



Resource Guide

Texas Human Resources Management Statutes Inventory



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State Auditor

2024–2025 Biennium
Report No. 24-303



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A Resource for Management of State Agencies and Higher Education Institutions

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The Texas Human Resources Management Statutes Inventory is provided by the State Auditor’s Office as a guide to assist state agencies and higher education institutions. 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 24th edition supersedes all previous editions and reflects changes made in the 88th Legislative Session.

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.”

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, or legislative agencies. State entities should consult with their legal counsel to ensure compliance with all applicable federal and state laws and regulations.

The State Auditor’s Office has strived to provide an accurate summary of laws relating to human resources management. However, due to the complex nature of the subject matter, the inventory is not intended to be comprehensive or authoritative. 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 from state entities concerning this inventory should be directed to the Classification Analyst from the State Auditor's Office's State Classification Team who is assigned to the entity. Information about analyst assignments is on [the State Auditor's Office website](#).

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Chapter 1

Standards of Conduct

Ethics Policy

Each state agency and higher education institution 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. The Texas Office of the Attorney General is responsible for developing and distributing a model policy that state agencies may use. A state employee who violates an agency's ethics policy is subject to termination.

Nepotism

Nepotism statutes focus primarily on prohibiting public officials from employing their 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; 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 Figure 1-1 on the next page.

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. 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.

A “public official” is:

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

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

Figure 1-1

Consanguinity and Affinity Relationship Chart From Public Official or Employee

Consanguinity (Includes individuals related by blood to the official or employee)			Affinity (Includes an official’s or employee’s spouse and individuals related to the spouse)		
First Degree	Second Degree	Third Degree	First Degree	Second Degree	Third Degree
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

Some 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 first term in the Legislature when no one related to the appointee within the prescribed degrees was a member or candidate.

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; or

- One year, if the public official is elected through the general election for state and county officers.

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.

The Texas Office of the Attorney General opinions on nepotism are available on [the Texas Office of the Attorney General's website](#).

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. For a list of state agencies covered under this provision, see Texas Government Code, Section 614.171.

An officer's violation of the adopted standards is just cause for dismissal or for 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.

Political Influence

A state agency or higher education institution 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.

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

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

State agencies and higher education institutions 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 in response to a request.

State agencies and higher education institutions 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. State agencies and higher education institutions 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.

Each agency and higher education institution 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.

Publicity

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

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.

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 his or her period of state service or employment.

A former state officer or employee of a state agency or higher education institution who during the period of state service or employment participated on behalf of a state agency or higher education institution in a procurement or contract negotiation involving a person or business entity may not accept employment from that person or business entity before the second anniversary of the date on which the contract was signed or the procurement is 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 reasonably tend to influence the employee's or officer's discharge of official duties or that is offered with the intent to influence official conduct.

Texas Ethics Commission

The Texas Ethics Commission issues advisory opinions on standards of conduct and conflict of interest provisions of specific state statutes; advisory opinions may be requested by a person subject to the application of such statutes.

Advisory opinions are available on [the Texas Ethics Commission's website](#).

- 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 reasonably impair the employee's or officer's independence of judgment in the performance of official duties.
- Make personal investments that might reasonably create a substantial 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.

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

Use of Alcoholic Beverages

Except for legitimate law enforcement purposes, a state agency or higher education institution 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.

Use of State Property

State property may be used only for official state purposes and should not be used for personal purposes. This includes the use of state-owned or state-leased motor vehicles, which may be used only for official state business. The use of such vehicles to commute to and from work is acceptable if the administrative head of a state agency or higher education institution approves it and determines that such use may be necessary to ensure vital agency functions are performed. 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. The reporting requirement does not apply to higher education institutions.

Prohibition on the Use of Certain Social Media Applications and Services

New Requirement

The 88th Legislature enacted legislation prohibiting the use of certain social media applications and services on devices owned or leased by state agencies and higher education institutions. This requirement took effect June 14, 2023.

A state agency and higher education institution as defined by Texas Government Code, Section 620.001(2), must adopt a policy prohibiting the installation or use of certain social media applications or services as defined by Texas Government Code, Section 620.001(1), on any device owned or leased by the state agency or higher education institution and requiring the removal of such applications or services from those devices.

The required policy may provide for certain exceptions necessary for law enforcement and information security measures.

The Department of Information Resources and Department of Public Safety must jointly identify social media applications or services that pose a risk to the State and develop a model policy that state agencies and higher education institutions can use in creating the required policy. The Department of Information Resources must publish and periodically update the required list on its website.

Additional Information

For additional information about the topics discussed in Chapter 1:

- **Ethics Policy:** Texas Government Code, Section 572.051(b), (c), and (d).

- **Nepotism:** Texas Government Code, Sections 573.001(3); 573.002; 573.022; 573.023; 573.024(a); 573.025; 573.041; 573.061(1), (2), and (3); and 573.062(a) and (b); and Texas Office of the Attorney General, Opinion MW-540 (1982).
- **Physical Fitness Programs and Standards:** Texas Government Code, Section 614.172.
- **Political Influence:** Texas Government Code, Sections 556.004; 556.005(a) and (b); 556.006; and 556.009.
- **Publicity:** Texas Government Code, Section 2113.011(a) and (b).
- **Employment Restrictions for Former Officers or Employees:** Texas Government Code, Sections 572.054(a), (b), (c), and (h); and 572.069.
- **Unacceptable Solicitations and Benefits:** Texas Government Code, Sections 572.001(b), 572.051(a), 660.016(a), and 2113.014(a).
- **Use of Alcoholic Beverages:** Texas Government Code, Sections 660.113(e), 2113.012, and 2113.101.
- **Use of State Property:** Texas Government Code, Sections 2101.0115(a), (c)(13), and (e); 2113.013; and 2203.004.
- **Prohibition on the Use of Certain Social Media Applications:** Texas Government Code, Sections 620.001, 620.003, 620.004, and 620.006, as added by Senate Bill 1893 (88th Legislature).

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, disability, age, or genetic information. This chapter summarizes some major federal and state laws that are applicable to state agencies and higher education institutions.

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 and grant relief related to state and federal employment laws. The Commission provides training to help state agencies and higher education institutions improve their understanding of and compliance with Equal Employment Opportunity laws.

Each state agency and higher education institution 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.

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

Age Discrimination in Employment Act of 1967 (ADEA)

The 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.

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

The 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, public transportation, state and local government services, and telecommunications.

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

The ADA 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. The ADA undergoes continuous interpretation in the court systems; therefore, an agency or higher education institution should consult with its legal counsel or subject matter experts in regard to these matters.

ADA Guidance and Resources for State and Local Governments

The U.S. Department of Justice’s Civil Rights Division has issued a resource that provides general guidance to assist state and local governments in understanding and complying with the ADA’s requirements. This resource and additional information are available on [the ADA website](#).

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 BFOQs. A BFOQ is a requirement that is necessary and related to the performance of a job and that would otherwise be unlawful because of its discriminatory impact based on one's sex, religion, race, or other reasons. The concept of BFOQ is interpreted very narrowly by federal courts and the U.S. Equal Opportunity Employment Commission, and state agencies and higher education institutions should consult with their legal counsel before choosing to use a BFOQ.

Texas Labor Code, Chapter 21 and Title VII of the Civil Rights Act of 1964

Together, the Texas Labor Code, Chapter 21, and Title VII of the Civil Rights Act of 1964 prohibit employment discrimination because of race, sex, color, national origin, religion, age, or disability. An employer commits an unlawful employment practice if, because of race, sex, color, national origin, religion, age, or disability, 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.

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.

New Requirement

The 88th Legislature enacted legislation prohibiting race discrimination based on an employee’s hair texture or protective hairstyle commonly or historically associated with race. This requirement took effect September 1, 2023.

Racial Discrimination Based on Hair Texture or Protective Hairstyle

Texas Labor Code, Chapter 21, prohibits race discrimination because of, or on the basis of, an employee’s hair texture or protective hairstyle commonly or historically associated with race. Protective hairstyle is defined as including braids, locks, and twists.

Employers are also prohibited from adopting or enforcing a dress or grooming policy that discriminates against a hair texture or protective hairstyle commonly or historically associated with race.

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.

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 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.”¹

A similar definition exists at the state level, and the Texas Labor Code provides that an employer commits an unlawful employment practice if sexual harassment of an employee occurs and the employer or the employer’s agents or supervisors (1) know or should have known that the conduct constituting sexual harassment was occurring, and (2) fail to take immediate and appropriate corrective action.

Equal Pay Act of 1963 (EPA)

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

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.

Genetic Information Nondiscrimination Act of 2008 (GINA)

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

¹ Title 29, Code of Federal Regulations, Section 1604.11(a).

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.

Genetic Testing Discrimination

State agencies and higher education institutions 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.

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.

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.

Pregnant Workers Fairness Act (PWFA)

New Federal Requirement

The Pregnant Workers Fairness Act (PWFA) requires employers to provide reasonable accommodations to applicants or employees with known limitations related to pregnancy, childbirth, or related medical conditions. The PWFA took effect June 27, 2023.

Under the federal PWFA, employers are required to provide reasonable accommodations to an applicant or employee with known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation would cause an undue hardship on the employer.

Additional information about the PWFA is available on [the U.S. Equal Employment Opportunity Commission's website](#).

Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act) and Right to Express Breast Milk

New Federal Requirement

The federal PUMP Act gives nursing employees the right to reasonable break times and a private place to pump breast milk while at work. The PUMP Act took effect December 29, 2022.

Under the federal PUMP Act, employers are required to provide employees reasonable break time and a place to pump breast milk while at work.

Covered employees must be provided with a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk. Under the PUMP Act, a private bathroom is not a permissible location.

Additionally, when an employee uses break time at work to express breast milk, the employee must either be completely relieved from duty **or** must be paid for the break time. An employee who chooses to pump breast milk while using a break time that is provided as a paid break time must be compensated in the same way other employees are compensated for that paid break time.

Right to Express Breast Milk

Under Texas Government Code, Chapter 619, state agencies and higher education institutions 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. Similar to the federal PUMP Act, state agencies and higher education institutions must provide an employee a reasonable amount of break time to express breast milk and a place (other than a multiple-user bathroom) where the employee can express breast milk shielded from view and free from intrusion from other employees and the public.

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

Protections in Reporting Violations of Law

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

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.

Reporting Child Abuse and Neglect

An employer may not take an adverse employment action against a professional who, in good faith, reports child abuse or neglect to the person's supervisor,

administrator, a regulatory agency, or law enforcement. In this situation, “professional” means an employee of a facility licensed, certified, or operated by the State and who, in the normal course of official duties or duties for which a license or certification is required, has direct contact with children. The term includes teachers, nurses, doctors, day-care employees, employees of a clinic or health care facility that provides reproductive services, juvenile probation officers, and juvenile detention or correctional officers.

Persons initiating or cooperating with an investigation are also extended this protection. This protection does not apply to a person who discloses his or her 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 person’s own abuse or neglect of a child.

Texas Whistleblower Act

A state agency or higher education institution 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. Agencies and higher education institutions must inform their employees of their rights by posting a sign in a prominent location in the workplace. A copy of this sign may be obtained online from [the Texas Office of the Attorney General’s website](#).

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.

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.

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. Figure 2-1 provides a list of posters that may be required as well as the agencies responsible for their distribution. This list is not all-inclusive and additional information, including links to these resources, is available through [the Texas Workforce Commission’s website](#) and [the U.S. Department of Labor’s website](#).

Figure 2-1

Required Workplace Posters

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>Texas Payday Law</i>
Texas Workforce Commission	<i>Texas Unemployment Compensation Act</i>
Texas Workforce Commission	<i>The Law in Texas (optional poster)</i>
Texas Workforce Commission	<i>Reporting Instances of Workplace Violence or Suspicious Activity²</i>
U.S. Department of Homeland Security, E-Verify	<i>Immigrant and Employee Rights (IER) Right to Work Poster</i>
U.S. Department of Homeland Security, E-Verify	<i>E-Verify Participation 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>

² No later than March 1, 2024, the Texas Workforce Commission must adopt rules prescribing the form and content of the notice for reporting instances of workplace violence or suspicious activity and informing employees of their right to make such a report.

Issuing Agency	Poster Title
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 and Responsibilities Under The Family and Medical Leave Act</i>
U.S. Equal Employment Opportunity Commission	<i>Know Your Rights</i>

Additional Information

For additional information about the topics discussed in Chapter 2:

- **General Information:**
 - o Texas Workforce Commission: Texas Labor Code, Sections 21.0015, 21.003(a), 21.010, and 21.201(a).
- **Age Discrimination in Employment Act of 1967:** Texas Labor Code, Sections 21.051 and 21.101; Title 29, United States Code, Sections 621 – 634 (Age Discrimination in Employment Act of 1967); and [Fact Sheet: Age Discrimination](#), U.S. Equal Employment Opportunity Commission’s website.
- **Americans with Disabilities Act of 1990 and the Americans with Disabilities Act Amendments Act of 2008:** [Guide to Disability Rights Laws](#), U.S. Department of Justice’s website; and [ADA Amendments Act of 2008: Frequently Asked Questions](#), U.S. Department of Labor’s website.
- **Texas Labor Code and Title VII of the Civil Rights Act of 1964:** Texas Labor Code, Sections 21.051 and 21.110; Title 42, United States Code, Section 2000e-2 (Title VII of Civil Rights Act of 1964); and [Questions and Answers about Race and Color Discrimination in Employment](#), U.S. Equal Employment Opportunity Commission’s website.
 - o Racial Discrimination Based on Hair Texture or Protective Hairstyle: Texas Labor Code, Section 21.1095, as added by House Bill 567 (88th Legislature).
 - o Religious Affiliation Discrimination: Texas Labor Code, Section 21.108.
 - o Sexual Harassment: Title 29, Code of Federal Regulations, Section 1604.11(a), and Texas Labor Code, Sections 21.141 and 21.142.

- **Equal Pay Act of 1963:** [The Equal Pay Act of 1963](#) and [Equal Pay/Compensation Discrimination](#), U.S. Equal Employment Opportunity Commission’s website.
- **Federal Pregnancy Discrimination Act of 1978:** Texas Labor Code, Section 21.106; Texas Government Code, Section 411.0079; and [The Pregnancy Discrimination Act of 1978](#) and [Fact Sheet: Pregnancy Discrimination](#), U.S. Equal Employment Opportunity Commission’s website.
- **Genetic Information Nondiscrimination Act of 2008:** [The Genetic Information Nondiscrimination Act of 2008](#) and [What You Should Know: Questions and Answers about the Genetic Information Nondiscrimination Act \(GINA\) and Employment](#), U.S. Equal Employment Opportunity Commission’s website.
- **Genetic Testing Discrimination:** Texas Labor Code, Sections 21.401, 21.402, 21.403, 21.4031, and 21.4032.
- **Lilly Ledbetter Fair Pay Act of 2009:** [Lilly Ledbetter Fair Pay Act of 2009](#) and [Notice Concerning the Lilly Ledbetter Fair Pay Act of 2009](#), U.S. Equal Employment Opportunity Commission’s website.
- **Pregnant Workers Fairness Act:** [The Pregnant Workers Fairness Act](#) and [What You Should Know About the Pregnant Workers Fairness Act](#), U.S. Equal Employment Opportunity Commission’s website.
- **Providing Urgent Maternal Protections for Nursing Mothers Act and Right to Express Breast Milk:** [FLSA Protections to Pump at Work](#), U.S. Department of Labor’s website; [Fact Sheet #73: FLSA Protections for Employees to Pump Breast Milk at Work](#), U.S. Department of Labor’s website; [Frequently Asked Questions – Pumping Breast Milk at Work](#), U.S. Department of Labor’s website; and Texas Government Code, Sections 619.003, 619.004, and 619.005.
- **Protections in Reporting Violations of Law:**
 - o Reporting Discrimination: Texas Labor Code, Section 21.055.
 - o Reporting Child Abuse and Neglect: Texas Family Code, Sections 261.101(b) and 261.110(a), (b), and (m).
 - o Texas Whistleblower Act: Texas Government Code, Sections 554.002(a) and 554.009(a).

- **Public Employee Labor Unions:** Texas Labor Code, Section 101.052; and Texas Government Code, Section 617.004.
 - Strikes: Texas Government Code, Section 617.003.
- **Required Posters at the Workplace:**
 - [*Posters for the Workplace*](#), Texas Workforce Commission’s website.
 - [*Workplace Posters*](#), U.S. Department of Labor’s website.
 - [*Employer Resources – Posters*](#), E-Verify’s website.
 - *Reporting Instances of Workplace Violence or Suspicious Activity*, Texas Labor Code, Chapter 104A, as added by House Bill 915 (88th Legislature).

Chapter 3

Employment 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. 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 employees who are subject to federal and state statutory provisions and regulations that may affect the at-will relationship. Agencies should consult their legal 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 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. 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 malice or in reckless disregard for the truth. This applies to a managerial employee or other representative of the employer who is authorized to provide and who provides this information. An employer is not required to provide an employment reference to or about a current or former employee.

An employer may not disclose information about a licensed nurse or licensed vocational nurse that relates to conduct that is protected under Texas Occupations

Code, Sections 301.352 and 303.005. 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.

Criminal History Checks

Texas Government Code, Chapter 411, Subchapter F, 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, Chapter 411, Subchapter F, for more information on agency-specific access and limitations.

Dissemination of Criminal History Information

New Requirement

The 88th Legislature enacted legislation that directs the Department of Public Safety (Department) to grant access to criminal history record information to a research organization or public or private higher education institution working on a research or statistical project that is related to the administration of criminal justice and approved by the Department and is either funded by a criminal justice grant or government funds, **or** meets certain federal requirements. This requirement took effect September 1, 2023.

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, including a research organization or public or private higher education institution, working on a research or statistical project that is

related to the administration of criminal justice and approved by the Department and that is funded in whole or in part by a criminal justice grant or government funds; or meets the requirements of Title 28, Code of Federal Regulations, Part 22.

- 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:
 - o Specifically authorizes access to the information.
 - o Limits the use of information to the purposes for which it is given.
 - o Ensures the security and confidentiality of the information.
 - o Provides for sanctions if a requirement imposed is violated.
 - o 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 non-criminal justice agency to provide services related to the use of criminal history record information, if the agreement:
 - o Specifically authorizes access to the information.
 - o Limits the use of information to the purposes for which it is given.
 - o Ensures the security and confidentiality of the information.
 - o Provides for sanctions if a requirement imposed is violated.
 - o 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.

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 (FBI) that relate to the dissemination or use of criminal history record information.

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. It is a criminal offense to knowingly obtain, use, or disclose a

criminal history record in an unauthorized manner. Additionally, it is an offense to obtain, use, or disclose criminal history record 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.

Criminal History Checks on Information Technology Employees

New Requirement

The 88th Legislature enacted legislation that allows state agencies and higher education institutions to obtain from the FBI and the Department of Public Safety, or any other criminal justice agency in the State, criminal history record information related to certain information technology employees. The legislation also prohibits state agencies and higher education institutions from releasing or disclosing the criminal history record information obtained from the FBI. This requirement took effect June 13, 2023.

A state agency or higher education institution is entitled to obtain criminal history record information maintained or indexed by the FBI or maintained by the Department or any other criminal justice agency in the State that relates to a person who:

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

A state agency or higher education institution may not release or disclose to any person the criminal history record information obtained from the FBI.

New Requirement

The 88th Legislature enacted legislation that allows state agencies and higher education institutions to release or disclose criminal history information about certain information technology employees obtained from the Department of Public Safety or any other criminal justice agency in the State, if the release or disclosure occurs in a criminal proceeding. The legislation also amends the requirement for when agencies and institutions must destroy criminal history information. This requirement took effect June 13, 2023.

A state agency or higher education institution that obtains criminal history record information from the Department, or from any other criminal justice agency in the State, 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;
- To the affected contractor or subcontractor; **or**
- In a criminal proceeding.

A state agency or higher education institution and the affected contractor or subcontractor are required to destroy criminal history record information after the information is used for the purposes authorized by Texas Government Code, Section 411.1405.

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

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 higher education institution. The Texas Office of the Attorney General may charge a fee to the state agency or higher education institution to cover the cost of the review. The policies and procedures adopted by the state agency or higher education institution 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.

Criminal History Checks on Security-Sensitive Positions in Higher Education

Higher education institutions and the Higher Education Coordinating Board are also entitled to obtain criminal history record information from the Department for the purpose of evaluating persons who are applicants for employment in security-sensitive positions.

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.

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.

All criminal history information obtained under Texas Government Code, Section 411.094, must be destroyed after the information is used for its authorized purpose.

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 website](#).

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.

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, and
- The individual is 25 years of age or younger.

These provisions apply to a department, commission, board, office, or other agency in the executive branch of state government, including a higher education institution. 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.

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 than the decision that is the subject of the complaint if the governing board determines that the former foster child employment preference was not applied.

Military Employment Preference

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

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 correspond to each position contained in the State's Position Classification Plan.

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 correspond to the employment opening if the duties of the available position correlate with a military occupational specialty.

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 that identifies:

- The five most common military occupational specialties of service members who are transitioning from military service to employment.
- 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.
- Any other data or information that helps support the transition of service members and veterans into the occupations found to offer the best transferable skills that meet the needs of employers, as identified during the Commission’s administration of the College Credit for Heroes program.

The report is submitted 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.

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.

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.

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.

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

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. 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.

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

Multiple Employment with the State

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

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

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

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 higher education institutions are required to ensure that the person is compensated for all combined time actually worked that exceeds 40 hours per week. The agencies and higher education institutions are required to cooperate to determine which agency or higher education institution is responsible for ensuring that the employee is properly compensated according to those provisions.

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

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

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 higher education institution and all the employing institutions are within the same university system.

Appointments at State Higher Education Institutions

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

A full-time employee at a higher education institution who has more than one position may receive pay for working more than 40 hours in a week if the institution

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

Posting Job Vacancies

State agencies and higher education institutions with job vacancies are required to list these vacancies with the Texas Workforce Commission (Commission) in the [WorkinTexas.com system](#). This applies only to vacancies for which candidates from outside the agency will be considered. Each notice of a job vacancy must be posted for a minimum of 10 working days unless the agency notifies the Commission that the vacancy has been filled within this time frame. In addition to using the statutorily required methods to announce job vacancies, state agencies and higher education institutions are encouraged to make other efforts to inform outside applicant recruitment sources of job vacancies.

A state agency or higher education institution 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.

Online State Agency Employment Applications

The online system for listing state agency employment openings, excluding those for higher education institutions or university systems, that the 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 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.

Probationary or Introductory Period

There is no state law either requiring or prohibiting an employee probationary or introductory period. State agencies and higher education institutions 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.

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.

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.

Additional information regarding selective service registration, including a list of individuals exempt from registration, is available on [the Selective Service System’s website](#).

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. 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, Employment Eligibility Verification, upon hiring a person. This form must be completed within three business days of the hire.

A state agency or higher education institution must register and participate in the E-verify program to verify information for all new employees.

Additional information regarding the employment eligibility verification process is available on [the U.S. Citizenship and Immigration Services' website](#).

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.

A volunteer program must include:

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

State agencies with volunteer programs may:

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

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

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.

Workforce Analysis

Each biennium, state agencies and higher education institutions must analyze their current workforces and compare the numbers employed in each demographic group and job category to those available in the statewide civilian workforce to determine the percentage of exclusion or underutilization by job category within each state agency.

In addition, state agencies and higher education institutions 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.

Recruitment Plans

Based on workforce availability analyses or court-ordered remedies or agreements, state agencies and higher education institutions 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 higher education institutions to ensure that the required plans are consistent with state statute. In addition, state agencies and higher education institutions must report to the Commission the number of protected class hires in each job

category that the agency and institution made during the preceding fiscal year. This report is due no later than November 1 of each year.

Additional Information

For additional information about the topics discussed in Chapter 3:

- **At-Will Employment:** Texas Office of the Attorney General, Opinion JM-941 (1988).
- **Reference Checks:** Texas Labor Code, Sections 103.001, 103.003, 103.004, and 103.005.
- **Criminal History Checks:**
 - o Dissemination of Criminal History Information: Texas Government Code, Section 411.083, as amended by House Bill 1184 (88th Legislature); and Sections 411.084(a) and 411.085.
 - o Criminal History Checks on Information Technology Employees: Texas Government Code, Section 411.1405, as amended by House Bill 4123 (88th Legislature).
 - o Criminal History Checks on Security-Sensitive Positions in Higher Education: Texas Government Code, Section 411.094.
- **Equal Employment Opportunity Commission (EEOC) Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII:** [EEOC Enforcement Guidance](#), EEOC's website.
- **Employees Working Out of State:** Texas Government Code, Section 651.002.
- **Employment Preference for Former Foster Children:** Texas Government Code, Sections 672.001, 672.002, 672.004, and 672.005.
- **Military Employment Preference:** Texas Government Code, Section 657.003, as amended by Senate Bill 1376 (88th Legislature).
- **Military Occupational Specialty Codes on Employment Openings:** Texas Government Code, Sections 654.0375(a) and 656.003.

- **Report on Transition from Military Service to Employment:** Texas Labor Code, Section 302.020.
- **Identification Cards for Peace Officers:** Texas Government Code, Sections 614.122, 614.123, 614.124, 614.1241, and 614.125.
- **Merit Selection Principles – Federal Laws or Regulations:** Texas Government Code, Sections 655.001, 655.002, 655.003, and 655.004.
- **Multiple Employment with the State:** Texas Government Code, Sections 667.001, 667.002, 667.003, 667.004, 667.005, 667.006, 667.007, and 667.009.
 - o Appointments at State Higher Education Institutions: Texas Government Code, Section 659.0411, and Texas Education Code, Section 51.963.
- **Posting Job Vacancies:** Texas Government Code, Sections 656.001, 656.024, 656.025, and 656.026.
 - o Online State Agency Employment Applications: Texas Government Code, Section 656.002.
- **Selective Service Registration:** Texas Government Code, Section 651.005(a), and Texas Office of the Attorney General, Opinion JC-0183 (2000).
- **Verification of Employment Eligibility:** Texas Labor Code, Section 21.051; Title 8, United States Code, Section 1324b; Title 8, Code of Federal Regulations, Sections 274a.2(a)(2) and 274a.2(b)(B)(ii); and Texas Government Code, Sections 673.001 and 673.002.
- **Volunteer Programs:** Texas Government Code, Sections 2109.001, 2109.002, 2109.003, 2109.004, and 2109.005.
- **Civilian Workforce Composition:** Texas Labor Code, Section 21.0035.
- **Workforce Analysis:** Texas Labor Code, Sections 21.501, 21.552(a), and 21.553(b).
- **Recruitment Plans:** 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 apply to state agencies and higher education institutions. Specifically:

- The 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 FMLA allows eligible employees to take unpaid, job-protected leave, or to substitute appropriate paid leave, for an FMLA-qualifying event without fear of being terminated from their jobs, being forced into a lower job upon their return, or losing group health insurance coverage.

Fair Labor Standards Act (FLSA)

The 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 on [the U.S. Department of Labor’s website](#).

The minimum wage in Texas is linked to the federal minimum wage under the FLSA of 1938. As of July 24, 2009, the federal minimum wage is \$7.25 per hour.

Employees working in state agencies and higher education institutions are covered under the FLSA, unless they are qualified for an exemption (FLSA-exempt employees) or otherwise excluded by statute. Employees who are not qualified for an exemption are considered FLSA-nonexempt.

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](#).
- [Fact Sheets](#).

FLSA-nonexempt Employees

FLSA-nonexempt employees are covered under the FLSA and 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.

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

Employees of state agencies and higher education institutions covered under 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.

State agencies can require FLSA-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.

Paid leave and holidays are not counted as hours worked for determining FLSA overtime hours. 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 FLSA-nonexempt employee must be allowed state compensatory time off equal to the number of hours in excess of 40 hours. See [Chapter 5 \(State and Holiday Compensatory Time\)](#) for additional information on state compensatory time.

FLSA-nonexempt employees may accumulate an overtime credit of 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).

FLSA-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. State agencies must pay employees for any accumulated FLSA overtime prior to transferring that employee to another agency.

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 FMLA. See [Chapter 20 \(Workers' Compensation\)](#) for additional information regarding FLSA compensatory time use in relation to workers' compensation income benefits.

FLSA-exempt Employees

An FLSA-exempt employee is not subject to the U.S. Department of Labor FLSA minimum wage and overtime requirements because the employee is employed in a bona fide executive, administrative, or professional capacity, or a specific computer-related occupation. 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.

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. FLSA-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 FLSA-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 FLSA-exempt employees may be made for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed pursuant to a written policy applicable to all employees. Thus, for example, an employer may suspend an exempt employee without pay for three days for violating a generally applicable written policy prohibiting sexual harassment. Similarly, an employer may suspend an exempt employee without pay for 12 days for violating a generally applicable written policy prohibiting workplace violence.
- An employer is not required to pay the full salary in the initial or final week of employment. Rather, an employer may pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment.
- An employer is not required to pay the full salary for weeks in which an FLSA-exempt employee takes unpaid leave under the FMLA.

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.

See [Chapter 5 \(State and Holiday Compensatory Time\)](#) for additional information regarding FLSA-exempt employees and the accrual of state compensatory time.

Family and Medical Leave Act (FMLA)

The FMLA allows eligible employees to take unpaid, job-protected leave, or to substitute appropriate paid leave, for an FMLA-qualifying event without fear of being terminated from their jobs, being forced into a lower job upon their return, or losing group health insurance coverage. The FMLA applies to all state agencies and higher education institutions, 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 higher education institutions 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 website](#).

Family and Medical Leave Eligibility

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

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

Family and Medical Leave Qualifying Events

The FMLA entitles all eligible employees to a total of 12 weeks of unpaid, job-protected leave during a 12-month period for one or more of the following qualifying events³:

- The birth and subsequent care of a newborn child.

Additional Resources

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

- [Family and Medical Leave Act Employer Guide](#).
- [Fact Sheets](#).

³ Effective September 1, 2023, the State established a paid parental leave benefit for state employees who are members of the Employees Retirement System of Texas, if they are eligible to take family and medical leave under the FMLA for the birth of a child or the adoption of a child.

State employees who are **not** eligible for family and medical leave may be entitled to an unpaid parental leave of absence, in accordance with Texas Government Code, Section 661.913, 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. See [Chapter 11 \(General Leave Provisions\)](#) for information about paid parental leave and parental leave.

- The placement of a child for adoption or foster care into the home of an employee, or with the employee, to bond with the child.
- The need to care for a spouse, child, or parent with a *serious health condition*.
 - A child includes a biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing *in loco parentis*. A parent is defined as a biological, adoptive, step, or foster parent; or an individual who stood *in loco parentis* to an employee when the employee was a child.
- 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 covered 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.

The FMLA also allows eligible employees to take up to 26 workweeks of leave in a single 12-month period to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered service member. This type of family and medical leave is referred to as military caregiver leave. See the section on Military Caregiver Leave (on the next page) for more information.

Serious Health Condition

For FMLA purposes, a *serious health condition* is defined as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a healthcare provider. Both physical and mental health conditions qualify for family and medical leave.

More information about a *serious health condition* under the FMLA can be found in [Fact Sheet #28P](#) on the U.S. Department of Labor’s Wage and Hour Division’s website.

In Loco Parentis

An individual stands *in locos parentis* to a child if that individual has day-to-day responsibilities to care for, or financially supports, the child. The individual does not have to have a biological or legal relationship to the child.

Agencies and higher education institutions should examine the facts of each situation to determine whether an employee stands *in loco parentis* to a child or if an individual stood *in loco parentis* to an employee when the employee was a child.

More information about *in loco parentis* under the FMLA can be found in [Fact Sheet #28B](#) and [Fact Sheet #28C](#) on the U.S. Department of Labor’s Wage and Hour Division’s website.

Military Caregiver Leave

State agencies and higher education institutions must allow an eligible employee who is the 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 to take up to a total of 26 workweeks of unpaid leave during a “single 12-month period” to provide care for the service member. 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.

The single 12-month period for military caregiver leave begins on the first day the employee takes leave for these reasons and ends 12 months later. An eligible employee is limited to a **combined** total of 26 workweeks of leave for any FMLA-qualifying reason during the single 12-month period. Up to 12 of the 26 weeks may be for an FMLA-qualifying reason other than military caregiver leave.

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 workweeks of family and medical leave for the following reasons:

- The birth of a child and care of a child after birth.
- The 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.

However, spouses working for the same state agency may each be entitled to paid parental leave in accordance with Texas Government Code, Section 661.9125, while taking family and medical leave following the birth of a child or the adoption of a child. See [Chapter 11 \(General Leave Provisions\)](#) for more information regarding paid parental leave.

In addition, eligible spouses who work for the same employer are limited to a combined total of 26 workweeks to care for a covered service member with a serious injury or illness (referred to as “military caregiver leave”).

Family and Medical Leave Notices and Certifications

Employee Notice Requirements

Employees must provide at least 30 days’ advance notice if the need for family and medical leave is foreseeable for an expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition for the employee or a family member, or the planned medical treatment for a serious injury or illness of a covered service member.

For foreseeable leave due to a “qualifying exigency,” the notice must be provided as soon as practicable, regardless of how far in advance such leave is foreseeable.

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.

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. The employee must provide at least verbal notice sufficient to make the employer aware that the employee may qualify for family and medical leave.

However, when an employee seeks leave due to a family and medical 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.

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.

Employer General Notice Requirements

State agencies and higher education institutions are required to post in a location that can be seen by employees and applicants for employment a notice that explains the provisions of the FMLA and information concerning the procedures for filing complaints of violations of the FMLA with the Department of Labor’s Wage and Hour Division. 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.

Notice of Eligibility

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 of his or her eligibility to take family and medical leave within five business days, absent extenuating circumstances. This notice may be verbal or written.

If the employee is not eligible for family and medical leave, the notice must provide at least one reason why the employee is not eligible, including as applicable, the number of months the employee has been employed and the hours of service with the employer during the 12-month period preceding the start of family and medical leave.

If the employee is eligible for family and medical leave, the employer’s written notice must include details about the specific expectations and obligations of the employee and explain any consequences of a failure to meet those obligations.

Certifications

A state agency or higher education institution may require that an employee’s request for leave due to a serious health condition affecting the employee or to care for a covered family member with a serious health condition be supported by a health care provider’s certification. If the certification is incomplete or insufficient, the employer must inform the employee in writing what additional information is necessary to make the certification complete and sufficient. The employer may also request, at the employer’s expense, second and third medical opinions.

In addition, the employer may require periodic recertification of a serious health condition. An employer must 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.

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 and medical leave is requested, including information on the type of qualifying exigency.

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 family and medical leave is requested.

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.

Family and Medical Leave and the Use of Paid Leave

Except as provided by the State’s paid parental leave benefit in accordance with Texas Government Code, Section 661.9125, the family and medical leave entitlement of job-protected leave is **generally** unpaid. Employees, however, may choose to substitute accrued paid leave for family and medical leave qualifying events not covered under the State’s paid parental leave benefit. Substitute means that the paid leave will run concurrently with the unpaid family and medical leave.

Vacation leave, sick leave, state compensatory time, administrative leave, and banked holiday time are considered accrued paid leave and can be counted toward an employee’s 12-week family and medical leave entitlement (or 26 weeks of military caregiver leave entitlement). Except as provided by the State’s paid parental leave benefit in accordance with Texas Government Code, Section 661.9125, employees are required to use all vacation and sick leave prior to being placed on a leave without pay status under the FMLA.

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

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.

Using Family and Medical Leave

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. 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. However, state employees using the State's paid parental leave benefit in accordance with Texas Government Code, Section 661.9125, following the birth of a child or the adoption of a child, cannot use that time intermittently or save that time for a later date.

For purposes of calculating 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. If the employee is using family and medical leave in increments of less than one week, the holiday does not count against the employee's family and medical leave entitlement unless the employee was otherwise scheduled and expected to work during the holiday. Additionally, 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 family and medical leave entitlement.

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

Determining the 12-Month Leave Entitlement Period

State agencies and higher education institutions 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.

State agencies and higher education institutions 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.

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

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. Employers cannot use the taking of family and medical leave as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions, nor can the taking of family and medical leave be counted against the employee under a no fault attendance policy.

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.

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.

Additional Information

For additional information about the topics discussed in Chapter 4:

- **Fair Labor Standards Act (FLSA):** Texas Labor Code, Section 62.051; [Wages and the Fair Labor Standards Act](#), U.S. Department of Labor's Wage and Hour Division's website; and Title 29, Code of Federal Regulations, Section 553.3.
 - o FLSA-nonexempt Employees: Texas Government Code, Section 659.015; Title 29, Code of Federal Regulations, Sections 553.20, 553.24, 553.27(b), 778.101, 778.110, and 778.218; and *Christensen v. Harris County* (98-1167), 529 U.S. 576 (2000).
 - o FLSA-exempt Employees: Title 29, Code of Federal Regulations, Sections 541.0, 541.2, and 541.602; and Texas Government Code, Section 659.016(e)(4).
- **Family and Medical Leave Act (FMLA):** Title 29, Code of Federal Regulations, Section 825.100.
 - o Family and Medical Leave Eligibility: Title 29, Code of Federal Regulations, Sections 825.108(c)(1) and 825.110(a) and (b); and Texas Government Code, Section 661.912(a).
 - o Family and Medical Leave Qualifying Events: Title 29, Code of Federal Regulations, Sections 825.100(a), 825.120(a)(2), 825.121(a)(2), and 825.126; and *Fact Sheets #28B, #28C, #28M, and #28M(c)* on the U.S. Department of Labor's Wage and Hour Division's website.

- o Serious Health Condition: Title 29, Code of Federal Regulations, Section 825.113; and [Fact Sheet #28P](#) on the U.S. Department of Labor’s Wage and Hour Division’s website.
- o In Loco Parentis: Title 29, Code of Federal Regulations, Section 825.122(d)(3); and [Fact Sheets #28B](#) and [#28C](#) on the U.S. Department of Labor’s Wage and Hour Division’s website.
- o Military Caregiver Leave: Title 29, Code of Federal Regulations, Sections 825.100(a) and 825.127(a), (b), and (e); and [Fact Sheet #28M\(a\)](#) on the U.S. Department of Labor’s Wage and Hour Division’s website.
- o Spouses Employed by Same Employer: Title 29, Code of Federal Regulations, Sections 825.120(a)(3), 825.121(a)(3), 825.127(f), and 825.201; and [Fact Sheet #28L](#) on the U.S. Department of Labor’s Wage and Hour Division’s website.
- o Family and Medical Leave Notices and Certifications:
 - Employee Notice Requirements: Title 29, Code of Federal Regulations, Sections 825.302 and 825.303.
 - Employer General Notice Requirements: Title 29, Code of Federal Regulations, Section 825.300(a).
 - Notice of Eligibility: Title 29, Code of Federal Regulations, Section 825.300(b), (c), and (d).
 - Certifications: Title 29, Code of Federal Regulations, Sections 825.305(a) and (c), 825.307(a), (b), and (c), 825.308, 825.309(b)(1), 825.310(a) and (b)(4), and 825.312(a) and (f).
- o Family and Medical Leave and the Use of Paid Leave: Texas Government Code, Section 661.912(b); Title 29, Code of Federal Regulations, Section 825.207; and Texas Office of the Attorney General, Opinion JC-0040 (1999).
- o Using Family and Medical Leave: Title 29, Code of Federal Regulations, Sections 825.200(h), 825.202, and 825.203.
- o Determining the 12-Month Leave Entitlement Period: Title 29, Code of Federal Regulations, Section 825.200(b) and (d)(1).
- o Job Restoration and Maintenance of Health Benefits: Title 29, Code of Federal Regulations, Sections 825.209, 825.210, 825.214, 825.215, 825.220(c), and 825.312(a) and (f); and Texas Government Code, Sections 661.904 and 661.909(f) and (g).

Chapter 5

State and Holiday Compensatory Time

State Compensatory Time

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

State Compensatory Time for Nonexempt Employees Subject to FLSA

When a FLSA-nonexempt employee takes leave or when a holiday occurs, the FLSA-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 FLSA-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. This is different from Fair Labor Standards Act (FLSA) overtime in which the FLSA-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.

Amended Requirement

The 88th Legislature enacted legislation allowing all employees of the Department of Criminal Justice (not only correctional officers) to use state compensatory time off during the 24-month period following the end of the workweek in which the time was earned. This requirement took effect September 1, 2023.

State compensatory time off earned by an employee of the Department of Criminal Justice 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.

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. 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.

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

Generally, an employee will not be paid for accrued but unused state compensatory time. However, there are some situations where the payment for 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 services 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.

Payment for 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. In addition, an employee of a state mental health or intellectual disability 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.

Employees at higher education institutions 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 higher education institution determines that taking the time off would be disruptive to normal teaching, research, or other critical functions.

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.

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

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.

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.

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.

Compensatory Time for Persons Governing State Agencies and Higher Education Institutions

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

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

Compensatory Time and Assigned Place of Employment

Except under circumstances specified in the General Appropriations Act, employees of a state agency or higher education institution 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.

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 holiday compensatory time will be used. Holiday compensatory time is earned on an hour-per-hour basis.

A higher education institution, 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.

New Requirement

The 88th Legislature enacted legislation expanding the list of state employees who are eligible to earn holiday compensatory time off when they are required to work on a national or state holiday that falls on a Saturday or Sunday to include: (1) employees of the Department of Family and Protective Services’ Statewide Intake Division who receive reports of abuse and neglect, (2) employees of the Department of Juvenile Justice who perform communication service duties for the incident reporting center and assist law enforcement officers appointed by the Department’s Office of the Inspector General, and (3) employees of the Department of Juvenile Justice who are employed as security officers to provide security and entry searches at secure correctional facilities operated by the Department. This requirement took effect September 1, 2023.

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 Department of Family and Protective Services employee in the Statewide Intake Division who receives reports of abuse or neglect.
- A peace officer commissioned or appointed under Article 2.12 of the Texas Code of Criminal Procedure.
- A Department of Public Safety employee who performs communications or dispatch services related to traffic law enforcement, or is 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 commissioned by the Parks and Wildlife Commission in performing law enforcement duties.
- A Juvenile Justice Department employee who performs communication service duties for the incident reporting center and assists law enforcement

officers appointed by the Department’s Office of the Inspector General in performing investigative duties.

- A Juvenile Justice Department employee who is employed as a security officer to provide security and entry searches at secure correctional facilities operated by the Department.

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.

The Texas Office of the Attorney General has issued an opinion stating that 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. The Texas Office of the Attorney General has also advised that the estate of a deceased employee may not be paid for the employee’s earned, but unused, compensatory time.

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.

Additional Information

For additional information about the topics discussed in Chapter 5:

- **State Compensatory Time:** Texas Government Code, Sections 659.015 and 659.016.
 - o State Compensatory Time for Nonexempt Employees Subject to FLSA: Texas Government Code, Section 659.015(f), (g), and (k), as amended by House Bill 1914 (88th Legislature).

- o State Compensatory Time for Employees Exempt from FLSA Overtime Provisions: Texas Government Code, Section 659.016(b), (c), and (i); and Texas Office of the Attorney General, Opinion H-883 (1976).
- o State Compensatory Time for Emergency Services Personnel: Texas Government Code, Section 659.025.
- o Payment for State Compensatory Time in Certain Situations: Texas Government Code, Sections 659.015(g), (i), and (j); and 659.016(i) and (j).
- o Use of Compensatory Time before Lapsing: Texas Government Code, Sections 659.015(g), 659.016(c), and 659.022.
- o Notification of Compensatory Time Policy: Texas Government Code, Section 659.023.
- o Compensatory Time for Persons Governing State Agencies and Higher Education Institutions: Texas Government Code, Section 659.024.
- o Compensatory Time and Assigned Place of Employment: Texas Government Code, Section 659.018.
- **Holiday Compensatory Time:** Texas Government Code, Section 662.005(b), as amended by Senate Bill 1727 (88th Legislature) and Senate Bill 2214 (88th Legislature), and Section 662.007.
- o Transfer of Holiday Compensatory Time between State Agencies: Texas Government Code, Section 662.0071; and Texas Office of the Attorney General, Opinion H-883 (1976) and 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.

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 promote equitable and uniform application of the Plan.
- Conducting position classification compliance reviews and 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.

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

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

Agencies' Use of the Position Classification Plan

Agencies should use an occupationally specific job classification title contained in the Plan that is appropriate for 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 higher education institution. 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.

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 website.

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. A new position may **not** be established for the sole purpose of adjusting the salary of an existing position.

The Comptroller may not pay compensation for the new position until formal notification of the Governor's action 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.

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, and abilities. More information and guidance on job descriptions is available in the State Auditor’s Office’s [*Job Description Guide*](#).

State job descriptions for the 2024–2025 biennium are available on [the State Auditor’s Office’s State Classification Team website](#).

Classification Salary Schedules

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

Fiscal Year 2024–2025 Classification Salary Schedules A and B

The classification salary schedules for Schedules A and B for the 2024–2025 biennium are listed in Figures 6-1, 6-2, 6-3, and 6-4 (on the next four pages), respectively.

Figure 6-1

Classification Salary Schedule A

Fiscal Year 2024

Effective September 1, 2023 to August 31, 2024

Salary Group	Minimum Salary	Midpoint	Maximum Salary
A04	\$21,893	\$26,209	\$30,525
A05	\$22,777	\$27,309	\$31,840
A06	\$23,706	\$28,464	\$33,221
A07	\$24,681	\$29,679	\$34,677
A08	\$25,705	\$30,967	\$36,229
A09	\$26,781	\$32,320	\$37,859
A10	\$27,910	\$33,741	\$39,571
A11	\$29,332	\$36,844	\$44,355
A12	\$30,840	\$38,819	\$46,798
A13	\$32,439	\$40,914	\$49,388
A14	\$34,144	\$43,139	\$52,134
A15	\$35,976	\$45,511	\$55,045
A16	\$37,918	\$48,024	\$58,130
A17	\$39,976	\$50,688	\$61,399
A18	\$42,521	\$55,096	\$67,671
A19	\$45,244	\$58,826	\$72,408
A20	\$48,158	\$62,818	\$77,477
A21	\$51,278	\$67,090	\$82,901
A22	\$54,614	\$71,659	\$88,703

Figure 6-2

Classification Salary Schedule A
Fiscal Year 2025
Effective September 1, 2024 to August 31, 2025

Salary Group	Minimum Salary	Midpoint	Maximum Salary
A04	\$24,893	\$29,209	\$33,525
A05	\$25,777	\$30,309	\$34,840
A06	\$26,706	\$31,464	\$36,221
A07	\$27,681	\$32,679	\$37,677
A08	\$28,705	\$33,967	\$39,229
A09	\$29,781	\$35,320	\$40,859
A10	\$30,910	\$36,741	\$42,571
A11	\$32,332	\$39,844	\$47,355
A12	\$33,840	\$41,819	\$49,798
A13	\$35,439	\$43,914	\$52,388
A14	\$37,144	\$46,139	\$55,134
A15	\$38,976	\$48,511	\$58,045
A16	\$40,918	\$51,024	\$61,130
A17	\$42,976	\$53,723	\$64,469
A18	\$45,521	\$58,288	\$71,055
A19	\$48,244	\$62,136	\$76,028
A20	\$51,158	\$66,255	\$81,351
A21	\$54,278	\$70,662	\$87,046
A22	\$57,614	\$75,376	\$93,138

Figure 6-3

Classification Salary Schedule B

Fiscal Year 2024

Effective September 1, 2023 to August 31, 2024

Salary Group	Minimum Salary	Midpoint	Maximum Salary
B10	\$27,910	\$33,741	\$39,571
B11	\$29,332	\$36,844	\$44,355
B12	\$30,840	\$38,819	\$46,798
B13	\$32,439	\$40,914	\$49,388
B14	\$34,144	\$43,139	\$52,134
B15	\$35,976	\$45,511	\$55,045
B16	\$37,918	\$48,024	\$58,130
B17	\$39,976	\$50,688	\$61,399
B18	\$42,521	\$55,096	\$67,671
B19	\$45,244	\$58,826	\$72,408
B20	\$48,158	\$62,818	\$77,477
B21	\$51,278	\$67,090	\$82,901
B22	\$54,614	\$71,659	\$88,703
B23	\$58,184	\$76,549	\$94,913
B24	\$62,004	\$81,780	\$101,556
B25	\$66,259	\$87,463	\$108,666
B26	\$72,886	\$98,077	\$123,267
B27	\$80,174	\$107,884	\$135,594
B28	\$88,191	\$118,673	\$149,155
B29	\$97,010	\$130,540	\$164,069
B30	\$106,712	\$143,594	\$180,475
B31	\$117,383	\$157,953	\$198,522
B32	\$129,121	\$173,749	\$218,376
B33	\$142,032	\$191,123	\$240,214
B34	\$156,236	\$210,236	\$264,235
B35	\$171,860	\$231,259	\$290,658
B36	\$189,046	\$254,385	\$319,724

Figure 6-4

Classification Salary Schedule B Fiscal Year 2025

Effective September 1, 2024 to August 31, 2025

Salary Group	Minimum Salary	Midpoint	Maximum Salary
B10	\$30,910	\$36,741	\$42,571
B11	\$32,332	\$39,844	\$47,355
B12	\$33,840	\$41,819	\$49,798
B13	\$35,439	\$43,914	\$52,388
B14	\$37,144	\$46,139	\$55,134
B15	\$38,976	\$48,511	\$58,045
B16	\$40,918	\$51,024	\$61,130
B17	\$42,976	\$53,723	\$64,496
B18	\$45,521	\$58,288	\$71,055
B19	\$48,244	\$62,136	\$76,028
B20	\$51,158	\$66,255	\$81,351
B21	\$54,278	\$70,662	\$87,046
B22	\$57,614	\$75,376	\$93,138
B23	\$61,184	\$80,421	\$99,658
B24	\$65,104	\$85,869	\$106,634
B25	\$69,572	\$91,836	\$114,099
B26	\$76,530	\$102,980	\$129,430
B27	\$84,182	\$113,278	\$142,374
B28	\$92,600	\$124,606	\$156,612
B29	\$101,860	\$137,066	\$172,272
B30	\$112,047	\$150,773	\$189,499
B31	\$123,252	\$165,851	\$208,449
B32	\$135,577	\$182,436	\$229,295
B33	\$149,134	\$200,679	\$252,224
B34	\$164,048	\$220,747	\$277,446
B35	\$180,453	\$242,822	\$305,191
B36	\$198,499	\$267,105	\$335,710

Fiscal Year 2024–2025 Classification Salary Schedule C

Salary Schedule C contains salaries for the State’s commissioned law enforcement positions and is part of the Plan (see Figures 6-5 and 6-6).

Figure 6-5

Classification Salary Schedule C
Fiscal Year 2024
Effective September 1, 2023 to August 31, 2024

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
C01	\$48,255					
C02	\$52,441					
C03	\$62,715	\$76,452	\$81,895	\$85,513	\$89,464	\$93,414
C04		\$85,696	\$91,504	\$95,254	\$99,461	\$101,941
C05		\$97,306	\$103,579	\$107,560	\$112,133	\$114,948
C06		\$121,221	\$125,343	\$127,874	\$130,417	\$131,982
C07		\$126,033	\$127,048	\$129,399	\$131,912	\$134,424
C08		\$142,608	\$142,701	\$142,758	\$142,758	\$142,758

Figure 6-6

Classification Salary Schedule C
Fiscal Year 2025
Effective September 1, 2024 to August 31, 2025

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
C01	\$51,255					
C02	\$55,441					
C03	\$65,851	\$80,274	\$85,989	\$89,789	\$93,937	\$98,085
C04		\$89,981	\$96,080	\$100,017	\$104,434	\$107,038
C05		\$102,171	\$108,758	\$112,938	\$117,739	\$120,695
C06		\$127,283	\$131,610	\$134,268	\$136,938	\$138,581
C07		\$132,334	\$133,400	\$135,869	\$138,507	\$141,145
C08		\$149,738	\$149,836	\$149,896	\$149,896	\$149,896

Classification Compliance Reviews and Audits

As required by the Texas Government Code, the State Classification Team in the State Auditor’s Office conducts classification compliance reviews and audits. The objective of these reviews and audits is to determine whether agencies conform to the Plan by ensuring the proper classification of positions. If these reviews and audits reveal misclassifications, the State Classification Team provides written notice to the appropriate agency heads.

Salary Studies

Each biennium, the State Classification Team submits to the Legislature recommended changes to the 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 the public and private sectors for work similar to that 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.

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 identify 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.

These studies and recommendations are available on [the State Auditor’s Office’s State Classification Team website](#).

Additional Information

For additional information about the topics discussed in Chapter 6:

- **Position Classification Plan Overview:** Texas Government Code, Sections 654.001, 654.011(a), 654.031, and 654.036; and the General Appropriations Act (88th Legislature), Article IX, Section 2.01.
 - o Agencies Subject to the Position Classification Plan: Texas Government Code, Section 654.011(a).
 - o Agencies' Use of the Position Classification Plan: Texas Government Code, Sections 654.014 and 654.0155.
 - o Bona Fide New Positions: Texas Government Code, Section 654.0125.
 - o State Job Descriptions: Texas Government Code, Section 654.015.
- **Classification Salary Schedules:** Texas Government Code, Section 654.012, and [the State Auditor's Office's State Classification Team website](#).
 - o Fiscal Year 2024–2025 Classification Salary Schedules A and B: The General Appropriations Act (88th Legislature), Article IX, Section 2.01.
 - o Fiscal Year 2024–2025 Classification Salary Schedule C: The General Appropriations Act (88th Legislature), Article IX, Section 2.01.
- **Classification Compliance Audits:** Texas Government Code, Section 654.036(3).
- **Salary Studies:** Texas Government Code, Section 654.037; and [A Biennial Report on the State's Position Classification Plan for the 2024–2025 Biennium](#) (State Auditor's Office Report No. 23-701, September 2022) and [A Report on the State's Law Enforcement Salary Schedule \(Salary Schedule C\) for the 2024–2025 Biennium](#) (State Auditor's Office Report No. 23-702, November 2022) on [the State Auditor's Office's State Classification Team website](#).

Chapter 7

Positions Exempt from the Position Classification Plan

Overview of Exempt Positions

The State has a limited number of positions at state agencies that are exempt from the Position Classification Plan (Plan). 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 higher education institution.
- Personnel employed by state higher education institutions.
- 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.

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.

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

Salary Groups

The State has nine salary groups for positions exempt from the 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 Figure 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.

Figure 7-1

Scheduled Exempt Position Salary Rates Fiscal Years 2024–2025

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
9	\$214,200	\$345,250

Not-to-Exceed (NTE) 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 rates” or “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 Figure 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.

Exempt Employee 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 salary for the assigned salary group for positions within specific agencies listed in Figure 7-2, notwithstanding the salary rate listed in an agency’s Schedule of Exempt Positions.

Figure 7-2

Exempt Positions for Which the Governor May Set the Compensation Rate

Agency	Position	Salary Group
Secretary of State	Secretary of State	Group 5
Office of State-Federal Relations	Executive Director	Group 4
Health and Human Services Commission	Executive Commissioner	Group 9
Texas Education Agency	Commissioner of Education	Group 9
Military Department	Adjutant General	Group 7
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 7
Department of Housing and Community Affairs	Executive Director	Group 6
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 7
Office of Public Insurance Counsel	Public Counsel	Group 4
Office of Public Utility Counsel	Public Counsel	Group 4
Bond Review Board	Executive Director	Group 4
Water Development Board	Commission Chair	Group 6
Water Development Board	Commissioners (2)	Group 6
Water Development Board	Executive Administrator	Group 6
Department of State Health Services	Commissioner	Group 8
Department of Family and Protective Services	Commissioner	Group 8

Some state agencies can request to set the salary (NTE rate) of certain exempt positions at an amount within their assigned salary group. Those agencies and exempt positions are listed in Figure 7-3 on the next page. The request must be submitted by the governing board (when applicable for an agency with a governing board) to the Office of the Governor and the Legislative Budget 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 monies 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 and additionally 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 of the new salary rate.

Figure 7-3

Agencies Authorized to Request a Salary Increase for Certain Exempt Positions

Agency	Position	Salary Group
Higher Education Coordinating Board	Commissioner	Group 9
Department of Information Resources	Executive Director	Group 9
Texas Lottery Commission	Executive Director	Group 7
Texas Juvenile Justice Department	Executive Director	Group 8
Preservation Board	Executive Director	Group 6
School for the Blind and Visually Impaired	Superintendent	Group 5
School for the Deaf	Superintendent	Group 5
Animal Health Commission	Executive Director	Group 6
Texas Public Finance Authority	Executive Director	Group 7
Alcoholic Beverage Commission	Executive Director	Group 7
Public Utility Commission of Texas	Commissioners (5)	Group 7
Public Utility Commission of Texas	Executive Director	Group 7

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

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

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.

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.

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 an NTE 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. Figure 7-4 lists those rates and the positions to which they apply.

Figure 7-4

Provisions for Salaries for Educational Institutions

Title	NTE Rate (Paid from Appropriated Funds)	NTE Rate for Housing Allowance ^a
President, Higher Education Institution	\$65,945	\$7,200
Chancellor, Higher Education Institution	\$70,231	\$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 Plan that reviews the compensation of exempt positions and executive compensation as provided in Articles I through VIII 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.
- Number of full-time equivalent (FTE) employees.
- 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 October 1, 2024.

Additional Information

For additional information about the topics discussed in Chapter 7:

- **Positions Exempt from the Position Classification Plan:** Texas Government Code, Section 654.012, and the General Appropriations Act (88th Legislature), Article IX, Section 3.04(e)(2).
- **Salary Groups and Not-to-Exceed Rates for Exempt Positions:**
 - o Salary Groups: The General Appropriations Act (88th Legislature), Article IX, Section 3.04(b)(2).
 - o Not-to-Exceed Rates: The General Appropriations Act (88th Legislature), Article IX, Section 3.04(a).
 - o Exempt Employee Salaries: The General Appropriations Act (88th Legislature), Article IX, Section 3.04(b), (c), and (d).

- **Salary Supplements for Exempt Positions:** Texas Government Code, Section 659.020.
- **Provisions for Educational Institutions:** The General Appropriations Act (88th Legislature), Article III, Special Provisions Relating Only to State Agencies of Higher Education, Section 5(2) and (3); and Article III, Special Provisions Relating Only to Components of Texas State Technical College, Rider 9.
- **Salary Study on Exempt Positions:** The General Appropriations Act (88th 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.
- **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.

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. 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. For group benefits purposes, a full-time employee is an employee who works 30 or more hours per week.

Salary at the Time of Hire

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

Salary Limitations

State employees must be paid at a salary rate that falls within the salary range of the applicable salary group. Therefore, a promotion, reclassification, or other salary

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 Texas Payroll/Personnel Resource](#) on the Office of the Comptroller of Public Accounts' website.

adjustment may not result in an employee receiving a salary in excess of the maximum rate authorized for his or her salary group. 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.

Additionally, monies appropriated to state agencies and higher education institutions may not be expended for a salary payment to a person whose classified salary or exempt salary is supplemented from sources other than appropriated monies until a report showing the amount and sources of the salary being paid from other sources has been provided to the Secretary of State, State Auditor, and Comptroller of Public Accounts.

State agencies—including higher education institutions 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 their websites the amount of each gift, grant, donation, or other consideration provided. In addition, a state agency or higher education institution that accepts from a person a gift, grant, donation, or other consideration 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 website.

When a state agency or higher education institution 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).

In addition, when a state agency or higher education institution 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).

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.

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.

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.

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.

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.

Demotions

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

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.

Equity Adjustments

A state agency may 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. A state agency may award an equity adjustment to an employee under this section only if the adjustment does not conflict with other law.

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.

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.

Lateral Transfers

A lateral transfer is a change-in-duty assignment of an agency employee that moves the employee to a different job classification title in the same salary group. An example might be a Systems Administrator V (Salary Group B25) who moves to Network Specialist V (Salary Group B25). 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 employee's salary group.

Transfers Within an Agency Between Classified Positions With the Same Job Classification Title When the Employee Is Competitively Selected

New Requirement

The 88th Legislature enacted legislation that allows an employee who transfers within an agency between classified positions with the same job classification title to be compensated at any rate within the appropriate salary group when the employee is competitively selected. This requirement took effect September 1, 2023.

If an employee is competitively selected for a classified position with the same job classification title, the employee's annual salary rate immediately after a transfer may be set at any rate in the appropriate salary group if the employee:

- Transfers within a state agency between two classified positions that:
 - o Are allocated to the same salary group; and
 - o Have the same job classification title as listed in the General Appropriations Act;

- Transfers to a position for which the employment opening is publicly listed in accordance with Texas Government Code, Chapter 656;
- Voluntarily applies for the position to which he or she transfers; and
- Agrees to accept the position to which he or she transfers at the publicly listed salary.

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.

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

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

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.

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. 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.

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.

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. 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 the lower 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.

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.

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.

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 that the employee 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, promote, or demote the employee.

Additional Information

For additional information about the topics discussed in Chapter 8:

- **General Information:** The General Appropriations Act (88th Legislature), Article IX, Sections 2.01 and 3.04; and Texas Government Code, Sections 654.012, 654.0125, and 659.011.
 - o Part-time and Hourly Employees: Texas Government Code, Sections 658.009 and 659.019(a); and Texas Insurance Code, Section 1551.003(9).
 - o Salary at the Time of Hire: Texas Government Code, Section 654.014(b).
 - o Salary Limitations: The General Appropriations Act (88th Legislature), Article IX, Section 3.01(d); and Texas Government Code, Section 659.259.
 - o Salary Supplementation: Texas Government Code, Sections 659.020 and 659.0201(a), (b), (c), (d), (e), and (i); and the General Appropriations Act (88th Legislature), Article IX, Section 3.02.

- **Conversion of Exempt Employees to Classified Positions:** Texas Government Code, Section 659.253; and Texas Payroll/Personnel Resource’s [*Salary Adjustments for State Agency Employees*](#), Office of the Comptroller of Public Accounts’ website.
 - o Reassignment of Executive Directors: Texas Government Code, Section 669.002.
- **Demotions:** Texas Government Code, Section 659.257; Texas Payroll/Personnel Resource’s [*Salary Adjustments for State Agency Employees*](#), Office of the Comptroller of Public Accounts’ website; and [*Reason Codes Quick Reference for State Agencies*](#), Fiscal Years 2024–2025 (Salary Action Code 021), Office of the Comptroller of Public Accounts’ website.
- **Equity Adjustments:** The General Appropriations Act (88th Legislature), Article IX, Section 3.07; Texas Payroll/Personnel Resource’s [*Salary Adjustments for State Agency Employees*](#), Office of the Comptroller of Public Accounts’ website; and [*Reason Codes Quick Reference for State Agencies*](#), Fiscal Years 2024–2025 (Salary Action Code 040), Office of the Comptroller of Public Accounts’ website.
- **Lateral Transfers:** Texas Government Code, Section 659.2531; Texas Payroll/Personnel Resource’s [*Salary Adjustments for State Agency Employees*](#), Office of the Comptroller of Public Accounts’ website; and [*Reason Codes Quick Reference for State Agencies*](#), Fiscal Years 2024–2025 (Salary Action Code 046), Office of the Comptroller of Public Accounts’ website.
- **Transfers Within an Agency Between Classified Positions With the Same Job Classification Title When the Employee Is Competitively Selected:** Texas Government Code, Section 659.2532, as added by House Bill 2157 (88th Legislature); Texas Payroll/Personnel Resource’s [*Salary Adjustments for State Agency Employees*](#), Office of the Comptroller of Public Accounts’ website; and [*Reason Codes Quick Reference for State Agencies*](#), Fiscal Years 2024–2025 (Salary Action Code A46), Office of the Comptroller of Public Accounts’ website.
- **Reallocations:** Texas Government Code, Section 659.254; and Texas Payroll/Personnel Resource’s [*Reallocation or Reclassification to a Different Salary Group and Job Classification*](#), Office of the Comptroller of Public Accounts’ website.

- **Reclassifications:** Texas Government Code, Sections 654.0155, 654.0156, and 659.254; and Texas Payroll/Personnel Resource’s [Reallocation or Reclassification to a Different Salary Group and Job Classification](#), Office of the Comptroller of Public Accounts’ website.
- **Salary Reduction for Disciplinary Reasons:** Texas Government Code, Section 659.258; and Texas Payroll/Personnel Resource’s [Salary Adjustments for State Agency Employees](#), Office of the Comptroller of Public Accounts’ website.
- **Promotions:** Texas Government Code, Section 659.256(b), (c), and (d); Texas Payroll/Personnel Resource’s [Salary Adjustments for State Agency Employees](#), Office of the Comptroller of Public Accounts’ website; and [Reason Codes Quick Reference for State Agencies](#), Fiscal Years 2024–2025 (Salary Action Code 020), Office of the Comptroller of Public Accounts’ website.
- **Temporary Assignments:** Texas Government Code, Section 659.260; and Texas Payroll/Personnel Resource’s [Temporary Assignments](#), Office of the Comptroller of Public Accounts’ website.

Chapter 9

Employee Compensation

Employee Compensation Overview

Various statutes and policies determine pay for employees in state agencies and higher education institutions. 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.

Recovering Excess Compensation Paid

State agencies and higher education institutions are authorized to recover overpayments of compensation to employees. The Comptroller of Public Accounts may adopt rules and establish procedures to administer the recovery of overpayments. Compensation subject to recovery for overpayment 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.

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

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.

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 benefit replacement pay may not exceed \$1,026.86 each calendar year for state agency employees participating in the Employees Retirement System. The benefit replacement pay for employees at higher education institutions participating in the Teacher Retirement System may not exceed \$1,031.25.

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.

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. 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.

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). 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, the Texas Office of the Attorney General, or the Insurance Fraud Unit of the Department of Insurance.
- A commissioned security officer of the Office of the Comptroller of Public Accounts.
- A law enforcement officer commissioned by the Parks and Wildlife Commission.
- A commissioned peace officer of a higher education institution.
- 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.
- Certain Juvenile Justice Department employees: (i) who have routine contact with youth placed in a residential facility of the department or released under the department’s supervision; or (ii) who are employed by the department’s Office of the Inspector General as an investigator, inspector general, security officer, or apprehension specialist.
- 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.
- A security officer employed by the Military Department.

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 2024–2025 biennium. Individuals hired after August 31, 1981, will not be eligible to receive hazardous duty pay unless so authorized by statute.

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.” 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. For a part-time employee, hazardous duty pay is proportional to the amount given to a full-time employee.

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. 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.

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.

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.

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. 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 higher education institutions; 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. The Comptroller of Public Accounts is responsible for adopting rules for the administration of longevity pay.

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 higher education institution.

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.

Figure 9-1 (on the next page) lists the amounts of longevity pay that eligible employees receive based upon years of service.

Figure 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, 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 0.05 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 12 years of service for which credit is established in the applicable retirement system. Longevity pay paid to a judge or justice is not included as part of the judge's or justice's combined salary from state and county sources for purposes of the salary limitations provided by Texas Government Code, Section 659.012.

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.

Longevity Pay When an 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.

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 what is normally expected and required. 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.

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. 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.

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.

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

Employees may receive a merit salary increase or 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:

- The employee has been employed by the agency for six continuous months in his or her 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.
- 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.

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

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

Merit Increases at Higher Education Institutions

Merit salary increases are awarded to employees whose job performance and productivity is consistently above that normally expected or required. A higher education institution may grant merit salary increases, including one-time merit payments, to employees.

A higher education institution may pay merit salary increases from any funds. Before awarding a merit salary increase, a higher education institution 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 higher education institution 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 higher education institution 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.

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

A higher education institution 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.

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.

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.

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

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.

To be eligible to enter into a contract for deferred compensation, the state employee must have already completed at least 12 months of service in a classified position. The retention bonus will be added to the employee's salary payment the month after the conclusion of the 12-month period of service under the deferred compensation contract.

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.

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.

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

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.

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.

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.

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 using 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 in the event of an emergency, return to work when they are contacted.

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

Additional Information

For additional information about the topics discussed in Chapter 9:

- **Employee Compensation Overview**
 - o Salary Limitations: The General Appropriations Act (88th Legislature), Article IX, Section 3.03.
 - o Recovering Excess Compensation Paid: Texas Government Code, Sections 666.001(1), 666.002(a) and (b), 666.003, 666.005, and 666.008; Texas Office of the Attorney General, Opinion GA-0171 (2004); and Texas Payroll/Personnel Resource's [Overpayments](#), Office of the Comptroller of Public Accounts' website.

- **Benefit Replacement Pay:** Texas Government Code, Sections 659.121(2), 659.123, 659.125, and 659.126; Texas Payroll/Personnel Resource’s [Benefit Replacement Pay for State Agencies](#), Office of the Comptroller of Public Accounts’ website; and Texas Payroll/Personnel Resource’s [Benefit Replacement Pay for Institutions of Higher Education](#), Office of the Comptroller of Public Accounts’ website.
- **Hazardous Duty Pay:** Texas Government Code, Sections 659.301(5), 659.302(a), and 659.303; the General Appropriations Act (88th Legislature), Article V, Alcoholic Beverage Commission, Rider 3; and Texas Payroll/Personnel Resource’s [Hazardous Duty Pay](#), Office of the Comptroller of Public Accounts’ website.
 - Hazardous Duty Pay Lifetime Service Credit: Texas Government Code, Sections 659.302(a), 659.305(a) and (f), and 659.307(a).
 - Amount of Hazardous Duty Pay: Texas Government Code, Sections 659.305(a) and 659.306.
- **Jury Service and Witness Fees:** Texas Government Code, Section 659.005.
- **Longevity Pay:** Texas Government Code, Sections 659.042, 659.043(a), and 659.047; and Texas Payroll/Personnel Resource’s [Longevity Pay](#), Office of the Comptroller of Public Accounts’ website.
 - Accrual of Lifetime Service Credit: Texas Government Code, Sections 659.044 and 659.046.
 - Longevity Pay for State Judges and Justices: Texas Government Code, Sections 659.0445(a), (b), and (e).
 - Longevity Pay for Return-to-Work Retirees: Texas Government Code, Section 659.044(f).
 - Longevity Pay When an Employee’s Status Changes: Texas Government Code, Section 659.045.
- **Merit Salary Increases and One-time Merit Payments:** Texas Government Code, Sections 659.255 and 659.2551; and Texas Payroll/Personnel Resource’s [Salary Adjustments for State Agency Employees](#), Office of the Comptroller of Public Accounts’ website.
 - Employees Not Eligible for Merit Increases: The General Appropriations Act (88th Legislature), Article V, Department of Criminal Justice, Rider 7, and Article V, Juvenile Justice Department, Rider 21; and Texas

Payroll/Personnel Resource's [*Salary Adjustments for State Agency Employees*](#), Office of the Comptroller of Public Accounts' website.

- **Merit Increases at Higher Education Institutions:** The General Appropriations Act (88th Legislature), Article III, Special Provisions Relating Only to State Agencies of Higher Education, Sections 5(4) and 5(5); and Texas Education Code, Sections 51.0065 and 51.962.
- **Recruitment Bonuses:** Texas Government Code, Section 659.262; and Texas Payroll/Personnel Resource's [*Recruitment and Retention Bonuses*](#), Office of the Comptroller of Public Accounts' website.
- **Retention Bonuses:** Texas Government Code, Sections 659.262; and Texas Payroll/Personnel Resource's [*Recruitment and Retention Bonuses*](#), Office of the Comptroller of Public Accounts' website.
- **Savings Incentive Program for State Agencies:** Texas Government Code, Sections 2108.101, 2108.102, and 2108.103.
- **Salary Stipends for Employees in Classification Salary Schedule C:** The General Appropriations Act (88th 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 a higher education institution 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.

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.

Payday

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

"Working day" for payroll purposes means a day other than Saturday, Sunday, or a national holiday as listed in the General Appropriations Act or state statute. A day

does not cease to be a national holiday because a state agency maintains or is required to maintain a minimum working staff on the holiday.

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.

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.

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 on the Comptroller's [Texas Payroll/Personnel Resource page](#).

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

Determining Amounts for Monthly or Hourly 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, a higher education institution, 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.

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.

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 2023, the OASDI tax rate for wages paid is 6.2 percent for employees and 6.2 percent for employers. The maximum taxable earnings amount for 2023 is \$160,200. The Medicare tax rate is 1.45 percent for employees and employers and currently has no income limit. All employees are subject to both types of FICA taxes.

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 a higher education institution 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.

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

Charitable Contribution Deductions

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

A state agency other than a higher education institution 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.

Credit Union 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.

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. 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.

The Employees Retirement System of Texas must designate eligible supplemental optional benefits programs that promote the interests of the State and state agency employees. Detailed information on eligible supplemental optional benefits programs is available through [the Employees Retirement System's website](#).

Payroll Reductions or Deductions Authorized for Higher Education Institutions

An employee of a higher education institution 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 a higher education institution 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.

The governing board of a university system or of a higher education institution 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. The policies and procedures of a

university system or a higher education institution may provide for enrollment periods.

A university system or higher education institution 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.

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, a higher education institution that is authorized to operate a payroll system reimbursable from the state treasury may withhold from the employee's salary or wage payment an administrative fee for making a supplemental deduction.

The administrative fee may not exceed the lower of the actual administrative cost of making the deduction or the highest fee charged by the state or institution, as appropriate, for making another similar deduction.

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 higher education institution 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.

Limitations on State Employment Levels

State agencies and higher education institutions may not use monies appropriated by the General Appropriations Act (GAA) to pay all or part of the salaries or benefits of a number of employees that would cause the number of full-time equivalent

(FTE) positions paid from monies appropriated by the GAA to exceed the number of FTE positions authorized by the GAA without reporting the use of those monies to the Office of the Governor and the Legislative Budget Board. That report must be completed no later than the last day of the first month following each fiscal year quarter for state agencies subject to a fiscal quarter limitation and no later than the last day of the first month following the last quarter of the fiscal year for state agencies and higher education institutions subject to an annual limitation. The time frame controlling the FTE limitation varies by state agency or higher education institution. Some entities are assigned quarterly FTE limitations and others are assigned annual FTE limitations. 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 monies 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.

State agencies and higher education institutions may not expend monies appropriated by the GAA to pay all or part of the salaries or benefits of a number of employees that would cause the number of FTEs paid from appropriated monies for a fiscal quarter or a fiscal year, respectively, to exceed the lesser of either 110 percent of the authorized FTEs funded by the GAA or 100 percent of the authorized FTEs plus 50.

The report made to the Office of the Governor and the Legislative Budget Board on exceeding the FTE limitation established by the GAA must be submitted by the governing board of a higher education institution or state agency (if the agency has a governing board) or by the agency's chief administrative officer (if the agency does not have a governing board or the governing board has not met) and must include:

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

- The source of monies 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.

The limitations on FTEs do not apply to employment, including employment of a temporary or contract worker, that is directly associated with the declaration of a disaster by the Governor. Each year, state agencies and higher education institutions 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.

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

If a program is transferred from a state agency or higher education institution, then at any time during the biennium, the Legislative Budget Board and the Office of the Governor may agree to reduce the number of FTEs paid from monies 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 higher education institution.

Certain state agencies may have specific riders in the GAA (88th Legislature) that increase or decrease agency FTE limitations or provide specific exemptions from mandated FTE caps.

The FTE limitations under the GAA (88th Legislature), Article IX, Section 6.10, do not apply to a state agency or higher education institution in an instance of employment of an intern or a worker who is paid from appropriations of gifts and grants under the GAA (88th Legislature), Article IX, Section 8.01. In addition, the reporting requirements under the GAA (88th Legislature), Article IX, Section 6.10,

do not apply to a state agency or higher education institution with fewer than 50 FTEs allowed in the agency's or higher education institution's bill pattern.

Agencies and higher education institutions should refer to the GAA (88th 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 higher education institution must file with the State Auditor's Office a report for that fiscal quarter that provides:

- The number of FTE employees paid from funds in the state treasury and the number of FTE employees paid from funds outside the state treasury.⁴
- The increase or decrease, if any, in the number of FTE 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.

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

- An organizational chart detailing the total number of FTE 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.

⁴ For quarterly FTE reporting by state agencies and higher education institutions 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's [Full-time Equivalent \(FTE\) Employee Reporting Instructions and Information](#).

- A separate organizational chart that summarizes the categories of employees in the agency’s regional offices without regard to the source of funds used to pay all or part of the salary of an employee.

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

The State Auditor’s Office provides additional data analysis and reports from its FTE State Employee System through its [State Classification Team website](#).

Additional Information

For additional information about the topics discussed in Chapter 10:

- **Payroll Overview:** Texas Government Code, Sections 654.036(3), 658.001(2), and 659.004.
 - o Payday: Texas Government Code, Sections 659.083 and 659.084.
 - o Method and Frequency of Pay: Texas Government Code, Sections 659.081 and 659.082; and Texas Payroll/Personnel Resource’s [Method and Frequency of Payroll](#), Office of the Comptroller of Public Accounts’ website.
 - o Determining Amounts for Monthly or Hourly Pay: Texas Government Code, Section 659.085.
- **Federal Insurance Contributions Act (FICA):** Texas Government Code, Section 659.002(d); [Contribution and Benefit Base](#), U.S. Social Security Administration’s website; and Title 26, United States Code, Section 3101.
- **Payroll Deductions:** Texas Government Code, Section 659.002(a), (b), and (c).
 - o Charitable Contribution Deductions: Texas Government Code, Section 659.132.
 - o Credit Union Deductions: Texas Government Code, Section 659.103(a).
 - o Deductions for Membership Fees for Eligible State Employee Organizations: Texas Government Code, Sections 403.0165 and 659.1031.

- o Deductions for Supplemental Optional Benefits Program: Texas Government Code, Section 659.102.
- o Payroll Reductions or Deductions Authorized for Higher Education Institutions: Texas Government Code, Section 659.202, and Texas Education Code, Section 51.9611.
- o Withholding of Administrative Fee for Supplemental Deductions: Texas Government Code, Section 659.108.
- o Deductions for Prepaid Higher Education Tuition Program: Texas Payroll/Personnel Resource's [Texas Prepaid Higher Education Tuition Program](#), Office of the Comptroller of Public Accounts' website.
- **Limitations on State Employment Levels:** The General Appropriations Act (88th Legislature), Article IX, Section 6.10.
 - o Full-Time Equivalent Employees Reporting: Texas Government Code, Sections 2052.103(a) and (b) and 2052.104(b).

Chapter 11

General Leave Provisions

Background on General Leave Provisions

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 State Auditor’s Office is authorized to provide uniform interpretation of certain leave provisions in Texas Government Code, Chapter 661, and for reporting any exceptions made by individual agencies to the Office of the Governor and the Legislature. These interpretations are advisory in nature.

Employee Leave Policies

State agencies and higher education institutions must adopt a policy governing leave provided for employees 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 higher education institution’s website in a location easily accessible by its employees and the public.

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. 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.

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.

Leave Reporting

State agencies and higher education institutions 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.

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 the employee was granted the emergency leave; and (3) the total number of hours of emergency leave granted to the employee.
- 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 the State Auditor's Office: (1) the name of the employee; and (2) a brief statement regarding the reason the employee was granted the leave.

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

Vacation Leave

State employees are entitled to paid vacation leave (also referred to as annual leave) each year **except** for:

- Faculty members of higher education institutions 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. Employees of independent school districts and junior colleges are not considered state employees for purposes of this section.

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. However, vacation leave may not be taken until the employee has been employed with the State for six continuous months.

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 (except for an employee returning from military leave without pay under Texas Government Code, 661.904), 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.

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.

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

Employees may carry unused vacation leave from one fiscal year to the next. The amount of allowable carry over hours depends on the employee’s length of state service and the number of hours worked (see Figure 11-1). Part-time employees may carry over unused vacation leave, but on a proportionate basis based on the number of hours worked. State employees who are employed by multiple state agencies or higher education institutions may not accrue vacation leave at a rate that exceeds that of a full-time employee.

Figure 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 vacation leave 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. 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.

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

[Appendix 3](#) and [Appendix 4](#) contain tables that detail leave entitlements for state agency employees and employees of higher education institutions, 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.

Vacation Leave and Employee Transfers and Separations

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

If an employee separates from a state agency and is re-employed within 30 calendar days by any state agency or higher education institution to a position that accrues vacation leave, the employee's vacation leave balance will be reinstated.

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 higher education institution that accrues vacation leave to a position within a state agency or higher education institution that does not accrue vacation leave if the agency or higher education institution agrees to pay for the employee's accrued balance of vacation leave.

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 re-employed by a state agency or higher education institution in a position that 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 any time 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 higher education institutions who do not directly transfer to another state agency or higher education institution do not have a 30-day waiting period for payment of vacation leave and must be paid for accrued and unused vacation leave as of the date of separation.

A separating employee may, with the approval of the employing agency, remain on the payroll after separation to exhaust accrued vacation leave rather than receive a lump-sum payment. No additional accruals will be made during this period. An employee who remains on the payroll is entitled to receive all compensation and benefits that the employee was receiving on the last day of duty, including paid holidays, longevity pay, and hazardous duty pay. The employee is also entitled to a general salary increase for state employees that takes effect before the employee's accrued vacation time is exhausted. The employee may **not**, however, use sick leave **or** accrue sick leave or vacation leave while remaining on the payroll to exhaust accrued vacation leave.

Upon separation, lump-sum payments for accrued but unused vacation leave will include payment for any holidays that the employee would have observed had the employee remained on the payroll. Eight hours per holiday will be added for employees who are normally scheduled to work 40 hours per week. Employees who are normally scheduled to work less than 40 hours per week will receive a proportionate payment. An employee moving to a position in a state agency that does not accrue vacation leave is not entitled to added time for holidays that fall within the accrual period. In no case is the employee entitled to receive longevity or hazardous duty pay for the accrual period.

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

[Appendix 5](#) and [Appendix 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.

Sick Leave

Sick leave is a benefit to state employees that allows for a paid absence from work under certain conditions. Exceptions include employees who work at higher education institutions 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.

Sick Leave Accruals and Utilization

A full-time employee accrues sick leave at a rate of eight hours per month; a part-time employee accrues sick leave proportionately. 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. An employee who is on leave the first day of the month may not use that month's sick leave accrual until he or she returns to duty.

Accrued sick leave may be used immediately upon employment when an employee is prevented from performing his or her job due to sickness, injury, or pregnancy and confinement, or when the employee is needed to care for and assist a member of the employee's immediate family who is ill. "Immediate family" is defined as individuals related by kinship, adoption, or marriage who reside in the same household as the employee; foster children who reside in the same household as the employee; and minor children of the employee regardless of whether they live in the same household. For family members who do not reside in the same household as the employee, the employee's use of sick leave is strictly limited to the time necessary to provide care and assistance to a spouse, child, or parent of the employee as a direct result of a documented medical condition.

An employee who will be absent from work due to sickness, injury, or pregnancy and confinement must notify his or her supervisor as soon as possible. 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 established at the discretion of the administrative head of the agency.

[Appendix 3](#) and [Appendix 4](#) contain tables that detail leave entitlements for state agency employees and employees of higher education institutions, respectively.

Sick Leave Records for Faculty at Higher Education Institutions

Faculty members at higher education institutions, as defined by Texas Education Code, Section 61.003, 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.

Sick Leave and Employee Transfers and Separations

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

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.

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

- The employee is re-employed by the same state agency or higher education institution within 12 months after the end of the month in which the employee separated 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 higher education institution within 12 months after the end of the month in which the employee separated from state employment.

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.

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

The State Auditor's Office publishes the [Guide to Sick, Parental, and Related Leave](#) to assist state agencies with these types of leave.

Extended Sick Leave

State agencies and higher education institutions that grant extended sick leave are required to have an extended sick leave policy. All agencies and higher education institutions 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.

Sick Leave Pool

Each state agency is required to establish a program that allows employees to voluntarily transfer sick leave to a sick leave pool. The sick leave pool is intended to assist employees and their immediate families in dealing with catastrophic illnesses or injuries that force the employees to exhaust all of their available sick leave. 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. "Immediate family" is defined as individuals related by kinship, adoption, or marriage who reside in the same household as the employee; foster children who reside in the same household as the employee; and minor children regardless of whether they live in the same household.

Administering the Sick Leave Pool

The program must be administered by the executive director or his or her designee. State agencies and higher education institutions 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.

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. 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.

An employee may use the time withdrawn from the sick leave pool as sick leave earned by the employee. The employee must be treated for all purposes as if the employee is out on earned sick leave. The estate of a deceased employee is not entitled to payment for unused time withdrawn by the employee from the sick leave pool.

Family Leave Pool

Each state agency is required to establish a program that allows employees to voluntarily transfer accrued sick leave or vacation leave to a family leave pool. The family leave pool is intended to provide eligible state employees the flexibility to bond with and care for children during a child's first year following birth, adoption, or foster placement; **or** to care for a seriously ill family member or the employee, including illnesses or complications resulting from a pandemic.

An employee is eligible to use time contributed to the family leave pool if the employee has exhausted his or her eligible compensatory, discretionary, sick, and vacation leave because of:

- The birth of a child;
- The placement of a foster child or adoption of a child under 18 years of age;
- The placement of any person 18 years of age or older requiring guardianship;
- A serious illness of an immediate family member or the employee; including a pandemic-related illness;
- An extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member; or
- A previous donation of time to the pool.

An employee who applies to use time to care for another person must submit and be listed on that other person's birth certificate, birth facts, or adoption or foster paperwork for a child under 18 years of age, including being listed as the mother, father, adoptive parent, foster parent, or partner of the child's mother, adoptive parent, or foster parent, **or** provide documentation that the employee is the guardian of a person who is 18 years of age or older and requires guardianship.

Administering the Family Leave Pool

The family leave pool must be administered by the executive head of the agency or his or her designee. In addition, state agencies must adopt rules and procedures relating to the operation of its family leave pool. State agencies and higher education institutions should ensure that their family leave pool policies do not conflict with other leave policies.

Contributions to the family leave pool must be in increments of one or more days of an employee's accrued sick leave or vacation leave, with the exception of a retiring employee, who may designate the number of sick leave or vacation leave hours to be donated.

An employee may draw from the family leave pool only with the approval of the pool administrator. If an employee is seeking permission to withdraw time from the pool because of a serious illness, including a pandemic-related illness, of an immediate family member or of the employee, and the employee does not qualify for or has exhausted time available in the sick leave pool, the employee must provide the pool administrator with a written statement from a licensed practitioner who is treating the employee or the employee's immediate family member.

If an employee is seeking permission to withdraw time from the family leave pool because of an extenuating circumstance created by an ongoing pandemic, including providing essential care to a family member, the employee must provide any applicable documentation, including an essential caregiver designation, proof of closure of a school or daycare, or other appropriate documentation.

An employee may not withdraw from the family leave pool an amount that exceeds one-third of the total time in the pool or 90 days, whichever is less.

An employee may use the time withdrawn from the family leave pool as sick leave earned by the employee. The employee must be treated for all purposes as if the employee is out on earned sick leave. The estate of a deceased employee is not entitled to payment for unused time withdrawn by the employee from the family leave pool.

Donation of Sick Leave to Another Employee

Employees of state agencies and higher education institutions, 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.

Paid Parental Leave (Texas Government Code, Section 661.9125)

New Requirement

The 88th Legislature enacted legislation providing eligible state employees paid parental leave if the employee takes leave under the Family and Medical Leave Act for the birth of a child, birth of a child by the employee's spouse, birth of a child by a gestational surrogate, or adoption of a child. This requirement took effect September 1, 2023.

Employees⁵ of state agencies, as defined by Texas Government Code, Section 661.9125(1), are entitled to paid parental leave if they qualify and take leave under the Family and Medical Leave Act for the:

- Birth of a child;
- Birth of a child by the employee’s spouse;
- Birth of a child by a gestational surrogate; or
- Adoption of a child.

For the birth of a child, a state employee who takes family and medical leave is entitled to 40 days of paid leave.

For the birth of a child by the employee’s spouse, birth of a child by a gestational surrogate, or adoption of a child, a state employee who takes family and medical leave is entitled to 20 days of paid leave.

Employees are **not** required to use all available paid vacation and sick leave before the employee is entitled to take paid parental leave.

Parental Leave (Texas Government Code, Section 661.913)

Employees who do **not** qualify for family and medical leave (and thus do not qualify for paid parental leave) are eligible for an unpaid parental leave of absence 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 3.

An employee does **not** meet the eligibility requirements for family and medical leave (and thus is eligible for unpaid parental leave) if:

- 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.

⁵ In accordance with Texas Government Code, Section 661.9125, paid parental leave applies only to a state employee who is a member of the Employees Retirement System of Texas or is employed by a board, commission, department, or other agency in the executive branch of state government, except for an institution of higher education as defined by Texas Education Code, Section 61.003.

While taking unpaid parental leave, the employee must first use all available and applicable paid vacation and sick leave; the remainder of the leave is unpaid. Unpaid 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.

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. 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.

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

Leave Without Pay

State agencies or higher education institutions 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.

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

A full-calendar month in which an employee is in 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 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.

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

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.

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.

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. The payment is calculated by multiplying the employee’s hourly rate of compensation at the time of death by the total number of leave hours applicable. The calculation does not include longevity or hazardous duty pay. An estate of an appointed officer or employee is eligible for payment by the State if the deceased employee normally worked at least 900 hours per year and had accrued six months of continuous state employment.

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

Leave Policies and Provisions for Higher Education Institutions

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

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.

Additional Information

For additional information about the topics discussed in Chapter 11:

- **Background on General Leave Provisions:** Texas Government Code, Section 661.151; and Texas Office of the Attorney General, Opinion CM-984 (formerly M-984) (1971).
- **Employee Leave Policies:** Texas Government Code, Sections 661.251 and 661.252; and Texas Education Code, Section 51.961(b) and (c).
- **Leave Records:** Texas Government Code, Section 661.908.
- **Leave Reporting:** Texas Government Code, Section 2101.042.

- o Reporting of Emergency Leave and Leave During an Investigation: Texas Government Code, Sections 661.902(d) and 661.923(c).
- **Vacation Leave:** Texas Government Code, Sections 661.152(a) and 661.915.
 - o Vacation Leave Accruals and Utilization: Texas Government Code, Sections 661.121; 661.152(c), (d), (e), (f), (g), (h) and (j); 661.909(f) and (h); and 667.001(b); and Texas Office of the Attorney General, Opinion JH-0341 (formerly H-0341) (1974).
 - o Vacation Leave for Legislative Employees: Texas Government Code, Section 661.154.
 - o Vacation Leave and Employee Transfers and Separations: Texas Government Code, Sections 661.062(a) and (b), 661.063(c)(2), 661.064, 661.067, 661.152(k), 661.153, and 661.904(c).
 - o Vacation Leave Accruals and Retirees: Texas Government Code, Section 661.152(l); 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' website.
- **Sick Leave:** Texas Government Code, Sections 661.201(b) and 661.202(a).
 - o Sick Leave Accruals and Utilization: Texas Government Code, Section 661.202.
 - o Sick Leave Records for Faculty at Higher Education Institutions: Texas Government Code, Section 661.203.
 - o Sick Leave and Employee Transfers and Separations: Texas Government Code, Sections 661.204, 661.205, and 661.904(c); and Texas Office of the Attorney General, Opinion GA-0201 (2004).
- **Extended Sick Leave:** Texas Government Code, Section 661.202(i) and (j).
- **Sick Leave Pool:** Texas Government Code, Sections 661.002(a), 661.004(a), 661.005(b), 661.006(a), and 661.202(d).
 - o Administering the Sick Leave Pool: Texas Government Code, Sections 661.002, 661.003, 661.005, 661.006, 661.007, and 661.008.
- **Family Leave Pool:** Texas Government Code, Sections 661.021, 661.022(a), and 661.024.

- o Administering the Family Leave Pool: Texas Government Code, Sections 661.022(b) and (c), 661.023(a) and (c), 661.025, 661.026, 661.027, and 661.028.
- **Donation of Sick Leave to Another Employee:** Texas Government Code, Section 661.207.
- **Paid Parental Leave (Texas Government Code, Section 661.9125):** Texas Government Code, Section 661.912, as amended by Senate Bill 222 (88th Legislature); and Section 661.9125, as added by Senate Bill 222 (88th Legislature).
- **Parental Leave (Texas Government Code, Section 661.913):** Texas Government Code, Section 661.913.
- **Education Service Centers and Leave:** Texas Education Code, Sections 8.002 and 8.007.
- **Leave Without Pay:** Texas Government Code, Sections 659.085(c) and 661.909; and Texas Payroll/Personnel Resource’s [*Leave without Pay; Leave of Absence*](#), Office of the Comptroller of Public Accounts’ website.
- **Payment of Accrued Leave of Deceased Employees:** Texas Government Code, Sections 661.031(2), 661.032, 661.033, 661.034, and 661.035; and Texas Office of the Attorney General, Opinion JH-0899 (formerly H-0899) (1976).
- **Leave Policies and Provisions for Higher Education Institutions:** Texas Education Code, Section 51.961.

Chapter 12

Miscellaneous Leave Provisions

Background of 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 higher education institutions should review these provisions carefully to determine if employees are eligible to use these leave types.

An employee of a higher education institution 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.

State agencies and higher education institutions must adopt and post on their websites a policy governing leave provided for employees under Texas Government Code, Chapter 661, and use the uniform system adopted by the Office of the Comptroller of Public Accounts (Comptroller's Office) to report leave taken by agency employees. Below are miscellaneous leave types provided under Texas Government Code, Chapter 661, that are subject to those requirements. (See [Chapter 11 \(General Leave Provisions\)](#) for more information on the types of general leave provided under Texas Government Code, Chapter 661.)

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.

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 time, sick leave, earned overtime credit, or state compensatory time. The amateur radio operator leave should be authorized by the employee's supervisor and have the approval of the Governor.

The number of amateur radio operators eligible for this type of leave may not exceed 350 state employees at any 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.

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.

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.

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.

Court Appointed Special Advocate (CASA) Volunteers

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

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.

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.

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.

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.

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 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.

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.

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.

Injury Leave for Certain Peace Officers

New Requirement

The 88th Legislature enacted legislation adding law enforcement officers or agents commissioned by the Office of the Comptroller of Public Accounts to the list of peace officers entitled to paid injury leave. This requirement took effect September 1, 2023.

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, the Texas Office of the Attorney General, the Insurance Fraud Unit of the Department of Insurance, or the Comptroller's Office.

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.

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

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.

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.

No later than the last day of each state fiscal 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 quarter. The report must 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 time, sick leave, earned overtime credit, 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.

Mental Health Leave for Peace Officers and Telecommunicators

New Requirement

The 88th Legislature enacted legislation requiring state agencies that employ full-time telecommunicators to develop and adopt a policy allowing the use of mental health leave by their full-time telecommunicators who experience a traumatic event in the scope of their employment as telecommunicators. Previously, this leave entitlement was available to only peace officers. This requirement took effect September 1, 2023.

Each state agency authorized by law to employ peace officers and each state agency that employs a full-time telecommunicator (as defined by Texas Occupations Code, Section 1701.405) must develop and adopt a policy allowing the use of mental health leave by its peace officers and full-time telecommunicators (as applicable) who experience a traumatic event in the scope of their employment as peace officers or telecommunicators. The mental health leave policy must:

- Provide clear and objective guidelines establishing the circumstances under which a peace officer or telecommunicator is granted and may use mental health leave;
- Entitle a peace officer or telecommunicator to mental health leave without a deduction in salary or other compensation;
- Specify the number of mental health leave days available to a peace officer or telecommunicator; and
- Detail the level of anonymity provided for a peace officer or telecommunicator who takes mental health leave.

The mental health policy adopted by the law enforcement or employing agency may provide a list of mental health services available to peace officers and telecommunicators in the agency's area.

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.

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.

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. There is no consistent standard or formal guidance regarding how much time should be provided to employees for this purpose; however, employers should adopt a written voting policy and procedures. State law does not differentiate between regular and runoff elections.

Volunteer Firefighters, Emergency Medical Services Volunteers, and Search and Rescue Volunteers Training Leave

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

Volunteers of Texas Voluntary Organizations Active in Disaster

A state employee who is a volunteer of an organization that is a member of the Texas Voluntary Organizations Active in Disaster may be granted leave not to exceed 10 days each fiscal year, without a deduction in salary or loss of vacation time, sick leave, earned overtime credit, or state compensatory time, to participate in disaster relief services if:

- The employee’s supervisor authorizes the leave;
- The services in which the employee participates are provided for a state of disaster declared by the Governor under Texas Government Code, Chapter 418; and
- The executive director of the employee’s state agency approves the leave.

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

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.

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

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.

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.

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.

Additional Information

For additional information about the topics discussed in Chapter 12:

- **Background of Leave Provisions:** Texas Government Code, Sections 661.251, 661.252, 661.901(c), and 2101.042.
- **Administrative Leave for Outstanding Performance:** Texas Government Code, Section 661.911.
- **Amateur Radio Operator Leave:** Texas Government Code, Section 661.919.
- **Assistance Dog Training:** Texas Government Code, Section 661.910.
- **Blood Donation:** Texas Government Code, Section 661.917.
- **Bone Marrow and Organ Donation:** Texas Government Code, Section 661.916.
- **Court Appointed Special Advocate (CASA) Volunteers:** Texas Government Code, Section 661.921.
- **Emergency Leave:**
 - o Death of an Employee’s Family Member: Texas Government Code, Sections 661.151 and 661.902(a).
 - o Good Cause: Texas Government Code, Section 661.902(b) and (c).
 - o Reporting of Emergency Leave: Texas Government Code, Sections 661.902(d) and 662.010.
- **Foster Parent Leave:** Texas Government Code, Section 661.906.
- **Injury Leave for Certain Peace Officers:** Texas Government Code, Section 661.918, as amended by Senate Bill 1237 (88th Legislature).
- **Leave During an Agency Investigation:** Texas Government Code, Section 661.923.
- **Medical and Mental Health Care Leave for Certain Veterans:** Texas Government Code, Section 661.924.
- **Mental Health Leave for Peace Officers and Telecommunicators:** Texas Government Code, Section 614.015, as amended by House Bill 1486 (88th Legislature).

- **Reserve Law Enforcement Officer Training Leave:** Texas Government Code, Section 661.922.
- **Sick Leave for Educational Activities:** Texas Government Code, Section 661.206.
- **Time Off to Vote:** Texas Government Code, Section 661.914; and Texas Office of the Attorney General, Opinion V-1532 (1952).
- **Volunteer Firefighters, Emergency Medical Services Volunteers, and Search and Rescue Volunteers Training Leave:** Texas Government Code, Section 661.905.
- **Volunteers of Texas Voluntary Organizations Active in Disaster:** Texas Government Code, Section 661.9075.
- **Additional Miscellaneous Leave Types Provided Under Texas Labor Code and Texas Government Code:**
 - o Compliance with a Subpoena: Texas Labor Code, Section 52.051; and Texas Office of the Attorney General, Opinion JM-785 (1987).
 - o Jury Service: Texas Government Code, Sections 62.106(a)(5) and 659.005(a).
 - o Wellness Leave: Texas Government Code, Section 664.061(a).

Chapter 13

State Employee Holidays

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 higher education institutions.

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

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.

Higher education institutions 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 higher education institutions are entitled to a paid day off from work on the holidays observed by the institution.

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.

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.

A state agency and higher education institution 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.

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

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.

Figure 13-1 on the next page provides examples of these types of scenarios.

Figure 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

Fiscal Years 2024 and 2025 Holiday Schedules

State employees receive most federal and state holidays, as well as optional holidays. Figures 13-2 and 13-3 on the following two pages list the state holiday schedules for fiscal years 2024 and 2025.⁶

⁶ Dates and descriptions of Texas state holidays are defined within Texas Government Code, Section 662.003. In accordance with Section 662.003(b), June 19 (Emancipation Day) is listed as a state holiday and not a national (federal) holiday and therefore requires a skeleton crew.

Figure 13-2

State Holiday Schedule for Fiscal Year 2024



































Holiday		Agency Status	Date	Day of Week
Labor Day		All agencies closed	9-04-23	Monday
Rosh Hashanah			9-16-23	Saturday
Rosh Hashanah			9-17-23	Sunday
<i>Yom Kippur</i>		<i>Optional holiday</i>	<i>9-25-23</i>	<i>Monday</i>
Veterans Day			11-11-23	Saturday
Thanksgiving Day		All agencies closed	11-23-23	Thursday
Day after Thanksgiving		All agencies closed	11-24-23	Friday
Christmas Eve Day			12-24-23	Sunday
Christmas Day		All agencies closed	12-25-23	Monday
Day after Christmas		All agencies closed	12-26-23	Tuesday
New Year's Day		All agencies closed	1-01-24	Monday
Martin Luther King Jr. Day		All agencies closed	1-15-24	Monday
Confederate Heroes Day		Skeleton crew required	1-19-24	Friday
Presidents' Day		All agencies closed	2-19-24	Monday
Texas Independence Day			3-02-24	Saturday
<i>Good Friday</i>		<i>Optional holiday</i>	<i>3-29-24</i>	<i>Friday</i>
Cesar Chavez Day			3-31-24	Sunday
San Jacinto Day			4-21-24	Sunday
Memorial Day		All agencies closed	5-27-24	Monday
Emancipation Day		Skeleton crew required	6-19-24	Wednesday
Independence Day		All agencies closed	7-04-24	Thursday
LBJ Day		Skeleton crew required	8-27-24	Tuesday

Figure 13-3

State Holiday Schedule for Fiscal Year 2025

Holiday		Agency Status	Date	Day of Week
Labor Day		All agencies closed	9-02-24	Monday
Rosh Hashanah		Optional holiday	10-03-24	Thursday
Rosh Hashanah		Optional holiday	10-04-24	Friday
Yom Kippur			10-12-24	Saturday
Veterans Day		All agencies closed	11-11-24	Monday
Thanksgiving Day		All agencies closed	11-28-24	Thursday
Day after Thanksgiving		All agencies closed	11-29-24	Friday
Christmas Eve Day		All agencies closed	12-24-24	Tuesday
Christmas Day		All agencies closed	12-25-24	Wednesday
Day after Christmas		All agencies closed	12-26-24	Thursday
New Year's Day		All agencies closed	1-01-25	Wednesday
Confederate Heroes Day			1-19-25	Sunday
Martin Luther King Jr. Day		All agencies closed	1-20-25	Monday
Presidents' Day		All agencies closed	2-17-25	Monday
Texas Independence Day			3-02-25	Sunday
Cesar Chavez Day		Optional holiday	3-31-25	Monday
Good Friday		Optional holiday	4-18-25	Friday
San Jacinto Day		Skeleton crew required	4-21-25	Monday
Memorial Day		All agencies closed	5-26-25	Monday
Emancipation Day		Skeleton crew required	6-19-25	Thursday
Independence Day		All agencies closed	7-04-25	Friday
LBJ Day		Skeleton crew required	8-27-25	Wednesday

Optional Holidays

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

Holidays and Employee Separations

If an employee of a state agency or higher education institution 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.

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.

In the event that a state or national holiday falls between the periods an employee transfers from one state agency or higher education institution to another without a break in service, the receiving agency or higher education institution must pay for the holiday regardless of whether the agency or higher education institution recognizes that particular holiday.

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.

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.

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.

Holidays for Higher Education Institutions

Higher education institutions may establish their own holiday schedules. However, the number of observed holidays may not exceed the number of holidays observed by state agencies.

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.

Employees of higher education institutions 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.

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 deceased part-time employee should be proportionate to the number of hours normally worked by the deceased employee.

Additional Information

For additional information about the topics discussed in Chapter 13:

- **Applicability and Overview:** Texas Government Code, Sections 662.001, 662.002, 662.003, 662.004, 662.005, 662.006, 662.007(a), 662.010, and 662.011.
- **Optional Holidays:** Texas Government Code, Sections 662.003(c), 662.006(b) and (c), and 662.013.
- **Holidays and Employee Separations:** Texas Government Code, Section 661.064(a) and (b).
- **Holidays and Employee Transfers:** Texas Government Code, Sections 662.0071(a) and 662.0072; and Texas Office of the Attorney General, Opinion H-883 (1976).
- **Holidays for Employees Working Non-Traditional Schedules:** Texas Government Code, Section 662.009(a), (b), and (c).
- **Holidays for Higher Education Institutions:** Texas Government Code, Sections 662.007(c) and 662.011(a), (b), and (c).
- **Holiday Time Payment for Deceased Employees:** 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 reemployment rights to individuals who are called to military service. These laws provide job and income protection, as well as a means for employees to secure time off when called to military service.

Liaisons for Veterans, Military Members, and Their Dependents

Amended Requirement

The 88th Legislature enacted legislation requiring a state agency to designate a liaison for veterans, military members, and their dependents, rather than just veterans. This requirement took effect September 1, 2023.

Each state agency or higher education institution that has at least 500 full-time equivalent positions **must** designate an individual to serve as a liaison for veterans, military members, and their dependents. A state agency or higher education institution that has fewer than 500 full-time equivalent positions **may** designate an individual to serve as a liaison.

Each state agency or higher education institution that designates a liaison for veterans, military members, and their dependents must make the liaison's work contact information available on the agency's or institution's website.

Uniformed Services Employment and Reemployment Rights Act (USERRA)

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, the National Guard, or other uniformed services. 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.

Uniformed Services Employment and Reemployment Rights Act (USERRA)

The U.S. Department of Defense's Employer Support of the Guard and Reserve committee and the U.S. Department of Labor published an [Employer Resource Guide](#) that provides additional information on USERRA.

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

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

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

New Federal Requirement

On September 29, 2022, the President signed into law the Civilian Reservist Emergency Workforce Act of 2021 (CREW Act). The CREW Act extends employment protections under USERRA to Federal Emergency Management Agency (FEMA) reservists who are deployed to disasters and emergencies, or training for such, on behalf of FEMA.

State employees who are FEMA reservists are also extended employment protections under USERRA.

The U.S. Department of Labor’s Veterans’ Employment and Training Service administers USERRA, and all questions should be directed to that office. Contact and additional information about USERRA is available on [the U.S. Department of Labor’s website](#).

In addition, more information about the CREW Act employment protections can be found on [FEMA’s website](#).

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.

The 15 days of paid leave need not be consecutive. These days are considered business days, not calendar days. 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.

State agencies and higher education institutions 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.

In addition to the leave provided under Texas Government Code, Section 437.202(a), for authorized training or duty, 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 who are called to **state** active duty by the Governor or another appropriate authority in response to a disaster are entitled to a paid leave of absence (not to exceed seven workdays in a fiscal year) for each day they are called to active duty during a disaster. For the purposes of this leave, “disaster” has the meaning assigned in Texas Government Code, Section 418.004.

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.

A state employee called to **state** active duty by the Governor or other appropriate authority is entitled to receive emergency leave without loss of military or vacation leave if: (i) the employee is a member of the state military forces responding to an emergency or a natural or man-made disaster; or (ii) the employee is a member of the State Guard responding to a natural or man-made disaster. This leave will be provided without a deduction in salary. 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.

A member of the state military forces who is ordered to **state** active 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.

Military Family Leave Entitlements

The Family and Medical Leave Act (FMLA) allows eligible employees to take up to 12 workweeks of job-protected leave in the applicable 12-month period for any “qualifying exigency” arising out of the active duty or call to active duty status of a spouse, son, daughter, or parent.

In addition, the FMLA also allows eligible employees to take up to 26 workweeks of job-protected leave in a single 12-month period to care for a covered service member with a serious injury or illness. Those two 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 FMLA 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 credit 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 accrued vacation leave, earned compensatory time, or overtime leave to maintain benefits for the employee or the employee's dependents while on military duty.

Additionally, the employee may continue to accrue service credit with the Employees Retirement System by receiving at least one hour of state pay during each month of active military service. The employee may use any combination of paid leave to qualify for state pay.

State agencies and higher education institutions 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.

Additionally, state agencies and higher education institutions 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 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 balance of all unused accumulated paid leave under Texas Government Code, Section 437.202, to which the employee is entitled.

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.

Military Pay Differentials

The administrative head of a state agency or higher education institution must grant sufficient paid 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 pay may not exceed the employee's actual gross state pay. Pay received for service in a combat zone (also known as hostile fire pay or imminent danger pay), hardship duty pay, and family separation pay are excluded when computing military differential pay.

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 higher education institutions in determining the amount of emergency leave to grant to deployed military members for the purpose of providing differential pay. These guidelines are available on [the State Auditor's Office's State Classification Team website](#).

The state agency or higher education institution 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 who are called to active duty in support of a national emergency (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.

If emergency leave is granted to a state employee activated for military duty, that employee will accrue sick leave and vacation leave each month that he or she receives pay from a state agency or higher education institution. The sick and vacation leave will be accrued but not posted until the employee returns to full employment with the state agency or higher education institution.

Determining Eligibility

To determine eligibility, state agencies and higher education institutions should request a copy of the employee's (service member's) Military Leave and Earnings Statement each month that emergency leave is going to be granted to review the total amount of military pay received by the service member. The service member's pay may change during the period of active duty because of a promotion or change in entitlements; any increase in pay may reduce or end the need for state military differential pay.

Returning Service Members

A state employee who (1) is a member of the State's military forces, a reserve component of the U.S. Armed Forces, or a state or federally authorized urban search and rescue team, and (2) 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.

USERRA also requires that reasonable efforts (such as training or retraining) be made to enable returning service members to refresh or upgrade their skills and perform the essential tasks of the position, in order to help them qualify for reemployment in the position to which they are returning.

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. 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.

Employees who are reemployed under Texas Government Code, Chapter 613, may not be discharged from their position without cause within one year of their reemployment.

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 higher education institution and must include evidence of discharge under honorable conditions.

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.

Military Employment Preferences

Amended Requirements

The 88th Legislature enacted legislation amending Chapter 657 of the Texas Government Code relating to military employment preferences. The legislation made the following changes: (1) amended “veteran’s employment preferences” to “military employment preferences” and (2) added two new military spouse categories to the list of qualifying individuals entitled to a “military employment preference.”

In addition, the legislation amended the state agency workforce composition requirement. All state agency employment forms must include a statement regarding the “military employment preferences” prescribed by Chapter 657, until at least 20 percent of an agency’s workforce is composed of individuals who qualify for a “military employment preference.”

Information about these changes is included in this section. In addition, state agencies and higher education institutions should refer to Senate Bill 1376 (88th Legislature) for details concerning these changes. These new and amended requirements took effect September 1, 2023.

The following individuals qualify for a military 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;
- A spouse of a member of the United States Armed Forces or Texas National Guard serving on active duty; and
- A spouse of a veteran if the spouse is the primary source of income for the household and the veteran has a total disability rating based either on having a service-connected disability with a disability rating of at least 70 percent or on individual unemployability.

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.

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.

An individual who qualifies for a military employment preference is entitled to a preference in employment with or appointment to a state agency or higher education institution over other applicants for the same position who do not have a greater qualification.

A state agency or higher education institution must provide a military employment preference to individuals who qualify, in the following order of priority:

- A veteran with a disability.
- A veteran.
- A spouse of a member of the United States Armed Forces or Texas National Guard serving on active duty **or** a spouse of a veteran if the spouse is the primary source of income for the household and the veteran has a total disability rating based either on having a service-connected disability with a disability rating of at least 70 percent or on individual unemployability.
- A veteran’s surviving spouse who has not remarried.

- An orphan of a veteran if the veteran was killed while on active duty.

Individuals entitled to a military employment preference are not disqualified from holding a position with a state agency or higher education institution because of age or an established service-connected disability if the age or disability does not make the individual unable to perform the duties of the position.

State agencies and higher education institutions 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.

Veteran Employment Goal for State Agencies

Each state agency and higher education institution must establish a goal of hiring, in full-time positions at the agency or higher education institution, a number of veterans equal to at least 20 percent of the state agency's or higher education institution's total number of employees. A state agency or higher education institution may establish a veteran employment goal that is greater than the percentage required under Texas Government Code, Section 657.004(a).

Designation of Open Positions for and Immediate Hiring of Individuals Entitled to a Military Employment Preference

A state agency or higher education institution may designate an open position as a military preference position and only accept applications for that position from individuals who are entitled to a military employment preference.

A state agency or higher education institution may hire or appoint for an open position an individual entitled to a military employment preference without announcing or advertising the position, if the state agency or higher education institution:

- Uses [the Texas Workforce Commission's system](#) to identify an individual who qualifies for a military employment preference; and
- Determines the individual meets the qualifications required for the position.

Interviews

For each announced open position:

- If the total number of individuals interviewed for the position is six or fewer, the state agency or higher education institution must interview at least one individual qualified for a military 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 higher education institution interviews must be individuals qualified for a military employment preference.

A state agency or higher education institution that does not receive any applications from individuals who qualify for a military employment preference is not required to comply with the interviewing requirements of Texas Government Code, Section 657.0047(a).

State Employment Forms

All state agency and higher education institution employment forms prescribed by the Texas Workforce Commission must include a statement regarding the military employment preference until at least 20 percent of the agency's or institution's workforce is composed of individuals who qualify for a military employment preference.

Employment Investigation

Prior to hiring an individual who qualifies for a military employment preference, a state agency or higher education institution 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 it is to fill the position.

Competitive Examinations

If a state agency or higher education institution requires a competitive examination under a civil service plan or merit system for selecting or promoting an employee, an individual entitled to a military employment preference who is qualified for that position and has received 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.

Reductions in Force

An individual who is entitled to a hiring or appointment preference under Texas Government Code, Chapter 657, is also entitled to a preference in retaining employment if the state agency or higher education institution that employs or appoints the individual reduces its workforce. This applies only to the extent that workforce reductions by the state agency or higher education institution involve other employees of a similar type or classification.

Appealing Employment Decisions Under a Military Employment Preference

An individual entitled to a military employment preference who is aggrieved by a decision of a state agency or higher education institution relating to the hiring or appointing of the individual, or relating to the retaining of the individual if the state agency or higher education institution reduces its workforce, may appeal the decision by filing a written complaint with the state agency's or higher education institution's executive officer.

The executive officer of a state agency or higher education institution 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 military preference was not applied.

Military Employment Preference Reporting Requirements

State agencies and higher education institutions 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 higher education institution during the reporting period who are entitled to a preference.
- The percentage of the total number of employees of the state agency or higher education institution who are entitled to a preference.
- The number of complaints filed with the executive officer of the state agency or higher education institution during that quarter and the number of complaints resolved by the executive officer.

The Office of the Comptroller of Public Accounts must make each quarterly report available to the public on its website. 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 quarterly reports filed by the state agencies and higher education institutions.

Additional Information

For additional information about the topics discussed in Chapter 14:

- **Liaisons for Veterans, Military Members, and Their Dependents:** Texas Government Code, Section 657.0046, as amended by Senate Bill 1376 (88th Legislature).
- **Uniformed Services Employment and Reemployment Rights Act (USERRA):**
 - U.S. Department of Defense’s [Employer Support of the Guard and Reserve website](#).
 - U.S. Department of Labor’s [Veterans’ Employment and Training Service \(VETS\) website](#).
 - Title 20, Code of Federal Regulations, Section 1002.18.
 - Title 38, United States Code, Sections 4311(a) and 4313(a)(3).
 - [Employer Resource Guide](#), at the U.S. Department of Defense’s Employer Support of the Guard and Reserve website.
 - [Employment and Reemployment Protections for Reservists FAQs](#), at the Federal Emergency Management Agency’s website.
- **Military Leave Entitlements and Eligibility:** Texas Government Code, Sections 437.202(a), (a-1), and (b); 437.213; 437.254(a) and (b); 437.305; 658.008; 661.903; and 661.904; and Texas Office of the Attorney General, Opinion C-679 (1966).
 - Military Family Leave Entitlements: Title 29, Code of Federal Regulations, Sections 825.100(a) and 825.127(e).
 - Paid Leave and State Service: Texas Government Code, Sections 437.202(e) and (f), and 661.904.
- **Notice of Military Leave:** VETS USERRA Resources, [Responsibility to Notify Employer \(Fact Sheet 4\)](#), U.S. Department of Labor’s Veterans’ Employment and Training Service website.
- **Military Pay Differentials:** Texas Government Code, Sections 661.152(j), 661.202(k), and 661.9041; and [Military Pay Differential Guide](#), State Auditor’s Office’s website.

- o Determining Eligibility: [Military Pay Differential Guide](#), State Auditor’s Office’s website.
- **Returning Service Members:** Texas Government Code, Sections 437.202(d), 613.002, 613.003, and 613.005; and VETS USERRA Resources, [Reemployment Rights and Benefits \(Fact Sheet 2\)](#), U.S. Department of Labor’s Veterans’ Employment and Training Service website.
 - o Applications for Reemployment: Texas Government Code, Section 613.004.
 - o Entitlement to Retirement or Other Benefits: Texas Government Code, Section 613.006.
- **Military Employment Preference:** Texas Government Code, Section 657.001(2) and (3); Section 657.002, as amended by Senate Bill 1376 (88th Legislature); Section 657.003(a), (b), and (d), as amended by Senate Bill 1376 (88th Legislature); and Sections 657.009(a) and 2308.251(2).
 - o Veteran Employment Goal for State Agencies: Texas Government Code, Section 657.004.
 - o Designation of Open Positions for and Immediate Hiring of Individuals Entitled to a Military Employment Preference: Texas Government Code, Section 657.0045, as amended by Senate Bill 1376 (88th Legislature).
 - o Interviews: Texas Government Code, Section 657.0047, as amended by Senate Bill 1376 (88th Legislature).
 - o State Employment Forms: Texas Government Code, Section 656.027, as amended by Senate Bill 1376 (88th Legislature).
 - o Employment Investigation: Texas Government Code, Section 657.005, as amended by Senate Bill 1376 (88th Legislature).
 - o Competitive Examinations: Texas Government Code, Section 657.003(c), as amended by Senate Bill 1376 (88th Legislature).
 - o Reductions in Force: Texas Government Code, Section 657.007.
- **Appealing Employment Decisions Under a Military Employment Preference:** Texas Government Code, Section 657.010, as amended by Senate Bill 1376 (88th Legislature).
- **Military Employment Preference Reporting Requirements:** Texas Government Code, Section 657.008.

Chapter 15

Insurance Programs

Insurance Overview

The State of Texas provides a comprehensive benefits program for employees in state agencies and higher education institutions. 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.

In addition to health insurance, state employees have access to other types of benefits, such as insurance options for dental; vision; life; supplemental life; dependent life; short- and long-term disability; and accidental death and dismemberment; as well as health care, limited-purpose, and dependent care flexible 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 credit per month to be used towards the cost of certain optional coverage. 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.

Detailed information on state insurance programs is available through [the ERS website](#).

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. Except for the conditions discussed in the Texas Insurance Code, no employee of a state agency or higher education institution may be denied coverage unless the employee waives this coverage.

The Texas Employees Group Benefits Program currently provides three types of health plans: HealthSelect of Texas, Consumer Directed HealthSelect with a Health Savings Account, and HealthSelect Out-of-State. When full-time employees enroll in any of these plans, they automatically receive a basic group term life insurance policy paid for by the State. When part-time employees enroll in any 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.

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.⁷ Certain state employees who are re-employed after military service will be eligible for health insurance on the first date of re-employment on which the employee performs services for a state agency or higher education institution.

Dependent Coverage

An employee can enroll his or her eligible dependents in select group coverages provided for employees by the Texas Employees Group Benefits Program. For information on eligible dependents, see the [Texas Employees Group Benefits Program Dependent Eligibility Chart](#).

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.

The State pays all of the health insurance and basic life premiums for full-time employees and half of the health insurance and basic life premiums for part-time employees. 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. State contributions to group insurance costs are available on [the ERS website](#).

⁷ 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.

Each state agency and higher education institution (not including components of 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 to the Texas Employees Group Benefits Program. Agencies and higher education institutions should refer to the Office of the Comptroller of Public Accounts for more information regarding the additional payroll contribution for group health insurance.

Dental Insurance

All individuals who are eligible for state insurance plans have access to optional dental insurance. Two dental insurance plans are available to employees, with different costs, benefits, service areas, and participating dentists. Neither of the plans require evidence of insurability.

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.

Tobacco User Premium

Each employee enrolled in a health benefit plan provided under the Texas Employees Group Benefits Program must certify his or her status as a tobacco user or non-user and certify the status of any dependents enrolled in a health benefit plan. Adult participants who do not certify their tobacco-use status will be charged a tobacco user premium, even if they do not use tobacco. A tobacco user is a person who has used any tobacco product five or more times within the past three consecutive months. Employees are responsible for paying the tobacco user premium.

Information on cessation programs and monthly premiums is available on [the ERS website](#).

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 term life coverage of \$5,000 for current employees at no cost. Optional and dependent term life programs may be purchased to supplement this plan. Accidental death and dismemberment and short- and long-term disability insurance plans are also available.

Accelerated Payment of Life Insurance Benefits

The ERS Board of Trustees 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.

Flexible Spending Accounts

Employees who are eligible for state insurance plans have access to optional health care, limited-purpose, and dependent care flexible spending accounts. Employees enrolled in HealthSelect or HealthSelect Out-of-State plans are eligible for the health care flexible spending account. Individuals enrolled in Consumer Directed HealthSelect with a Health Savings Account are eligible for the limited-purpose flexible spending account. None of these plans require evidence of insurability.

Additional Information

For additional information about the topics discussed in Chapter 15:

- **Insurance Overview:** Texas Insurance Code, Sections 1551.006(b) and 1551.227; the General Appropriations Act (88th Legislature), Article I,

Employees Retirement System, Rider 7; and [Health Insurance Opt-Out Credit for Active Employees](#), Employees Retirement System’s website.

- **Employee Insurance Benefits:** Texas Insurance Code, Sections 1551.002(1), 1551.104, and 1551.1045; and [Health Benefits for Active Employees](#) and [New Employee Benefits Guide](#), Employees Retirement System’s website.
 - o Waiting Period for Health Insurance Coverage: Texas Insurance Code, Sections 1551.1055(a) and (e), and 1601.1045(e).
 - o Dependent Coverage: Texas Insurance Code, Section 1551.151.
 - o State Contributions for Health Insurance: Texas Insurance Code, Sections 1551.003(9) and (11), 1551.311, and 1551.319(a) and (b); the General Appropriations Act (88th Legislature), Article IX, Section 17.03; and Fiscal Policies and Procedures, [Payroll Contribution for Group Health Insurance](#), Office of the Comptroller of Public Accounts’ website.
- **Dental Insurance:** [Optional Add-on Benefits for Active Employees](#), Employees Retirement System’s website.
- **Vision Insurance:** [Optional Add-on Benefits for Active Employees](#), Employees Retirement System’s website.
- **Tobacco User Premium:** [Tobacco Policy and Certification](#), Employees Retirement System’s website.
- **Employee Life and Disability Insurance:** [Optional Add-on Benefits for Active Employees](#), Employees Retirement System’s website.
 - o Accelerated Payment of Life Insurance Benefits: Texas Insurance Code, Section 1551.254.
- **Flexible Spending Accounts:** [TexFlex Flexible Spending FSA for Active Employees](#), Employees Retirement System’s website.

Chapter 16

Retirement

Retirement Overview

The State offers a defined benefit retirement plan as well as 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. In some cases, eligible employees of higher education institutions may elect to participate in the Optional Retirement Program governed by the Higher Education Coordinating Board. An optional retirement program 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.

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

The information below primarily focuses on ERS policies, rules, procedures, and governing laws. These requirements and options may apply in some cases to employees covered by TRS or the Judicial Retirement System of Texas. 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. This plan provides a lifetime level of

retirement income based on a formula authorized by the State Legislature. The types of benefits payable by the retirement system are:

- Service retirement benefits.
- Disability retirement benefits (occupational or non-occupational disability).
- Death benefits.

A state agency employee becomes a member of the ERS program starting on his or her first day of employment. Each employee who is a member of ERS is required to pay an annual membership fee. However, the Legislature has continued a long-standing tradition of appropriating funds to pay the membership fee.

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 website](#).

Additional information regarding retirement is available on [the ERS website](#).

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.

An employee's portion of the retirement contribution is deducted each month from the employee's pay and deposited into an employee savings account. The State deposits its portion of the retirement contribution into a State Accumulation Account.

The employing agency is responsible for deducting the amount of the employee's contribution from the employee's pay. The deduction process requires no employee consent because the employee consents to the automatic deduction when he or she becomes a member of the ERS program.

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). Deposits into the Fund also include the State's contributions, other appropriations made by the Legislature, and proceeds from investment of the Fund.

In addition, during the 2024–2025 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 ERS's Retirement Program.

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. This means if you return to state employment you will be subject to the benefit rules for new employees. 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: elected class and employee class.

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.
- Members of the Legislature.
- District and criminal district attorneys (to the extent that they receive salaries from the state general revenue fund).

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.
- **Regular Employee Class:** employee class service rendered that is not considered CPO/CO service.

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, years of service credit, and state agency start date determine his or her eligibility to retire.

- If the employee started working at a state agency before September 1, 2022, the amount of his or her monthly retirement annuity will depend on his or her start date, years of service, age, and salary.
- If the employee started working on or after September 1, 2022, the amount of his or her annuity will depend on how much money—including guaranteed 4-percent annual interest, investment earnings, and a 150-percent match funded by state contributions—is in his or her ERS account when he or she retires. Refer to [the ERS website](#) for detailed information on the benefit structure for these employees.

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.

Refer to [the ERS website](#) for information on retirement eligibility for all retirement groups and service classes, including the Judicial Retirement System of Texas.

Establishing Service Credit

Membership in ERS's regular employee or CPO/CO class begins on the first day a person is employed or holds office. Employees receive a full month's retirement credit when a retirement contribution is deducted from a paycheck and deposited into ERS. However, service credit for retirement may be established in other ways. If the employee is eligible, these may be:

- Vacation and sick leave.
- 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.

Additional information regarding service credit is available on [the ERS website](#).

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 highest average salary and years of creditable service. This amount is called an annuity. An employee's hire date affects the annuity computation. In addition, an employee's annuity may be reduced if he or she retires before the regular retirement age.

Consult [the ERS website](#) for the different annuity formulas and age requirements for all service classes, including the Judicial Retirement System of Texas.

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. Certain municipal employees may also elect to join this program.

Each retirement system will pay benefits based upon only the service and salaries established in that system.

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.

Additional information on eligibility for proportionate retirement benefits is available on [the ERS website](#).

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. In addition, state agencies are required to pay into the retirement system an amount equal to the amount of the state contribution for active

members for a person who retired on or after September 1, 2009, from the employee class and then was rehired as a retiree in a position that would otherwise include membership in the employee class.

A retiree from another system, such as TRS, who returns to work for a state agency under ERS contributes the employee portion of his or her monthly pay to an ERS retirement account.

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 or her annuity.

A retiree must notify the employing agency that he or she is a retiree and is no longer eligible to be an active member of ERS. Both the retiree and his or her employer must notify ERS 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.

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.

Additional information on return-to-work retirees is available on [the ERS website](#).

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.

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.

A higher education institution may create and administer a 457 plan or it may contract with other higher education institutions to create a single plan for its employees.

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 1.0 percent of an employee's pay. Unless otherwise directed by the employee, this contribution is placed in a default investment product selected by the ERS Board of Trustees.

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.

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 provided as part of orientation for new employees. 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.

Additional information about Texa\$aver and the 401(k) and 457 plans is available on [the ERS website](#).

Additional Information

For additional information about the topics discussed in Chapter 16:

- **Retirement Overview:** Texas Government Code, Section 812.003(a) and (b); and *Optional Retirement Program and An Overview of TRS and ORP for Employees Who Are Eligible to Elect ORP (July 2021)*, [Texas Higher Education Coordinating Board's website](#).
- **Employees Retirement System (ERS):** Texas Government Code, Sections 812.003(d), 814.001, 815.401(a) and (c), and 815.507; the General Appropriations Act (88th Legislature), Article I, Employees Retirement System, Rider 4.
 - o Retirement Contributions: The General Appropriations Act (88th Legislature), Article I, Employees Retirement System, Rider 4; and Article IX, Section 17.06; and Texas Government Code, Sections 815.311(a); 815.312(a); 815.317(a); 815.402(a), (d), (g), and (h); 815.4035; and 820.101.

- o Withdrawal of Contributions: Texas Government Code, Section 812.101(a).
- o Classes of Membership: Texas Government Code, Sections 812.001, 812.002(a), and 812.003.
- **Retirement Eligibility:** Texas Government Code, Sections 814.104(a), (b), and (d); 814.107(a); and 820.052(1) and (2); [Retirement](#), Employees Retirement System’s website; [Overview of Retirement Annuity and Insurance Benefits for Regular State Employees](#), Employees Retirement System’s website; and [Group 4 Recruitment Handout](#), Employees Retirement System’s website.
- **Establishing Service Credit:** Texas Government Code, Section 812.003(d); and [Service Credit for State of Texas Retirement](#), Employees Retirement System’s website.
 - o Determining the Standard Service Retirement Annuity: Texas Government Code, Sections 814.105 and 814.107; and [Standard Annuity](#), Employees Retirement System’s website.
- **Proportionate Retirement Program:** Texas Government Code, Sections 803.0021, 803.101, 803.102, 803.201(a), and 803.302(b).
- **Resumption of State Service by a Retiree:** Texas Government Code, Sections 812.202, 812.204, 812.205, and 812.206; Texas Administrative Code, Title 34, Section 73.7; and [Retirees Who Return to Work](#), Employees Retirement System’s website.
- **Deferred Compensation:** Texas Government Code, Sections 609.005 and 609.702, and [Planning Your Retirement: Regular State Employees](#), Employees Retirement System, March 2023, Employees Retirement System’s website.
 - o 401(k) Plan Automatic Enrollment: Texas Government Code, Section 609.5025(b), (c), (d), and (h).

Chapter 17

Additional Benefits

Awards and Gifts

State agencies and higher education institutions 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.

State agencies and higher education institutions 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.

Additional Information

The [Office of the Comptroller of Public Accounts' website](#) provides additional guidance on policy and documentation requirements and sources for several of the additional benefits discussed in this chapter.

Employee Health and Wellness Programs

Health Fitness and Education Programs

A state agency or higher education institution 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.

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.

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

Wellness Programs

A state agency or higher education institution 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.

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. In addition, state agencies and higher education institutions must designate an employee to serve as the wellness liaison between the agency or higher education institution and the statewide wellness coordinator.

As part of a state agency or higher education institution wellness program, a state agency or higher education institution 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 higher education institution 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 higher education institution may adopt additional wellness policies as determined by the agency or higher education institution.

Wellness Council

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

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

Employee Assistance Programs

A state agency or higher education institution may provide an employee assistance program (EAP) to offer employees help with personal concerns that may adversely affect job performance. An EAP is not required to be provided by a state agency or higher education institution. The Office of the Comptroller of Public Accounts' website provides guidance and information on employee assistance programs at [eXpendit](#), State Employees/Employee Assistance Programs.

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 higher education institution with which the employee is employed.

Memberships in and Dues for Professional Organizations

With the exception of a state library, a state agency or higher education institution 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.

Moving and Storage Expenses

A state agency or higher education institution 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 higher education institution 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 higher education institution at another headquarters that is at least 25 miles from the facility that is being closed or undergoing a reduction in force.

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

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.

A state agency or higher education institution 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.

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.

See the Office of the Comptroller of Public Accounts' [Texas Payroll/Personnel Resource](#) for additional agency-specific information on State-owned housing.

Additional Information

For additional information about the topics discussed in Chapter 17:

- **Awards and Gifts:** Texas Government Code, Sections 2113.201 and 2113.202.
- **Employee Health and Wellness Programs:**
 - o Health Fitness and Education Programs: Texas Government Code, Sections 664.002, 664.004, and 664.005.
 - o Wellness Programs: Texas Government Code, Section 664.053(a), (d), and (e); and 664.061(a).
 - o Wellness Council: Texas Government Code, Section 664.060(a), (b), and (d).
 - o Employee Assistance Programs: [Employee Assistance Programs](#), Office of the Comptroller of Public Accounts' website.
- **Child Care Expenses:** Texas Government Code, Section 610.011.
- **Memberships In and Dues for Professional Organizations:** Texas Government Code, Section 2113.104.
- **Moving and Storage Expenses:** Texas Government Code, Section 2113.204(a), (b), (c), and (d).
- **State-owned Housing:** The General Appropriations Act (88th Legislature), Article IX, Section 11.02(a); and Texas Payroll/Personnel Resource's [Housing](#), Office of the Comptroller of Public Accounts' website.

Chapter 18

Training

Equal Employment Opportunity (EEO) Compliance Training

State agencies and higher education institutions that receive three or more discrimination complaints with merit in a fiscal year must provide comprehensive EEO 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 higher education institution 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.

Equal Employment Opportunity (EEO) Standards Training

Each state agency and higher education institution must provide employment discrimination and sexual harassment training to its employees. New employees must receive the training no later than 30 days after their date of hire. Employees who complete the training are required to sign a statement verifying their completion of the training program. Agencies and higher education institutions must save the statements in the employees' personnel files.

Additional employment discrimination and sexual harassment training is required for each employee every two years. The minimum standards for the training are determined by the Commission.

Coordinated Technology Training

Each calendar quarter, a state agency or higher education institution 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 higher education institution must use training offered or coordinated by the Department of Information Resources if the training meets agency or higher education institution requirements and is cost-competitive.

Cybersecurity Training

Cybersecurity Awareness Training and Data Use Agreements

To the extent possible, state agencies and higher education institutions 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.

Cybersecurity Training for State Agency Employees

State agencies and higher education institutions must identify employees who use a computer to complete at least 25 percent of their required duties, and at least once each year, those employees and each elected or appointed officer of the agency or higher education institution must complete a cybersecurity program certified by the Department of Information Resources (Department). The Department must annually publish on its website the list of cybersecurity training programs that it has certified. A state agency or higher education institution may select for its employees the most appropriate cybersecurity training program certified by the Department.

The executive head of a state agency or higher education institution must verify completion of a cybersecurity training program by its employees in a manner specified by the Department. In addition, the executive head must periodically require an internal review of the agency's or institution's compliance with this requirement.

Cybersecurity Training for Agency Contractors

State agencies and higher education institutions must require any contractor who has access to a state computer system or database to complete a cybersecurity training program certified by the Department and selected by the agency or institution. A contractor includes a subcontractor, officer, or employee of the contractor.

The cybersecurity training program must be completed by the contractor during the term of the contract and during any renewal period, and the requirement for completing the cybersecurity training program must be included in the terms of the contract awarded by the state agency or institution.

A contractor required to complete the cybersecurity training program must verify completion of the program to the contracting state agency or higher education institution. In addition, the person who oversees contract management for the agency or higher education institution must report the contractor's completion of the training program to the Department no later than August 31 of each year and must periodically review the agency's or institution's contracts to ensure compliance with this requirement.

Training and Education Programs

A state agency or higher education institution 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. For example, certain state agencies and higher education institutions may have specific training requirements authorized by statute or the General Appropriations Act.

A state agency or higher education institution 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. A state agency of higher education institution may also spend appropriated funds to reimburse an employee or administrator who serves in an information technology, cybersecurity, or other cyber-related position for fees associated with industry-recognized certification examinations. Additionally, if an employee of a state agency or higher education institution seeks reimbursement for a training or education program offered by a higher education institution (as defined by Section 61.003 of the Texas Education Code), the agency or higher education institution may pay the tuition

expenses for a program course successfully completed by the employee only at an accredited higher education institution.

A state agency or higher education institution 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; and
- The certification earned by each employee through the training or education program.

A state agency or higher education institution must adopt rules relating to the eligibility of employees for training and education supported by the agency or higher education institution, as well as rules relating to the obligations assumed by the employees receiving the training and education. Additionally, a state agency or higher education institution must adopt rules that require the executive head of the agency or higher education institution 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).

A state agency or higher education institution may contract with another state, local, or federal department, agency, or higher education institution to train or educate its employees, or it may join in presenting a training or educational program.

Training Policy Requirements

The State Employees Training Act authorizes a state agency or higher education institution 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.

A state agency or higher education institution 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 higher education

institution 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.

A state agency's or higher education institution's training and educational program may include the following:

- Preparing for technological and legal developments.
- Increasing work capabilities.
- Increasing the number of qualified employees in areas designated by higher education institutions as having an acute faculty shortage.
- Increasing the competence of state employees.

Before funds for training may be expended, state agencies and higher education institutions 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 higher education institution must post the policy on its website.

If a state employee receives training that is paid for by a state agency or higher education institution, 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 higher education institution must require the employee to agree to certain conditions in writing before the training begins. For an employee, the conditions state that they must:

- Work for the agency or higher education institution for at least one month following the training, for each month of the training period, **or**
- Reimburse the agency or higher education institution 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.

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 higher education institution for all costs

associated with the training and for the agency's or institution's reasonable expenses incurred in obtaining payment, including attorney fees.

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

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. 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.

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. 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.

See [the Comptroller's Office's website](#) for additional information on training requirements for state agency employees who are responsible for contract management and/or purchasing.

Reporting of Contract Management and Procurement Staff

Each year, state agencies must estimate the number of their employees requiring purchasing or contract management training and report their anticipated purchasing and contract management training needs to the Comptroller's Office.

Training in Contract Negotiation for Purchase of Information Resources Technologies

Employees of state agencies and higher education institutions 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.

Additional Information

For additional information about the topics discussed in Chapter 18:

- **Equal Employment Opportunity (EEO) Compliance Training:** Texas Labor Code, Section 21.556.
- **Equal Employment Opportunity (EEO) Standards Training:** Texas Labor Code, Section 21.010; and Texas Administrative Code, Title 40, Section 819.24.
- **Coordinated Technology Training:** Texas Government Code, Section 2054.122.
- **Cybersecurity Training:**
 - o Cybersecurity Awareness Training and Data Use Agreements: Texas Government Code, Section 2054.135.
 - o Cybersecurity Training for State Agency Employees: Texas Government Code, Sections 2054.519(e) and 2054.5191(a), (c), and (d).
 - o Cybersecurity Training for Agency Contractors: Texas Government Code, Section 2054.5192.
- **Training and Education Programs:** Texas Government Code, Sections 656.045, 656.047, 656.048, and 656.049.
- **Training Policy Requirements:** Texas Government Code, Sections 656.041, 656.044, 656.046, 656.102, 656.103, 656.104, and 2113.205(a).

- **Contract Management and Purchasing Training:** Texas Government Code, Sections 656.051(a) and (c); 656.052(a-1), (c), and (d); 656.054(a); and 656.055.
 - o Reporting of Contract Management and Procurement Staff: Texas Government Code, Section 656.054(b).
- **Training in Contract Negotiation for Purchase of Information Resources Technologies:** Texas Government Code, Section 656.050.

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. With few exceptions, state employees are covered by UI.

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

The Texas Workforce Commission (Commission) is the agency responsible for administering the State's UI compensation programs. Agencies and higher education institutions should refer to the Commission for additional information regarding UI compensation.

The Commission supplies employers, without cost, printed notices that provide general information about filing a claim for unemployment benefits. A state agency or higher education institution must post and maintain the notices in places accessible to all employees.

Filing an Initial Claim for Unemployment Benefits and Notice of Initial Claim

Individuals may file for UI benefits in two ways: online at the Commission's "[Apply for Benefits](#)" Internet application or by calling a Commission Tele-Center at 800-939-6631. Full details about how to file a claim are available on [the Commission's website](#).

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 either (1) 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 (2) the entity for which the claimant last worked, if that entity is an employer as defined by Texas Labor Code, Chapter 201, or as defined by the unemployment law of any other state. An employer or their agent to whom a notice is mailed 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.

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. The employer's response can be submitted online via [the Commission's website](#).

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. 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 website on the [Introduction to the Unemployment Benefits Appeal Process](#) page and the [File an Unemployment Appeal](#) page.

Reimbursements to the Unemployment Compensation Fund

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

If a state agency or higher education institution 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 higher education institution is not entitled to a refund or credit for the amount paid to the Commission, if the agency or higher education institution did not comply with the notification requirements according to Texas Labor Code, Section 208.004, regarding a claimant's entitlement eligibility.

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. 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.

Additional Information

For additional information about the topics discussed in Chapter 19:

- **Unemployment Insurance Overview:** Texas Labor Code, Sections 201.063, 205.013, 205.041, 208.001(b), and 301.001(a); and [Basics of Unemployment Benefits](#), Texas Workforce Commission's website.
- **Filing an Initial Claim for Unemployment Benefits and Notice of Initial Claim:** Texas Labor Code, Sections 208.002 and 208.004.
 - o Appeals Process: Texas Labor Code, Section 212.053(1).
- **Reimbursements to the Unemployment Compensation Fund:** Texas Labor Code, Sections 205.0125 and 205.013.
- **Coverage for State Employees Working Outside the State:** Texas Labor Code, Sections 205.042, 211.001, and 211.002.

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.

The Department of Insurance, Division of Workers’ Compensation (Division) oversees the State’s workers’ compensation program. The Office of Injured Employee Counsel was established by the Legislature to represent the interests of workers’ compensation claimants in Texas.

Coverage for State Employees

For most state agencies and higher education institutions, 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.

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 the [State Office of Risk Management's website](#).

New Requirement

The 88th Legislature enacted legislation providing that for purposes of the Texas Workers’ Compensation Act, the travel of a member of the Texas military forces to or from the member’s duty location while serving on state active duty and engaged in authorized duty under written orders or while on state training and other duty is considered to be in the course and scope of the member’s employment. This requirement took effect September 1, 2023.

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.
- A person employed by the Department of Transportation, The University of Texas System, or the Texas A&M University System.

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. 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.

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.

For additional information on workers’ compensation health care networks, please refer to [the Department of Insurance’s website](#).

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.

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.

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.

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 Division, or the state agency with which the officer or employee is associated.

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 higher education institutions.

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. However, the Division adjudicates income and medical benefit disputes for the State. 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.

There are four types of workers’ compensation benefits: income benefits, medical benefits, burial benefits, and death benefits. Information about those benefits is available from SORM and the Division.

New Requirement

The 88th Legislature enacted legislation providing workers’ compensation coverage for post-traumatic stress disorder (as defined by Texas Labor Code, Section 504.019) suffered by a member of the Texas military forces on state active duty if, based on a diagnosis, the disorder was caused by events occurring in the course and scope of the member’s state active duty. This requirement took effect September 1, 2023.

Employer Responsibilities

A state agency or higher education institution covered under Texas Labor Code, Chapter 501, must report to SORM an injury that results in medical expenses or the absence of an employee of the state agency or higher education institution for more than one day. In addition, a state agency or higher education institution must notify SORM of an occupational disease reported by an employee. The initial report of injury must be made not 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.

The following list is a summary of responsibilities for state agencies and higher education institutions that are covered by these provisions.

- **Sending timely notices, reports, and information** - Most state agencies and higher education institutions are required to give notices, make reports, and otherwise transmit information to SORM and to the Division concerning on-the-job injuries and occupational diseases or illnesses in a timely manner.
- **Designating a claims coordinator** - Most state agencies and higher education institutions must designate one or more claims coordinators, and must report to SORM any change in this designation.
- **Complying with rules** - Most state agencies and higher education institutions must comply with all rules enacted by SORM, as well as those of the Division. State agency and higher education institution 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 higher education institutions are subject to administrative penalties for violations of the Act that may be assessed against the employer by the Division’s Compliance and Investigations Division.
- **Keeping adequate records** - Most state agencies and higher education institutions 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 higher education institutions 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 higher education institutions 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 communicable diseases and eligibility for workers’ compensation benefits. State agencies and higher education institutions 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).

- **Notifying employees about the State’s ombudsman program** - State agencies and higher education institutions 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.
- **Developing health and safety programs and return-to-work programs** - State agencies and higher education institutions must have programs in place to promote the health and safety of their employees and to assist injured employees with returning to work. Those programs must comply with SORM’s guidelines. Return-to-work programs must be a coordinated effort involving the Division, state agencies and higher education institutions, employees, and health care providers.
- **Notifying employees of health care network requirements** - State agencies and higher education institutions 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.

For additional information on return-to-work programs, see the [Facilitating an Injured Employee’s Return to Work](#) section in this chapter.

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.

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.

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.

Workers’ Compensation and Emergency Leave

The administrative head of a state agency or higher education institution 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 higher education institution must attach a statement of the reasons for the authorization to its payroll voucher for the first payroll period affected by the leave. 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 higher education institutions are entitled to certain rights under the Texas Workers’ Compensation Act. These rights include:

- The right to be present at all administrative proceedings relating to an employee’s claim.
- The right to present relevant evidence relating to an employee’s claim at any proceeding.
- The right to report suspected fraud.
- The right to contest the compensability of an injury if the insurance carrier⁸ accepts liability for the payment of benefits.
- The right to receive notice, after making a written request to the insurance carrier, of:
 - o A proposal to settle a claim; or
 - o An administrative or a judicial proceeding relating to the resolution of a claim.

⁸ 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.”

- The right to contest the failure of the insurance carrier to provide accident prevention services.

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. 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 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.

Claims for compensation must 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. 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.

Claims for death benefits 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.

Additional Injury Reporting Requirements

A state agency is 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 Division and others.

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.

To facilitate an injured employee’s return to employment as soon as it is considered safe and appropriate by the injured employee’s treating doctor, the treating doctor may request that the employer provide the doctor specific information about the functions and physical responsibilities related to the injured employee’s job. The employer should do this using the form developed and adopted by the Commissioner of Workers’ Compensation. Information provided to a treating doctor does not constitute:

- A request by the employer that the injured employee return to his or her job.
- An offer of employment by the employer for the injured employee to return to his or her job.
- An admission of the compensability of the employee’s injury.

Additional information about the Return-to-Work Program is available on [SORM’s website](#).

In addition, a [Return-to-Work Guide](#) published by the Division and the [2023 Return to Work](#) report published by the Division’s Workers’ Compensation Research & Evaluation Group are available on the Department of Insurance’s website.

Additional Information

For additional information about the topics discussed in Chapter 20:

- **Overview of Workers’ Compensation:** Texas Labor Code, Sections 402.001 and 404.002(a); and [Workers’ Compensation/Injured Employee Resources](#), Department of Insurance, Division of Workers’ Compensation’s website.
 - o Coverage for State Employees: Texas Labor Code, Sections 408.001(a), 412.011, 501.002(d), and 501.024.
 - o Workers’ Compensation Health Care Networks: Texas Insurance Code, Section 1305.002.
 - o Out-of-State Assignments or Positions: Texas Labor Code, Section 501.025.
 - o Coverage for Services Provided by Volunteers: Texas Labor Code, Section 501.026(a), (b), and (d); and [Volunteer Program](#), State Office of Risk Management’s website.
- **Workers’ Compensation Benefits:** Texas Labor Code, Sections 402.001, 409.013(b), 410.002, and 501.021; and [Workers’ Compensation Income and Medical Benefits](#), Department of Insurance, Division of Workers’ Compensation’s website.
- **Employer Responsibilities:**
 - o Texas Labor Code, Section 406.005; and Title 28, Texas Administrative Code, Sections 110.101, 110.108(a) and (b), and 251.207.
 - o Texas Labor Code, Sections 404.153, 409.005(a) and (b), 412.0125, 412.051(a), and 501.001(6).
 - o Texas Insurance Code, Section 1305.005(d) and (g).
 - o [Claims Coordinator Handbook for Texas State Agencies](#), State Office of Risk Management’s website.
 - o [Return to Work](#) and [Workplace Safety](#), Department of Insurance, Division of Workers’ Compensation’s website.
 - o [Workers’ Compensation Health Care Networks](#), Department of Insurance’s website.

- **Workers’ Compensation and State Leave Provisions:** Texas Labor Code, Section 501.044; and Texas Office of the Attorney General, Opinion JC-0188 (2000).
 - o Workers’ Compensation and Emergency Leave: Texas Labor Code, Section 501.045.
- **Employer’s Rights:** Texas Labor Code, Section 409.011(b); and [*Claims Coordinator Handbook for Texas State Agencies*](#), State Office of Risk Management’s website.
 - o Employee’s Responsibilities: Texas Labor Code, Sections 409.001, 409.002, 409.003, 409.004, and 409.007.
- **Additional Injury Reporting Requirements:** Texas Labor Code, Section 501.048.
 - o Facilitating an Injured Employee’s Return to Work: Texas Labor Code, Sections 408.0221 and 412.051(a)(1); and [*Return-to-Work Program*](#), State Office of Risk Management’s website.

Chapter 21

Miscellaneous Provisions

Employee Exit Surveys

Each state agency must provide employees who are terminating their employment voluntarily access to the State Auditor’s Office online exit survey. This comprises all employee types, including 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. Higher education institutions are exempt from this requirement.

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 higher education institution with no break in service.
- Retirement.

The exit survey instrument can be accessed on the [State Classification Team website](#).

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.

Several methods can be used to distribute the unique ID. These include printing the unique ID to give to the employee, copying and pasting the unique ID into an email to send to the exiting employee with the link to the survey website, 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.

Exit Survey Reporting and Disclosure Requirements

Summary reports are available to agency human resources directors following the end of each fiscal year quarter. These reports summarize the results of the exit surveys submitted by former employees of the agency during the preceding quarter. In addition, agency executive directors can view the exit surveys submitted by former employees of the agency who elected to share their exit survey responses with their agency's executive director.

The State Auditor's Office is required to provide a report summarizing exit survey findings to the Governor, Lieutenant Governor, Speaker of the House of Representatives, and members of the Senate Committee on Finance and the House Committee on Appropriations by December 15 of each year before a regular legislative session.

Individual exit survey responses are confidential and are not subject to disclosure under Texas Government Code, Chapter 552. The responses may be disclosed only to a law enforcement agency for a criminal investigation or by court order.

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. 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 higher education institution.

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 administrative head of the employing state agency or higher education institution to perform work elsewhere. 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 higher education institution. 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. A full-time salaried employee in a state agency or higher education institution may not be employed in a position for less than 40 hours in a workweek.

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. The chief administrator of a state agency or higher education institution that must maintain certain services 24 hours a day may require essential employees who perform those services to be on duty for a workweek that exceeds 40 hours in necessary or emergency situations.

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.

The governing board of a higher education institution 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 higher education institution, university system, or an office, department, or division of either.

State agencies and higher education institutions may consider the use of alternative work schedules such as compressed work weeks, flexible work schedules, and staggered work hours.

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.

Voluntary Work Reduction Program

To increase state efficiency while reducing the cost of state government, a state agency or higher education institution may create a work reduction program in which a full-time state employee of the state agency or higher education institution agrees to accept reduced wages and benefits for a proportionate reduction in work

hours. State agencies and higher education institutions that have this program shall place a notice of the program's availability in common areas of the state agency or higher education institution. 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 eligible to participate in this program.

Workforce Planning

As part of their strategic plans, state agencies are required to conduct staffing analyses and develop workforce plans.

Workforce planning is an organized process for identifying, analyzing, and forecasting the number of employees and the types of employee skill sets required to meet agency goals and strategic objectives. Therefore, workforce planning may help agencies ensure better development of existing talent, provide realistic staffing projections for budgets, and maintain or improve workforce diversity.

Higher education institutions, 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.

The State Auditor's Office has published the [Workforce Planning Guide](#) to assist agencies with developing their workforce plans.

Designated Information Security Officer

State agencies and higher education institutions 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.

Designated Data Management Officer

State agencies and higher education institutions with more than 150 full-time employees must designate a full-time employee to serve as a data management officer. State agencies and higher education institutions should refer to Texas Government Code, Section 2054.137, for details concerning the responsibilities of the data management officer required by statute.

Restrictions on State Agency Use of Certain Individual-Identifying Information

State agencies, including higher education institutions as defined by the Texas Education Code, Section 61.003, may not use global positioning system technology, individual contact tracing, or technology designed to obtain biometric identifiers to acquire information that alone or in conjunction with other information identifies an individual or the individual's location without the individual's written or electronic consent. "Biometric identifier" has the meaning assigned by the Texas Government Code, Section 560.001. In addition, state agencies and higher education institutions may not (1) retain such information with respect to an individual without the individual's written or electronic consent or (2) disseminate to a person such information with respect to an individual unless the agency or institution first obtains the individual's written or electronic consent.

State agencies and higher education institutions may, however, acquire, retain, and disseminate the information described above with respect to an individual without the individual's written or electronic consent, if the acquisition, retention, or dissemination is: (1) required or permitted by a federal statute or by a state statute other than Chapter 552 of the Texas Government Code; or (2) made by or to a law enforcement agency for a law enforcement purpose.

State agencies and higher education institutions must retain the required written or electronic consent obtained from an individual in the agency's or institution's records until the contract or agreement under which that information was acquired, retained, or disseminated expires.

Additional Information

For additional information about the topics discussed in Chapter 21:

- **Employee Exit Surveys:** Texas Government Code, Section 651.007(a) and (b).
 - o Exit Survey Employee Access: Texas Government Code, Section 651.007(b).
 - o Exit Survey Reporting and Disclosure Requirements: Texas Government Code, Section 651.007(b), (e), (g), and (i).
- **Human Resources Staffing:** Texas Government Code, Sections 670.001 and 670.002.
- **Place of Work and Working Hours:** Texas Government Code, Sections 658.002; 658.005; 658.006; 658.007(a); and 658.010; and Texas Office of the Attorney General, Opinion M-1058 (1972).
 - o Eight-Hour Work Day for Certain Public Works Employees: Texas Government Code, Section 605.001.
 - o Voluntary Work Reduction Program: Texas Government Code, Sections 658.003 and 658.004.
- **Workforce Planning:** Texas Government Code, Sections 2056.001 and 2056.0021.
- **Designated Information Security Officer:** Texas Government Code, Section 2054.136.
- **Designated Data Management Officer:** Texas Government Code, Section 2054.137.
- **Restrictions on State Agency Use of Certain Individual-Identifying Information:** Texas Government Code, Sections 2062.001 and 2062.002.



Appendix 1 Objective, Scope, and Methodology

Objective

The objective of this inventory was to summarize the State’s human resources management statutes that apply to Texas state employees for the 2024–2025 biennium.

Methodology

Fieldwork for this inventory was conducted from April 2023 through October 2023. This 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 reference guide was subject to certain quality control procedures to ensure accuracy.

For this inventory, we reviewed the following:

- Texas Office of the Attorney General opinions.
- Office of the Comptroller of Public Accounts’ Texas Payroll/Personnel Resource.
- General Appropriations Act (88th Legislature).
- Texas Administrative Code.

The following members of the State Auditor’s staff were involved in creating this inventory:



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- Texas Education Code.
- Texas Family Code.
- Texas Government Code.
- Texas Human Resources Code.
- Texas Insurance Code.
- Texas Labor Code.
- Texas Occupations Code.
- Code of Federal Regulations.
- United States Code.
- United States Supreme Court cases.
- Various Texas and federal agencies' website resources.

Appendix 2

State Agency Responsibilities

Figure A lists subject areas and the corresponding responsible agencies for various human resources-related subjects. Agencies should contact the appropriate office with questions.

Figure A

Agencies Responsible for Human Resources-related Subjects

Topic	Office to Contact	Phone Numbers and Websites
Salary Administration	State Auditor's Office – State Classification Team	(512) 936-9500 State Classification Team main page and the Agency Contact Managers page
	Office of the Comptroller of Public Accounts	(512) 463-4008 or (512) 463-2277 Texas Payroll/Personnel Resource main page
Discrimination in Employment	Texas Workforce Commission	(512) 463-2642 (888) 452-4778 (toll free) Employment Discrimination page
Vacation and Leave	State Auditor's Office – State Classification Team	(512) 936-9500 State Classification Team main page and the Agency Contact Managers page
Health Insurance	Employees Retirement System	(877) 275-4377 (toll free) Employees Retirement System website
Holidays	Office of the Comptroller of Public Accounts	(512) 463-4008 or (512) 463-2277 General Provisions section of the Texas Payroll/Personnel Resource
	State Auditor's Office – State Classification Team	(512) 936-9500 Holiday Schedule
Job Vacancy Posting	Texas Workforce Commission	(512) 463-4210 (800) 832-9394 (toll free) Recruiting & Hiring Resources page
Longevity	Office of the Comptroller of Public Accounts	(512) 463-4008 or (512) 463-2277 Non-Salary Payments section of the Texas Payroll/Personnel Resource

Topic	Office to Contact	Phone Numbers and Websites
Payroll	Office of the Comptroller of Public Accounts	(512) 463-4008 or (512) 463-2277 Fiscal Management Division's Payroll/Personnel page
Retirement	Employees Retirement System	(877) 275-4377 (toll free) Employees Retirement System website
	Teacher Retirement System	(800) 223-8778 (toll free) Teacher Retirement System website
Travel	Office of the Comptroller of Public Accounts	(512) 463-4008 or (512) 463-2277 Fiscal Management Division's Travel page
Unemployment Insurance	Texas Workforce Commission	(866) 274-1722 (toll free) Employer Benefits Services page
Veterans' Benefits	Texas Veterans Commission	(512) 463-6564 (800) 252-8387 (toll free) Texas Veterans Commission website
Workers' Compensation	Division of Workers' Compensation at the Department of Insurance	(512) 804-4000 (800) 252-7031 (toll free) Workers' Compensation main page
	State Office of Risk Management	(512) 475-1440 (877) 445-0006 (toll free) Claims Operations main page

Appendix 3

Entitlements for State Agency Employees

Figure B

Entitlements for State Agency Employees

Employment Status ^a	Vacation Leave Accrual ^b	Sick Leave Accrual ^c	State Service Credit ^d	Longevity Pay ^e	Holidays ^f
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.

^b Texas Government Code, Section 661.152.

^c Texas Government Code, Section 661.202.

^d Texas Government Code, Section 659.046.

^e Texas Government Code, Sections 659.041, 659.042, and 659.043.

^f Texas Government Code, Sections 662.001, 662.005, and 662.008.

Appendix 4

Entitlements for Employees of Higher Education Institutions

Figure C

Entitlements for Employees of Higher Education Institutions ^a

Employment Status ^b	Vacation Leave Accrual ^c	Sick Leave Accrual ^d	State Service Credit ^e	Longevity Pay ^f	Holidays ^g
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 ^h	No	No

^a The leave entitlements may not apply to employees of higher education institutions that have adopted a comprehensive leave policy in accordance with Texas Education Code, Section 51.961.

^b For higher education institutions, 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).

^c Texas Government Code, Section 661.152.

^d Texas Government Code, Sections 661.201(b) and 661.202(c).

^e Texas Government Code, Section 659.046(a).

^f Texas Government Code, Sections 659.041(2)(B), 659.042(6), and 659.043(a).

^g Texas Government Code, Sections 662.008 and 662.011(c).

^h Texas Office of the Attorney General, Opinion JM-407 (1985).

Appendix 5

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. Figure 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, as well as [Chapter 4 \(Federal Requirements: Fair Labor Standards Act and the Family and Medical Leave Act\)](#) for more information on the Fair Labor Standards Act (FLSA).

Figure 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 half of the accrued 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.

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)

^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 higher education institutions 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.

Appendix 6

Transfer and Rehire Leave Reinstatement Entitlements

Employees who separate from their current state agency or higher education institution 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.⁹ In addition, employees who have separated from employment at a state agency and then are rehired by a state agency or higher education institution may be entitled to have their vacation and sick leave reinstated, depending on the length of separation from the State. Those employees who separate from employment at a higher education institution are entitled to be paid for their vacation leave upon separation.¹⁰ Figure E lists these entitlements, as well as the transfer or reinstatement of state compensatory time and Fair Labor Standards Act (FLSA) overtime. See [Chapter 11 \(General Leave Provisions\)](#) for additional information on leave balances and transfers.

Figure E

Transfer and Rehire Leave Entitlements

Employment Status ^a	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. ^a	Yes. All remaining sick leave should be transferred to the new state employer. ^b	No.	No. FLSA overtime must be paid by employer from which the employee transferred. ^c
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 did not donate that leave and returns to state employment within 30 days of such separation. ^{a d}	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. ^{b d e}	No.	No. FLSA overtime must be paid by employer from which the employee separated. ^c

⁹ Texas Government Code, Sections 661.153 and 661.204.

¹⁰ Texas Government Code, Sections 661.062, 661.152(k), and 661.205.

Employment Status ^a	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 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. ^{b d e}	No.	No. FLSA overtime must be paid by employer from which the employee separated. ^c
Employee transfers to another state agency as a result of a legislative mandate.	Yes. All remaining vacation leave should be transferred to the new state agency.	Yes. All remaining sick leave should be transferred to the new state agency.	Yes, if that is the agreement between the agencies. ^f	Yes, if that is the agreement between the agencies. ^f Otherwise, the employee must be paid for the remaining balance.

^a The transfer and reinstatement of vacation leave applies to “unused” and “accumulated” vacation leave in accordance with Texas Government Code, Sections 661.152(k) and 661.153. Vacation leave donated to the family leave pool is not eligible for transfer or reinstatement.

^b 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, family leave pool, and donated sick leave hours are not eligible for transfer or reinstatement.

^c Code of Federal Regulations, Title 29, Section 553.27(b), states that employees must be paid unused FLSA compensatory time upon termination with an employer.

^d Texas Government Code, Section 661.023(a), allows a state employee to contribute to the family leave pool one or more days of the employee’s accrued sick leave or vacation leave. Sick leave or vacation leave donated to the family leave pool is not eligible for transfer.

^e 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 per Texas Government Code, Section 661.205.

^f Texas Government Code, Section 662.0071, 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.



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