$47,688	\$58,399
A18	\$39,521	\$51,985	\$64,449
A19	\$42,244	\$55,602	\$68,960
A20	\$45,158	\$59,473	\$73,788

Table 6-2

Classification Salary Schedule B Fiscal Years 2018-2019			
Salary Group	Minimum Salary	Midpoint	Maximum Salary
B10	\$24,910	\$30,741	\$36,571
B11	\$26,332	\$33,844	\$41,355
B12	\$27,840	\$35,819	\$43,798
B13	\$29,439	\$37,914	\$46,388
B14	\$31,144	\$40,139	\$49,134
B15	\$32,976	\$42,511	\$52,045
B16	\$34,918	\$45,024	\$55,130
B17	\$36,976	\$47,688	\$58,399
B18	\$39,521	\$51,985	\$64,449
B19	\$42,244	\$55,602	\$68,960
B20	\$45,158	\$59,473	\$73,788
B21	\$48,278	\$63,616	\$78,953
B22	\$51,614	\$68,047	\$84,479
B23	\$55,184	\$72,789	\$90,393
B24	\$59,004	\$77,862	\$96,720
B25	\$63,104	\$83,298	\$103,491
B26	\$69,415	\$93,406	\$117,397
B27	\$76,356	\$102,747	\$129,137
B28	\$83,991	\$113,022	\$142,052
B29	\$92,390	\$124,323	\$156,256
B30	\$101,630	\$136,756	\$171,881
B31	\$111,793	\$150,431	\$189,069
B32	\$122,972	\$165,475	\$207,977
B33	\$135,269	\$182,022	\$228,775
B34	\$148,796	\$200,224	\$251,652
B35	\$163,676	\$220,247	\$276,817

Fiscal Year 2018-2019 Classification Salary Schedule C

Salary Schedule C contains salaries for the State’s law enforcement positions and is part of the Plan (see Table 6-3).²²⁷

Table 6-3

Classification Salary Schedule C						
Fiscal Years 2018-2019						
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	\$40,350					
C2	\$44,082					
C3	\$53,242	\$64,919	\$69,541	\$72,613	\$75,968	\$79,323
C4		\$72,711	\$77,639	\$80,821	\$84,391	\$86,495
C5		\$80,582	\$85,777	\$89,074	\$92,860	\$95,192
C6		\$98,903	\$102,265	\$104,331	\$106,406	\$107,682
C7		\$102,828	\$103,657	\$105,575	\$107,625	\$109,675
C8		\$116,352	\$116,428	\$116,474	\$116,474	\$116,474

Classification Compliance Audits

As part of the requirements established in the Texas Government Code, the State Classification Team in the State Auditor’s Office has a responsibility to conduct classification compliance audits. The objective of these audits is to determine whether agencies conform to the State Position Classification Plan by ensuring the proper classification of positions.²²⁸ If these audits reveal misclassifications, the State Classification Team provides written notice to the appropriate agency heads. The steps available to resolve misclassifications include:

- Reclassifying the employee to a job classification title that is consistent with the work that is actually performed.
- Changing the employee’s duties to conform to the assigned job classification title.
- Obtaining a new job classification title and salary range.²²⁹

²²⁷ General Appropriations Act (85th Legislature), Article IX, Section 2.01.

²²⁸ Texas Government Code, Section 654.036 (3).

²²⁹ Texas Government Code, Section 654.038.

Each biennium, the State Classification Team submits to the Legislature recommended changes to the Position Classification Plan (Plan). Changes may take the form of new job classification titles; reallocations of existing job classification titles; changes to job classification titles and job classification numbers; and deletion of job classification titles. In reviewing the Plan, the State Classification Team makes periodic studies of salary rates in both the public and private sector industries for similar work performed in state government. The objective of the review is to determine (1) the competitiveness of the Plan and (2) whether changes to the Plan are needed to ensure that the Plan effectively meets the needs of its users. The results of those studies are reported to the Governor's Budget Office and the Legislative Budget Board prior to October 1 preceding each regular session of the Legislature.²³⁰

In addition, before September 1 of each even-numbered year, the State Classification Team will survey the local law enforcement departments that employ more than 1,000 commissioned law enforcement officers to gather information about the total compensation provided by the departments to law enforcement officers. The results of this survey will be analyzed and reported to the Legislature before January 1 of each odd-numbered year. The report will contain information that identifies the five local law enforcement departments that provide the highest average total compensation to local law enforcement officers who have been employed by the local law enforcement departments at the maximum salary level.²³¹

These studies and recommendations are available on the State Auditor's Office's State Classification Team Web site at <http://www.hr.sao.texas.gov/Reports/>.

²³⁰ Texas Government Code, Section 654.037 (a); and *A Biennial Report on the State's Position Classification Plan for the 2018-2019 Biennium* (State Auditor's Office Report No. 17-701, September 2016).

²³¹ Texas Government Code, Section 654.037 (b).

Chapter 7
Positions Exempt from the Position Classification Plan

Positions Exempt from the Position Classification Plan

The State has a limited number of positions that are exempt from the Position Classification Plan (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.²³²

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

- For the purpose of hiring a replacement in a key management position as certified by the chief administrator of the agency.
- If the current incumbent of the position has formally resigned or otherwise announced irrevocable plans to vacate the position.
- For a period of time not to exceed the equivalent of one month’s salary per fiscal year per terminating incumbent (excluding time spent on the payroll for the purpose of exhausting accrued vacation leave or state compensatory time).
- If exceptions are reported as prescribed for payroll reporting procedures.²³³

²³² Texas Government Code, Section 654.012.

²³³ General Appropriations Act (85th Legislature), Article IX, Section 3.04 (e) (2).

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

Salary Groups

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

Table 7-1

Scheduled Exempt Position Salary Rates Fiscal Years 2018 - 2019 ²³⁴		
Group	Minimum Salary	Maximum Salary
1	\$70,000	\$112,750
2	\$80,500	\$129,765
3	\$92,600	\$149,240
4	\$106,500	\$171,688
5	\$122,500	\$197,415
6	\$140,900	\$227,038
7	\$162,000	\$261,068
8	\$186,300	\$299,813

Not-to-Exceed Rates

In addition to having assigned salary groups, most exempt positions have "authorized salaries" listed in the agencies' Schedule of Exempt Positions, often referred to as "not-to-exceed (NTE) rates," which are set by the Legislature and identified in the General Appropriations Act. If an agency's Schedule of Exempt Positions has an NTE rate that is less than the maximum salary listed in Table 7-1, the NTE rate listed in the agency's Schedule of Exempt Positions in the General Appropriations Act prevails. These NTE rates cannot be changed unless specifically authorized in accordance with the General Appropriations Act.²³⁵

Exempt Employees Salaries

As noted above, the Legislature sets an agency's NTE rate for exempt positions identified within the agency's Schedule of Exempt Positions. The Governor has the authority to set compensation in an amount not to exceed the maximum salary, but not less than the minimum, of the assigned salary group for positions within specific agencies listed in Table 7-2 on the next page, notwithstanding the salary rate listed in an agency's Schedule of Exempt Positions.²³⁶ In addition, the Governor may designate the title and set the compensation rate of positions exempt from the Position

²³⁴ General Appropriations Act (85th Legislature), Article IX, Section 3.04 (b) (2).

²³⁵ General Appropriations Act (85th Legislature), Article IX, Section 3.04 (a).

²³⁶ General Appropriations Act (85th Legislature), Article IX, Section 3.04 (b) (1).

Classification Plan that are used by the Office of the Governor.²³⁷ The salary provided by the General Appropriations Act for the Governor is an annual salary and is not reduced during the Governor’s absence from the state.²³⁸

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

Table 7-2

Agencies Authorized to Have Exempt Positions Titles and Salaries Set by the Governor ²³⁹		
Agency	Position	Salary Group
Secretary of State	Secretary of State	Group 5
Office of State-Federal Relations	Executive Director	Group 3
Health and Human Services Commission	Executive Commissioner	Group 8
Texas Education Agency	Commissioner of Education	Group 8
Texas Military Department	Adjutant General	Group 5
Department of Criminal Justice	Presiding Officer, Board of Pardons and Paroles	Group 5
Department of Criminal Justice	Parole Board Members (6)	Group 3
Commission on Environmental Quality	Commissioners (3)	Group 6
Department of Housing and Community Affairs	Executive Director	Group 5
Texas Workforce Commission	Commissioners (2)	Group 5
Texas Workforce Commission	Commission Chair	Group 6
State Office of Administrative Hearings	Chief Administrative Law Judge	Group 5
Department of Insurance	Commissioner of Insurance	Group 6
Office of Public Insurance Counsel	Public Counsel	Group 4
Public Utility Commission of Texas	Commissioners (3)	Group 6
Office of Public Utility Counsel	Public Counsel	Group 4
Bond Review Board	Executive Director	Group 3
Texas Water Development Board	Commission Chair	Group 6
Texas Water Development Board	Commissioners (2)	Group 6
Texas Water Development Board	Executive Administrator	Group 5

²³⁷ General Appropriations Act (85th Legislature), Article I, Office of the Governor, Riders 2 and 4.

²³⁸ General Appropriations Act (85th Legislature), Article I, Office of the Governor, Rider 3.

²³⁹ General Appropriations Act (85th Legislature), Article IX, Section 3.04 (b) (1) and (3).

Some state agencies can request to set the rate of compensation of certain exempt positions at an amount within their assigned salary group. Those agencies and exempt positions are listed in Table 7-3 (on the next page). The request must be submitted by the governing board (when applicable for an agency with a governing board) and may include:

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

An agency's governing board (when applicable for an agency with a governing board) may make this request no more than once per fiscal year or upon a vacancy in the exempt position. After submission of the request, the agency can consider it approved if neither the Legislative Budget Board nor the Office of the Governor issues a written disapproval by:

- The 30th business day after the Legislative Budget Board staff submits the results of its review to the chairperson of the House Appropriations Committee, the chairperson of the Senate Finance Committee, the Speaker of the House, and the Lieutenant Governor; and
- The 30th business day after the Office of the Governor received the request for the increase.

If a proposed salary increase is approved, the Legislative Budget Board must notify the affected agency, the Office of the Governor, and the Office of the Comptroller of Public Accounts.²⁴⁰

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

²⁴⁰ General Appropriations Act (85th Legislature), Article IX, Section 3.04 (c).

Table 7-3

Agencies Authorized to Request a Salary Increase for Exempt Positions within the General Appropriations Act ²⁴¹		
Agency	Position	Salary Group
Department of State Health Services	Commissioner	Group 7
Department of Family and Protective Services	Commissioner	Group 7
Higher Education Coordinating Board	Commissioner	Group 8
Department of Information Resources	Executive Director	Group 6
Texas Lottery Commission	Executive Director	Group 6
Juvenile Justice Department	Executive Director	Group 6
Preservation Board	Executive Director	Group 5
School for the Blind and Visually Impaired	Superintendent	Group 4
School for the Deaf	Superintendent	Group 4

In addition to all other requirements and limits established under an agency’s bill pattern, any requests for a salary increase from appropriated funds for exempt positions listed in Table 7-2 (on Page 53) and Table 7-3 must be:

- In writing;
- Signed by the presiding officer of the governing board (for an agency with a governing board);
- Submitted to the Governor, the Legislative Budget Board, and the Office of the Comptroller of Public Accounts; and
- Approved by the governing board (for an agency with a governing board) in a public meeting.²⁴²

Salary Supplements for Exempt Positions

Classified employees or employees in exempt positions funded by the General Appropriations Act cannot receive a salary supplement from any source unless specifically authorized by statute or the General Appropriations Act.²⁴³

In addition to salary amounts appropriated by the General Appropriations Act and identified in the schedule of exempt positions, some exempt positions may receive a salary supplement. See Chapter 8 (Salary Administration) for additional information about reporting and disclosing salary supplements.

²⁴¹ General Appropriations Act (85th Legislature), Article IX, Section 3.04 (c) (6).

²⁴² General Appropriations Act (85th Legislature), Article IX, Section 3.04 (d).

²⁴³ Texas Government Code, Section 659.020.

Provisions for Educational Institutions

Out 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 rate for the salary of a president or chancellor. All presidents and chancellors may receive additional amounts for a house, utilities, and/or supplement from institutional funds. Table 7-4 lists those rates and the positions to which they apply.

Table 7-4

Provisions for Salaries for Educational Institutions ²⁴⁴		
Title	Not To Exceed Rate (Paid from Appropriated Funds)	Not to Exceed Rate for Housing Allowance ^a
President, Higher Education Institution	\$65,945	\$7,200
Chancellor, Higher Education Institution	\$70,231	\$7,200
Campus President, Texas State Technical College	\$63,654	\$7,200
Chancellor, Texas State Technical College	\$70,231	\$7,200
^a If a house owned by the institution, system, or program is not available, an amount not to exceed \$7,200 per year from appropriated funds and additional amounts from private or institutional funds, when required, may be provided in lieu of housing and utilities.		

Salary Study on Exempt Positions

The State Auditor's Office is directed to conduct a study similar to the biennial study on the State's Position Classification Plan that reviews the compensation of exempt positions and executive compensation as provided in Articles 1 through 8 of the General Appropriations Act. The study should compare exempt positions from different agencies and take into account the following:

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

The study must be submitted to all members of the Legislature and the director of the Legislative Budget Board no later than September 1, 2018.²⁴⁵

²⁴⁴ General Appropriations Act (85th Legislature), Article III, Special Provisions Relating Only to State Agencies of Higher Education, Section 5 (2) and (3); and General Appropriations Act (85th Legislature), Article III, Special Provisions Relating Only to Components of Texas State Technical College, Riders 9 and 10.

²⁴⁵ General Appropriations Act (85th Legislature), Article IX, Section 3.08.

Chapter 8 Salary Administration

General Information

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

- Classified positions paid in accordance with the Classification Salary Schedules.²⁴⁶
- Positions that are exempted from the Position Classification Plan by authority of the Legislature or the Governor. Salaries for these positions must be set in accordance with the General Appropriations Act.²⁴⁷

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' Texas Payroll/Personnel Resource** at the following Web site:
<https://fmx.cpa.texas.gov/fm/pubs/pa/ypol/index.php>.

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

Part-time and Hourly Employees

Regular, full-time positions may be filled by part-time and hourly employees.²⁴⁸ 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 Position Classification Plan or appropriate exempt titles.²⁴⁹ For group benefits purposes, a full-time employee is an employee who works 30 or more hours per week.²⁵⁰

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.²⁵¹ Initial employment includes rehires and interagency transfers.

Salary Limitations

State employees must be paid at a salary rate that falls within the salary range of the applicable salary group.²⁵² Therefore, a promotion, reclassification, or other salary adjustment may not result in an employee receiving a salary in excess of the maximum rate authorized for his or her salary

²⁴⁶ General Appropriations Act (85th Legislature), Article IX, Section 2.01.

²⁴⁷ Texas Government Code, Sections 654.012, 654.0125, and 659.011; and General Appropriations Act (85th Legislature), Article IX, Section 3.04.

²⁴⁸ Texas Government Code, Section 658.009.

²⁴⁹ Texas Government Code, Section 659.019 (a).

²⁵⁰ Texas Insurance Code, Section 1551.003 (9).

²⁵¹ Texas Government Code, Section 654.014 (b).

²⁵² General Appropriations Act (85th Legislature), Article IX, Section 3.01 (d).

group.²⁵³ Additionally, state employees may not be paid less than the minimum rate of the salary range of his or her applicable salary group.

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.²⁵⁴

Additionally, funds appropriated to state agencies and institutions of higher education may not be expended for a salary payment to a person whose classified salary or exempt salary is supplemented from other than appropriated funds until a report showing the sources and amounts of the non-appropriated funds for the salary has been submitted to the Secretary of State, State Auditor, and Comptroller of Public Accounts.²⁵⁵

State agencies—including institutions of higher education as defined by the Texas Education Code, Section 61.003—that accept from a person gifts, grants, donations, or other considerations that the person designates to be used as a salary supplement for an employee of the agency or institution must post on its Web site the amount of each gift, grant, donation, or other consideration provided. In addition, a state agency or institution of higher education that accepts a gift, grant, donation, or other consideration from a person that is designated to be used as a salary supplement for an employee of the agency or institution must by rule adopt conflict of interest provisions regarding the acceptance of gifts, grants, donations, or other considerations to be used as salary supplements. The conflict of interest provisions must be posted on the agency's or institution's Web site.²⁵⁶

When a state agency or institution of higher education receives a gift, grant, donation, or other consideration for the purpose of a salary supplement from an entity created solely to provide support for the agency or institution, the agency or institution must compile and report to the State Auditor and the Legislature certain information regarding the gift, grant, donation, or other consideration as described in Texas Government Code, Section 659.0201 (d).²⁵⁷

In addition, when a state agency or institution of higher education receives from a person a gift, grant, donation, or other consideration that is designated to be used as a salary supplement for a named person, position, or endowment, the agency or institution must report to the State Auditor certain information regarding the gift, grant, donation, or other consideration as described in Texas Government Code, Section 659.0201 (i).²⁵⁸

²⁵³ Texas Government Code, Section 659.259 (b) and (c).

²⁵⁴ Texas Government Code, Section 659.020.

²⁵⁵ General Appropriations Act (85th Legislature), Article IX, Section 3.02.

²⁵⁶ Texas Government Code, Section 659.0201 (a), (b), and (c).

²⁵⁷ Texas Government Code, Section 659.0201 (d) and (e).

²⁵⁸ Texas Government Code, Section 659.0201 (i).

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.²⁵⁹

A merit salary increase for an employee who transfers to a classified position from an exempt position may not take effect if the employee has spent fewer than six months in the classified position or the increase would take the employee's salary beyond the maximum of his or her new salary group.²⁶⁰

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.²⁶¹

A transfer from an exempt position to a classified position is not considered initial employment; therefore, agency heads can designate an employee's pay rate only in accordance with the provisions stating that the compensation rate must not exceed an employee's current salary rate or the maximum rate of the employee's salary group.²⁶²

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.²⁶³

²⁵⁹ Texas Government Code, Section 659.253 (a) and (b).

²⁶⁰ Texas Government Code, Section 659.253 (c).

²⁶¹ Texas Government Code, Section 659.253 (d).

²⁶² Texas Government Code, Section 659.253 (b).

²⁶³ Texas Government Code, Section 669.002.

Demotions

A demotion is a change from one classification title to another classification title in a salary group with a lower minimum salary rate.²⁶⁴ The salary of a demoted employee in Classification 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 Classification Salary Schedule B will be reduced by at least 3.4 percent.²⁶⁵

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

- The demotion was accepted in lieu of a layoff that resulted from a reduction in force. An employee demoted under these circumstances may not receive a salary rate that exceeds the employee's salary rate before the demotion.
- The employee was selected for another position in a lower salary group as a result of applying for the position. An employee under these circumstances may not receive a salary rate that exceeds the maximum rate of the lower salary group.²⁶⁶

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.²⁶⁷

A classified employee may receive an equity adjustment if the employee has worked in his or her current position for at least six months while maintaining a satisfactory level of job performance. An employee may not receive more than one equity adjustment during a fiscal year.²⁶⁸ State agencies must establish written rules regarding equity adjustments and must consider the education, skills, related work experience, length of service, and job performance of agency employees and similar employees in the relevant labor market. These rules must include procedures under which the agency will review and analyze the salary relationships between agency employees who receive salaries under the same job classification and perform the same type and level of work to determine if inequities exist.²⁶⁹

²⁶⁴ Texas Government Code, Section 659.257 (b).

²⁶⁵ Texas Government Code, Section 659.257 (c) and (d); Texas Payroll/Personnel Resource's *Salary Adjustments for State Agency Employees*, Office of the Comptroller of Public Accounts' Web site at <https://fmxcpa.texas.gov/fm/pubs/paypol/index.php>; and *Reason Codes Quick Reference for State Agencies*, Fiscal Year 2018-2019 (Salary Action Code 021), Office of the Comptroller of Public Accounts' Web site at <https://fmxcpa.texas.gov/fmx/payper/reascode/18-19/ReasonCodeQuickRef.php>.

²⁶⁶ Texas Government Code, Section 659.257 (f) and (g).

²⁶⁷ General Appropriations Act (85th Legislature), Article IX, Section 3.07 (a).

²⁶⁸ General Appropriations Act (85th Legislature), Article IX, Section 3.07 (c).

²⁶⁹ General Appropriations Act (85th Legislature), Article IX, Section 3.07 (b) and (d).

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.²⁷⁰

Lateral Transfers

A lateral transfer is a change-in-duty assignment of an agency employee that moves the employee to another job classification title in the same salary group. An example might be an Accountant V (Salary Group B21) who moves to Accounts Examiner V (Salary Group B21). When a lateral transfer occurs, the salary can be increased, it can remain the same, or it can decrease within the salary group. If an increase is provided, it can be no more than 3.4 percent higher than 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.²⁷¹ An increase in salary is not authorized for employees moving to a different position in the same job classification at the same agency. An example might be an Accountant IV in the finance division who moves to an Accountant IV in the human resources division.

Reallocations

In this chapter, "higher salary group" means a salary group with a higher minimum salary rate, and "lower salary group" means a salary group with a lower minimum salary rate.²⁷²

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.²⁷³

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.²⁷⁴

²⁷⁰ Texas Payroll/Personnel Resource's, *Salary Adjustments for State Agency Employees*, Office of the Comptroller of Public Accounts' Web site at <https://fmx.cpa.texas.gov/fm/pubs/paypol/index.php>; and *Reason Codes Quick Reference for State Agencies*, Fiscal Years 2018-2019 (Salary Action Code 040), Office of the Comptroller of Public Accounts' Web site at <https://fmx.cpa.texas.gov/fmx/payper/reascode/18-19/ReasonCodeQuickRef.php>.

²⁷¹ Texas Government Code, Section 659.2531; Texas Payroll/Personnel Resource's, *Salary Adjustments for State Agency Employees*, Office of the Comptroller of Public Accounts' Web site at <https://fmx.cpa.texas.gov/fm/pubs/paypol/index.php>; and *Reason Codes Quick Reference for State Agencies*, Fiscal Years 2018-2019 (Salary Action Code 046), Office of the Comptroller of Public Accounts' Web site at <https://fmx.cpa.texas.gov/fmx/payper/reascode/18-19/ReasonCodeQuickRef.php>.

²⁷² Texas Government Code, Section 659.254 (b).

²⁷³ Texas Government Code, Section 659.254 (c) and (d).

²⁷⁴ Texas Government Code, Section 659.254 (c).

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 must not exceed the maximum rates for the lower salary groups.²⁷⁵

Reclassifications

Reclassification is defined as a change in the classification of a position to another classification title as a result of a classification review or agency reorganization. The purpose of a reclassification is to properly classify a position based on the actual duties currently performed by an employee. It does not refer to a change in an employee's duty assignment. A position may be reclassified at any time to correct a discrepancy.²⁷⁶ Annually, all agencies covered by the Position Classification Act are required to review individual job assignments to ensure that each employee is classified properly. In addition, an agency may perform a monthly review of job assignments.²⁷⁷

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.²⁷⁸

Employees whose positions are reclassified to a lower salary group will receive the salaries they would have received had their positions not been reclassified. However, the employees' salaries must not exceed the maximum rates for the lower salary groups.²⁷⁹ Consequently, if the employee's salary prior to the reclassification is higher than the maximum salary of the lower salary group, the employee will receive the maximum salary of his or her salary group.

Salary Reduction for Disciplinary Reasons

Agency heads may reduce a classified employee's pay for disciplinary reasons if warranted by the employee's performance. The reduced salary cannot be lower than the minimum rate of the employee's current salary group. Pay may be restored to any rate within the same salary group, up to and including the employee's prior rate, as performance improves without accounting for the increase as a merit increase.²⁸⁰

²⁷⁵ Texas Government Code, Section 659.254 (d).

²⁷⁶ Texas Government Code, Section 654.0156.

²⁷⁷ Texas Government Code, Section 654.0155.

²⁷⁸ Texas Government Code, Section 659.254 (c).

²⁷⁹ Texas Government Code, Section 659.254 (d).

²⁸⁰ Texas Government Code, Section 659.258 (b).

Promotions

A promotion is a change in classification title that provides a higher minimum salary rate, requires higher qualifications, and involves a higher level of responsibility.²⁸¹

An employee promoted to a position in Classification 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 Classification 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.²⁸²

Temporary Assignments

To facilitate the work of state agencies during emergencies or special circumstances, an employee may be temporarily assigned to other duties for a period not to exceed six months. During that time, the employee will receive at least the same amount of pay he or she received prior to the reassignment. An employee may not be temporarily assigned to a position with a lower minimum salary rate. Temporary assignments will not exceed 6 months in a 12-month period. An employee temporarily designated to act as the administrative head of a state agency may continue to receive a salary for a classified position in an amount not to exceed the amount established by the General Appropriations Act for the administrative head of the agency. During the temporary assignment, an agency cannot award a merit increase to or promote or demote the employee.²⁸³

²⁸¹ Texas Government Code, Section 659.256 (b).

²⁸² Texas Government Code, Section 659.256 (c) and (d); and *Reason Codes Quick Reference for State Agencies*, Fiscal Years 2018-2019 (Salary Action Code 020), Office of the Comptroller of Public Accounts' Web site at <https://fmx.cpa.texas.gov/fmx/payper/reascode/18-19/ReasonCodeQuickRef.php>.

²⁸³ Texas Government Code, Section 659.260.

Chapter 9 Employee Compensation

Employee Compensation Overview

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

Salary Limitations

The General Appropriations Act does not limit the total amount agencies may expend for merit salary increases and promotions.²⁸⁴

Recovering Excess Compensation Paid

State agencies and institutions of higher education are authorized to recover overpayments of compensation to employees.²⁸⁵ The Comptroller of Public Accounts may adopt rules and establish procedures to administer the recovery of overpayments.²⁸⁶ 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.²⁸⁷

If requesting recovery of an overpayment, the state agency or institution of higher education must first notify the employee before collection action.²⁸⁸ The state agency or institution of higher education may request that the Comptroller of Public Accounts recover the overpayment.²⁸⁹ No statute of limitations bars the State's recovery of employee indebtedness.²⁹⁰

Information Regarding Staff Compensation

State agencies, including institutions of higher education as defined by the Texas Education Code, Section 61.003, must make available to the public certain information regarding the compensation of their staff. Specifically, state agencies and institutions of higher education must post on their Web sites the following information:

- The number of full-time equivalent employees employed by the agency or institution.

²⁸⁴ General Appropriations Act (85th Legislature), Article IX, Section 3.03.

²⁸⁵ Texas Government Code, Section 666.002 (a).

²⁸⁶ Texas Government Code, Section 666.008.

²⁸⁷ Texas Government Code, Section 666.001 (1).

²⁸⁸ Texas Government Code, Sections 666.002 (a) (1) and 666.003.

²⁸⁹ Texas Government Code, Sections 666.002 (b) and 666.005.

²⁹⁰ Texas Office of the Attorney General, Opinion GA-0171 (2004).

- The amount of legislative appropriations to the agency or institution for each fiscal year of the current fiscal biennium.
- The agency's or institution's methodology, including any employment market analysis, for determining the compensation of executive staff employed by the agency or institution, along with the name and position of the person who selected the methodology.
- Whether executive staff is eligible for a salary supplement.
- The market average for compensation of similar executive staff in the private and public sectors.
- The average compensation paid to employees of the agency or institution who are not executive staff.
- The percentage increase in compensation of executive staff for each of the five preceding fiscal years and the percentage increase in legislative appropriations to the agency or institution for each of the five preceding fiscal years.

Compensation includes "an emolument provided in lieu of base salary or wages or a supplement to base salary or wages." Executive staff means staff as defined by Texas Government Code, Section 659.026 (a) (2).²⁹¹

Benefit Replacement Pay

Prior to January 1, 1996, the State paid a portion of the 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. 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 FICA by paying a new entitlement called benefit replacement pay.

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.²⁹²

²⁹¹ Texas Government Code, Section 659.026.

²⁹² Texas Government Code, Section 659.121 (2); and Texas Payroll/Personnel Resource's *Benefit Replacement Pay for State Agencies*, Office of the Comptroller of Public Accounts' Web site at https://fm.x.cpa.texas.gov/fm/pubs/paypol/nonsalary_provisions/index.php.

Benefit replacement pay is equal to 5.85 percent of the first \$16,500 of 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.²⁹³ The benefit replacement pay for employees at institutions of higher education participating in the Teacher Retirement System may not exceed \$1,031.25.²⁹⁴

State agencies have the option of providing benefit replacement pay in equal installments during the calendar year. This practice is known as “leveling.” This option exists if the employee’s FICA 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.²⁹⁵

An eligible employee who leaves state employment for 30 or more consecutive days becomes ineligible to receive benefit replacement pay upon re-employment with the State.²⁹⁶ 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.²⁹⁷

Hazardous Duty Pay

A state employee is eligible for hazardous duty pay if he or she is a state employee for any portion of the first work day of the month and has completed at least 12 months of lifetime service credit (by the last day of the preceding month).²⁹⁸ Those state employees eligible for hazardous duty pay include:

- A commissioned law enforcement officer of the Department of Public Safety, the Texas Facilities Commission, the Alcoholic Beverage Commission, the Department of Criminal Justice, or the Office of the Attorney General.
- A commissioned security officer of the Office of the Comptroller of Public Accounts.
- A law enforcement officer commissioned by the Parks and Wildlife Commission.

²⁹³ Texas Government Code, Section 659.123; and Texas Payroll/Personnel Resource’s *Benefit Replacement Pay for State Agencies*, Office of the Comptroller of Public Accounts’ Web site at https://fm.x.cpa.texas.gov/fm/pubs/paypol/nonsalary_provisions/index.php.

²⁹⁴ Texas Payroll/Personnel Resource’s *Benefit Replacement Pay for Institutions of Higher Education*, Office of the Comptroller of Public Accounts’ Web site at https://fm.x.cpa.texas.gov/fm/pubs/paypol/hied_provisions/.

²⁹⁵ Texas Government Code, Section 659.125; and Texas Payroll/Personnel Resource’s *Benefit Replacement Pay for State Agencies*, Office of the Comptroller of Public Accounts’ Web site at https://fm.x.cpa.texas.gov/fm/pubs/paypol/nonsalary_provisions/index.php.

²⁹⁶ Texas Government Code, Section 659.126 (a).

²⁹⁷ Texas Government Code, Section 659.126 (d).

²⁹⁸ Texas Government Code, Section 659.302 (a).

- A commissioned peace officer of an institution of higher education.
- An employee or official of the Board of Pardons and Paroles or the Department of Criminal Justice’s Parole Division if the employee or official has routine, direct contact with inmates or with administratively released prisoners.
- An individual certified as having begun employment as a law enforcement officer or custodial officer unless the employee ceased that employment.
- An employee who received hazardous duty pay before May 29, 1987, based on the terms of any state law if the individual holds a position designated under that law as eligible for pay.²⁹⁹

Department of Criminal Justice employees hired after August 31, 1985, must occupy positions approved by the Texas Board of Criminal Justice and meet statutory criteria to receive hazardous duty pay.³⁰⁰

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 2018-2019 biennium. Individuals hired after August 31, 1981, will not be eligible to receive hazardous duty pay unless so authorized by statute.³⁰¹

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.”³⁰² The number of months is determined on the last day of the preceding month. To be eligible, the employee must be an employee for a portion of the first workday of the month.³⁰³ For a part-time employee, hazardous duty pay is proportional to the amount given to a full-time employee.³⁰⁴

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.³⁰⁵ 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.³⁰⁶

²⁹⁹ Texas Government Code, Section 659.301 (5).

³⁰⁰ General Appropriations Act (85th Legislature), Article V, Department of Criminal Justice, Rider 15.

³⁰¹ General Appropriations Act (85th Legislature), Article V, Alcoholic Beverage Commission, Rider 3.

³⁰² Texas Government Code, Sections 659.305 (a) and 659.307 (a).

³⁰³ Texas Government Code, Section 659.302 (a).

³⁰⁴ Texas Government Code, Section 659.305 (f).

³⁰⁵ Texas Government Code, Section 659.305 (a).

³⁰⁶ Texas Government Code, Section 659.306.

Jury Service and Witness Fees

A deduction may not be made from the salary or wages of a state employee because the employee is called for jury service, including a deduction for any fee or compensation the employee receives for the jury service.³⁰⁷

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 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. Additionally, 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 only from the State or the judicial body, but not from both the State and the judicial body.³⁰⁸

Longevity Pay

Longevity pay is provided to all eligible full-time employees who are not on leave without pay the first workday of the month and who have at least two years of lifetime service credit. Part-time employees do not receive longevity pay.³⁰⁹ 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 state employees; officers or employees of public junior colleges; academic employees of institutions of higher education; and return to work employees who retired from state employment on or after June 1, 2005, and who receive an annuity based wholly or partly on service as a state officer or state employee.³¹⁰ The Comptroller of Public Accounts is responsible for adopting rules for the administration of longevity pay.³¹¹

³⁰⁷ Texas Government Code, Section 659.005 (a).

³⁰⁸ Texas Government Code, Section 659.005 (b), (c), (d), and (e).

³⁰⁹ Texas Government Code, Section 659.043 (a).

³¹⁰ Texas Government Code, Section 659.042; and Texas Payroll/Personnel Resource's *Longevity Pay*, Office of the Comptroller of Public Accounts' Web site at https://fm.x.cpa.texas.gov/fm/pubs/paypol/nonsalary_provisions/index.php.

³¹¹ Texas Government Code, Section 659.047.

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.

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

An employee who simultaneously holds two or more positions that each accrues lifetime service credit accrues credit for only one of the positions.

An employee who begins working on the first workday of a month in a position that accrues lifetime service credit is considered to have begun working on the first day of the month.

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

The amount of an employee's lifetime service credit does not include the period served in a hazardous duty position if the employee is entitled to receive hazardous duty pay or is receiving the maximum amount of hazardous duty pay that the Juvenile Justice Department may pay to the employee.³¹²

³¹² Texas Government Code, Section 659.046.

Table 9-1 lists the amounts of longevity pay that eligible employees receive based upon years of service.³¹³

Table 9-1

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

Longevity Pay for State Judges and Justices

A judge or justice who receives a salary paid by the State, is a member of the Judicial Retirement System of Texas Plan I or the Judicial Retirement System of Texas Plan II, and is an active judge (as defined by Texas Government Code, Section 74.041) is entitled to longevity pay. The monthly amount of longevity pay to which a judge or justice is entitled is equal to the product of .031 multiplied by the amount of the judge's or justice's current monthly state salary. Longevity pay becomes payable beginning with the month following the month in which the judge or justice completes 16 years of service for which credit is established in the applicable retirement system.³¹⁴ Longevity pay paid to a judge or justice is not included as part of the judge's or justice's combined

³¹³ Texas Government Code, Section 659.044.

³¹⁴ Texas Government Code, Section 659.0445 (a) and (b).

salary from state and county sources for purposes of the salary limitations provided by Texas Government Code, Section 659.012.³¹⁵

Longevity Pay for Return-to-Work Retirees

A state employee who retired from state employment before June 1, 2005, and who returned to state employment before September 1, 2005, is entitled to receive longevity pay. The monthly amount of longevity pay the employee is entitled to receive equals the amount of longevity pay that the employee was entitled to receive immediately before September 1, 2005. A state employee who retired from state employment before June 1, 2005, and who returned to state employment on or after September 1, 2005, is not entitled to receive longevity pay.³¹⁶

Longevity Pay When Employee's Status Changes

If an employee changes from a full-time state employee after the first workday of a month to another status (for example, a part-time employee), but otherwise qualifies for longevity pay, the employee's compensation for the month includes full longevity pay.³¹⁷

Merit Salary Increases and One-time Merit Payments

State agencies may award merit salary increases and one-time merit payments to classified employees whose job performance and productivity in their current position is consistently above that normally expected and required.³¹⁸ Each state agency must adopt policies to ensure that an employee's performance expectations are linked to the goals in the agency's strategic plan.³¹⁹

For classified employees in Classification Salary Schedules A and B, a merit salary increase consists of an increase in the employee's base salary within the range of the employee's salary group.³²⁰ For Classification Salary Schedule A employees, the minimum amount for a merit increase is \$30 per month. For Classification Salary Schedule B employees, there is no specified minimum amount for a merit increase.³²¹

For classified employees in Classification Salary Schedules A, B, and C, there is no minimum or maximum amount that may be awarded for a one-time merit payment. A one-time merit payment is a single payment to an employee that does not change the employee's base salary.³²²

³¹⁵ Texas Government Code, Section 659.0445 (e).

³¹⁶ Texas Government Code, Section 659.044 (f).

³¹⁷ Texas Government Code, Section 659.045.

³¹⁸ Texas Government Code, Section 659.255 (e) (4) and (f) (4).

³¹⁹ Texas Government Code, Section 659.2551.

³²⁰ Texas Government Code, Section 659.255 (a) (3).

³²¹ Texas Payroll/Personnel Resource's *Salary Adjustments for State Agency Employees*, Office of the Comptroller of Public Accounts' Web site at <https://fmx.cpa.texas.gov/fm/pubs/paypol/index.php>.

³²² Texas Payroll/Personnel Resource's *Salary Adjustments for State Agency Employees*, Office of the Comptroller of Public Accounts' Web site at <https://fmx.cpa.texas.gov/fm/pubs/paypol/index.php>.

Agencies should ensure that merit increases and one-time merit payments are distributed throughout the range of classified salary groups.³²³

Employees may receive a merit salary increase and a one-time merit payment for performance if the criteria listed below are met. 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:³²⁴

- The employee has been employed by the agency for six continuous months in their classified position before the effective date of the merit salary increase or one-time merit payment.
- The effective date of the merit salary increase or one-time merit payment is at least six months after the effective date of the employee's last promotion, enhanced compensation award, merit salary increase for performance in that position, or a one-time merit payment for performance in that position (including a one-time merit payment given for an employee's performance during a natural disaster or other extraordinary circumstance). The six-month limitation between salary actions does not apply to one-time merit payments that are awarded for performance during a natural disaster or other extraordinary circumstance. The administrative head of an agency must document the employee's performance during a natural disaster or other extraordinary circumstance.³²⁵
- The agency has established a procedure for determining the eligibility of a classified employee to receive a merit salary increase or a one-time merit payment.
- The employee's job performance and productivity in that position are consistently above that normally expected or required.

Employees Not Eligible for Merit Increases

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

- Correctional officers.
- Sergeants, Lieutenants, Captains, and Majors of correctional officers.
- Food service managers.
- Laundry managers.
- Parole officers.³²⁶

³²³ Texas Government Code, Section 659.255 (d).

³²⁴ Texas Government Code, Section 659.255 (e) and (f).

³²⁵ Texas Government Code, Section 659.255 (g).

³²⁶ General Appropriations Act (85th Legislature), Article V, Department of Criminal Justice, Rider 9.

Merit increases are also prohibited for all Juvenile Justice Department juvenile correctional officers who are receiving or are eligible to receive career ladder adjustments.³²⁷

Employees in a temporary assignment or currently under a disciplinary reduction in pay are not eligible to receive merit salary increases.³²⁸

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.³²⁹ An institution of higher education may grant merit salary increases, including one-time merit payments, to employees.³³⁰

An institution of higher education may pay merit salary increases from any funds. Before awarding a merit salary increase, an institution of higher education must adopt criteria for the granting of merit salary increases. To be eligible for a merit salary increase, an employee must have been employed by the institution of higher education for the six months immediately preceding the effective date of the increase and at least six months must have elapsed since the employee's last merit salary increase. The required six-month lapse between merit increases does not apply to a one-time merit payment if the chief administrative officer of the institution of higher education determines in writing that the one-time payment is made in relation to the employee's performance during a natural disaster or other extraordinary circumstances.³³¹

Salary increases for faculty or faculty-equivalent employees at institutions of higher education must be awarded on the basis of merit and job performance. This does not include salary adjustments designed to avoid salary inequities.³³²

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.³³³

³²⁷ General Appropriations Act (85th Legislature), Article V, Juvenile Justice Department, Rider 22.

³²⁸ Texas Payroll/Personnel Resource's *Salary Adjustments for State Agency Employees*, Office of the Comptroller of Public Accounts' Web site at <https://fmx.cpa.texas.gov/fm/pubs/paypol/index.php>.

³²⁹ General Appropriations Act (85th Legislature), Article III, Special Provisions Relating Only to State Agencies of Higher Education, Section 5 (4).

³³⁰ Texas Education Code, Section 51.962.

³³¹ Texas Education Code, Section 51.962 (c), (d), (e), and (f).

³³² General Appropriations Act (85th Legislature), Article III, Special Provisions Relating Only to State Agencies of Higher Education, Section 5 (5).

³³³ Texas Education Code, Section 51.0065.

Recruitment Bonuses

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

If the employee discontinues employment with the state agency for any reason less than three months after the date of receiving the recruitment payment, the employee must refund to the state agency the full amount of the recruitment payment.

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

- Subtracting from 12 months the number of complete calendar months the employee worked after the date of receiving the recruitment payment;
- Dividing the number of months above by 12 months; and
- Multiplying the fraction computed by the amount of the recruitment payment.³³⁴

Before an agency provides or enters into a contract to provide additional compensation to an employee under Texas Government Code, Section 659.262, 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 Texas Government Code, Section 659.262, is specifically exempted from any limitation on salary or salary increases.³³⁵

Recruitment bonuses do not constitute compensation or salary and wages for purposes of determining the amount of the State's contribution for retirement.³³⁶

Retention Bonuses

To enhance the retention of employees who are employed in certain classified positions that are identified by the chief administrator of the agency as "essential for the state agency's operations," a state agency may enter into a deferred compensation contract with an employee to provide the employee a one-time payment not to exceed \$5,000.³³⁷

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

³³⁴ Texas Government Code, Section 659.262 (b).

³³⁵ Texas Government Code, Section 659.262 (f) and (g).

³³⁶ Texas Payroll/Personnel Resource's *Recruitment and Retention Bonuses*, Office of the Comptroller of Public Accounts' Web site at https://fm.x.cpa.texas.gov/fm/pubs/paypol/nonsalary_provisions/index.php.

³³⁷ Texas Government Code, Section 659.262 (c).

added to the employee's salary payment the month after the conclusion of the 12-month period of service under the deferred compensation contract.³³⁸

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

- The criticality of the employee position in the operation of the agency.
- Evidence of high turnover rates among employees filling the position or an extended period during which the position has been vacant.
- Evidence of a shortage of employees qualified to fill the position or a shortage of qualified applicants.
- Other relevant factors.³³⁹

Before an agency provides or enters into a contract to provide additional compensation to an employee under Texas Government Code, Section 659.262, the chief administrator of the agency must certify in writing to the Comptroller of Public Accounts the reasons why the additional compensation is necessary. Additional compensation paid to an employee in accordance with Texas Government Code, Section 659.262, is specifically exempted from any limitation on salary or salary increases.³⁴⁰

Retention bonuses do not constitute compensation or salary and wages for purposes of determining the amount of the State's contribution for retirement.³⁴¹

Performance Rewards

The Legislature has provided a system of performance rewards and penalties for state agencies and institutions of higher education to encourage them to make use of appropriations in the most efficient and effective manner. Agencies and institutions of higher education were tasked with establishing key performance milestones. Based on the achievement of these milestones, the Legislative Budget Board and the Governor may adopt a budget execution order, which may include positive incentives and rewards for the agency. These incentives could include: increased funding, exemption from reporting requirements, increased funding transferability, formalized recognition or accolades, awards or bonuses, expended responsibility, or expanded contracting authority.³⁴²

³³⁸ Texas Government Code, Section 659.262 (c) and (d).

³³⁹ Texas Government Code, Section 659.262 (e).

³⁴⁰ Texas Government Code, Section 659.262 (f) and (g).

³⁴¹ Texas Payroll/Personnel Resource's *Recruitment and Retention Bonuses*, Office of the Comptroller of Public Accounts' Web site at https://fm.cpa.texas.gov/fm/pubs/paypol/nonsalary_provisions/index.php.

³⁴² General Appropriations Act (85th Legislature), Article IX, Section 6.13.

Savings Incentive Program for State Agencies

State agencies that realize savings in accordance with Texas Government Code, Sections 2108.101 and 2108.102, may retain and use part of the savings to provide bonuses, in the amounts prescribed by Texas Government Code, Section 2108.103, to each agency employee who:

- Is a current full-time employee of the agency,
- Worked for the agency as a full-time employee for the entire fiscal year in which the savings were realized, and
- Is directly responsible for, or worked in, a department, office, or other division within the agency that is responsible for the savings.

A state agency is allowed to retain one-half of the amount of savings verified by the Office of the Comptroller of Public Accounts, and it may use one-half of the retained amount to provide the employee bonuses if the agency does not have to make additional principal payments for general obligation bonds issued by the agency or on behalf of the agency. A state agency may not provide a bonus under this program to an employee of the agency who serves in an upper management position, including the chief executive or chief administrator of the agency. To implement this program, a state agency must adopt rules.³⁴³

New Requirement

The 85th Legislature enacted legislation amending Texas Government Code, Chapter 2108, relating to the savings incentive program for state agencies. A state agency that realizes savings may use one-half of the savings amount retained to provide bonuses to employees directly responsible for the savings, or who worked in a department, office, or other division within the agency that is responsible for the savings (if the agency does not have to make additional principal payments for general obligation bonds issued by the agency or on behalf of the agency). A state agency employee who serves in an upper management position, including the chief executive or chief administrator of the agency, is not eligible for a bonus under this program. To implement this program, state agencies must adopt rules.

Salary Stipends for Employees in Classification Salary Schedule C

Certain commissioned peace officers in Classification Salary Schedule C are eligible to receive salary stipends. These stipends must be paid to officers who achieve certain levels of skill or certifications as approved by the eligible employing agencies. Commissioned peace officers may receive a stipend for education level or certification level, but not both.

³⁴³ Texas Government Code, Sections 2108.101 and 2108.102; and Texas Government Code, Section 2108.103, as amended by Senate Bill 132 (85th Legislature, Regular Session).

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 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.³⁴⁴

Salary Stipends and Pay for Special Assignments

Salary stipends may be used to provide additional salary to employees in certain circumstances. Specific agencies are provided authority in the General Appropriations Act for stipends to supplement employee pay for special assignments or duties.

Shift Differentials, Standby, or On-Call Pay

Shift differentials may be paid to employees to compensate them for working shifts different than a normal schedule. Standby or on-call pay may be used to compensate certain employees who are required to be on call and return to work when they are contacted in the event of an emergency.

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

³⁴⁴ General Appropriations Act (85th Legislature), Article IX, Section 3.12 (b).

Chapter 10
Payroll and Personnel Reporting

Payroll Overview

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

- A board, commission, department, institution, office, or other agency in the executive branch of state government that is created by the constitution or a statute of this state, including an institution of higher education as defined by the Texas Education Code, Section 61.003, other than a public junior college; or
- The Supreme Court of Texas, the Texas Court of Criminal Appeals, a court of appeals, or other agency in the State’s judicial branch.³⁴⁵

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

- Facilitate the auditing of payrolls.
- Facilitate a classification compliance audit for agencies covered by the State’s Position Classification Plan.
- Assure conformity with state statute and the General Appropriations Act.
- Provide the Legislative Audit Committee with current information on employment and wage rate practices in state government.³⁴⁶

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.³⁴⁷

“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.³⁴⁸

³⁴⁵ Texas Government Code, Sections 658.001 (2) and 659.004 (a).

³⁴⁶ Texas Government Code, Sections 659.004 (b) and 654.036 (3).

³⁴⁷ Texas Government Code, Section 659.083 (a) and (b).

³⁴⁸ Texas Government Code, Section 659.083 (c).

Salaries for state officers and employees paid once a month must be paid through electronic funds transfer unless paid on warrant as permitted by state statute.³⁴⁹

Method and Frequency of Pay

Except as provided by state statute or the General Appropriations Act, annual salaries for state officers and employees must be paid once a month.³⁵⁰

Employees of certain state agencies are entitled to be paid twice a month if the employees hold certain classified positions under the State's Position Classification Plan and if the employing agency satisfies the Comptroller's requirements related to the payment of compensation twice a month. Additional information is available through the Comptroller's Web site at <https://fmx.cpa.texas.gov/fm/pubs/paypol/>.³⁵¹

Employees of an institution of higher education as defined by the Texas Education Code, Section 61.003, may be paid twice a month at the election of the employing institution of higher education.³⁵²

Determining Amounts for Part-time Pay

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

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

Alternatively, an institution of higher education, as defined by the Texas Education Code, Section 61.003, may compute an employee's hourly rate of pay for a given month by dividing the employee's annual salary by 2,080, which is the number of working hours in the standard work year.

When an employee is on leave without pay, compensation for the pay period will be reduced by an amount computed in accordance 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.³⁵³

³⁴⁹ Texas Government Code, Section 659.084.

³⁵⁰ Texas Government Code, Section 659.081.

³⁵¹ Texas Government Code, Section 659.082 (a); and Texas Payroll/Personnel Resource's *Method and Frequency of Payroll*, Office of the Comptroller of Public Accounts' Web site at <https://fmx.cpa.texas.gov/fm/pubs/paypol/>.

³⁵² Texas Government Code, Section 659.082 (b).

³⁵³ Texas Government Code, Section 659.085.

Federal Insurance Contributions Act (FICA)

The State must withhold money from salaries and wages paid to state officers and employees in accordance with applicable federal law, including federal law relating to withholding for purposes of the federal income tax. The State must make any required employer contributions in accordance with applicable federal law. The Comptroller must make payments in accordance with applicable state and federal law.³⁵⁴

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

For 2017, the OASDI tax rate for wages paid is 6.2 percent for employees and 6.2 percent for employers. The maximum wage contribution for 2017 is \$127,200. The Medicare tax rate is 1.45 percent for employees and employers and currently has no income limit.³⁵⁵ All employees are subject to both types of FICA taxes.³⁵⁶

Payroll Deductions

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

For payroll deduction purposes, “state agency” means:

- A board, commission, department, office, or other agency in the executive branch of state government and that was created by the constitution or a statute of this state, including an institution of higher education as defined by Texas Education Code, Section 61.003, other than a public junior college;
- The Legislature or a legislative agency; or
- The Supreme Court of Texas, the Texas Court of Criminal Appeals, a court of appeals, the State Bar of Texas, or another state judicial agency.

To the extent that the laws, regulations, and rules of Texas or the United States do not specify the priority of deductions, the Comptroller by rule may determine the priority for compensation paid by a state governmental body.³⁵⁷

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

³⁵⁴ Texas Government Code, Section 659.002 (d).

³⁵⁵ U.S. Social Security Administration’s Web site at <https://www.ssa.gov>.

³⁵⁶ Title 26, United States Code, Section 3101.

³⁵⁷ Texas Government Code, Section 659.002 (a), (b), and (c).

Charitable Contribution Deductions

A state employee may authorize a deduction each pay period from the employee's salary or wage payment for a charitable contribution as authorized by state law. In most cases, a state employee may authorize a deduction only during a state employee charitable campaign. However, a state employee who begins working for the State when a campaign is not being conducted may authorize a deduction according to the Comptroller's requirements.

A state agency other than an institution of higher education is not required to permit an employee to authorize a deduction until the first full payroll period after the agency converts to a system in which uniform statewide payroll procedures are followed. In such situations, a state employee who works for a state agency that does not allow deduction authorizations may authorize a deduction that is effective with the first full payroll period after the agency is converted to a system in which uniform statewide payroll procedures are followed.

A state employee who authorized a deduction while working for a state agency may continue the deduction after transferring to another state agency if the Comptroller's rules for continuing the deduction are followed.

An authorization must direct the Comptroller to distribute the deducted funds to a participating federation or fund or a local charitable organization selected by the State Policy Committee 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.³⁵⁸

Credit Unions Deductions

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 to an account with a credit union.³⁵⁹

Deductions for Membership Fees for Eligible State Employee Organizations

An employee of a state agency may authorize monthly deductions from the employee's salary or wages to pay membership fees to eligible state employee organizations.³⁶⁰ For information about eligible state employee organizations, state agencies should contact the Comptroller of Public Accounts.

Deductions for Supplemental Optional Benefits Program

An employee of a state agency may authorize in writing a deduction each pay period from the employee's salary or wage payment for coverage of the employee under an eligible supplemental optional benefits program. A deduction may be made each pay period from the employee's salary or wage payment without authorization in writing from the employee for participation in a 401(k) plan as provided by state law.

³⁵⁸ Texas Government Code, Section 659.132.

³⁵⁹ Texas Government Code, Section 659.103 (a).

³⁶⁰ Texas Government Code, Sections 403.0165 and 659.1031.

The Employees Retirement System of Texas must designate eligible supplemental optional benefits programs that promote the interests of the State and state agency employees. The supplemental optional benefits program may include permanent life insurance, catastrophic illness insurance, disability insurance, prepaid legal services, or a qualified transportation benefit.³⁶¹

Payroll Reductions or Deductions Authorized for Institutions of Higher Education

An employee of an institution of higher education may provide written authorization to reduce the employee's salary or wage payment each pay period for the payment of any fee or charge for parking, a parking permit, a transportation pass, or other qualified transportation benefit authorized by the federal Internal Revenue Code. An authorization for a reduction by the employee must be voluntary. The institution determines the fee or charge an employee may pay.

An employee of an institution of higher education may authorize in writing a deduction each pay period from the employee's salary or wage payment for the payment of any fee or charge for parking or for a club membership, recreational sports membership, or similar activity or program. An authorization for a deduction by the employee must be voluntary. The institution must determine which fee or charge an employee may pay.³⁶²

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

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

A university system or institution of higher education may collect an administrative fee to cover the costs of making a deduction. A payroll deduction is not authorized for dues or membership fees payable to a labor union or employees association.³⁶³

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.

³⁶¹ Texas Government Code, Section 659.102.

³⁶² Texas Government Code, Section 659.202.

³⁶³ Texas Education Code, Section 51.9611.

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.³⁶⁴

Deductions for Prepaid Higher Education Tuition Program

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

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

An employee of a state agency or institution of higher education may have one or more separate contracts in one or more of the available plans. Agencies must set up a separate deduction for each plan for the sum of the contract amounts designated by the employee.³⁶⁵

Limitations on State Employment Levels

State agencies and institutions of higher education are not permitted to exceed the number of full-time equivalent (FTE) positions authorized by the General Appropriations Act (GAA).³⁶⁶ 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 GAA.
- 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.³⁶⁷

Without the written approval from the Office of the Governor and the Legislative Budget Board, state agencies and institutions of higher education may not use funds appropriated by the GAA to pay all or part of the salaries or benefits of the number of employees that would cause the number

³⁶⁴ Texas Government Code, Section 659.108.

³⁶⁵ Texas Payroll/Personnel Resource's *Texas Prepaid Higher Education Tuition Program*, Office of the Comptroller of Public Accounts' Web site at https://fm.x.cpa.texas.gov/fm/pubs/paypol/voluntary_deductions/index.php.

³⁶⁶ General Appropriations Act (85th Legislature), Article IX, Section 6.10 (a).

³⁶⁷ General Appropriations Act (85th Legislature), Article IX, Section 6.10 (d).

of FTEs paid from appropriated funds for a fiscal quarter to exceed the lesser of 110 percent of the authorized FTEs funded by the GAA or 100 percent of the authorized FTEs plus 50.³⁶⁸

A request to the Office of the Governor and the Legislative Budget Board to exceed the FTE limitation must be submitted by the governing board of an institution of higher education or state agency (if the agency does not have a governing board, the request must be submitted by the agency's chief administrative officer) and must include:

- The date on which the board approved the request (or the chief administrative officer if the state agency does not have a governing board).
- A statement justifying the need to exceed 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.³⁶⁹

The time frame controlling the FTE limitation varies by state agency or institution of higher education. Some entities are assigned quarterly FTE limitations and others are assigned annual FTE limitations.³⁷⁰

FTE limitations do not apply to employment that is directly associated with the declaration of a disaster by the Governor. Each year, state agencies and institutions of higher education 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.³⁷¹

According to the GAA, the limitations on FTEs do not apply to employment by a state agency or institution of higher education, including employment of a temporary or contract worker, associated with the implementation of a new, unanticipated project (or the unanticipated expansion of an existing project) that is 100 percent federally funded. Specifically, the state agency or institution of higher education is exempt from the FTE limitation only for the duration of the federal funding for the employment related to the project. In addition, all salaries, benefits, and other expenses incurred that are related to that employment must be paid from federal funds. Each state agency or institution of higher education is required to notify the State Auditor's Office, Comptroller of Public Accounts, Legislative Budget Board, and the Office of the Governor of any FTEs that are exempted because of these circumstances. This exemption does not apply to any employees associated with existing projects that are 100 percent federally funded and included in the number of FTEs allowed in the agency's or institution of higher education's bill pattern.³⁷²

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

³⁶⁸ General Appropriations Act (85th Legislature), Article IX, Section 6.10 (a) (2).

³⁶⁹ General Appropriations Act (85th Legislature), Article IX, Section 6.10 (b) (2).

³⁷⁰ General Appropriations Act (85th Legislature), Article IX, Section 6.10 (d) and (e).

³⁷¹ General Appropriations Act (85th Legislature), Article IX, Section 6.10 (g).

³⁷² General Appropriations Act (85th Legislature), Article IX, Section 6.10 (h).

reduce the number of FTEs paid from funds appropriated by the GAA for one or more fiscal quarters to a figure less than that indicated by the GAA for that state agency or institution of higher education.³⁷³

Certain state agencies may have specific riders in the GAA (85th Legislature) that increase or decrease agency FTE limitations or provide specific exemptions from mandated FTE caps.

The FTE limitations under the GAA (85th Legislature), Article IX, Section 6.10, do not apply to a state agency or institution of higher education in an instance of employment, including employment of a temporary or contract worker, if the employee is paid from appropriations of gifts and grants under the GAA (85th Legislature), Article IX, Section 8.01. In addition, the reporting requirements under the GAA (85th Legislature), Article IX, Section 6.10, do not apply to a state agency or institution of higher education with fewer than 50 FTEs allowed in the agency's or institution of higher education's bill pattern.³⁷⁴

Agencies and institutions of higher education should refer to the GAA (85th Legislature), Article IX, Section 6.10, for additional FTE reporting requirements on exceeding the limitations established by the Legislature.

Full-Time Equivalent Employees Reporting

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

- The number of full-time equivalent employees paid from funds in the state treasury and the number of full-time equivalent employees paid from funds outside the state treasury.³⁷⁵
- The increase or decrease, if any, in the number of full-time equivalent employees from the fiscal quarter preceding the quarter covered by the report.
- The number of positions paid from funds in the state treasury and the number of positions paid from funds outside the state treasury.
- The number of individuals who performed services for the agency under contracts, including consultants and individuals employed under contracts for temporary help services.
- The number of managers, supervisors, and staff.³⁷⁶

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

³⁷³ General Appropriations Act (85th Legislature), Article IX, Section 6.10 (i).

³⁷⁴ General Appropriations Act (85th Legislature), Article IX, Section 6.10 (j) and (k).

³⁷⁵ For quarterly FTE reporting by state agencies and institutions of higher education to the State Auditor's Office, the State Auditor's Office considers "funds in the state treasury" and "funds outside the state treasury" to be "appropriated funds" and "non-appropriated funds," respectively. For additional information on quarterly FTE reporting to the State Auditor's Office, see the *State Auditor's Office Full-time Equivalent (FTE) Employee Reporting Instructions and Information* at <http://www.hr.sao.texas.gov/Resources/Guides/>.

³⁷⁶ Texas Government Code, Section 2052.103 (a).

- 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.³⁷⁷

The State Auditor's Office publishes an annual Full-Time Equivalent Employees report for the Legislative Budget Board, the Office of the Governor, and the Comptroller of Public Accounts summarizing the results of the information provided by agencies.³⁷⁸

The State Auditor's Office provides additional data analysis and reports from its Full-Time Equivalent (FTE) State Employee System through its State Classification Team Web site at <http://www.hr.sao.texas.gov/Tools/>.

³⁷⁷ Texas Government Code, Section 2052.103 (b).

³⁷⁸ Texas Government Code, Section 2052.104 (b).

Chapter 11 General Leave Provisions

The State Auditor's Office is responsible for providing uniform interpretation of certain leave provisions and for reporting any exceptions made by individual agencies to the Office of the Governor and the Legislature.³⁷⁹ These interpretations are advisory in nature.³⁸⁰

Employee Leave Policies

State agencies and institutions of higher education must adopt a policy governing leave provided for employees under Texas Government Code, Chapter 661.³⁸¹ This chapter addresses vacation leave and sick leave provided under Texas Government Code, Chapter 661. See Chapter 12 (Miscellaneous Leave Provisions) for additional types of leave provided under Texas Government Code, Chapter 661.

The policy must provide clear and objective guidelines to establish under what circumstances an employee may be entitled to, or granted, each type of leave provided by Texas Government Code, Chapter 661. The policy must be posted on the state agency's or institution of higher education's Web site in a location easily accessible by its employees and the public.³⁸²

The governing board of a university system may adopt a comprehensive leave policy that applies to employees of the university system or any component institution of the system.³⁸³ The comprehensive leave policy may combine vacation, sick, and holiday leave into a paid leave system that does not distinguish or separate the types of leave to be awarded and may award leave in an amount that the governing board determined to be appropriate and cost effective.³⁸⁴

New Requirement

The 85th Legislature enacted legislation requiring state agencies and institutions of higher education to adopt a policy governing leave for employees under Texas Government Code, Chapter 661. The policy must provide guidelines to establish under what circumstances an employee may be entitled to, or granted, each type of leave provided by Texas Government Code, Chapter 661. The policy must be posted on the state agency's or institution of higher education's Web site in a location easily accessible by its employees and the public.

³⁷⁹ Texas Government Code, Section 661.151.

³⁸⁰ Texas Office of the Attorney General, Opinion M-984 (1971).

³⁸¹ Texas Government Code, Subchapter H, Sections 661.251 and 661.252 (a), as added by Senate Bill 73 (85th Legislature, Regular Session).

³⁸² Texas Government Code, Subchapter H, Section 661.252 (b) and (c), as added by Senate Bill 73 (85th Legislature, Regular Session).

³⁸³ Texas Education Code, Section 51.961 (b).

³⁸⁴ Texas Education Code, Section 51.961 (c).

Leave Records

Each state agency must keep a record of time and attendance for each of its employees. Such records include:

- The accrual and use of vacation and sick leave.
- The reason an employee takes leave if the law requires the employee to inform the agency of the reason.
- Whether any leave taken is accounted for as sick leave, vacation leave, other paid leave, leave without pay, or other absence.³⁸⁵

Leave Reporting

State agencies and institutions of higher education subject to Texas Government Code, Section 2101.036 (d), must use the uniform system adopted by the Office of the Comptroller of Public Accounts (Comptroller's Office) to report leave taken by agency employees.³⁸⁶

New Requirement

The 85th Legislature enacted legislation requiring state agencies and institutions of higher education subject to Texas Government Code, Section 2101.036 (d), to use the uniform system adopted by the Comptroller's Office to report leave taken by agency employees.

Reporting of Emergency Leave and Leave During an Investigation

State agencies have certain reporting requirements concerning the granting of emergency leave and leave during an agency investigation. Specifically:

- No later than October 1 of each year, state agencies are required to report the following information to the Comptroller's Office for each employee who is granted more than 32 hours of emergency leave during the previous fiscal year: (1) the employee's name and position, (2) the reason for which the employee was granted the emergency leave, and (3) the total number of hours of emergency leave granted to the employee.³⁸⁷
- No later than the last day of each fiscal year quarter, state agencies that grant 168 hours or more of leave to an employee who is the subject of an investigation being conducted by the agency are required to report to the Legislative Budget Board and State Auditor's Office (1) the

³⁸⁵ Texas Government Code, Section 661.908.

³⁸⁶ Texas Government Code, Section 2101.042, as added by Senate Bill 73 (85th Legislature, Regular Session).

³⁸⁷ Texas Government Code, Section 661.902 (d), as added by Senate Bill 73 (85th Legislature, Regular Session).

name of the employee and (2) a brief statement as to the reason that the employee was granted the leave.³⁸⁸

See *Emergency Leave and Leave During an Agency Investigation* in Chapter 12 (Miscellaneous Leave Provisions) for more information about the reporting requirements discussed above.

New Requirement
The 85th Legislature enacted legislation requiring state agencies to report certain information to the Comptroller's Office regarding the granting of emergency leave and certain information to the Legislative Budget Board and State Auditor's Office regarding the granting of leave during an investigation. See Chapter 12 (Miscellaneous Leave Provisions) for more information about those reporting requirements.

Vacation Leave

State employees are entitled to paid vacation leave (also referred to as annual leave) each year. Exceptions to this policy include faculty members of institutions of higher education who worked less than 12 months during the year and instructors at the School for the Blind and Visually Impaired, the School for the Deaf, and the Juvenile Justice Department who worked less than 12 months during the year. Additionally, employees not entitled to vacation leave include higher education employees who do not work at least 20 hours per week for a period of at least 4.5 months or employees in positions that require student status as a condition of employment.³⁸⁹ Employees of independent school districts and junior colleges are not considered state employees for purposes of this section.³⁹⁰

Vacation Leave Accruals and Utilization

Employees begin to accrue vacation leave on their first day of employment and on the first calendar day of each succeeding month of state employment.³⁹¹ However, vacation leave may not be taken until the employee has been employed with the State for six continuous months.³⁹²

³⁸⁸ Texas Government Code, Section 661.923 (c), as added by Senate Bill 73 (85th Legislature, Regular Session).

³⁸⁹ Texas Government Code, Section 661.152 (a).

³⁹⁰ Texas Government Code, Sections 661.001 (4) and 661.915.

³⁹¹ Texas Government Code, Section 661.152 (e).

³⁹² Texas Government Code, Section 661.152 (f).

A full or partial calendar month of leave without pay does not constitute a break in state employment nor does it require the employee to start over in the calculation of the employee's continuous months of employment. However, if an employee is on leave without pay for a full calendar month, that month is not counted in computing:

- Total state service credit for purposes of vacation leave accruals.
- Total state service credit for purposes of longevity pay.
- Continuous state service for purposes related to merit increases or vacation leave.³⁹³

In addition, if the employee is on any type of paid leave that extends into the following month, the employee's accrual of leave will not be posted until the employee returns to duty, which means the employee may not take vacation leave accrued for that month until the employee returns to work. An employee forfeits this accrual if he or she does not return to duty.³⁹⁴

Vacation leave accruals for full-time employees are the same whether they are hourly or salaried employees.³⁹⁵ Part-time hourly and salaried employees are also eligible for vacation leave, but their accrual rate is proportionate to the number of hours they work.³⁹⁶ The amount of vacation leave an employee accrues is also determined by his or her length of state service. To determine an employee's length of state service, state agencies and institutions of higher education should count actual days, months, and years of total state employment.³⁹⁷

Employees may carry unused vacation leave forward from one year to the next. The amount of allowable carryover hours depends on the length of state service and the number of hours worked (see Table 11-1 on the next page).³⁹⁸ State employees who are employed by multiple state agencies or institutions of higher education may not accrue vacation leave at a rate that exceeds that of a full-time employee.³⁹⁹

³⁹³ Texas Government Code, Section 661.909 (f) and (h).

³⁹⁴ Texas Government Code, Section 661.152 (j).

³⁹⁵ Texas Government Code, Section 661.121.

³⁹⁶ Texas Government Code, Section 661.152 (c).

³⁹⁷ Texas Government Code, Section 661.152 (d); and Texas Office of the Attorney General, Opinion H-341 (1974).

³⁹⁸ Texas Government Code, Section 661.152 (d).

³⁹⁹ Texas Government Code, Section 667.001 (b).

Table 11-1

Schedule of Vacation Leave Accruals for Full-Time Employees			
Length of Service	Hours Accrued per Month	Days Accrued per Year	Allowable Carryover (Hours)
Less than 2 years	8	12.0	180
At least 2 but less than 5 years	9	13.5	244
At least 5 but less than 10 years	10	15.0	268
At least 10 but less than 15 years	11	16.5	292
At least 15 but less than 20 years	13	19.5	340
At least 20 but less than 25 years	15	22.5	388
At least 25 but less than 30 years	17	25.5	436
At least 30 but less than 35 years	19	28.5	484
At least 35 years or more	21	31.5	532

Credit for the higher rate of accrual will be given on the first calendar day of each month only if the employee’s anniversary falls on that day. Otherwise, the increase in vacation leave accrual will be given on the first calendar day of the following month.⁴⁰⁰ All vacation leave hours in excess of the maximum allowable carryover remaining at the end of a fiscal year must be credited to the employee’s sick leave balance.⁴⁰¹

Accruals of vacation leave end on an employee’s last day of duty, which is an employee’s last physical day on the job.⁴⁰²

Appendices 3 and 4 contain tables that detail leave entitlements for state agency employees and employees of institutions of higher education, respectively.

Vacation Leave for Legislative Employees

Vacation leave for employees of the legislative branch, including employees of the Lieutenant Governor’s Office, is determined as follows:

- For employees of either house of the legislature, members of the legislature, or the Lieutenant Governor’s Office, vacation leave will be determined by the presiding officer of the appropriate house of the legislature.
- For employees of a legislative agency, vacation leave will be determined by the agency’s administrative head.⁴⁰³

⁴⁰⁰ Texas Government Code, Section 661.152 (g).

⁴⁰¹ Texas Government Code, Section 661.152 (h).

⁴⁰² Texas Government Code, Section 661.152 (e).

⁴⁰³ Texas Government Code, Section 661.154.

Vacation Leave and Employee Transfers and Separations

Employees who transfer directly from one state agency or institution of higher education to another will have their vacation leave balances transferred.⁴⁰⁴

If an employee separates from a state agency and is re-employed within 30 calendar days by another state agency or institution of higher education to a position that accrues vacation leave, his or her vacation leave balance will transfer to the new agency or institution of higher education.⁴⁰⁵

Separation includes, but is not limited to, (1) leaving one state agency to work for another, provided at least one workday passes between those employments and (2) moving from a position in a state agency or institution of higher education that accrues vacation leave to a position within the state agency or institution of higher education that does not accrue vacation leave if the agency or institution of higher education agrees to pay for the employee's accrued balance of vacation leave.⁴⁰⁶

State agency employees, who have accrued six months of continuous state employment, are entitled to be paid for the accrued balance of the employee's vacation leave as of the date of separation, if the employee is not reemployed by a state agency or institution of higher education in a position which accrues vacation leave during the 30-day period immediately following the date of separation from state employment. The six months of continuous state employment may have been accrued at anytime during the employee's lifetime, which means that it may have been accrued during a previous period of employment and not during the employment from which the employee is currently separating. Employees of institutions of higher education who do not directly transfer to another state agency or institution of higher education do not have a 30-day waiting period for payment of vacation leave and must be paid for accrued and unused vacation leave immediately upon the employee's separation.⁴⁰⁷

A terminating employee may, with the approval of the employing agency, remain on the payroll after separation to use accrued vacation leave rather than receive a lump-sum payment.⁴⁰⁸ No additional accruals will be made during this period. The employee may not use sick leave or accrue sick leave or vacation leave while exhausting vacation leave. However, an employee allowed to remain on an agency's payroll is entitled to continue to receive all compensation and benefits that the employee was receiving on the employee's last day of duty.⁴⁰⁹

Upon separation, lump-sum payments for accrued but unused vacation leave will include payment for any holidays that the employee would have observed had he or she remained on the payroll. Eight hours per holiday will be added for employees who are normally scheduled to work 40 hours per week. Employees who are normally scheduled to work less than 40 hours per week will receive a proportionate payment. An employee moving to a position in a state agency that does not accrue

⁴⁰⁴ Texas Government Code, Section 661.153.

⁴⁰⁵ Texas Government Code, Section 661.152 (k).

⁴⁰⁶ Texas Government Code, Section 661.062 (b).

⁴⁰⁷ Texas Government Code, Section 661.062 (a).

⁴⁰⁸ Texas Government Code, Section 661.067 (a).

⁴⁰⁹ Texas Government Code, Section 661.067 (b).

vacation leave is not entitled to added time for holidays that fall within the accrual period.⁴¹⁰ In no case is the employee entitled to receive longevity or hazardous duty pay for the accrual period.⁴¹¹

An employee who is restored to state employment following military service is entitled to have his or her vacation leave balance restored.⁴¹²

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

Vacation Leave Accruals and Retirees

Vacation leave accruals for return-to-work retirees are based on retirement and rehire dates. An employee returning to state employment who retired from state employment on or after June 1, 2005, and who receives a state retirement annuity, accrues vacation leave based only on the employee's length of service earned after the employee's retirement date. Otherwise, the return-to-work retiree accrues vacation leave based on total state service.⁴¹³

Sick Leave

Sick leave is a benefit to state employees that allows for a paid absence from work under certain conditions.⁴¹⁴ Exceptions include employees who work at institutions of higher education less than 20 hours per week or less than 4.5 months and who are employed in positions that require student status as a condition of employment.⁴¹⁵

Sick Leave Accruals and Utilization

A full-time employee accrues sick leave at a rate of eight hours per month (or proportionately for part-time employees).⁴¹⁶ 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.⁴¹⁷ 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.⁴¹⁸

Accrued sick leave may be used immediately upon employment when an employee is prevented from performing his or her job due to sickness, injury, pregnancy or confinement. It may also be used to care for an employee's immediate family member who is ill. "Immediate family" is defined as individuals related by kinship, adoption, or marriage who live in the same household; foster

⁴¹⁰ Texas Government Code, Section 661.064.

⁴¹¹ Texas Government Code, Section 661.063 (c) (2).

⁴¹² Texas Government Code, Section 661.904 (c).

⁴¹³ Texas Government Code, Section 661.152 (I); and Texas Payroll/Personnel Resource's *Retired State Employees Who Resume State Employment - Vacation Leave Accruals and Retirees*, Office of the Comptroller of Public Accounts' Web site at <https://fm.x.cpa.texas.gov/fm/pubs/paypol/>.

⁴¹⁴ Texas Government Code, Section 661.202 (a).

⁴¹⁵ Texas Government Code, Section 661.201 (b).

⁴¹⁶ Texas Government Code, Section 661.202 (c).

⁴¹⁷ Texas Government Code, Section 661.202 (b).

⁴¹⁸ Texas Government Code, Section 661.202 (k).

children who reside in the same household; and minor children regardless of whether they live in the same household.⁴¹⁹ 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.⁴²⁰

An employee who will be absent from work must notify his or her supervisor as soon as possible.⁴²¹ 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.⁴²²

Appendices 3 and 4 contain tables that detail leave entitlements for state agency employees and employees of institutions of higher education, respectively.

Sick Leave Records for Faculty at Institutions of Higher Education

Faculty members at institutions of higher education, as defined by Section 61.003, Texas Education Code, are required to submit prescribed leave forms for all sick leave taken if the absence occurs during the normal workday for regular employees, even if no classes are missed.⁴²³

Sick Leave and Employee Transfers and Separations

Employees who transfer directly from one state agency or institution of higher education to another will have their sick leave balances transferred.⁴²⁴

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.⁴²⁵

Employees separated for reasons other than a formal reduction in force and re-employed by a state agency or institution of higher education may have their sick leave balances restored only if:

- The employee is re-employed by the same state agency or institution of higher education within 12 months after the end of the month in which the employee separates from state employment, and if there has been a break in employment with the State of at least 30 calendar days; or
- The employee is re-employed by a different state agency or institution of higher education within 12 months after the end of the month in which the employee separates from state employment.⁴²⁶

⁴¹⁹ Texas Government Code, Section 661.202 (b) and (d).

⁴²⁰ Texas Government Code, Section 661.202 (e).

⁴²¹ Texas Government Code, Section 661.202 (f).

⁴²² Texas Government Code, Section 661.202 (g).

⁴²³ Texas Government Code, Section 661.203.

⁴²⁴ Texas Government Code, Section 661.204.

⁴²⁵ Texas Government Code, Section 661.205 (a).

⁴²⁶ Texas Government Code, Section 661.205 (b).

There is no authority to make a lump sum payment for an employee's accrued but unused sick leave balance upon separation from state employment.⁴²⁷

An employee who is restored to state employment following military service is entitled to have his or her sick leave balance restored.⁴²⁸

Extended Sick Leave

State agencies and institutions of higher education that grant extended sick leave are required to have an extended sick leave policy. All agencies and institutions of higher education are required to provide a copy of such policies to the State Auditor's Office upon request. Such policies must also be made available to all agency employees.⁴²⁹

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.⁴³⁰ The sick leave pool is intended to assist employees and their immediate families in dealing with catastrophic illnesses or injuries that force the employees to exhaust all of their available sick leave.⁴³¹ An employee becomes eligible to withdraw time from the sick leave pool if the employee has exhausted his or her sick leave because of a catastrophic illness or injury of the employee or of a member of the employee's immediate family.⁴³²

Catastrophic Injury or Illness

The Employees Retirement System has defined the following terms:

- **Catastrophic injury or illness** is a severe condition or combination of conditions affecting the mental or physical health of the employee or 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 Department of Human Services [now the Department of Family and Protective Services] who are living in the same household, or if not in the same

⁴²⁷ Texas Office of the Attorney General, Opinion GA-0201 (2004).

⁴²⁸ Texas Government Code, Section 661.904 (c).

⁴²⁹ Texas Government Code, Section 661.202 (i) and (j).

⁴³⁰ Texas Government Code, Section 661.002 (a).

⁴³¹ Texas Government Code, Sections 661.004 (a) and 661.006 (a).

⁴³² Texas Government Code, Sections 661.004 (a) and 661.005 (b).

household are totally dependent upon the employee for personal care or services on a continuing basis.⁴³³

Administering the Sick Leave Pool

The program must be administered by the executive director or his or her designee.⁴³⁴ State agencies and institutions of higher education should ensure that their sick leave pool policies do not conflict with their extended sick leave policies.

Contributions to the sick leave pool must be in increments of one or more days with the exception of retiring employees who may designate the number of hours to be donated.⁴³⁵

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.⁴³⁶ 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.⁴³⁷

Donation of Sick Leave to Another Employee

Employees of state agencies and institutions of higher education, as defined by Texas Government Code, Section 661.001, may donate any amount of the employee's accrued sick leave to another employee who:

- Is employed in the same agency as the donor employee, and
- Has exhausted his or her sick leave, including any time he or she may be eligible to withdraw from a sick leave pool.

Employees may not provide or receive remuneration or a gift in exchange for a sick leave donation. An employee who receives donated sick leave may not:

- Use the donated sick leave except as provided by Texas Government Code, Section 661.202 (d) and (e), or
- Receive service credit in the Employees Retirement System of Texas for any donated sick leave that is unused on the last day of the employee's employment.⁴³⁸

⁴³³ Board of Trustees Meeting, Employees Retirement System, October 24, 1989.

⁴³⁴ Texas Government Code, Section 661.002 (b).

⁴³⁵ Texas Government Code, Section 661.003 (a) and (c).

⁴³⁶ Texas Government Code, Sections 661.005 (a) and (b) and 661.006 (c).

⁴³⁷ Texas Government Code, Section 661.006 (b).

⁴³⁸ Texas Government Code, Section 661.207.

Parental Leave

Employees who do not qualify for family and medical leave are entitled to parental leave not to exceed 12 weeks for the birth of a child or the adoption or foster care placement of a child under the age of three. To be eligible for parental leave, an employee does not meet the eligibility requirements for family and medical leave because:

- The employee has worked for the State for less than 12 months, or
- The employee has worked fewer than 1,250 hours during the 12-month period preceding the leave.

The employee must first use all available and applicable paid vacation and sick leave while taking parental leave prior to going on leave without pay. Parental leave is limited to, and begins on the date of, the birth of the employee's natural child or the adoption by or foster care placement with the employee of a child younger than three years of age.⁴³⁹

Education Service Centers and Leave

Education Service Centers were established to assist school districts in improving student performance and increasing the efficiency of school operations.⁴⁴⁰ Education Service Centers are not considered state agencies for benefits purposes; however, sick leave may be transferred from Education Service Centers to a state agency at a rate not to exceed five days per year for each year of employment.⁴⁴¹

Vacation leave is not transferable to Education Service Centers; therefore, state employees transferring to Education Service Centers should be paid for accumulated vacation leave.⁴⁴²

Leave without Pay

State agencies or institutions of higher education may grant leave without pay (LWOP), including a leave of absence without pay, subject to the following provisions:

- The leave may not exceed 12 months.
- All accumulated paid leave must be exhausted except in instances of disciplinary suspension, leave covered by workers' compensation benefits, or active military duty situations. Sick leave must first be used only if the employee is eligible to use sick leave under Texas Government Code, Chapter 661, Subchapter G.
- Subject to fiscal constraints, approval of LWOP constitutes a guarantee of employment at the conclusion of the specified leave period.

⁴³⁹ Texas Government Code, Section 661.913.

⁴⁴⁰ Texas Education Code, Section 8.002.

⁴⁴¹ Texas Education Code, Section 8.007 (b).

⁴⁴² Texas Education Code, Section 8.007.

The administrative head of an agency or institution of higher education may allow for exceptions to these limitations in certain situations.

A full-calendar month in which an employee is in a LWOP status does not constitute a break in state employment. However, except for employees who return to state employment from military leave under Texas Government Code, Section 661.904, a full calendar month in which an employee is in a LWOP status is not counted in the calculation of:

- The employee's total state service for the purpose of determining the amount of longevity pay or the accrual rates for vacation leave, or
- The number of months of continuous state service for the purposes of the merit salary provisions or for the eligibility to use vacation leave.⁴⁴³

In addition, an employee who is in a LWOP status for the entire month will not accrue vacation or sick leave for that month.⁴⁴⁴

An employee who is on LWOP will have his or her compensation reduced for the pay period by an amount in accordance with the General Appropriations Act and rules adopted by the Office of the Comptroller of Public Accounts.⁴⁴⁵

Please refer to Texas Government Code, Chapter 659, for specific guidelines concerning salary reductions for employees who are exempt from the Fair Labor Standards Act (FLSA).

Payment of Accrued Leave of Deceased Employees

In the event of an employee's death, the employee's estate is entitled to payment by the State for (1) all accumulated vacation leave and (2) one-half of accumulated sick leave or 336 hours, whichever is less.⁴⁴⁶ The payment is calculated by multiplying the employee's hourly rate at the time of death by the total number of leave hours applicable. The calculation does not include longevity or hazardous duty pay.⁴⁴⁷ The estates of appointed officers or employees of the State who normally work at least 900 hours per year and who have accrued six months of continuous state employment are eligible for this benefit.⁴⁴⁸

However, a deceased employee's estate is not entitled to payment for earned but unused state compensatory time.⁴⁴⁹ In addition, for a state employee who at the time of death was working at least 40 hours a week, a state agency or institution of higher education must allocate the deceased employee's accrued sick and vacation leave over the workdays following the employee's death. The state agency or institution of higher education must then add eight hours to the employee's accrued

⁴⁴³ Texas Government Code, Section 661.909; and Texas Payroll/Personnel Resource's *Leave without Pay; Leave of Absence*, Office of the Comptroller of Public Accounts' Web site at <https://fm.xcpa.texas.gov/fm/pubs/paypol/>.

⁴⁴⁴ Texas Government Code, Section 661.909 (g).

⁴⁴⁵ Texas Government Code, Section 659.085 (c).

⁴⁴⁶ Texas Government Code, Section 661.033.

⁴⁴⁷ Texas Government Code, Section 661.034.

⁴⁴⁸ Texas Government Code, Sections 661.031 (2) and 661.032.

⁴⁴⁹ Texas Office of the Attorney General, Opinion H-899 (1976).

sick and vacation leave for each state or national holiday scheduled to occur during the time period to which the accrued leave was allocated. Employees who work fewer than 40 hours a week will receive a proportionate payment.⁴⁵⁰

Leave Policies and Provisions for Institutions of Higher Education

The governing board of a university system may adopt a leave policy for employees that combines vacation, sick, and holiday leave into a paid leave system that does not distinguish or separate the types of leave awarded. The governing board of the university system may award leave in amounts that it determines to be appropriate and cost-effective.

The policy adopted must include provisions for all of the following:

- Payment of accrued leave for:
 - ♦ The estates or heirs of deceased employees.
 - ♦ Separating employees.
 - ♦ Contributing members of state retirement systems who retire.
- Awards of accrued leave to employees who are transferring to other state agencies or institutions of higher education.

Chapters 661 and 662 of the Texas Government Code do not apply to employees covered by a paid leave policy adopted by a university system.⁴⁵¹

⁴⁵⁰ Texas Government Code, Section 661.035.

⁴⁵¹ Texas Education Code, Section 51.961.

Chapter 12 *Miscellaneous Leave Provisions*

In addition to the vacation and sick leave provisions, the State offers leave to employees for specific situations. This chapter covers various leave provisions that may be granted to state employees. Agencies and institutions of higher education should review these provisions carefully to determine if employees are eligible to use these leave types.

An employee of an institution of higher education may not be eligible to accrue or take paid leave listed within this chapter if: (1) the employee works fewer than 20 hours per week, (2) the employee is appointed for fewer than 4.5 months, or (3) the employee is in a position for which he or she must be a student as a condition of employment.⁴⁵²

The 85th Legislature enacted Senate Bill 73 requiring state agencies and institutions of higher education to adopt and post on their Web sites a policy governing leave provided for employees under Texas Government Code, Chapter 661, and to use the uniform system adopted by the Office of the Comptroller of Public Accounts (Comptroller's Office) to report leave taken by agency employees.⁴⁵³ Below are miscellaneous leave types provided under Texas Government Code, Chapter 661, that are subject to those requirements. (See Chapter 11 for general leave provided under Texas Government Code, Chapter 661, that are subject to those requirements.)

Administrative Leave for Outstanding Performance

Administrative leave with pay may be granted by the head of an agency as a reward for outstanding performance. This performance should be documented by the agency. The total amount of leave granted may not exceed 32 hours per employee during a fiscal year.⁴⁵⁴

Amateur Radio Operator Leave

A state employee with an amateur radio station license issued by the Federal Communications Commission may be granted leave not to exceed 10 days each fiscal year to participate in specialized disaster relief services without a deduction in salary or loss of vacation leave, 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.⁴⁵⁵

The number of amateur radio operators eligible for this type of leave may not exceed 350 state employees at any one time during a fiscal year. The Texas Division of Emergency Management is responsible for coordinating the establishment and maintenance of the list of employees eligible for this leave.⁴⁵⁶

⁴⁵² Texas Government Code, Section 661.901 (c).

⁴⁵³ Texas Government Code, Subchapter H, Sections 661.251 and 661.252, as added by Senate Bill 73 (85th Legislature, Regular Session); and Texas Government Code, Section 2101.042, as added by Senate Bill 73 (85th Legislature, Regular Session).

⁴⁵⁴ Texas Government Code, Section 661.911.

⁴⁵⁵ Texas Government Code, Section 661.919 (a).

⁴⁵⁶ Texas Government Code, Section 661.919 (b).

Assistance Dog Training

A state employee with a disability as defined by Texas Human Resources Code, Section 121.002, is entitled to a paid leave of absence not to exceed 10 working days in a fiscal year to attend a training program to acquaint the employee with an assistance dog that the employee will use.⁴⁵⁷

Blood Donation

A state agency shall allow employees sufficient time off, without a deduction in salary or accrued leave, to donate blood. An employee may not receive time off to donate blood unless the employee obtains approval from his or her supervisor before taking time off. Upon returning to work, the employee shall provide his or her supervisor with proof that the employee donated blood during the time off. If an employee fails to provide proof that he or she donated blood during the time off, the agency must deduct the time off from the employee's salary or accrued leave, whichever the employee chooses. An employee may receive time off to donate blood not more than four times in a fiscal year.⁴⁵⁸

Bone Marrow and Organ Donation

A state employee is entitled to a leave of absence without a deduction in salary for the time necessary to permit the employee to serve as a bone marrow or organ donor. The leave of absence may not exceed:

- Five working days in a fiscal year to serve as a bone marrow donor; or
- Thirty working days in a fiscal year to serve as an organ donor.⁴⁵⁹

Certified American Red Cross Activities

Employees who are certified disaster service volunteers of the American Red Cross or who are in training to become a volunteer may be granted paid leave—without a deduction in salary or loss of vacation leave, sick leave, overtime leave, or state compensatory time—not to exceed 10 days each fiscal year to participate in specialized disaster relief services for the American Red Cross. The employee must have the approval of his or her supervisor and the Governor and a request from the American Red Cross. The number of certified disaster service volunteers who are eligible for this type of leave may not exceed 350 state employees at any one time during a fiscal year. The Texas Division of Emergency Management is responsible for coordinating the establishment and maintenance of the list of eligible employees.⁴⁶⁰

⁴⁵⁷ Texas Government Code, Section 661.910.

⁴⁵⁸ Texas Government Code, Section 661.917.

⁴⁵⁹ Texas Government Code, Section 661.916.

⁴⁶⁰ Texas Government Code, Section 661.907 (a) and (b).

A state employee may be provided paid leave not to exceed five hours each month to participate in mandatory training or to perform volunteer services for Court Appointed Special Advocates. This leave is provided to an employee without a deduction in salary or loss of vacation leave, sick leave, overtime leave, or state compensatory time.⁴⁶¹

Emergency Leave

Death of an Employee's Family Member

An employee is entitled to emergency leave with pay for a death in the employee's family. An employee's family is defined as the employee's spouse, as well as the employee's and spouse's parents, children, brothers, sisters, grandparents, and grandchildren.⁴⁶²

There is nothing in statute that requires an agency to provide a specific number of days of emergency leave for a death in the employee's family. In addition, there is nothing in statute that requires an employee to attend a funeral to be entitled to emergency leave. The amount of emergency leave for the death of an employee's family member is dependent on agency policy.⁴⁶³

Good Cause

In addition to granting employees emergency leave for the death of an employee's family member, an agency's administrative head may grant emergency leave for other reasons if:

- The employee requests the leave,
- The agency's administrative head determines that the employee has shown good cause for taking the leave, and
- The agency's administrative head believes in good faith that the employee being granted the emergency leave intends to return to his or her position with the agency upon expiration of the emergency leave.⁴⁶⁴

An employee is not required to request emergency leave if the agency head grants emergency leave because the agency is closed due to weather conditions or in observance of a holiday.⁴⁶⁵

Reporting of Emergency Leave

There is nothing in statute that limits the number of emergency leave hours that can be granted to an employee. However, not later than October 1 of each year, the agency's administrative head must report to the Comptroller's Office the name and position of each agency employee who was

⁴⁶¹ Texas Government Code, Section 661.921.

⁴⁶² Texas Government Code, Section 661.902 (a).

⁴⁶³ Texas Government Code, Section 661.151.

⁴⁶⁴ Texas Government Code, Section 661.902 (b), as amended by Senate Bill 73, (85th Legislature, Regular Session); and General Appropriations Act (85th Legislature), Article IX, Section 7.14 (d).

⁴⁶⁵ Texas Government Code, Section 661.902 (c), as added by Senate Bill 73 (85th Legislature, Regular Session).

granted more than 32 hours of emergency leave during the previous fiscal year. In addition, the agency must report for each of those employees:

- The reason for granting the emergency leave.
- The total number of hours of emergency leave granted to that employee in that fiscal year.^{466 467}

Employees who are on emergency leave are considered to be in a “paid leave status.” Therefore, they are eligible for holiday pay if a holiday occurs during the time they are on emergency leave.⁴⁶⁸

New Requirement
<p>The 85th Legislature enacted legislation amending the use of emergency leave by state employees. That legislation allows the administrative head of a state agency to grant an employee use of emergency leave for reasons other than for the death of an employee’s family member if: (1) the employee requests the leave, (2) the agency’s administrative head determines that the employee has shown good cause for taking the emergency leave, and (3) the agency’s administrative head believes in good faith that the employee being granted the emergency leave intends to return to his or her position with the agency upon expiration of the emergency leave. An employee is not required to request emergency leave if the agency’s administrative head grants the emergency leave because the agency is closed due to weather conditions or in observance of a holiday.</p> <p>In addition, the legislation requires the agency’s administrative head to report to the Comptroller’s Office, not later than October 1 of each year, the name and position of each agency employee who was granted more than 32 hours of emergency leave during the previous fiscal year <u>and</u> (1) the reason for which that employee was granted the emergency leave and (2) the total number of hours of emergency leave granted to that employee in that fiscal year.</p> <p>The first report required by the new legislation is due October 1, 2017, and must cover the time period from September 1, 2016, to August 31, 2017.</p>

Foster Parent Leave

An employee who is a foster parent to a child under the protection of the Department of Family and Protective Services (Department) is entitled to a paid leave of absence to attend meetings held by the Department regarding the foster child. In addition, the employee may use this entitlement to attend admission, review, and dismissal meetings held by a school district regarding the foster child.⁴⁶⁹

⁴⁶⁶ Texas Government Code, Section 661.902 (d), as added by Senate Bill 73 (85th Legislature, Regular Session); and General Appropriations Act (85th Legislature), Article IX, Section 7.14 (b).

⁴⁶⁷ Senate Bill 73 (85th Legislature, Regular Session), states that the first report required under Texas Government Code, Section 661.902 (d), is due October 1, 2017, and must cover the time period from September 1, 2016, to August 31, 2017.

⁴⁶⁸ Texas Government Code, Section 662.010.

⁴⁶⁹ Texas Government Code, Section 661.906.

Injury Leave for Certain Peace Officers

Peace officers injured in the course of duty may be entitled to paid injury leave without a deduction in salary. This covers commissioned law enforcement officers or agents commissioned by the Public Safety Commission and the director of the Department of Public Safety, the Parks and Wildlife Commission, the Alcoholic Beverage Commission, or the Office of the Attorney General.⁴⁷⁰

Peace officers who are injured in the line of duty as a result of the performance of their duties may be entitled to paid injury leave. An officer who qualifies for injury leave is not required to use compensatory time off or any other type of leave for an injury that occurs in the line of duty. However, a peace officer is not entitled to injury leave if the officer's own gross negligence contributed to the injury or if the injury was related to performing routine office duties.⁴⁷¹

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 a physician licensed to practice in Texas.⁴⁷² The maximum amount of leave allowed for all injuries occurring at one time is one year.⁴⁷³

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.⁴⁷⁴

Leave During an Agency Investigation

An agency's administrative head may grant leave without a deduction in salary to a state employee who is:

- The subject of an investigation being conducted by the agency, or
- A victim of, or witness to, an act or event that is the subject of an investigation being conducted by the agency.

A state employee who is the subject of an investigation being conducted by the agency is ineligible to receive leave for that reason under any other provision of Texas Government Code, Chapter 661.

⁴⁷⁰ Texas Government Code, Section 661.918 (a).

⁴⁷¹ Texas Government Code, Section 661.918 (b).

⁴⁷² Texas Government Code, Section 661.918 (c).

⁴⁷³ Texas Government Code, Section 661.918 (d).

⁴⁷⁴ Texas Government Code, Section 661.918 (e).

No later than the last day of each state fiscal year quarter, an agency must submit a report to the State Auditor's Office and the Legislative Budget Board that includes the name of each agency employee who is the subject of an investigation being conducted by the agency and who has been granted 168 hours or more of leave for that reason during that fiscal year quarter. The report must include, for each employee, a brief statement as to the reason that the employee was granted the leave.⁴⁷⁵

New Requirement

The 85th Legislature enacted legislation allowing an agency's administrative head to grant leave without a deduction in salary to an employee who is: (1) the subject of an investigation being conducted by the agency or (2) a victim of, or witness to, an act or event that is the subject of an investigation being conducted by the agency. A state employee who is the subject of an investigation being conducted by the agency is ineligible to receive leave for that reason under any other provision of Texas Government Code, Chapter 661.

In addition, no later than the last day of each state fiscal year quarter, an agency must submit a report to the State Auditor's Office and the Legislative Budget Board that includes the name of each agency employee who is the subject of an investigation being conducted by the agency and who has been granted 168 hours or more of leave for that reason during that fiscal year quarter. The report must also include, for each employee, a brief statement as to the reason that the employee was granted the leave.

Medical and Mental Health Care Leave for Certain Veterans

A state employee who is a veteran, as defined by Texas Government Code, Section 434.023 (a), and who is eligible for health benefits under a program administered by the Veterans Health Administration of the U.S. Department of Veterans Affairs, may be granted leave without a deduction in salary or loss of vacation and sick leave, earned overtime, or state compensatory time, to obtain medical or mental health care (including physical rehabilitation) administered by the Veterans Health Administration of the U.S. Department of Veterans Affairs. Leave granted for this reason may not exceed 15 days each fiscal year unless the agency's administrative head determines that additional days of this leave is appropriate for the employee.⁴⁷⁶

⁴⁷⁵ Texas Government Code, Section 661.923, as added by Senate Bill 73 (85th Legislature, Regular Session).

⁴⁷⁶ Texas Government Code, Section 661.924, as added by Senate Bill 73 (85th Legislature, Regular Session).

New Requirement

The 85th Legislature enacted legislation allowing state agencies to grant leave to certain employees who are veterans, without a deduction in salary or loss of vacation and sick leave, overtime, and state compensatory time, to obtain medical and mental health care (including physical rehabilitation) administered by the Veterans Health Administration of the U.S. Department of Veterans Affairs. Leave granted for this reason may not exceed 15 days each fiscal year unless the agency's administrative head determines that additional days of this leave is appropriate for the employee.

Sick Leave for Educational Activities

An employee may use up to eight hours of sick leave each fiscal year to attend educational activities of the employee's children who are in pre-kindergarten through 12th grade. The employee must give reasonable notice of his or her intention to use this leave. Educational activities are school-sponsored activities, including parent-teacher conferences, tutoring, volunteer programs, field trips, classroom programs, school committee meetings, academic competitions, and athletic, music, or theater programs.⁴⁷⁷

Time Off to Vote

Employers shall allow sufficient time off to employees, without a deduction in salary or accrued leave, to vote in each national, state, or local election if there is not sufficient time to vote outside regular working hours.⁴⁷⁸ There is no consistent standard or formal guidance regarding how much time should be provided to employees for this purpose; however, employers should spell out their voting policy in written procedures. State law does not differentiate between regular and runoff elections.

Early voting enables an employee to vote (before or after work, including the weekends) prior to an election. If an employee has been unable to vote during the early voting period, time off to vote on Election Day is allowed.

⁴⁷⁷ Texas Government Code, Section 661.206.

⁴⁷⁸ Texas Government Code, Section 661.914; and Texas Office of the Attorney General, Opinion V-1532 (1952).

Volunteer Firefighters and Emergency Medical Services Training Leave

Volunteer firefighters and emergency medical services volunteers are entitled to paid leave not to exceed five working days each fiscal year for attending training services conducted by a state agency or institution of higher education. Also, a state agency or institution of higher education may grant paid leave to a volunteer firefighter or an emergency medical services volunteer for the purpose of responding to emergency fire or medical situations if the agency or institution of higher education has a policy for granting the leave.⁴⁷⁹

Reserve Law Enforcement Officer Training Leave

State employees who are reserve law enforcement officers as defined by Texas Occupations Code, Section 1701.001, are entitled to paid leave not to exceed five working days each fiscal biennium to attend training required by Texas Occupations Code, Section 1701.351.⁴⁸⁰

Additional Miscellaneous Leave Types Provided Under Texas Labor Code and Texas Government Code

The following types of leave are permitted under Texas Labor Code, Chapter 52, and Texas Government Code, Chapters 659 and 664.

Compliance with a Subpoena

An employer may not discharge, discipline, or penalize an employee for complying with a subpoena to appear in a civil, criminal, legislative, or administrative proceeding. Any organization that violates this may be found in contempt of court or subject to a monetary penalty, depending upon the issuing authority.⁴⁸¹

Agencies should use their own discretion in instances of unofficial testimony to decide whether such an absence is considered good cause for emergency leave.⁴⁸²

Jury Service

An employee is entitled to serve on a jury without a deduction in salary, including a deduction for any fee or compensation the employee receives for jury service.⁴⁸³

Officers or employees of the Senate, the House of Representatives, or any agency in the legislative branch of state government may establish an exemption from jury service.⁴⁸⁴

⁴⁷⁹ Texas Government Code, Section 661.905.

⁴⁸⁰ Texas Government Code, Section 661.922.

⁴⁸¹ Texas Labor Code, Section 52.051.

⁴⁸² Texas Office of the Attorney General, Opinion JM-785 (1987).

⁴⁸³ Texas Government Code, Section 659.005 (a).

⁴⁸⁴ Texas Government Code, Section 62.106 (a) (5).

Wellness Leave

A state agency may:

- Allow an employee 30 minutes during their normal working hours for exercise three times each week.
- Allow an employee to attend on-site wellness seminars.
- Provide eight hours of additional leave time each year to an employee who receives a physical examination and completes either an online health risk assessment tool or a similar health risk assessment conducted in person by a worksite wellness coordinator.⁴⁸⁵

⁴⁸⁵ Texas Government Code, Section 664.061 (a).

Chapter 13 State Employee Holidays

Overview of Holidays for State Employees

State agency employees are entitled to a paid day off from work on national, state, and optional holidays observed by the State.⁴⁸⁶

Institutions of higher education can establish their own holiday schedules, as long as the total number of holidays observed does not exceed the number of holidays observed by an employee of a state agency. Eligible employees of institutions of higher education are entitled to a paid day off from work on the holidays observed by the institution.⁴⁸⁷

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.⁴⁸⁸

A state agency and institution of higher education must have enough state employees on duty during a state holiday to conduct the public business of the agency or institution with the exception of those state holidays that fall on a Saturday or Sunday, the Friday after Thanksgiving Day, December 24, or December 26.⁴⁸⁹

State employees who actually work on an observed national or state holiday that does not fall on a weekend will be allowed compensatory time off during the 12-month period following the date of the holiday worked.⁴⁹⁰ (At times, those state holidays are referred to as “skeleton crew days.”) For additional information on holiday compensatory time, see Chapter 5 (State and Holiday Compensatory Time).

To be paid for a holiday that falls on a day other than the first or last workday of the month, the employee must be a state employee on the day before and the day after the holiday. For the purposes of determining holiday pay, a state employee

Applicability of State Holiday Section

Unless specifically stated, the information in this section regarding holidays pertains only to state agencies and does not pertain to institutions of higher education.

The applicability of holidays for state employees of the Texas House of Representatives or the Senate applies only at the discretion of the presiding officer or the administration committee of each respective house.

Source: Texas Government Code, Sections 662.001 and 662.002.

Types of Holidays

National Holidays:

- **New Year's Day.**
- Martin Luther King, Jr. Day.
- **Presidents' Day.**
- Memorial Day.
- Independence Day.
- Labor Day.
- Veterans Day.
- Thanksgiving Day.
- Christmas Day.

State Holidays:

- Confederate Heroes Day.
- Texas Independence Day.
- San Jacinto Day.
- Emancipation Day in Texas.
- Lyndon Baines Johnson (LBJ) Day.
- The Friday after Thanksgiving Day.
- December 24.
- December 26.

Optional Holidays

- Rosh Hashanah.
- Yom Kippur.
- Good Friday.
- Cesar Chavez Day.

Source: Texas Government Code, Sections 662.003 and 662.013.

⁴⁸⁶ Texas Government Code, Sections 662.003, 662.005, and 662.006.

⁴⁸⁷ Texas Government Code, Section 662.011.

⁴⁸⁸ Texas Government Code, Section 662.005 (a) and (c).

⁴⁸⁹ Texas Government Code, Section 662.004.

⁴⁹⁰ Texas Government Code, Section 662.007 (a).

includes someone who is using paid leave from a state agency. It does not include an individual who is taking leave without pay.⁴⁹¹

However, if the holiday falls on the first workday of a month, the employee must be a state employee on the day immediately after the holiday to be paid. If the holiday falls on the last workday of the month, the employee must be a state employee on the day immediately before the holiday to be paid.⁴⁹²

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

Table 13-1

Scenarios in which a State Agency Would or Would Not Pay an Employee for a Holiday						
In the first example, an employee begins work on January 2. This employee would be paid for the holiday observed on January 1 because it falls on the first workday of the month and the employee is a state employee on the day after the holiday.						
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
In the second example, an employee works December 31 and then terminates employment. This employee would not be paid for the January 1 holiday because it fell on the first workday of the month, and the employee was not a state employee on the day after the holiday.						
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

⁴⁹¹ Texas Government Code, Section 662.010.

⁴⁹² Texas Government Code, Section 662.010 (a).

Fiscal Years 2018 and 2019 Holiday Schedules

State employees receive most federal and state holidays, as well as optional holidays. Tables 13-2 and 13-3 list the state holiday schedules for fiscal years 2018 and 2019.

Table 13-2

State Holiday Schedule for Fiscal Year 2018			
Holiday	Agency Status	Date	Day of Week
Labor Day	All agencies closed.	9-04-17	Monday
<i>Rosh Hashanah</i>	<i>Optional Holiday</i>	9-21-17	<i>Thursday</i>
<i>Rosh Hashanah</i>	<i>Optional Holiday</i>	9-22-17	<i>Friday</i>
Yom Kippur		9-30-17	Saturday
Veterans Day		11-11-17	Saturday
Thanksgiving Day	All agencies closed.	11-23-17	Thursday
Day after Thanksgiving	All agencies closed.	11-24-17	Friday
Christmas Eve Day		12-24-17	Sunday
Christmas Day	All agencies closed.	12-25-17	Monday
Day after Christmas	All agencies closed.	12-26-17	Tuesday
New Year's Day	All agencies closed.	1-01-18	Monday
Martin Luther King, Jr. Day	All agencies closed.	1-15-18	Monday
Confederate Heroes Day	Skeleton crew required.	1-19-18	Friday
Presidents' Day	All agencies closed.	2-19-18	Monday
Texas Independence Day	Skeleton crew required.	3-02-18	Friday
<i>Good Friday</i>	<i>Optional Holiday</i>	3-30-18	<i>Friday</i>
Cesar Chavez Day		3-31-18	Saturday
San Jacinto Day		4-21-18	Saturday
Memorial Day	All agencies closed.	5-28-18	Monday
Emancipation Day	Skeleton crew required.	6-19-18	Tuesday
Independence Day	All agencies closed.	7-04-18	Wednesday
LBJ's Birthday	Skeleton crew required.	8-27-18	Monday

Table 13-3

State Holiday Schedule for Fiscal Year 2019			
Holiday	Agency Status	Date	Day of Week
Labor Day	All agencies closed.	9-03-18	Monday
<i>Rosh Hashanah</i>	<i>Optional Holiday</i>	9-10-18	Monday
<i>Rosh Hashanah</i>	<i>Optional Holiday</i>	9-11-18	Tuesday
<i>Yom Kippur</i>	<i>Optional Holiday</i>	9-19-18	Wednesday
Veterans Day		11-11-18	Sunday
Thanksgiving Day	All agencies closed.	11-22-18	Thursday
Day after Thanksgiving	All agencies closed.	11-23-18	Friday
Christmas Eve Day	All agencies closed.	12-24-18	Monday
Christmas Day	All agencies closed.	12-25-18	Tuesday
Day after Christmas	All agencies closed.	12-26-18	Wednesday
New Year's Day	All agencies closed.	1-01-19	Tuesday
Confederate Heroes Day		1-19-19	Saturday
Martin Luther King, Jr. Day	All agencies closed.	1-21-19	Monday
Presidents' Day	All agencies closed.	2-18-19	Monday
Texas Independence Day		3-02-19	Saturday
Cesar Chavez Day		3-31-19	Sunday
<i>Good Friday</i>	<i>Optional Holiday</i>	4-19-19	Friday
San Jacinto Day		4-21-19	Sunday
Memorial Day	All agencies closed.	5-27-19	Monday
Emancipation Day	Skeleton crew required.	6-19-19	Wednesday
Independence Day	All agencies closed.	7-04-19	Thursday
LBJ's Birthday	Skeleton crew required.	8-27-19	Tuesday

Optional Holidays

An employee who works for a state agency is entitled to observe Rosh Hashanah, Yom Kippur, Good Friday, and Cesar Chavez Day.⁴⁹³ A state agency employee is entitled to each optional holiday if the employee qualifies for the paid day off and agrees to give up during the same fiscal year an equivalent number of state holidays that do not fall on a Saturday or Sunday and that are not otherwise prohibited from being observed; however, the employee may not agree to give up the Friday after Thanksgiving Day, December 24, or December 26. Optional holidays cannot be substituted for national holidays.⁴⁹⁴

Holidays and Employee Separations

If a state agency or institution of higher education employee separates from the State and is exhausting unused vacation leave, the employee receives payment for any holidays that the employee would have observed had he or she remained on the payroll. The number of hours that is added to the employee's accrued vacation leave is to be proportionally reduced for part-time employees.⁴⁹⁵

Holidays and Employee Transfers

With the exception of a transfer directed by the Legislature, there is no authority to transfer accrued holiday compensatory time between state agencies.⁴⁹⁶

In the event that a state or national holiday falls between the periods an employee transfers from one state agency or institution of higher education to another without a break in service, the receiving agency or institution of higher education must pay for the holiday regardless of whether the agency or institution of higher education recognizes that particular holiday.⁴⁹⁷

Holidays for Employees Working Non-Traditional Schedules

A state employee who works 40 hours a week on a schedule other than Monday through Friday is entitled to paid holiday time off during the fiscal year equal to eight hours multiplied by the number of national and state holidays in the fiscal year.⁴⁹⁸

A state employee working a non-traditional schedule who works less than the entire fiscal year is entitled to paid holiday time off during the fiscal year equal to eight hours multiplied by the number of national and state holidays that occur during the time period worked by the employee.⁴⁹⁹

⁴⁹³ Texas Government Code, Sections 662.003 (c) and 662.013.

⁴⁹⁴ Texas Government Code, Section 662.006 (b) and (c).

⁴⁹⁵ Texas Government Code, Section 661.064 (a) and (b).

⁴⁹⁶ Texas Government Code, Section 662.0071 (a), as amended by Senate Bill 706 (85th Legislature, Regular Session); and Texas Office of the Attorney General, Opinion No. H-883 (1976).

⁴⁹⁷ Texas Government Code, Section 662.0072.

⁴⁹⁸ Texas Government Code, Section 662.009 (a).

⁴⁹⁹ Texas Government Code, Section 662.009 (b).

Paid holiday time off for a part-time employee, who works on a schedule other than Monday through Friday, is proportionate to the number of hours normally worked by the employee.⁵⁰⁰

Holidays for Institutions of Higher Education

Institutions of higher education may establish their own holiday schedules. However, the number of observed holidays may not exceed the number of holidays observed by state agencies.⁵⁰¹

Employees who work 20 hours per week or more and who are employed for a period of at least four-and-one-half months in a position that does not require student status as a condition for employment are eligible for paid holidays.⁵⁰²

Employees of institutions of higher education may be paid for working national or state holidays if taking holiday compensatory time off would be disruptive to normal teaching, research, or other critical functions.⁵⁰³

Holiday Time Payment for Deceased Employees

When a full-time state employee is deceased, eight hours must be added to that employee's total accumulated leave balance (sick and vacation leave) under Texas Government Code, Section 661.034, for each state or national holiday that is scheduled to occur within the period following the date of the employee's death and during which the employee could have remained on the payroll to expend his or her sick and vacation leave balance. The estates of appointed officers or employees of the State who normally work at least 900 hours per year and who have accrued six months of continuous state employment are eligible for this benefit.

Holiday pay for a part-time employee should be proportionate to the number of hours normally worked by the deceased employee.⁵⁰⁴

⁵⁰⁰ Texas Government Code, Section 662.009 (c).

⁵⁰¹ Texas Government Code, Section 662.011 (a) and (b).

⁵⁰² Texas Government Code, Section 662.011 (c).

⁵⁰³ Texas Government Code, Section 662.007 (c).

⁵⁰⁴ Texas Government Code, Sections 661.031 (2), 661.032, and 661.035.

Chapter 14
Military Leave and Employment Rights

Military Leave Overview

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

Veterans' Liaisons

Each state agency or institution of higher education that has at least 500 full-time equivalent positions must designate an individual to serve as a veterans' liaison. A state agency or institution of higher education that has fewer than 500 full-time equivalent positions may designate an individual to serve as a veterans' liaison.⁵⁰⁵

Each state agency or institution of higher education that designates a veterans' liaison must make the liaison's work contact information available on the agency's or institution's web site.⁵⁰⁶

The Uniformed Services Employment and Reemployment Rights Act (USERRA)

The Uniformed Services Employment and Reemployment Rights Act (USERRA) is the federal law intended to ensure that persons are not disadvantaged in their civilian careers because of their current or past service in the U.S. Armed Forces, the U.S. Armed Forces' Reserves (Reserves), the National Guard, or other uniformed services.⁵⁰⁷ USERRA prohibits an employer from denying initial employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of an individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.⁵⁰⁸

<p>Uniformed Services Employment and Reemployment Rights Act (USERRA)</p> <p>The U.S. Department of Defense's Employer Support of the Guard and Reserve committee and the U.S. Department of Labor published an <i>Employer Resource Guide</i> that provides additional information on USERRA. This guide is located at http://www.esgr.mil/USERRA/USERRA-for-Employers.</p>
--

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

- Prompt job reinstatement.
- Accumulation of seniority, including pension plan benefits.

⁵⁰⁵ Texas Government Code, Section 657.0046 (a) and (b).

⁵⁰⁶ Texas Government Code, Section 657.0046 (c).

⁵⁰⁷ U.S. Department of Defense's Employer Support of the Guard and Reserve Web site at <http://www.esgr.mil/USERRA/What-is-USERRA.aspx>.

⁵⁰⁸ Title 38, United States Code, Section 4311 (a); and Title 20, Code of Federal Regulations, Section 1002.18.

- Reinstatement of health insurance.
- Training/retraining of job skills, including accommodations for the disabled.
- Protection against discrimination.⁵⁰⁹

In addition, USERRA provides protection for disabled veterans, requiring employers to make reasonable efforts to accommodate the disability.⁵¹⁰

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

Military Leave Entitlements and Eligibility

State employees who are members of the State's military forces, a reserve branch of the U.S. Armed Forces, or a state or federally authorized urban search and rescue team are entitled to 15 workdays in each fiscal year without loss of pay or benefits to accommodate authorized training or duty for the State's military forces, a reserve branch of the U.S. Armed Forces, or a state or federally authorized urban search and rescue team.⁵¹¹

The 15 days of paid leave need not be consecutive. These days are considered business days, not calendar days.⁵¹² In addition, if the employee does not use the 15 days of military leave in a fiscal year, the employee is entitled to carry forward from one fiscal year to the next fiscal year the net balance of the unused accumulated leave not to exceed 45 workdays.⁵¹³

State agencies and institutions of higher education are required to adjust the work schedule of an employee who is a member of the Texas National Guard or a reserve branch of the U.S. Armed Forces so that two of the employee's days off each month coincide with two days of military duty.⁵¹⁴

An employee called to active duty during a national emergency to serve in a reserve component of the U.S. Armed Forces under Title 10 or Title 32 of the United States Code is entitled to an unpaid leave of absence. The employee may choose (but is not required) to use all or some portion of another form of paid leave before he or she chooses to go on leave without pay while on military leave.⁵¹⁵

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

⁵⁰⁹ *Employer Resource Guide*, Pages 3 and 4, U.S. Department of Defense's Employer Support of the Guard and Reserve Web site at <http://www.esgr.mil/USERRA/USERRA-for-Employers>.

⁵¹⁰ Title 38, United States Code, Section 4313 (a) (3).

⁵¹¹ Texas Government Code, Section 437.202 (a).

⁵¹² Texas Office of the Attorney General, Opinion C-679 (1966).

⁵¹³ Texas Government Code, Section 437.202 (b).

⁵¹⁴ Texas Government Code, Section 658.008.

⁵¹⁵ Texas Government Code, Section 661.904.

vacation leave.⁵¹⁶ This leave will be provided without a deduction in salary.⁵¹⁷ This time is not limited and does not count against the 15 days maximum military leave per fiscal year.

A state employee called to federal active duty for the purpose of providing assistance to civil authorities in a declared emergency or for training for that purpose is entitled to receive paid emergency leave for not more than 22 workdays without loss of military leave or vacation leave.⁵¹⁸

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

- To persons performing service in the uniformed services in accordance with Title 38, United States Code, Sections 4301–4313 and Sections 4316–4319; and
- To persons in the military service of the United States in accordance with Title 50, United States Code, Sections 3901-3959, 3991, and 4011-4026.⁵¹⁹

Military Family Leave Entitlements

The Family and Medical Leave Act (FMLA) allows eligible employees to take up to 12 weeks of job-protected leave in the applicable 12-month period for any “qualifying exigency” arising out of the active duty or call to active duty status of a spouse, son, daughter, or parent.⁵²⁰

In addition, the FMLA also allows eligible employees to take up to 26 weeks of job-protected leave in a single 12-month period to care for a covered service member with a serious injury or illness.⁵²¹ Those two types of FMLA leave are known as the “military family leave entitlements.”

See Chapter 4 (Federal Requirements: Fair Labor Standards Act and the Family and Medical Leave Act) and Chapter 11 (General Leave Provisions) for additional information on the Family and Medical Leave Act and Parental Leave, respectively.

Paid Leave and State Service

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

⁵¹⁶ Texas Government Code, Sections 437.254 (a) and 437.305.

⁵¹⁷ Texas Government Code, Section 661.903.

⁵¹⁸ Texas Government Code, Section 437.254 (b).

⁵¹⁹ Texas Government Code, Section 437.213, as amended by House Bill 3066 (85th Legislature, Regular Session).

⁵²⁰ Title 29, Code of Federal Regulations, Section 825.100 (a); and *Revised Final Regulations Under the Family and Medical Leave Act*, U.S. Department of Labor’s Web site at <http://www.dol.gov/whd/fmla/finalrule.htm>.

⁵²¹ Title 29, Code of Federal Regulations, Section 825.127 (e); and *Revised Final Regulations Under the Family and Medical Leave Act*, U.S. Department of Labor’s Web site at <http://www.dol.gov/whd/fmla/finalrule.htm>.

accrued vacation leave, compensatory time, or overtime leave to maintain benefits for the employee or the employee's dependents while on military duty.⁵²²

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.⁵²³

State agencies and institutions of higher education must provide written notice regarding the number of workdays of paid leave to which state employees who are members of the State's military forces, a reserve branch of the U.S. Armed Forces, or a state or federally authorized urban search and rescue team are entitled to each fiscal year and, if applicable, the number of workdays of paid leave that can be carried forward each fiscal year.⁵²⁴

Additionally, state agencies and institutions of higher education must, upon the request of a state employee who is a member of the State's military forces, a reserve branch of the U.S. Armed Forces, or a state or federally authorized urban search and rescue team, provide to that employee a statement that contains:

- The number of workdays for which the employee claimed as paid leave under Texas Government Code, Section 437.202 (a), in that fiscal year,
- The net balance of unused accumulated paid leave for that fiscal year that the employee is entitled to carry forward to the next fiscal year, and
- The net balances of all unused accumulated paid leave under Texas Government Code, Section 437.202, to which the employee is entitled.⁵²⁵

Notice of Military Leave

USERRA requires that service members provide advance written or verbal notice to their employers for all military duty unless giving notice is impossible, unreasonable, or precluded by military necessity.⁵²⁶

⁵²² Texas Government Code, Section 661.904 (a), (b), (c), and (d).

⁵²³ Texas Government Code, Section 661.904 (f); and Texas Office of the Attorney General, Opinion MW-109 (1979).

⁵²⁴ Texas Government Code, Section 437.202 (e).

⁵²⁵ Texas Government Code, Section 437.202 (f).

⁵²⁶ *VETS USERRA Fact Sheet 3*, U.S. Department of Labor's Web site at http://www.dol.gov/vets/programs/userra/userra_fs.htm.

The executive officer of a state agency or institution of higher education must grant sufficient 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.⁵²⁷

Military Pay Differential Guidelines

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

The state agency or institution of higher education should inform activated state employees of the agency's or institution's intent to use emergency leave to supplement their military pay to raise it to a rate comparable to the state pay received prior to activation.

Only state employees called to active duty in support of a national emergency or Homeland Security mission (under United States Code, Title 10 or Title 32) and whose military pay is less than their gross state pay are eligible for differential pay. Service members involved in routine military training or who are attending military schools are not entitled to this differential pay.⁵²⁸

If emergency leave is granted to state employees activated for military duty, those employees will accrue sick leave and vacation leave each month they receive pay from the state agency or institution of higher education. The sick and vacation leave will be accrued but not posted until the employee returns to full employment with the state agency.⁵²⁹

Determining Eligibility

To determine eligibility, state agencies and institutions of higher education should request a copy of the employees' Military Leave and Earnings Statement each month that emergency leave is going to be granted to look at the total entitlement of military pay received by the service members. The service members' pay may change during the period of active duty because of a promotion or change in entitlements; any increase in pay may reduce or cease the need for state military differential pay.⁵³⁰

⁵²⁷ Texas Government Code, Section 661.9041.

⁵²⁸ *Military Pay Differential Guidelines*, State Auditor's Office's Web site at <http://www.hr.sao.texas.gov/Resources/Guides/>.

⁵²⁹ Texas Government Code, Sections 661.152 (j) and 661.202 (k).

⁵³⁰ *Military Pay Differential Guidelines*, State Auditor's Office's Web site at <http://www.hr.sao.texas.gov/Resources/Guides/>.

Returning Service Members

A state employee who (1) is a member of the state military forces, a reserve component of the U.S. Armed Forces, or a member of a state or federally authorized urban search and rescue team and (2) who is ordered to duty by the proper authority is entitled, when relieved from duty, to be restored to the position that the employee held when ordered to duty or to a position of similar seniority, status, and pay.⁵³¹

USERRA also requires that reasonable efforts (such as training or retraining) be made to enable returning service members to refresh or upgrade their skills to help them qualify for reemployment.⁵³²

Under state and federal law, to be eligible for reemployment, the employee must be discharged, separated, or released from active military service under honorable conditions no later than five years after induction, enlistment, or call to duty. In addition, under state law, the employee must be physically and mentally qualified to perform the duties of the job.⁵³³ If an employee is unable to perform the duties of the previous job due to a service-related disability, the veteran is entitled to be restored to a position that he or she can perform with similar or the nearest possible seniority, status, and pay.⁵³⁴

Veterans whose employment has been restored may not be dismissed without cause within a year of their reinstatement.⁵³⁵

Applications for Reemployment

Under state law, eligible veterans must apply for reinstatement within 90 days after discharge or release from service. The application must be made in writing to the head of the state agency or institution of higher education and must include evidence of discharge under honorable conditions.⁵³⁶

Entitlement to Retirement or Other Benefits

An individual reemployed is considered to have been on furlough or leave of absence during the time that the individual was in military service. As such, the employee may participate in retirement or other benefits to which a public employee is or may be entitled.⁵³⁷

⁵³¹ Texas Government Code, Section 437.202 (d), as amended by House Bill 2486 (85th Legislature, Regular Session); and Texas Government Code, Section 613.002.

⁵³² *VETS USERRA Fact Sheet 3*, U.S. Department of Labor's Web site at http://www.dol.gov/vets/programs/userra/userra_fs.htm.

⁵³³ Texas Government Code, Section 613.002 (b); and *VETS USERRA Fact Sheet 3*, U.S. Department of Labor's Web site at http://www.dol.gov/vets/programs/userra/userra_fs.htm.

⁵³⁴ Texas Government Code, Section 613.003.

⁵³⁵ Texas Government Code, Section 613.005.

⁵³⁶ Texas Government Code, Section 613.004.

⁵³⁷ Texas Government Code, Section 613.006.

Veterans' Employment Preference

The following individuals qualify for a veterans' employment preference:

- A veteran, including a veteran with a disability.
- A veteran's surviving spouse who has not remarried.
- An orphan of a veteran if the veteran was killed while on active duty.⁵³⁸

A veteran is defined as an individual who has served in (and has been honorably discharged from) the following branches of service:

- The U.S. Army, Navy, Air Force, Marine Corps, or Coast Guard or the U.S. Public Health Service under Title 42, United States Code, Section 201.
- The Texas Military Forces as defined by Texas Government Code, Section 437.001.
- An auxiliary service of one of the branches of the U.S. Armed Forces.⁵³⁹

A veteran with a disability is defined as a veteran (1) who is classified as disabled by the U.S. Department of Veterans Affairs or the branch of the service in which the veteran served and (2) whose disability is service-connected.⁵⁴⁰

An individual who qualifies for a veterans' employment preference is entitled to a preference in employment with or appointment to a state agency or institution of higher education over other applicants for the same position who do not have a greater qualification.⁵⁴¹

A state agency or institution of higher education must provide employment preference to individuals who qualify for a veterans' employment preference in the following order of priority:

- A veteran with a disability.
- A veteran.
- A veteran's surviving spouse who has not remarried.
- An orphan of a veteran if the veteran was killed while on active duty.⁵⁴²

Individuals entitled to a veterans' employment preference are not disqualified from holding a position with a state agency or institution of higher education because of age or an established

⁵³⁸ Texas Government Code, Section 657.002.

⁵³⁹ Texas Government Code, Section 657.001 (2); and Texas Government Code, Section 2308.251.

⁵⁴⁰ Texas Government Code, Section 657.001 (3).

⁵⁴¹ Texas Government Code, Section 657.003 (a).

⁵⁴² Texas Government Code, Section 657.003 (b).

service-connected disability if the age or disability does not make the individual incompetent to perform the duties of the position.⁵⁴³

State agencies and institutions of higher education must provide to the Texas Workforce Commission information regarding an open position that is subject to the hiring or appointment preference required by Texas Government Code, Chapter 657.⁵⁴⁴

Veteran Employment Goal for State Agencies

Each state agency and institution of higher education must establish a goal of hiring, in full-time positions at the agency or institution of higher education, a number of veterans equal to at least 20 percent of the state agency's or institution of higher education's total number of employees. A state agency or institution of higher education may establish a veteran employment goal that is greater than the percentage required under Texas Government Code, Section 657.004 (a).⁵⁴⁵

Designation of Open Positions for, and Immediate Hiring of, Individuals Entitled to a **Veterans' Employment Preference**

A state agency or institution of higher education may designate an open position as a veterans' position and only accept applications for that position from individuals who are entitled to a veterans' employment preference.

A state agency or institution of higher education may hire or appoint for an open position an individual entitled to a veterans' employment preference without announcing or advertising the position, if the state agency or institution of higher education:

- Uses the Texas Workforce Commission's Web Site, <https://wit.twc.state.tx.us>, to identify an individual who qualifies for a veterans' employment preference; and
- Determines the individual meets the qualifications required for the position.⁵⁴⁶

Interviews

For each announced open position:

- If the total number of individuals interviewed for the position is 6 or fewer, the state agency or institution of higher education must interview at least 1 individual qualified for a veterans' employment preference.
- If the total number of individuals interviewed for the position is more than 6, at least 20 percent of the total number of individuals that the state agency or institution of higher education interviews must be individuals qualified for a veterans' employment preference.⁵⁴⁷

⁵⁴³ Texas Government Code, Section 657.003 (d).

⁵⁴⁴ Texas Government Code, Section 657.009 (a).

⁵⁴⁵ Texas Government Code, Section 657.004.

⁵⁴⁶ Texas Government Code, Section 657.0045.

⁵⁴⁷ Texas Government Code, Section 657.0047 (a).

A state agency or institution of higher education that does not receive any applications from individuals who qualify for a veterans' employment preference is not required to comply with the interviewing requirements of Texas Government Code, Section 657.0047 (a).⁵⁴⁸

State Employment Forms

All state agency and institution of higher education employment forms prescribed by the Texas Workforce Commission must include a statement regarding the veterans' employment preference until the agency's or institution's workforce is composed of at least 40 percent veterans.⁵⁴⁹

Employment Investigation

Prior to hiring an individual who qualifies for a veterans' employment preference, a state agency or institution of higher education must investigate the qualifications of the applicant for the position. An applicant who is a veteran with a disability must furnish the official records to the individual whose duty is to fill the position.⁵⁵⁰

Competitive Examinations

If a state agency or institution of higher education requires a competitive examination under a civil service plan or merit system for selecting or promoting an employee, an individual entitled to a veterans' employment preference who is qualified for that position and receives at least the minimum required score for the test is entitled to have a service credit of 10 points added to the test score. A veteran with a disability is entitled to have a service credit of 5 additional points added to the test score.⁵⁵¹

Reductions in Force

An individual who is entitled to a veterans' employment hiring or appointment preference is also entitled to a preference in retaining employment if the state agency or institution of higher education that employs or appoints the individual reduces its workforce. This applies only to workforce reductions of employees of a similar type or classification as the individual who qualifies for the veterans' preference and does not apply to veterans less qualified than employees who are not veterans.⁵⁵²

⁵⁴⁸ Texas Government Code, Section 657.0047 (b).

⁵⁴⁹ Texas Government Code, Section 656.027.

⁵⁵⁰ Texas Government Code, Section 657.005.

⁵⁵¹ Texas Government Code, Section 657.003 (c).

⁵⁵² Texas Government Code, Section 657.007; and Texas Office of the Attorney General, Opinion DM-422 (1996).

Appealing Employment Decisions Under Veterans' Preference

An individual entitled to a veterans' employment preference that is aggrieved by a decision of a state agency or institution of higher education relating to the hiring or appointing of the individual, or relating to the retaining of the individual if the state agency or institution of higher education reduces its workforce, may appeal the decision by filing a written complaint with the state agency's or institution of higher education's executive officer.⁵⁵³

The executive officer of a state agency or institution of higher education that receives a written complaint is required to respond to the complaint no later than the 15th business day after the date that the executive officer receives the complaint. The executive officer may render a different hiring or appointment decision than the decision that is the subject of the complaint if the executive officer determines that the veterans' preference was not applied.⁵⁵⁴

Veterans' Preference Reporting Requirements

State agencies and institutions of higher education must file quarterly reports with the Office of the Comptroller of Public Accounts that state:

- The percentage of the total number of employees hired or appointed by the state agency or institution of higher education during the reporting period that are entitled to a veterans' preference.
- The percentage of the total number of employees of the state agency or institution of higher education who are entitled to a veterans' preference.
- The number of complaints filed with the executive officer of the state agency or institution of higher education during that quarter and the number of complaints resolved by the executive officer.⁵⁵⁵

The Office of the Comptroller of Public Accounts must make each quarterly report available to the public on its Web site. Additionally, no later than December 1 of each year, the Office of the Comptroller of Public Accounts must file a report with the Legislature that compiles and analyzes the information that the Office of the Comptroller of Public Accounts received from the state agencies' and institutions of higher education's quarterly reports.⁵⁵⁶

⁵⁵³ Texas Government Code, Section 657.010 (a).

⁵⁵⁴ Texas Government Code, Section 657.010 (b).

⁵⁵⁵ Texas Government Code, Section 657.008 (a).

⁵⁵⁶ Texas Government Code, Section 657.008 (b) and (c).

Chapter 15 Insurance Programs

Insurance Overview

The State of Texas provides a comprehensive benefits program for employees in state agencies and institutions of higher education. Health insurance for most employees is available through the Employees Retirement System (ERS). Exceptions include employees of the University of Texas and Texas A&M University systems, which provide their own insurance programs for employees.⁵⁵⁷

In addition to health insurance, state employees have access to other types of benefits such as dental, vision, life, supplemental life, dependent life, short- and long-term disability, accidental death and dismemberment, health and dependent care flexible spending accounts, and commuter spending accounts.

State employees who have other health insurance comparable to what the State provides may drop the Texas Employees Group Benefits Program health insurance and receive a Health Insurance Opt-Out Credit. Full-time employees may receive up to a \$60 credit per month and part-time employees may receive up to a \$30 per month credit to be used towards the cost of certain optional coverage.⁵⁵⁸ The TRICARE Military Health System supplemental plan is available to an employee or annuitant who waives coverage under the Texas Employees Group Benefits Program and is eligible for benefits under the TRICARE Military Health System.⁵⁵⁹

Detailed information on state insurance programs is available through the ERS Web site at <http://www.ers.texas.gov>.

Employee Insurance Benefits

The Texas Employees Group Benefits Program is intended to provide health, life, and accident insurance benefits to all employees of the State and their eligible dependents.⁵⁶⁰ Except for the conditions discussed in the Texas Insurance Code, no employee of a state agency or institution of higher education may be denied coverage unless the employee waives this coverage.⁵⁶¹

There are currently three types of medical plans in the Texas Employees Group Benefits Program: HealthSelect, Consumer Directed HealthSelect, and health maintenance organizations (HMOs). When full-time employees enroll in either of these plans, they automatically receive a basic group term life insurance policy paid for by the State. When part-time employees enroll in either of these plans, they automatically receive a basic group term life insurance policy but are responsible for half of the premium with the State paying the other half.

⁵⁵⁷ Texas Insurance Code, Section 1551.006 (b).

⁵⁵⁸ General Appropriations Act (85th Legislature), Article I, Employees Retirement System, Rider 7; and Employees Retirement System's Web site at <http://www.ers.texas.gov/Active-Employees/Health-Benefits/Opt-Out-Credit/>.

⁵⁵⁹ Texas Insurance Code, Section 1551.227.

⁵⁶⁰ Texas Insurance Code, Section 1551.002 (1).

⁵⁶¹ Texas Insurance Code, Sections 1551.104 and 1551.1045.

Waiting Period for Health Insurance Coverage

New employees' eligibility for health insurance begins not later than the 90th day after the date the employee performs services for a state agency or is qualified for and begins to hold elected or appointed office.⁵⁶² Certain state employees who are reemployed after military service will be eligible for health insurance on the first date of reemployment on which the employee performs services for a state agency or institution of higher education.⁵⁶³

Dependent Coverage

An employee or retiree can secure for his or her eligible dependents any uniform coverage provided for employees by the Texas Employees Group Benefits Program. For information on eligible dependents, see the Texas Employees Group Benefits Program (GBP) Dependent Eligibility Chart at <http://ers.texas.gov/Benefits-at-a-Glance/Dependent-eligibility-chart.pdf>.

State Contributions for Health Insurance

For the purpose of determining state contributions for health insurance, an employee is considered full-time if he or she is designated to work 30 or more hours in a workweek. A part-time employee is defined as a person designated to work less than 30 hours in a workweek.⁵⁶⁴

For full-time employees, the State pays all of the health insurance and basic life premiums and half of the health insurance and basic life premiums for part-time employees.⁵⁶⁵ The ERS Board of Trustees, in coordination with the Legislative Budget Board, establishes the amount of the State's contribution no later than November 1 preceding each regular session of the Legislature.⁵⁶⁶ State contributions to group insurance costs are available on the ERS Web site at <http://www.ers.texas.gov>.

Each state agency and institution of higher education (not including components within the University of Texas and Texas A&M University systems) is required to contribute an amount equal to 1.0 percent of the total base wages and salaries for each benefits-eligible employee of a state agency or institution of higher education to the ERS Group Benefits Program. This requirement first began on September 1, 2011.⁵⁶⁷ Agencies and institutions of higher education should refer to the Office of the Comptroller of Public Accounts for more information regarding the additional payroll contribution for group health insurance.

⁵⁶² Texas Insurance Code, Section 1551.1055 (a). According to the Employees Retirement System, health insurance coverage begins effective the first day of the month following the 60th day of employment to ensure coverage will not begin later than the 90th day after the date of employment.

⁵⁶³ Texas Insurance Code, Section 1551.1055 (e); and Texas Insurance Code, Section 1601.1045 (e).

⁵⁶⁴ Texas Insurance Code, Section 1551.003 (9) and (11).

⁵⁶⁵ Texas Insurance Code, Section 1551.319 (a) and (b).

⁵⁶⁶ Texas Insurance Code, Section 1551.311.

⁵⁶⁷ General Appropriations Act (85th Legislature), Article IX, Section 17.03; and Fiscal Policies and Procedures, *Payroll Contribution for Group Health Insurance*, Office of the Comptroller of Public Accounts' Web site at <https://fmx.cpa.texas.gov/fmx/payper/contribution>.

Dental Insurance

All individuals who are eligible for state insurance plans have access to optional dental insurance. There are two dental insurance plans and one non-insurance dental discount plan available to employees with different costs, benefits, service areas, and participating dentists. None of the plans require evidence of insurability.⁵⁶⁸

Vision Insurance

All individuals who are eligible for state insurance plans also have access to an optional vision insurance plan. This plan does not require evidence of insurability.⁵⁶⁹

Tobacco User Premium Differential

Each participant in a health benefit plan provided under the group benefits program who uses one or more tobacco products will be assessed a monthly tobacco user premium. Employees are responsible for paying the tobacco user premium differential.⁵⁷⁰

Information on cessation programs and monthly premium differentials is available on the ERS Web site at <http://www.ers.texas.gov>.

Employee Life and Disability Insurance

State employees have the option of enrolling in various life and disability insurance plans. New employees (within the first 31 days on the job) may sign up for most of 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 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.⁵⁷¹

Accelerated Payment of Life Insurance Benefits

The board of trustees of the Employees Retirement System of Texas 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.⁵⁷²

⁵⁶⁸ Employees Retirement System's Web site at <http://www.ers.texas.gov/Active-Employees/Optional-Add-on-Benefits/>.

⁵⁶⁹ Employees Retirement System's Web site at <http://ers.texas.gov/Active-Employees/Optional-Add-on-Benefits/Vision-Benefits>.

⁵⁷⁰ Employees Retirement System's Web site at <http://www.ers.texas.gov/About-ERS/Policies/Tobacco-Policy-and-Certification>.

⁵⁷¹ Employees Retirement System's Web site at <http://www.ers.texas.gov>.

⁵⁷² Texas Insurance Code, Section 1551.254.

Chapter 16 Retirement

Retirement Overview

The State's retirement plan is a defined benefit plan and offers defined contribution retirement plans to employees. Employees are covered under a defined benefit plan (or traditional pension plan) through the Employees Retirement System (ERS), the Teacher Retirement System (TRS), or the Judicial Retirement System of Texas (Plan I or Plan II). In some cases, eligible employees of institutions of higher education may elect to participate in the Optional Retirement Program (ORP) governed by the Higher Education Coordinating Board. An ORP is an individualized defined contribution plan in which each participant selects from a variety of investments offered by several companies through annuity contracts or mutual fund investments.⁵⁷³

Most state agency employees are covered through ERS. These employees also have the opportunity to contribute to deferred compensation plans such as 401(k) or 457 accounts. These accounts can supplement the current state retirement plan and offer employees the option of choosing how they will invest their money.

Retirement benefits for most higher education employees are processed through TRS. Employees who are covered by TRS, by the Judicial Retirement System of Texas (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.⁵⁷⁴

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

Employees Retirement System (ERS)

The ERS retirement program is a defined benefit plan, qualified under Section 401(a) of the Internal Revenue Code.⁵⁷⁵ 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).

⁵⁷³ *Optional Retirement Program (ORP) Information*, Texas Higher Education Coordinating Board; and *An Overview of TRS and ORP for Employees Who Are Eligible to Elect ORP*, Higher Education Coordinating Board, August 2015, at <http://www.theccb.state.tx.us/>.

⁵⁷⁴ Texas Government Code, Section 812.003 (a) and (b).

⁵⁷⁵ Texas Government Code, Section 815.507.

- Death benefits.⁵⁷⁶

A state agency employee becomes a member of the ERS program starting on his/her first day of employment.⁵⁷⁷ Each employee who is a member of ERS is required to pay an annual membership fee.⁵⁷⁸ However, the Legislature has continued a long-standing tradition of appropriating funds to pay the membership fee.⁵⁷⁹

Disability retirement benefits and death benefits are not covered within this chapter. Information regarding disability retirement benefits and death benefits is available on the ERS Web site at <http://www.ers.texas.gov>.

Effective September 1, 2014, the State of Texas implemented a tiered insurance contribution for retirees. Due to the complex nature of this change, employers and employees should consult the ERS for additional information.

Retirement Contributions

The Legislature establishes the State and employee retirement contribution rates biennially for various retirement systems and funds; these rates are set in the General Appropriations Act.⁵⁸⁰

An employee's portion of the retirement contribution is deducted each month from the employee's pay and deposited into an employee savings account.⁵⁸¹ The State deposits its portion of the retirement contribution into a State Accumulation Account.⁵⁸²

The employing agency is responsible for deducting the amount of the employee's contribution from the employee's pay.⁵⁸³ The deduction process requires no employee consent because the employee consents to the automatic deduction when he or she becomes a member of the ERS program.⁵⁸⁴

⁵⁷⁶ Texas Government Code, Section 814.001.

⁵⁷⁷ Texas Government Code, Section 812.003 (d).

⁵⁷⁸ Texas Government Code, Section 815.401 (a).

⁵⁷⁹ General Appropriations Act (85th Legislature), Article I, Employees Retirement System, Rider 4; and Texas Government Code, Section 815.401 (c).

⁵⁸⁰ General Appropriations Act (85th Legislature), Article I, Employees Retirement System, Rider 4.

⁵⁸¹ Texas Government Code, Sections 815.402 (a) and 815.311 (a).

⁵⁸² Texas Government Code, Section 815.312 (a).

⁵⁸³ Texas Government Code, Section 815.402 (d).

⁵⁸⁴ Texas Government Code, Section 815.402 (g).

State agencies that employ a law enforcement officer or custodial officer are required to deduct an additional contribution from that employee's compensation that must be deposited into the Law Enforcement and Custodial Officer Supplemental Retirement Fund (Fund).⁵⁸⁵ Deposits into the Fund also include the State's contributions, other appropriations made by the Legislature, and proceeds from investment of the Fund.⁵⁸⁶

In addition, during the 2018-2019 biennium, each state agency is required to contribute an amount equal to 0.5 percent of the total base wages and salaries for each benefits-eligible employee of a state agency to the Employees Retirement System's Retirement Program.⁵⁸⁷ Agencies should refer to the Office of the Comptroller of Public Accounts for more information regarding the additional payroll retirement contribution.

Withdrawal of Contributions

Upon termination of employment, an individual who is a member of the Certified Peace Officer/Custodial Officer (CPO/CO) or regular employee class may withdraw his or her contributions made to the retirement plan. Withdrawal of contributions cancels membership in the retirement plan, service credit, and all rights to benefits.⁵⁸⁸ A member wanting to withdraw his or her contributions should consult with ERS.

Classes of Membership

Employees of state agencies or elected officials become a member in one of the following classes of membership:⁵⁸⁹

Elected Class: Membership in the elected class is limited to:

- Persons who hold state offices normally filled by a statewide election and not included for coverage under the Judicial Retirement System of Texas Plan I or Judicial Retirement System of Texas Plan II.
- Members of the State Legislature.
- District and criminal district attorneys (to the extent that they receive salaries from the state general revenue fund).⁵⁹⁰

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

CPO/CO Class: employee class service rendered while a law enforcement officer, custodial officer, or parole officer or caseworker.

⁵⁸⁵ Texas Government Code, Section 815.402 (h).

⁵⁸⁶ Texas Government Code, Section 815.317 (a).

⁵⁸⁷ Texas Government Code, Section 815.4035; and General Appropriations Act (85th Legislature), Article IX, Section 17.06.

⁵⁸⁸ Texas Government Code, Sections 812.101 (a) and 812.103.

⁵⁸⁹ Texas Government Code, Section 812.001.

⁵⁹⁰ Texas Government Code, Section 812.002 (a).

Regular Employee Class: employee class service rendered that is not considered CPO/CO service.⁵⁹¹

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

Retirement Eligibility

A regular employee class member's age and years of service credit determine his/her eligibility to retire.⁵⁹² An employee included in the CPO/CO membership class may have different retirement eligibility requirements. However, similar to a regular employee class member, a CPO's/CO's age and established years of service credit determine the CPO's/CO's eligibility to retire.⁵⁹³

Refer to the ERS Web site at <http://www.ers.texas.gov> for information on retirement eligibility for all service classes including the Judicial Retirement System of Texas (Plan I or Plan II).

Establishing Service Credit

Membership in ERS' regular employee or CPO/CO class begins on the first day a person is employed or holds office.⁵⁹⁴ Employees receive a full month's retirement credit when a retirement contribution is deducted from a paycheck and deposited into ERS. However, service credit toward an employee's eligibility for retirement may be established in other ways. If eligible, these may be:

- Vacation and sick leave.
- The transfer of service credit.
- Purchase of withdrawn service.
- Purchase of unestablished service.
- Purchase of waiting period service.
- Purchase of military service.
- Purchase of additional service.⁵⁹⁵

Additional information regarding service credit for all classes including the Judicial Retirement System of Texas (Plan I or Plan II) is available on the ERS Web site at <http://www.ers.texas.gov>.

⁵⁹¹ Texas Government Code, Section 812.003.

⁵⁹² Texas Government Code, Section 814.104 (a) and (d).

⁵⁹³ Texas Government Code, Sections 814.104 (b) and 814.107(a).

⁵⁹⁴ Texas Government Code, Section 812.003 (d).

⁵⁹⁵ *Service Credit for State of Texas Retirement for Active Employees*, Employees Retirement System at <http://www.ers.texas.gov/Active-Employees/Retirement/Service-Credit-for-State-of-Texas-Retirement>.

Determining the Standard Service Retirement Annuity

An employee who is a CPO/CO or regular employee class member and who retires from the State of Texas receives a monthly payment based on his or her average salary and years of creditable service. This amount is called an “annuity” and does not depend on the amount of money in the retiree’s account. However, an employee’s hire date affects the annuity computation.⁵⁹⁶ In addition, an employee’s annuity may also be reduced if he or she retires before the regular retirement age.⁵⁹⁷

Consult the ERS Web site at <http://www.ers.texas.gov> for the different annuity formulas and age requirements for all service classes including the Judicial Retirement System of Texas (Plan I or Plan II).

Proportionate Retirement Program

The State provides proportionate retirement benefits to qualified members who have service credit in more than one retirement system. These participating retirement systems are the ERS, the TRS, and the Judicial Retirement System of Texas (Plan I or Plan II). Certain municipal employees may also elect to join this program.⁵⁹⁸

Each retirement system will pay benefits based upon only the service and salaries established in that system.⁵⁹⁹

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.⁶⁰⁰

Additional information on eligibility for proportionate retirement benefits is available on the ERS Web site at <http://www.ers.texas.gov/>.

Resumption of State Service by a Retiree

An employee who retired on or after May 31, 2009, may not return to work in a position in the employee class of membership before the 90th day after the original retirement date.⁶⁰¹ In addition, state agencies are required to pay into the retirement system an amount equal to the amount of the state contribution for active members for a person who retired on or after September 1, 2009, from

⁵⁹⁶ Texas Government Code, Sections 814.105 and 814.107; and *Standard Annuity for Active Employees*, Employees Retirement System at <http://www.ers.texas.gov/Active-Employees/Retirement/Standard-Annuity>.

⁵⁹⁷ Texas Government Code, Sections 814.105 (d) and 814.107 (c).

⁵⁹⁸ Texas Government Code, Sections 803.0021, 803.101, and 803.102.

⁵⁹⁹ Texas Government Code, Sections 803.201 (a) and 803.302 (b).

⁶⁰⁰ Texas Government Code, Section 803.201 (a).

⁶⁰¹ Texas Government Code, Section 812.205.

the employee class and then was rehired as a retiree in a position that would otherwise include membership in the employee class.⁶⁰²

A retiree from another system, such as TRS, who returns to work for a state agency under ERS contributes the employee portion of his/her monthly pay to an ERS retirement account.⁶⁰³

An employee who retires from another statewide retirement system should refer to that system to find out if returning to state employment will affect his/her annuity.

A retiree must notify the employing agency that he/she is a retiree and is no longer eligible to be an active member of 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.⁶⁰⁴

Retirement must be canceled and membership in a retirement system reinstated if the member holds a position in the class from which he or she retired during the calendar month following retirement. If a person establishes that service credit received after retirement was the result of an oversight or an error on the part of the employee's department, the member may petition the executive director for relief.⁶⁰⁵

Additional information on return-to-work retirees is available on the ERS Web site at <http://www.ers.texas.gov>.

Deferred Compensation

In addition to a state employee's established ERS pension plan, an employee has the opportunity to save a portion of his or her income by making traditional pre-tax or Roth after-tax contributions to a deferred compensation plan.⁶⁰⁶

Under the TexaSaver Program, state agency employees can enroll in two types of deferred compensation plans available: a 401(k) and a 457. The deferred compensation plans also have "catch-up" provisions that allow employees who meet the eligibility requirements to make up for lost time.⁶⁰⁷

An institution of higher education may create and administer a 457 plan or it may contract with other institutions of higher education to create a single plan for its employees.⁶⁰⁸

⁶⁰² Texas Government Code, Section 812.206.

⁶⁰³ *Retirees Who Return to Work*, Employees Retirement System, July 2017.

⁶⁰⁴ Texas Government Code, Sections 812.202 and 812.204.

⁶⁰⁵ Texas Administrative Code, Title 34, Section 73.7.

⁶⁰⁶ Texas Government Code, Section 609.005; and *Planning Your Retirement*, Employees Retirement System, December 2016.

⁶⁰⁷ *Planning Your Retirement*, Employees Retirement System, December 2016.

⁶⁰⁸ Texas Government Code, Section 609.702.

401(k) Plan Automatic Enrollment

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.⁶⁰⁹

An employee participating in a 401(k) plan under this legislation may elect to end participation in the 401(k) plan, to contribute to a different investment product, or to contribute a different amount to the plan.⁶¹⁰

A state agency participating in a 401(k) plan is required to inform new hires of their automatic enrollment in a 401(k) account and their right to opt-out of enrollment. This information should be included as part of the new employee orientation process. State agencies participating in a 401(k) plan must maintain a record of a new hire's acknowledgement of receipt of information regarding the ability to opt-out of enrollment in a 401(k) plan.⁶¹¹

Additional information about Texa\$aver and the 401(k) and 457 plans is available on the ERS web site at <https://www.ers.texas.gov>.

⁶⁰⁹ Texas Government Code, Section 609.5025 (b) and (c).

⁶¹⁰ Texas Government Code, Section 609.5025 (d).

⁶¹¹ Texas Government Code, Section 609.5025 (h).

Chapter 17 Additional Benefits

Awards and Gifts

State agencies and institutions of higher education are authorized to use appropriated funds to purchase and present awards to employees for professional achievement or outstanding service. The cost of each award must not exceed \$100.⁶¹²

State agencies and institutions of higher education that have established a volunteer program may use appropriated funds to purchase awards for special achievements or outstanding service to be presented to a volunteer. Such awards must not exceed a value of \$50 and are limited to certificates, plaques, pins, or other similar awards.⁶¹³

Additional Information

The Office of the Comptroller of Public Accounts' Web site provides additional guidance on policy and documentation requirements and sources for several of the additional benefits discussed in this chapter. See <https://fmx.cpa.texas.gov/fm/pubs/purchase/index.php/>.

Employee Health and Wellness Programs

Health Fitness and Education Programs

A state agency and institution of higher education may use available public funds for health fitness education and activities and other costs related to health fitness. In addition, available facilities may be used for health fitness programs.⁶¹⁴

Such programs are designed to encourage and create a condition of health fitness in state employees and serve important purposes including:

- An understanding and reduction of the risk factors associated with society's most debilitating diseases.
- The development of greater work productivity and capacity.
- A reduction in absenteeism.
- A reduction of health insurance costs.
- An increase in the general level of fitness.⁶¹⁵

State agencies and institutions of higher education are encouraged to enter into agreements with other state, local, or federal agencies, including state-supported institutions of higher education, to

⁶¹² Texas Government Code, Section 2113.201.

⁶¹³ Texas Government Code, Section 2113.202.

⁶¹⁴ Texas Government Code, Section 664.004.

⁶¹⁵ Texas Government Code, Section 664.002.

present, join in presenting, or participate jointly in health fitness education or activity programs for state employees.⁶¹⁶

Wellness Programs

A state agency or institution of higher education may develop a wellness program designed to increase work productivity and capacity and to reduce health insurance costs, or it can implement a wellness program based on the model program or components of the model program.⁶¹⁷

The Department of State Health Services must designate a statewide wellness coordinator to create and develop a model statewide wellness program to improve the health and wellness of state employees.⁶¹⁸ In addition, state agencies and institutions of higher education must designate an employee to serve as the wellness liaison between the agency or institution of higher education and the statewide wellness coordinator.⁶¹⁹

As part of a state agency or institution of higher education wellness program, a state agency or institution of higher education may develop policies that:

- Allow each employee 30 minutes during normal working hours to exercise three times a week.
- Allow all employees to attend on-site wellness seminars when offered.
- Provide eight hours of additional leave time each year to an employee who receives a physical examination and completes either an online health risk assessment tool or a similar health risk assessment conducted in person by a worksite wellness coordinator.
- Provide financial incentives, notwithstanding Texas Government Code, Section 2113.201, for participation in a wellness program developed by the agency or institution of higher education under Texas Government Code, Section 664.053 (e), after it has established a written policy with objective criteria for providing the incentives.
- Offer on-site clinic or pharmacy services.

In addition, a state agency or institution of higher education may adopt additional wellness policies as determined by the agency or higher education institution.⁶²⁰

⁶¹⁶ Texas Government Code, Section 664.005.

⁶¹⁷ Texas Government Code, Section 664.053 (e).

⁶¹⁸ Texas Government Code, Section 664.053 (a).

⁶¹⁹ Texas Government Code, Section 664.053 (d).

⁶²⁰ Texas Government Code, Section 664.061 (a).

Wellness Council

A state agency or institution of higher education may develop a wellness council composed of employees and managers to promote worksite wellness. The wellness council may undertake the following:

- Increasing employee interest in worksite wellness.
- Developing and implementing policies to improve agency or institution of higher education infrastructure to allow for increased worksite wellness.
- Involving employees in worksite wellness programs.⁶²¹

A state agency or institution of higher education may allow its employees to participate in wellness council activities for two or more hours each month.⁶²²

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. The Office of the Comptroller of Public Accounts' Web site provides guidance and required documentation for employee assistance programs at https://fm.x.cpa.texas.gov/fm/pubs/purchase/state_emp/index.php?section=state_emp&page=employee_assistance.

Child Care Expenses

The State may enter into an agreement with a state employee to reduce the employee's salary by an amount to be paid for child care expenses. A state employee may request the salary reduction agreement and select the recipient for child care payments by filing a written request with the state agency or institution of higher education with which the employee is employed.⁶²³

Memberships In and Dues for Professional Organizations

With the exception of a state library, a state agency or institution of higher education may not use appropriated money to pay for membership in or dues for a professional organization unless the administrative head or designee reviews and approves the expenditure.⁶²⁴

⁶²¹ Texas Government Code, Section 664.060 (a) and (b).

⁶²² Texas Government Code, Section 664.060 (d).

⁶²³ Texas Government Code, Section 610.011.

⁶²⁴ Texas Government Code, Section 2113.104.

Moving and Storage Expenses

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

- Reassigned from one headquarters to another if the state agency or institution of higher education determines that the best interests of the State will be served and the distance between headquarters is at least 25 miles; or
- Employed at a facility that is being closed or is undergoing a reduction in force if the employee accepts a position with the agency or institution of higher education at another headquarters that is at least 25 miles from the facility that is being closed or undergoing a reduction in force.⁶²⁵

A state agency or institution of higher education must use State-owned equipment to move an employee if it is available. If not, the agency or institution of higher education may pay for the services of a transportation company or self-service vehicles to make the move.⁶²⁶

A state employee is entitled to be reimbursed for reasonable and necessary expenses incurred in traveling by a personally owned or a leased motor vehicle for a move described above at the rate provided by the General Appropriations Act for business-related travel by the employee.⁶²⁷

A state agency or institution of higher education may also pay for or reimburse a state employee for storage expenses incurred if the employee is required to live in State-owned housing and the housing is not available when the move is made.⁶²⁸

State-Owned Housing

There are certain situations in which the State provides housing for employees. This housing may be at a reduced cost or at no cost to employees based upon provisions in the General Appropriations Act.

Each state agency that provides employee housing must report annually to the Legislative Budget Board:

- The estimated fair market rental value of housing supplied by the agency, and
- The amount of revenue (if any) recovered.⁶²⁹

⁶²⁵ Texas Government Code, Section 2113.204 (a).

⁶²⁶ Texas Government Code, Section 2113.204 (b).

⁶²⁷ Texas Government Code, Section 2113.204 (c).

⁶²⁸ Texas Government Code, Section 2113.204 (d).

⁶²⁹ General Appropriations Act (85th Legislature), Article IX, Section 11.02 (a).

Chapter 18 Training

Equal Employment Opportunity (EEO) Compliance Training

State agencies and institutions of higher education that receive three or more discrimination complaints with merit in a fiscal year must provide comprehensive equal employment opportunity training to managers and supervisors. The training may be provided by the Texas Workforce Commission (Commission) or by a person or entity approved by the Commission, including a state agency. An agency or institution of higher education required to participate in the training must pay the cost of attending the training or reimburse the Commission or state agency providing the training through an interagency contract. If the training is not provided by the Commission, documentation verifying this training must be provided to the Commission. The documentation must 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 Commission determines the minimum standards for the training.⁶³⁰

Equal Employment Opportunity (EEO) Standards Training

Each state agency and institution of higher education must provide employment discrimination training, including employment discrimination involving sexual harassment, to its employees. New employees must receive employment discrimination training no later than 30 days after the date of hire. Employees who complete the training are required to sign a statement verifying their completion of the training program. The agency or institution of higher education must file the statement in the employee's personnel file.⁶³¹

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 Commission.⁶³²

Coordinated Technology Training

Each calendar quarter, a state agency or institution of higher education must coordinate its training for the use of information resources technology with training offered or coordinated by the Department of Information Resources. The agency or institution of higher education must use training offered or coordinated by the Department of Information Resources if the training meets agency or institution of higher education requirements and is cost-competitive.⁶³³

⁶³⁰ Texas Labor Code, Section 21.556.

⁶³¹ Texas Labor Code, Section 21.010; and Texas Administrative Code, Title 40, Section 819.24.

⁶³² Texas Labor Code, Section 21.010 (c) and (d); and Texas Administrative Code, Title 40, Section 819.24.

⁶³³ Texas Government Code, Section 2054.122.

Cybersecurity Awareness Training

To the extent possible, state agencies and institutions of higher education must provide employees who handle sensitive information, including financial, medical, personnel, or student data, with cybersecurity awareness training that coincides with the distribution of data use agreements required by Texas Government Code, Section 2054.135, and each biennial update of those agreements.⁶³⁴

Training and Education Programs

A state agency or institution of higher education may require an employee to attend a training or education program if the training and education is related to the employee's duties or prospective duties.⁶³⁵ For example, certain state agencies and institutions of higher education may have specific training requirements authorized by statute or the General Appropriations Act.

A state agency or institution of higher education may spend appropriated funds to pay the salary, tuition and other fees, travel and living expenses, training expenses, expense of training materials, and other necessary expenses of an instructor, student, or other participant in a training or education program. Additionally, if an employee of a state agency or institution of higher education seeks reimbursement for a training or education program offered by an institution of higher education (as defined by Section 61.003 of the Texas Education Code), the agency or institution of higher education may pay the tuition expenses for a program course successfully completed by the employee only at an accredited institution of higher education.⁶³⁶

A state agency or institution of higher education that spends more than \$5,000 in a fiscal year for a training or education program for any one employee must submit a report to the Legislative Budget Board no later than August 31 of each fiscal year that includes:

- The name of each employee for which the agency spent more than \$5,000 in that fiscal year for a training or education program.
- The amount spent on each employee.
- The certification earned by each employee through the training or education program.⁶³⁷

⁶³⁴ Texas Government Code, Section 2054.135, as redesignated by Senate Bill 1488 (85th Legislature, Regular Session).

⁶³⁵ Texas Government Code, Section 656.045.

⁶³⁶ Texas Government Code, Section 656.047 (a) and (b).

⁶³⁷ Texas Government Code, Section 656.047 (c), as added by Senate Bill 255 (85th Legislature, Regular Session).

New Requirement

The 85th Legislature enacted legislation requiring state agencies and institutions of higher education that spend more than \$5,000 in a fiscal year for a training or education program for any one employee to submit a report to the Legislative Budget Board that includes: the name of each employee for which the agency spent more than \$5,000 in that fiscal year for a training or education program, the amount spent on each employee, and the certification earned by each employee through the training or education program. This report is due no later than August 31 of each fiscal year.

A state agency or institution of higher education must adopt rules relating to the eligibility of employees for training and education supported by the agency or institution of higher education, as well as rules relating to the obligations assumed by the employees receiving the training and education. Additionally, a state agency or institution of higher education must adopt rules that require the executive head of the agency or institution of higher education to authorize the tuition reimbursement payments before an employee is reimbursed for successfully completing a training or education program in accordance with Texas Government Code, Section 656.047 (b).⁶³⁸

A state agency or institution of higher education may contract with another state, local, or federal department, agency, or institution of higher education to train or educate its employees or may join in presenting a training or educational program.⁶³⁹

Training Policy Requirements

The State Employees Training Act authorizes a state agency or an institution of higher education to use public funds to provide training and education to its employees. Such training or education must be related to the current or prospective duties of the employee.⁶⁴⁰

A state agency or institution of higher education may use money appropriated for a particular fiscal year to pay expenses for training that will occur during that fiscal year. To the extent that it is cost-effective, a state agency or institution of higher education may use money appropriated for a particular fiscal year to pay expenses for training that will occur partly or entirely during a different fiscal year.⁶⁴¹

⁶³⁸ Texas Government Code, Section 656.048.

⁶³⁹ Texas Government Code, Section 656.049.

⁶⁴⁰ Texas Government Code, Sections 656.041 and 656.044.

⁶⁴¹ Texas Government Code, Section 2113.205 (a).

A state agency's or institution of higher education'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.⁶⁴²

Before funds for training may be expended, state agencies and institutions of higher education must adopt a policy governing the training of employees that requires training to specifically relate to an employee's duties following the training. The policy must:

- Provide guidelines to govern tuition reimbursements for employees enrolled in training for which the employee seeks reimbursement from the State, and
- Address tuition reimbursement for nontraditional training, including online courses or courses not credited toward a degree.

A state agency or institution of higher education must post the policy on its Web site.⁶⁴³

If a state employee receives training that is paid for by a state agency or institution of higher education, and during the training period the employee does not perform his or her regular duties for three or more months as a result of the training, the agency or institution of higher education must require the employee to agree, in writing, before the training begins, to certain conditions. For an employee, the conditions state that they must:

- Work for the agency or institution of higher education for at least one month following the training, for each month of the training period, or
- Reimburse the agency or institution of higher education for all costs associated with the training that were paid during the training period, including salary for hours that were paid and that were not accounted for as paid vacation leave or compensatory leave.⁶⁴⁴

If a state employee does not provide the required services, provides those services for less than the required term, or fails to make the required reimbursements, the employee is liable to the state agency or institution of higher education for all costs associated with the training and for the agency's or institution's reasonable expenses incurred in obtaining payment, including attorney fees.⁶⁴⁵

⁶⁴² Texas Government Code, Section 656.046.

⁶⁴³ Texas Government Code, Section 656.102.

⁶⁴⁴ Texas Government Code, Section 656.103 (a) and (b).

⁶⁴⁵ Texas Government Code, Section 656.104.

By an order adopted in a public meeting, the agency or institution of higher education may waive these requirements if it is in the best interest of the agency or institution of higher education or is warranted because of personal hardship suffered by the employee.⁶⁴⁶

Contract Management and Purchasing Training

The Office of the Comptroller of Public Accounts (Comptroller's Office) is responsible for developing and administering training programs for state agency employees who are responsible for contract management and/or purchasing.⁶⁴⁷ State agencies must ensure that agency employees who are responsible for contract management and/or purchasing receive the required training provided by the Comptroller's Office.⁶⁴⁸

However, state agencies, in consultation with the Comptroller's Office, may develop agency-specific purchasing and contract management training programs to be administered by the agency to its employees instead of, or as a supplement to, the training programs developed by the Comptroller's Office.⁶⁴⁹ An employee who participates in an agency-specific training program remains subject to any other applicable certification requirements established for training programs administered by the Comptroller's Office.⁶⁵⁰

See the Comptroller's Office's Web site at <https://comptroller.texas.gov/purchasing/> for additional information on training requirements for state agency employees who are responsible for contract management and/or purchasing.

New Requirement
The 85th Legislature enacted legislation allowing state agencies, in consultation with the Comptroller's Office, to develop agency-specific purchasing and contract management training programs to be administered by the agency to its employees instead of, or as a supplement to, the training programs developed by the Comptroller's Office.

⁶⁴⁶ Texas Government Code, Section 656.103 (c).

⁶⁴⁷ Texas Government Code, Section 656.051 (a), as redesignated and amended by Senate Bill 255 (85th Legislature, Regular Session); Texas Government Code, Section 656.052 (a-1) and (d), as redesignated and amended by Senate Bill 255 (85th Legislature, Regular Session); Texas Government Code, Section 656.054 (a), as added by Senate Bill 255 (85th Legislature, Regular Session); and the Office of the Comptroller of Public Accounts' Web site at <https://comptroller.texas.gov/purchasing/>.

⁶⁴⁸ Texas Government Code, Section 656.051 (c), as redesignated and amended by Senate Bill 255 (85th Legislature, Regular Session); and Texas Government Code, Section 656.052 (c), as redesignated by Senate Bill 255 (85th Legislature, Regular Session).

⁶⁴⁹ Texas Government Code, Section 656.055 (a), as added by Senate Bill 255 (85th Legislature, Regular Session).

⁶⁵⁰ Texas Government Code, Section 656.055 (b), as added by Senate Bill 255 (85th Legislature, Regular Session).

Reporting of Contract Management and Procurement Staff

Each year, state agencies must estimate the number of its employees requiring purchasing or contract management training and report the agency's anticipated purchasing and contract management training needs of the agency to Comptroller's Office.⁶⁵¹

New Requirement
The 85th Legislature enacted legislation requiring state agencies to estimate the number of its employees requiring purchasing or contract management training and to report the agency's anticipated training needs to the Comptroller's Office on an annual basis.

Training in Contract Negotiation for Purchase of Information Resources Technologies

Employees of state agencies and institutions of higher education directly involved in contract negotiations for the purchase of information resources technologies must complete the contract negotiation training for the purchase of information resources technologies developed by the Department of Information Resources.⁶⁵²

New Requirement
The 85th Legislature enacted legislation requiring employees of state agencies and institutions of higher education directly involved in contract negotiations for the purchase of information resources technologies to complete the contract negotiation training developed by the Department of Information Resources.

⁶⁵¹ Texas Government Code, Section 656.054 (b), as added by Senate Bill 255 (85th Legislature, Regular Session).

⁶⁵² Texas Government Code, Section 656.050, as redesignated and amended by Senate Bill 255 (85th Legislature, Regular Session).

Chapter 19

Unemployment Insurance Compensation

Overview

Unemployment insurance (UI) is an insurance program paid for by employers that provides benefits to qualified individuals (referred to as claimants within this chapter) who are unemployed through no fault of their own. This program provides temporary, partial income replacement to eligible individuals while they are seeking other employment.⁶⁵³ With few exceptions, state employees are covered by unemployment insurance.⁶⁵⁴

UI benefits are financed through a state unemployment tax and paid from the State's Unemployment Compensation Trust Fund (Fund). Most employers are subject to paying unemployment tax. Under Texas law, state agencies and institutions of higher education must pay *reimbursements* for benefits instead of the tax.⁶⁵⁵ As reimbursing employers, they pay to the Fund, in lieu of taxes, an amount equal to the amount of benefits that were paid to their former employees and attributable to service with the agency or institution.⁶⁵⁶

The Texas Workforce Commission (Commission) is the agency responsible for administering the State's Unemployment Insurance Compensation programs.⁶⁵⁷ Agencies and institutions of higher education should refer to the Commission for additional information regarding unemployment insurance compensation.

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 must post and maintain the notices in places accessible to all employees.⁶⁵⁸

Filing an Initial Claim for Unemployment Benefits and Notice of Initial Claim

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

Once a claim for unemployment benefits is filed, a notice of the initial claim is mailed to the most recent employer named on the claim. The most recent employer refers to the last person for whom the claimant actually worked, if the claimant worked for that person for at least 30 hours during a week; or that entity is an employer as defined by Texas Labor Code, Chapter 201, or as defined by the unemployment law of any other state.⁶⁵⁹ An employer or their agent to whom a notice is mailed

⁶⁵³ Texas Workforce Commission's Web site at <http://www.twc.state.tx.us/jobseekers/basics-unemployment-benefits>.

⁶⁵⁴ Texas Labor Code, Section 201.063.

⁶⁵⁵ Texas Labor Code, Section 205.041.

⁶⁵⁶ Texas Labor Code, Section 205.013.

⁶⁵⁷ Texas Labor Code, Section 301.001 (a).

⁶⁵⁸ Texas Labor Code, Section 208.001 (b).

⁶⁵⁹ Texas Labor Code, Section 208.002.

must promptly notify the Commission of all facts known that may adversely affect the claimant's right to benefits or affect a charge to the employer's account. The notification provided to the Commission must include sufficient factual information to allow the Commission to make a determination regarding the claimant's entitlement to benefits. A notification is not adequate if the notification merely alleges that a claimant is not entitled to benefits without providing sufficient factual information.⁶⁶⁰

The Texas Labor Code gives employers 14 days to respond to the notice of initial claim. If an employer fails to respond to the claim in a timely manner, the employer will not be a party of interest to the claim. This includes the loss of the employer's appeal rights in connection with the claim.⁶⁶¹ The employer's response can be submitted online at <http://www.twc.state.tx.us/businesses/employer-response-notice-application-unemployment-benefits>.

Appeals Process

An employer who timely and adequately protests the initial claim has the right to submit a written appeal disagreeing with the Commission's decision to pay the claimant unemployment benefits. Conversely, a claimant may also appeal a Commission decision not to award benefits.⁶⁶² During the appeals process, the Commission will hold a hearing during which the claimant and the employer can present their cases.

Additional information about the unemployment appeals process is available on the Commission's Web site at <http://www.twc.state.tx.us/jobseekers/introduction-unemployment-benefits-appeal-process> and <http://www.twc.state.tx.us/jobseekers/how-appeal-decision>.

Reimbursements to the Unemployment Compensation Fund

If a claim is approved for payment, a state agency or institution of higher education will be billed on a quarterly basis for all benefits based on wages it reported during the base period of the claim.⁶⁶³ State agencies and institutions of higher education may appeal charges for UI benefits paid to a former employee if the employee was discharged for misconduct or voluntarily quit without good cause connected with the work.⁶⁶⁴

If a state agency or institution of higher education pays a reimbursement to the Commission for benefits paid to a claimant that are not in accordance with the final determination or decision, the state agency or institution of higher education is not entitled to a refund or credit for the amount paid to the Commission, if the agency or institution of higher education did not comply with the notification requirements according to Texas Labor Code, Section 208.004, regarding a claimant's entitlement eligibility.⁶⁶⁵

⁶⁶⁰ Texas Labor Code, Section 208.004 (a), (a-1), (c), and (d).

⁶⁶¹ Texas Labor Code, Section 208.004 (a) and (b).

⁶⁶² Texas Labor Code, Section 212.053 (1).

⁶⁶³ Texas Labor Code, Section 205.013.

⁶⁶⁴ Texas Labor Code, Section 205.0125.

⁶⁶⁵ Texas Labor Code, Section 205.013 (d).

Coverage for State Employees Working Outside the State

The Commission may enter into agreements with agencies of other states or federal agencies to cover an employee who performs his or her duties outside of Texas.⁶⁶⁶ If the Commission is unable to execute a reciprocal agreement with another state, the employing Texas state agency shall become a reimbursing employer if permitted by the laws of the state in which the employee works. If the agency is not permitted to be a reimbursing employer, it may pay the required contributions for that employee from funds available for that purpose.⁶⁶⁷

⁶⁶⁶ Texas Labor Code, Sections 211.001 and 211.002.

⁶⁶⁷ Texas Labor Code, Section 205.042.

Chapter 20
Workers' Compensation

Overview of Workers' Compensation

Workers' compensation is a form of insurance that provides income benefits, medical treatment, and other benefits to workers who are injured on the job or acquire an occupational disease on the job.⁶⁶⁸

The Department of Insurance, Division of Workers' Compensation (Division) regulates the State's workers' compensation program.⁶⁶⁹ The Office of Injured Employee Counsel was established by the Legislature to represent the interests of workers' compensation claimants in Texas.⁶⁷⁰

Coverage for State Employees

For most state agencies and institutions of higher education, the State Office of Risk Management (SORM) is responsible for administering state risk management programs and insurance services obtained by state agencies, including the state employees' workers' compensation insurance program and the state risk management programs.⁶⁷¹

Individuals excluded from workers' compensation coverage provided by SORM include:

- A person performing personal services for the State as an independent contractor or volunteer.
- A person who at the time of injury was performing services for the federal government and who is covered by some form of federal workers' compensation insurance.
- A prisoner or inmate of a correctional institution other than a work program participant in a Texas Correctional Industries contract.
- A client or patient of a state agency.

State Office of Risk Management

The State Office of Risk Management (SORM) is responsible for operating a self-insured **workers' compensation program for the State**. Duties of SORM include receiving and investigating reports of an injury filed by or on behalf of state employees; determining whether a claim is compensable; paying income and medical benefits in accordance **with the Workers' Compensation Act; and reviewing medical bills to determine reasonableness, necessity, and compliance with the Division of Workers' Compensation's (Division) fee guidelines**. In addition, SORM may appear as an adversary before the Division and the courts, presenting the **position and legal defenses of the State's workers' compensation program, as well as preparing reports for the Legislature and providing workers' compensation training for state agencies**.

Sources: Texas Labor Code, Sections 412.011 and 412.0122; and Strategic Plan 2017-2021, State Office of Risk Management located at <https://www.sorm.state.tx.us/>.

⁶⁶⁸ *Workers' Compensation Resources for Employees/Injured Employees*, Department of Insurance, Division of Workers' Compensation's Web site at <http://www.tdi.texas.gov/wc/employee/index.html>.

⁶⁶⁹ Texas Labor Code, Section 402.001.

⁶⁷⁰ Texas Labor Code, Section 404.002 (a).

⁶⁷¹ Texas Labor Code, Section 412.011.

- A person employed by the Department of Transportation, the University of Texas System, or the Texas A&M University System.⁶⁷²

Recovery of workers' compensation benefits is the exclusive remedy of an employee covered by workers' compensation insurance coverage. For the death of an employee as a result of a work-related injury, the employee's surviving legal beneficiary may be eligible for these remedies.⁶⁷³ However, the Texas Labor Code does not authorize a cause of action or damages against the State, a state agency, or an employee of the State beyond the actions and damages authorized by Chapter 101 of the Texas Civil Practice and Remedies Code.⁶⁷⁴

Workers' Compensation Health Care Networks

Workers' compensation health care networks were established to provide health care services to injured employees through networks certified by the Department of Insurance.⁶⁷⁵

For additional information on workers' compensation health care networks, please refer to the Department of Insurance's Web site at <http://www.tdi.texas.gov/pubs/consumer/cb084.html>.

Out of State Assignments or Positions

A state employee who performs services outside of Texas is entitled to workers' compensation benefits from the State of Texas, even if the person:

- Is hired or not hired in Texas;
- Does not work in Texas;
- Works both in Texas and out of Texas;
- Is injured outside of Texas; or
- Has been outside of Texas for more than one year.⁶⁷⁶

According to SORM, in situations in which an employee works outside of Texas, some states may require state agencies to purchase separate workers' compensation insurance. However, employees temporarily working outside of Texas continue to be covered under the State's workers' compensation insurance program. If an employee elects to pursue remedies provided by the state in which the injury occurred, the employee is not entitled to workers' compensation benefits through SORM.⁶⁷⁷

⁶⁷² Texas Labor Code, Section 501.024.

⁶⁷³ Texas Labor Code, Section 408.001 (a).

⁶⁷⁴ Texas Labor Code, Section 501.002 (d).

⁶⁷⁵ Texas Insurance Code, Section 1305.002.

⁶⁷⁶ Texas Labor Code, Section 501.025 (a).

⁶⁷⁷ Texas Labor Code, Section 501.025 (b).

Coverage for Services Provided by Volunteers

While volunteers generally are not covered, a person who performs volunteer services for the State in a disaster or in scheduled emergency response training under the direction of an officer or employee of the State is entitled to medical benefits for an injury sustained in the course of providing those services. A disaster in this situation means an event for which the Governor has issued a declaration of a state of disaster or another occurrence that initiates the state emergency management plan.⁶⁷⁸

To qualify for benefits, the volunteer must seek medical attention from a doctor for the injury not later than 48 hours after the occurrence of the injury or after the date the person knew or should have known an injury occurred. The person must comply with the notification requirements by providing notice of the injury to the Department of Insurance, Division of Workers' Compensation or the state agency with which the officer or employee is associated.⁶⁷⁹

SORM has developed a Statewide Volunteer Insurance Program to provide excess personal liability, excess automobile liability, and accident medical expense coverage for designated or registered volunteers of state agencies and institutions of higher education.⁶⁸⁰

Workers' Compensation Benefits

State employees with compensable injuries (injuries arising out of and in the course and scope of employment for which compensation is payable) are entitled to compensation by SORM.⁶⁸¹ However, the Department of Insurance, Division of Workers' Compensation (Division) adjudicates income and medical benefit disputes for the State.⁶⁸² Upon receipt of a report of injury, the Division contacts the affected employee to provide information on the benefit process and the compensation procedures established by state law.⁶⁸³

There are four types of workers' compensation benefits: income benefits, medical benefits, burial benefits, and death benefits.⁶⁸⁴ Information about those benefits is available from SORM and the Division.

⁶⁷⁸ Texas Labor Code, Section 501.026 (a) and (b).

⁶⁷⁹ Texas Labor Code, Section 501.026 (d).

⁶⁸⁰ *Volunteer Program*, State Office of Risk Management's Web site at <https://www.sorm.state.tx.us/insurance-program/statewide-volunteer-program>.

⁶⁸¹ Texas Labor Code, Section 501.021.

⁶⁸² Texas Labor Code, Section 402.001, and Texas Labor Code, Section 410.002.

⁶⁸³ Texas Labor Code, Section 409.013 (b), as amended by House Bill 2112 (85th Legislature, Regular Session).

⁶⁸⁴ *Workers' Compensation Income and Medical Benefits*, Department of Insurance, Division of Workers' Compensation's Web site at <http://www.tdi.texas.gov/wc/employee/benefits.html>.

Employer Responsibilities

A state agency or institution of higher education covered under Texas Labor Code, Chapter 501, must report to the State Office of Risk Management (SORM) an injury that results in medical expenses or the absence of an employee of the state agency or institution of higher education for one day.⁶⁸⁵ In addition, a state agency or institution of higher education must notify SORM of an occupational disease reported by an employee.⁶⁸⁶ 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.⁶⁸⁷

The following list is a summary of responsibilities for state agencies and institutions of higher education that are covered by these provisions.⁶⁸⁸

- **Sending timely notices, reports, and information** - Most state agencies and institutions of higher education are required to give notices, make reports, and otherwise transmit information to SORM and to the Department of Insurance, Division of Workers' Compensation (Division) concerning on-the-job injuries and occupational diseases or illnesses in a timely manner.
- **Designating a claims coordinator** - Most state agencies and institutions of higher education must designate one or more claims coordinators, and must report to SORM any change in this designation.
- **Complying with rules** - Most state agencies and institutions of higher education must comply with all rules enacted by SORM, as well as those of the Division. State agency and institution of higher education policies, guidelines, or instructions must not vary from Division rules, SORM rules, or with the Texas Workers' Compensation Act (Act). As the employer of record, state agencies and institutions of higher education are subject to administrative penalties for violations of the Act that may be assessed against the employer by the Division's Compliance and Practices Division.
- **Keeping adequate records** - Most state agencies and institutions of higher education must make a record of all injuries sustained by employees in the course of employment.
- **Immediately notifying SORM if an injury is severe or fatal** – State agencies and institutions of higher education must immediately notify SORM by telephone if an injury is severe or results in death, in addition to filing the required first report of injury.
- **Posting required notices** – State agencies and institutions of higher education must post notices for workers' compensation insurance coverage in the workplace. State agencies employing law enforcement officers and correctional officers must post a notice regarding certain work-related

⁶⁸⁵ Title 28, Texas Administrative Code, Section 251.207; Texas Labor Code, Section 409.005 (a) (1); and Texas Labor Code, Section 501.001 (6).

⁶⁸⁶ Texas Labor Code, Section 409.005 (a) (2).

⁶⁸⁷ Texas Labor Code, Section 409.005 (b).

⁶⁸⁸ *Employer Responsibilities*, State Office of Risk Management's Web site at <https://www.sorm.state.tx.us/claims-coordinator-overview/employer-responsibilities>.

communicable diseases and eligibility for workers' compensation benefits.⁶⁸⁹ State agencies and institutions of higher education must post a notice in the workplace to inform employees about requirements that may affect qualifying for workers' compensation benefits following a work-related exposure to the human immunodeficiency virus (HIV).⁶⁹⁰

- **Notifying employees about the State's ombudsman program** – State agencies and institutions of higher education are required to inform employees of the Office of Injured Employee Counsel's Ombudsman program. Failure to inform employees of this program is an administrative violation.⁶⁹¹
- **Developing health and safety programs and return-to-work programs** – State agencies and institutions of higher education must have programs in place to promote the health and safety of their employees and to assist injured employees with returning to work and comply with SORM's guidelines. Return-to-work programs must be a coordinated effort involving the Department of Insurance's Division of Workers' Compensation, state agencies and institutions of higher education, employees, and health care providers.⁶⁹²
- **Notifying employees of health care network requirements** – State agencies and institutions of higher education must provide employees with a notice of health care network requirements; obtain a signed acknowledgment from each employee; post a notice of the healthcare network requirements; and notify injured employees of the network requirements at the time of injury.⁶⁹³

For additional information on return-to-work programs, see the *Facilitating an Injured Employee's Return to Work* section in this chapter.

⁶⁸⁹ Title 28, Texas Administrative Code, Section 110.108 (a).

⁶⁹⁰ Title 28, Texas Administrative Code, Section 110.108 (b).

⁶⁹¹ Texas Labor Code, Section 404.153, as amended by House Bill 2082 (85th Legislature, Regular Session).

⁶⁹² Texas Labor Code, Sections 412.051 (a) and 412.0125; and the Department of Insurance, Division of Workers' Compensation's Web sites at <http://www.tdi.texas.gov/wc/rtw/index.html> and <http://www.tdi.texas.gov/wc/safety/index.html>.

⁶⁹³ Texas Insurance Code, Section 1305.005 (d) and (g); and *Worker' Compensation Health Care Networks*, Department of Insurance's Web site at <http://www.tdi.texas.gov/pubs/consumer/cb084.html>.

Workers' Compensation and State Leave Provisions

An employee may elect to use accrued sick leave prior to receiving workers' compensation income benefits. If the employee makes the election to use accrued sick leave, the employee must exhaust all accrued sick leave before the employee is entitled to use income benefits.⁶⁹⁴

After exhausting sick leave, the employee may also use accrued vacation leave. If making this choice, the employee may elect to use all or any number of weeks of vacation leave. The amount of vacation leave the employee elects to use must be exhausted before the employee is entitled to receive income benefits.⁶⁹⁵

Employers may not require employees to exhaust state or Fair Labor Standards Act (FLSA) compensatory time balances before receiving income benefits. In addition, employers may not prohibit employees from using state or FLSA compensatory time while they are receiving income benefits.⁶⁹⁶

Workers' Compensation and Emergency Leave

The administrative head of a state agency or institution of higher education may authorize emergency leave with pay to an employee receiving workers' compensation benefits. The emergency leave payment may not exceed an amount equal to the difference between the basic monthly wage of the employee and the amount of income benefits that the employee received for the month. Emergency leave payments may not extend beyond six months. If emergency leave is authorized, the state agency or institution of higher education must attach a statement of the reasons for the authorization to its payroll voucher for the first payroll period affected by the leave.⁶⁹⁷ See *Emergency Leave* in Chapter 12 (Miscellaneous Leave Provisions) for more information on the requirements concerning the granting and reporting of emergency leave.

Employer's Rights

As the employer of record, state agencies and institutions of higher education are entitled to certain rights under the Texas Workers' Compensation Act. These rights include:

- The right to be present at all administrative proceedings relating to an employee's claim.
- The right to present relevant evidence relating to an employee's claim at any proceeding.
- The right to report suspected fraud.

⁶⁹⁴ Texas Labor Code, Section 501.044 (a).

⁶⁹⁵ Texas Labor Code, Section 501.044 (b).

⁶⁹⁶ Texas Office of the Attorney General, Opinion JC-0188 (2000).

⁶⁹⁷ Texas Labor Code, Section 501.045.

- The right to contest the compensability of an injury if the insurance carrier⁶⁹⁸ 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.
- The right to contest the failure of the insurance carrier to provide accident prevention services.⁶⁹⁹

Employee's Responsibilities

An employee or person representing the employee should notify the employer as soon as possible but not later than 30 days after an injury occurred, or if the injury is an occupational disease, the employee should notify the employer as soon as the employee knows that the injury or injurious exposure might be related to the employment.⁷⁰⁰ 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 Department of Insurance, Division of Workers' Compensation (Division) determines that good cause exists for failure to provide notice in a timely manner, or the employer or its insurance carrier does not contest the claim.⁷⁰¹

Claims for compensation must normally be filed within one year from the date of injury, or if the injury is an occupational disease, a claim must be filed within one year from the date the employee knew or should have known that the disease was related to the employee's employment.⁷⁰² Failure to file a claim for compensation with the Division as required by statute relieves the employer and the employer's insurance carrier of liability unless good cause exists for failure to file a claim in a timely manner or the employer or the employer's insurance carrier does not contest the claim.⁷⁰³

Claims for death benefits generally must be filed within one year of the employee's death. Failure to file within the required time period bars the claim unless the person is a minor or incompetent, or if good cause exists for the failure to file. Separate claims must be filed for each beneficiary unless the claim expressly includes other parties.⁷⁰⁴

⁶⁹⁸ A self-insured governmental entity pays workers compensation claims as if it were an insurance carrier. Insurance carrier is defined in Texas Labor Code, Section 401.011 (27), and includes "a governmental entity that self-insures, either individually or collectively."

⁶⁹⁹ Texas Labor Code, Section 409.011 (b); and *Employer Responsibilities*, State Office of Risk Management's Web site at <https://www.sorm.state.tx.us/claims-coordinator-overview/employer-responsibilities>.

⁷⁰⁰ Texas Labor Code, Section 409.001.

⁷⁰¹ Texas Labor Code, Section 409.002.

⁷⁰² Texas Labor Code, Section 409.003.

⁷⁰³ Texas Labor Code, Section 409.004.

⁷⁰⁴ Texas Labor Code, Section 409.007.

Additional Injury Reporting Requirements

State agencies are required to submit in the administrative statement of its biennial budget request a summary containing:

- The number of first reports of injury filed by the state 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 state agency to increase job safety and to reduce job injuries, including the participation of the head of the state agency and the executive staff of the state agency in training programs offered by the Department of Insurance, Division of Workers' Compensation, and others.⁷⁰⁵

Facilitating an Injured Employee's Return to Work

State agencies are required to develop, implement, and maintain a program designed to assist employees in returning to work after the employees have sustained a compensable injury. Such a program should include appropriate, detailed procedures that identify specific responsibilities and actions that should be taken by designated return-to-work coordinators, supervisors, and employees.⁷⁰⁶

To facilitate an injured employee's return to employment as soon as it is considered safe and appropriate by the injured employee's treating doctor, the treating doctor may request that the employer provide the doctor specific information about the functions and physical responsibilities related to the injured employee's job. The employer should do this using the form developed and adopted by the Commissioner of Workers' Compensation. Information provided to a treating doctor does not constitute:

- A request by the employer for the injured employee to return to his or her job.
- An offer of employment by the employer for the injured employee.
- An admission of the compensability of the employee's injury.⁷⁰⁷

Additional information about the Return-to-Work Program is available on SORM's Web site at <http://www.sorm.state.tx.us/workers-compensation/return-to-work-program>.

In addition, a *Return-to-Work Guide* published by the Department of Insurance's Division of Workers' Compensation is available at <http://www.tdi.texas.gov/wc/rtw/index.html>.

⁷⁰⁵ Texas Labor Code, Section 501.048.

⁷⁰⁶ Texas Labor Code, Section 412.051; and *Return to Work Program*, State Office of Risk Management's Web site at <http://www.sorm.state.tx.us/workers-compensation/return-to-work-program>.

⁷⁰⁷ Texas Labor Code, Section 408.0221 (b), (c), and (d).

Chapter 21
Miscellaneous Provisions

Employee Exit Surveys

Each state agency must provide all employees, who are terminating their employment voluntarily, access to the State Auditor's Office online exit survey.⁷⁰⁸ 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.⁷⁰⁹

The State Auditor's Office considers the following reason codes used by the Office of the Comptroller of Public Accounts' Human Resource Information System (HRIS), the Uniform Statewide Payroll/Personnel System (USPS), and the Standardized Payroll/Personnel Reporting System (SPRS) as voluntary terminations:

- Voluntary separation from agency.
- Transfer to a different state agency or institution of higher education with no break in service.
- Retirement.

The exit survey instrument can be accessed at: <https://www.sao.texas.gov/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 exit survey system, they can indicate whether they want to share their responses with the Office of the Governor and/or their agency's executive director.⁷¹⁰

⁷⁰⁸ Texas Government Code, Section 651.007 (b).

⁷⁰⁹ Texas Government Code, Section 651.007 (a).

⁷¹⁰ Texas Government Code, Section 651.007 (b).

Exit Survey Reporting and Disclosure Requirements

Summarized quarterly reports are available for executive directors and human resources directors. In addition, the State Auditor's Office is required to provide a report summarizing exit survey responses to the Governor, Lieutenant Governor, Speaker of the House of Representatives, and members of the Senate Committee on Finance and House Committee on Appropriations by December 15 before each year of a regular legislative session.⁷¹¹

Individual exit survey responses are not subject to disclosure under Texas Government Code, Chapter 552, including responses furnished to the agency. The responses may be disclosed only to a law enforcement agency in a criminal investigation or by court order.⁷¹²

Human Resources Staffing

State agencies with 500 or more full-time equivalent employees are required to have a human resources employee-to-staff ratio of not more than one human resources employee for every 85 staff members.⁷¹³ 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.⁷¹⁴

Place of Work and Working Hours

Employees must, during normal working hours, conduct agency business only at their regular place of business or assigned duty point unless they are on travel status or have received prior written authorization from the administrator of the employing state agency or institution of higher education. An employee's home may not be considered his or her regular place of business without the written approval of the administrative head of the state agency or institution of higher education.⁷¹⁵ 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.⁷¹⁶ A full-time salaried employee in a state agency or institution of higher education may not be employed in a position for less than 40 hours in a workweek.⁷¹⁷

All state agencies are required to remain open with at least one person on duty during the noon hour each work day to accept calls, receive visitors, and conduct business.⁷¹⁸ The chief administrator of a state agency or institution of higher education that must maintain certain services

⁷¹¹ Texas Government Code, Section 651.007 (e) and (i).

⁷¹² Texas Government Code, Section 651.007 (g).

⁷¹³ Texas Government Code, Section 670.002.

⁷¹⁴ Texas Government Code, Section 670.001.

⁷¹⁵ Texas Government Code, Section 658.010.

⁷¹⁶ Texas Government Code, Section 658.005 (a).

⁷¹⁷ Texas Government Code, Section 658.002 (a).

⁷¹⁸ Texas Government Code, Section 658.005 (a).

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.⁷¹⁹

The chief administrator also has the authority to:

- Keep the agency open during other hours and on other days, with the time worked counting toward the 40 hours a week that are required for full-time employees.
- Make exceptions to the minimum length of the workweek to take care of any emergency or public necessity that the chief administrator finds to exist.⁷²⁰

The governing board of an institution of higher education or a university system may make exceptions to the minimum length of the workweek and the maximum length of a workday to achieve and maintain operational efficiency at the institution of higher education, university system, or an office, department, or division of either.⁷²¹

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.⁷²²

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.⁷²³

Voluntary Work Reduction Program

To increase state efficiency while reducing the cost of state government, a state agency or institution of higher education may create a work reduction program in which a full-time state employee of the state agency or institution of higher education agrees to accept reduced wages and benefits for a proportionate reduction in work hours. State agencies and institutions of higher education that have this program shall place a notice of the program's availability in common areas of the state agency or institution of higher education. Participation by the employee is strictly voluntary and must be for a period of no less than six months. In addition, the agreement must be in writing and signed by the employee. Temporary and exempt employees are not permitted to participate in this program.⁷²⁴

⁷¹⁹ Texas Government Code, Section 658.002 (b).

⁷²⁰ Texas Government Code, Section 658.005 (b) and (c).

⁷²¹ Texas Government Code, Section 658.007 (a).

⁷²² Texas Government Code, Section 658.006; and Texas Office of the Attorney General, Opinion M-1058 (1972).

⁷²³ Texas Government Code, Section 605.001.

⁷²⁴ Texas Government Code, Sections 658.003 and 658.004 (a).

Workforce Planning

As part of their strategic plans, state agencies are required to conduct staffing analyses and develop workforce plans.⁷²⁵ 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.

Institutions of higher education, university systems, the Office of the Governor, the Lieutenant Governor's Office, and agencies within the judicial and legislative branches are excluded from this requirement, but they are encouraged to conduct such planning.⁷²⁶

The State Auditor's Office has published a workforce planning guide to assist agencies with developing their workforce plans. This guide is available at <http://www.hr.sao.texas.gov/Resources/Guides/>.

Designated Information Security Officer

State agencies and institutions of higher education must designate an information security officer who:

- Reports to the agency's or institution's executive-level management,
- Has authority over information security for the entire agency or institution,
- Possesses the training and experience required to perform the duties required by Department of Information Resources' rules, and
- To the extent feasible, has information security duties as the officer's primary duties.⁷²⁷

New Requirement
The 85th Legislature enacted legislation requiring state agencies and institutions of higher education to designate an information security officer.

⁷²⁵ Texas Government Code, Section 2056.0021.

⁷²⁶ Texas Government Code, Sections 2056.001 and 2056.0021.

⁷²⁷ Texas Government Code, Section 2054.136, as added by Senate Bill 1910 (85th Legislature, Regular Session).

Appendices

Appendix 1

Objective, Scope, and Methodology

Objective

The objective of this Inventory was to summarize state and federal human resources management laws that apply to Texas state employees in state agencies and institutions of higher education.

Methodology

Information collected and reviewed included the following:

- Office of the Attorney General of Texas opinions.
- Office of the Comptroller of Public Account's Texas Payroll/Personnel Resource.
- General Appropriations Act (85th Legislature).
- Texas Administrative Code.
- Texas Code of Criminal Procedure.
- Texas Education Code.
- Texas Family Code.
- Texas Government Code.
- Texas Health and Safety Code.
- Texas Human Resources Code.
- Texas Insurance Code.
- Texas Labor Code.
- Texas Occupations Code.
- Code of Federal Regulations.
- Internal Revenue Code.
- United States Code.
- United States Supreme Court cases.

Project Information

Fieldwork was conducted from May 2017 through August 2017. This project is a general reference guide on the State's human resources management statutes; therefore, the information in this Inventory was not subjected to all the tests and confirmations that would be performed in an audit. However, the information in this report was subject to certain quality control procedures to ensure accuracy.

The following members of the State Auditor's staff were involved in creating this Inventory:

- Juan R. Sanchez, MPA, CIA, CGAP (Project Manager)
- Sharon K. Schneider, CCP, PHR, SHRM-CP (Assistant Project Manager)
- Judy Millar, CCP
- Kathy-Ann Moe, MBA
- Lara Foronda Tai, PHR, SHRM-CP
- Tony White, CFE
- Michelle Ann Duncan Feller, CPA, CIA (Quality Control Reviewer)
- John Young, MPAff (Audit Manager)

Appendix 2
State Agency Responsibilities

Table A lists subject areas and the corresponding responsible agencies for various human resources-related subjects. Agencies should contact the appropriate office with questions.

Table A

Agencies Responsible for Human Resources-related Subjects		
Topic	Office to Contact	Phone Numbers and Web sites
Salary Administration	State Auditor's Office - State Classification Team Office of the Comptroller of Public Accounts	(512) 936-9500 http://www.sao.texas.gov/Contact/AgencyContactManagers/ (512) 463-4008 or (512) 463-2277 https://fm.xcpa.texas.gov/fm/pubs/paypol/index.php
Discrimination in Employment	Texas Workforce Commission	(512) 463-2642 (888) 452-4778 (toll free) http://www.twc.state.tx.us/partners/civil-rights-discrimination
Vacation and Leave	State Auditor's Office - State Classification Team	(512) 936-9500 http://www.sao.texas.gov/Contact/AgencyContactManagers/
Health Insurance	Employees Retirement System	(877) 275-4377 (toll free) http://ers.texas.gov/
Holidays	Office of the Comptroller of Public Accounts	(512) 463-4008 or (512) 463-2277 https://fm.xcpa.texas.gov/fm/pubs/paypol/
Job Vacancy Posting	Texas Workforce Commission	(512) 463-2222 (800) 832-9394 (toll free) http://www.twc.state.tx.us/businesses/recruiting-hiring-resources
Longevity	Office of the Comptroller of Public Accounts	(512) 463-4008 or (512) 463-2277 https://fm.xcpa.texas.gov/fm/pubs/paypol/nonsalary_provisions/index.php
Payroll	Office of the Comptroller of Public Accounts	(512) 463-4008 or (512) 463-2277 https://fm.xcpa.texas.gov/fm/payper/index.php
Retirement	Employees Retirement System Teacher Retirement System	(877) 275-4377 (toll free) http://www.ers.texas.gov (512) 542-6400 (800) 223-8778 (toll free) https://www.tr.s.texas.gov/Pages/about_contacts_us.aspx
Travel	Office of the Comptroller of Public Accounts	(512) 475-0966 https://fm.xcpa.texas.gov/fm/travel/index.php
Unemployment Insurance	Texas Workforce Commission	(866) 274-1722 (toll free) http://www.twc.state.tx.us/businesses/unemployment-benefits-contact-information-employers

Agencies Responsible for Human Resources-related Subjects		
Topic	Office to Contact	Phone Numbers and Web sites
Veterans' Benefits	Texas Veterans Commission	(512) 463-5538 (512) 463-6564 (800) 252-8387 (toll free) http://www.tvc.state.tx.us
Workers' Compensation	Division of Workers' Compensation at the Department of Insurance	(800) 252-7031 (toll free) http://www.tdi.texas.gov/wc/dwcccontacts.html
	State Office of Risk Management	(512) 475-1440 (877) 445-0006 (toll free) http://www.sorm.state.tx.us/about-us/contact-us

Appendix 3
 Entitlements for State Agency Employees

Table B

Entitlements for State Agency Employees					
Employment Status ^a	Vacation Leave Accrual ⁷²⁸	Sick Leave Accrual ⁷²⁹	State Service Credit ⁷³⁰	Longevity Pay ⁷³¹	Holidays ⁷³²
Classified Full-time	Yes	Yes	Yes	Yes	Yes
Classified Part-time	Yes, proportionate to the number of hours scheduled to work.	Yes, proportionate to the number of hours scheduled to work.	Yes	No	Yes, proportionate to the number of hours scheduled to work.
Exempt Full-time	Yes	Yes	Yes	Yes	Yes
Exempt Part-time	Yes, proportionate to the number of hours scheduled to work.	Yes, proportionate to the number of hours scheduled to work.	Yes	No	Yes, proportionate to the number of hours scheduled to work.
Unclassified Full-time	Yes	Yes	Yes	Yes	Yes
Unclassified Part-time	Yes, proportionate to the number of hours scheduled to work.	Yes, proportionate to the number of hours scheduled to work.	Yes	No	Yes, proportionate to the number of hours scheduled to work.
Temporary Classified/Unclassified/Exempt (Full-time)	Yes	Yes	Yes	No	Yes
Temporary Classified/Unclassified/Exempt (Part-time)	Yes, proportionate to the number of hours scheduled to work.	Yes, proportionate to the number of hours scheduled to work.	Yes	No	Yes, proportionate to the number of hours scheduled to work.
Contract Employee	No	No	No	No	No

^a **Classified positions are those that are subject to the State's Position Classification Plan. Exempt positions are excluded from the State's Position Classification Plan and are listed in the General Appropriations Act. Unclassified positions are not subject to the State's Position Classification Plan. Temporary positions are those limited in duration and established for a specific period of time. Temporary positions also include seasonal employees. Contract positions are filled by independent contractors, temporary workers supplied by staffing companies, contract company workers, and consultants.**

⁷²⁸ Texas Government Code, Section 661.152.

⁷²⁹ Texas Government Code, Section 661.202.

⁷³⁰ Texas Government Code, Section 659.046.

⁷³¹ Texas Government Code, Sections 659.041, 659.042, and 659.043.

⁷³² Texas Government Code, Sections 662.001, 662.005, and 662.008.

Entitlements for Employees of Institutions of Higher Education

Table C

Entitlements for Employees of Institutions of Higher Education ^a					
Employment Status	Vacation Leave Accrual ⁷³³	Sick Leave Accrual ⁷³⁴	State Service Credit ⁷³⁵	Longevity Pay ⁷³⁶	Holidays ⁷³⁷
Regular Staff Employee (Full-time)	Yes	Yes	Yes	Yes	Yes
Regular Staff Employee (Part-time)	Yes, proportionate to the number of hours scheduled to work.	Yes, proportionate to the number of hours scheduled to work.	Yes	No	Yes, proportionate to the number of hours scheduled to work.
Faculty (Full-time or Part-time) 20 Hours or More	No, except those employed for 12 calendar months.	Yes, proportionate to the number of hours scheduled to work.	Yes	No	Yes, proportionate to the number of hours scheduled to work.
Non-Faculty (Less than 20 hours and/or less than 4.5 month appointment)	No	No	Yes	No	No
Positions Requiring Student Status as a Condition of Employment	No	No	Yes ^b	No	No

^a For institutions of higher education, a regular staff employee is defined as one who is employed to work at least 20 hours per week for a period of at least four-and-one-half months, excluding students employed in positions that require student status as a condition of employment. A faculty member employed for a period of less than 12 months is not eligible for vacation accrual in accordance with Texas Government Code, Section 661.152 (a).

^b Texas Office of the Attorney General, Opinion JM-407 (1985).

⁷³³ Texas Government Code, Section 661.152.

⁷³⁴ Texas Government Code, Sections 661.201 (b) and 661.202 (c).

⁷³⁵ Texas Government Code, Section 659.046 (a).

⁷³⁶ Texas Government Code, Sections 659.041 (2) (B), 659.042 (6), and 659.043 (a).

⁷³⁷ Texas Government Code, Sections 662.008 and 662.011 (c).

Pay Entitlements Upon Separation from State Employment

An employee who separates from state employment may be entitled to additional pay besides his or her regular pay. Table D lists the various pay entitlements to which an employee may be entitled upon separating from state employment. See Chapter 9 (Employee Compensation) and Chapter 11 (General Leave Provisions) for additional information regarding pay and leave entitlements.

Table D

Pay Entitlements Upon Separation from State Employment			
Pay Entitlements	Type of Separation		
	Any Separation in Which the Employee Is Permitted to Remain on the Payroll to Expend Accrued Vacation	Any Separation in Which the Employee Is Not Permitted to Remain on the Payroll to Expend Accrued Vacation	Death (Payment to estate)
Lump-Sum Payment for Accrued Vacation Leave	No, since the employee is allowed to remain on the payroll to expend accrued vacation leave.	Yes. ^a	Yes.
Lump-Sum Payment for Accrued Sick Leave	No, also not eligible to use sick leave while remaining on the payroll to expend vacation.	No.	Yes, for ½ sick leave hours not to exceed 336 hours.
Further Accrual of Vacation Leave	No.	Not applicable.	Not applicable.
Further Accrual of Sick Leave	No.	Not applicable.	Not applicable.
Lump-Sum Payment for Accrued State Compensatory Time ^b	No. ^b	No. ^b	No. ^b
Lump-Sum Payment for Accrued FLSA Compensatory Time	Yes.	Yes.	Yes. ^c
Payment for Longevity or Hazardous Duty	Yes.	Not applicable.	No.
Holiday	Yes.	Yes. ^d	Yes. ^d
General Salary Increase	Yes.	No.	No.

^a Requires six months of continuous state service.

^b Texas Government Code, Section 659.015, provides exceptions to allow for the payment of state compensatory time to employees of certain agencies and institutions of higher education under certain circumstances.

^c Agencies should consult their legal counsel and the U.S. Department of Labor for more information regarding the payment of accrued FLSA compensatory time to the estate of a deceased employee.

^d 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 are entitled to have their remaining vacation and sick leave transferred to their new employer.⁷³⁸ In addition, employees who have separated from employment at a state agency and then are rehired by a state agency or institution of higher education may be entitled to have their vacation and sick leave reinstated, depending on the length of separation from the State. Employees who have separated from employment at an institution of higher education are entitled to be paid for their vacation leave upon separation.⁷³⁹ Table E lists these entitlements, including the transfer or reinstatement of state compensatory time and Fair Labor Standards Act (FLSA) overtime. See Chapter 11 (General Leave Provisions) for additional information regarding leave balances and leave transfers.

Table E

Transfer and Rehire Leave Reinstatement Entitlements				
Employment Status	Transfer or Reinstatement of Vacation Leave	Transfer or Reinstatement of Sick Leave	Transfer or Reinstatement of State Compensatory Time	Transfer or Reinstatement of FLSA Overtime
Employee Directly Transfers From One State Agency or Institution to Another State Agency or Institution Without a Break In Service.	Yes. All remaining vacation leave should be transferred to the new state employer.	Yes. All remaining sick leave should be transferred to the new state employer. ^a	No.	No. FLSA overtime must be paid by employer from which the employee transferred. ^b
Employee Separates from Employment at 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. ^c	Yes, as long as the employee did not donate that leave and returns to state employment within 12 months after the end of the month following the employee's separation. ^{a d}	No.	No. FLSA overtime must be paid by employer from which the employee separated. ^b
Employee Separates from Employment at an Institution and then Returns to State Employment after a Break in Service.	No. Employees who separate employment with the institution are entitled to be paid their vacation leave balance upon separation.	Yes, as long as the employee did not donate that leave and returns to state employment within 12 months after the end of the month following the employee's separation. ^{a d}	No.	No. FLSA overtime must be paid by employer from which the employee separated. ^b
Employee Transfers to Another State Agency as a Result of a Legislative Mandate.	Yes. All remaining vacation leave should be transferred to the new state employer.	Yes. All remaining sick leave should be transferred to the new state employer.	Yes, if that is the agreement between the agencies. ^e	Yes, if that is the agreement between the agencies. ^e Otherwise, the employee must be paid for the remaining balance.

⁷³⁸ Texas Government Code, Sections 661.153 and 661.204.

⁷³⁹ Texas Government Code, Sections 661.062, 661.152 (k), and 661.205.

Transfer and Rehire Leave Reinstatement Entitlements

Employment Status	Transfer or Reinstatement of Vacation Leave	Transfer or Reinstatement of Sick Leave	Transfer or Reinstatement of State Compensatory Time	Transfer or Reinstatement of FLSA Overtime
-------------------	---	---	--	--

^a **The transfer and reinstatement of sick leave applies to “earned” and accumulated sick leave in accordance with Texas Government Code, Sections 661.204 and 661.205.** Sick leave pool and donated sick leave is not eligible for transfer or reinstatement.

^b Code of Federal Regulations, Title 29, Section 553.27 (b), states employees must be paid unused FLSA compensatory time upon termination with an employer.

^c As long as the employee has had continuous employment for at least six months.

^d Employees who separate for reasons other than a formal reduction in force and who are re-employed by the same agency or institution within 12 months may only have their sick leave balance restored if they have had a break in service of at least 30 calendar days since their date of separation.

^e Texas Government Code, Section 662.0071, as amended by Senate Bill 706 (85th Legislature, Regular Session), provides the specific situations in which agencies must agree to transfer an employee’s state compensatory balances, and may also be applicable to FLSA overtime.