

GOVERNMENT CODE
CHAPTER 661. LEAVE

SUBCHAPTER A. STATE EMPLOYEE SICK LEAVE POOL

Sec. 661.001. DEFINITIONS. In this subchapter:

(1) "Employee" means an individual, other than a state officer, employed by a state agency.

(2) "Executive director" means the individual appointed by the governing body of a state agency as chief administrative officer of the agency and includes the chancellor or highest executive officer of a university system and the president of a public senior college or university as defined by Section 61.003, Education Code.

(3) "Pool administrator" means the individual appointed by the governing body of a state agency to administer the agency's sick leave pool.

(4) "State agency" means:

(A) a board, commission, department, or other agency in the executive branch of state government created by the constitution or a statute of the state;

(B) an institution of higher education as defined by Section 61.003, Education Code;

(C) a legislative agency, but not either house or a member of the legislature; or

(D) the supreme court, the court of criminal appeals, a court of appeals, or a state judicial agency.

(5) "State officer" means an elected or appointed officer of a state agency or an executive director.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 1354, Sec. 14, eff. Sept. 1, 1999.

Sec. 661.002. SICK LEAVE POOL. (a) The governing body of a state agency shall, through the establishment of a program, allow an agency employee to voluntarily transfer to a sick leave pool sick leave earned by the employee.

(b) The executive director of the agency or another individual appointed by the governing body shall administer the sick leave pool.

(c) The governing body of the state agency shall adopt rules and prescribe procedures relating to the operation of the agency sick leave pool.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 661.003. CONTRIBUTION TO POOL. (a) An employee may contribute to the sick leave pool one or more days of the employee's accrued sick leave.

(b) The pool administrator shall credit the sick leave pool with the amount of time contributed by an employee and deduct a corresponding amount of time from the employee's earned sick leave as if the employee had used the time for personal purposes.

(c) A retiring employee may designate the number of the retiring employee's accrued sick leave hours to be used for retirement credit and the number of the retiring employee's accrued sick leave hours to be donated on retirement to the sick leave pool.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 1995, 74th Leg., ch. 288, Sec. 1, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 387, Sec. 1, eff. Sept. 1, 2001.

Sec. 661.004. USE OF TIME IN POOL. (a) An employee is eligible to use time contributed to the sick leave pool of the agency if the employee has exhausted the employee's sick leave because of:

(1) a catastrophic illness or injury; or

(2) a previous donation of time to the pool.

(b) The board of trustees of the state employee group benefits program established under Chapter 1551, Insurance Code, shall:

(1) classify, for the purposes of this subchapter, those injuries and illnesses that are catastrophic; and

(2) provide a written statement of the classification to the governing body of each state agency.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 10A.519, eff. Sept. 1, 2003.

Sec. 661.005. WITHDRAWAL OF TIME FROM POOL. (a) An employee may apply to the pool administrator for permission to withdraw time from the sick leave pool.

(b) If the employee is seeking permission to withdraw time

because of a catastrophic illness or injury, the employee must provide the pool administrator with a written statement from the licensed practitioner who is treating the employee or the employee's immediate family member. The statement must provide sufficient information regarding the illness or injury to enable the pool administrator to evaluate the employee's eligibility.

(c) If the pool administrator determines that the employee is eligible, the administrator shall:

(1) approve the transfer of time from the pool to the employee; and

(2) credit the time to the employee.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1334, Sec. 1, eff. Sept. 1, 1997.

Sec. 661.006. LIMITATION ON WITHDRAWALS. (a) An employee may not withdraw time from the sick leave pool except in the case of catastrophic illness or injury of the employee or the employee's immediate family.

(b) An employee may not withdraw time from the sick leave pool in an amount that exceeds the lesser of:

(1) one-third of the total time in the pool; or

(2) 90 days.

(c) The pool administrator shall determine the amount of time that an employee may withdraw from the pool.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1334, Sec. 2, eff. Sept. 1, 1997.

Sec. 661.007. EQUAL TREATMENT. An employee absent on time withdrawn from the sick leave pool may use the time as sick leave earned by the employee, and the employee is treated for all purposes as if the employee were absent on earned sick leave.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 661.008. NO ENTITLEMENT TO ESTATE. The estate of a deceased employee is not entitled to payment for unused time withdrawn by the employee from the sick leave pool.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. PAYMENT FOR VACATION AND SICK LEAVE TO ESTATES OF DECEASED STATE EMPLOYEES

Sec. 661.031. DEFINITIONS. In this subchapter:

(1) "National holiday" includes only those days listed under Section 662.003(a).

(2) "State employee" means an individual who is an appointed officer or employee of a state agency and who normally works 900 hours or more a year. The term includes:

(A) an hourly employee;

(B) a temporary employee;

(C) a person employed by:

(i) the Teacher Retirement System of Texas;

(ii) the Texas Education Agency;

(iii) the Texas Higher Education

Coordinating Board;

(iv) the Texas National Research Laboratory

Commission;

(v) the Texas School for the Blind and

Visually Impaired;

(vi) the Texas School for the Deaf;

(vii) the Texas Youth Commission;

(viii) the Windham School District; or

(ix) the Texas Rehabilitation Commission;

and

(D) a classified, administrative, faculty, or professional employee of a state institution or agency of higher education who has accumulated vacation leave, sick leave, or both, during the employment.

(3) "State holiday" includes only those days listed under Section 662.003(b).

(4) "Workday" includes a state or national holiday.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.20, eff. Sept. 1, 1997.

Sec. 661.032. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a state employee who, at any time during the employee's lifetime, has accrued six months of continuous state employment. State employment is continuous while the employee is entitled to be paid a regular salary, except that the continuity of

state employment is not interrupted while the employee is on a leave of absence without pay for less than one calendar month.

(b) The estates of the following are not entitled to payments under this subchapter:

(1) an individual employed on a piecework basis;
(2) an individual who holds an office that is normally filled by vote of the people;
(3) an independent contractor or an employee of an independent contractor;

(4) an operator of equipment or a driver of a team whose wages are included in the rental paid by a state agency to the owner of the equipment or team; or

(5) an individual covered by:
(A) the Judicial Retirement System of Texas Plan One;

(B) the Judicial Retirement System of Texas Plan Two; or

(C) the Teacher Retirement System of Texas, other than an individual described by Section 661.031(2)(C) or (D).

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.18, eff. Sept. 1, 1995.

Sec. 661.033. PAYMENT FOR VACATION AND SICK LEAVE. (a) When a state employee dies, the state shall pay the employee's estate for the balances of the employee's:

- (1) vacation leave; and
- (2) sick leave.

(b) Payment under this section shall comply with any limits in the General Appropriations Act, except as provided by Subsection (c).

(c) Payment under this section may not be for more than:
(1) all of the state employee's accumulated vacation leave; and

(2) one-half of the state employee's accumulated sick leave or 336 hours of sick leave, whichever is less.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 279, Sec. 17, eff. Sept. 1, 1999.

Sec. 661.034. COMPUTATION OF PAYMENT. (a) The payment to the estate of the deceased state employee shall be computed by multiplying the employee's hourly rate of compensation at the time of death by the total number of leave hours determined under Section 661.035.

(b) Under this section, rate of compensation:

(1) includes an emolument in lieu of base pay for which the state employee was eligible on the last day of employment; and

(2) does not include longevity or hazardous duty pay.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 661.035. COMPUTATION OF TOTAL ACCUMULATED LEAVE; HOLIDAY TIME. (a) For a state employee who at the time of death is normally scheduled to work at least 40 hours a week, eight hours is to be added to the employee's sick and vacation leave under Section 661.034 for each state or national holiday that is scheduled to fall within the period after the date of death and during which the employee could have used leave. To determine the period during which leave could have been used and the number of state or national holidays, the employee's leave is allocated over the workdays after the employee's death and eight hours is added as a state or national holiday occurs during the period.

(b) For a state employee who at the time of death is normally scheduled to work fewer than 40 hours a week, the number of hours that is to be added to the employee's accumulated sick and vacation leave for each state or national holiday is computed as provided by Subsection (a), but is to be proportionally reduced according to the lesser number of the employee's normally scheduled weekly work hours.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 661.036. PAYMENT CHARGED TO CERTAIN FISCAL YEAR. A state agency shall charge a payment required by Section 661.033 to the fiscal year in which the state employee dies.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 661.037. PAYMENT WITH FUNDS APPROPRIATED FOR SALARIES. A state agency shall use funds appropriated to the agency for salaries to make a payment required by Section 661.033.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 661.038. RULES. The comptroller may establish procedures and adopt rules to administer this subchapter. Added by Acts 1997, 75th Leg., ch. 1035, Sec. 17, eff. June 19, 1997.

SUBCHAPTER C. PAYMENT FOR VACATION TIME TO STATE EMPLOYEES WHO SEPARATE FROM STATE EMPLOYMENT

Sec. 661.061. DEFINITIONS. In this subchapter:

(1) "National holiday" includes only those days listed under Section 662.003(a). The term does not include a national holiday on which a state employee is not entitled to a paid day off from work under Section 662.005.

(2) "State employee" means an employee or appointed officer of a state agency. The term includes:

- (A) a full-time employee or officer;
- (B) a part-time employee or officer;
- (C) an hourly employee;
- (D) a temporary employee;
- (E) a person employed by:
 - (i) the Teacher Retirement System of Texas;
 - (ii) the Texas Education Agency;
 - (iii) the Texas Higher Education Coordinating Board;
 - (iv) the Texas National Research Laboratory Commission;
 - (v) the Texas School for the Blind and Visually Impaired;
 - (vi) the Texas School for the Deaf;
 - (vii) the Texas Youth Commission;
 - (viii) the Windham School District; or
 - (ix) the Texas Rehabilitation Commission;

or

(F) a classified, administrative, faculty, or professional employee of a state institution or agency of higher education who has accumulated vacation leave during the employment.

(3) "State holiday" includes only those days listed under Section 662.003(b). The term does not include a state holiday on which a state employee is not entitled to a paid day off from work under Section 662.005.

(4) "Workday" includes a state or national holiday. Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.21, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1035, Sec. 42, eff. Sept. 1, 1997.

Sec. 661.062. ENTITLEMENT TO PAYMENT FOR VACATION TIME. (a) A state employee who, at any time during the employee's lifetime, has accrued six months of continuous state employment and who resigns, is dismissed, or otherwise separates from state employment by a state agency other than an institution of higher education is entitled to be paid for the accrued balance of the employee's vacation time as of the date of separation, if the individual is not reemployed by the state in a position under which the employee accrues vacation leave during the 30-day period immediately following the date of separation from state employment. A state employee who, at any time during the employee's lifetime, has accrued six months of continuous state employment and who resigns, is dismissed, or otherwise separates from state employment by an institution of higher education is entitled to be paid for the accrued balance of the employee's vacation time as of the date of separation.

(b) A separation from state employment includes a separation in which the employee:

(1) leaves one state agency to begin working for another state agency, if one or more workdays occur between the two employments and the individual is not reemployed by the state in a position under which the employee accrues vacation leave during the 30-day period immediately following the date of separation from state employment;

(2) moves from a position in a state agency that accrues vacation time to a position in that agency that does not accrue vacation time, if the agency agrees to pay the employee for the accrued balance of the employee's vacation time;

(3) moves from a position in a state agency that accrues vacation time to a position in another state agency that does not accrue vacation time, if the other state agency refuses to credit the employee for the balance of the employee's vacation time as of the date of the move;

(4) moves from a position in a state agency that does not accrue vacation time to a position in another state agency that does not accrue vacation time, if the other state agency is not authorized or refuses to credit the employee for the balance of the employee's vacation time as of the date of the move; or

(5) holds two or more positions, and separates from one that accrues vacation time, if the agency agrees to pay the employee for the accrued balance of the employee's vacation time.

(c) A separation under Subsection (b)(4) applies only with respect to the position from which the separation occurs.

(d) State employment is continuous for purposes of Subsection (a) while the employee is entitled to be paid a regular state salary, except that continuity of state employment is not interrupted while the employee is on a leave of absence without pay for less than one calendar month.

(e) The following are not entitled to payments under this subchapter:

(1) an individual who holds an office that is normally filled by vote of the people;

(2) an independent contractor or an employee of an independent contractor;

(3) an operator of equipment or a driver of a team whose wages are included in the rental paid by a state agency to the owner of the equipment or team;

(4) an individual employed on a piecework basis; or

(5) an individual covered by:

(A) the Judicial Retirement System of Texas Plan One;

(B) the Judicial Retirement System of Texas Plan Two; or

(C) the Teacher Retirement System of Texas, other than an individual described by Section 661.061(2)(E) or (F).

(f) Payment for accrued vacation leave for employees of the legislative branch, including employees of the lieutenant governor, is determined as follows:

(1) for employees of either house of the legislature, a member of the legislature, or the lieutenant governor, by the presiding officer of the appropriate house of the legislature; and

(2) for employees of a legislative agency, by the administrative head of the agency.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.19, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1035, Sec. 43, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 279, Sec. 18, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 118, Sec. 2.06, eff. Sept. 1, 2001.

Sec. 661.063. COMPUTATION OF PAYMENT. (a) Except as provided by Subsection (b), the payment to a state employee under this subchapter shall be computed by multiplying the employee's rate of compensation on the date of separation from state employment by the total number of hours of vacation time determined under Section 661.064.

(b) The payment under this subchapter to a state employee who separates from state employment while holding a position that does not accrue vacation time shall be computed according to this subsection. The employee's final rate of compensation in the last position held that accrues vacation time shall be multiplied by the employee's total number of hours of vacation time determined under Section 661.064.

(c) Under this section, rate of compensation:

(1) includes an emolument in lieu of base pay for which the state employee was eligible; and

(2) does not include longevity or hazardous duty pay.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 44, eff. Sept. 1, 1997.

Sec. 661.064. COMPUTATION OF TOTAL ACCUMULATED LEAVE; HOLIDAY TIME. (a) This subsection applies except as provided by Subsection (c). For a state employee who on the date of separation is normally scheduled to work at least 40 hours a week, eight hours are to be added to the employee's accrued vacation time for each state or national holiday that is scheduled to fall within the period after the date of separation and during which the employee could have used the time. To determine the period during which vacation time could have been used and the number of state or national holidays, the employee's vacation time is allocated over

the workdays after the employee's separation and eight hours are added as a state or national holiday occurs during the period.

(b) For a state employee who on the date of separation is normally scheduled to work less than 40 hours a week, the number of hours that is to be added to the employee's accrued vacation time for each state or national holiday is computed as provided by Subsection (a), but is to be proportionally reduced according to the lesser number of the employee's normally scheduled weekly work hours.

(c) For a state employee who is paid under this subchapter because the separation from state employment involves a move to a position in a state agency that does not accrue vacation time, no hours may be added to the employee's accrued vacation time for a state or national holiday which is scheduled to fall within the period after the date of separation and during which the employee could have used the time.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1035, Sec. 45, eff. Sept. 1, 1997.

Sec. 661.065. LUMP-SUM PAYMENT. A state agency shall make a payment required by this subchapter in a lump sum, except as provided by Section 661.067.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 661.066. PAYMENT CHARGED TO CERTAIN FISCAL YEAR. A state agency shall charge a lump-sum payment required by this subchapter to the fiscal year in which the state employee's separation from state employment becomes effective.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 661.067. AGREEMENT FOR STATE EMPLOYEE TO REMAIN ON AGENCY PAYROLL. (a) A state agency may agree to permit an employee entitled to payment under this subchapter to remain on the agency's payroll to exhaust the employee's accrued vacation time.

(b) A state employee who remains on the payroll of a state agency under this section:

(1) is entitled to continue to receive all compensation and benefits that the state employee was receiving on the employee's last day of duty, including paid holidays, longevity pay, and hazardous duty pay;

(2) is entitled to a general salary increase for state employees that takes effect before the employee's accrued vacation time is exhausted; and

(3) may not use sick leave or accrue sick leave or vacation time.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 661.068. RULES. The comptroller may establish procedures and adopt rules to administer this subchapter.

Added by Acts 1997, 75th Leg., ch. 1035, Sec. 18, eff. June 19, 1997.

SUBCHAPTER D. PAYMENTS FOR VACATION TIME TO CONTRIBUTING MEMBERS OF EMPLOYEES RETIREMENT SYSTEM WHO RETIRE

Sec. 661.091. PAYMENT FOR VACATION TIME ON RETIREMENT. (a) A contributing member of the Employees Retirement System of Texas who retires is entitled to be paid in a lump sum, from funds of the agency or department from which the member retires, for the member's accrued vacation time as of the date of retirement.

(b) A payment required by this section is payable on the date of retirement.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 661.092. COMPUTATION OF PAYMENT. A payment required by this subchapter shall be computed as if the member had taken vacation time, using the member's rate of compensation as of the date of retirement.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 661.093. CONFLICT WITH OTHER SUBCHAPTER. Subchapter C of this chapter controls if there is a conflict between Subchapter C and this subchapter.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

Sec. 661.094. RULES. The comptroller may establish procedures and adopt rules to administer this subchapter.

Added by Acts 1997, 75th Leg., ch. 1035, Sec. 19, eff. June 19, 1997.

SUBCHAPTER E. VACATION FOR HOURLY OR DAILY STATE EMPLOYEE

Sec. 661.121. VACATION FOR HOURLY OR DAILY EMPLOYEE. (a) A state department, institution, or agency may grant a vacation with full pay to an employee:

(1) whose pay is computed by the hour or by the day; and

(2) who has been continuously employed by the state for six months.

(b) The vacation authorized by this section is for the same time as that granted to employees whose pay is computed monthly. Added by Acts 1993, 73rd Leg., ch. 268, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER F. GENERAL PROVISIONS FOR VACATION LEAVE FOR STATE EMPLOYEES

Sec. 661.151. STATE AUDITOR INTERPRETATION. (a) The state auditor shall provide a uniform interpretation of this subchapter and Subchapters G and Z.

(b) The state auditor shall report to the governor and the legislature any state agency or institution of higher education that practices exceptions to those laws.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999.

Sec. 661.152. ENTITLEMENT TO ANNUAL VACATION LEAVE. (a) A state employee is entitled to a vacation in each fiscal year without a deduction in salary, except for a state employee who is:

(1) an employee of an institution of higher education as defined by Section 61.003, Education Code, who:

(A) is not employed to work at least 20 hours per week for a period of at least four and one-half months; or

(B) is employed in a position for which the employee is required to be a student as a condition of the employment;

(2) a faculty member employed for a period of fewer than 12 months by an institution of higher education as defined by Section 61.003, Education Code; or

(3) an instructional employee employed for a period of fewer than 12 months by the Texas School for the Blind and Visually Impaired, the Texas School for the Deaf, or the Texas Youth Commission.

(b) The amount of vacation accrues and may be taken in accordance with this subchapter.

(c) A part-time employee accrues vacation leave on a proportionate basis. The maximum amount of vacation leave a part-time employee may carry forward from one fiscal year to the next is also on a proportionate basis.

(d) An employee accrues vacation leave and may carry vacation leave forward from one fiscal year to the next in accordance with the following schedule:

	Hours Accrued Per Month for Full-time Employment	Maximum Hours Carried Forward From One Fiscal Year to the Next for a Full-time Employee
Employees With Total State Employment of:		
less than 2 years	8	180
at least 2 but less than 5 years	9	244
at least 5 but less than 10 years	10	268
at least 10 but less than 15 years	11	292
at least 15 but less than 20 years	13	340
at least 20 but less than 25 years	15	388
at least 25 but less than 30 years	17	436
at least 30 but less than 35 years	19	484
at least 35 years or more	21	532

(e) In this subsection, "duty day" means an employee's last physical day on the job. An employee accrues vacation leave at the applicable rate beginning on the first day of state employment and ending on the last duty day of state employment. An employee accrues and is entitled to be credited for one month's vacation leave for each month of employment with the state beginning on the first day of employment with the state and on the first calendar day of each succeeding month of state employment. An employee who is employed by the state during any part of a calendar month accrues vacation leave entitlement for the entire calendar month.

(f) An employee may not take vacation leave until the employee has six months of continuous employment with the state, although the employee accrues vacation leave during that period.

(g) If an employee's state employment anniversary date occurs on the first calendar day of a month, the employee begins to accrue vacation leave at a higher rate in accordance with Subsection (d) on the first calendar day of the appropriate month.

Otherwise, the employee begins to accrue vacation leave at the higher rate on the first calendar day of the month following the anniversary date. An employee who begins working on the first workday of a month in a position that accrues vacation leave is considered to have begun working on the first calendar day of the month for purposes of this subsection.

(h) An employee is entitled to carry forward from one fiscal year to the next the net balance of unused accumulated vacation leave that does not exceed the maximum number of hours allowed under Subsection (d). All hours of unused accumulated vacation leave that may not be carried forward at the end of a fiscal year under this subsection and Subsection (d) shall be credited to the employee's sick leave balance on the first day of the next fiscal year.

(i) In computing the amount of vacation leave taken, time during which an employee is excused from work because of a holiday is not charged against the employee's vacation leave.

(j) An employee who is on paid leave on the first workday of a month may not take vacation leave accrued for that month until the employee has returned to duty.

(k) An individual who is reemployed by any state agency in a position under which the employee accrues vacation leave within 30 days after the individual's date of separation from state employment is entitled to reinstatement of the unused balance of the employee's previously accrued vacation leave.

(l) For purposes of computing vacation leave under Subsection (d) for a state employee who retired from state employment on or after June 1, 2005, and who receives an annuity based wholly or partly on service as a state officer or state employee in a public retirement system, as defined by Section 802.001, that was credited to the state employee, years of total state employment includes only the length of state employment after the date the state employee retired.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1310, Sec. 43, 44, eff. June 20, 2003; Acts 2005, 79th Leg., ch. 899, Sec. 13.05, eff. Sept. 1, 2005.

Sec. 661.153. TRANSFER OF VACATION LEAVE BALANCE. A state employee who transfers directly from one state agency to another is entitled to credit by the agency to which the employee transfers for the unused balance of the employee's accumulated vacation leave, if the employee's employment with the state is uninterrupted and if the employee is not paid for the leave under Section 661.062.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999.

Sec. 661.154. VACATION LEAVE FOR LEGISLATIVE EMPLOYEES. Vacation leave for employees of the legislative branch, including employees of the lieutenant governor, is determined as follows:

(1) for employees of either house of the legislature, a member of the legislature, or the lieutenant governor, by the presiding officer of the appropriate house of the legislature; and

(2) for employees of a legislative agency, by the administrative head of the agency.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999.

SUBCHAPTER G. GENERAL PROVISIONS FOR SICK LEAVE FOR STATE EMPLOYEES

Sec. 661.201. APPLICABILITY. (a) Sick leave for employees of the legislative branch, including employees of the lieutenant governor, is determined as follows:

(1) for employees of either house of the legislature, a member of the legislature, or the lieutenant governor, by the presiding officer of the appropriate house of the legislature; and

(2) for employees of a legislative agency, by the administrative head of the agency.

(b) An employee of an institution of higher education as defined by Section 61.003, Education Code, is eligible to accrue or take paid sick leave under this subchapter only if the employee:

(1) is employed to work at least 20 hours per week for a period of at least four and one-half months; and

(2) is not employed in a position for which the employee is required to be a student as a condition of the employment.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999.

Sec. 661.202. ENTITLEMENT TO SICK LEAVE; GENERAL PROVISIONS AND PROCEDURES. (a) A state employee is entitled to sick leave without a deduction in salary in accordance with this subchapter.

(b) In this subsection, duty day means an employee's last physical day on the job. An employee accrues sick leave beginning on the first day of state employment and ending on the last duty day of state employment. An employee is entitled to be credited for one month's accrual of sick leave at the rate specified by Subsection (c) for each month of employment with the state beginning on the first day of employment with the state and on the first calendar day of each succeeding month of state employment.

(c) Sick leave entitlement for a full-time employee accrues at the rate of eight hours for each month of state employment. A part-time employee accrues sick leave on a proportionate basis. An employee who is employed by the state during any part of a calendar month accrues sick leave entitlement for the entire calendar month. Sick leave accumulates with the unused amount of sick leave carried forward each month.

(d) Sick leave with pay may be taken when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty or when the employee is needed to care for and assist a member of the employee's immediate family who is sick. For purposes of taking regular sick leave with pay, the following persons are considered to be members of the employee's immediate family:

(1) an individual who resides in the same household as the employee and is related to the employee by kinship, adoption, or marriage;

(2) a foster child of the employee who resides in the same household as the employee and who is under the conservatorship of the Department of Protective and Regulatory Services; and

(3) a minor child of the employee, regardless of whether the child lives in the same household.

(e) An employee's use of sick leave to care for and assist members of the employee's family who are not described by Subsection (d) is strictly limited to the time necessary to provide care and assistance to a spouse, child, or parent of the employee who needs the care and assistance as a direct result of a documented medical condition.

(f) An employee who must be absent from duty because of sickness, injury, or pregnancy and confinement shall notify the employee's supervisor or have the supervisor notified of that fact at the earliest practicable time.

(g) To be eligible to take accumulated sick leave without a deduction in salary during a continuous period of more than three working days, an employee absent due to sickness, injury, or pregnancy and confinement shall send to the administrative head of the employing agency a doctor's certificate showing the cause or nature of the condition or another written statement of the facts concerning the condition that is acceptable to the administrative head. The administrative head of an agency may require a doctor's certificate or other written statement of the facts for sick leave without a deduction in salary taken during a continuous period of three or fewer working days.

(h) On returning to duty after taking sick leave, the employee shall without delay complete the prescribed application for sick leave and send the application in the manner prescribed by the agency to the appropriate authority for approving the application.

(i) The administrative head of an agency that is in compliance with Subsection (j) may authorize an exception to the amount of sick leave an employee may take after a review of the individual's particular circumstances. A statement of all authorized exceptions and the reasons for the exceptions shall be attached to the state agency's duplicate payroll voucher for the payroll period affected by the authorized exceptions.

(j) A state agency shall file a written statement with the state auditor covering the policies and procedures for an extension of leave under Subsection (i) and shall make the statement available to all agency employees.

(k) An employee who is on leave on the first day of a month may not use the sick leave that the employee accrues for that month until after the employee returns to duty.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1310, Sec. 45, eff. June 20, 2003.

Sec. 661.203. FACULTY AT INSTITUTIONS OF HIGHER EDUCATION. A faculty member at an institution of higher education as defined by Section 61.003, Education Code, must submit

prescribed leave forms for all sick leave the faculty member takes if the absence occurs during the normal workday for regular employees, even if no classes are missed.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999.

Sec. 661.204. TRANSFER OF SICK LEAVE BALANCE. A state employee who transfers directly from one state agency to another is entitled to credit by the agency to which the employee transfers for the unused balance of the employee's accumulated sick leave, if the employee's employment with the state is uninterrupted.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999.

Sec. 661.205. RESTORATION OF SICK LEAVE ON REEMPLOYMENT IN CERTAIN CIRCUMSTANCES. (a) An employee who separates from employment with the state under a formal reduction in force is entitled to have the employee's sick leave balance restored if the employee is reemployed by the state within 12 months after the end of the month in which the employee separates from state employment.

(b) An employee who separates from employment with the state for a reason other than that described by Subsection (a) is entitled to have the employee's sick leave balance restored if:

(1) the employee is reemployed by the same state agency or institution of higher education within 12 months after the end of the month in which the employee separates from state employment, but only if there has been a break in employment with the state of at least 30 calendar days; or

(2) the employee is reemployed by a different state agency or institution of higher education within 12 months after the end of the month in which the employee separates from state employment.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999.

Sec. 661.206. PARENT-TEACHER CONFERENCE: USE OF SICK LEAVE. (a) This section applies to an employee who is a parent of a child who is a student attending a grade from prekindergarten through 12th grade.

(b) An employee may use up to eight hours of sick leave each fiscal year to attend parent-teacher conference sessions for the employee's children.

(c) An employee shall give reasonable advance notice of the employee's intention to use the sick leave to attend a parent-teacher conference.

(d) In this section:

(1) "Employee" has the meaning assigned by Section 661.001.

(2) "Parent" means a person standing in parental relation.

Added by Acts 1997, 75th Leg., ch. 430, Sec. 1, eff. Sept. 1, 1997.

Renumbered from Sec. 661.151 and amended by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1310, Sec. 46, eff. June 20, 2003.

SUBCHAPTER Z. MISCELLANEOUS LEAVE PROVISIONS FOR STATE EMPLOYEES

Sec. 661.901. APPLICABILITY. (a) This subchapter applies only to a state employee employed in the executive or judicial branch of state government.

(b) The leave policies for employees of the legislative branch, including employees of the lieutenant governor, are determined as follows:

(1) for employees of either house of the legislature, a member of the legislature, or the lieutenant governor, by the presiding officer of the appropriate house of the legislature; and

(2) for employees of a legislative agency, by the administrative head of the agency.

(c) An employee of an institution of higher education as defined by Section 61.003, Education Code, is eligible to accrue or take paid leave under this subchapter only if the employee:

(1) is employed to work at least 20 hours per week for a period of at least four and one-half months; and

(2) is not employed in a position for which the employee is required to be a student as a condition of the employment.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999.

Sec. 661.902. EMERGENCY LEAVE. (a) A state employee is entitled to emergency leave without a deduction in salary because of a death in the employee's family. The death of the employee's spouse or of a parent, brother, sister, grandparent, grandchild, or child of the employee or of the employee's spouse is considered to be a death in the employee's family for purposes of this subsection.

(b) The administrative head of an agency may determine that a reason other than that described by Subsection (a) is sufficient for granting emergency leave and shall grant an emergency leave to an employee who the administrative head determines has shown good cause for taking emergency leave.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999.

Sec. 661.903. NATIONAL GUARD EMERGENCY. A state employee who is called to state active duty as a member of the state military forces by the governor because of an emergency is entitled to a leave of absence without a deduction in salary in accordance with Section 431.0825. A state employee who is called to federal active duty as a member of the state military forces may not receive the employee's state salary except as provided by Sections 661.904(d) and (f) and 661.9041.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 175, Sec. 4, eff. Sept. 1, 2003.

Sec. 661.904. MILITARY LEAVE DURING NATIONAL EMERGENCY. (a) An employee called to active duty during a national emergency to serve in a reserve component of the armed forces of the United States under Title 10 or 32, United States Code, is entitled to an unpaid leave of absence.

(b) The employee continues to accrue state service credit for purposes of longevity pay while on military duty described by Subsection (a) but does not accrue vacation or sick leave during an unpaid leave of absence.

(c) The employee may retain any accrued vacation or sick leave and is entitled to be credited with those balances on return to state employment from military duty described by Subsection (a). Leave earned while in a state-paid status is credited to the employee's balance when the employee returns to active state employment.

(d) The employee may use any accrued vacation leave, earned compensatory leave, or overtime leave under the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), as amended, in whole or in part, to maintain benefits for the employee or the employee's dependents while the employee is on military duty described by Subsection (a).

(e) Before a state employee leaves for military service, the state agency employing the employee shall review with the employee any issues relating to maintaining state health insurance coverage during the employee's military duty, including what the employee needs to do to maintain state health insurance coverage, how health insurance coverage is affected by paid or unpaid leave, and how to pay any premium required for the insurance coverage.

(f) A state employee activated for military service may continue to accrue service credit with the Employees Retirement System of Texas 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, including state compensatory leave, overtime leave under the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), as amended, annual leave, military leave, or approved agency differential pay, to qualify for the state pay.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 175, Sec. 5, eff. Sept. 1, 2003.

Sec. 661.9041. DIFFERENTIAL PAY. (a) The administrative head of a state agency shall grant sufficient emergency leave as differential pay to a state employee on unpaid military leave if the employee's military pay is less than the employee's state gross pay. The combination of emergency leave and military pay may not exceed the employee's actual state gross pay.

(b) For purposes of Subsection (a), military pay does not include money the employee receives:

- (1) for service in a combat zone;
- (2) as hardship pay; or
- (3) for being separated from the employee's family.

(c) The state auditor shall adopt guidelines to assist state agencies in determining the amount of emergency leave to grant to an employee under this section as differential pay.

Added by Acts 2003, 78th Leg., ch. 175, Sec. 6, eff. Sept. 1, 2003. Amended by Acts 2005, 79th Leg., ch. 371, Sec. 1, eff. June 17, 2005.

Sec. 661.905. VOLUNTEER FIREFIGHTERS AND EMERGENCY MEDICAL

SERVICES VOLUNTEERS. (a) In this section, "emergency medical services volunteer" has the meaning assigned by Section 773.003, Health and Safety Code.

(b) A state employee who is a volunteer firefighter or an emergency medical services volunteer is entitled to a leave of absence without a deduction in salary to attend fire service or emergency medical services training conducted by a state agency or institution of higher education. Leave without a deduction in salary under this subsection may not exceed five working days in a fiscal year.

(c) A state agency or institution of higher education may grant leave without a deduction in salary to a volunteer firefighter or an emergency medical services volunteer for the purpose of allowing the firefighter or emergency medical services volunteer to respond to emergency fire or medical situations if the agency or institution has an established policy for granting that leave.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 343, Sec. 1, eff. Sept. 1, 2001.

Sec. 661.906. FOSTER PARENTS. A state employee who is a foster parent to a child under the conservatorship of the Department of Protective and Regulatory Services is entitled to a leave of absence without a deduction in salary for the purpose of attending:

(1) meetings held by the Department of Protective and Regulatory Services regarding the child under the foster care of the employee; or

(2) an admission, review, and dismissal meeting held by a school district regarding the child under the foster care of the employee.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999.

Sec. 661.907. RED CROSS DISASTER SERVICE VOLUNTEER. (a) A state employee who is a certified disaster service volunteer of the American Red Cross or who is in training to become such a volunteer may be granted leave not to exceed 10 days each fiscal year to participate in specialized disaster relief services for the American Red Cross without a deduction in salary or loss of vacation time, sick leave, earned overtime credit, or state compensatory time if the leave is taken:

(1) on the request of the American Red Cross;

(2) with the authorization of the employee's supervisor; and

(3) with the approval of the governor.

(b) The number of certified disaster service volunteers who are eligible for leave under this section may not exceed 350 state employees at any one time during a fiscal year. The division of emergency management in the governor's office shall coordinate the establishment and maintenance of the list of eligible employees.

(c) Not later than the 60th day after the date the American Red Cross makes a request under Subsection (a)(1), the American Red Cross shall prepare a report for the Legislative Budget Board stating the reasons for the request.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999.

Sec. 661.908. LEAVE RECORDS; TIME AND ATTENDANCE RECORDS. The administrative head or governing body of each state agency shall require for each employee:

(1) time and attendance records;

(2) a record of the accrual and taking of vacation and sick leave;

(3) a record of the reason an employee takes leave if other law requires the employee to inform the agency of the reason; and

(4) a record that shows whether any leave taken is accounted for as sick leave, vacation leave, other paid leave, leave without pay, or other absence.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999.

Sec. 661.909. LEAVE WITHOUT PAY; LEAVE OF ABSENCE. (a) A state agency or institution of higher education may grant employees leave without pay, including a leave of absence without pay, in accordance with this section.

(b) The duration of the leave may not exceed 12 months.

(c) Except for disciplinary suspensions, active military duty, and leave covered by workers' compensation benefits, all accumulated paid leave entitlements must be used before going on

leave without pay status. Sick leave must first be used only if the employee is taking leave for a reason for which the employee is eligible to take sick leave under Subchapter G.

(d) Subject to fiscal constraints, approval of the leave constitutes a guarantee of employment at the conclusion of the specified leave period.

(e) The administrative head of a state agency or institution of higher education may grant exceptions to the limitations of this section if the employee is taking the leave for a reason such as:

(1) to work for another state governmental entity under an interagency agreement; or

(2) educational purposes.

(f) Except for an employee who returns to state employment from military leave without pay under Section 661.904, a full calendar month during which an employee is on leave without pay is not counted in computing:

(1) total state service for purposes related to longevity pay or to the rate of accrual of vacation leave; or

(2) continuous state service for purposes related to merit salary provisions or vacation leave.

(g) An employee does not accrue vacation or sick leave for a full calendar month during which the employee is on leave without pay.

(h) A full or partial calendar month during which an employee is on leave without pay does not constitute a break in continuity of employment.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999.

Sec. 661.910. ASSISTANCE DOG TRAINING FOR EMPLOYEES WITH A DISABILITY. (a) A state employee who is a person with a disability, as defined by Section 121.002, Human Resources Code, is entitled to a leave of absence without a deduction in salary for the purpose of attending a training program to acquaint the employee with an assistance dog to be used by the employee.

(b) The leave of absence provided by this section may not exceed 10 working days in a fiscal year.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999.

Sec. 661.911. ADMINISTRATIVE LEAVE WITH PAY. (a) In addition to employee leave authorized elsewhere in this chapter, the administrative head of an agency may grant administrative leave without a deduction in salary to an employee as a reward for outstanding performance as documented by employee performance appraisals.

(b) The total amount of administrative leave an employee may be granted under this section may not exceed 32 hours during a fiscal year.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999.

Sec. 661.912. FAMILY AND MEDICAL LEAVE ACT. (a) To the extent required by federal law, a state employee who has a total of at least 12 months of state service and who has worked at least 1,250 hours during the 12-month period preceding the beginning of leave under this section is entitled to leave under the federal Family and Medical Leave Act of 1993 (29 U.S.C. Section 2601 et seq.).

(b) The employee must first use all available and applicable paid vacation and sick leave while taking leave under this section, except that an employee who is receiving temporary disability benefits or workers' compensation benefits is not required to first use applicable paid vacation or sick leave while receiving those benefits.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999.

Sec. 661.913. PARENTAL LEAVE FOR CERTAIN EMPLOYEES. (a) A state employee who has been employed for fewer than 12 months by the state or who worked fewer than 1,250 hours during the 12-month period preceding the beginning of leave under this section is eligible to take a parental leave of absence not to exceed 12 weeks in accordance with this section.

(b) The employee must first use all available and applicable paid vacation and sick leave while taking the leave, and the remainder of the leave is unpaid.

(c) The leave authorized by this section is limited to, and begins on the date of, the birth of a natural child of the employee or the adoption by or foster care placement with the employee of a child younger than three years of age.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999.

Sec. 661.914. VOTING BY STATE EMPLOYEES. A state agency

shall allow each agency employee sufficient time off, without a deduction in salary or accrued leave, to vote in each national, state, or local election.

Added by Acts 1999, 76th Leg., ch. 279, Sec. 19, eff. Sept. 1, 1999.

Sec. 661.915. APPLICABILITY TO JUNIOR COLLEGES. The provisions of this chapter do not apply to a public junior college as defined by Section 61.003, Education Code.

Added by Acts 2001, 77th Leg., ch. 118, Sec. 2.13, eff. Sept. 1, 2001.

Sec. 661.916. LEAVE FOR ORGAN OR BONE MARROW DONORS. (a) 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.

(b) The leave of absence provided by this section may not exceed:

(1) five working days in a fiscal year to serve as a bone marrow donor; or

(2) 30 working days in a fiscal year to serve as an organ donor.

Added by Acts 2003, 78th Leg., ch. 177, Sec. 1, eff. Sept. 1, 2003.

Sec. 661.917. DONATION OF BLOOD. (a) A state agency shall allow each agency employee sufficient time off, without a deduction in salary or accrued leave, to donate blood.

(b) An employee may not receive time off under this section unless the employee obtains approval from the employee's supervisor before taking time off.

(c) On returning to work after taking time off under this section, an employee shall provide the employee's supervisor with proof that the employee donated blood during the time off. If an employee fails to provide proof that the employee donated blood during the time off, the state agency shall deduct the period for which the employee was granted time off from the employee's salary or accrued leave, whichever the employee chooses.

(d) An employee may receive time off under this section not more than four times in a fiscal year.

Added by Acts 2003, 78th Leg., ch. 177, Sec. 1, eff. Sept. 1, 2003.

Sec. 661.918. INJURY LEAVE FOR CERTAIN PEACE OFFICERS. (a) This section applies to a peace officer under Article 2.12, Code of Criminal Procedure, who is commissioned as a law enforcement officer or agent, including a ranger, by:

(1) the Public Safety Commission and the director of the Department of Public Safety;

(2) the Parks and Wildlife Commission; or

(3) the Texas Alcoholic Beverage Commission.

(b) A peace officer to whom this section applies is entitled to injury leave, without a deduction in salary, without being required to use compensatory time off accrued under Chapter 659, and without being required to use any other type of leave allowable under this chapter, for an injury resulting from an assaultive offense under Chapter 22, Penal Code, to which the person is exposed because of the nature of the person's duties and that occurs during the course of the person's performance of duty. For the purposes of this section, the course of performance of a person's duty does not include transportation to or from the person's designated headquarters or the site of an assignment.

(c) To be eligible for injury leave under this section, a person must submit to the person's employer evidence of a medical examination and a recommendation for a specific period of leave from a physician licensed to practice in this state.

(d) The maximum amount of leave available under this section for all injuries occurring at one time is one year.

(e) A person may simultaneously be on injury leave under this section and receive workers' compensation medical benefits under Title 5, Labor Code, but is not eligible for disability retirement benefits under Chapter 814 during the leave period. A person is entitled to workers' compensation indemnity benefits which accrue pursuant to Title 5, Labor Code, after the discontinuation or exhaustion of injury leave under this section.

Added by Acts 2005, 79th Leg., ch. 571, Sec. 2, eff. June 17, 2005.