

The background of the cover features a large, semi-transparent image of the Texas state flag waving on a flagpole. The flagpole is on the left side, topped with a silver eagle finial. The flag has a blue field with a white star, and horizontal stripes of white and red.

Texas Human Resources Management Statutes Inventory 2002-2003 Biennium

**A Handbook for State
Agencies and Institutions of
Higher Education**

Prepared by:
Floyd F. Quinn, M.Ed., PHR
Human Resources Consultant



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Statutes Inventory
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FOREWORD

The *Texas Human Resources Management Statutes Inventory*—first published in 1972 and updated every two years—reflects changes made in the legislative session. Our Office produces this handbook to assist state agencies and institutions of higher education in understanding the regulations that apply to human resource management. This fifteenth edition supersedes all previous editions.

Additional copies are available from the State Auditor's Office at (512) 936-9880. The entire document is also available online from the State of Texas Human Resources Web site at <http://www.hr.state.tx.us>.

If you have questions concerning any of these regulations, please contact the HR Consultant assigned to your agency or institution of higher education.

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Sincerely,



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The *Inventory* is a general reference only and should not be taken as legal advice. It is not intended to be a contract between the State of Texas and any of its employees, nor does it give any contractual rights to an employee. The specific language contained in the source documents takes precedence over the content of the *Inventory*. Agencies should consult their legal counsel to ensure compliance with all applicable federal and state laws.

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BASE PAY

POSITION CLASSIFICATION PLAN

The Position Classification Plan (Plan) was established by the Position Classification Act¹ and requires state agencies to comply with the salary schedules and compensation provisions of Article IX of the General Appropriations Act. State agencies that are subject to the Plan include:

- General government agencies.
- Health and human services agencies.
- Courts (except for judges, district attorneys, and assistant district attorneys).
- Public safety and criminal justice agencies.
- Natural resources agencies.
- Business and economic development agencies.
- Regulatory agencies.
- Agencies of public education (limited to the Texas Education Agency, Texas School for the Blind and Visually Impaired, State Board of Educator Certification, Telecommunications Infrastructure Fund Board, and the Texas School for the Deaf).

The Plan establishes job classes for all full-time, part-time, hourly, and temporary employees. Each job class is assigned to a salary group. Each salary group is assigned to a salary schedule. The salary schedules and job classes are contained in the most recent edition of the General Appropriations Act. Each job class contains “General Qualification Guidelines” that provide a listing of qualifications for a given position and typically address areas such as experience, training, knowledge, skills, and abilities.²

Under the Plan, on a very limited basis, supervisors may be classified in the same or in a lower salary group than their employees.³

The Plan is administered by the State Classification Office (SCO), which is required to:

- Ensure the Plan is current and accurate.
- Ensure the Plan is applied in an equitable and uniform manner.
- Assist with classification audits by:
 - ♦ Recommending improvements to the Governor and the Legislature.
 - ♦ Conducting periodic salary studies.⁴

State agencies are responsible for ensuring that all positions are classified properly.⁵ The SCO also has a responsibility to ensure that positions are classified properly and does so by way of compliance audits and parity studies.⁶ If these audits and studies reveal inconsistencies, the SCO provides written notice to the appropriate agency head, who is given 20 days to correct the situation. If no corrective action is taken, the SCO must submit a written report of the facts to the Governor and the Legislative Budget Board (LBB).⁷ The Governor will then determine what action needs to be taken to resolve the nonconformity.⁸

¹ [Texas Government Code Ann., Sect. 654.011](#)

² [Ibid., Sect. 654.015](#)

³ [State Auditor’s Office letter of January 15, 1998, Subject: Guidance of Reporting Relationships](#)

⁴ [Texas Government Code Ann., Sect. 654.037](#)

⁵ [Ibid., Sect. 654.0155](#)

⁶ [Ibid., Sect. 654.038](#)

⁷ [Ibid., Sect. 654.039](#)

⁸ [Ibid., Sect. 654.040](#)

Agencies may use any job class contained in the Plan that is appropriate to the position. Agencies may determine the appropriate rate of pay within the salary range for employees at the time of initial employment, which includes rehires and interagency transfers.⁹

The SCO submits recommendations to the Legislature for modifications to the Plan each biennium. Modifications may take the form of new job classes, reallocations of existing job classes, changes in class titles and class numbers, and/or the deletion of job classes.

Some positions are exempted from the Plan and include:

- Constitutionally named and elected officials or officers.
- Officers appointed by the Governor.
- Heads of agencies covered by the Plan.
- Teachers in public schools and special schools.
- Faculty and research staff in institutions of higher education.
- Nonacademic employees in institutions of higher education.
- Principals, teachers, supervisors, and coaches at the School for the Blind and Visually Impaired and the School for the Deaf.
- Positions excluded by executive order of the Governor or by direction of the Legislature.

Salaries and job titles for most agency heads are authorized by the Legislature and contained in a Schedule of Exempt Positions located in the General Appropriations Act. Others are established by the agency's governing board or commission. Agencies may not use a classified job title for agency heads, except in the case of an employee designated to act as the agency head on a temporary basis. The employee may be paid a salary under the Plan up to the amount indicated in the Schedule of Exempt Positions.¹⁰ Agency heads are allowed to pay less than the maximum salary rates for other exempt positions in their organizations and specified in the General Appropriations Act.¹¹

The General Appropriations Act gives the Governor the authority to exempt new positions during the biennium. The Governor must notify the State Classification Officer and the LBB of these exemptions.¹² An exemption made during the first year of a biennium may be carried over to the second year. Pay may be adjusted during the second year, but this adjustment can be no higher than adjustments authorized for classified positions.

CLASSIFICATION SALARY SCHEDULES

Classification salary schedules were revised for the 2002–2003 biennium. There are two versions of each salary schedule: one for employees eligible for the 4 percent pay increase (minimum of \$100 per month), and one for employees who are not eligible.¹³ Eligibility criteria include:

- Twelve months of continuous state service prior to September 1, 2001, (increase effective September 1, 2001), or
- Began work during the period from September 2, 2001, through February 28, 2002, and were not previously eligible for the increase (increase effective September 1, 2002), or
- Began work during the period from March 1, 2002, through August 31, 2002, and were not previously eligible for the increase (increase effective March 1, 2003).

A detailed listing of [class titles](#) and Plan [salary schedules](#) is located in the General Appropriations Act¹⁴ or can be found online by accessing the [State of Texas Human Resources Web site](#) at <http://www.hr.state.tx.us>.

⁹ [Texas Government Code Ann., Sect. 654.014](#)

¹⁰ [77th Legislature General Appropriations Act, Art. IX, Sect. 3.05 \(a\)](#)

¹¹ [Ibid., Art. IX, Sect. 4.01](#)

¹² [Texas Government Code Ann., Sect. 654.0125](#)

¹³ [77th Legislature General Appropriations Act, Art. IX., Sect. 10.12](#)

CHANGES IN SALARY STATUS

An employee who moves from an exempt position to a classified position within an agency will receive a salary in the appropriate salary group. If, prior to the change, the employee receives a salary equal to a step rate within the new salary group, the employee's new pay will not exceed that step rate.

As stated earlier, employers may determine the appropriate rate of pay for an employee within the designated salary group upon the employee's initial employment with an agency.¹⁵ A transfer from an exempt position to a classified position is not considered initial employment.

PROMOTIONS

A promotion is a change in job classification that provides a higher minimum salary rate, requires higher qualifications, and involves a higher level of responsibility.¹⁶

Employees promoted to positions in Salary Schedules A or B will receive at least a one-step increase in Schedule A, a 3.4 percent increase in Schedule B, or the minimum salary rate of their new salary group, whichever is higher. In addition, agency administrators have the discretion to grant a promoted employee a salary up to and including the maximum rate of the new salary group.¹⁷

DEMOTIONS

A demotion is a change in job classification that provides a lower minimum salary rate.¹⁸ The salary of a demoted employee in Salary Schedule A or B will be reduced to a level below the employee's current salary—at least one-step in Schedule A or 3.4 percent in Schedule B.

An employee who is demoted because he or she applied for and accepted a lower-level position may not receive a salary that exceeds the maximum rate of the new salary group. An employee who accepts a demotion in lieu of employment termination due to a reduction in force may not receive a new salary that exceeds his or her salary before the demotion.

An agency is not required to reduce a demoted employee's salary if the demotion was accepted in lieu of a layoff or if the employee applied for and accepted a position in a lower salary group.¹⁹

LATERAL TRANSFER

A lateral transfer is a change in duty assignment of an agency employee that moves the employee to another job class in the same salary group. Such a move is authorized by statute. There is no provision for a change in salary under such conditions. However, if an employee has performed well in his or her previous position and would be eligible for a merit increase at the time of the transfer, the agency could process such an increase for past performance.²⁰

¹⁴ [77th Legislature General Appropriations Act, Sect. 2.01](#)

¹⁵ [Texas Government Code Ann., Sect. 654.014 \(b\)](#)

¹⁶ [Ibid., Sect. 659.256](#)

¹⁷ [Ibid.](#)

¹⁸ [Ibid., Sect. 659.257](#)

¹⁹ [Ibid.](#)

²⁰ [Ibid., Sect. 659.255](#) and [Sect. 659.256](#)

EMPLOYEE PERFORMANCE PAY

MERIT INCREASES

State agencies are encouraged to grant merit salary increases to employees whose performance and productivity consistently exceed expectations.²¹ For employees in Schedule A, a merit increase consists of an incremental increase in the same salary group. In Schedule B, a merit increase consists of an increase within the range of the same salary group.

Employees may receive a one-time merit payment following the same criteria as merit salary increases. Such a payment is not considered compensation or wages for purposes of determining the amount of the State's contribution for retirement.²² Employees at the maximum of their salary groups are eligible to receive one-time merit payments.

To be eligible for a merit salary increase or one-time payment, employees must:

- Be employed by the agency or institution of higher education at least six continuous months prior to the award, excluding any full calendar months of leave without pay.
- Have at least six months elapse since their last cash award, promotion, one-time merit payment, or merit salary increase.²³

Additionally, state agencies must ensure that they have adequate documentation to substantiate the pay action.²⁴ There are no minimum or maximum amounts specified for the size of either a merit salary increase or one-time merit payment.

Salary increases for faculty or faculty-equivalent employees at institutions of higher education shall be awarded based on job performance. Additionally, salary adjustments should be considered to avoid salary inequities.²⁵

Merit increases are prohibited for all Texas Department of Criminal Justice employees who are eligible to receive career ladder step adjustments, such as the following:

- Correctional Officers
- Senior Correctional Officers
- Food Service Managers
- Laundry Managers
- Parole Caseworkers and Officers
- Parole Human Services Technicians and Case Managers
- Texas Youth Commission Juvenile Correctional Officers

SALARY REDUCTION FOR POOR PERFORMANCE

Agency heads may reduce an employee's pay for poor performance. The reduced salary cannot be lower than the minimum rate of the employee's salary group. Pay may be restored to any rate within the salary group as performance improves without accounting for the increase as a merit increase.²⁶

²¹ [Texas Government Code Ann., Sect. 659.255](#)

²² [Office of the Comptroller, Payroll and Policies Guide, August 2000, page 2.20](#)

²³ [Texas Government Code Ann., Sect. 659.255 \(e\) \(2\)](#)

²⁴ [Ibid., Sect. 659.255 \(e\) \(3\)](#)

²⁵ [77th Legislature General Appropriations Act, Article III, Special Provisions Relating Only to State Agencies of Higher Education, Sect. 5.5](#)

²⁶ [Texas Government Code Ann., Sect 659.258](#)

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 during a fiscal year.²⁷ Executive directors of state agencies are not eligible for administrative leave for outstanding performance.²⁸

TIME-BASED PAY INCREASES

The Texas Department of Criminal Justice is authorized to adjust salaries of certain correctional positions based on their career ladder system. These positions are Correctional Officer; Sergeant, Lieutenant, Captain, and Major of Correctional Officers; Food Service Manager; Laundry Manager; Caseworker and Parole Officer; and Human Services Technician and Case Manager. These employees' salaries may be adjusted not less than 4 percent or \$1,200 per year, whichever is greater.

The Texas Youth Commission is also authorized to adjust salaries of Juvenile Correctional Officers based on their career ladder system. These employees' salaries may be adjusted not less than 4 percent or \$1,200 per year, whichever is greater.

DIFFERENTIAL PAY

FLSA OVERTIME

The Fair Labor Standards Act of 1938 (FLSA) requires all employers to compensate nonexempt (hourly) employees for any hours worked over 40 in a workweek at a rate of time and a half, or 1.5 times an employees' hourly pay. Amendments to the FLSA provide that state government employers could choose to compensate their nonexempt employees for overtime in cash or in compensatory time off. State agencies can require nonexempt employees who have requested leave to exhaust their FLSA compensatory time balance before using annual leave.²⁹

Paid leave and holidays are not counted as hours worked for determining overtime hours. However, if the total number of hours worked plus paid leave or paid holidays exceed 40, the nonexempt employee shall be allowed state compensatory time off equal to the number of hours in excess of 40.

When the number of hours worked plus the hours of paid leave or paid holidays exceed 40 after subtracting overtime hours, the employee will be allowed state compensatory time for these excess hours.³⁰

Nonexempt employees may accumulate up to 240 hours of FLSA compensatory time.³¹ Those employees engaged in public safety or emergency response may accumulate up to 480 hours of FLSA compensatory time. Nonexempt part-time employees must be paid for hours worked over their

²⁷ [Texas Government Code Ann., Sect. 661.911](#) and [State Auditor's Leave Interpretation Letter 98-02 \(1977\)](#)

²⁸ [The State of Texas HR Management Web Page, Question of the Month for December 13, 1999](#)

²⁹ [U.S. Supreme Court ruling, May 1, 2000 \(Christensen v. Harris County, 529 U.S. 576\)](#) and [DOL Fact Sheet #21](#)

³⁰ [Texas Government Code Ann., Sect. 659.015](#)

³¹ [Ibid.](#)

designated hours.³² Nonexempt employees or their estates must be paid for any unused FLSA compensatory time at the time of separation from state employment.³³ State agencies must pay employees for any accumulated FLSA compensatory time prior to transferring that employee to another agency.³⁴ However, an employee may retain this balance if transferred as a direct result of legislative action.³⁵

STATE COMPENSATORY TIME

At the discretion of the agency, an employee who is exempt from the overtime provisions of the FLSA may be allowed to accrue state compensatory time off 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.³⁶ State compensatory time is accrued at a rate of straight time, or 1.0 times an employee's hourly rate. If an employee does not use state compensatory time within 12 months of when it was earned, the employee loses this time.³⁷ An employee will not be paid for accrued but unused state compensatory time. The exceptions to this rule are employees at institutions of higher education and those involved in public safety work, who may be paid for state compensatory time if taking the time off would be disruptive to teaching, research, or other critical activities.³⁸

Part-time FLSA exempt employees may accrue state compensatory time when the number of work hours exceeds the number of hours the employee was designated to work. An FLSA exempt employee shall receive his or her full salary for any week in which work is performed without regard to the number of days and hours worked. Such an employee need not be paid for any workweek in which the employee performs no work, with the following exceptions:

- Deductions may be made for full-day absences for personal reasons other than sickness or accident. Exceptions are jury duty, witness at a judicial action, or military duty.
- Deductions may be made for full-day absences for sickness or disability after exhaustion of sick leave or Workers' Compensation benefits.
- Deductions may be made for penalties due to safety infractions.

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.³⁹

No employee may accrue state compensatory time for work performed at home. Additionally, an employee who is authorized to work at home on a holiday does not accrue compensatory time off.⁴⁰

In general, the transfer of unused state compensatory time from one agency to another is prohibited. However, a transfer of state and holiday compensatory time is required if the employee transfers because of a legislative transfer of authority or duties from one agency to another. Additionally, if the employee's position was eliminated by the State Council on Competitive Government, the employee's compensatory time would transfer.

Estates of deceased employees may not be paid for unused state compensatory time.

³² [Texas Government Code Ann., Sect. 659.015](#)

³³ [5 C.F.R. Chapter 551](#)

³⁴ [Opinion, Texas Attorney General, No. H-883 \(1976\)](#)

³⁵ [Texas Government Code Ann., Sect. 662.0071](#)

³⁶ [Ibid., Sect. 659.016](#)

³⁷ [Ibid., Sect. 659.015 \(g\)](#) and [Sect. 659.016](#). See also [State Auditor's Technical Update Letter 00-01 \(1999\)](#)

³⁸ [Texas Government Code Ann., Sect. 659.015 \(f\), \(g\)](#)

³⁹ [Ibid., Sect. 659.016 \(f\)](#)

⁴⁰ [Ibid., Sect. 659.018](#). See also [State Auditor's Leave Interpretation Letter 98-05](#)

Personal staff, appointees, or immediate advisors of an elected officeholder are not subject to the FLSA. These employees may be allowed compensatory time off under terms and conditions established by the officeholder.⁴¹

Legislative employees will have their overtime pay and compensatory time off determined by the agency administrator or by the employing officeholder. Overtime pay and compensatory time off for House or Senate employees shall be determined by the presiding officer of that body.⁴²

Employees of the Legislative Reference Library are subject to the provisions of the FLSA.

State agencies shall approve, or provide an alternative date for, written requests by employees to use state compensatory time off before it expires. Such requests must be submitted at least 90 days in advance. State agencies are encouraged to accommodate to the extent practicable an employee's use of accrued compensatory time.⁴³

Each state agency has the discretion to establish policies addressing how state compensatory time off is earned, how much can be earned, and how and under what circumstances it may be used.⁴⁴ Each year, employers must notify their employees of the details of this policy.

Employees who must work on a designated national or state holiday will be allowed compensatory time off during the 12 months following the date of the holiday. Employees are required to give reasonable notice when taking this time off.⁴⁵ Holiday compensatory time is earned at the straight time rate, or 1.0 times an employee's hourly rate.

As with state compensatory time, employees at institutions of higher education may be paid for holiday compensatory time if taking this time would be disruptive to normal teaching, research, or other critical functions.⁴⁶

There is no provision that allows for the conversion of holiday compensatory time to any other type of leave. If an employee does not use holiday compensatory time within 12 months of earning it, the employee loses this time.⁴⁷

LONGEVITY PAY

Longevity pay is provided to all full-time employees who are not on leave without pay the first workday of the month and who have at least three years of lifetime service credit.⁴⁸ Those ineligible for longevity pay include members of the Legislature, individuals in public office, temporary workers, officers or employees of public junior colleges, and academic employees of institutions of higher education.⁴⁹ As shown in the accompanying chart, eligible employees receive \$20 per month for every three years of lifetime service credit up to and including 42 years of service.⁵⁰

Legislative service is included in determining lifetime service credit for purposes of longevity pay. Time spent working in a hazardous duty position is not included if the employee was entitled to receive hazardous duty pay during this period.⁵¹

⁴¹ [Texas Government Code Ann., Sect. 659.016 \(h\)](#)

⁴² [Ibid., Sect. 659.017](#)

⁴³ [Ibid., Sect. 659.022](#)

⁴⁴ [Ibid., Sect. 659.022](#), and [Sect. 659.023](#); [State Auditor's Office Technical Update Letter No. 01-01 \(2000\)](#)

⁴⁵ [Texas Government Code Ann., Sect. 662.007](#)

⁴⁶ [Ibid., Sect. 662.007 \(c\)](#)

⁴⁷ [Ibid., Sect. 659.015](#) and [Sect. 659.016](#). See also [State Auditor's Office Technical Update Letter 00-01 \(1999\)](#)

⁴⁸ [Texas Government Code Ann., Sect. 659.042](#)

⁴⁹ [Ibid., Sect. 659.044](#)

⁵⁰ [Ibid., Sect. 659.046](#)

⁵¹ [Ibid., Sect. 659.046 \(f\)](#) and [Sect. 659.047](#)

LONGEVITY PAY	
Years of Service	Monthly Longevity Pay
Less than 3 years	\$0
Greater than 3 and less than 6 years	\$20
Greater than 6 and less than 9 years	\$40
Greater than 9 and less than 12 years	\$60
Greater than 12 and less than 15 years	\$80
Greater than 15 and less than 18 years	\$100
Greater than 18 and less than 21 years	\$120
Greater than 21 and less than 24 years	\$140
Greater than 24 and less than 27 years	\$160
Greater than 27 and less than 30 years	\$180
Greater than 30 and less than 33 years	\$200
Greater than 33 and less than 36 years	\$220
Greater than 36 and less than 39 years	\$240
Greater than 39 and less than 42 years	\$260
Greater than 42 years	\$280

HAZARDOUS DUTY PAY

An employee is eligible for hazardous duty pay if he or she has completed at least 12 months of lifetime service credit (by the last day of the preceding month) and is:

- A commissioned law enforcement officer of the Department of Public Safety, the Texas Building and Procurement Commission, the Texas Alcoholic Beverage Commission, or the Institution Division of the Texas Department of Criminal Justice.
- A commissioned security officer of the Comptroller.
- A law enforcement officer commissioned by the Parks and Wildlife Department.
- A commissioned peace officer of an institution of higher education.
- An employee or official of the Board of Pardons and Paroles if the employee or official has routine, direct contact with inmates or with administratively released prisoners.
- An employee of the Pardons and Paroles Division of the Texas Department of Criminal Justice if the employee has routine, direct contact with inmates or with administratively released prisoners.
- 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.⁵²

The amount of an employee's hazardous duty pay is based on the number of years served in a hazardous duty position. 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.⁵³ See the Hazardous Duty Pay table on the next page.

⁵² [Texas Government Code Ann., Sect. 659.305](#)

⁵³ [Ibid., Sect. 659.306, Sect. 659.303 and Sect. 659.044](#)

HAZARDOUS DUTY PAY TABLE	
Years of Service	Monthly Hazardous Duty Pay
Over 1 and less than 2 years	\$7
Over 2 and less than 3 years	\$14
Over 3 and less than 4 years	\$21
Over 4 and less than 5 years	\$28
Over 5 and less than 6 years	\$35
Over 6 and less than 7 years	\$42
Over 7 and less than 8 years	\$49
Over 8 and less than 9 years	\$56
Over 9 and less than 10 years	\$63
Over 10 and less than 11 years	\$70
Over 11 and less than 12 years	\$77
Over 12 and less than 13 years	\$84
Over 13 and less than 14 years	\$91
Over 14 and less than 15 years	\$98
Over 15 and less than 16 years	\$105
Over 16 and less than 17 years	\$112
Over 17 and less than 18 years	\$119
Over 18 and less than 19 years	\$126
Over 19 and less than 20 years	\$133
Over 20 and less than 21 years	\$140
Over 21 and less than 22 years	\$147
Over 22 and less than 23 years	\$154
Over 23 and less than 24 years	\$161
Over 24 and less than 25 years	\$168
Over 25 and less than 26 years	\$175
Over 26 and less than 27 years	\$182
Over 27 and less than 28 years	\$189
Over 28 and less than 29 years	\$196
Over 29 and less than 30 years	\$203
Over 30 years	\$210

SHIFT DIFFERENTIAL PAY

The Department of Mental Health and Mental Retardation and the Department of Health are authorized to pay an additional night shift salary differential to clinical and support personnel who work either the 3 p.m. to 11 p.m. shift or the 11 p.m. to 7 a.m. shift (or their equivalents). This salary differential may not exceed 15 percent of the employee's monthly pay rate. Additionally, a weekend shift differential may be paid to employees who work weekend shifts. This differential may not exceed 5 percent of the employee's monthly pay rate. Employees involved in data processing or printing operations in these agencies as well as the Department of Human Services, the Health and

Human Services Commission, and the Department of Protective and Regulatory Services are also eligible for these differentials.⁵⁴

The Texas Building and Procurement Commission is authorized to pay an additional night shift differential to Print Shop, Environmental Services, and Building and Property Service employees.⁵⁵

Nurses and licensed vocational nurses (employed by any agency) who work the 3 p.m. to 11 p.m. shift or the 11 p.m. to 7 a.m. shift (or their equivalents) may receive a differential not to exceed 15 percent of the employee's monthly pay rate. A weekend differential is also available for use. Payment of a weekend differential may not exceed 5 percent of the employee's monthly pay rate.⁵⁶

ON-CALL PAY

The Texas Building and Procurement Commission and the Department of Transportation may pay employees for on-call time. One hour's pay will be awarded for each day on call during the workweek and two hour's pay for each day on call during weekends and holidays.⁵⁷

BENEFIT REPLACEMENT PAY

Beginning with wages paid January 1, 1996, the State no longer pays the federal taxes imposed on state employees and state-paid judges under the Federal Insurance Contributions Act. The Legislature offset the effects of the repeal of this Act by instituting Benefit Replacement Pay for eligible employees. To be eligible, an employee must have been employed by the State on August 31, 1995, and:

- Eligible for the state-paid Social Security contribution under Section 606.064 of Government Code.
- Using unpaid leave; if the employee would have been otherwise eligible.
- Not working because his or her employment customarily did not include summer months, 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.⁵⁸

Benefit replacement pay is equal to 5.85 percent of the FICA wages earned during the pay period (not to exceed \$16,500 annually) and the additional retirement contribution paid by the employee because of receiving benefit replacement pay. The total paid out (not including the retirement contribution) may not exceed \$965.25 each calendar year.⁵⁹ Employers have the option of providing benefit replacement pay in equal installments during the calendar year.

An eligible employee who leaves state employment for 12 or more consecutive months before returning becomes ineligible to receive benefit replacement pay.⁶⁰

⁵⁴ [77th Legislature General Appropriations Act, Art. II, Special Provisions Relating to All Health and Human Services Agencies, Sect. 2](#)

⁵⁵ [Ibid., Art I, Building and Procurement Commission, Sect. 22](#)

⁵⁶ [Ibid., Art IX, Sect. 3.06](#)

⁵⁷ [Ibid., Art I, Building and Procurement Commission, Sect. 22 and Art. VII, Department of Transportation, Sect. 10](#)

⁵⁸ [Texas Government Code Ann., Sect. 659.121](#)

⁵⁹ [Ibid., Sect. 659.123](#)

⁶⁰ [Ibid., Sect. 659.125 and Sect. 659.126](#)

VARIABLE PAY

ENHANCED COMPENSATION AWARDS

The 77th Legislature provided a system of performance rewards and penalties for state agencies and institutions of higher education to encourage them to make use of appropriations in the most efficient and effective manner. Agencies and institutions were tasked with establishing performance milestones. Based on the achievement of these milestones, the LBB and the Governor may adopt a budget that contains incentives and rewards for these employees.⁶¹

Only classified employees (including classified employees in higher education) are eligible for these enhanced compensation awards. Such awards may not exceed 6.8 percent of an employee's base pay.

To qualify, an agency or institution must meet the following criteria:

- Achieve at least 80 percent of key performance measures
- Have an unqualified certification by the State Auditor's Office for at least 70 percent of performance measures
- File a report with the Legislative Budget Board, Governor's Office of Budget and Planning, House Appropriations Committee, and Senate Finance Committee describing the success of any innovative program used to justify the award as well as the criteria used to assess the improvements.

INCENTIVE BONUSES

The Texas Incentive and Productivity Commission (TIPC) administer the State Employee Incentive Program and the Productivity Bonus Program.

The State Employee Incentive Program was created to recognize employee efforts toward reducing costs to the State, increasing revenues, and improving the quality of services. If an employee's suggestion results in a savings to the State that equals or exceeds \$500 (after implementation), the employee is eligible for a monetary bonus of 10 percent of the net savings or generated revenue, not to exceed \$5,000.⁶² Employees whose suggestions result in intangible benefits or savings or net savings or generated revenue of less than \$500 (after implementation) may be given a certificate of appreciation.

Additionally, recognition awards of \$50 may be granted for contributions that:

- Conserve energy.
- Enhance safety.
- Improve customer service.
- Result in the adoption of any other innovation or improvement.⁶³

Employee groups may also submit suggestions. Each member of such a group is eligible for a total bonus not to exceed \$5,000 or 10 percent of the first-year net savings or revenue increases. Bonuses awarded to a group of employees are divided equally among the members.⁶⁴

Suggestions must be given to the designated agency coordinator, be annotated on the proper TIPC form, and include a proposed implementation method and an estimate of cost savings or revenue generated if adopted by the agency. If the same suggestion is submitted by more than one employee,

⁶¹ [77th Legislature General Appropriations Act, Art. IX, Sect. 6.31](#)

⁶² [Texas Government Code Ann., Sect. 2108.023](#)

⁶³ [Ibid., Sect. 2108.0235](#)

⁶⁴ [Ibid., Sect. 2108.0236](#)

the first suggestion received will be eligible for the award. If the same suggestion is received on the same day from more than one employee, any bonus may be divided equally between the employees.⁶⁵

If dissatisfied with an eligibility determination, employees may request a redetermination.⁶⁶

RECOGNITION AWARDS

A state agency may use appropriated money to purchase service awards, safety awards, or other similar awards to be presented to its employees for professional achievement or outstanding service under agency policies. The cost of awards purchased under this section may not exceed \$50 for an individual employee.

These awards are not the same as the \$50 employee recognition awards provided through the State Employee Incentive Program.

RETENTION BONUSES

A state agency may pay a bonus of up to \$3,000 to any classified employee deemed by the agency head as necessary to its operations. The employee must remain with that agency or institution of higher education in a classified position for 12 months after executing a bonus contract. The contract may be executed only after 12 months of employment in a classified position. Before a contract is executed, a letter documenting the need for such a bonus must be directed to the Comptroller. Retention bonuses do not constitute compensation or salary and wages for purposes of determining the amount of the State's contribution for retirement.⁶⁷

SALARY ADMINISTRATION

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

- Classified positions paid in accordance with the [Classification Salary Schedule](#).
- Positions exempted from the Plan by authority of the Legislature or the Governor. Salaries for these positions must be in accordance with the General Appropriations Act.⁶⁸

SALARY LIMITED TO THE MAXIMUM RATE

In general, no promotion, reclassification, or other salary adjustment may result in an employee receiving a salary in excess of the maximum rate authorized for his or her salary group.⁶⁹

The Department of Public Safety may pay its employees who are classified as Corporal I–V, Traffic Law Enforcement, at rates that exceed the maximum rates for those positions by up to \$600 per fiscal year.⁷⁰

⁶⁵ [Texas Government Code Ann., Sect. 2108.027](#)

⁶⁶ [Ibid., Sect. 2108.029](#)

⁶⁷ [77th Legislature General Appropriations Act, Article IX, Sect. 3.07](#) and [Office of the Comptroller, Payroll and Policies Guide](#)

⁶⁸ [Texas Government Code Ann., Sect. 654.011, Sect. 659.011; 654.0125](#) and [77th Legislature General Appropriations Act, Art. IX, Sect. 3.05](#)

⁶⁹ [Texas Government Code Ann., Sect. 659.259](#)

The Department of Mental Health and Mental Retardation may pay employees working in Maximum Security Units or Behavior Management Units up to a two-step increase over the established ranges for their positions.⁷¹

GREEN- AND RED-CIRCLED EMPLOYEES

“Green-circled” employees are employees who are paid below the salary ranges for their positions. It is the intent of the Legislature to avoid paying employees salaries that are below the established pay ranges for their positions. Newly hired employees must be hired within posted salary ranges.

It is also the intent of the Legislature to avoid paying employees more than the maximums of the salary ranges for their positions. These employees are referred to as “red-circled” employees. A red-circled employee may not receive an additional salary increase until he or she is paid within the salary range of the position.⁷²

PART-TIME AND HOURLY EMPLOYEES

Regular full-time positions may be filled by part-time and hourly employees. The rates of pay for part-time and hourly employees are to be proportional to their full-time counterparts.⁷³ Part-time employees must be appropriately classified with titles from the Plan or appropriate exempt titles.

TEMPORARY ASSIGNMENT

To facilitate the work of state agencies during emergencies or special circumstances, any classified employee may be temporarily assigned to other duties. During that time, the employee will receive at least the same amount of pay he or she received prior to the reassignment. An employee will not be temporarily assigned to a position with a lower minimum salary rate. Such assignments will not exceed 6 months in a 12-month period. During this time, an agency cannot award a merit increase to, promote, or demote the employee.⁷⁴

SALARY SUPPLEMENTATION

Classified employees or employees in positions exempt from the Plan cannot receive salary supplements unless authorized by statute or the General Appropriations Act.⁷⁵

SALARY GROUP REALLOCATION

Classified employees whose positions are reallocated to higher salary groups will receive the minimum rates in the higher salary groups or the salaries they would receive without the reallocation, whichever are higher. Salaries of employees may not be increased more than 2 salary steps or 6.8 percent.⁷⁶

⁷⁰ [77th Legislature General Appropriations Act, Art. IX, Sect. 3.01 \(f\)](#)

⁷¹ [Ibid., Art. II, Sect. 45](#)

⁷² [Texas Government Code Ann., Sect. 659.259 \(c\)](#)

⁷³ [Ibid., Sect. 658.009](#) and [Sect. 659.019](#)

⁷⁴ [Ibid., Sect. 659.260](#)

⁷⁵ [Ibid., Sect. 659.020](#)

⁷⁶ [Ibid., Sect. 659.254](#)

Employees whose positions are reallocated to a lower salary group will receive the salaries they would have received had the positions not been reallocated. However, the employees' salaries should not exceed the maximum rates for the lower salary groups.⁷⁷

RECLASSIFICATION

Reclassification is defined as a change in the classification of a position based on the actual duties performed by an employee. It does not refer to a change in an employee's duty assignment.⁷⁸ Annually, all agencies covered by the Position Classification Act must review individual job assignments to ensure that each employee is classified properly.⁷⁹ A position may be reclassified at any time to correct a discrepancy.⁸⁰ The salary administration provisions for reclassifications are the same as for reallocations.

CONVERSION OF EXEMPT EMPLOYEES TO CLASSIFIED POSITIONS

Exempt employees who are moved into classified positions are converted at their current base salaries. If moving to salary schedule A, they may receive salaries at the equivalent step level or the next higher salary step. If moving to a position in salary schedule B, they may receive their current salaries or the maximum rates of the new salary groups, whichever is less.⁸¹ An executive director may not be reassigned to another position within the agency. The exception to this is if, in an open meeting, the governing body approves the reassignment.⁸²

SALARY LIMITATIONS FOR RETIREES RESUMING STATE SERVICE

The 77th Legislature [repealed](#) the salary limitation on retirees who resume state employment.

INCOME PROTECTION PROGRAM

UNEMPLOYMENT COMPENSATION

With few exceptions, state employees are covered by unemployment insurance in Texas.

The law requires employers to respond to the notice of initial claim within 14 days following the mailing date of the claim. A failure to respond to the claim in a timely manner results in a waiver of all rights in connection with the claim. A protest of the claim must be filed in a timely manner to protect the employer's status as a party of interest in the claim.

Unemployment benefits are based on the wages reported to the Texas Workforce Commission by employers during the base period of the claim, which is typically 10 to 14 weeks prior to the recorded date of the claim.⁸³

⁷⁷ [Texas Government Code Ann., Sect. 659.254 \(b\) \(2\)](#)

⁷⁸ [Ibid., Sect. 654.0156](#)

⁷⁹ [Ibid., Sect. 654.0155](#)

⁸⁰ [Ibid., Sect. 659.254](#) and [Sect. 654.0156](#)

⁸¹ [Ibid., Sect. 659.253](#)

⁸² [Ibid., Sect. 669.002](#)

⁸³ [Texas Labor Code Ann., Sect. 207.021](#)

In order to receive unemployment benefits, claimants must:

- Have registered for work and continue to report the status of a work search to an unemployment office.
- Have filed a claim for benefits.
- Be able and available for work.
- Actively search for work.
- Participate in re-employment activities.⁸⁴

An otherwise qualified claimant can be disqualified for unemployment benefits if the claimant quit or was fired for gross misconduct.

A claimant will not be disqualified if he or she left work due to:

- A medically verifiable illness (claimant or child).
- Injury.
- Disability.
- Pregnancy.

Individuals who have any earnings during the benefit period must report those earnings to the Texas Workforce Commission.

An individual is not considered unemployed and is not eligible for benefits for any period in which the individual works his or her full-time hours, regardless of the amount of wages earned during the benefit period.⁸⁵

The maximum benefit amount an individual may be paid during a benefit year may not exceed 26 times the weekly benefit amount or 27 percent of the total base period wage credits, whichever is less.⁸⁶ The weekly benefit amount is equal to 1/25 of the highest quarter of wages for the base period or the maximum benefit amount established for that year, whichever is less. Individuals who exhaust their regular benefits may apply for extended benefits if such benefits are available.⁸⁷

The State may enter into agreements with agencies of other states to allow an employee who performs his or her duties outside of Texas to be considered completely employed in Texas.⁸⁸

WORKERS' COMPENSATION

The State Office of Risk Management administers the state's workers' compensation system for most state employees. Exceptions to this include the Texas Department of Transportation, The University of Texas System, and the Texas A&M University System.⁸⁹

Employees covered by workers' compensation insurance or their legal beneficiaries have, as their sole remedy for compensable accidents or injuries, the ability to recover insurance benefits.⁹⁰ To receive these benefits, an employee must suffer a compensable injury on the job. An injury is defined as "damage or harm to the physical structure of the body and a disease or infection naturally resulting from the damage or harm."⁹¹

⁸⁴ [Texas Labor Code Ann., Sect. 207.021](#)

⁸⁵ [Ibid., Sect. 207.005](#)

⁸⁶ [Ibid., Sect. 207.002](#)

⁸⁷ [Ibid., Sect. 211.001](#)

⁸⁸ [Ibid., Sect. 205.042](#) and [Texas Insurance Code Ann., Art 3.50-2, Sect. 2 \(a\)](#)

⁸⁹ [Texas Labor Code Ann., Sect. 501.024](#)

⁹⁰ [Ibid., Sect. 408.001](#)

⁹¹ [Ibid., Sect. 401.011](#)

An injured employee is entitled to all health care reasonably required to treat an injury or illness when and as needed.⁹² The injured employee is entitled to his or her choice of treating physicians; however, the physician must be one of the doctors listed on the Texas Workers' Compensation Commission's (TWCC) approved doctor list.⁹³ The injured employee may change his or her treating physician, but this change may require preapproval from TWCC.⁹⁴ Employees may be required to submit to a medical examination to determine the appropriateness of treatment.⁹⁵

In addition to medical payments, employees are eligible to receive income benefits for time lost from work as the result of an injury. To be eligible, an injury must result in disability for at least one week. Income benefits begin to accrue on the eighth day after the disabling injury. This entitlement ends upon the death of the employee. Eligibility for income benefits expires 401 weeks after the date of the disabling injury.⁹⁶

An employee may elect to use accrued sick leave prior to receiving income benefits. In order to do so, the employee must exhaust all accrued sick leave. Annual leave may also be used by the employee. Under these circumstances, and after exhausting his or her sick leave, the employee may designate the use of all or any number of weeks of annual leave. If annual leave is used, the designated amount of leave must be exhausted before the employee is entitled to receive income benefits. Once this election has been made by the employee, no changes are permitted.⁹⁷ Employers may not require employees to exhaust compensatory time balances before receiving income benefits. Employers may also not prohibit employees from using compensatory time while they are receiving income benefits.⁹⁸

There are five types of income benefits:

- **Temporary benefits** are provided to the injured employee until he or she reaches maximum medical improvement (MMI). MMI is reached when certified by a physician or at the conclusion of 104 weeks, whichever comes first.⁹⁹
- **Impairment benefits** begin the day after an employee reaches MMI and end on the date of the employee's death, or after a period equal to three weeks for each percentage point of impairment.¹⁰⁰
- **Supplemental benefits** are paid out when impairment benefits have expired and the employee:
 - ♦ Has an impairment rating of 15 percent or more.
 - ♦ Has not returned to work or has returned to work earning less than 80 percent of the average pre-injury weekly wage.
 - ♦ Has made a good faith effort to find employment suitable for his or her ability to work.¹⁰¹
- **Lifetime benefits** are paid for specific illnesses:
 - ♦ Loss of sight in both eyes
 - ♦ Loss of both feet at or above the ankle
 - ♦ Loss of both hands at or above the wrist
 - ♦ Loss of one foot and one hand
 - ♦ Injury resulting in complete paralysis of both arms, both legs, or one arm and one leg
 - ♦ Injury to the skull resulting in incurable insanity or imbecility

⁹² [Texas Labor Code Ann., Sect. 408.021](#)

⁹³ [Ibid., Sect. 408.022 \(a\)](#)

⁹⁴ [Ibid., Sect. 408.023](#)

⁹⁵ [Ibid., Sect. 408.022](#)

⁹⁶ [Ibid., Sect. 408.081, Sect. 408.082 and Sect. 408.083](#)

⁹⁷ [Ibid., Sect. 501.044](#)

⁹⁸ [Opinion, Texas Attorney General No. JC-0188 \(2000\)](#)

⁹⁹ [Texas Labor Code Ann., Sect. 408.101](#) and [28 Texas Admin. Code Ann., Sect. 130.4\(a\)](#)

¹⁰⁰ [Ibid., Sect. 408.121](#) and [Sect. 408.122](#)

¹⁰¹ [Ibid., Sect. 408.142, Sect. 408.061, and Sect. 408.144](#)

- ♦ Third degree burns over 40 percent of the body
- ♦ Third degree burns covering the majority of both hands, or one hand and the face¹⁰²

The employee receives this benefit until his or her death.

- **Death and burial benefits** are paid to the beneficiaries of a deceased employee if the employee died of a compensable injury. Beneficiaries may include spouses, children, grandchildren, or dependents.¹⁰³

An employee or party representing the employee must notify the employer within 30 days after an injury occurred or as soon as possible after a determination that an injury is work-related. Failure to notify the employer may relieve that employer of any liability in the matter.¹⁰⁴

Claims for compensation must normally be filed within one year from the date of injury. These claims are filed with the TWCC. Failure to file a claim within this one-year period may relieve the employer from liability for payment.¹⁰⁵ Claims for death benefits generally must be filed within one year of the employee's death. Separate claims must be filed for each beneficiary unless the claim expressly includes other parties.¹⁰⁶

Workers' compensation coverage does extend to employees who regularly work outside the state.¹⁰⁷

The administrative head of an agency, department, or institution of higher education may authorize emergency leave with pay to an employee receiving workers' compensation benefits. Emergency leave payments may not extend beyond six months.¹⁰⁸

FICA

FICA is also known as the Social Security tax. It is composed of Old Age, Survivors, and Disability Benefits (OASDI) and Medicare. The OASDI rate is 6.20 percent of a base amount that changes each year due to a rise in the Consumer Price Index. The Medicare rate is 1.45 percent and currently has no income limit. All employees are subject to both FICA taxes.¹⁰⁹

UNIFORM GROUP INSURANCE PROGRAM (UGIP)

In 1975, the Legislature passed the Texas Employees Uniform Group Insurance Act intended to provide life, accident, and health benefits to all employees of the state and their dependents.¹¹⁰ Except for the conditions discussed in this section of Insurance Code, no employee may be denied coverage unless the employee waives this coverage in writing.¹¹¹ Employees on Family and Medical Leave are entitled to continue to receive the state's contribution to UGIP but are responsible for payment of out-of-pocket premiums. These premiums are due on the first day of each month.

¹⁰² [Texas Labor Code Ann., Sect. 408.161, Sect. 408.061](#)

¹⁰³ [Ibid., 408.181, Sect. 408.061, Sect. 408.182, and Sect. 408.186](#)

¹⁰⁴ [Ibid., Sect. 409.001 and Sect. 409.002](#)

¹⁰⁵ [Ibid., Sect. 409.003 and Sect. 409.004](#)

¹⁰⁶ [Ibid., Sect. 409.007](#)

¹⁰⁷ [Ibid., Sect. 501.025](#)

¹⁰⁸ [Ibid., Sect. 501.045](#)

¹⁰⁹ [Social Security Administration](#)

¹¹⁰ [Texas Insurance Code Ann., Art. 3.50-2, Sect. 13](#)

¹¹¹ [Ibid., Art. 3.50-2, Sect. 4](#)

A dependent is the spouse of an active or retired employee, or an unmarried child under the age of 25, including:

- An adopted child.
- A stepchild whose primary residence is the participant's household.
- A foster child whose primary residence is the participant's household and who is not covered under another government health plan.
- Other child in a parent-child relationship with the employee whose primary residence is the participant's household
- A child who is considered a dependent for tax purposes and who is the child of the employee's or retiree's child.
- A child required to receive medical support pursuant to a court order.
- Any child of any age who is mentally retarded or physically incapacitated and dependent upon the employee for support.¹¹²

An unmarried dependent is eligible for reinstatement of coverage upon the expiration of benefits under COBRA, but at a rate sufficient to cover the entire cost of the coverage.¹¹³

UGIP may also include a cafeteria plan that allows the employee to pay premiums, health care expenses, and dependent care expenses on a pre-tax basis.¹¹⁴

If the cost of coverage exceeds the amount of the state's contribution, the difference will be deducted from the employee's pay or retirement benefits. All other participants will be billed directly by Employees Retirement System (ERS). State contributions to group insurance costs can be found on the ERS Web site at www.ers.state.tx.us.

The trustees of the Uniform Group Insurance Benefits Program may adopt rules to pay accelerated life insurance benefits to terminally ill, terminally injured, or permanently disabled participants. The amount of any payment will be deducted from the amount of the death benefit.¹¹⁵

The Legislature is empowered to provide assistance payments to survivors of eligible officers, firefighters, and other employees¹¹⁶ due to the hazardous nature of the employees' duties.¹¹⁷ A surviving spouse may receive \$250,000. If there is no eligible spouse, the payment will be distributed in equal shares to the children. Without a spouse or children, a surviving parent may receive \$250,000. If there are two surviving parents, each will receive equal shares.¹¹⁸

A surviving spouse or child is eligible to receive education benefits. The child must be claimed as a dependent on the employee's income tax return for the year prior to his or her death. An eligible beneficiary may enroll as a full-time student at a public institution of higher education and be exempt from all tuition and fees until the student receives a bachelor's degree or 200 credit hours, whichever comes first. This benefit extends to on-campus housing, meals, and the cost of textbooks.¹¹⁹ These education benefits are in addition to any payments received under Government Code, Section 615.022, Payments for Eligible Survivors.

Additionally, the state will pay for funeral expenses and an annuity to an eligible beneficiary of an employee killed in the line of duty who had not qualified for payment under a retirement plan. The annuity will consist of monthly payments that equal the greater of:

- The monthly payment had the employee survived and retired on the last day of the month (if eligible for retirement); or

¹¹² [Texas Insurance Code Ann., Art. 3.50-2, Sect. 19 \(d\)](#)

¹¹³ [Ibid., Art. 3.50-2, Sect. 14A](#)

¹¹⁴ [Ibid., Art. 3.50-2, Sect. 13 \(b\)](#)

¹¹⁵ [Id, Art. 3.50-2, Sect. 11 \(d\) and Sect. 11A](#)

¹¹⁶ [Texas Government Code Ann., Sect. 615.003](#)

¹¹⁷ [Ibid., Sect. 615.021](#)

¹¹⁸ [Ibid., Sect. 615.022](#)

¹¹⁹ [Ibid., Sect. 615.0225](#)

- The monthly payment had the employee survived, been employed by the state for 10 years, paid a salary at the lowest amount provided by the General Appropriations Act, and had been eligible to retire under ERS.

The surviving spouse may receive these payments until:

- The date the surviving spouse remarries.
- The date the surviving spouse becomes eligible to retire under a state retirement plan.
- The date the surviving spouse becomes eligible for Social Security benefits.

LIABILITY INSURANCE

State agencies that own or operate motor vehicles, power equipment, aircraft, or boats are authorized to provide liability insurance to employees. If liability insurance is required but not provided, the employee may be reimbursed from agency funds.¹²⁰

STATE KIDS INSURANCE PROGRAM (SKIP)

State agencies are required to provide employees information regarding SKIP and Medicaid. This must be done at least annually during open enrollment.¹²¹ This program provides a 30 percent supplement toward the health insurance premiums of eligible children of full-time employees and 15 percent toward the premium costs for part-time employees. This supplement is available to state employees participating in the state insurance program who:

- Meet eligibility criteria according to family income and size,
- Are not eligible for Medicaid,
- Are U.S. citizens or legal residents, and
- Have UGIP-eligible children under the age of 19 living with them in Texas.

The Children's Health Insurance Program (CHIP) is comparable to SKIP but is for children whose parents are not covered by the state's insurance program.

DEFERRED COMPENSATION

State agencies are permitted to offer a deferred compensation plan in addition to a benefit plan for purposes of retirement. Under such a plan, employees may defer a part of their pay for investment in a qualified "investment product" and will not be taxed on this amount until the employee receives a distribution from the plan.¹²² There are two types of plans available to employees:

- A 401(k) plan allows employees to defer up to the lesser of 25 percent or \$10,500. This plan allows employees to borrow against these funds as well as roll them over to another investment vehicle such as an individual retirement account.¹²³
- A 457 plan allows employees to invest with a variety of vendors. Under this plan, an employee may defer up to the lesser of 25 percent or \$8,500.¹²⁴

Employees should contact an ERS customer service agent or visit the ERS Web site at www.ers.state.tx.us for additional details regarding deferred compensation plans.

¹²⁰ [Texas Government Code Ann., Sect. 612.002](#)

¹²¹ [77th Legislature General Appropriations Act, Article IX, Sect. 6.42](#)

¹²² [Texas Government Code Ann., Sect. 609.003, Sect. 609.004, Sect. 609.005, and Sect. 609.006](#)

¹²³ 26 U.S.C. Sect. 401(k)

¹²⁴ *Ibid.*, Sect. 457

RETIREMENT

There are several retirement plans available to state employees. ERS constitutes the largest with the greatest number of employee participants.

As a condition of employment, all employees and appointed officers of the State are members of the employee class of ERS and earn monthly service credit from their first day of employment. Elected officials who are not part of the Teacher Retirement System (TRS) or the Judicial Retirement System may participate in ERS as members of the elected class. Temporary employees who are age 65 or older may elect not to join for the first six months of employment. These employees are required to join if their employment extends into a seventh month.¹²⁵

Employees participating in ERS must contribute 6 percent of their pay into the system. Employees who are members of the Legislature must contribute 8 percent of their pay. The employing agency is responsible for deducting the amount of this contribution from the employee's pay. The deduction process requires no employee consent.¹²⁶

The State contribution will be 7.4 percent of the total compensation for employees participating in the plan.¹²⁷

Upon termination of employment, an individual who is a member of the employee class may receive a refund of his or her contributions to the plan. In order to receive this refund, the member must not resume employment in this class during the 30 days following termination and must file an application for the refund with ERS.¹²⁸ Withdrawal of contributions cancels membership in the plan, service credit, and all rights to benefits.¹²⁹ The amount of the refund includes total monthly contributions, service credit contributions, and any accumulated interest. Interest is earned monthly at a rate of 5 percent. The refunded amount does not include membership fees or interest paid for purposes of service credit.¹³⁰

In addition to the monthly service credit earned by employees, there are four types of service credit that may be purchased by members of the employee class:

- Employees may purchase previously refunded service credit by depositing with ERS the amount refunded plus interest. In addition, at least six months must have elapsed since the employee's termination from state service.¹³¹
- Employees may purchase service credit for military service on a month-for-month basis up to 60 months. The employee must not be eligible for retirement from active military duty and must have received an honorable discharge.¹³²
- Employees may purchase service credit for the period of September 13, 1947, to August 31, 1973, and any other service for which no contribution to the plan was made.¹³³ In doing so, employees may not purchase more than 60 months of service credit in either the elected class or employee class.¹³⁴
- Additional Service Credit (ASC) allows employees to purchase up to five years of service credit in the employee class if employed by the State at least 10 years.¹³⁵

¹²⁵ [Texas Government Code Ann., Sect. 812.002, Sect. 812.003, and Sect. 812.004](#)

¹²⁶ [Ibid., Sect. 815.402\(a\) and Sect. 815.402\(g\)](#)

¹²⁷ [Ibid., Sect. 815.403](#)

¹²⁸ [Ibid., Sect. 812.101](#)

¹²⁹ [Ibid., Sect. 812.103](#)

¹³⁰ [Ibid., Sect. 812.104](#)

¹³¹ [Ibid., Sect. 813.102 and Sect. 813.504](#)

¹³² [Ibid., Sect. 813.301, Sect. 813.302, Sect. 813.304, and Sect. 813.505](#)

¹³³ [Ibid., Sect. 813.202 and Sect. 813.505](#)

¹³⁴ [Ibid., Sect. 813.513](#)

¹³⁵ [Employee Retirement System Web site at \[www.ers.state.tx.us/Retirement/ASC.htm\]\(http://www.ers.state.tx.us/Retirement/ASC.htm\)](#)

Employees may purchase service credit by way of a lump-sum payment or payroll deduction. Purchase through the use of payroll deduction is unavailable for ASC.¹³⁶

Upon retiring, an employee has the option to designate accrued annual leave as service credit in addition to receiving a lump-sum payment for this time. It is important to note that this designation must occur on the last day of employment. Annual leave is credited at the rate of one month of service credit for each 20 days or 160 hours of annual leave.¹³⁷

A member of the plan also has the option to designate accrued but unused sick leave for retirement credit on the last day of employment. Such a designation may be made only if the person is employed during the month of his or her retirement. Credit is given at the rate of one month of service credit for each 20 days or 160 hours of sick leave. Employees may also donate all or part of their sick leave balance to the employer's sick leave pool prior to certification for service credit.

There is no provision for storing or banking sick leave for use after retirement if the employee returns to work with the State.¹³⁸

An employee who is an ERS employee class member is eligible to retire and receive an annuity if:

- He or she is at least 60 years old with five years of service credit in the employee class (ten years to be eligible for health insurance).
- The sum of the employee's age and amount of service credit equals or exceeds 80. (A minimum of five years of service credit is required.)¹³⁹

ERS will credit service performed as a member of an alternative State plan for purposes of retirement eligibility.¹⁴⁰

An employee who is an elected class member of ERS is eligible to retire and collect a retirement annuity if:

- The employee is at least 60 years old and has eight years of service credit in that class.
- The employee is at least 50 years old and has 12 years of service credit in that class.¹⁴¹

Additionally, a member who is at least 55 years old with at least ten years of service may retire if the employee worked as:

- A commissioned peace officer with the Department of Public Safety, the Alcoholic Beverage Commission, the Board of Pharmacy, or the Parks and Wildlife Department.
- An employee of Railroad Commission of Texas who is licensed by the Commission on Law Enforcement Officer Standards and Education and who has served at least five years as an investigator for the oil field theft detection division.
- A parole officer or case worker for the Board of Pardons and Paroles or Department of Criminal Justice.
- A custodial officer.¹⁴²

A member of both the ERS and the TRS who applies for retirement from one system may transfer service credit to the other. In order to do this, the employee must have at least three years of service credit in the system from which he or she is retiring.¹⁴³

¹³⁶ [Texas Government Code Ann., Sect. 813.104](#)

¹³⁷ [Ibid., Sect. 813.511](#)

¹³⁸ [Ibid., Sect. 813.509](#) and [State Auditor's Technical Update Letter No. 01-02 \(2000\)](#)

¹³⁹ [Texas Government Code Ann., Sect. 814.104 \(a\)](#)

¹⁴⁰ [Ibid., Sect. 814.104 \(a\), \(c\)](#) and [Sect. 814.1042](#)

¹⁴¹ [Ibid., Sect. 814.102](#)

¹⁴² [Ibid., Sect. 814.104 \(b\)](#) and [Sect. 814.107](#)

¹⁴³ [Ibid., Sect. 805.002](#)

DISABILITY RETIREMENT

A plan member is eligible to retire under an occupational disability, regardless of age or amount of service credit.

A member who serves with either the Texas National Guard or Texas State Guard and is injured while on active duty is eligible for retirement. The injury must be sufficiently serious to result in a discharge from military service and the cessation of state employment.¹⁴⁴

In the case of a nonoccupational disability, a member is eligible to retire if he or she meets one of the following criteria:

- Eight years of service credit in the elected class of membership
- Six years of service credit in the elected class of membership plus two years of military service (established before January 1, 1978)
- Ten years of service credit in the employee class of membership¹⁴⁵

Except for certain peace officers and custodial officers, the standard disability retirement annuity is calculated in the same manner as a service retirement annuity.¹⁴⁶

The annuity may not be less than 35 percent of the employee's monthly compensation or \$150 per month, whichever is greater.¹⁴⁷

RETIREMENT BENEFITS

Detailed information regarding this topic is available on line at www.ers.state.tx.us.

The standard service retirement annuity for members in the employee class of membership is calculated at 2.3 percent times the number of years of service in the employee class of membership times the average monthly compensation (during the 36 months of highest compensation).¹⁴⁸ This annuity may not be less than \$150 or more than 100 percent of the member's average monthly compensation.¹⁴⁹

For a member of the elected class of ERS, the standard retirement annuity is equal to 2 percent for each year of service in that class, multiplied by the state salary paid to a district judge. This annuity may not exceed 100 percent of the salary currently paid to a district judge.¹⁵⁰

A retiree may waive all or a portion of any retirement benefit in order to receive other services such as Medicaid.¹⁵¹

A spouse of a current member who meets certain conditions may receive a monthly annuity from the member's retirement account. The member must be an active employee, not yet retired but eligible to retire. Upon retirement, the member's benefit will be reduced by the amount awarded to the member's spouse.¹⁵²

The State provides proportional retirement benefits to qualified members who have service credit in more than one retirement system. These participating retirement systems are the Employees

¹⁴⁴ [Texas Government Code Ann., Sect. 814.204](#)

¹⁴⁵ [Ibid., Sect. 814.202](#)

¹⁴⁶ [Ibid., Sect. 814.206 \(a\)](#)

¹⁴⁷ [Ibid., Sect 814.206](#) and [Sect. 814.207](#)

¹⁴⁸ [Ibid., Sect. 814.105](#)

¹⁴⁹ [Ibid., Sect. 814.107](#)

¹⁵⁰ [Ibid., Sect. 814.103 \(b\)](#)

¹⁵¹ [Ibid., Sect. 814.005](#)

¹⁵² [Ibid., Sect. 804.005](#)

Retirement System of Texas, the Teacher Retirement System of Texas, and the Judicial Retirement System of Texas Plan I and II. Certain municipal employees may also elect to join this program.¹⁵³

A person who has membership in two or more retirement systems is subject to the laws governing each for determining eligibility for retirement benefits. Each retirement system will only pay benefits based upon the service and salaries established in that system.¹⁵⁴

Service credit may not be re-established in a municipality or subdivision participating in a state retirement program if the person seeking the credit is excluded from participation by that party under [Texas Government Code, Section 803.103](#).

The retirement system will no longer suspend annuity payments to retirees who resume state service in the employee class of membership. In the elected class, annuity payments will be withheld for the period of time the employee holds the elected position.¹⁵⁵ Before the retiree begins work, both the employing agency and the retiree must notify the retirement system in writing of the employee's name, date of employment, and projected dates of service. A retiree from the elected class of membership must also notify the retirement system in writing prior to taking the oath of office. An employee taking a position in another class of membership or serving as an independent contractor may continue to receive retirement benefits.¹⁵⁶

Members of ERS may elect to receive an optional annuity in lieu of the standard annuity. The member may select an annuity approved by the board of trustees or any one of the options provided by [Texas Government Code Section 814.108](#).

A retiree may change from an optional annuity selection to a standard annuity by filing a request with the retirement system. Once made, the retirement system will recompute the annuity.¹⁵⁷

An ERS member who has at least 10 years of service credit may select a death benefit plan for payment of an annuity to a person designated by the member. A death benefit designee is entitled to service credit in the retirement system for the member's accumulated sick leave and annual leave. Designation of a former spouse as a beneficiary is invalid unless the designation occurred after the date of a divorce.¹⁵⁸

If a member who is eligible to choose a death benefit dies without selecting one, the designated beneficiary or personal representative of the estate may select an annuity plan. In lieu of a death benefit plan, a refund of contributions may be elected by the beneficiary or representative of the estate. The designee may use the deceased member's sick and/or annual leave to qualify for making a death benefit plan selection.¹⁵⁹

If a member is not eligible to retire or select a death benefit plan, the accumulated employee contributions, with interest, will be refunded to the beneficiary or the estate. If, however, this member was:

- Actively employed by the State,
- Receiving workers' compensation for a work-related injury, or
- On authorized sick leave,

then a lump-sum death benefit is payable to the beneficiary or estate. This benefit is in addition to the refunded employee contribution and is calculated at 5 percent of the amount in the employee's account times the number of full years of service credit. This payment may not exceed 100 percent of the amount in the member's account.¹⁶⁰

¹⁵³ [Texas Government Code Ann., Sect. 803.101](#) and [Sect. 803.102](#)

¹⁵⁴ [Ibid., Sect. 803.201](#)

¹⁵⁵ [77th Legislature, Senate Bill 587, Section 3](#) and [Texas Government Code Ann., Sect. 814.202](#)

¹⁵⁶ [Texas Government Code Ann., Sect. 812.204](#) and [Sect. 812.202](#)

¹⁵⁷ [Ibid., Sect. 814.1081](#)

¹⁵⁸ [Ibid., Sect. 814.301](#), [Sect. 813.509](#), and [Sect. 813.511](#)

¹⁵⁹ [Ibid., Sect. 813.509](#), [Sect. 813.511](#), and [Sect. 814.302](#)

¹⁶⁰ [Ibid., Sect. 814.401](#)

In the case of an occupational death, an amount equal to one year's salary is also provided to the surviving spouse or children's guardian. Supplemental death benefits are paid out upon the death of a commissioned peace officer or custodial officer with 20 or more years of service.

ERS retirees who selected an optional retirement annuity may now change the designated beneficiary after annuity payments to that beneficiary have begun. If the beneficiary is a spouse or former spouse, written, notarized consent to the change, or a court order, is necessary.¹⁶¹

EMPLOYEE LEAVE

ANNUAL LEAVE

State employees are entitled to a paid vacation each year. The amount of time off each employee receives is determined by length of service. Exceptions to this policy include faculty members of institutions of higher education who worked less than 12-months during the year and instructors of the Texas School for the Blind and Visually Impaired and School for the Deaf who worked less than 12 months during the year.¹⁶²

Vacation accrual rates are the same for both hourly and salaried employees.¹⁶³ Part-time employees are also eligible for paid vacation, but their accrual rate and maximum carryover are proportional to the number of hours worked.¹⁶⁴ For example, half-time employees earn and carry over annual leave at one-half the rate authorized for full-time employees. The amount of annual leave accrued by an employee is based on his or her employment status on the first day of the month.

In computing annual leave taken by an employee, absences due to holidays are not charged.¹⁶⁵

Any appointed officer who normally works 900 hours or more per year is allowed to accrue annual and sick leave.¹⁶⁶

SCHEDULE OF VACATION LEAVE ACCRUALS FOR FULL-TIME EMPLOYEES ¹⁶⁷			
Length of Service	Hours Accrued per Month	Days Accrued per Year	Allowable Carryover (Hours)
Less than 2 years	7	10.5	168
At least 2 but less than 5 years	8	12	232
At least 5 but less than 10 years	9	13.5	256
At least 10 but less than 15 years	10	15	280
At least 15 but less than 20 years	12	18	328
At least 20 but less than 25 years	14	21	376
At least 25 but less than 30 years	16	24	424
At least 30 but less than 35 years	18	27	472
At least 35 years or more	20	30	520

¹⁶¹ [Texas Government Code Ann., Sect. 814.305, Sect. 814.008](#); *See also* [Opinion, Texas Attorney General, No. H-1214 \(1978\)](#)

¹⁶² [Texas Government Code, Ann., Sect. 661.152](#)

¹⁶³ [Ibid., Sect. 661.121](#)

¹⁶⁴ [Ibid., Sect. 661.152](#)

¹⁶⁵ [Ibid., Sect. 661.152](#)

¹⁶⁶ [Opinion, Texas Attorney General, No. JM-19 \(1983\)](#)

¹⁶⁷ [Texas Government Code, Ann., Sect. 661.151](#)

All hours in excess of the maximum allowable carryover left at the end of a fiscal year shall be credited to the employee's sick leave balance.¹⁶⁸

Credit for the higher rate of accrual will be given on the first calendar day of the month only if the employee's anniversary falls on that day. Otherwise, the increase in vacation accrual will be given on the first calendar day of the following month.¹⁶⁹

Employees begin to accrue vacation from their first day of employment. They end their accrual on their last day of duty.¹⁷⁰ Credit for annual leave is given for each month or fraction of a month of state employment. The employee receives this credit on the first day of the month. If the employee is on any type of paid leave that extends into the following month, the accrual will not be posted until the employee returns to duty.¹⁷¹ An employee forfeits this accrual if he or she fails to return to duty.¹⁷²

State employees who are employed with multiple state agencies may not accrue annual leave at a rate that exceeds that of a full-time, 40 hour per week employee.¹⁷³

Vacation with pay may not be taken until the employee has been continuously employed with a state agency for six months. An employee who separates from state employment for any reason during that six-month period is not eligible for any accruals made during that period.¹⁷⁴ Additionally, continuous employment means that no leave without pay for a full month has been taken. The six-month eligibility requirement must be met only once. Should an employee who separates from state employment be re-employed, he or she is eligible to use vacation leave as it is earned or to be paid for it upon termination.¹⁷⁵

An employee who separates from employment will not be paid for unused annual leave if re-employed by a state agency in a benefits-eligible position within 30 days.¹⁷⁶ The exception to this provision is institutions of higher education that must pay for accrued and unused annual leave upon an employee's separation.¹⁷⁷ Separation includes, but is not limited to, leaving one state agency to work for another, provided at least one workday passes between those employments.¹⁷⁸

A terminating employee may, with the approval of the employing agency, remain on the payroll after separation to use accrued annual leave rather than receive a lump-sum payment. No additional accruals will be made during this period.¹⁷⁹

Upon separation, lump-sum payments for accrued but unused annual leave include, as applicable, payment for any holidays that the employee would have observed had he or she remained on the payroll. Eight hours per holiday will be added for employees normally scheduled to work 40 hours per week. Employees normally scheduled to work less than 40 hours per week will receive a prorated payment. An employee moving to a position in a state agency that does not accrue vacation time is not entitled to add time for holidays that fall within the accrual period.¹⁸⁰ In no case is the employee entitled to receive longevity and/or hazardous duty pay for the accrual period.

¹⁶⁸ [Texas Government Code Ann., Sect. 661.152 \(h\)](#)

¹⁶⁹ [Ibid., Sect. 661.152 \(g\)](#)

¹⁷⁰ [Ibid., Sect. 661.152 \(e\)](#)

¹⁷¹ [Ibid., Sect. 661.152 \(j\)](#)

¹⁷² [State Auditor's Leave Interpretation Letter No. 91-02 \(1991\)](#)

¹⁷³ [Ibid., No. 01-03 \(2000\)](#)

¹⁷⁴ [Texas Government Code Ann., Sect. 661.152 \(f\)](#)

¹⁷⁵ [Ibid., Sect. 661.062](#)

¹⁷⁶ [Ibid., Sect. 661.152 \(k\)](#)

¹⁷⁷ [Ibid., Sect. 661.062](#)

¹⁷⁸ [Ibid., Sect. 661.062](#)

¹⁷⁹ [Ibid., Sect. 661.067](#)

¹⁸⁰ [Ibid., Sect. 661.064](#)

The employee may not use sick leave or accrue sick or vacation time while exhausting vacation time.¹⁸¹

Employees transferring from one state agency to another will have their leave balances transferred. If an employee separates from employment and is re-employed within 30 calendar days by an agency to a position that accrues annual leave, the leave balance will transfer to the new agency.¹⁸²

Retired state employees who return to state employment are eligible for annual leave accruals at the same rate experienced prior to retirement.¹⁸³

SICK LEAVE

State employees are entitled to sick leave subject to the following provisions:

- An employee earns sick leave on his or her first day of employment and the first day of each succeeding month.
- An employee who is on leave the first day of the month may not use that month's accrual until he or she returns to duty.¹⁸⁴
- An employee accrues sick leave at a rate of eight hours per month (prorated for part-time employees).
- Sick leave may be used when an employee is prevented from performing his or her job due to sickness, injury, pregnancy, or confinement. It may also be taken to care for an immediate family member who is ill. Immediate family is defined as individuals related by kinship, adoption, or marriage who live in the same household; foster children who reside in the same household; and minor children regardless of whether or not the child lives in the same household.¹⁸⁵ Sick leave may be used to care for immediate family members who do not reside in the same household only because of a documented medical condition.¹⁸⁶
- An employee who will be absent from work must notify his or her supervisor as soon as possible.
- An absence of greater 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 less is at the discretion of the administrative head of the agency.¹⁸⁷
- Sick leave may be used by an employee while he or she is on vacation.¹⁸⁸
- Employees employed by multiple agencies cannot accrue sick leave at a rate that exceeds that of a full-time, 40 hour per week employee.¹⁸⁹
- An employee who is a legal guardian of a child by court appointment may take sick leave to care for the child.¹⁹⁰
- Sick leave may be taken for the adoption of a child under the age of three.¹⁹¹

¹⁸¹ [Texas Government Code Ann., Sect. 661.067](#); [State Auditor Leave Interpretation Letter, No. 99-01 \(1998\)](#)

¹⁸² [Texas Government Code Ann., Sect. 661.152 \(k\)](#) and [Sect. 661.153](#)

¹⁸³ [State Auditor's Office Leave Interpretation Letter No. 97-07 \(1997\)](#)

¹⁸⁴ [Texas Government Code Ann., Sect. 661.202 \(k\)](#)

¹⁸⁵ [Ibid., Sect. 661.202 \(d\)](#)

¹⁸⁶ [State Auditor's Leave Interpretation Letter, No. 97-04 \(1996\)](#)

¹⁸⁷ [Texas Government Code Ann., Sect. 661.202 \(g\)](#)

¹⁸⁸ [State Auditor's Leave Interpretation Letter, September 10, 1986](#) and [No. 97-05 \(1996\)](#)

¹⁸⁹ [Ibid., No. 01-03 \(2000\)](#)

¹⁹⁰ [Ibid., No. 01-04 \(2000\)](#)

¹⁹¹ [Ibid., No. 97-01 \(Revised\) \(1998\)](#)

An employee may use up to eight hours of sick leave per calendar year to attend parent-teacher conferences for children in pre-kindergarten through twelfth grade.¹⁹²

Separated employees are entitled to have their sick leave balances restored if they are re-employed within 12 months.¹⁹³

Employees separated for reasons other than a formal reduction in force and re-employed by the same state agency may have their sick leave balances restored only if they have a break in service of 30 or more calendar days.¹⁹⁴

An employee who is restored to state employment following military service is entitled to have his or her sick leave balance restored.¹⁹⁵

Retirees who return to state employment will not have their sick leave balances restored.¹⁹⁶

The estate of a deceased employee is entitled to receive payment for one-half of the employee's sick leave balance or 336 hours, whichever is less, provided the employee had six months of continuous service at the time of death.¹⁹⁷ The amount paid to the estate will be based on the employee's compensation rate at the time of death and will not include longevity or hazardous duty pay.¹⁹⁸

The administrative head of any state agency or institution of higher education may extend sick leave to an employee only after a thorough review of the merits of each individual case. He or she may also grant, on a case-by-case basis, exceptions to the amount of sick leave an employee may take. All agencies are required to submit policies addressing extended sick leave to the State Auditor. Such policies must also be made available to all agency employees.¹⁹⁹

Retired state employees who return to state service are eligible for sick leave accruals at the same rates experienced prior to retirement.²⁰⁰

SICK LEAVE POOL

Each state agency and institution of higher education is required to establish a program that allows employees to voluntarily transfer sick leave to a sick leave pool. The program must be administered by a person appointed by the agency or institution of higher education.²⁰¹

Contributions to the sick leave pool must be in increments of eight hours with the exception of retiring employees, who may contribute any unused balance.²⁰² The sick leave pool is intended to assist employees and their immediate families in dealing with catastrophic illness or injury that forces them to exhaust all sick leave.²⁰³

ERS has defined *catastrophic* as an illness or injury requiring the services of a medical practitioner over a prolonged period of time.

¹⁹² [Texas Government Code Ann., Sect. 661.206](#)

¹⁹³ [Ibid., Sect. 661.205 \(a\)](#)

¹⁹⁴ [Ibid., Sect. 661.205 \(b\)](#)

¹⁹⁵ [Opinion, Texas Attorney General, No. MW-109 \(1979\)](#)

¹⁹⁶ [State Auditor's Technical Update Letter No. 01-02 \(2000\)](#)

¹⁹⁷ [Texas Government Code Ann., Sect. 661.033](#) and [Sect. 661.003](#)

¹⁹⁸ [Ibid., Sect. 661.034](#)

¹⁹⁹ [Ibid., Sect. 661.202](#) and [State Auditor's Leave Interpretation Letter 01-01 \(2000\)](#)

²⁰⁰ [State Auditor's Office Leave Interpretation Letter No. 97-07 \(1997\)](#)

²⁰¹ [Texas Government Code Ann., Sect. 661.002](#)

²⁰² [Ibid., Sect. 661.003](#)

²⁰³ [Ibid., Sect. 661.004](#)

A retiring employee may designate accrued sick leave for retirement credit in increments of 20 days or 160 hours for one month's credit as well as the number of hours to be donated to the sick leave pool.²⁰⁴

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 containing sufficient information to allow the pool administrator to evaluate the employee's eligibility.²⁰⁵

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.²⁰⁶

EDUCATION SERVICE CENTERS AND LEAVE

An Education Service Center is required to accept the transfer of personal leave for prior state service. This leave will be converted to sick leave by the center. The exception to this policy involves employees in the schools of the Department of Criminal Justice, who are not considered state employees.²⁰⁷

Annual leave is not transferable to Education Service Centers because they are not considered state agencies. State employees transferring to centers should be paid for accumulated leave.

Sick leave may not be transferred to a center. Any accumulated sick leave balance would be forfeited by the employee. Some centers have policies allowing credit for this leave as a hiring incentive for employees who were formally with the State. Sick leave may be transferred from service centers at a rate not to exceed five days per year of employment.²⁰⁸

LEAVE WITHOUT PAY (LWOP)

State agencies may grant a leave of absence subject to the following provisions²⁰⁹:

- The leave is unpaid.
- The leave may not exceed 12 months.
- Except in instances of disciplinary suspension, workers' compensation, or military situations:
 - ◆ Annual leave must be exhausted.
 - ◆ Sick leave, if appropriate, must be exhausted.
- Subject to fiscal constraints, approval of LWOP constitutes a guarantee of employment for a specified period of time.
- The administrative head of an agency or institution of higher education may approve instances of LWOP on a case-by-case basis and may also allow for exceptions to these limitations.²¹⁰
- Any full calendar month of LWOP does not constitute a break in employment but also does not count for purposes of state service credit with the exception of an employee returning from military leave without pay.²¹¹

²⁰⁴ [Texas Government Code Ann., Sect. 661.003](#)

²⁰⁵ [Ibid., Sect. 661.005](#)

²⁰⁶ [Ibid., Sect. 661.006](#)

²⁰⁷ [Texas Education Code Ann., Sect. 19.009](#)

²⁰⁸ [Ibid., Sect. 8.007 \(b\)](#)

²⁰⁹ [Texas Government Code Ann., Sect. 661.909](#)

²¹⁰ [Opinion, Texas Attorney General, No. JM-337 \(1985\)](#)

²¹¹ [Texas Government Code Ann., Sect. 661.909](#)

An employee who is on LWOP will have his or her compensation reduced for the pay period at the hourly rate of pay times the number of hours on LWOP.²¹² Please refer to the statutes cited in this section for specific guidelines concerning salary reduction for FLSA exempt employees.

HOLIDAYS²¹³

Agency employees are entitled to a paid day off from work on holidays observed by the State. These holidays are specified by the Legislature.

An employee is eligible to receive the holiday if:

- The holiday does not fall on a weekend.
- The employee is not on LWOP.²¹⁴

Unless specifically stated, the following information regarding holidays pertains only to State agencies and does not include institutions of higher education.

An agency must have enough employees on duty to conduct public business except for those holidays that result in the closing of the agency.²¹⁵ Employees who work on an observed holiday will receive holiday compensatory time for those hours. Holiday compensatory time must be used within 12 months following the date the hours were earned. Employees are required to give reasonable notice to their employers when taking this compensatory time.²¹⁶

Employees who work 40 hours per week on a schedule other than the normal work schedule are entitled to the same number of holidays per year as those employees who work a normal schedule. Holiday pay for a part-time employee should be proportionate to the number of hours normally worked by the employee.²¹⁷

An employee who is in a paid status (working or on paid leave) the day before and the day after an observed holiday is entitled to be paid for the holiday.²¹⁸

For **new** employees:

An employee who begins work for an agency the day after a state holiday will not be paid for that holiday if the last workday before the holiday and the holiday fall in the same month.²¹⁹

In the example below, a new employee begins work on **January 2**. Should this employee be paid for the holiday observed on **January 1**?

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
23	24	25	26	27	28	29
30	31	1 (holiday)	2			

Answer: Yes, the last workday before the holiday and the holiday fall in two different month.

²¹² [Texas Government Code Ann., Sect. 659.085](#) and [Sect. 659.016 \(e\)](#)

²¹³ [Ibid., Sect. 662.001](#)

²¹⁴ [Ibid., Sect. 662.005](#)

²¹⁵ [Ibid., Sect. 662.004](#)

²¹⁶ [Ibid., Sect. 662.007](#) and [Sect. 659.022](#)

²¹⁷ [Ibid., Sect. 662.009](#)

²¹⁸ [Ibid., Sect. 662.005](#)

²¹⁹ [Ibid., Sect. 662.010](#)

For **terminating** employees:

An employee who works the day before a holiday and terminates employment will not be paid for that holiday if it occurs before the first workday of the month.²²⁰

In the example below, an employee works **December 31** and then terminates. Should he or she be paid for the **January 1** holiday?

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
23	24	25	26	27	28	29
30	31	1 (holiday)	2			

Answer: No, the holiday occurs before the first workday of the month.

For employees on **LWOP**:

Employees who are on LWOP before **and** after a holiday may not be paid for the holiday.

Individuals who change their LWOP status immediately before a holiday will be treated the same way as a new or terminating employee.

In cases of a partial LWOP day, the employee will receive credit for working the entire day if he or she works any part of it. The Comptroller's office has determined that only employees who use unpaid leave for the entire workday will be considered on LWOP for the day.²²¹

A state employee is entitled to observe Rosh Hashanah, Yom Kippur, Good Friday and Cesar Chavez Day in lieu of any skeleton crew holiday.²²²

In the event a state holiday falls between the periods an employee transfers from one state agency to another without a break in service, the receiving agency must pay for the holiday regardless of whether or not the agency or institution of higher education recognizes that particular holiday.²²³

Institutions of higher education may establish their own holidays in accordance with academic schedules. However, the number of observed holidays may not exceed the number of holidays observed by state agencies.

There are three options regarding an institution of higher education's determination of holidays:

- Establish all holidays and mandate those holidays for all employees.
- Establish some holidays and allow each employee to take the remainder as "floating" holidays.
- Establish no holidays and allow each employee to take his or her holiday time off in the form of "floating" holidays that would be unique for each employee.²²⁴

²²⁰ [Texas Government Code Ann., Sect. 662.010](#)

²²¹ [Payroll Policies and Procedures Guide, August 2000, page 2.13](#)

²²² [Texas Government Code Ann., Sect. 662.003](#) and [Sect. 662.013](#)

²²³ [Ibid., Sect. 662.0072](#)

²²⁴ [State Auditor's Technical Update Letter No. 00-02 \(1999\)](#)

Non-student employees who work 20 hours per week or more and are employed for a period of at least four and one-half months are eligible for paid holidays.²²⁵

Employees who work for multiple agencies may not accrue holiday leave at a rate greater than that for a full-time, 40 hour per week employee.²²⁶

Employees of institutions of higher education may be paid for holiday compensatory time if using such time would be disruptive to teaching, research, or other critical functions.²²⁷

STATE HOLIDAY SCHEDULE FOR FISCAL YEAR 2002			
Holiday	Agency Status	Date	Day of Week
Labor Day	All agencies closed	09-03-01	Monday
<i>Rosh Hashanah</i>	<i>Optional holiday</i>	<i>09-18-01</i>	<i>Tuesday</i>
<i>Rosh Hashanah</i>	<i>Optional holiday</i>	<i>09-19-01</i>	<i>Wednesday</i>
<i>Yom Kippur</i>	<i>Optional holiday</i>	<i>09-27-01</i>	<i>Thursday</i>
Veterans Day		11-11-01	Sunday
Thanksgiving Day	All agencies closed	11-22-01	Thursday
Day after Thanksgiving	All agencies closed	11-23-01	Friday
Christmas Eve Day	All agencies closed	12-24-01	Monday
Christmas Day	All agencies closed	12-25-01	Tuesday
Day after Christmas	All agencies closed	12-26-01	Wednesday
New Year's Day	All agencies closed	01-01-02	Tuesday
Confederate Heroes Day		01-19-02	Saturday
Martin Luther King, Jr. Day	All agencies closed	01-21-02	Monday
Presidents' Day	All agencies closed	02-18-02	Monday
Texas Independence Day		03-02-02	Saturday
Good Friday	<i>Optional holiday</i>	<i>03-29-02</i>	<i>Friday</i>
Cesar Chavez Day		03-31-02	Sunday
San Jacinto Day		04-21-02	Sunday
Memorial Day	All agencies closed	05-27-02	Monday
Emancipation Day	Skeleton crew required	06-19-02	Wednesday
Independence Day	All agencies closed	07-04-02	Thursday
LBJ's Birthday	Skeleton crew required	08-27-02	Tuesday

²²⁵ [Texas Government Code Ann., Sect. 662.011](#)

²²⁶ [State Auditor's Leave Interpretation Letter No. 01-03 \(2000\)](#)

²²⁷ [Texas Government Code Ann., Sect. 662.007 \(c\)](#)

STATE HOLIDAY SCHEDULE FOR FISCAL YEAR 2003			
Holiday	Agency Status	Date	Day of Week
Labor Day	All agencies closed	09-02-02	Monday
Rosh Hashanah		09-07-02	Saturday
Rosh Hashanah		09-08-02	Sunday
<i>Yom Kippur</i>	<i>Optional holiday</i>	<i>09-16-02</i>	<i>Monday</i>
Veterans Day	All agencies closed	11-11-02	Monday
Thanksgiving Day	All agencies closed	11-28-02	Thursday
Day after Thanksgiving	All agencies closed	11-29-02	Friday
Christmas Eve Day	All agencies closed	12-24-02	Tuesday
Christmas Day	All agencies closed	12-25-02	Wednesday
Day after Christmas	All agencies closed	12-26-02	Thursday
New Year's Day	All agencies closed	01-01-03	Wednesday
Confederate Heroes Day		01-19-03	Sunday
Martin Luther King, Jr. Day	All agencies closed	01-20-03	Monday
Presidents' Day	All agencies closed	02-17-03	Monday
Texas Independence Day		03-02-03	Sunday
<i>Cesar Chavez Day</i>	<i>Optional holiday</i>	<i>03-31-03</i>	<i>Monday</i>
<i>Good Friday</i>	<i>Optional holiday</i>	<i>04-18-03</i>	<i>Friday</i>
San Jacinto Day	Skeleton crew required	04-21-03	Monday
Memorial Day	All agencies closed	05-26-03	Monday
Emancipation Day	Skeleton crew required	06-19-03	Thursday
Independence Day	All agencies closed	07-04-03	Friday
LBJ's Birthday	Skeleton crew required	08-27-03	Wednesday

FAMILY AND MEDICAL LEAVE

Eligibility for Family and Medical Leave (FML) is limited to employees who have worked for the State at least 12 months. In addition, the employee must have worked a minimum of 1,250 hours during the 12 months immediately preceding the start of leave. For purposes of FML, the State is considered a single employer. Agencies should credit time worked for other State employers when considering FML eligibility. Additionally, agencies should research any leave taken by the employee while previously employed with the State.²²⁸ Eligible employees must use all appropriate paid leave while taking FML.²²⁹

Sick leave may be used in conjunction with FML when a child under the age of three is adopted, regardless of whether or not the child is ill at the time of adoption. Conversely, a state employee who is the father of a child may use his sick leave only if the child is ill due to childbirth or to care for his spouse while she is recovering from labor and delivery.²³⁰

²²⁸ [29 C.F.R Part 825](#)

²²⁹ [Texas Government Code Ann., Sect. 661.912](#)

²³⁰ [State Auditor's Leave Interpretation Letter, No. 97-01 \(Revised\) \(1998\)](#)

Employees on workers' compensation or receiving temporary disability benefits cannot be required to use, but may elect to use, paid leave prior to taking FMLA.²³¹

The Family and Medical Leave Act (FMLA) provides all eligible employees a total of 12 weeks of unpaid leave during any 12-month period for the following:

- The birth and subsequent care of a newborn child
- The placement of a child for adoption or foster care
- The need to care for a spouse, child, or parent with a serious health condition
- A serious health condition that makes the employee unable to work

Additionally:

- An employee who takes FMLA must be returned to the same job or a job with equivalent status and pay.
- The employer must continue the employee's health benefits during the absence.
- The employer can require the employee to provide a doctor's certification.
- FMLA may be used intermittently. FMLA may be used intermittently if required by a physician to care for a serious illness. Employees requesting intermittent leave to care for a child that is a new born, during adoption, or during foster care must get employer approval for the intermittent leave.
- If used in one continuous block, a business closing will count against the employee's entitlement. The exception to this is a closing of a week or more.
- Holidays, ice days, and shutdowns do not count against employees who are on intermittent FMLA or a reduced work schedule.

In all instances, it is the employer's responsibility to determine whether leave qualifies as FMLA. It is not a matter left to the employee to decide. Title 29 of the Code of Federal Regulations, Part 825.207 (i), does not permit FLSA compensatory time to be used concurrently with FMLA. If an employee elects to use FLSA compensatory time while out on FMLA, that time is not counted toward the 12-week entitlement. State compensatory time, holiday time, and administrative leave that are benefits of the state may be counted toward the entitlement.

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

- A calendar year
- Any fixed 12-month period such as a fiscal year or anniversary date
- A 12-month period beginning on the date an employee first uses FMLA
- A 12-month period measured backward from the date an employee first uses FMLA

The State will continue to pay for its portion of the employee's group health plan coverage during FMLA. The employee is responsible for paying his or her portion of the premium.

An employee does not earn state service credit, annual leave, or sick leave for any full calendar months of leave without pay while on FMLA. This time is also not included in the calculation of the number of continuous months of employment for purposes of merit increases and leave.

²³¹ [Texas Government Code Ann., Sect. 661.912 and Opinion, Texas Attorney General No. JC-0040 \(1999\)](#)

PARENTAL LEAVE

Employees who do not qualify for FML are entitled to parental leave for the birth of a child or the adoption or foster care placement of a child under the age of three. This entitlement provides up to 12 weeks (480 hours) of unpaid leave. Accrued annual leave and applicable sick leave must be used while taking parental leave. Because eligibility time requirements are different for parental leave (less than 12 months of state service) and family and medical leave [12 months (1,250 hours) or more of state service], an employee can meet requirements for only one of these entitlements.²³²

The Federal Pregnancy Discrimination Act of 1978 stipulates that discrimination based upon pregnancy, childbirth, or related medical conditions constitutes sexual discrimination.

FOSTER PARENT LEAVE

An employee who is a foster parent to a child under the protection of the Department of Protective and Regulatory Services (DPRS) is entitled to a paid leave of absence to attend staff meetings held by DPRS regarding the foster child. In addition, the employee may use this entitlement to attend the Admission, Review, and Dismissal meetings held by a school district regarding the foster child.²³³

PARENT-TEACHER CONFERENCE LEAVE

An employee may use up to eight hours of sick leave each calendar year to attend parent-teacher conference sessions for the employee's children who are in pre-kindergarten through twelfth grade. The employee must give reasonable notice of his or her intention to use this leave.²³⁴ Part-time employees receive this leave on a proportional basis.

EMERGENCY LEAVE

An employee is entitled to leave with pay for a death in the employee's family. An employee's family is defined as the employee's spouse, the employee and spouse's parents, children, brothers, sisters, grandparents, and grandchildren. An agency head may grant this leave for other reasons determined to be for good cause.²³⁵

MILITARY LEAVE

State employees are eligible for leave to accommodate:

- Authorized training or duty for the state's military forces and members of any reserve branch of the U.S. Armed Forces.
- Activation of the state's National Guard by the Governor.
- National emergency activation for members of a reserve branch of the U.S. Armed Forces.

²³² [Texas Government Code Ann., Sect. 661.913](#) and [State Auditor's Leave Interpretation Letter No. 97-01](#)

²³³ [Texas Government Code Ann., Sect. 661.906](#)

²³⁴ [Ibid., Sect. 661.206](#)

²³⁵ [Ibid., Sect. 661.902](#)

State agencies are required to adjust the work schedule of a military member so that two of the employee's days off each month coincide with two days of military duty.²³⁶

A state employee who is called to active duty or authorized training is entitled to a leave of absence of 15 days in each federal fiscal year (October 1 – September 30) without loss of pay or benefits.²³⁷ The 15 days need not be consecutive. In addition, these days are “working” days, not “calendar” days.²³⁸ After exhausting the 15 days, the employee may use accrued vacation or be placed in a leave without pay status (or combination of the two) for the remainder of the active duty period.²³⁹

Call to National Guard Active Duty by the Governor: A member of the National Guard called to active duty by the Governor because of a state emergency is entitled to receive emergency leave without loss of military or annual leave. This leave is not limited and will be provided with full pay.²⁴⁰

Call to National Duty: A member of the National Guard or any reserve branch of the U.S. Armed Forces called to federal active duty during a national emergency is entitled to an unpaid leave of absence after exhausting the 15 days of paid military leave. The employee retains any accrued sick or vacation leave. The employee does not earn sick or annual leave during this period; however, he or she does accrue state service credit.²⁴¹

To be eligible for restoration of employment at the conclusion of military service, the employee must be honorably discharged no later than five years after induction, enlistment, or call to duty and must be physically and mentally qualified to perform the duties of the job.²⁴²

VOLUNTEER FIREFIGHTERS/EMERGENCY MEDICAL SERVICES TRAINING LEAVE

Volunteer firefighters and emergency medical services volunteers will be granted a paid leave of absence not to exceed five working days each fiscal year for attending training schools conducted by state agencies. This leave may also be used for the purpose of responding to emergencies if the agency or institution of higher education has a policy for granting this leave under those circumstances.²⁴³

CERTIFIED RED CROSS ACTIVITIES LEAVE

Employees who are certified disaster service volunteers of the American Red Cross or are in training to become such a volunteer are entitled to a leave of absence not to exceed 10 days each fiscal year. The employee must have the approval of his or her supervisor and a formal request from the Red Cross. In addition, the approval of the Governor's Office is required. An employee on such leave will not lose pay, vacation time, sick leave, earned overtime, and/or compensatory time during this leave. The pool of certified disaster volunteers must not exceed 350 participants at any one time.²⁴⁴

²³⁶ [Texas Government Code Ann., Sect. 658.008](#)

²³⁷ [Ibid., Sect. 431.005 and State Auditor's Leave Interpretation Letter 98-03 \(1988\)](#)

²³⁸ [Opinion, Texas Attorney General, No. C-679 \(1966\)](#)

²³⁹ [State Auditor's Leave Interpretation Letter No. 79-01 \(1979\)](#)

²⁴⁰ [Texas Government Code Ann., Sect. 661.903 and Sect. 661.904](#)

²⁴¹ [Ibid., Sect. 661.904 and Opinion, Texas Attorney General, No. MW-109 \(1979\)](#)

²⁴² [Texas Government Code Ann., Sect. 613.002](#)

²⁴³ [Ibid., Sect. 661.905](#)

²⁴⁴ [Ibid., Sect. 661.907](#)

LEAVE FOR EMPLOYEES WITH A DISABILITY

An employee with a disability as defined by Human Resources Code, Sect. 121.002, will be granted a paid leave of absence not to exceed 10 days each fiscal year to attend training necessary to provide the employee with an assistance dog.²⁴⁵

PAID LEAVE BANK FOR INSTITUTIONS OF HIGHER EDUCATION

The governing board of an institution of higher education may adopt a leave policy for employees working in a hospital or clinic of a medical and dental unit that combines vacation, sick, and holiday leave. This policy must include provisions for:

- Payment of accrued leave to:
 - ◆ the estates of heirs of deceased employees,
 - ◆ separating employees, and
 - ◆ retirees.
- Awards of accrued leave to employees who are transferring to other state agencies.

On or after September 15, 2005, the governing board of an institution of higher education may adopt a similar leave policy for all employees of the institution.

Chapters 661 and 662 of Texas Government Code do not apply to employees covered by a paid leave bank adopted by an institution of higher education.

OTHER BENEFITS

AWARDS AND GIFTS

State agencies are authorized to purchase and present awards to employees for professional achievement or outstanding service. The value of each award must not exceed \$50.

State agencies that have established a volunteer program may also present awards for special achievements or outstanding service. Such awards must not exceed a value of \$50 and are limited to pins, certificates, plaques, or other similar awards. Savings bonds with a maturity value in excess of \$50 may be given as a gift as long as the purchase price does not exceed \$50.²⁴⁶

CHILD CARE SERVICES

The Child Care Development Commission (Commission) is responsible for providing child care services for state employees. These services are to be provided by private vendors under the direction of the Commission. The Child Care Advisory Committee, a body appointed by the Commission, is charged with advising the Commission on the location, size, design, and curriculum a facility must provide to ensure high quality services.²⁴⁷

²⁴⁵ [Texas Government Code Ann., Sect. 661.910](#)

²⁴⁶ [Ibid., Sect. 2113.201, Sect. 2113.202, Sect. 2109.004](#); *See also* [Opinion, Texas Attorney General No. 96-132 \(1996\)](#)

²⁴⁷ [Texas Government Code Ann., Sect. 663.051, Sect. 663.052, Sect. 663.101, Sect. 663.103, and Sect. 663.105](#)

EMPLOYEE BREAK AND MEAL PERIODS

There is no federal or state law that requires or prohibits the establishment of breaks or meal periods. State agencies and institutions of higher education are free to generate their own policies in this area. If agencies establish such policies and provide time off during the workday, meal periods of 30 minutes or longer are not considered worktime.²⁴⁸

UNIFORM CLEANING ALLOWANCE

A cleaning allowance is authorized for employees working in specific positions and is intended to defray the cost of maintaining a uniform. This allowance is not considered compensation for the purposes of retirement contribution determination.²⁴⁹

CLOTHING ALLOWANCE

Clothing allowances are authorized for certain commissioned officers assigned to the Alcoholic Beverage Commission, the Department of Public Safety, and the Parks and Wildlife Department.²⁵⁰

HEALTH FITNESS AND EDUCATION

Any state employer may use public funds and facilities to defray costs for health fitness education and activities. The employer must submit a detailed plan of the health program to the Department of Health before implementation. If the program involves the expenditure of public funds, written authorization from the Governor is required.²⁵¹

EMPLOYEE MEAL AUTHORIZATION

Certain state agencies may provide meals to employees working in institutional settings. These agencies may charge employees a fee that does not exceed the cost of food preparation.²⁵²

EMPLOYEE ASSISTANCE PROGRAMS

An Employee Assistance Program (EAP) offers employees help with personal concerns that may adversely affect job performance. Employers who wish to provide such services must meet the same implementation requirements as specified in the “Health Fitness and Education” section.

TUITION ASSISTANCE

Members of the State’s military forces are authorized to receive tuition assistance for vocational, technical, undergraduate, or graduate level courses offered by public or private institutions of higher education. This assistance may not exceed 12 semester credit hours in any semester or more than 5 academic years or 10 semesters, whichever comes first.

²⁴⁸ [US Department of Labor: Compliance Assistance: Fair Labor Standards Act \(FLSA\)](#)

²⁴⁹ [77th Legislature General Appropriations Act, Art. IX, Sect. 9.10](#)

²⁵⁰ [Ibid., Art. V, Alcoholic Beverage Commission, Sect. 10; Department of Public Safety, Sect. 35](#)

²⁵¹ [Texas Government Code Ann., Sect. 664.002, Sect. 664.004, and Sect. 664.006](#)

²⁵² [77th Legislature General Appropriations Act, Art. IX, Sect. 9.01](#)

To be eligible, a person must:

- Be an enlisted member.
- Be a warrant officer in grades one through three.
- Be a commissioned officer in grades Second Lieutenant through Captain.
- Meet any additional qualifications established by the Adjutant General.²⁵³

WORK AND FAMILY POLICY CLEARINGHOUSE

The Work and Family Policy Clearinghouse was established by the Legislature to provide information and assistance on dependent care and other employment-related family issues. To this end, the Legislature established both an advisory committee and a fund to be administered by the Clearinghouse for the following purposes:

- The operation of the Clearinghouse
- Research
- Other uses authorized by law²⁵⁴

TIME OFF TO VOTE

Employees should be allowed sufficient time off to vote in each national, state, or local election.²⁵⁵

JURY SERVICE

An employee is entitled to serve on a jury without any deduction from wages.²⁵⁶

Officers or employees of the Senate, the House of Representatives, or any organization in the legislative branch of state government may establish an exemption from state jury service.²⁵⁷

STANDARDS OF CONDUCT

CONFLICT OF INTEREST

Employees may not engage in any activity or incur any obligation that conflicts with their ability to conduct their duties in the public's interest. Employees may not:

- Accept any gift, favor, or service that might tend to influence an employee's conduct.
- Accept employment or engage in an activity that might reasonably require an employee to disclose confidential information.
- Accept employment or money that would reasonably tend to impair independent judgment.

²⁵³ [Texas Government Code Ann., Sect. 431.090](#)

²⁵⁴ [Texas Labor Code Ann., Sect. 81.004](#) and [Sect. 81.006](#)

²⁵⁵ [Texas Government Code Ann., Sect. 661.914](#)

²⁵⁶ [Ibid., Sect. 659.005 \(a\)](#)

²⁵⁷ [Ibid., Sect. 62.106 \(5\)](#)

- Make personal investments that could reasonably be expected to create a conflict between private and public interests.
- Knowingly solicit or accept any benefit for performing their duties in favor of another person or business.²⁵⁸

Employees must be provided a copy of these rules and acknowledge their receipt. Acknowledgements must be made available for public inspection. New acknowledgements for these employees are not required unless the content of the law is changed by the Legislature.

Additionally, the Legislature has determined that the following acts are inappropriate:

- A former officer or employee of a regulatory agency may not receive compensation for services provided to another employer regarding a matter he or she participated in while employed by the State.
- Employees of a regulatory agency may not solicit or accept gifts from any business regulated by that agency and from which the business must obtain a permit to operate.
- A state officer may not solicit or receive a compensation from the State or any state entity for the award of a contract or sale, excluding those contracts or sales awarded by competitive bid and not otherwise prohibited.²⁵⁹

FINANCIAL DISCLOSURE STATEMENTS

There are two types of financial disclosure required by law: personal financial statements and state agency and institution financial disclosure.

On or before April 30 of each year, every state officer and party chairperson must file a personal financial statement with the Texas Ethics Commission. "State officer" means an elected officer, an appointed officer, or the executive head of a state agency.²⁶⁰

Agencies must submit annual budgets on or before November 1 of each fiscal year to the Governor's Office of Budget and Planning, the Legislative Budget Board (LBB), the Comptroller of Public Accounts (Comptroller), and the Legislative Reference Library.

The Comptroller is responsible for providing guidance on an agencies' annual financial reports.

State agencies that are authorized to accept money from private donors must establish rules regarding the relationship between the donor, the agency, and agency employees.²⁶¹

MULTIPLE EMPLOYMENT WITH THE STATE

An employee of the State may not be paid if that employee holds more than one civil office at one time.

There are three exceptions to this rule:

- Payment may be made to members of the military reserves or retirees of military service.
- Payment may be made to employees serving without salary as members of school districts, cities, towns, or other local governments.

²⁵⁸ [Texas Government Code Ann., Sect. 572.001](#) and [Sect. 572.051](#)

²⁵⁹ [Ibid., Sect. 572.001, Sect. 572.051, Sect. 572.054, Sect. 572.055,](#) and [Sect. 572.056](#)

²⁶⁰ [Ibid., Sect. 572.021, Sect. 572.023,](#) and [Sect 572.026](#)

²⁶¹ [77th Legislature General Appropriations Act, Art. IX, Sect. 7.01; Texas Government Code Ann., Sect. 2101.011](#) and [Sect. 2255.001](#)

- Nonelected officers or employees may hold other nonelected offices or positions if the positions are of benefit to the state or are required by law and there is no conflict with the original office or position.²⁶²

A state agency may not use multiple employments for the purpose of paying the employee more than 40 hours in a week in lieu of compensatory time or paying a greater salary than is allowed for the employee's position.

Before an employee may be employed by more than one agency, he or she must be informed of the following:

- Separate leave records must be maintained for each position.
- State service credit will accrue as if the employee had a single position.
- Leave balances do not transfer upon termination of one position.
- The employee must notify his or her employer prior to accepting a second position.
- In the case of FLSA nonexempt positions, both employers must coordinate with each other to ensure that the employee is appropriately paid for working more than 40 hours in a workweek.

An employee with two part-time jobs may quit both, transfer to a new full-time position with another employer, and take his or her existing leave balances to the new position.²⁶³

Institutions of higher education will determine whether employees who have more than one appointment with the school hold only one position or one position for each appointment. The Board of Regents has the responsibility to determine if 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 ruled to have more than one position.²⁶⁴

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

An institution of higher education may have the right to prohibit outside employment, even if that employment is serving as an elected official.²⁶⁵

NEPOTISM

Public officials are not allowed to appoint, confirm, or vote for the appointment or confirmation of a person to a position:

- When the individual is under the official's direction or control **and**
- Is related to the official within the third degree by blood or the second degree by marriage.²⁶⁶

A public official may not participate in any action or render any decision that would affect the employment of a relative.

²⁶² [Opinion, Texas Attorney General, No. MW-230 \(1980\), No. 94-072 \(1994\), No. 95-050 \(1995\), Texas Constitution, Art. XVI, Sect. 40, and Texas Government Code Ann., Sect. 574.001](#)

²⁶³ [Texas Government Code Ann., Sect. 667.001 et seq.](#)

²⁶⁴ [Ibid., Sect. 659.041](#)

²⁶⁵ [Texas Education Code Ann., Sect. 51.963; Opinion, Texas Attorney General, No. MW-418 \(1981\), No. JM-93 \(1983\), No. 96-109 \(1996\)](#)

²⁶⁶ [Texas Government Code Ann., Sect. 573.041, Sect. 573.044 and Texas Local Government Code Ann., Sect. 391.0116](#)

Supervisors may not employ relatives in subordinate positions.²⁶⁷

CIVIL LAW - DEGREES OF RELATIONSHIP				
	1st	2nd	3rd	4th
Officer and Spouse	Child	Grandchild	Great-grandchild	Great, great-grandchild
	Parent	Sister/brother	Niece/nephew	Grandniece/nephew
		Grandparent	Aunt/uncle	First cousin
			Great-grandparent	Great aunt/uncle
				Great, great-grandparent

Exceptions to this policy include an appointment as a notary public, an appointment as a personal attendant for any member of the Legislature, confirmation of appointment to a term in the Legislature when no one related to the appointee within the prescribed degrees was a member or candidate, or employment as a substitute teacher or bus driver within a school district of a county with less than 35,000 people (or where less than 35,000 people compose the largest part of the district).

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.

Violation of this policy is a misdemeanor involving official misconduct. Violators are subject to a fine and removal from office.²⁶⁸

OFF-DUTY EMPLOYMENT

Agencies may prohibit an employee from taking a second job without the prior approval of the executive director. Institutions of higher education have even broader authority and may prohibit outside work, even if that work is serving as an elected official.²⁶⁹

OUTSIDE CONTRACTING

State agencies and institutions of higher education may not enter into a contract with an ex-employee for consulting, employment, or professional services for twelve months following the employee's termination if appropriated funds will be used to make payment.²⁷⁰

²⁶⁷ [Opinion, Texas Attorney General, No. JC-0193 \(2000\)](#), [No. DM-76 \(1992\)](#); [Texas Government Code Ann., Sect. 573.023](#), [Sect. 573.024](#), [Sect. 573.025](#), [Sect. 573.042](#), and [Sect. 573.043](#)

²⁶⁸ [Texas Government Code Ann., Sect. 573.061](#), [Sect. 573.062](#), [Sect. 573.081](#), [Sect. 573.084](#); *See also* [Opinion, Texas Attorney General, No. JM-1188 \(1990\)](#)

²⁶⁹ [Opinion, Texas Attorney General, No. JM-93 \(1983\)](#), [No. 96-109 \(1996\)](#), and [Texas Government Code Ann., Sect. 411.0077](#)

²⁷⁰ [Texas Government Code Ann., Sect. 2252.901](#)

POLITICAL INFLUENCE

Employees may not use official authority or influence to affect the result of an election or to achieve any political purpose. Employees may not coerce, restrict, or prevent contributions to candidates or political organizations. Violators may be subject to immediate termination for gross misconduct.

A state employer may not use any funds under its control to finance or support the candidacy of an individual for state or federal office.

State agencies and institutions of higher education may not use appropriated funds to attempt to influence the passage or defeat of any legislation.

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

State employees are not allowed to be employed as paid lobbyists. Appropriated funds may not be used as compensation to employees who are required by Chapter 305 of Texas Government Code to register as lobbyists. Appropriated funds may not be used to pay membership fees in organizations that pay all or part of the salary of a person required by Government Code to register as a lobbyist.

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

Each agency is required to provide all employees a copy of this policy and to maintain signed acknowledgements from these employees which must be made available for public inspection.²⁷¹

PUBLICITY RESTRICTIONS

A state agency may not use appropriated funds for public relations purposes. Agencies may use appropriated funds to disseminate information regarding legal responsibilities or the activities of the agency. These funds may not be used to publicize or direct attention to any state official or employee. Institutions of higher education are permitted to provide a news and information service for the benefit of the public.²⁷²

USE OF STATE-OWNED OR LEASED VEHICLES

State-owned or leased vehicles may be used only for official state business. This includes the commute to and from work if approved by the administrative head of an agency. The names and job titles of these employees and the reasons for authorization must be included in the agency's annual report.²⁷³

STATE EMPLOYEE BONDING

The intent of the Legislature is to limit the purchase of surety bonds and to self-insure employees to the greatest extent possible.

The State Office of Risk Management may approve the purchase of a bond if it feels the bond is necessary due to substantial or unusual risk of loss, or is otherwise necessary to protect the interests of the State.

²⁷¹ [Texas Government Code Ann., Sect. 556.002, Sect. 556.004, Sect. 556.005, Sect. 556.008, Sect. 556.009](#); *See also State of Texas Travel Allowance Guide*

²⁷² [Texas Government Code Ann., Sect. 2113.011](#)

²⁷³ [Ibid., Sect. 2113.013](#)

An officer or employee will not be disqualified from office or employment solely because a surety bond has not been obtained.²⁷⁴

USE OF ALCOHOLIC BEVERAGES

Appropriated funds may not be spent on alcoholic beverages (except for legitimate law enforcement purposes).²⁷⁵

USE OF STATE PROPERTY

State property may be used only for official state purposes.²⁷⁶

USE OF CONSULTANTS TO STATE AGENCIES

A state agency may use a private consultant only if there is a substantial need for such services and the agency's own staff or another agency's consulting services cannot adequately do the job. In selecting a consultant, the decision must be based on demonstrated competence, knowledge, and the cost of services. All things considered, preference should be given to a business headquartered in the state or with a State office.

The agency must provide the LBB and the Governor's Office of Budget and Planning (GOBP) with a notification of intent to contract with a private consultant. Additionally, the agency must provide information showing that it has complied with the aforementioned provisions. Finally, the necessity of such services must be affirmed by the GOBP.

Prior to contracting for services, the agency must file with the Texas Registrar no later than 30 days prior to entering into a contract. The agency must send out invitations soliciting private consultants for competitive bids. The invitation must provide the name of a contact within the agency, the closing date for receipt of bids, and the procedures by which the award will be made.²⁷⁷

No later than 10 days after a contract has been awarded, the agency must once again file with the Texas Registrar, providing:

- A description of the services to be performed.
- The name and address of the consultant.
- The total value of the contract.
- The beginning and ending dates of service.
- The delivery dates of all items/services the consultant is required to provide.

A former state employee (if terminated within the previous two years) who bids on a contract is required to disclose the nature of his or her previous employment, date of termination, and annual compensation at the time of termination. Agencies are no longer limited in the amount they may pay to retired state employees for contracted services.

An agency may not enter into a contract with the following people unless the governing board votes to approve the contract and notifies the LBB, not later than five days before the governing board votes, of the terms of the contract:

- The executive director of the agency.

²⁷⁴ [Texas Government Code Ann., Sect. 653.002, Sect. 653.004, Sect. 653.005, Sect. 653.012](#)

²⁷⁵ [Ibid., Sect. 2113.012](#) and [Sect. 2113.101](#)

²⁷⁶ [Ibid., Sect. 2203.004](#)

²⁷⁷ [Ibid., Sect. 2254.026, Sect. 2254.027, Sect. 2254.028, and Sect. 2254.029](#)

- A person who, during the previous four years, served as the executive director of the agency.
- A person who employs a current or former executive director.²⁷⁸

Additional information on this topic may be found in the State Auditor’s Office report titled [An Audit Report on the State’s Contract Workforce Use and Contract Workforce Data Collection](#), (SAO Report No. 01-023, March 2001).

STAFFING

AT-WILL EMPLOYMENT

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

EMPLOYMENT CONTRACTS FOR ADMINISTRATORS

Institutions of higher education may enter into an employment contract with an administrator who is to be paid in whole or in part from appropriated funds. Such a decision is left to the governing board and should be based on what is in the best interests of the school. An administrator is defined as someone with administrative duties related to the operation of the school, including operation of a department, college, program, or other subdivision.

If an administrator is reassigned to a faculty or staff position, he or she may not be paid more than other employees with similar qualifications doing similar work.²⁷⁹

EMPLOYMENT CONTRACTS FOR FACULTY

Institutions of higher education that reappoint a faculty member for the next academic year shall provide that faculty member a written contract at least 30 days prior to the beginning of classes. If unable to comply, the institution shall inform the member in writing that it is unable to comply, offer an explanation, and provide a time by which the contract will be offered.

Institutions of higher education may enter into a contract with a faculty member for more than one academic year.

An institution of higher education is not required to provide an annual contract to tenured or tenure-tracked faculty but must provide notification (according to the institution’s tenure policy) of a change in a term of employment. This notification should be provided no later than 30 days prior to implementation.²⁸⁰

²⁷⁸ [Texas Government Code Ann., Sect. 669.003, Sect. 2254.030, Sect. 2254.033, Sect. 2252.901;](#)
See also 77th Legislature, Senate Bill 587, Sect. 3

²⁷⁹ [Texas Education Code Ann., Sect. 51.948](#)

²⁸⁰ [Ibid., Sect. 51.943](#)

CRIMINAL HISTORY CHECKS

The Legislature has authorized many agencies and institutions of higher education to access the criminal histories of applicants, employees, and others who provide services to these employers. For example, the School for the Deaf, the Department of Protective and Regulatory Services, the Department of Mental Health and Mental Retardation, the Texas Workforce Commission, and the Office of the Attorney General, among others, may access criminal history records of applicants for, and employees in, certain positions.

It is a criminal offense to obtain, use, or disseminate a criminal history in an unauthorized manner.

These employers may not provide a person with a copy of his or her criminal history. Additionally, it is an offense to provide this information in exchange for money or to employ another person to do so.²⁸¹

PROBATIONARY PERIOD

There is no legislation either requiring or prohibiting an employee probationary period. Agencies and institutions of higher education have complete discretion in this matter. If used, such a practice should be documented and communicated to employees as an internal policy.

REFERENCE CHECKING

An employer who discloses information about a current or former employee is immune from civil liability for that disclosure or any damages caused by that disclosure unless it is proven that the information was known to be false or was made with reckless disregard for the truth. Although not required, an employer may disclose information about a current or former employee's job performance to a prospective employer at the request of either the employer or the employee.²⁸²

EXIT INTERVIEWS

Each state agency must conduct exit surveys with terminating employees. Presently, institutions of higher education are exempt from this requirement but are strongly encouraged to conduct such interviews.

The State Auditor's Office was tasked by the Legislature to provide an online tool for agencies and their employees to help them meet this requirement. The instrument can be accessed at <https://www.sao.state.tx.us/apps/exit/>. The agency shall allow the employee an opportunity to access the survey questionnaire and electronically complete and submit the questionnaire to the State Auditor. Individual responses are confidential in nature and will not be shared with the former employer.

A report summarizing the findings of these exit surveys is due from the State Auditor to the Legislature by December 15 of each year.²⁸³

LIMITATIONS ON STATE EMPLOYMENT LEVELS

A state agency shall not exceed the number of employees authorized by the General Appropriations Act. These limits are established in terms of Full-Time Equivalent (FTE) positions.²⁸⁴ A request to

²⁸¹ [Texas Government Code Ann., Sect. 411.081 to Sect. 411.127](#)

²⁸² [Texas Labor Code, Ann., Sect. 103.001](#)

²⁸³ [Texas Government Code Ann., Sect. 651.007](#)

the Governor and LBB to exceed the FTE limitations must be submitted by the governing board of an agency or institution of higher education and must include:

- The date on which the board approved the request.
- A justification statement and the source of funds to pay the additional salary or salaries.
- An explanation on why the functions cannot be performed by the current staff.²⁸⁵

The number of FTEs:

- Shall be determined in accordance with the reports filed pursuant to Section 2052.103, Texas Government Code.
- Shall not include overtime hours.
- Shall include temporary or contract workers who worked for more than half the year. These workers include those employed under contract to fill specific positions normally filled by state employees.

The Governor's Office, Comptroller (if determined by cost-benefit analysis that outsourcing or contracting provides savings to the State), and Appellate Courts are not subject to limitations on state employment levels.²⁸⁶

State agencies that have both "FTE-Appropriated Funds" and an "FTE-Total" shall consider their FTE limitation to be the "FTE-Appropriated Funds" figure.²⁸⁷

FTE limitations do not apply to employment that stems from the declaration of a disaster by the Governor. Each year, state agencies must notify the State Auditor, Comptroller, LBB, and Governor of any FTEs created in response to a declared disaster.²⁸⁸

QUARTERLY FTE REPORTS

Each quarter, state agencies must file an FTE report with the State Auditor. This report identifies the number of employees assigned to an agency or institution of higher education.

This report must be submitted no later than the last day of the first month following the quarter.²⁸⁹ For example, a report containing data for the second fiscal quarter (ending February 28) is due to the State Auditor by March 31.

CONTRACT WORKFORCE

Appropriated funds may not be used to pay a contract workforce until an employer:

- Develops comprehensive policies and procedures for its contract workforce.
- Examines the legal and personnel issues stemming from the use of a contract workforce.
- Conducts a cost-benefit analysis of its current workforce.
- Documents why and how the use of contract workers fits into the agency's or institution's staffing strategy.

Contract workers are defined as independent contractors, temporary workers, employees of companies under contract, and consultants.

²⁸⁴ [77th Legislature General Appropriations Act, Art. IX, Sect. 6.14](#)

²⁸⁵ [Ibid., Sect. 6.14 \(b\)](#)

²⁸⁶ [Ibid., Art. IX, Sect. 6.14 \(e\) and Art. IV, Sect. 10](#)

²⁸⁷ [Ibid., Art. IX, Sect. 6.14 \(f\)](#)

²⁸⁸ [Ibid., Sect. 6.14 \(g\)](#)

²⁸⁹ [Texas Government Code Ann., Sect. 2052.103](#)

By December 1 of each year, an agency must file a report with the State Auditor, LBB, and the Governor's Office on the use of contract workers during the preceding fiscal year. This report must include:

- A description of how the agency has complied with this section of the General Appropriations Act.
- An evaluation of the work performed by the contract workforce (e.g., on time, within budget, according to specifications, etc.).²⁹⁰

MANAGEMENT-TO-STAFF RATIOS

State agencies and institutions of higher education must develop procedures to achieve a management-to-staff ratio that does not exceed one manager/supervisor for every 11 employees.

A manager/supervisor has the authority to initiate or effectively recommend the following:

- Hire an employee
- Discipline an employee
- Assign/reassign duties
- Approve leave requests
- Resolve disputes
- Evaluate employee performance
- Formulate/administer policy

When calculating management-to-staff ratios, actual headcount is used, *not FTEs*. Part-time employees are counted in the same manner as full-time employees for purposes of calculating the ratio.

The following formula is used to calculate the management-to-staff ratio:

$$(N + (S - 1)) / S$$

Where:

N = Number of non-supervisory employees

S = Combined number of supervisors and managers

(S - 1) excludes the agency's top executive from the calculation. For agencies that are directed by more than one top executive, (S - 1) will be replaced by (S - the number of top executives). For example, if an agency does not have an executive director but is directed by three commissioners, the formula (N + (S - 3)) / S is used.

To ensure that state agencies and institutions of higher education are working toward achieving the management-to-staff ratio goals established by the Legislature, employers are required to submit this information as part of their quarterly FTE reports. Each report must also include an organizational chart identifying managers, supervisors, and staff for each functional area. These charts must be submitted only once unless there is a change in the number of areas.²⁹¹

NOTICES AND INFORMATION ON JOB OPPORTUNITIES

All state agencies with job vacancies are required to list these openings with the Texas Workforce Commission (TWC). This applies only to vacancies in which candidates from outside the agency will

²⁹⁰ [77th Legislature General Appropriations Act, Art. IX, Sect. 4.07](#)

²⁹¹ [Texas Government Code Ann. Sect. 2052.103 \(a\) and \(b\)](#)

be considered. This notification is processed by way of a TWC information form. Each notice of a job vacancy must be posted for a minimum of 10 workdays unless the agency notifies the TWC that the opening has been filled within this time frame.²⁹²

SELECTIVE SERVICE REGISTRATION

A state agency or institution of higher education may not hire a male aged 18 to 25 unless he presents proof of selective service registration or exemption from registration.²⁹³ Individuals who are exempt from registration are:

- Females.
- Lawfully admitted nonimmigrant aliens.
- Members of the Armed Forces on full-time active duty, including cadets and midshipmen at military academies.

REDUCTIONS IN FORCE

Agencies undergoing reorganizations may institute reductions in force.²⁹⁴

DISCRIMINATION

The Texas Commission on Human Rights Act prohibits employment discrimination by both public and private employers because of race, sex, color, national origin, religion, age, and mental or physical disability. The TCHR Act is enforced by the Texas Commission on Human Rights (TCHR).²⁹⁵

All state agencies and institutions of higher education are required to provide training to each new employee on policies regarding discrimination and 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 TCHR at www.tchr.state.tx.us. A signed statement verifying attendance is required to be maintained in the employee's personnel file.²⁹⁶

The Texas Labor Code requires each state agency to report equal employment information for the previous year to the TCHR no later than the seventh workday of each calendar year. The report must be in a format prescribed by the TCHR. Any employer who fails to comply with this requirement is subject to having funding reduced by \$2,000 for each reporting period the employer is considered out of compliance.²⁹⁷

²⁹² [Texas Government Code Ann., Sect. 656.001, Sect. 656.022, Sect. 656.023, Sect. 656.024, Sect. 656.025](#)

²⁹³ [Ibid., Sect. 651.005; Selective Service and You, National Headquarters, Selective Service System; See also Opinion, Texas Attorney General, No. JC-0183 \(2000\)](#)

²⁹⁴ [Texas Government Code Ann., Sect. 651.006](#)

²⁹⁵ [Texas Labor Code Ann., Sect. 21.001](#)

²⁹⁶ [Ibid., Sect. 21.010](#)

²⁹⁷ [Ibid., Sect. 21.552 and Sect. 21.555](#)

EEO COMPLIANCE TRAINING FOR STATE AGENCIES

Employers that receive three or more substantiated discrimination complaints in a fiscal year must provide a comprehensive EEO training program to managers and supervisors. The training may be provided by the TCHR or a person or agency approved by the TCHR. If this training is not conducted by the TCHR, documentation verifying this training must be provided to the TCHR. Minimum standards for this training can be found in Texas Administrative Code, Title 40, Part 11, Chapter 323, Rule 323.9, or on the TCHR's [Web site](#).²⁹⁸

HIRING PRACTICES

All state employers should implement policies that comply with the Texas Commission on Human Rights Act.²⁹⁹ This includes employment staffing procedures and workforce diversity initiatives.

Each biennium, the Texas Commission on Human Rights (TCHR) is required to audit the statewide civilian workforce and report the results of this audit to the Governor and the Legislature. This report, "Minority Hiring Practices Report," is due by the fifth day of each legislative session. The report captures percentages representing African Americans, Hispanic Americans, and females within the workforce by job category.

For further information on this topic, please contact the TCHR directly at (512) 437-3450.

WORKFORCE ANALYSIS

State agencies and institutions must have a recruitment plan based on a workforce availability analysis. The TCHR monitors these plans to ensure that they comply with the TCHR Act.

Up-to-date workforce analysis percentages for the state civilian workforce are available at www.tchr.state.tx.us/wkfrc.htm.

Percentages as of September 19, 2002						
Categories	African American		Hispanic American		Female	
	Number	Percent	Number	Percent	Number	Percent
Officials/ Admin	25,853	7	40,886	11	115,274	31
Professional	52,853	9	61,739	10	278,427	47
Technical	33,269	14	43,290	18	93,277	39
Protective Services	15,962	18	18,733	21	18,663	21
Para- professional	145,363	18	254,388	31	449,590	56
Administrative Support	106,374	19	150,063	27	433,545	80
Skilled Craft	29,795	10	82,200	28	29,773	10
Service/ Maintenance	118,773	18	282,132	44	166,369	26

²⁹⁸ [Texas Labor Code Ann., Sect. 21.556](#)

²⁹⁹ [Ibid., Sect. 21.001 et al](#)

Employers are required to analyze their current workforce and compare the numbers in each job category with the civilian workforce to determine if underutilization exists.³⁰⁰

RECRUITMENT PLAN

Based upon the employer's workforce availability analysis or court-ordered remedies or agreements, state agencies and institutions are directed to develop and implement plans to recruit qualified African Americans, Hispanic Americans, and females. The TCHR monitors employers to ensure that their plans are consistent with the TCHR Act. In addition, employers must report to the TCHR no later than November 1 the number of protected class hires in each job class during the preceding fiscal year.³⁰¹

PERSONNEL POLICIES AND PROCEDURES

State agencies and institutions of higher education are required to develop and implement personnel policies that comply with [Chapter 21 of the Texas Labor Code](#) (Employment Discrimination), including the development of a workforce diversity program. The TCHR is tasked to review these policies to ensure compliance with the TCHR Act. If TCHR finds that these policies do not comply with the TCHR Act, it will recommend revisions. No later than 60 days after TCHR completes the review of a state employer's policies, the agency shall submit a report to the Governor, the Legislature, and the LBB detailing the following:

- Whether the agency implemented the recommendations of the TCHR
- If not, the reason for rejecting the recommendations

State agencies and institutions are required to reimburse the TCHR for costs incurred as a result of the review. This is done by interagency contract.³⁰²

SEXUAL HARASSMENT

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature that creates a hostile, intimidating, or offensive work environment.

Sexual harassment is a violation under the TCHR Act. (Texas Penal Code Ann., Sect. 39).³⁰³

INDIVIDUALS WITH DISABILITIES

The [Americans with Disabilities Act](#) (ADA) was signed into law on July 26, 1990. The purpose of this law is to provide clear, consistent, enforceable standards addressing discrimination against people with disabilities. This law applies to all state agencies and institutions.

The ADA defines *discrimination* as:

- Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects his or her job opportunities or status because of the disability of the applicant or employee.
- Participating in a contractual or other arrangement or relationship that has the effect of subjecting a qualified applicant or employee with a disability to discrimination.

³⁰⁰ [Texas Labor Code Ann., Sect. 21.501](#) and [Sect. 21.502](#)

³⁰¹ [Ibid., Sect. 21.504](#) and [Sect. 21.502](#)

³⁰² [Ibid., Sect. 21.452, Sect. 21.455, and Sect. 21.456](#)

³⁰³ [Texas Penal Code Ann., Sect. 39.03](#)

- Using standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability.
- Excluding or denying equal jobs or benefits to a qualified individual because of the known disability.
- Using standards, tests, or other selection criteria designed to screen out people with disabilities.
- Failing to administer tests in the most effective manner to ensure the results accurately reflect the factors the test is supposed to measure.
- Not making reasonable accommodations for an otherwise qualified applicant or employee.
- Denying employment opportunities to a job applicant or employee with a disability who is otherwise qualified if the denial is based on the need to provide reasonable accommodations.³⁰⁴

A “qualified individual with a disability” is a person who, with or without an accommodation, has the ability to perform the essential functions of the job. The agency or institution is responsible for making reasonable accommodations for otherwise qualified individuals and cannot deny employment based on the need for this accommodation. The only exception is if the employer can demonstrate that the accommodation is not reasonable or will cause undue hardship, disruption, or fundamental changes in the nature of the operation of the employer.

The primary purpose of the Governor’s Committee on People with Disabilities (GCPD) is to coordinate and monitor the State’s compliance with the ADA and other federal and state statutes. State agencies and institutions should direct their concerns to the GCDP and cooperate with and assist in its goal of improving opportunities for people with disabilities.

State agencies and institutions must also report statistical information relating to the number of disabled employees working for them and the number hired. This data is incorporated into the employers’ EEO reports.

Any person who feels that he or she was or is being discriminated against may file a complaint with the TCHR.

The TCHR has a contractual relationship with the Equal Employment Opportunity Commission (EEOC), but as a matter of law, the TCHR maintains jurisdiction over these matters.³⁰⁵

GENETIC TESTING

State agencies and institutions of higher education are prohibited from discriminating against an individual on the basis of genetic information or refusal to submit to a genetic test.

Excluded from this definition of genetic testing are:

- Routine physical exams.
- Chemical, blood, or urine analyses.
- Tests to determine drug use.
- A test for the presence of human immunodeficiency virus³⁰⁶

An employee’s genetic information is confidential, regardless of the source, and cannot be disclosed without written authorization.³⁰⁷

³⁰⁴ [Americans with Disabilities Act of 1990, Pub. L. No. 101-336 and 42 U.S.C. Sect. 12112 \(1995\)](#)

³⁰⁵ [Texas Human Resources Code Ann., Sect. 115.001; Texas Government Code Ann., Sect. 2052.003; Texas Labor Code Ann., Sect. 21.002 and Sect. 21.003](#)

³⁰⁶ [Texas Labor Code Ann., Sect. 21.401, Sect. 21.402, and Sect. 21.403](#)

³⁰⁷ [Ibid., Sect. 21.403](#)

EMPLOYMENT OF ALIENS

An individual who is not a citizen of this country is protected under the provisions of federal law and Texas Labor Code. It is unlawful to discriminate on the basis of citizenship or “intending citizen” status. Also, federal law does prohibit an employer from knowingly hiring an alien not authorized to work in this country. To ensure compliance, employers are required to complete federal form I-9 upon hiring a person. This form must be completed within three business days of the hire.³⁰⁸

AGE LIMITATIONS

Employment laws prohibit discrimination based on age. Employees age 40 and older are protected from such age-related discrimination. Employees are also not required to retire at any specific age.³⁰⁹

In most instances, State law prohibits the employment of minors under 14 years of age.³¹⁰

WHISTLE BLOWING

A state agency or institution may not take action against an employee who, in good faith, reports a violation of the law to law enforcement. An employee who alleges a violation of this provision may file suit against the State, but such action must be taken no later than 90 days after the violation occurred or was discovered. Also, the employee must exhaust the appeals process during this 90-day period.³¹¹

REPORTING CHILD ABUSE

An employer may not take action against an employee who, in good faith, reports child abuse or neglect to the person’s supervisor, administrator, a regulatory agency, or law enforcement. Persons initiating or cooperating with an investigation are also extended this protection. This protection does not apply to a self-disclosure.³¹²

COMPLIANCE WITH A SUBPOENA

An employer may not take action against an employee for complying with a subpoena to appear in court.

An employee testifying in an official capacity is considered to be on “special assignment,” and no leave will be charged against the absence. An employee testifying as an expert witness is authorized administrative leave for the absence. Agencies will use their own discretion in instances of unofficial testimony as to whether or not such an absence is considered good cause for emergency leave.³¹³

³⁰⁸ [Texas Labor Code Ann., Sect. 21.051](#) and [8 C.F.R. Sect. 274a \(1995\)](#)

³⁰⁹ [Texas Labor Code Ann., Sect. 21.051](#) and [Age Discrimination in Employment Act of 1967](#)

³¹⁰ [Texas Labor Code Ann., Sect. 51.011](#)

³¹¹ [Texas Government Code Ann., Sect. 554.002, Sect. 554.003, and Sect. 554.006](#)

³¹² [Texas Family Code Ann., Sect. 261.110](#)

³¹³ [Texas Labor Code Ann., Sect. 52.051](#); *See also* [Opinion, Texas Attorney General, No. JM-785 \(1987\)](#)

VETERAN'S PREFERENCE

The State has a goal to achieve a workforce that is 40% veterans. The Comptroller provides agencies with a quarterly report that identifies the percentage of employees eligible for a veteran's preference. Veterans qualify for an employment preference "if the veteran served in the military for not less than 90 consecutive days during a national emergency declared in accordance with federal law or was discharged for a service-related disability." The veteran must also have been honorably discharged and must be competent. A veteran's orphan or surviving spouse who has not remarried retains this preference if the veteran was killed on active duty. This preference entitles the veteran to preferred hiring over other applicants who do not have greater qualifications for the same position.³¹⁴

Eligible veterans are entitled to a preference in employment during a reduction in force that involves employees of a similar type or job classification.

Veteran preferences do not apply to private secretaries or deputies of state officials, or to people holding confidential relationships to appointing or employing officers.³¹⁵

VETERANS EMPLOYMENT RESTORATION

An employee who separates from state service to enlist in the federal armed forces, Texas State Guard, National Guard, or federal military reserves is entitled to restoration of employment. The employee must be physically and mentally qualified to perform the duties of the job (same or similar seniority, status, and pay) and must be honorably discharged within five years of beginning military service.³¹⁶

Title 38 of United States Code, Section 4302, the Uniformed Services Employment and Reemployment Rights Act (USERRA), supercedes any State law that attempts to reduce, limit, or eliminate rights or benefits provided under this act.³¹⁷ Eligible veterans must apply for reinstatement within 90 days after discharge or release from service. The application must include evidence of discharge. If the veteran is unable to perform the duties of the previous job due to a service-related disability, the veteran is entitled to be restored to a position that he or she can perform with similar (same or nearest) seniority, status, and pay.³¹⁸ An agency or institution may not delay or deny this obligation by waiting for documentation that is not immediately available. The employee may be terminated from employment if documentation becomes available that does not meet the eligibility requirement. Veterans whose employment has been restored may not be dismissed without cause within a year of their reinstatement.³¹⁹

³¹⁴ [Texas Government Code Ann., Sect. 657.003, Sect. 657.004, and Sect. 657.008](#)

³¹⁵ [Ibid., Sect. 657.003, Sect. 657.007 and Sect. 657.009](#)

³¹⁶ [Ibid., Sect. 613.001 and Sect. 613.002](#)

³¹⁷ [Title 38, United States Code, Sect. 4312 \(f\)\(4\)](#)

³¹⁸ [Texas Government Code Ann., Sect. 613.003 and Sect. 613.004](#)

³¹⁹ [Title 38, United States Code, Sect. 4312 \(f\)\(4\), Texas Government Code Ann., Sect. 613.005, Sect. 613.006, Sect. 613.022, Sect. 613.023; See also Opinion, Texas Attorney General, No. MW-109 \(1979\)](#)

TRAVEL REGULATIONS

TRANSPORTATION EXPENSES

Travel expenses may be reimbursed by the State only if the expense is reasonable and necessary and the travel involves official state business.³²⁰

ILLNESS OR DEATH WHILE TRAVELING

An employee may be reimbursed for travel expenses related to obtaining medical treatment if:

- The employee is away from his or her headquarters for the purpose of conducting state business.
- Waiting to receive care until his or her return would be unreasonable.

Employees may also be reimbursed for cancellation charges because the employee was unable to travel due to illness.

If an employee dies while conducting state business, the agency may pay or reimburse the expense of preparing and transporting the remains and personal property to the headquarters or other designated location.³²¹

REIMBURSEMENT FOR TRAVEL WHILE ON LEAVE

An agency or institution of higher education may reimburse an employee for travel expenses incurred while on leave if the employee is away from headquarters, the primary purpose of the trip was state business, and the agency determines that returning the employee to the headquarters while on leave would be impractical.³²²

TELECONFERENCING INSTEAD OF TRAVELING

State agencies and institutions of higher education are directed to use all telecommunications options in order to reduce travel expenses. Travel expenses for training may not be reimbursed unless the agency head specifies on the reimbursement form that the agency does not have access to or that the cost is prohibitive to use interactive television or teleconferencing facilities.³²³

TRAVEL OF PROSPECTIVE EMPLOYEES

An agency or institution of higher education may reimburse a candidate for travel expenses resulting from a job interview. The reimbursement will be treated in the same manner and with the same standards as those for state employees, and the level of reimbursement is limited to that which would be accorded to an employee holding that position.³²⁴

³²⁰ [Texas Government Code Ann., Sect. 660.003](#) and [Office of the Comptroller, Travel Allowance Guide, dated January 2000](#)

³²¹ [Texas Government Code Ann., Sect. 660.010, Sect. 660.012, Sect. 660.015, and Sect. 660.144](#)

³²² [Ibid., Sect. 660.008](#) and [Sect. 660.012](#)

³²³ [Ibid., Sect. 660.147](#)

³²⁴ [Ibid., Sect. 660.006](#)

TRAVEL OF DISABLED EMPLOYEES

An agency or institution of higher education may reimburse an employee with a disability for attendant care and other expenses incurred while traveling.³²⁵

TRAVEL OF THREATENED EMPLOYEES

Agencies and institutions of higher education may pay or reimburse the cost of travel for law enforcement personnel or their families in response to a threat related to the employees' duties.³²⁶

TRAVEL EXPENSES INCURRED TO ATTEND A FUNERAL

An agency or institution of higher education may pay or reimburse an employee for travel expenses to the funeral of a state employee, board member, or member of the Legislature if it determines such attendance is appropriate.³²⁷

MEALS AND LODGING ALLOWANCE

Employees who travel within the state and incur overnight costs will be reimbursed for lodging (up to \$80 per day) and the cost of meals (up to \$30 per day). Employers may, at their discretion, reimburse the costs of meals for travel without an overnight stay (up to \$25 a day). No reimbursements are authorized for travel within the headquarters area or travel away from the headquarters for less than a six-hour period, except when:

- The expense is mandatory and connected to training, a seminar, or a conference.
- The expense is authorized by the head of the agency.
- The expense is authorized by the General Appropriations Act.

Employees traveling outside of the state will also be reimbursed for actual meal and lodging costs. These costs may not exceed the maximum out-of-state meals and lodging rates unless the Comptroller determines that an adjustment to these rates is warranted.

Employees other than agency heads and board members must provide hotel receipts in order to be reimbursed.³²⁸

No full-time employee may receive a salary and compensatory per diem for concurrent service as an employee and a board or commission member.³²⁹

MOVING EXPENSES

An employer may pay the relocation costs associated with moving an employee from one headquarters to another. Such a move must serve the best interests of the State, and the distance between headquarters must be at least 25 miles. Employees required to live in state-owned housing may be reimbursed for storage expenses. Reimbursement is allowed at the rate provided by the GAA.

A state agency shall use state-owned equipment to accomplish the move if it is available.³³⁰

³²⁵ [Texas Government Code Ann., Sect. 660.143](#)

³²⁶ [Ibid., Sect. 660.145](#)

³²⁷ [Ibid., Sect. 660.011](#)

³²⁸ [77th Legislature General Appropriations Act, Art. IX, Sect. 5.06; Sect. 4.04; Texas Government Code Ann., Sect. 660.113, Sect. 606.115, Sect. 606.202, and Sect. 606.203](#)

³²⁹ [77th Legislature General Appropriations Act, Art. IX, Sect. 5.09](#)

EMPLOYEE MANAGEMENT

WORKFORCE PLANNING

As part of the strategic plan, state agencies will conduct a staffing analyses and develop workforce plans. The workforce plan must be based on guidelines established and provided by the State Auditor. Institutions of higher education and university systems are excluded from this requirement but are encouraged to conduct such planning on their own behalf.³³¹

ALTERNATIVE DISPUTE RESOLUTION

Agencies and institutions of higher education are encouraged to use mediation as a method of alternative dispute resolution. Binding arbitration is not allowed by statute.

Procedures for mediation may be developed by:

- Contracting with another government agency such as the Center for Public Policy Dispute Resolution at The University of Texas School of Law.
- Referring to Chapter 152, Civil Practice and Remedies Code.
- Contracting with a private service provider.³³²

EMPLOYEE PERFORMANCE EXPECTATIONS

State agencies are required by the Legislature to develop policies designed to ensure that an employee's performance goals are linked to the goals of the organization (the agency's strategic plan).³³³

TRAINING POLICY REQUIREMENTS

The State Employees Training Act authorizes state employers to use public funds to provide training to state employees. Such training is intended to be applicable to current or prospective duty assignments. Agencies and institutions of higher education must adopt rules addressing eligibility and obligations after receiving the training and must be approved by the Governor. The Governor's Office has provided general guidelines for the approval of³³⁴:

- College degree programs, both undergraduate and graduate.
- Interagency training.
- Out-of-agency training.
- Internship training.

³³⁰ [Texas Government Code Ann., Sect. 2113.204](#)

³³¹ [Ibid., Sect. 2056.001 et seq.](#)

³³² [Ibid., Sect. 2009.001 et seq.](#)

³³³ [Ibid., Sect. 659.2551](#)

³³⁴ [Opinion, Texas Attorney General, No. MW-116, No. M-1141; Texas Government Code Ann., Sect. 656.046, Sect. 656.048; See also](#) Official Memorandum from the Governor's Office: "Implementation of State Employees Training Act of 1969 (S.B. 653)," October 31, 1969

A state agency may use public funds for a given fiscal year to pay expenses for training that will occur, either partly or entirely, during a different fiscal year.³³⁵

Agencies and institutions of higher education must adopt a policy that requires training to specifically relate to an employee's duties before funds may be expended. If an employee completes state-paid training but does not perform his or her regular duties for three or more months after completing the training, the employee must:

- Work for an additional month for each month of training.
- Reimburse the State for all costs related to the training to include salary for hours not considered vacation or compensatory leave.

These requirements may be waived by the agency or institution of higher education if such action is in the best interest of the agency or institution, or is warranted because of personal hardship.

Additionally, registration fees for training, conferences, and seminars are not subject to limitations imposed by the travel cap.³³⁶

INTERNET-BASED TRAINING

In order to reduce costs, maximize efficiency, and minimize travel costs and other expenses, agencies and institutions of higher education should use Internet-based training to the greatest extent possible.³³⁷

EMPLOYEE GRIEVANCES

State agencies and institutions of higher education may establish their own policies regarding the processing of employee grievances. State funds may not be used to reimburse an employee who represents another employee who filed a grievance for any costs associated with this activity. Such employees may, in accordance with agency policy, take annual leave, compensatory leave, or LWOP for time associated with representing an employee who filed a grievance.³³⁸

FACULTY GRIEVANCES

A faculty member at an institution of higher education has a right to present a grievance, in person, to administration regarding nonrenewal or termination of employment. This right is guaranteed and cannot be restricted. "Faculty members" are employed full-time with duties that include teaching, research, administration, or providing professional services. This right is not extended to faculty who spend the majority of time dedicated to managerial or supervisory duties. Such positions include chancellor, vice chancellor, president, vice president, provost, assistant provost, dean, and assistant dean.

MERIT PRINCIPLES

State agencies that are required to use a merit system shall develop applicable management policies to ensure that they are:

³³⁵ [Texas Government Code Ann., Sect. 2113.205](#)

³³⁶ [Ibid., Sect. 656.101, Sect. 656.102, Sect. 656.103, Sect. 656.104](#); *See also Office of the Comptroller, Travel Allowance Guide, dated January 2000*

³³⁷ [77th Legislature General Appropriations Act, Art. IX, Sect. 9.14](#)

³³⁸ [Ibid., Art. IX, Sect. 6.28](#)

- Recruiting, selecting, and advancing employees on the basis of knowledge, skills, and abilities.
- Providing equitable compensation.
- Training employees to facilitate high quality performance.
- Retaining employees on the basis of performance.
- Ensuring fair treatment of applicants and employees.
- Complying with EEO and nondiscrimination laws.
- Protecting employees from coercion for partisan political purposes.³³⁹

PAYROLL AND PERSONNEL ACCOUNTING

Generally, personnel accounting and reporting are the responsibility of individual agencies. The Comptroller and the State Auditor are required to jointly develop and issue standardized procedures for personnel and payroll reporting.³⁴⁰

State procedures require state agencies to present payroll claims to the Comptroller prior to the end of payroll periods.³⁴¹ These claims must be accompanied by affidavits from agencies certifying that the services related to the payroll claims were performed. The Comptroller is authorized to establish rules and procedures for agencies to use when adjusting payrolls due to inaccurate payments, deductions, or other payroll errors.³⁴² If an employee owes the State money, a state agency may deduct this amount from the employee's compensation provided it notifies the employee and provides ample opportunity for the employee to respond.³⁴³

Employee compensation includes:

- Base pay.
- Longevity or hazardous duty pay.
- Benefit replacement pay.
- Payment for the balance of vacation and sick leave.
- Fees provided for service in lieu of base pay.

Annual salaries for State officers and employees are to be paid once a month unless otherwise authorized by statute.³⁴⁴ Payday for employees paid on a monthly basis is the first working day of the month following the pay period.³⁴⁵ The electronic funds transfer system allows employees to have their pay transferred directly to their financial institutions. Retirement payments can also be transferred directly. Additionally, this system now allows transfers for authorized reimbursements.

Regarding personnel recordkeeping, state agencies are required to maintain:

- A personnel file on each employee containing the employee's application, I-9 form, W-4 form, counseling records, and any signed agreements required by the employer.

³³⁹ [Texas Government Code Ann., Sect. 655.002](#)

³⁴⁰ [Ibid., Sect. 659.004](#)

³⁴¹ [Ibid., Sect. 403.072](#)

³⁴² [Ibid., Sect. 659.006](#)

³⁴³ [Ibid., Sect. 666.002](#)

³⁴⁴ [Ibid., Sect. 659.081, Sect. 659.082](#)

³⁴⁵ [Ibid., Sect. 659.083](#)

- Time and attendance records, to include records of sick leave and vacation accrual, absences, and the reasons for these absences.³⁴⁶
- Payroll records³⁴⁷

Employers should note that these records are available for public inspection.³⁴⁸

PAYROLL DEDUCTIONS

There are a variety of payroll deductions that are authorized by law. The most common are:

- 401(k) loan repayments.
- Charitable contributions.
- Court-ordered bankruptcy payments.
- Cafeteria plan contributions.
- Court-ordered child support payments.
- Dental plan payments.
- Employee organization membership dues.
- Federal income tax.
- Student loan payments.
- Internal Revenue Service tax levies.
- Investments in tax-deferred annuities.
- Retirement and insurance contributions.
- Social Security contributions.
- U.S. savings bonds purchases.
- Fees for parking, club membership, and recreational sports membership at institutions of higher education.³⁴⁹
- Contributions to an institution of higher education.³⁵⁰
- 401(k) or 457 contributions

WAGE GARNISHMENT

An employee's wages may be garnished for payment of debts, non-repayment of student loans, nonpayment of child support, and payment of income taxes. In addition, an administrative fee of up to \$5.00 per month may be added to any amount withheld for spousal maintenance.³⁵¹

PROFESSIONAL FEES AND DUES

The State may pay an employee's membership fee in a professional organization if approved by the administrative head of the agency. Appropriated funds may also be used to pay an employee's notary

³⁴⁶ [Texas Government Code Ann., Sect. 661.908](#)

³⁴⁷ [Payroll Policies and Procedures Guide](#)

³⁴⁸ [Texas Government Code Ann., Sect. 552.102](#)

³⁴⁹ [Ibid., Sect. 659.202](#)

³⁵⁰ [Ibid., Sect. 659.002](#)

³⁵¹ [Texas Family Code Ann., Sect. 8.051, Sect. 8.204, Sect. 101.012, Sect. 158.011, Sect. 159.101; 31 U.S.C. Sect. 3701 and Sect 3702; Texas Government Code Ann., Sect. 659.002\(d\)](#)

license fee if such a license is required to carry out his or her duties. Tuition and fees for approved training and conferences may be reimbursed as travel expenses.³⁵²

WITNESS FEES

Institutions of higher education must report the number of faculty and staff who acted as expert witnesses or consulted in state suits during the previous fiscal year.³⁵³

An employee called to appear in an official capacity as an expert witness is not entitled to any witness fees. However, if the employee is called in an unofficial capacity for the purposes of testifying from personal knowledge, the employee may receive any customary witness fees as long as the appearance is made on his or her own time. Employees may receive per diem allowances, reimbursement of expenses, and mileage allowances for serving in an official capacity as long as there is no double reimbursement for these expenses.³⁵⁴

MISCELLANEOUS EMPLOYMENT STATUTES

INCLEMENT WEATHER CLOSING

Each agency has the discretionary authority to determine how to post time when the agency closes because of inclement weather. The following guidelines are suggested:

- When an employee is temporarily working in the same metropolitan area (for example, presenting or attending training) and the agency closes, the employee should receive compensatory time for working.
- When an employee is temporarily working in another metropolitan area (for example, presenting or attending training) and the agency closes, the employee should not receive compensatory time for working.
- A part-time employee who has already completed his or her scheduled hours when the agency closes would not receive any compensatory time or administrative time off because the agency was not closed while the employee was scheduled to work.
- A part-time employee who has not completed his or her scheduled hours when the agency closes should receive administrative leave time because the agency was closed while the employee was scheduled to work.
- When an agency closes but satellite offices in other locations remain open, employees in those offices do not receive administrative leave or compensatory time off.
- If an employee is on sick or vacation leave and the agency closes due to inclement weather, the employee should receive administrative leave for the absence.

³⁵² [Opinion, Texas Attorney General, No. JM-1063 \(1989\), No. MW-251 \(1980\); Texas Government Code Ann., Sect. 2113.104, and Sect. 660.030](#)

³⁵³ [Texas Education Code, Ann., Sect. 61.0815](#)

³⁵⁴ [Texas Government Code Ann., Sect. 659.005](#)

OFFICE AND WORKING HOURS

Regular, full-time employees are generally required to work 40 hours per week.

Office hours for state agencies are 8:00 a.m. to 5:00 p.m., Monday through Friday. All state agencies are required to remain open with at least one person on duty during the lunch hour to accept calls, receive visitors, and conduct business. The executive head of an agency may adjust these hours if necessary; however all hours worked by employees count toward the required 40 hours per week. The staggering of work hours in the interest of public safety is permitted. If necessary to facilitate organizational efficiency, certain staff members may be assigned to a ten-hour, four-day workweek.³⁵⁵

The Legislature authorized a voluntary program for the reduction of employee hours and wages. Temporary and exempt employees are not permitted to participate. The program is strictly voluntary. Under this program, the employee accepts a reduction in wages and benefits for a proportionate reduction in work hours. Participation must be for a period of no less than six months.³⁵⁶

PUBLIC INFORMATION

Under the Texas Public Information Act, documentation that deals with government affairs and official business conducted by employees of the State are available to the general public. Such information includes, among other things:³⁵⁷

- Reports, audits, evaluations, and investigations.
- Name, sex, ethnicity, salary, title, and dates of employment.
- Information pertaining to the receipt or expenditure of public funds (unless confidential by law).
- Voting records on all proceedings.
- Working papers, research materials, and other information used as a basis to estimate the need for, or expenditure of, public funds.
- Information related to persons reporting or paying sales and use taxes.
- Organization descriptions and charts.
- Agency staff manuals and various policies and procedures.
- Final opinions and orders in the determination of cases.
- Other information regarded as open to the public under an agency's policies.

In addition, the Attorney General has identified the following items to be released³⁵⁸:

- Settlement terms of an equal employment claim
- An employee's letter of resignation
- Names and dates associated with sick leave usage
- Hearing officer's reports concerning an employee's termination
- An employee's educational background and work experience

An individual or designated representative may access records that contain information that is ordinarily protected from disclosure by privacy laws. Consent to release this information must be in writing and signed by the individual.³⁵⁹

³⁵⁵ [Texas Government Code Ann., Sect. 658.002, Sect. 658.005, Sect. 658.006](#); *See also* [Opinion, Texas Attorney General, No. M-1058 \(1972\)](#)

³⁵⁶ [Texas Government Code Ann., Sect. 658.003 and Sect. 658.008](#)

³⁵⁷ [Ibid., Sect. 552.001, Sect. 552.002, Sect. 552.021, and Sect. 552.022](#)

³⁵⁸ [Texas Open Records Decision., No. 245 \(1980\), No. 278 \(1981\), No. 336 \(1982\), No. 325 \(1982\), No. 218 \(1978\), No. 67 \(1975\)](#)

Records pertaining to the following may not be withheld from public disclosure³⁶⁰:

- Reassignment of an executive head of a state agency
- Terms of consulting contracts with current or former agency heads
- Documents related to the settlement, compromise, or other resolution of differences between the State and a current or former agency head

Once accessed, information cannot be destroyed, altered, or removed from employee records.³⁶¹

The following types of information may be withheld from the general public³⁶²:

- Information deemed confidential by law
- Information in personnel files that would be considered a clear invasion of privacy
- Interagency and intraagency correspondence or letters
- Home address or telephone number of a current or former official or employee of the Legislature, peace officer, security officer, or an employee or family member of the Department of Criminal Justice
- Information regarding litigation or settlement negotiations

The Attorney General has determined that the following information is confidential by law³⁶³:

- Information concerning marriage, contraception, family relationships, raising children and education
- Any intimate or highly embarrassing fact that would be highly objectionable and not the concern of the public

Other items that are typically not considered public information include requests for advice, letters of recommendation for employment, recommendations for promotion, letters of reprimand, and letters of commendation.³⁶⁴

STATE PRIVACY POLICY

Members of the public are entitled to be notified about information that the State has collected about them, unless such information is protected under [Texas Government Code, Section 552.023](#). With few exceptions, an individual is:

- Entitled to be notified about information the State has collected.
- Entitled to receive and review the information.
- Entitled to correct inaccurate information.

Collection efforts utilizing online sources must ensure that individuals using a monitored Internet site or computer network are aware that information is being collected.

³⁵⁹ [Texas Government Code Ann., Sect. 552.023](#) and [Sect. 552.229](#)

³⁶⁰ [Ibid., Sect. 669.004](#)

³⁶¹ [Opinion, Texas Attorney General, No. DM-40 \(1991\)](#) and [No. MW-327 \(1981\)](#)

³⁶² [Texas Government Code Ann., Sect. 552.101](#), [Sect. 552.102](#), [Sect. 552.103](#), [Sect. 552.110](#), and [Sect. 552.111](#)

³⁶³ [Texas Open Records Decision, No. 361 \(1983\)](#) and [No. 260 \(1980\)](#)

³⁶⁴ [Opinion, Texas Attorney General, No. MW-372 \(1981\)](#), [Texas Open Records Decision, No. 345 \(1982\)](#), [No. 361 \(1983\)](#), and [No. 77 \(1975\)](#)

PLACE OF WORK

An employee's home may not be considered his or her regular place of business without the written approval of the agency head.³⁶⁵

PUBLIC EMPLOYEE LABOR UNIONS

Texas is a "right to work" state. As such, no person can be denied public employment due to membership or nonmembership in a labor union.³⁶⁶ Most state agencies are protected from collective bargaining and strikes; however, firefighters and police officers have the right to organize for the purpose of collective bargaining. They are the only group of state workers permitted to do so.³⁶⁷

The Attorney General has ruled that state agencies should meet with their employees to hear grievances concerning wages, work hours, and work conditions.³⁶⁸

Public employees are not permitted to strike or participate in an organized work stoppage. Employees who do so forfeit all civil service rights.³⁶⁹

Employees may use automatic payroll deduction for membership fees in state employee organizations. Such organizations must have a minimum of 4,000 members to qualify for this service.³⁷⁰

MOVEMENT OF WORKFORCE FROM TRAVIS COUNTY

Within reason, agencies were directed by the Legislature to shift full-time equivalent positions outside of the Travis County area. Several agencies were specifically required to submit a report to the Governor's Office and the LBB detailing their efforts no later than January 1, 2003.³⁷¹

³⁶⁵ [Texas Government Code Ann., Sect. 658.010](#)

³⁶⁶ [Texas Labor Code Ann., Sect. 101.001](#), and [Texas Government Code Ann., Sect. 617.004](#)

³⁶⁷ [Texas Government Code Ann., Sect. 617.002](#)

³⁶⁸ [Opinion, Texas Attorney General, No. H-422 \(1974\)](#) and [No. M-719 \(1970\)](#)

³⁶⁹ [Texas Government Code Ann., Sect. 617.003](#), and [Sect. 617.005](#)

³⁷⁰ [Ibid., Sect. 403.0165](#) and [Sect. 814.009](#)

³⁷¹ 77th Legislature General Appropriations Act, Article III, Texas Education Agency, Rider 82; Article VIII, Real Estate Commission, Rider 9; Article VIII, Office of Consumer Credit Commissioner, Rider 4; Article VIII, Structural Pest Control Board Rider 3; Article VIII, Department of Banking, Rider 9; Article VIII, Special Provisions Relating To All Regulatory Agencies, Sect. 5

APPENDIX

Payment Entitlements Upon Separation From State Employment					
TYPE OF SEPARATION	Any separation where the employee is permitted to remain on the payroll to expend accrued vacation	Any separation where the employee is not permitted to remain on the payroll to expend accrued vacation	Any separation where the employee is permitted to remain on the payroll to expend accrued state of FLSA compensatory time	Any separation where the employee is not permitted to remain on the payroll to expend accrued state of FLSA compensatory time	Death (payment to estate)
LUMP-SUM PAYMENT FOR ACCRUED VACATION LEAVE	NO, but may expend accrued vacation prior to separation	YES	YES, at the time of separation	YES	YES
LUMP-SUM PAYMENT FOR ACCRUED SICK LEAVE	NO, also not eligible to use sick leave while remaining on the payroll to extend vacation	NO	NO, also may not use sick leave while remaining on payroll to expend state or FLSA Compensatory time	NO	YES, for ½ sick leave hours not to exceed 336 hours (lump-sum payment)
FURTHER ACCRUAL OF VACATION LEAVE	NO	N/A	NO	N/A	N/A
FURTHER ACCRUAL OF SICK LEAVE	NO	N/A	NO	N/A	N/A
LUMP-SUM PAYMENT FOR ACCRUED STATE COMPENSATORY TIME	NO	NO	NO	NO	NO
LUMP-SUM PAYMENT FOR ACCRUED FLSA COMPENSATORY TIME	YES	YES	YES	YES	YES
PAYMENT FOR LONGEVITY OR HAZARDOUS DUTY	YES	NO	YES	NO	NO
HOLIDAY ENTITLEMENT	YES	YES	YES	NO	YES
GENERAL SALARY INCREASE ENTITLEMENT	YES	NO	YES	NO	NO

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