

## **F. Sick Leave**

DFPS Human Resources Manual January 2018

### **Policy**

Chapter 5: Work Leave (F. Sick Leave)

Sick leave is paid leave taken when an employee is prevented from performing job duties. An employee accrues and is eligible to use sick leave beginning on the first day of employment.

An employee may take sick leave for reasons such as:

- a personal illness or injury;
- appointments with physicians, dentists, opticians, nurse practitioners, or physician assistants for examination or treatment;
- pregnancy and confinement by a physician due to complications with pregnancy;
- to care for an eligible immediate family member who is ill; or
- for the adoption of a child under the age of three.

Unlike vacation leave, the employee is not required to complete six months of continuous state service before using accrued sick leave.

### **Authority**

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The Texas Government Code, Chapter 661, authorizes and governs sick leave use for state employees.

### **Earning Sick Leave**

Chapter 5: Work Leave (F. Sick Leave)

Employees earn sick leave beginning on the first day of employment and ending on the last duty day.

### **First Day of Employment**

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An employee accrues sick leave beginning on the first day of the calendar month if the employee is required to work on the first scheduled workday of the calendar month

## **Last Duty Day**

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For sick leave accrual, the last duty day of an employee who separates from employment for any reason is the last day that the employee is physically present for work.

This includes an employee who is in a paid status and has not resigned, but is separated due to illness, temporary disability, or death.

## **Definition of Immediate Family Members**

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For sick leave purposes, immediate family includes the following individuals:

- individuals related by kinship, adoption, or marriage who reside in the employee's household;
- foster children certified by the TDFPS who reside in the employee's household;
- the employee's minor children, whether or not living in the employee's household; and
- a spouse, child, or parent of the employee who does not reside in the employee's household, but who requires care and assistance as a direct result of a documented medical condition.

The use of sick leave to care for a spouse, child, or parent who does not reside in the employee's household, is strictly limited to the time necessary to provide such care.

The supervisor may request documentation of the family member's medical condition from the employee before approving sick leave.

However, if the disease or condition is chronic or terminal, documentation is not required for each use of sick leave.

## **Rate for Full-Time Employees**

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Full-time employees accrue eight hours of sick leave per month or fraction of a month.

## **Rate for Part-Time Employees**

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Part-time employees accrue sick leave at a rate proportional to full-time employees, using the percent time worked to calculate the accrued hours.

For example, an employee who works 50 percent time will earn four hours per month (8 hours X 0.5 = 4 hours).

### **Rate for Hourly Employees**

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Hourly employees accrue sick leave at a rate proportional to full-time employees. The calculation of sick leave accrued during the month should be completed after the pay period has ended.

To determine the rate of accrual for an hourly employee, divide the actual number of hours the employee worked by the number of scheduled work hours for full-time employees.

Example:

An hourly employee (hours in the same month)

Hours worked during a month = 132

Scheduled work hours for full-time employees = 176

Accrual during that month = 6 hours

(132 ÷ 176 X 8 hours = 6 hours)

### **Crediting Accrual**

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Credit for one month's accrual is given for each month or fraction of a month of employment. Sick leave is credited to each employee's leave record on the first day of state employment and on the first duty day of each succeeding month.

### **Hours Carried Forward**

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The employee's sick leave balance is carried forward each month throughout employment.

There is no limit to the amount of sick leave that can be accumulated or carried forward into the next fiscal year.

### **Sick Leave and Other Paid Leaves**

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When an employee is on any paid leave that extends into a subsequent month, sick leave continues to accrue during that time.

The accrual is credited to the employee's leave balance on the date the employee returns to duty.

This leave cannot be applied to cover any previous absences.

### **Sick Leave and Holidays**

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In computing the sick leave taken, the time during which an employee is excused from work due to an authorized holiday is not charged against the employee's sick leave balance.

### **Sick Leave and Vacation Leave**

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An employee may request vacation leave in lieu of sick leave.

Employees who have exhausted sick leave and are using vacation leave in lieu of sick leave must provide documentation if the employee is out for more than three consecutive working days.

### **Sick Leave and Educational Activities**

#### Chapter 5: Work Leave (F. Sick Leave)

An employee who is a parent of a child in grades pre-kindergarten through 12 may use up to eight hours of sick leave each fiscal year to attend a school sponsored educational activity, including:

- a parent-teacher conference (either in person or by phone),
- tutoring,
- a volunteer program,
- a field trip,
- a classroom program,
- an academic competition, and
- an athletic, music, or theater program.

The employee should give reasonable advance notice to use sick leave for this purpose.

## **Sick Leave and Workers' Compensation**

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Employees who are drawing workers' compensation benefits may retain or use accrued sick leave. If an employee uses sick leave, the employee is not entitled to workers' compensation income benefits until the employee has exhausted all accrued sick leave.

Employees who retain sick leave balances while on leave without pay may not use a portion of their sick leave balance each month and then return to unpaid leave status. The employee must return to duty before requesting sick leave.

## **Sick Leave and FMLA**

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An employee who is approved for FMLA leave must exhaust all accrued sick leave, when sick leave use is appropriate, before going on unpaid leave during the 12-weeks, except when the employee is receiving

- temporary disability benefit payments, or
- workers' compensation benefits.

## **Sick Leave and Parental Leave**

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An employee who is approved for parental leave must exhaust all accrued sick leave, when sick leave is appropriate, before going on unpaid leave during the 12 weeks.

## **Sick Leave and Transfers**

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For information on the transfer of sick leave when an employee transfers, see Chapter 3, General Employment (E. Employee Transfers; [Accrued Vacation and Sick Leave and Transfers](#)).

## **Donations to the Sick Leave Pool**

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Donations to the sick leave pool are strictly voluntary.

Any employee may donate unlimited hours of accrued sick leave to the sick leave pool in increments of eight hours using [Form 5355, Sick Leave Pool Contribution](#) , as long as the donation does not cause the employee's sick leave balance to fall below 80 hours. The employee submits [Form 5355](#)  to the supervisor.

Employees may donate their entire sick leave balance at the time of separation.

Hours donated to the sick leave pool at the time of separation from state employment are considered used and are not restored if the person is subsequently re-employed by a state agency.

Employees who make donations to the sick leave pool may not stipulate who will receive the donated hours.

Once an employee donates time to the sick leave pool, it is taken out of that employee's sick leave balance and transferred to the pool. It cannot be reinstated, and the employee may only withdraw leave from the pool when he or she meets eligibility requirements and has the approval of the HHS Time, Labor, and Leave office.

## **Retirement and Sick Leave**

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For information on compensating a retiring employee for unused sick leave, see Chapter 8, Benefits (O. Retirement; [Service Credit for Unused Sick Leave and Vacation Leave](#)).

## **Re-Employment and Sick Leave Restoration**

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Former state employees who are separated for more than 12 months will not have their sick leave balance restored under any circumstance.

The following table describes the conditions under which sick leave may be restored to rehired state employees.

<b>An employee who separates...</b>	<b>Has sick leave balance restored if reemployed by...</b>
under a formal reduction in force	any state agency within 12 months of separation.

<b>An employee who separates...</b>	<b>Has sick leave balance restored if reemployed by...</b>
not under a formal reduction in force (except for retirement)	<ul style="list-style-type: none"> <li>• the same state agency within 12 months after separation, but only if there has been a break in employment with the state of at least 30 calendar days; or</li> <li>• a different state agency within 12 months after separation.</li> </ul>

### **Rehired Retirees and Sick Leave**

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At the time of the employee's retirement, any sick leave balance that is not used for service credit or donated to the sick leave pool is forfeited.

No sick leave will be restored upon re-employment by a state agency.

### **Sick Leave and Employee's Death**

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The estate of a deceased employee is entitled to payment for half of the employee's accumulated sick leave, or 336 hours, whichever is less, provided that the requirements in the Texas Government Code, Chapter 661, Subchapter B, are satisfied.

### **Using Other Paid Leave for Sick Leave Purposes**

Chapter 5: Work Leave (F. Sick Leave)

Employees who use other appropriate paid leave in lieu of sick leave must provide documentation if the employee is out for more than three consecutive working days.

The employee must follow all provisions of the sick leave policy.

### **Notification for Appointments**

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Employees must give supervisors at least 24 hours notice of sick leave for

- non-emergency medical, dental, or optical appointments; or
- a parent-teacher conference.

### **Notification for Illness**

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Employees absent from duty because of illness must notify their supervisors at the earliest practical time.

### **Required Documentation**

#### Chapter 5: Work Leave (F. Sick Leave)

An employee absent due to illness for more than three consecutive working days must provide acceptable documentation from the treating health care provider describing the need for the work absence. For information on health care providers, see Chapter 5, Work Leave (I. Family and Medical Leave Act [FMLA] Leave; [Health Care Provider](#)).

In situations where abuse of leave is suspected, the supervisor may require documentation for absences of three consecutive working days or less.

### **Requesting Sick Leave**

#### Chapter 5: Work Leave (F. Sick Leave)

To request sick leave, the employee submits to the supervisor:

- a request using the leave request screen in CAPPs, and
- any supporting documentation required.

### **Donations of Sick Leave to a Specific Employee**

#### Chapter 5: Work Leave (F. Sick Leave)

An employee may donate any amount of the employee's accrued sick leave, in whole hour increments, to another employee who:

- is employed in the same state agency as the donor employee; and
- has no current balance of sick leave, extended sick leave or leave from the sick leave pool. **Note:** To be eligible to receive donated sick leave, the recipient employee does not have to apply for or be awarded extended sick leave or leave from the sick leave pool.

An employee who receives donated sick leave may only use this leave for sick leave purposes that occur on or after the date the donor employee submits form [HR0515, Employee Donated Sick Leave](#) . For information on the appropriate use of sick leave, see Chapter 5, Work Leave (F. Sick Leave; [Policy](#)).

If an employee is retiring from the state and has a remaining balance of donated leave, the employee may not use this donated leave towards receiving additional service credit in the Employees Retirement System of Texas (ERS). In addition, the donated sick leave balance is not paid to the estate of a deceased employee.

Employees may donate their entire sick leave balance to an eligible employee at the time of separation.

Once an employee donates time to an eligible employee, it is taken out of the donating employee's sick leave balance and transferred to the eligible employee. It cannot be reinstated. **Note:** An employee who is planning to use a portion of his or her sick leave balance to satisfy requirements for retirement should consider this restriction when deciding on a donation amount.

Hours donated to an eligible employee at the time of separation from state employment are considered used and are not restored if the person is subsequently re-employed by a state agency.

To donate sick leave to another employee, the donating employee completes [HR0515](#) .

**Note:** Donations of sick leave are strictly voluntary. Any attempt to coerce or otherwise persuade an employee to donate sick leave is prohibited. Employees must not provide or receive any compensation, gift, or other benefit in exchange for a sick leave donation.

An employee requesting to use donated sick leave submits to the supervisor:

- a request using the Time Reporting Code of EDSLTL on the timesheet in CAPPS, and
- a sick leave documentation, if required. For information on required sick leave documentation, see Chapter 5, Work Leave (F. Sick Leave; [Required Documentation](#)).

## **I. Family and Medical Leave Act (FMLA) Leave**

DFPS Human Resources Manual January 2018

### **Policy**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

The FMLA of 1993 entitles eligible employees to take up to 12 weeks of job-protected accrued paid or unpaid leave during a 12-month period. The 12-month period for FMLA is measured backward from the date on which an employee uses any FMLA leave. This is referred to as a rolling 12-month period.

An eligible employee who is the spouse, son, daughter, parent, or nearest blood relative of a member or an honorably discharged veteran of the Armed Forces is entitled to take up to 26 weeks of job-protected accrued paid or unpaid leave during a 12-month period to care for the service member or honorably discharged veteran. For more information on Service Member Family Leave, see Chapter 5, Work Leave (I. Family and Medical Leave Act [FMLA] Leave; Service Member Family Leave).

The amount of leave a part-time employee is entitled to take is determined on a pro rata basis. **Example:** The entitlement for a full-time employee is 12 weeks (480 hours). If a part-time employee works a 30-hour per week work schedule (30 divided by 40 equals .75), this employee would be entitled to 360 hours of FMLA leave (480 multiplied by .75 equals 360 hours).

FMLA may be used for any of the following:

- the birth of the employee's child and care of the infant;
- the placement of a child with the employee for adoption or foster care and the care of the newly placed child;
- the care of a spouse, child, or parent of the employee if that individual has a serious health condition;
- the employee's own serious health condition that makes the employee unable to perform the essential functions of his or her job;
- to care for a service member or an honorably discharged veteran who incurred a serious injury or illness. For more information, see Chapter 5, Work Leave (I. Family and Medical Leave Act [FMLA] Leave; [Service Member Family Leave](#)); or
- a qualifying exigency arising from the employee's spouse, child or parent being deployed or being notified of impending deployment to a foreign country. For more information, see Chapter 5, Work Leave (I. Family and Medical Leave Act [FMLA] Leave; [Leave for a Qualifying Exigency](#)).

A parent includes an individual who stood in loco parentis (role of parent) to an employee.

A child includes an individual who is either under age 18 or age 18 or older and incapable of self-care because of mental or physical disability, and is

- the employee's biological, adopted, or foster child;
- the employee's stepchild;
- the employee's legal ward; or
- a child for whom the employee stands in loco parentis.

A spouse includes an individual in an opposite-sex, same-sex or common law marriage.

For more information on relationships that qualify for FMLA leave, contact the DFPS Human Resources Office, Employee Relations Unit.

### **Authority**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

The FMLA allows employees to take reasonable leave for family and medical reasons while providing job protection.

It is a federal law administered by the U.S. Department of Labor's Wage and Hour Division. In addition, the Texas Government Code, Chapter 661, authorizes FMLA leave for state employees.

### **Eligibility**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

A full-time or part-time employee is eligible to take FMLA leave if the employee

- has a total of at least 12 months of state service, and
- has physically worked at least 1,250 hours in the rolling 12-month period immediately preceding the commencement of leave. **Note:** Any paid leave or holidays taken are not counted as hours physically worked.

### **Service Member Family Leave**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

Eligible employees who are the spouse, son, daughter, parent, or nearest blood relative of a member or an honorably discharged veteran of the Armed Forces (including a member of the National Guard or Reserves) are entitled to take up to 26 weeks of job-protected accrued paid or unpaid leave during a 12-month period to care for:

- a service member who incurred a serious injury or illness in the line of duty while the member is deployed to a foreign country or that existed before the beginning of the member's deployment and was aggravated by service in the line of duty while the member was deployed to the foreign country. Such serious injury or illness may render the service member medically unfit to perform the duties of the member's office, grade, rank, or rating, and have resulted in the member:

- undergoing medical treatment, recuperation, or therapy;

- being otherwise placed in outpatient status; or

- being otherwise placed on the temporary disability retired list; or

- a veteran undergoing medical treatment, recuperation, or therapy for a serious injury or illness incurred in the line of duty while the veteran was deployed to a foreign country or that existed before the beginning of the member's deployment and was aggravated by service in the line of duty while the member was deployed to the foreign country. Such serious injury or illness is either:

- a continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the member unable to perform the duties of the member's office, grade, rank, or rating;

- a physical or mental condition for which the veteran has received a Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater. (The rating may be based on multiple conditions);

- a physical or mental condition that substantially impairs the veteran's ability to work because of a disability or disabilities related to military service, or would do so absent treatment; or

- an injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

An employee may take leave for this purpose up to five years after the veteran was discharged or released from the military. **Note:** The period between October 28, 2009 and March 8, 2013 does not count when determining whether the five-year period has expired.

The length of such leave, when combined with other FMLA qualifying leave, is limited to 26 weeks during a single 12-month period. For example, during the 12-month period, an employee:

- could claim up to 12 weeks of FMLA leave for the birth of a child, and later claim up to an additional 14 weeks of FMLA leave for a qualifying military illness or injury; and
- could not claim 26 weeks of leave to care for a sibling with a qualifying military illness or injury, and later claim an additional 12 weeks of FMLA leave for the birth of a child.

For information on the certification and approval process, see Chapter 5, Work Leave (I. Family and Medical Leave Act [FMLA] Leave; [Processing Requests for FMLA Leave for Service Member Family Leave](#)).

### **Processing Requests for FMLA Leave for Service Member Family Leave**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

The following table describes the actions taken to request leave to care for a service member or an honorably discharged veteran.

<b>Step</b>	<b>Action</b>
1	<p>The employee submits to the supervisor:</p> <ul style="list-style-type: none"> <li>• a request using the leave request screen in CAPPs; and</li> <li>• any supplemental documentation, if applicable.</li> </ul>
2	<p>The supervisor:</p> <ul style="list-style-type: none"> <li>• reviews the employee's request and supplemental documentation, if applicable;</li> <li>• consults with the DFPS human resources office, employee relations unit; and</li> <li>• within five business days of receiving the leave request:</li> <li>• notifies the employee whether or not he or she is eligible for the FMLA leave using form <a href="#">WH-381, Notice of Eligibility and Rights and Responsibilities</a> ;</li> <li>• (if eligible to use FMLA leave) designates the leave as FMLA leave on the consolidated timesheet in CAPPs by selecting the FMLA override reason code, based on information provided by the employee; and</li> <li>• requests that the employee provide medical certification of the qualifying condition by informing the employee that an authorized</li> </ul>

Step	Action
	<p>health care provider for the service member should supply appropriate medical certification as soon as possible (but no later than 15 calendar days after the date of the supervisor's request). Note: Authorized health care providers include those affiliated with the Department of Defense (DOD), the Department of Veterans Affairs (VA), or TRICARE (the DOD health care program), as well as health care providers listed in Chapter 5, Work Leave (I. Family and Medical Leave Act [FMLA] Leave; Health Care Provider); and:</p> <ul style="list-style-type: none"> <li>• (if for a current service member's condition) form <a href="#">WH-385, Certification for Serious Injury or Illness of Current Servicemember -- for Military Family Leave</a> ; or</li> <li>• (if for a veteran's condition) form <a href="#">WH-385-V, Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave</a> .</li> </ul>
3	<p>The employee and health care provider complete and send to the immediate supervisor form <a href="#">WH-385</a>  or form <a href="#">WH-385-V</a> .</p>
4	<p>The supervisor:</p> <ul style="list-style-type: none"> <li>• consults with the DFPS human resources office, employee relations unit;</li> <li>• (within five business days of receiving the completed form <a href="#">WH-385</a>  or form <a href="#">WH-385-V</a> ) makes the final determination on FMLA designation for leave by sending the employee a completed form <a href="#">WH-382, Designation Notice</a> ; and</li> <li>• maintains for three years the original form <a href="#">WH-385</a>  or form <a href="#">WH-385-V</a> , and copies of form <a href="#">WH-381</a>  and form <a href="#">WH-382</a> .</li> </ul>

### Leave for a Qualifying Exigency

#### Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

An eligible employee is entitled to take up to 12 weeks of job-protected accrued paid or unpaid leave during a 12-month period for a qualifying exigency if the employee is the spouse, son, daughter, or parent of a military member which includes:

- a member of the Regular Armed Forces who has been deployed to a foreign country, or has been notified of impending deployment to a foreign country; or

- a member of the reserve components of the Armed Forces (National Guard and Reserves) who has been deployed to a foreign country, or has been notified of impending deployment to a foreign country under a call or order to active duty in support of a contingency operation.

Military members include the employee's:

- parent (biological, adoptive, step or foster father or mother, or any individual who stood in loco parentis to the employee when he or she was a child);
- son or daughter (biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, and who is of any age); or
- spouse.

The following table describes acceptable qualifying exigency situations.

<b>Leave may be taken for...</b>	<b>Leave could be used...</b>
Short-notice deployment	<p>To address any issue that arises from the fact that a military member is notified of an impending call or order to covered active duty in support of a contingency operation seven or less calendar days prior to the date of deployment.</p> <p><b>Note:</b> Leave taken for this purpose can be used for a period of seven calendar days beginning on the date a military member is notified of an impending call or order to covered active duty in support of a contingency operation.</p>
Military events and related activities	<p>To attend:</p> <ul style="list-style-type: none"> <li>• any official ceremony, program, or event sponsored by the military that is related to the covered active duty or call to covered active duty status of a military member; and</li> <li>• family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American</li> </ul>

<b>Leave may be taken for...</b>	<b>Leave could be used...</b>
	Red Cross that are related to the covered active duty or call to covered active duty status of a military member.
Childcare and school activities	<ul style="list-style-type: none"> <li>• To arrange for alternative childcare when the covered active duty or call to covered active duty status of a military member necessitates a change in the existing childcare arrangement for a biological, adopted, or foster child, a stepchild, or a legal ward of a military member, or a child for whom a military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence;</li> <li>• To provide childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the covered active duty or call to covered active duty status of a military member for a biological, adopted, or foster child, a stepchild, or a legal ward of a military member, or a child for whom a military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence;</li> <li>• To enroll in or transfer to a new school or day care facility a biological, adopted, or foster child, a stepchild, or a legal ward of the military member, or a child for whom the military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence, when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of a military member; and</li> <li>• To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a biological, adopted, or foster child, a stepchild, or a legal ward of the military member, or a child for whom the military member stands</li> </ul>

<b>Leave may be taken for...</b>	<b>Leave could be used...</b>
	<p>in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence, when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of a military member.</p>
<p>Financial and legal arrangements</p>	<ul style="list-style-type: none"> <li>• To make or update financial or legal arrangements to address the military member's absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and</li> <li>• To act as the military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the military member's covered active duty status.</li> </ul>
<p>Counseling</p>	<p>To attend counseling provided by someone other than a health care provider for oneself, for the military member, or for the biological, adopted, or foster child, a stepchild, or a legal ward of the military member, or a child for whom the military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence, provided that the need for counseling arises from the covered active duty or call to covered active duty status of a military member.</p>
<p>Rest and recuperation</p>	<p>To spend time with a military member who is on short-term, temporary, rest and recuperation leave during the period of deployment.</p>

<b>Leave may be taken for...</b>	<b>Leave could be used...</b>
	<p>Note: Eligible employees may take up to 15 days of leave for each instance of rest and recuperation.</p>
<p>Post-deployment activities</p>	<p>To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the military member's covered active duty status; and</p> <p>To address issues that arise from the death of a military member while on covered active duty status, such as meeting and recovering the body of the military member and making funeral arrangements.</p>
<p>Parental care</p>	<p>To arrange for alternative care for a parent of the military member when the parent is incapable of self-care and the covered active duty or call to covered active duty status of the military member necessitates a change in the existing care arrangement for the parent;</p> <p>To provide care for a parent of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the parent is incapable of self-care and the need to provide such care arises from the covered active duty or call to covered active duty status of the military member;</p> <p>To admit to or transfer to a care facility a parent of the military member when admittance or transfer is necessitated by the covered active duty or call to covered active duty status of the military member; and</p> <p>To attend meetings with staff at a care facility, such as meetings with hospice or social service providers for a parent of the military member, when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of the military member but not for routine or regular meetings.</p>

Leave may be taken for...	Leave could be used...
Additional activities	To address other events which arise out of the military member's covered active duty or call to covered active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

For information on the certification and approval process, see Chapter 5, Work Leave (I. Family and Medical Leave Act [FMLA] Leave; [Processing Requests for FMLA Leave for a Qualifying Exigency](#)).

### Processing Requests for FMLA Leave for a Qualifying Exigency

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

The following table describes the actions taken to request leave for a qualifying exigency arising from the employee's spouse, child or parent being deployed or being notified of impending deployment to a foreign country.

Step	Action
1	<p>The employee submits to the supervisor:</p> <ul style="list-style-type: none"> <li>• a request using the leave request screen in CAPPS; and</li> <li>• any supplemental documentation, if applicable.</li> </ul>
2	<p>The supervisor:</p> <ul style="list-style-type: none"> <li>• reviews the employee's request and supplemental documentation, if applicable;</li> <li>• consults with the DFPS human resources office, employee relations unit; and</li> </ul> <p>within five business days of receiving the leave request:</p> <ul style="list-style-type: none"> <li>• notifies the employee whether or not he or she is eligible for the FMLA leave using form <a href="#">WH-381, Notice of Eligibility and Rights and Responsibilities</a> ;</li> <li>• requests a copy of: <ul style="list-style-type: none"> <li>• the military member's covered active duty orders, or</li> </ul> </li> </ul>

Step	Action
	<ul style="list-style-type: none"> <li>• other documentation issued by the military that indicates the military member is on covered active duty or call to covered active duty status in support of a contingency operation, and the dates of the military member's covered active duty service;</li> <li>• (if eligible to use FMLA leave) designates the leave as FMLA leave on the consolidated timesheet in CAPPS by selecting the FMLA override reason code, based on information provided by the employee; and</li> <li>• provides the employee with form <a href="#">WH-384, Certification of Qualifying Exigency for Military Family Leave</a> , and informs the employee that this certification form must be returned to the supervisor as soon as possible (but no later than 15 calendar days after the date of the supervisor's request).</li> </ul>
3	The employee completes and sends to the immediate supervisor form <a href="#">WH-384</a>  .
4	<p>The supervisor:</p> <ul style="list-style-type: none"> <li>• consults with the DFPS human resources office, employee relations unit;</li> <li>• (within five business days of receiving the completed <a href="#">WH-384</a> ) makes the final determination on FMLA designation for leave by sending the employee a completed form <a href="#">WH-382, Designation Notice</a> ; and</li> <li>• maintains for three years the original form <a href="#">WH-384</a>  and copies of form <a href="#">WH-381</a>  and form <a href="#">WH-382</a> .</li> </ul>

### Requirement to Exhaust Paid Leave

#### Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

Employees are required to use all applicable accrued paid leave concurrently with FMLA leave. The use of sick leave (including extended sick leave and sick leave pool leave) under this policy is limited to those situations that meet the definition/criteria for the use of sick leave, extended sick leave, or sick leave pool leave (see Chapter 5, Work Leave [F. Sick Leave; [Policy](#)]; Chapter 5, Work Leave [G. Extended Sick Leave; [Policy](#)]; Chapter 5, Work Leave [H. Sick Leave Pool; [Policy](#)]).

**Exception:** Employees who are on FMLA leave and receiving temporary disability benefit payments or workers' compensation benefits are not required to first exhaust vacation leave or sick leave while receiving those benefits.

## **Health Benefits**

### Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

An employee on an unpaid leave of absence while on FMLA leave is entitled to have health benefits maintained while on leave as if the employee had continued to work, or the employee may choose to reduce the employee's level of coverage to Employee Only.

If the employee paid part of the premiums prior to the leave, the employee continues to pay that part during the leave period.

## **Serious Health Condition**

### Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

The FMLA defines a serious health condition as any illness, injury, impairment, or physical or mental condition that involves either any period of incapacity or treatment connected with inpatient care or continuing treatment by a health care provider that includes any period of incapacity due to:

- a health condition lasting more than three consecutive full calendar days involving treatment of two or more times within 30 days of the first day of incapacity (unless extenuating circumstances exist), by, or under the supervision of, a health care provider, or treatment by a health care provider on at least one occasion with a regimen of continuing treatment. **Note:** Extenuating circumstances are circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider. For example, it would be considered an extenuating circumstance if no appointments were available during that time period;
- pregnancy, including severe morning sickness, or time needed for prenatal care;
- a chronic serious health condition, which is one that continues over an extended period of time, requires periodic visits to a health care provider, and may cause episodic periods rather than a continuing period of incapacity, such as asthma, diabetes, or epilepsy;

- a permanent or long-term condition for which treatment may not be effective, if the employee is under the supervision of a health care provider (but is not necessarily undergoing active treatment) such as when the employee has suffered a severe stroke or is in the terminal stages of cancer; or

- any period of absence to receive multiple treatments by, or under the orders of, a health care provider either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity for more than three consecutive full calendar days if left untreated, such as dialysis for kidney disease or chemotherapy for cancer.

### **Inpatient Care**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

Inpatient care under the FMLA is an overnight stay in a hospital, hospice, or residential medical care facility. It also includes any period of incapacity or any subsequent treatment in connection with such inpatient care.

### **Health Care Provider**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

A health care provider is broadly defined to include:

- doctors of medicine or osteopathy;
- physician's assistants;
- podiatrists;
- dentists;
- optometrists;
- chiropractors (limited to treatment consisting of manual manipulations of the spine to correct a subluxation as demonstrated by x-ray);
- nurse practitioners;
- nurse midwives;
- clinical psychologists;
- clinical social workers;
- Christian Scientist practitioners (listed with the First Church of Christ, Scientist, in Boston, Massachusetts); and

- any other health care provider approved under the Uniform Group Insurance Plan.

With the exception of the Christian Scientist practitioners, health care providers must be authorized to practice by the state in which they practice.

Health care providers who practice in a country other than the United States may be included in the FMLA definition of a health care provider if they are:

- authorized to practice in accordance with the law of that country, and
- performing within the scope of his or her practice as defined under such law.

For additional guidance, consult with the DFPS human resources office, employee relations unit.

### **Intermittent or Reduced Leave**

#### Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

Under certain circumstances, employees may take FMLA leave for a serious health condition on an intermittent or reduced leave schedule. Such leave must be granted if medically necessary.

<b>Schedule Type</b>	<b>Description and Example</b>
Intermittent leave	Leave taken in separate blocks of time (rather than in one continuous period of time) for the same serious health condition, such as required for chemotherapy or physical therapy.
Reduced schedule	A schedule that reduces an employee's usual number of hours per workweek or workday for a period of time, such as switching from full-time to part-time for a limited period.

### **Medical Certification**

#### Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

Employees must provide the supervisor with medical certification by the health care provider to support a request for FMLA leave under the following situations:

- to care for the employee's spouse, child, or parent who has a serious health condition;

- to care for the employee's spouse, son, daughter, parent, or nearest blood relative who is a member of the Armed Forces, and who is rendered medically unfit to perform the duties of the member's office, grade, rank, or rating; or
- to care for the employee's own serious health condition, which renders the employee unable to perform the essential functions of the job.

Medical certification is provided using either form [WH-380-E, Certification of Health Care Provider for Employee's Serious Health Condition](#) , form [WH-380-F, Certification of Health Care Provider for Family Member's Serious Health Condition](#) , or form [WH-385, Certification for Serious Injury or Illness of Covered Servicemember – for Military Family Leave](#) .

If the employee fails to provide the supervisor with a completed form [WH-380-E](#) , form [WH-380-F](#) , or form [WH-385](#) , the supervisor must contact the DFPS human resources office, employee relations unit for additional guidance.

**Note:** If the agency determines the employee's medical certification is incomplete or insufficient, the supervisor must provide the employee with form [WH-382, Designation Notice](#) , indicating that the employee must provide the supervisor with the specified additional information within at least seven calendar days or the leave request may be denied.

### **Validity of Medical Certification**

#### Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

If the supervisor receives complete and sufficient medical certification but doubts the validity of the certification, the agency may require the employee to obtain a second certification from a health care provider selected by the agency, at the agency's expense.

The following table describes the actions taken, based on the results of the second opinion:

<b>If the second opinion...</b>	<b>Then...</b>
agrees with the first opinion	the employee is notified that the leave will be designated as FMLA.
does not agree with the first opinion and the employee agrees, in	the employee is notified that the leave will not be designated as FMLA.

If the second opinion...	Then...
writing, that the leave is not protected under FMLA	
does not agree with the first opinion and the employee disputes this finding	<p>the agency may require the employee to obtain certification from a third health care provider, again at the agency's expense. The agency and employee must jointly approve of the third health care provider. The third medical certification is final and binding.</p> <p><b>Note:</b> If the agency chooses not to require a third opinion, the employee is notified that the leave will be designated as FMLA.</p>

Pending the receipt of the second or third medical certification, the employee is provisionally entitled to the benefits of the FMLA, including maintenance of group health insurance.

**Note:** If the employee refuses to obtain the second or third opinion, the employee is notified that the leave will not be designated as FMLA.

### **Documentation of Birth or Placement of Child**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

Employees may be required to provide the supervisor with a copy of the birth certificate, or a copy of foster care or adoption papers, to support a request for FMLA leave under the following situations:

- the birth of the employee's child and care of the infant, or
- the placement of a child with the employee for adoption or foster care and the care of the newly placed child.

### **Both Spouses Employed by the Same State Agency**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

If both spouses are employed by the same state agency and both are eligible for FMLA leave, they are entitled to a **combined** total of

- 12 weeks of leave during any rolling 12-month period when the qualifying event is:
  - the birth of the employees' child and care of the infant, or

- the placement of a child with the employees for adoption or foster care and the care of the newly placed child; or
- 26 weeks of leave during a 12-month period when the qualifying event is the qualifying military illness or injury of the employees' son, daughter, parent, or nearest blood relative.

### **Advance Notification**

#### Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

Under the FMLA, employees must let the agency know that they need leave. The employee's spouse, family member, or other responsible party may also provide notice if the employee is personally unable to do so.

Ordinarily, the employee must provide at least 30 days advance notice when the need is foreseeable.

Examples of foreseeable needs include:

- an expected birth,
- placement for adoption or foster care, or
- planned medical treatment.

If 30 days advance notice is not possible, such as for a medical emergency, notice must be given as soon as practicable, ordinarily within two business days.

### **Processing Requests for FMLA Leave for Employee's or Family Member's Serious Health Condition, and Birth or Child Placement**

#### Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

The following table describes the actions taken to request leave for an FMLA qualifying event.

<b>Step</b>	<b>Action</b>
1	The employee submits to the supervisor: <ul style="list-style-type: none"> <li>• a request using the leave request screen in CAPPs; and</li> <li>• any supplemental documentation, if applicable.</li> </ul>
2	The supervisor:

Step	Action
	<ul style="list-style-type: none"> <li>• reviews the employee's request and supplemental documentation, if applicable;</li> <li>• consults with the DFPS human resources office, employee relations unit; and</li> <li>• within five business days of receiving the leave request:</li> <li>• notifies the employee whether or not he or she is eligible for the FMLA leave using form <a href="#">WH-381, Notice of Eligibility and Rights and Responsibilities</a> ;</li> <li>• (if eligible to use FMLA leave) designates the leave as FMLA leave on the consolidated timesheet in CAPPs by selecting the FMLA override reason code, based on information provided by the employee or his or her representative; and</li> <li>• requests that the employee provide: <ul style="list-style-type: none"> <li>• (if for a medical condition other than a pregnancy) medical certification of the qualifying condition by: <ul style="list-style-type: none"> <li>• informing the employee that the relevant health care provider should supply appropriate medical certification as soon as possible (but no later than 15 calendar days after the date of the supervisor's request); and</li> <li>• giving the employee: <ul style="list-style-type: none"> <li>• (if for the employee's own serious health condition) a job description, a list of physical requirements for the employee's job and form <a href="#">WH-380-E, Certification of Health Care Provider for Employee's Serious Health Condition</a> , or</li> <li>• (if for a covered family member's serious health condition) form <a href="#">WH-380-F, Certification of Health Care Provider for Family Member's Serious Health Condition</a> ;</li> <li>• (if for a pregnancy) a copy of the birth certificate or other acceptable medical documentation; or</li> <li>• (if for foster care or adoption) foster care or adoption papers.</li> </ul> </li> </ul> </li> </ul> </li> </ul>

Step	Action
3	If not for a pregnancy, foster care, or adoption, the employee and health care provider complete and send to the immediate supervisor form <a href="#">WH-380-E</a> or form <a href="#">WH-380-F</a> .
4	<p>The supervisor:</p> <ul style="list-style-type: none"> <li>• consults with the DFPS human resources office, employee relations unit;</li> <li>• (within five business days of receiving the completed form <a href="#">WH-380-E</a> or form <a href="#">WH-380-F</a>, and/or other relevant documentation) makes the final determination on FMLA designation for leave by: <ul style="list-style-type: none"> <li>• sending the employee a completed form <a href="#">WH-382, Designation Notice</a>; and</li> <li>• (if the leave request is approved for the employee's own serious health condition) attaching a job description, a list of physical requirements for the employee's job, and <a href="#">Form 5359, Fitness for Duty Certification</a>; and</li> <li>• maintains for three years all relevant documentation, including the original form <a href="#">WH-380-E</a> or form <a href="#">WH-380-F</a> and copies of form <a href="#">WH-381</a> and form <a href="#">WH-382</a>.</li> </ul> </li> </ul>

If the request is for extended sick leave (ESL) or sick leave pool (SLP) leave, follow the procedures in Chapter 5, Work Leave (G. Extended Sick Leave; [Processing Requests for Extended Sick Leave](#)), or Chapter 5, Work Leave (H. Sick Leave Pool; [Processing Requests for Leave from the Sick Leave Pool](#)).

### **Insurance Coverage While on Unpaid FMLA Leave**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

If an employee is on unpaid FMLA leave and

- has insurance coverage other than "Employee Only" (and the employee does not wish to drop the additional coverages),
- wishes to continue to receive the state's share of the insurance premium, and
- is on unpaid leave for
- a full calendar month, or

- less than a full calendar month, but does not receive enough salary for the month to cover the employee's premium deduction,

the employee must pay the employee's share by personal check, cashier's check or money order, payable to "Employees Group Insurance Fund."

The Employees Retirement System of Texas (ERS) must receive the payment no later than the last day of the month in which the employee is on unpaid leave.

### **Leave Can Be FMLA, Even When Not Requested**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

It is not necessary for an employee to identify an absence or the need for leave specifically as FMLA leave.

The supervisor must determine whether any request for leave, paid or unpaid, meets the requirements for FMLA leave.

### **When Any Type of Leave Is Requested**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

The supervisor should determine an employee's eligibility for FMLA leave whenever an employee requests any type of leave, paid or unpaid, for one of the following reasons:

- the birth of the employee's child and care of the infant;
- the placement of a child with the employee for adoption or foster care and the care of the newly placed child;
- the care of the employee's spouse, son, daughter, parent, or nearest blood relative who is a member or an honorably discharged veteran of the Armed Forces, and who may be rendered medically unfit to perform the duties of the member's office, grade, rank, or rating;
  - a qualifying exigency arising from the employee's spouse, child or parent being deployed or being notified of impending deployment to a foreign country; or
  - the health condition of the employee or the employee's spouse, child, or parent causes the employee to be absent for more than three consecutive full calendar days.

For more information on the supervisor's responsibilities in determining whether requested leave should be designated as FMLA leave, see Family

and Medical Leave Policy - Questions and Answers; Chapter 5, Work Leave (I. Family and Medical Leave Act (FMLA) Leave; [Processing Requests for FMLA Leave for Service Member Family Leave](#)); Chapter 5, Work Leave (I. Family and Medical Leave Act (FMLA) Leave; [Processing Requests for FMLA Leave for a Qualifying Exigency](#)); and Chapter 5, Work Leave (I. Family and Medical Leave Act (FMLA) Leave; [Processing Requests for FMLA Leave for Employee's or Family Member's Serious Health Condition, and Birth or Child Placement](#)).

### **Place Eligible Employees on FMLA Leave Immediately**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

The supervisor places a qualified employee on FMLA leave immediately after determining the employee's eligibility, without waiting until after all paid leaves are used.

### **FMLA Runs Concurrently with Other Leaves**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

FMLA leave runs concurrently with the following leaves, whenever the reason for the employee's absence qualifies for FMLA leave:

- sick leave,
- vacation leave,
- state compensatory leave,
- FLSA overtime,
- leave from the sick leave pool,
- extended sick leave,
- leave associated with Workers' Compensation, and
- unpaid leave.

### **FMLA Leave and Holidays or Office Closures**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

The following table describes when a holiday or office closure counts against an employee's FMLA entitlement.

<b>If a holiday or office closure occurs while an employee is using FMLA...</b>	<b>Then the time...</b>
in one continuous block	counts against the FMLA entitlement.
while on an intermittent or reduced leave schedule	does not count against the FMLA entitlement.

For definitions of intermittent leave and reduced schedule, see Chapter 5, Work Leave (I. Family Medical Leave Act [FMLA] Leave; [Intermittent or Reduced Leave](#)).

### **Retroactive Designation of FMLA Leave**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

A supervisor may designate leave as FMLA-qualified after the fact if

- an employee on leave unexpectedly experiences an FMLA leave event and requests an extension of leave, in which case all leave after the qualifying event may be counted against the employee's entitlement;
- the supervisor is unaware until the employee returns from leave that the reason for the absence was an FMLA qualifying event; or
- the supervisor is unable to confirm that the leave qualifies as FMLA leave, the employee returns from leave or does not provide requested medical certification, and the supervisor subsequently confirms that the absence qualifies as FMLA leave.

### **Reinstatement**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

The FMLA generally requires employees to be reinstated to the same or an equivalent position on return from leave.

### **Denying Reinstatement**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

Under the FMLA, an employee may be denied reinstatement at the end of leave if

- the agency can show an employee would not otherwise have been employed at the time reinstatement is requested, such as when the position is eliminated during a reduction in force; or

- the employee is unable to perform an essential function of the position, with or without reasonable accommodation, because of a physical or mental condition, including the continuation of a serious health condition.

### **FMLA and Light Duty Assignments**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

Under the FMLA, an employee may refuse an offer of a modified or alternate-duty assignment until the employee's FMLA covered leave expires.

For more information, see Chapter 3, General Employment ([P. Return to Work Program](#)).

### **Release to Return to Work**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

Before returning to work following FMLA leave for the employee's own serious health condition, the employee must provide the supervisor with [Form 5359, Fitness for Duty Certification](#),  and a [DWC 73, Work Status Report](#)  (if for a workers' compensation-related injury or occupational illness) completed by the employee's treating health care provider. The supervisor is responsible for providing the employee with [Form 5359](#) , a job description, and a list of physical requirements for the employee's job. The health care provider will provide the employee with [DWC 73](#)  (if for a workers' compensation-related injury or occupational illness).

### **FMLA and ADA**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

In some cases, a serious health condition may also qualify as a disability under the ADA. If so, an employee may request a reasonable accommodation, or a position for which he or she qualifies, although at a different salary, shift, or pattern.

For more information on the ADA and reasonable accommodations, see Chapter 16, Equal Employment Opportunity ([D. Reasonable Accommodation](#)).

### **Inability to Work after FMLA**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

If an employee is unable to return to work due to the employee's own serious health condition after exhausting the FMLA leave entitlement,

- the employee may exhaust any remaining accrued paid leave;
- the DFPS commissioner may grant leave without pay for up to a total of 12 months, including FMLA leave; or
- the employee may be dismissed.

### **Intent Not to Return to Work**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

If an employee gives unequivocal notice of intent not to return to work, the agency's obligations cease under FMLA to maintain health benefits (subject to COBRA requirements) and to restore the employee to employment.

However, these obligations continue if an employee indicates a desire to return to work.

### **Providing Notice**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

Each agency must post notices explaining FMLA provisions and procedures for filing complaints with the Department of Labor's Wage and Hour Division.

The notices must be posted where employees and applicants for employment can readily see them.

### **FMLA Medical Records**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

Records and documents relating to medical certifications, recertifications, or medical histories of the employee or employee's family members should be maintained, to the extent allowed by law, as confidential medical records in a file separate from the employee's personnel files.

For more information, see Chapter 14, Employment Records ([E. Restricted Access to Employee Medical Information](#)).

### **Additional Information**

Chapter 5: Work Leave (I. Family and Medical Leave Act (FMLA) Leave)

For additional information on FMLA leave, see [Family and Medical Leave Policy - Questions and Answers](#) and [Manager's FMLA Checklist](#) .

## **O. Administrative Leave for Outstanding Performance**

DFPS Human Resources Manual January 2018

### **Policy**

Chapter 5: Work Leave (O. Administrative Leave for Outstanding Performance)

The DFPS commissioner or designee may grant paid administrative leave, not to exceed 32 hours in a fiscal year, to an employee as a reward for outstanding performance.

Administrative leave may be granted for a single act of outstanding performance, or for the outstanding performance of a task, as long as the reason is documented. Administrative leave may not be granted for the purpose of keeping a departing or departed employee on the payroll (i.e., as severance or part of a settlement).

To award administrative leave for outstanding performance, the supervisor enters the awarded hours onto the employee's consolidated timesheet in CAPPs.

Employees may carry administrative leave from one fiscal year to the next in the same biennium.

The DFPS commissioner must approve carrying administrative leave not used at the end of the biennium into the next biennium.

Employees separating from employment may use administrative leave only to the end of the month in which they last physically worked.

## **Q. Leavekeeping Requirements**

DFPS Human Resources Manual January 2018

### **Policy**

Chapter 5: Work Leave (Q. Leavekeeping Requirements)

Each employee must use the consolidated timesheet in CAPPs to accurately report and account for all absences from work with paid leave, authorized holiday, or unpaid leave.

### **Authorization**

## Chapter 5: Work Leave (Q. Leavekeeping Requirements)

The Texas Government Code, Chapter 661, authorizes and governs leave records for state employees.

### **Leave Records**

#### Chapter 5: Work Leave (Q. Leavekeeping Requirements)

The DFPS commissioner requires the following be maintained in CAPPs for each employee:

- time and attendance records,
- a record of the accrual and use of vacation and sick leave,
- a record of the reason an employee takes leave, if the law requires the employee to state the reason, and
- a record accounting for all leave taken as sick leave, vacation leave, other paid leave, unpaid leave, or other absence.

### **Recording Leave and Time**

#### Chapter 5: Work Leave (Q. Leavekeeping Requirements)

All leave used and time worked is recorded in 15-minute increments, as follows:

<b>Amount of Time Worked</b>	<b>Recorded as:</b>
0 to 7 minutes	disregard, if infrequent
8 to 22 minutes	15 minutes or .25 hour
23 to 37 minutes	30 minutes or .5 hour
38 to 52 minutes	45 minutes or .75 hour
53 to 67 minutes	1 hour

### **Employee Responsibilities**

#### Chapter 5: Work Leave (Q. Leavekeeping Requirements)

Employees must:

- give proper and timely notice to the supervisor of any anticipated leave requirements;

- notify the supervisor as soon as possible when they will be absent from work due to illness or other unanticipated reasons, preferably before the shift begins;
- notify the supervisor when they are late to work;
- provide all required information and documentation to process leave requests; and
- submit a leave request to the supervisor using the consolidated timesheet in CAPPS.

Each employee who is not exempt from the Fair Labor Standards Act (FLSA) must certify on his or her consolidated timesheet in CAPPs that, for the preceding month, the employee:

- worked scheduled hours;
- entered any deviation from scheduled hours to ensure federal compliance;
- entered all overtime hours worked; and
- entered all leave taken.

For more information on FLSA, see Chapter 6, Working Overtime ([C. FLSA Overtime](#)).

## **Supervisor Responsibilities**

Chapter 5: Work Leave (Q. Leavekeeping Requirements)

Supervisors must use the consolidated timesheet in CAPPs, to:

- approve and enter regular work schedules;
- authorize or approve authorization of all leave or overtime;
- ensure that each employee accounts for all absences from work with paid leave, holidays, or unpaid leave; and
- ensure that each employee who is not exempt from the Fair Labor Standards Act (FLSA) completes the monthly time certification on the consolidated timesheet in CAPPs, For more information on FLSA, see Chapter 6, Working Overtime ([C. FLSA Overtime](#)).

## **Chapter 6: Working Overtime**

### **A. Overview**

DFPS Human Resources Manual January 2018

#### **Purpose**

Chapter 6: Working Overtime (A. Overview)

This chapter explains federal and state laws on overtime.

#### **Application**

Chapter 6: Working Overtime (A. Overview)

The policy applies to all employees of the Department of Family and Protective Services.

#### **References**

Chapter 6: Working Overtime (A. Overview)

The federal statutes referenced or relied upon in this chapter include the Fair Labor Standards Act (FLSA) of 1938, 29 USC §§ 201, et seq.

The state statutes referenced or relied upon in this chapter include:

- Texas Government Code, Chapter 659, Compensation;
- Texas Government Code, Chapter 662, Holidays for State Employees; and
- Texas Health and Safety Code, Chapter 258, Mandatory Overtime for Nurses Prohibited.

### **B. Working Overtime**

DFPS Human Resources Manual January 2018

#### **Policy**

Chapter 6: Working Overtime (B. Working Overtime)

The agency compensates employees with time off or pay for the overtime hours they are required to work, consistent with federal and state laws.

An employee's hours worked are recorded on the consolidated timesheet in the Centralized Accounting and Payroll/Personnel System (CAPPS) when the total hours worked for a day exceed the employee's scheduled hours for that day. Other methods for recording overtime hours are not allowed (e.g., Office Sign-in/Sign-out Sheets, unauthorized paper forms or electronic excel spreadsheets).

Each employee who is not exempt from the Fair Labor Standards Act (FLSA) must certify on his or her consolidated timesheet in CAPPS that, for the preceding month, the employee:

- worked scheduled hours;
- entered any deviation from scheduled hours to ensure federal compliance
- entered all overtime hours worked; and
- entered all leave taken.

For more information on FLSA, see Chapter 6, Working Overtime ([C. FLSA Overtime](#)).

### **Authority**

Chapter 6: Working Overtime (B. Working Overtime)

The Federal Fair Labor Standards Act (FLSA) is a federal law that regulates overtime for workers, including state employees, who are covered by the Act.

Chapters 659 and 662 of the Texas Government Code govern overtime and compensatory leave for state employees.

### **Required Overtime**

Chapter 6: Working Overtime (B. Working Overtime)

An agency manager or supervisor may require an employee to work overtime. Supervisors are responsible for managing work effectively, so that employees are allowed or required to work beyond regularly assigned work hours only when there is a business necessity.

### **Supervisor's Authority**

Chapter 6: Working Overtime (B. Working Overtime)

Supervisors and managers should:

- require employees to request permission before working overtime;
- require employees to enter total hours worked over scheduled hours in CAPPS;
- use Performance and Conduct Management when permission is not requested in advance;
- ensure that FLSA non-exempt employees complete their monthly time certification on the consolidated timesheet in CAPPS;
- deny approval of compensatory time for overtime hours worked when FLSA exempt employees fail to request permission in advance; and
- ensure that employees working authorized overtime hours receive appropriate supervision and assistance as needed.

### **C. FLSA Overtime**

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#### **Policy**

Chapter 6: Working Overtime (C. FLSA Overtime)

Most HHS non-management employees are covered by the FLSA and are entitled to FLSA overtime.

FLSA overtime is the amount of time physically worked by an FLSA-nonexempt employee in excess of 40 hours in a workweek.

Any paid leave or holidays taken are not counted as hours worked in determining FLSA overtime.

#### **Compensation for FLSA Overtime**

Chapter 6: Working Overtime (C. FLSA Overtime)

Employees who are covered by the FLSA are entitled to compensation for the hours worked in excess of 40 either by

- allowing or requiring the employee to take time off at the rate of 1.5 hours for each hour of overtime, or
- at the discretion of the DFPS commissioner paying the employee at the rate of 1.5 times the employee's current regular rate of pay when granting time off is impractical.

#### **Pre-Shift Duty**

## Chapter 6: Working Overtime (C. FLSA Overtime)

The time before or after regular duty hours that an FLSA-nonexempt employee is required to be at work is subject to the overtime provisions of the FLSA. This time must be taken into account when calculating hours worked or overtime.

### **Insignificant Amounts of Time**

#### Chapter 6: Working Overtime (C. FLSA Overtime)

Periods of less than eight minutes of overtime worked need not be computed for overtime purposes if they do not occur with any regularity. Conversely, the same amount of time lost as a result of occasional tardiness should not require the use of leave.

In the overtime situation, the employee should be allowed that time off during the same day or workweek. Tardiness time should be made up the same day or workweek.

### **Limit on FLSA Overtime**

#### Chapter 6: Working Overtime (C. FLSA Overtime)

Employees who are covered by the FLSA may accumulate FLSA overtime credit of not more than 240 hours.

Employees who are engaged in a public safety activity, an emergency response activity, or a seasonal activity may not accumulate more than 480 hours, pursuant to 29 USC §207(o)(3)(A). Employees qualify for this higher limit of accumulated overtime credit only if their work regularly involves public safety, emergency response, or seasonal activities.

Employees must be paid for FLSA overtime worked in excess of the limits on accumulations, at a rate equal to 1.5 times the employee's regular rate of pay.

### **Overtime and Employee Volunteers**

#### Chapter 6: Working Overtime (C. FLSA Overtime)

An employee may perform volunteer service for his or her employer, even if the employee receives expenses, a nominal fee, or reasonable benefits to perform the service, if the service is in a different capacity from the employee's regular job.

An FLSA-nonexempt employee who volunteers services in a capacity similar to the employee's own job is considered to be working at his or her job and may be eligible for overtime leave.

For more information, see Chapter 3, General Employment (H. Employee Volunteers).

### **FLSA Overtime and Transfers**

Chapter 6: Working Overtime (C. FLSA Overtime)

For information on a transferring employee's accrued FLSA overtime, see Chapter 3, General Employment (E. Employee Transfers; [Accrued FLSA Overtime and Transfers](#)).

### **D. State Compensatory Time**

DFPS Human Resources Manual January 2018

#### **Policy**

Chapter 6: Working Overtime (D. State Compensatory Time)

The following table defines state compensatory time for state employees.

<b>For employees who are . . .</b>	<b>State compensatory time is accumulated when . . .</b>
exempt from the FLSA overtime provisions (FLSA- exempt)	the combination of hours worked, paid leave, and holidays exceeds 40 hours in a workweek.
not exempt from the FLSA overtime provisions (FLSA-nonexempt)	the employee has not physically worked more than 40 hours in a workweek, but the combination of hours worked, paid leave, and holidays exceeds 40 hours in a workweek.

**Exception:** With the exception of staff in medical positions, an FLSA-exempt employee in salary group B26 and above is prohibited from earning state compensatory time. However, if the employee is not in an executive-level position, he or she may request an exception to this prohibition by providing the Agency Commissioner or designee with written documentation that explains the business need for the additional work time, the expected duration of the project, and an estimate of the amount of state compensatory time anticipated.

**Note:** Affected employees will continue to earn state compensatory time when they are required to work on a national or state holiday.

## **Compensation**

Chapter 6: Working Overtime (D. State Compensatory Time)

Employees exempt and nonexempt from the FLSA are compensated for state compensatory time either by

- allowing or requiring compensatory time off during the 12-months following the workweek in which the overtime was accumulated, at a rate not to exceed equivalent time; or
- paying on a straight-time basis for work on a holiday or for state compensatory time hours, only if the employees work in shortage occupations or the legislature otherwise specifically authorizes payment and when taking time off would disrupt normal business functions. For more information, see Chapter 3, General Employment ([D. Critical Shortage Occupations](#)); Chapter 7, Compensation (J. Other Pay and Allowances; Regular and Holiday Compensatory Time Pay); and Chapter 7, Compensation (J. Other Pay and Allowances; [Regular and Holiday Compensatory Time Pay During a Disaster](#)).

FLSA exempt Emergency Management Personnel, as determined by the DFPS commissioner or designee, who work during a state or federally declared disaster may be compensated for state compensatory time either by:

- allowing or requiring compensatory time off during the 18-months following the workweek in which the overtime was accumulated, at a rate not to exceed equivalent time; or
- paying on a straight-time basis.

For more information, see Chapter 7, Compensation (J. Other Pay and Allowances; [Regular and Holiday Compensatory Time Pay During a Disaster](#)).

## **Limit on Accumulation**

Chapter 6: Working Overtime (D. State Compensatory Time)

Employees may not accumulate a balance of more than 160 hours of state compensatory leave credit.

The supervisor should not approve an employee's reported earned state compensatory leave if the employee is at or above the 160 hour limit.

**Note:** Holiday compensatory time is not included in this limit.

### **State Compensatory Time and Part-Time Employees**

Chapter 6: Working Overtime (D. State Compensatory Time)

A part-time, FLSA-exempt employee may accrue state compensatory time only when the sum of hours worked, holidays, and other paid leave during a workweek exceeds the number of hours that the part-time employee is designated to work. For this purpose, the number of hours worked over the number of hours that the employee was scheduled to work during the workweek is the amount of state compensatory time accrued.

Part-time, FLSA-nonexempt employees may accrue state compensatory time only when the total hours worked, plus paid leave used, plus Monday through Friday official state holiday hours, minus any FLSA overtime hours, exceeds 40.

Hours physically worked by part-time, FLSA-nonexempt employees in excess of their scheduled workweek, up to and including 40 hours, should be handled as follows:

- reduce the employee's scheduled work hours in a subsequent workweek in the same pay period (calendar month) by the number of excess hours, or
- if reduction of hours is not feasible, pay the employee at the employee's regular rate of pay for the excess hours.

### **Employee's Regular Place of Employment**

Chapter 6: Working Overtime (D. State Compensatory Time)

An employee may accumulate state compensatory time off for hours worked during any calendar week at the employee's personal residence if the employee obtains the advance approval of the DFPS commissioner or designee.

### **Holiday Compensatory Time**

Chapter 6: Working Overtime (D. State Compensatory Time)

Employees who are required to work on national or state holidays are entitled to compensatory time off during the 12 months after the holiday. The amount of compensatory time accrued is equal to the amount of holiday time worked, not to exceed eight hours per holiday.

### **Time Limit on State Compensatory Usage**

## Chapter 6: Working Overtime (D. State Compensatory Time)

State compensatory leave must be taken during the 12-month period following the date on which the leave was accrued, or it lapses.

**Exception:** FLSA exempt Emergency Management Personnel, as determined by the DFPS commissioner or designee, who work during a state or federally declared disaster may take their earned state compensatory leave during the following 18-month period following the date on which the leave was accrued, or it lapses. For more information, see Chapter 7, Compensation (J. Other Pay and Allowances; [Regular and Holiday Compensatory Time Pay During a Disaster](#)).

### E. Using Leave

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#### Requesting FLSA Overtime or State Compensatory Leave

##### Chapter 6: Working Overtime (E. Using Leave)

Employees may request FLSA overtime or state compensatory leave by submitting a request to their supervisors using the leave request screen in CAPPS.

#### Allowing Employees to Use Leave

##### Chapter 6: Working Overtime (E. Using Leave)

Leave for overtime worked must be granted to employees within a reasonable time after requested by the employee unless to do so would unduly disrupt the activities of the agency.

**Note:** A supervisor may require a Fair Labor Standards Act (FLSA) nonexempt employee to use his or her FLSA overtime in lieu of requested vacation leave or state compensatory leave, but should not require this substitution if it would result in the employee's loss of:

- vacation leave due to fiscal year end conversion into sick leave; or
- state compensatory leave due to reaching the 12 month or 18 month expiration date.

For more information on maximum number of vacation leave hours that an employee can be carried forward into the next fiscal year, see Chapter 5, Work Leave (E. Vacation Leave; [Rates for Full-Time Employees](#)) and Chapter 5, Work Leave (E. Vacation Leave; [Rates for Part-Time Employees](#)). For more information on the loss of state compensatory time, see Chapter 6,

Working Overtime (D. State Compensatory Time; [Time Limit on State Compensatory Usage](#)).

### **State Compensatory Leave Requested 90 Days in Advance**

Chapter 6: Working Overtime (E. Using Leave)

A supervisor must allow employees to use state compensatory leave if it is requested in writing at least 90 days in advance of the date it is to be taken.

If the request cannot be approved for the date requested, the supervisor must provide the employee with an alternate date on which the time can be taken.

### **Workers' Compensation and FLSA Overtime Leave**

Chapter 6: Working Overtime (E. Using Leave)

Employees may be encouraged, but not required, to exhaust accumulated FLSA overtime leave before drawing income benefits for a work-related illness or injury.

Employees may take FLSA overtime leave while drawing income benefits from workers' compensation.

### **Transfers and State Compensatory Leave**

Chapter 6: Working Overtime (E. Using Leave)

For information on a transferring employee's accrued compensatory time, see Chapter 3, General Employment (E. Employee Transfers; [Accrued State Compensatory Leave and Transfers](#)).

### **Separation, State Compensatory Leave, and FLSA Overtime**

Chapter 6: Working Overtime (E. Using Leave)

Employees separating from employment may use up to 160 hours of accumulated state compensatory leave. State compensatory leave may be used past the end of the month last physically worked.

Employees subject to the FLSA and separating from employment are paid for the accumulated FLSA overtime hours. **Exception:** Employees identified in an approved business continuity staffing plan may use FLSA overtime. For more information on business continuity staffing, see Chapter 15, Reorganization, Reduction-in-Force and Business Continuity Staffing Plans ([C. Business Continuity Staffing Plans](#)).

## **Chapter 9: Performance Evaluation**

### **A. Overview**

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#### **Purpose**

Chapter 9: Performance Evaluation (A. Overview)

The performance evaluation process is the meaningful assessment of an employee's performance.

#### **Types of Employee Performance Evaluations**

Chapter 9: Performance Evaluation (A. Overview)

Performance evaluations are completed for the following reasons:

- Probationary evaluations are administered at the end of the employee's initial probationary period. For more information, see Chapter 3, General Employment ([C. Probationary Period](#)).
- Annual evaluations are administered every year, either at the employee's work anniversary or 12 months after the employee's most recent evaluation.
- Special evaluations may be administered for reasons that include:
  - documenting changes to essential job functions,
  - documenting performance prior to a change in supervision,
  - documenting significant improvement or problematic conduct or performance, or
  - supporting management decisions (such as merit awards or training selection).

#### **Performance Evaluation Form**

Chapter 9: Performance Evaluation (A. Overview)

The evaluating supervisor uses [Form 5401](#) , Employee Performance Evaluation to document the performance evaluation session between the supervisor and employee.

The completion of this evaluation form is the conclusion of the process of engagement between the supervisor and employee regarding expectations and performance.

Instructions for completing [Form 5401](#)  are included on the form. The evaluating supervisor is responsible for uploading the completed form into the Centralized Accounting and Payroll/Personnel System (CAPPS).

The supervisor may access completed performance evaluations he or she has uploaded into CAPPS. The employee has access to all of his or her performance evaluations in CAPPS.

## **B. Evaluating the Employee**

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### **Policy**

Chapter 9: Performance Evaluation (B. Evaluating the Employee)

The evaluating supervisor uses [Form 5401](#)  to rate the employee's performance against DFPS performance criteria and the essential functions of the job.

### **Performance Criteria**

Chapter 9: Performance Evaluation (B. Evaluating the Employee)

The performance criteria found on [Form 5401](#)  are five characteristics that measure how employees accomplish the work while following DFPS agency mission and goals.

On [Form 5401](#) , the supervisor marks whether the employee "meets expectations" or "does not meet expectations" for the performance criteria. The supervisor must provide comments on all performance criteria marked "does not meet expectations." Examples of successful accomplishment of these criteria include:

Professionalism

The employee:

- Considers the agency's mission statement, values and vision in making decisions and taking actions.

- Displays professional attitude, actions and work attire
- Promotes and demonstrates appropriate respect for cultural diversity among co-workers and all work-related contacts.
- Exhibits leadership qualities.
- Builds constructive and effective relationships.

#### Policy & Rules Compliance

The employee:

- Adheres to DFPS rules, policies, and ethics.
- Attends work regularly in accordance with agency policies and procedures.
- Keeps agency records, information and client's names confidential.

#### Personal Conduct

The employee:

- Treats clients, co-workers, and management with courtesy and respect.
- Follows state and agency standards of conduct.
- Acts in a manner that promotes DFPS agency mission and goals.

#### Communication

The employee:

- Voices opinions and offers suggestions in a diplomatic manner.
- Demonstrates clear, concise and, effective communications skills.
- Uses content (words, level of detail) appropriate for audience.
- Keeps supervisor and co-workers informed of work activities.
- Interacts with people at all levels in the organization in a positive manner.
- Actively and attentively listens.

#### Teamwork

The employee:

- Helps accomplish the missions, goals, and objectives of the group.

- Assists others in achieving group and/or program goals.
- Accepts assignments willingly.
- Encourages participation of group members with diverse opinions, experiences and backgrounds.

The supervisor shares these performance criteria with new employees within the first 30 days of employment.

## **Essential Job Functions**

Chapter 9: Performance Evaluation (B. Evaluating the Employee)

Essential job functions (EJFs) record the employee's performance on certain areas assigned to the employee's specific job functions. The supervisor will mark either "exceeds expectations," "meets expectations," or "does not meet expectations" for the employee's performance on each EJV. The supervisor must provide comments on all EJFs marked either "does not meet expectations" or "exceeds expectations."

When possible, an evaluating supervisor should reference objective measurements for the employee's job performance. Supervisors may use tasks and standards to develop these objective measures.

The supervisor shares these essential job functions with new employees within the first 30 days of employment or when the EJFs of the job change.

### **Notes:**

- Supervisors are responsible for ensuring the EJFs evaluated are accurately reflected on the position description for the employee's job on the [Form 5364, Position Description](#) , or the position description in the job posting in CAPPS.
- In accordance with Section 654.0155 of the Texas Government Code, supervisors must review each employee's job duties at least annually to ensure the job description accurately reflects the work performed and that the appropriate classification and FLSA status are assigned. If the employee's job duties have changed significantly, a job audit should be requested. For more information on job audits, see Chapter 7, Compensation ([B. Job Audits and Fair Labor Standards Act Reviews](#)).

## **Supervisor Comments**

Chapter 9: Performance Evaluation (B. Evaluating the Employee)

An evaluating supervisor uses [Form 5401](#)  to provide comments on the employee's overall job performance, including strengths and accomplishments. For employees whose position requires license verification, record whether or not the employee's license is current and valid as of the date of the evaluation.

**Note:** When commenting on an employee's performance, the evaluating supervisor must not include any confidential information, including personally identifiable patient health or genetic information.

### **Finalizing the Evaluation**

Chapter 9: Performance Evaluation (B. Evaluating the Employee)

At the end of the evaluation period, the supervisor rates the employee's performance and, if consistent with direction from the supervisor's management chain, shares the evaluation with the second-line supervisor. The immediate supervisor meets with the employee to:

- review the evaluation, and
- provide the employee with a copy of [Form 5401](#) .

After the supervisor and employee meet:

- the immediate supervisor and employee sign the evaluation form. The supervisor may sign on behalf of the employee if the employee refuses to sign or is unavailable to sign the form; and
- the supervisor uploads the signed [Form 5401](#)  to CAPPs using the instructions on the form.

**Note:** To be eligible for a recurring or one-time merit payment, supervisors must be current on all direct report performance evaluations. See Chapter 7, Compensation ([E. Merit Compensation](#)).