STATE OF TENNESSEE
ATTENDANCE & LEAVE MANUAL

July 2021

Introduction

The State of Tennessee Attendance and Leave Manual is a collection of policies established by the Tennessee Department of Human Resources (DOHR). Pursuant to Tennessee Law, the DOHR Commissioner "shall direct and supervise all administrative and technical human resources activities of state service." *See* Tenn. Code Ann. § 8-30-104. This includes development of personnel policies, methods, procedures, and standards for all state agencies.

The Attendance and Leave Manual provides general guidance to employees about the privileges they have as employees and the duties and responsibilities we all share. It is not intended, nor is it considered to be a contract of employment. Nothing in this handbook constitutes a waiver of the State's sovereign immunity.

Changes in Federal laws, State laws, rules or policies will take precedence over information provided in the manual. Although DOHR will make every attempt to give employees notice about upcoming changes to the manual, DOHR has the right to change information provided in the manual at any time for any reason without prior notice.

Employees are encouraged to read the manual and retain it for easy reference. Questions should be directed to your supervisor, your human resource division, or DOHR.

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GLOSSARY

CHAPTER 1
WORK SCHEDULES

1.01 OFFICE HOURS

The central offices of all departments and agencies, as well as field offices not requiring irregular work hours or schedules, shall be open for the transaction of public business from 8:00 a.m. until 4:30 p.m. local time, each day except Saturdays, Sundays, and legal holidays. The established office hours of other organizational units may vary from one unit to the next depending upon the nature of the work and the demand for the unit's service.

Hourly equivalents for days used in this manual are for employees on a seven and one-half (7.5) hour workday, thirty-seven and one-half (37.5) hours per week schedule. Certain employees have an eight- hour (8.0) hour workday, forty (40.0) hours per week schedule.

The same rules shall apply to all full-time schedules.

1.02 WORK WEEK

The standard work week for accounting purposes begins at 12:01 a.m. Sunday and runs one hundred and sixty-eight (168) continuous hours in the form of seven (7) consecutive twenty-four (24) hour periods to 12:01 a.m. the following Sunday.

1.03 REGULAR WORK SCHEDULES

The regular work schedule for most employees is from 8:00 a.m. until 4:30 p.m. local time, Monday through Friday. Local conditions may cause these hours to vary, but an employee scheduled to work seven and one-half (7.5) hours per day, Monday through Friday, is considered to be on a regular work schedule.

1.04 IRREGULAR WORK SCHEDULES

Several departments and agencies may require irregular work schedules for their employees because of the nature of the work. With prior approval of the department or agency's appointing authority, management at each work location has the authority to schedule arrival and departure times and specific workdays

for employees depending upon local needs. The use of flex time and compressed work weeks is also subject to approval of the appointing authority. Any work schedule totaling more than thirty-seven and one-half (37.5) hours per week must have prior approval of the Commissioners of Human Resources and Finance and Administration.

An employee on an irregular work schedule must revert to a normal work week schedule when using a prolonged period of annual, sick, or compensatory leave, when placed on extended leave without pay status, and when paid through the Sick Leave Bank.

1.05 DAYLIGHT SAVINGS TIME AND SHIFT

Daylight savings time is observed in accordance with the Uniform Time Act.

A. Employees on duty at 2:00 a.m. when daylight savings time goes into effect in the Spring and moves forward by one (1) hour, although they actually work one
(1) hour less than a full shift, should be given credit for a full shift.

B. When time reverts to standard time in the Fall, employees on duty during that shift will work and be compensated for an extra hour. This hour should be considered when determining eligibility for overtime compensation for that week.

Authority:
Tenn. Code Ann. § 4-4-105
Rules of the Department of Human Resources: 1120-6-.02 and 1120-6-.03

CHAPTER 2
LUNCH AND WELLNESS BREAKS

2.01 LUNCH HOUR

Employees shall be allowed a one (1) hour unpaid meal period. The employee should be relieved of all work responsibilities for the purpose of eating a meal. The authorized meal period must be taken during the work shift and may not be used to alter arrival or departure time by not using the meal period or any part thereof.

This provision shall not apply to the following employees:

- Uniformed members of the Departments of Safety & Homeland Security and Revenue
- Wildlife Officers
- Park Rangers
- Employees of the Department of Transportation in the following classifications:
    - Highway Response Operator 1 or 2
    - Highway Response Supervisor 1 or 2
    - Communications Dispatcher 1 or 2
    - Transportation Management Center Operator
    - Transportation Management Center Supervisor 1 or 2
- Non-administrative officials of the Departments of Children's Services or Correction
- Employees assigned to hospitals or institutions in the Departments of Mental Health and Substance Abuse Services and Intellectual and Developmental Disabilities.

Examples of charging leave before and after the lunch hour are:

Example 1: The employee arrives at work at 8:00 a.m. and works continuously until 1:00 p.m. The employee then requests annual leave for the remainder of the day. The employee actually worked 5.0 hours and charged 2.5 hours of annual

leave.

Example 2: The employee arrives at work at 8:00 a.m. and works until 1:00 with the usual lunch hour and then requests annual leave for the remainder of that day. The employee will be charged 3.5 hours of annual leave, having actually worked 4.0 hours and taken an hour for lunch.

2.02 ON-CALL

Certain employees are "on-call" during their meal period. These employees are relieved of their duties during the meal period but must remain easily reachable to report back to work, if necessary. These employees receive extra compensation only if they are called back to work.

2.03 FIXED POST ASSIGNMENT

Certain employees cannot be relieved of duties to have a meal period during their work shift. This situation usually results from "fixed post" assignments in which employees may not leave their workstation. These employees are considered to be at work even if they are able to eat a meal during their work shift and must be compensated accordingly.

2.04 REST OR WELLNESS BREAKS

Appointing authorities or agency heads, at their discretion, may allow their employees two (2) rest or wellness breaks, of fifteen (15) minutes duration each, during each workday. These rest and wellness breaks are a privilege, not a right, and should be taken at times that do not interfere with service to the public. If an employee chooses not to take advantage of these breaks, this time may not be accumulated and added to lunch periods or any type of leave.

A rest or wellness break may not be used to alter arrival or departure time or used in conjunction with the lunch hour.

With supervisor approval, wellness breaks may be combined into one (1) thirty (30)

minute break.

2.05 BREAK TIME FOR NURSING MOTHERS

An employee who needs to express breast milk for the nursing child shall be allowed a reasonable break time. The employee should also be afforded a space to do so that is not a bathroom, is shielded from view, and is free from intrusionfrom coworkers and the public. Break time for nursing mothers shall be allowedin addition to other provided breaks. Break time for nursing mothers shall not be used to alter the employee's scheduled arrival or departure time.

Authority:
Fair Labor Standards Act (29 U.S.C. §§ 201, et seq.)
Patient Protection and Affordable Care Act (P.L. 111-148)
Tenn. Code Ann. §§ 4-4-105, 8-30-104, 8-30-406 and 50-1-305
Rules of the Department of Human Resources: 1120-06-.06, 1120-6-.07, and 1120-6-.08

CHAPTER 3
ADMINISTRATIVE LEAVE (Excused and Unexcused Absences)

3.01 EXCUSED ABSENCE AUTHORIZATION

An excused absence is leave with pay granted under Tennessee law and/or Department of Human Resources rules or policies without being charged against the employee's compensatory, annual, or sick leave. This leave should be charged as administrative leave with pay unless noted differently.

3.02 PARTICIPATION IN STATE ASSESSMENTS AND INTERVIEWS

An employee may be granted an excused absence to participate in a state administered assessment or at a State of Tennessee job interview. An excused absence will not be granted to participate in external assessments or interviews.

Recordkeeping: Employee timesheets should be coded as Administrative Leave for Interviews and Exams (ADMIV).

3.03 ELECTIONS - TIME ALLOWANCE FOR VOTING

Any person entitled to vote in an election held in this state may be granted paid leave on the day of the election for a reasonable period of time, not to exceed three (3) hours, to vote during the time polls are open in the county where the employee resides. Requests for such leave shall be made to the supervisor before 12:00 p.m. on the day before the election.

If the work schedule of an employee begins three (3) or more hours after the opening of the polls or ends three (3) or more hours before the closing of polls of the county where the employee is a resident, the employee may not take time off under this section.

Recordkeeping: Employee timesheets should be coded as Administrative Leave for Election (ADMEL).

This section applies to all elections for public office, for candidacy for public office, and on questions submitted to the people.

Example: In most elections, the polls close at 7:00 p.m. Therefore, state employees whose normal shifts end at 4:30 p.m. and who have requested to leave early to vote as prescribed above, should be excused at 4:00 p.m. on that date to ensure that they have a reasonable period of time to vote.

Since polls are open until 8:00 p.m. in the Eastern Time Zone, this policy only affects employees in that time zone working a schedule other than 8:00 a.m. until 4:30 p.m. Therefore, only employees having less than three (3) hours available between the normal end of their shift and 8:00 p.m., Eastern Time Zone, should be notified of this policy. Otherwise, the policy only applies to employees in the Central Time Zone.

3.04 EXCUSED ABSENCE WITHOUT PAY FOR VOTING MACHINE TECHNICIAN

A voting machine technician appointed by the county election commission who performs such duties on a part-time basis and who is a full-time state employee shall be excused without pay from the employee's assigned duties for the day(s) required for the performance of the technician's duties. No employee being excused under this section shall be required to use annual or compensatory leave to perform the technician's duties. An employee may request compensatory or annual leave in lieu of time without pay.

3.05 BLOOD DONATION

Employees participating in a state-sponsored blood drive will be considered on duty during the time necessary to give blood, plus a reasonable length of time for recovery. Any time away from the job beyond that period, due to complications, must be charged as sick, compensatory, or annual leave.

Employees with rare or special blood types contacted by the American Red Cross and its counterparts in other areas of the state and asked to donate blood will be considered on duty during the time required.

Employees donating platelets through the Pheresis Program should be granted "administrative leave with pay" for the time required, workload permitting. The difference in policy for pheresis donors is necessary due to the frequency one may give platelets versus whole blood (every two (2) weeks versus every fifty-six (56)

days).

3.06 EMPLOYEE ASSISTANCE PROGRAM (EAP)

Employees are to be excused to receive up to ten (10) hours per year to attend EAP sponsored programs or counseling.[1] While supervisors may maintain informal records of employees' attendance at EAP sponsored programs or counseling, no formal documentation should be maintained in the employee's personnel file. EAP counseling sessions are considered confidential. For this reason, employees should be considered "on duty" during the time EAP programs or counseling occurs and this time coded as working time on the employee's attendance and leave record (up to ten (10) hours).

Should the employee be referred by an EAP counselor to other professional services for additional counseling or treatment, any further time off should be coded as compensatory, annual, or sick leave as appropriate.

3.07 ABSENCE DUE TO INCLEMENT WEATHER

Inclement weather does not usually warrant the closing of state offices. Absence due to inclement weather requires that each employee make a personal judgment pertaining to the employee's safety in traveling to and from work. Loss of work time for this reason is charged against the employee's compensatory or annual leave accumulation. If the employee has no compensatory or annual leave, then the time absent is charged as leave without pay. Employees who make the effort to report on time (employee leaving at normal departure time from home) and who report within a reasonable period should not be required to use leave for that absence.

Occasionally, extraordinary emergency conditions caused by inclement weather may warrant the closing of some state offices by the Governor or Governor's designee. Any decision to close state offices due to inclement weather should be countywide and made county to county. Communication of any closing decision will be made as quickly as practical by email, the State's mass notification alert system, or public broadcast media.

[1] This includes time for travel. For example, an employee may have up to five 1-hour sessions of EAP. The employee will also be allowed to up to 30 minutes before and after each session for travel. This totals to the 10-hour allotment.

Recordkeeping: Employee timesheets should be coded as Administrative Leave for Inclement Weather (ADMIW).

Certain employees who are employed by the Departments of Mental Health & Substance Abuse Services, Intellectual and Developmental Disabilities, Correction, Children's Services (group homes, schools, and institutions), Military, Transportation, Safety & Homeland Security, and others which require the employee to maintain the health and safety of others may be required to report to work during periods of inclement weather.

Employees who work in a county where state offices are closed due to extreme weather will receive administrative leave with pay for regularly scheduled working hours during the period of closing. Employees who must work when offices in their work county are closed are eligible for regular compensatory time for hours actually worked during the period of closing up to their regular scheduled hours for the workday. Hours worked in excess of regularly scheduled hours are compensated as overtime hours at the end of the work week based on each employee's FLSA status. Such time worked by an executive grade employee should be treated the same as time worked on a holiday. Part-time employees are not eligible for administrative leave or compensatory time. Employees on previouslyapproved leave during the affected period must continue to charge the appropriate leave and will not be eligible for administrative leave.

Recordkeeping; Employee timesheets should be coded as Regular Inclement Weather Shift 1, 2, or 3 (RIWS1 – 1st shift, RIWS2 – 2nd shift, or RIWS3 – 3rd shift).

Employees already scheduled to work at home through an Alternative Workplace Solutions (AWS) arrangement must continue to work from home to the extent possible. However, if an employee is participating in the Mobile Work AWS arrangement on the day State offices are closed, the Appointing Authority will have the discretion to either allow the employee to be excused from work and granted discretionary leave with pay or require the employee to work remotely.

3.08 ABSENCE DUE TO UNINHABITABLE BUILDING

Employees who are not able to work in a building that is considered uninhabitable due to power outages, flooding, physical damage, or other valid reasons should be

granted administrative leave with pay for all regularly scheduled hours during the affected period. Employees who are required by management to work during the periods that the building is considered uninhabitable may receive regular compensatory time for hours actually worked during the affected period up to their regularly scheduled hours for the workday. Hours worked in excess of regularly scheduled hours are compensated as overtime hours at the end of the work week based on each employee's FLSA status.

Only those employees who are directly affected by a building closing are eligible for administrative leave with pay or compensatory time. Employees who normallywork in an affected building or area who were assigned to a different work location that was not considered uninhabitable during the affected period are not covered under this policy. Such time worked by an executive grade employee should be treated the same as time worked on a holiday. Part-time employees are not eligible for administrative leave or compensatory time. Employees on previously approved leave during the affected period must continue to charge the appropriate leave and will not be eligible for administrative leave. Similarly, employees scheduled as AWS during the affected period are not covered under this policy.

The Commissioner of the Department of Human Resources, acting on a recommendation from the requesting agency's appointing authority, shall have the sole authority to declare a building uninhabitable. If a determination is made to deem the building uninhabitable, the agency's appointing authority should be notified as soon as possible. Authorized personnel in the agency may deem a building uninhabitable in emergency situations that are considered hazardous to the safety of the employees or when situations occur outside the regular Monday through Friday work schedule. When this occurs, the Department of Human Resources should be notified as soon as possible. A follow-up written notification to the Department of Human Resources is required in all uninhabitable situations. The uninhabitable building policy only applies in instances in which an entire county is not closed. All employees within the county in which the building is located that are not affected by the building closure will not be eligible for any administrative leave with pay or compensatory time.

Employees cease to receive administrative leave with pay or compensatory time once the building is considered habitable again or an alternative work site is provided. Administrative leave and compensatory time granted under this policy may not exceed thirty-seven and one-half (37.5) hours for a seven and one-half (7.5)

hour employee, or forty (40.0) hours for an eight (8.0) hour employee, without additional authorization from the Department of Human Resources.

Recordkeeping: Employee timesheets should be coded as Regular Uninhabitable Building Shift 1, 2, or 3 (RUBS1 – 1st shift, RUBS2 – 2nd shift, or RUBS3 – 3rd shift).

3.09 ABSENCE DUE TO DECLARED STATE OF EMERGENCY

The State of Tennessee recognizes that there will be instances where the Governor declares a state of emergency resulting from an emergency beyond local control. However, it shall be the policy of the State to make every effort to maintain normal working hours by initiating departmental Continuity of Operations Plans (COOP) and/or Emergency Workforce Management Plans during these periods in order to continue providing necessary services.

These conditions may require each employee to make a personal decision regarding safety in traveling to and from the workplace. As with absences due to inclement weather, employees who do not feel it is safe to travel should contact their supervisor. If the employee is eligible for an AWS arrangement during the affected period, they may be allowed to work remotely at agency discretion. Employees who otherwise do not report to work may use accumulated annual or compensatory leave for their absence. If the employee has no compensatory or annual leave, then the time absent is charged as leave without pay. Employees who make every effort and report to work within a reasonable period should not be required to take leave for that absence. To be eligible, the employee must leave for work at his or her normal departure time in anticipation of regular arrival time.

In extraordinary situations, the Governor, in consultation with the Tennessee Emergency Management Agency (TEMA) and the Departments of Transportation, Safety & Homeland Security, Health, Human Resources or other departments, may determine that state government offices should be closed in a particular county or counties due to a declared state of emergency. Notice of the closing of state offices will be timely given to local media for broadcast to the general public. If this occurs, employees other than those who work in 24-hour facilities, are required to work on an emergency basis, or participate in an AWS arrangement, shall be excused from work and granted administrative leave with pay for any scheduled hours.

Employees who are required to work when their offices have been otherwise closed

shall be granted compensatory time for hours actually worked during the period of closing up to their regularly scheduled hours for the workday. Hours worked in excess of regularly scheduled hours may be compensated as overtime, depending on each employee's status under the Fair Labor Standards Act. An appointing authority may grant administrative leave with pay to executive and non-compensatory employees who are required to work during a time when offices are closed. This administrative leave shall be equal to the hours worked and must be taken within twelve (12) months from the time worked.

This leave shall not be granted to employees who were previously scheduled to be working under an AWS arrangement and are otherwise not required to work in a structure deemed uninhabitable.

In the event the Governor declares a state of emergency as the result of a natural or man-made disaster, an appointing authority may grant up to ten (10) workdays of discretionary leave with pay to an employee whose primary residence becomes uninhabitable due to the disaster. Additional restrictions can be found by reviewing DOHR Policy 12-039.

3.10 HEALTH SERVICES

Administrative leave with pay may be granted for an employee to attend state sponsored health promotion-related programs and activities or to receive medical treatment through the State Employee Health Center.

The employee must go directly to the health clinic or specified location and return immediately to work if he/she works in a county that is a reasonable distance from where the health services are being conducted. **A maximum of four and onehalf (4.5) hours of administrative leave with pay may be granted for an employee to receive health services.**

Recordkeeping: Employee timesheets should be coded as Administrative Leave for Health Services (ADMHS).

3.11 STATE GROUP INSURANCE APPEALS

Employees may appeal state group insurance plan decisions when they feel benefits were not provided in accordance with the plan document. In addition to a review of the written record, employees may make a personal presentation as part of their

appeal. Employees should call the Benefits Administration hotline at 615-741-3590 or 800-253-9981 or reach out to the Benefits Coordinator in their agency.

If an employee chooses to appear in person and is successful in the appeal, it is appropriate to code the employee's timesheet as regular time worked.

3.12 APPEARANCE AT APPEALS DISCUSSIONS & HEARINGS

The Step I Appeals Discussion is the first step of the discipline appeals process for preferred service employees and involves the participation of the affected employee. When an employee appears at a Step I Appeal Discussion, the employee's timesheet will be coded as regular time worked. If the employee fails to participate or appear for the scheduled Step I Appeal Discussion, without prior notice and absent extenuating circumstances, the employee's time will be coded as leave without pay.

The Board of Appeals (Step III hearing) serves as the final step of the appeals process for preferred service employees. When an employee appears at a Boardof Appeals hearing at the discretion of a proper authority, the employee's timesheet will be coded as regular time worked.

3.13 SPECIALIZED DISASTER RELIEF SERVICES LEAVE

A state employee who is a certified disaster service volunteer of the American Red Cross may be granted administrative leave with pay, not to exceed fifteen (15) regularly scheduled workdays in each calendar year, to participate in specialized disaster relief services for the American Red Cross. This leave shall not affect the employee's regular leave status.

The employee must submit a written request from the American Red Cross giving details concerning the specialized disaster relief services to the employee's appointing authority for approval.

An employee who works an irregular schedule must be placed on a regular schedule (seven and one-half (7.5) or eight (8.0) hours per day) for the time this leave is being used. Holidays and scheduled off duty days do not count toward the fifteen (15) workdays allowed.

Recordkeeping: Employee timesheets should be coded as Administrative Leave for Disaster Relief (ADMDR).

3.14 BEREAVEMENT LEAVE

Bereavement leave will be granted for three (3) days in the event of the death of an employee's immediate family member (defined as spouse, children, stepchildren, siblings, parents, grandparents, grandchildren, stepparents, foster parents and parents-in-law) without charge to the employee's accumulated leave balance. The granting of bereavement leave does not increase the total number of days provided for in Chapter 5 Sick Leave, nor does it affect the use of annual leave.

Example: An employee had a sick leave balance of 90.5 hours. The employee is granted 3 days (22.5 hours) of paid bereavement leave. The bereavement leave is not deducted from the employee's sick leave, leaving a sick leave balance of 90.5 hours. If, the employee also used 2 days (15.0 hours) of sick leave, then this is deducted, leaving a sick leave balance of 75.5 hours.

Recordkeeping: Employee timesheets should be coded as Bereavement Leave (BER) with pay.

For additional information on bereavement leave please refer to Chapter 5 Sick Leave.

3.15 DISCRETIONARY LEAVE WITH PAY

Appointing authorities may grant discretionary leave with pay to an employee for a period of time not to exceed ten (10) working days when it is considered necessary for the welfare of the employee or the proper operation of the agency. The Commissioner of the Department of Human Resources must approve any period of discretionary leave that exceeds the ten (10) working days.

Discretionary leave with pay cannot be approved to supplement leave already provided for in Tennessee law. For example, sick leave is for health-related issues and annual leave is for personal, vacation and recreational needs. Such leave is legislated and cannot be extended or supplemented by granting discretionary leave with pay.

Recordkeeping: Employee timesheets should be coded as Administrative Leave with Pay

(ADM).

3.16 UNEXCUSED ABSENCES

Absence of an employee after compensatory, annual or sick leave has been requested and denied prior to the occurrence of the leave should always be considered an unexcused absence.

Leave time not approved in advance may be considered an unexcused absence as long as the employee has been informed in writing, of the consequences of not obtaining approval in advance on at least one prior occasion. Consequences in this situation include the supervisor's authority to require that leave time not approved in advance be taken without pay along with instruction that continued unexcused absences could result in disciplinary action.

While an unexcused absence may be without pay, a supervisor may choose to allow an employee to reduce the employee leave balance by the amount of time used. In this situation, a notation should be placed on the leave request form indicating that the time off is considered an unexcused absence.

Sick leave is not considered an unexcused absence if the employee presents a valid statement from a doctor within a reasonable amount of time after it is eitherrequested by a supervisor or the employee returns to work.

Authority:
Tenn. Code Ann. §§ 2-1-103, 2-1-106, 2-9-103, 8-30-104, 8-50-113, and 8-50-810
Rules of the Department of Human Resources 1120-06

CHAPTER 4 ANNUAL LEAVE

4.01 ELIGIBILITY TO ACCRUE LEAVE

Employees scheduled to work one thousand six hundred (1,600) hours or more in a fiscal year, whether compensated on hourly, daily, monthly, or piecework basis, shall accrue leave upon completion of a calendar month of service or major portion thereof. A major portion of a month is defined as one-tenth (0.1) of one (1) hour over fifty percent (50%) of the employee's portion scheduled working hours in any month.

4.02 EMPLOYEES ELIGIBLE TO ACCRUE LEAVE

The following employees are eligible to accrue leave:

A. Employees with regular, temporary provisional and interim appointments who are employed full-time.

B. Employees serving on full-time temporary appointments accrue leave after completing six (6) months of active service. The first day following completion of six (6) months of service is regarded as the beginning date for the purpose of accruing leave. Each period of temporary employment should be treated separately.

C. Any part-time or seasonal employee scheduled to work one thousand, six hundred (1,600) hours or more in a fiscal year.

D. Any employee currently eligible to accrue leave who receives a full-time emergency or full-time temporary appointment shall continue to accrue leave, provided there is no break in service.

4.03 EMPLOYEES INELIGIBLE TO ACCRUE LEAVE

The following employees are not eligible to accrue leave:

A. Employees on temporary appointments who have worked less than six (6) months.

B. Employees on educational leave, with or without pay.

C. Employees on emergency appointments.

D. Employees on Division of Claims/Workers' Compensation Administration leave.

E. Employees on terminal leave.

F. Employees on military leave without pay.

G. Employees on special leave without pay.

H. Employees on parental leave without pay.

I. Seasonal or part-time employees scheduled to work less than one thousand six hundred (1,600) hours in a fiscal year.

J. Employees being paid through the Sick Leave Bank.

K. Limited term employees (such as commissioners) are not eligible to accrue leave while serving in limited term appointments. However, should these employees later be appointed to a position eligible to accrue leave, their time served in a full-time limited term appointment can be used to establish the proper leave service group.

4.04 LEAVE ACCRUAL

Leave is accrued on a regular workday basis. One (1) day of leave is equivalent to seven and one half (7.5) hours for employees on a thirty-seven and one-half (37.5) hour per work week schedule. One (1) day of leave is equal to eight (8.0) hours for employees on a forty (40) hour per work week schedule. Employees on any authorized work cycle changing from one schedule to another will have their hourly balances adjusted accordingly.

Example 1: (231.5 hours accrued on a 7.5- hour schedule changing to an 8.0-hour schedule):

231.5 hours x 1.0667 = 249.9 hours for 8.0 hours schedule
(8.0 divided by 7.5 = 1.0667)

Example 2: (231.5 hours accrued on an 8.0-hour schedule changing to a 7.5-hour schedule):

231.5 hours x 0.9375 = 217.0 hours for 7.5 hours schedule
(7.5 divided by 8.0 = 0.9375)

4.05 LEAVE ACCUMULATION

An eligible employee earns and accumulates annual leave for each month of service or major portion thereof.

Group amounts earned and maximum allowable accumulations follow:

Service Group 1: Employees with less than five (5) years of full-time service accrue annual leave at the rate of one (1) day (or 7.5 hours) for each month of service or major portion thereof and may accumulate a maximum of thirty (30) workdays (or two hundred and twenty five (225.0) hours). Employees working an eight (8.0) hour schedule accrue eight (8.0) hours per month and may accumulate a maximum of two hundred and forty (240.0) hours.

Service Group 2: Employees with five (5) years and less than ten (10) years of full-time service accrue annual leave at the rate of one and one-half days (or 11.3 hours) for each month of service or major portion thereof and may accumulate a maximum of thirty-six (36) workdays (or 270.0) hours. Employees working an eight (8.0) hour schedule accrue twelve (12.0) hours per month and may accumulate a maximum of two hundred and eighty-eight (288.0) hours.

Service Group 3: Employees with ten (10) years and less than twenty (20) years of full-time service accrue annual leave at the rate of one and three fourths days (or hours) for each month of service or major portion thereof and may accumulate a maximum of thirty-nine (39) workdays (or 292.5 hours). Employees working an eight (8.0) hour schedule accrue fourteen (14.0) hours per month and may

accumulate a maximum of three hundred and twelve (312.0) hours.

Service Group 4: Employees with twenty (20) years or more full-time service accrue annual leave at the rate of two (2) days (15.0 hours) for each month of service or major portion thereof and may accumulate a maximum of forty-two (42) workdays (315.0) hours. Employees working an eight (8.0) hour schedule accrue sixteen (16.0) hours per month and may accumulate a maximum of three hundred and thirty-six (336.0) hours.

Temporary (employees with less than six (6) months service), emergency and limited term full-time employees are eligible to receive longevity, if hired before June 30, 2015, but are not eligible to accrue annual or sick leave.

4.06 RECORDING TIME

Time should be recorded in hours and tenths of hours, i.e., one and one-half hours should be entered as 1.5. To assist in recording attendance and leave data accurately and quickly, the following equivalent time chart showing hours and tenths of hours instead of hours and minutes should be used. When deducting against the employee for absences, if the time absent falls between the designated times shown always move back to the previous tenth of an hour. When computing overtime or compensatory time earned of any kind, move to the next higher tenth of an hour over the number of minutes worked if the time falls between the designated tenths. The decimal breakdown on the following chart enables quick determination of equivalent minutes:

EQUIVALENT TIME CHART

.1 hour = 6 minutes or less
.2 hour = 12 minutes
.3 hour = 18 minutes
.4 hour = 24 minutes
.5 hour = 30 minutes
.6 hour = 36 minutes
.7 hour = 42 minutes
.8 hour = 48 minutes
.9 hour = 54 minutes
1.0 hour = 60 minutes

4.07 SCHEDULING ANNUAL LEAVE

Any employee may request to use annual leave at any time by application to the employee's appropriate supervisor through Edison. The request is subject to approval of the supervisor, who must plan the work under the supervisor's control and authorize absences only at such times as the employee can be spared. Exceptions may apply to members of the armed services or as the result of an emergency.

Annual leave may not be advanced. Annual leave may not be taken until earned, which occurs when the employee completes work for the major portion of the month.

An employee leave request should be completed and submitted to the supervisor before leave may be approved. Leave for unexpected illness or other extenuating situations may be provisionally approved verbally by the supervisor. The first day an employee returns from leave, a request must be submitted by the employee and must then be approved by the supervisor. Upon return, the employee must submit a request for leave to cover the period previously approved.

4.08 YEARLY TRANSFER OF ANNUAL LEAVE TO SICK LEAVE

Annual leave earned in excess of the maximum allowable accumulation for an employee's service group is transferred to the employee's sick leave account. The employee's last hire month will be the month when the annual leave total exceeding the maximum allowed for a particular service group transfers to the sick leave account. Employees can accumulate leave in excess of the maximum amount allowed for up to one (1) year before it is transferred to the sick leave account at the end of the day on the last day of the month.

4.09 USING COMPENSATORY LEAVE BEFORE ANNUAL LEAVE

The use of earned compensatory leave is subject to approval of the department, agency head, designated manager, or supervisor. When an employee requests annual leave and compensatory leave is available, the compensatory leave shall be used first, unless the accumulated annual leave balance at the beginning of the pay period is within two (2) days of the maximum accrual hours for the employee's service group. When an employee is within two (2) days of the

maximum, annual leave may be used until the employee falls below the (2) day maximum at that point the employee will use compensatory leave for the remainder of the pay period. Any employee whose annual leave balance is not within the two (2) day maximum at the beginning of a pay period must use compensatory leave during the entire pay period. The term "two (2) days" shall mean fifteen (15.0) hours for thirty-seven and one half (37.5) hours-per week employees and sixteen (16.0) hours for forty (40.0) hours-per week employees.

Employees' service groups change on the first day of the month. Therefore, to determine eligibility to use annual leave before compensatory leave, the new service group maximum hours shall be used.

For more information on Compensatory Time, please reference Chapter 18 of this manual.

4.10 ANNUAL LEAVE PAYMENT UPON SEPARATION/TERMINATION

Upon separation, an employee shall be paid in a lump sum for any unused annual leave accumulation unless dismissed from state service for gross misconduct, as defined by DOHR Rule 1120-10-.04(4)(c). When an employee is terminated for gross misconduct or resigns in lieu of termination for gross misconduct, the employee forfeits payment of the annual leave balance. The agency shall submit a detailed report of gross misconduct, including the statutory citation for the action which could lead to criminal prosecution of the employee along with the notice of separation to the Department of Human Resources. See Chapter 16 regarding method of payment for unused annual leave for separating/terminating employees.

4.11 LEAVE OF ABSENCE FOR PARTICIPATION IN CERTAIN ATHLETIC COMPETITIONS

An employee may be granted compensatory, annual or special leave without pay if the employee is a group leader, coach, official or athlete who comprises the official delegation of the United States in World, Pan-American or Olympic level competition. The employee is eligible for leave provided that the employee:

A. is actively working at the time the request is made;

B. the request of such a leave of absence is made within a reasonable period which, whenever practicable, will be fifteen (15) days prior to the date the employee

wishes such leave to commence; and

C. the employee shall:

1. provide the actual or anticipated dates of the competition in which the employee expects to compete or participate, together with the dates of any official training camp period required for preparation for competition;

2. specify the total number of days of leave necessary in order to participate in and prepare for the athletic competition(s) involved; and

3. submit satisfactory evidence of qualification and selection for participation in athletic competitions.

Leave shall be available only for the purpose of preparing for and engaging in the competitions stated above, and in no event shall the total of all such leave exceed the period of the official training camp and competition combined plus a reasonable amount of travel time or ninety (90) calendar days a year, whichever is less.

An employee who has been granted leave and is for any reason unable to further participate in the training period or competition covered by such leave, shall be required to immediately notify the employee's appointing authority of such inability and such employee may be required to return to and resume the duties of the employee's position provided the employee is physically able to do so. An employee who has traveled to locations of actual competition shall not berequired to return prior to completion of the competition or until the scheduled departure date of the team of which the employee is a member, whichever is later.

4.12 ANNUAL LEAVE TRANSFERABLE BETWEEN STATE AGENCIES

Unless there is a break in service, annual leave must be transferred to and will be accepted from state agencies, higher education institutions, legislative and judicial branches.

Annual leave earned while employed by a local school board in Tennessee is not transferable.

4.13 USING ANNUAL LEAVE FOR EMPLOYEE MEETINGS

An officer or employee belonging to an employee association qualified for payroll deduction for association dues may use two (2) days of accrued annual leave each year to attend a statewide meeting, conference or convention of the association. The leave shall be granted in accordance with the provisions of Tennessee Code Annotated, Section 8-50-110. Also, pursuant to Tennessee Code Annotated, Section 8-50-110(c), an officer or employee belonging to an employee association which is qualified for payroll deduction for association dues and is a member of the official board of such association may receive up to twelve (12) days administrative leave days per calendar year in order to attend board meetings.

4.14 PROCEDURES FOR ADMINISTERING LEAVE

A. Establishing a Service Group - In establishing an employee's service group for annual leave, the amount of service accrued by the employee must be determined. All leave accruing service accumulated while employed in any agency, office, or department of the state or in any state college or university shall be credited for purposes of leave computation. Any former member of the Tennessee General Assembly who, as of July 1, 1988, was eligible to accrue annual leave shall be credited for each year of legislative service as twelve (12) months of full-time service for all time served in the Tennessee General Assembly.

   When an employee changes appointment types or returns from extended leave, the agency shall verify the service anniversary and longevity dates with the Department of Human Resources.

B. Computing Creditable Service - The amount of total leave accruing service (present and prior) with the State of Tennessee should be determined. When special leave has been taken to the extent that an employee did not work for a month or a major portion of a month, that month is not included in computing service, unless the employee was on military, paid educational, or Division of Claims Administration leave. Employment with a local school board in Tennessee is not creditable service in most circumstances. However, for a full- time employee of the Department of Education holding a position requiring three (3) years of experience as a certified professional employee in the Tennessee public school system, prior teaching or administrative

experience in Tennessee public schools shall be creditable for purposes of establishing the employee's service group, not to exceed three (3) years.

C. Establishing Employees' Service Anniversary Dates/Changing Employees' Leave Group Categories - The service anniversary date is the date in the future when the employee is projected to change a leave group. It is calculated from the first of the month of the current period of employment for which the first day of annual leave was earned. It may also be calculated from a computed appointment date in the past that is established by crediting all verified periods of creditable service as though service had been continuous. Once established, a category leave date/group does not change unless thereis a break in service or unless there is a period of special leave without payin excess of the major portion of a month.

D. Reinstating Prior Service - Reinstating prior service may result in changing the service group. The employee must notify his/her supervisor of the prior service and make the request for the modification. Leave adjustments resulting from retroactive changes to service groups should be calculated back to the employee's last hire date.

4.15 CORRECTIONS FOR PRIOR ANNUAL LEAVE USED

Any corrections occurring other than the current pay period or other types of leave adjustments must be submitted to the Department of Human Resources. Proper documentation reflecting the need for the correction should become a part of the employee's attendance and leave record.

Authority:
Tenn. Code Ann. §§ 8-30-406, 8-50-110, 8-50-801, 8-50-803, 8-50-807,and 8-50-1102
Rules of the Tennessee Department of Human Resources 1120-06-.10 and 1120-06-.11

CHAPTER 5
SICK LEAVE

5.01 ELIGIBILITY TO ACCRUE SICK LEAVE

Sick leave is accrued by an employee at the rate of one (1) day (seven and one-half (7.5) hours for thirty-seven and one-half (37.5) hours per week or eight (8.0) hours for forty (40.0) hours per week) for each month or major portion thereof. Eligibility to accrue sick leave is the same as for annual leave. The rate of accrual for sick leave never changes during the period of employment.

5.02 USE OF SICK LEAVE

An appointing authority may grant an eligible employee sick leave if the employee is absent for any of the following reasons:

A. Personal illness

B. Disability due to accident

C. Exposure to a contagious disease

D. Sickness due to pregnancy or birth of a child (see Chapter 13, Parental Leave)

E. Adoption

F. Medical and dental appointments

G. Medical care, illness or death of one of the following members of the family:

- Spouse

- Children (Son/Daughter: Biological, adopted, foster child, step-child, legal ward or child of a person standing in place of an absent parent, who is either under age 18 or age 18 or older and incapable of self-care because of a mental or physical disability.)

- Parents

- Others, who at the discretion of the appointing authority have a relationship that merits similar consideration.

H. Death of one of the following relatives:

- Siblings	- Sisters-in law *
- Grandparents	- Brothers-in-law *
- Grandchildren	- Foster parents
- Parents-in-law	- Foster brothers and sisters *
- Daughters-in-law *	- Step parents
- Sons-in-law *	- Step children

* Employees are eligible to use up to three (3) days of sick leave for the death of these relatives. Employees are not eligible to use Bereavement Leave in the instance of death for these relatives.

In (A) through (D) of this section, sick leave cannot be denied to any employee who presents a statement from a doctor certifying that the employee's health requires the employee to be absent from work.

In (E) of this section, sick leave cannot be denied to any employee who presents a statement from the adoption agency indicating the required bonding period.

In (F) of this section, the period of sick leave approved should be limited to the amount of time necessary for such appointment.

In (G) and (H) of this section, refer to section titled "In Instance of Death of

Employee's Family" for additional information regarding limits of sick leave use for death in the family.

Recordkeeping: Employee timesheets should be coded as Sick Leave (SL).

5.03 SICK LEAVE BALANCE FOR SEPARATING EMPLOYEES

The sick leave balance for separating employees (other than deceased employees) will be retained as a permanent record in the employee's personnel file. Should the employee be rehired with the state in the future, the sick leave balance may be reinstated in accordance with policy.

5.04 EXCESS LEAVE TRANSFERRED TO SICK LEAVE

An employee accumulating the maximum yearly allowable annual leave hours shall have any additional annual leave hours accrued transferred to the employee sick leave balance at the end of the month in which the employee was last hired. (See Chapter 4).

5.05 SICK LEAVE USE AFTER NOTICE OF SEPARATION

Sick leave may not be used simultaneously with terminal leave. If proper evidence is submitted supporting the use of sick leave after a retiring employee begins terminal leave, the employee will only be allowed to use sick leave through the original effective date of the employee's separation. After the original separation date, the employee will be required to take a lump sum payment of the remainder of the employee's compensatory and/or annual leave balances. This applies to any employee who submits notice of retirement. Terminal leave used prior to the approved sick leave periods should be changed to annual leave and employees are eligible to accrue leave during this period in accordance with standard policies and procedures. Any accrued annual leave would also be included in the lump sum payment at the end of the sick leave period.

Upon the death of an employee, the sick leave balance is paid to the employee's designated beneficiary. This balance is paid whether an employee dies while working or on terminal leave.

5.06 SICK LEAVE MAY NOT BE ADVANCED

Sick leave may not be taken before being earned.

5.07 SICK LEAVE TRANSFERABLE BETWEEN AGENCIES

All sick leave earned while employed in any agency, department of the state or in any state college, university or state operated technical school, shall be fully transferable between such agencies, departments, colleges and universities, unless there is a break in service.

All earned sick leave accrued by any employee who has transferred employment from a local school system in Tennessee may transfer when becoming a state employee, unless there is a break in service. This section shall not apply to a substitute teacher.

5.08 REINSTATEMENT OF UNUSED ACCUMULATED SICK LEAVE

A previously accumulated unused sick leave balance shall be granted to any state employee who: 1) worked on a continuous basis for at least one (1) full year, 2) leaves in good standing and 3) returns to the state service as an employee scheduled to work at least one thousand six hundred (1,600) hours and eligible to accrue leave. The employee shall be credited with the sick leave balance upon the receipt of proper documentation from the employee's agency.

The provision of working one (1) full year shall not apply to a state employee or individual employed by a local school board in Tennessee who leaves the employment of the state or school board in good standing and becomes a full-time state employee within six (6) months of the date of termination. Such an employee shall be credited with all sick leave to which he was entitled at the time of termination upon the receipt of proper documentation from the employee's agency.

To certify that prior sick leave hours are correct, the current or previous employer must supply documentation and/or verify the records maintained by the Department of Human Resources.

Sick leave reinstatement will be denied to any employee who is dismissed from state employment because of gross misconduct. Sick leave will be reinstated to employees who leave state service for any other reason.

5.09 BEREAVEMENT LEAVE

In the event of the death of an employee's immediate family member, bereavement leave will be granted for up to three (3) days, within a 12-month period from the date of the event, without charge to the employee's accumulated leave balance. An employee must be in a leave accruing position to be eligible for bereavement leave.

For this purpose, “immediate family members” are defined as:

- Spouse
- Parents
- Siblings
- Grandchildren
- Parents-in-law
- Children
- Step children
- Grandparents
- Foster parents
- Step parents

Recordkeeping: Bereavement leave will be coded as Bereavement Leave with Pay (BER) on the employee’s timesheet.

The granting of bereavement leave does not increase the total number of days provided for in the following section (“In Instance of Death in the Employee's Family”).

5.10 IN INSTANCE OF DEATH IN THE EMPLOYEE'S FAMILY

The use of sick leave for death of a family member is limited to three (3) days except for deaths of members of the immediate family. Leave for the death of an

immediate family member is normally limited to five (5) days (three (3) days of bereavement leave plus two (2) days of sick leave). The immediate family is defined under bereavement leave. When funeral services are conducted in a locality other than where the employee resides, necessary travel time in addition to the five (5) days may be allowed. Travel documentation explaining the necessity for the extra days should be placed in the employee's leave file.

Example: An employee had a sick leave balance of 90.5 hours. The employee is granted 3 days (22.5 hours) of paid bereavement leave. The bereavement leave is not deducted from the employee sick leave, leaving a sick leave balance of 90.5 hours. The employee also used 2 days (15.0 hours) of sick leave and this is deducted, leaving a sick leave balance of 75.5 hours.

5.12 MEDICAL DOCUMENTATION

Any employee may be required to present documentation (personal affidavits, physician's certificates and/or other testimonials) at the request of an appointing authority, the Commissioner of Human Resources or any other appropriate authority to support the reason for any absence during the time for which sick leave was taken.

In situations where an employee has been unable to perform the essential functions of the employee job due to illness or disability, the appointing authority may require, as a condition of the employee's return to work, medical certification from a licensed health care provider that the employee is able to resume the employee's regular job duties.

Sick leave cannot be denied to any employee who presents a statement from a health service provider certifying that the employee's health requires absence from work. In situations where the health care provider's statement does not identify specific beginning and end dates for the period of illness or incapacity, the supervisor may request that the employee provide additional documentation. Supervisors or agency officials needing clarification of or additional documentation should ask the employee to obtain the needed information instead of contacting

the health service provider directly. The appointing authority may require additional documentation if, upon further investigation, there is substantial evidence of sick leave abuse by the employee.

5.13 SICK LEAVE BANK

The Sick Leave Bank (SLB) grants paid sick leave to members who are medically certified as unable to perform the duties of their jobs as a result of a personal illness, injury, accident, disability, medical condition, or quarantine and who have exhausted all their personal sick, compensatory, and annual leave balances. The member employee must meet the criteria established by the Sick Leave Bank Trustees and have been in a without pay status for five (5) consecutive days.

The enrollment period is August, September and October each year. To elect to participate, an employee must:

A. be eligible to accrue sick leave pursuant to Tenn. Code Ann. § 8-50-802;

B. have been employed by state government for twelve (12) full months immediately preceding application for participation;

C. currently accrue leave; and

D. have a sick leave balance of at least six (6) days as of October 31 of the current enrollment year in which applying for membership.

At the time of enrollment, the member employee will have the equivalent of four (4) days of sick leave deducted from the employee personal accumulation and donated to the SLB. An annual contribution of one (1) sick leave day every October 1 after the first year of enrollment is required, although this may be waived by the Board of Trustees in any year.

A member of the SLB shall be eligible to make application to the bank for sick leave on the February 1 following successful enrollment. Applications for grants from the

SLB for pre-existing conditions will be denied until November 1 of the following year.

Grants of sick leave from the SLB shall not be made to any member for:

A. elective surgery;

B. illness of any family member;

C. while the member is earning or receiving income from other employment;

D. during any period the member is receiving disability benefits from voluntary short term and long term disability insurance, social security, or the state retirement plan; or

E. the member is receiving workers' compensation benefits, or any other employer provided benefits for job or service-related injuries or illnesses that are also related to the request for grants from the SLB.

An eligible member may receive a maximum of 90 days from the SLB as a result of a personal illness, injury, accident, disability, medical condition, or quarantine or a condition related to, resulting from, or recurring from a previously diagnosed condition for which the bank granted sick leave. Grants may be made in increments of up to thirty (30) days for which the member would have otherwise lost pay.

Grants of sick leave from the SLB shall not exceed ninety (90) days within a twelve (12) month period.

Sick leave used from the SLB shall not constitute creditable service for sick and annual leave accrual or for longevity purposes. An employee receiving a grant from the bank is not eligible for holiday pay but will be paid by the bank for a holiday that falls within an approval period.

Sick Leave Bank Members must apply for Sick Leave Bank grants in Edison via the following path: Navigator> HCM> Self Service> Time Reporting> Sick Leave Bank> Request Withdraw> Start a New Request.

5.14 - TRANSFERRING SICK LEAVE BETWEEN STATE EMPLOYEES (DONATED LEAVE)

Sick leave may be transferred to fellow state employees who are members of the Sick Leave Bank (SLB) and are unable to perform the duties of their jobs as a result of a personal illness, injury, accident, disability, medical condition, or quarantine and who have exhausted all sick, annual and compensatory leave and leave approved through the SLB.

The maximum amount of leave that may be transferred to an employee during his or her state employment is limited to no more than one hundred and twenty (120) days for which the employee would not otherwise be paid. The maximum amount of leave that may be transferred to an employee in a twelve (12) month period is ninety (90) days for which the employee would not otherwise be paid. The initial twelve (12) month period starts on the date the employee receives donated sick leave and extends forward from that date. A new twelve (12) month period begins the first time the SLB certifies the member has exhausted all SLB grants available and the member continues to be medically unable to perform the duties of the job.

In order to receive sick leave donated from another employee, all of the following criteria must be met. An employee must:

A. be a current member of the SLB;

B. have used all accumulated sick, annual and compensatory leave and used all days approved through the SLB;

C. have continuing disability resulting from a personal illness as described above and be unable to perform job duties; and

D. not be receiving any other form of compensation including Social Security Disability benefits, Division of Claims Administration benefits, or compensation through the State Retirement Plan or the SLB.

Before an employee is eligible to receive donated leave, the employee must complete a Request for Donated Sick Leave form (PR-0472) and the employee's medical provider must complete a Medical Statement for the Transfer of Donated Sick Leave form (PR-0471) certifying that the employee is unable to perform the duties of his or her job. Initial and subsequent Medical Statement for the Transfer of Donated Sick Leave forms must be completed either by the current medical doctor/surgeon or by a nurse practitioner or physician's assistant working directly under the supervision of the current medical doctor/surgeon. The completed medical statement form must be sent from the medical provider's office directly to the Department of Human Resources. Medical statements received from anyone other than the medical office or the official custodian of the medical records will not be accepted.

Each subsequent application for donated sick leave requires a new Request for Donated Sick Leave form from the employee and a new Medical Statement for the Transfer of Donated Sick Leave form from the medical provider. Subsequent medical forms must be completed based on a follow-up treatment visit relating to the same illness or injury for which the employee previously received donated sick leave.

Once an application is approved by the Department of Human Resources, the employee is eligible to receive, if available, donated leave for regularly scheduled workdays and holidays for which the employee would otherwise be without pay. The employee may be authorized to receive donated sick leave for up to thirty (30) workdays that fall within the approved period. A new Request for Donated Leave form and a new Medical Statement for the Transfer of Donated Sick Leave form documenting the employee's continued disability is required after each approved period of paid leave. The employee is no longer eligible to receive donated leave as of the date the member is released to return to work with or without restrictions.

For employees receiving donated sick leave, each day is defined as seven and one-half (7.5) hours for employees on a thirty seven and one-half (37.5) hour work week schedule and eight (8.0) hours for employees on a forty (40) hour work week schedule. Sick leave may be transferred to fellow state employees who are members of the Sick Leave Bank (SLB) who are unable to perform the duties of their jobs as a result of a personal illness, injury, accident, disability, medical condition, or quarantine and who have exhausted all sick, annual and compensatory leave and

leave approved through the SLB.

5.15 - CRITERIA FOR DONATING LEAVE TO AN EMPLOYEE

In order to donate sick leave to another individual, an employee must agree to donate a minimum of five (5) days of leave (thirty-seven and one-half (37.5) hours for an employee with a seven and one-half (7.5) hour per day work schedule or forty (40.0) hours for an employee with an eight (8.0) hour per day work schedule). The maximum amount of sick leave an employee may donate during his or her state employment is a total of ninety (90) days. A donating employee is not required to be a member of the SLB and is not required to be employed in the same agency as the individual who will receive the donation.

An employee may donate more than one (1) time to a single individual. However, the employee may not donate more than one-half of his or her own sick leave balance at the point leave is deducted from the sick leave balance and added to the receiving employee's sick leave balance. For example, an employee with a two hundred (200) hour sick leave balance agrees to donate to a member of the SLB who has exhausted all available SLB benefits. This employee may not donate more than a total of one hundred (100) hours (one-half of the 200-hour leave balance) to the SLB member. If the donating employee wishes to give additional leave to the same employee at a later date and the employee's own sick leave balance is now one hundred ten (110) hours, the employee may only donate a maximum of fifty-five (55) hours (one-half of the 110 hour sick leave balance) to the SLB member. Remember, the maximum amount of sick leave an employee may donate to another employee during his or her state employment is a total of ninety (90) days.

In order to facilitate sick leave transfer between employees, the following procedures must be followed. An employee donating leave to another employee must complete a Sick Leave Donation Agreement Form (# PR-0339) with information including the name of the employee to whom leave is being donated and the amount of leave the employee is agreeing to donate. This form must be signed by the donating employee certifying that he or she is aware of all conditions under which leave is being donated and that the leave is being donated at the employee's own free will. Two other individuals must sign the form as witnesses to the employee's signature. Once completed, the employee should send this form to his or her agency's human resources officer.

The agency human resources officer must sign the form acknowledging receipt. After verifying that the employee has the sick leave balance to cover the amount of leave being donated and that the employee is not donating more than one-half of the sick leave balance, the form shall be forwarded to the Department of Human Resources. A copy of the agreement shall be placed in the donating employee's personnel file.

Donor forms will be dated and time stamped in the order received. This will determine the order in which sick leave will be deducted from donating employees' leave balances in situations where there are multiple employees agreeing to donate to a single individual. Department of Human Resources staff will notify the agency employing the person to whom leave is being donated.

Only the exact amount of leave needed to cover approved time in a pay period will be transferred at any given time. At the point of leave transfer, the Department of Human Resources will process leave adjustment forms (C-7's) to deduct the leave from the donating employee's leave balance and add this leave to the receiving employee's balance. Prior to deducting this leave, agency staff will verify with the Department that the donating employee still has a sufficient leave balance to cover the amount he or she originally agreed to donate. If less than that amount is available, only the amount meeting eligibility criteria will be deducted. If the person originally agreeing to donate leave is no longer employed with the state, has retired, has transferred to a state agency with a leave system not covered by the provisions of Tennessee Code Annotated, Title 8, Chapter 50, or no longer has a sufficient leave balance to meet eligibility criteria to donate leave at the time the sick leave is to be deducted, all responsibility to donate this leave is voided. After processing the adjustments, copies of the C-7's will be sent to both the donating and receiving employees' agencies and should be placed in their attendance and leave files.

NOTE: Sick leave may not be transferred retroactively beyond one (1) pay period. An example of this would be an employee for whom no one has agreed to donate leave at the time his or her leave from the SLB has been exhausted. This employee would then begin a period of leave without pay. If another employee later agrees to donate sick leave to this employee, retroactive payment for the value of this leave may not extend beyond one (1) pay period.

The decision to donate sick leave to another individual should be a choice made freely by each employee. Any person attempting to unduly influence another employee to donate leave shall be subject to disciplinary action and any prior agreement made to donate leave under these conditions shall be voided.

5.16 - SEPARATING/TERMINATING EMPLOYEES WISHING TO DONATE LEAVE

Separating/Terminating employees wishing to donate leave must meet all of the following conditions:

A. The separating/terminating employee must have a specific employee identified to whom the leave is to be donated;

B. Leave donated for a separating/terminating employee cannot be used beyond the employee's last day worked and the minimum five (5) days (37.5 hours for employees working 7.5 hour days or 40.0 hours for employees working 8.0 hour days) must be exhausted before the employee's last day worked.

C. The person to whom the leave is to be donated must be eligible to receive the leave (i.e., have exhausted all SLB leave and any other leave) during the period the separating/terminating employee is still working.

Example: A separating/terminating employee has fourteen (14) working days left before the employee's last day worked. The employee must donate at least five (5) days of sick leave and an eligible employee must completely use this leave before the end of the separating/terminating employee's last working day in order for the employee to be able to donate the leave.

Authority:
Tenn. Code Ann. §§ 8-30-104, 8-50-113, 8-50-802, 8-50-803, 8-50-804, 8-50-805, 8-50-806, 8-50-808, and 8-50-901 et seq.
Rules of the Department of Human Resources 1120-06-.10, 1120-06-.12, and 1120-09-.02

CHAPTER 6
FAMILY AND MEDICAL LEAVE ACT (FMLA)

6.01 - EMPLOYEE ELIGIBILITY

In order to be considered eligible for leave under the Family and Medical Leave Act (FMLA), an employee must: (1) have worked for the State of Tennessee for at least twelve (12) months; and (2) have worked at least one thousand, two-hundred and fifty (1,250) hours during the year preceding the start of the leave.

(1) Twelve (12) months of service.

The twelve (12) months of required work with the State do not have to be consecutive in order for an employee to be eligible. However, service accrued more than seven (7) years ago shall not be counted toward the minimum requirement. If an employee is maintained on the payroll for any part of a week, including periods of paid or unpaid leave during which other benefits or compensation are provided bythe state (such as worker's compensation or group health plan benefits), that weekis considered a week of employment. Fifty-two (52) weeks of such employment equals twelve (12) months.

An employee who has a break in employment due to service under the Uniformed Service Employment and Reemployment Act (USERRA) shall receive credit for each month of military service which shall count toward the 12-month minimum service requirement.

For example, an employee who has been employed by the state for nine (9) months is ordered to active military service for a period of nine (9) additional months. Upon completion of military service, the employee must be considered to have been employed by the state for more than the required twelve (12) months, since nine (9) months were accrued while actually employed by the state and nine (9) months were accrued while serving on active duty.

(2) One thousand, two-hundred and fifty (1,250) hours worked.

In determining hours worked, the agency shall calculate all hours actually worked by

an employee, including overtime hours.

An employee who returns to work from fulfilling a USERRA-covered military service obligation shall be credited with the hours of service that would have been performed but for the period of military service. In order to determine the hours that would have been worked during the period of military service, the employee's pre-service work schedule can generally be used for calculations.

For example, an employee who works 37.5 hours per week for the state returns to employment following 20 weeks of military service and requests leave under FMLA. To determine the employee's eligibility, the hours the employee would have worked during the period of military service (20 x 37.5 = 750 hours) must be added to the hours actually worked during the twelve (12) month period prior to the start of the leave.

6.02 - QUALIFYING CRITERIA FOR GRANTING LEAVE

If an employee otherwise meets eligibility requirements, he or she may take FMLA leave for any one or combination of the following reasons:

A. The birth of a child and to bond with the newborn child within one year of birth;

B. The placement with the employee of a child for adoption or foster care and to bond with the newly-placed child within one year of placement;

C. The care of the employee's spouse, son, daughter, or parent with a serious health condition, including incapacity due to pregnancy and for prenatal care;

D. A serious health condition that makes the employee unable to perform the functions of the employee's job, including incapacity due to pregnancy and for prenatal medical care;

E. Any qualifying exigency arising out of the fact that an employee's spouse, son, daughter, or parent is a covered military member on covered active duty (or has been notified of an impending call or order to active covered duty status); or

F. To care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of a covered service member.

6.03 - DEFINITIONS OF FAMILY MEMBERS

Spouse: A husband or wife. For purposes of this definition, husband or wife refers to the person with whom an individual entered into marriage as defined or recognized under Tennessee law for purposes of marriage or, in the case of a marriage entered into outside of Tennessee, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either:

(1) Was entered into in a State that recognizes such marriages; or

(2) If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

Parent: Biological, adoptive, step or foster parent or an individual who currently stands in place of an absent parent. A person who is “in loco parentis” (standing in place of an absent parent) is not required to have a biological or legal relationship with a child. Persons who are standing in place of an absent parent include those with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. The FMLA Coordinator may require an employee requesting FMLA leave to provide reasonable documentation confirming the family relationship including such items as a written statement from the employee, a child's birth certificate and relevant court documents. The definition does not include parents-in-law.

Son/Daughter: Biological, adopted, foster child, stepchild, legal ward, or child of a person standing in place of an absent parent who is either under age 18 or age 18 or older and who is incapable of self-care because of a mental or physical disability. In order for an employee to take FMLA leave for a child who is 18 or over, the son or daughter must: (1) have a disability as defined by the Americans with Disability Act (ADA) at the time the leave is to commence; (2) be incapable of self-care because of the disability; (3) have a serious health condition; and (4) need care because of the serious health condition.

For purposes of military caregiver leave, a son or daughter refers to the service member's son or daughter of any age.

Next of kin: The service member's nearest blood relative, other than the service member's spouse, parent, son, or daughter, in the following order of priority: (1) one designated blood relative (in writing); (2) all blood relatives with legal custody; (3) all brothers and sisters; (4) all grandparents; (5) all aunts and uncles; or (6) all first cousins.

6.04 - BIRTH OF A SON OR DAUGHTER

In addition to leave taken after the birth of a child, FMLA leave may be taken by an expectant mother for the purpose of prenatal visits and in situations where a serious health condition prevents her from performing her job duties prior to the child's birth.

6.05 - ADOPTIVE OR FOSTER CARE PLACEMENT

FMLA leave may be taken prior to an adoptive or foster care placement if the leave is integral to the placement. Examples include required counseling sessions, court appearances, and legal or medical consultations. There is no requirement in FMLA that the source of an adoption be from a licensed adoption agency in order for an employee to be eligible for FMLA leave.

Foster Care is defined as "24-hour care for children in substitution for, and away from, their parents or guardian." FMLA requires that this placement be made by or in agreement with the state and that state action be involved in the removal of the child from parental custody.

6.06 - SERIOUS HEALTH CONDITION

For purposes of the FMLA, serious health condition means an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

A. Inpatient Care means an overnight stay in a hospital, hospice, or residential

medical care facility.

B. Continuing Treatment by a Health Care Provider: A serious health condition involving continuing treatment by a health care provider includes one or more of the following:

1. A period of incapacity of more than three (3) consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves:

   (a) treatment two (2) or more times, within thirty (30) days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider. The first in-person visit to the health care provider must take place within seven (7) days of the first day of incapacity; or

   (b) treatment by a health care provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

2. Any period of incapacity due to pregnancy or for prenatal care.

3. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which (a) requires periodic visits, at least two per year, for treatment by a health care provider or by a nurse or physician's assistant under direct supervision of a health care provider, (b) continues over an extended period of time (including recurring episodes of a single underlying condition), and (c) may cause episodic rather than continuing periods of incapacity (such as asthma, diabetes and epilepsy).

4. A long-term period of incapacity due to a condition for which treatment may not be effective. In this situation the employee or family member must be under the continuing supervision of but not need to be receiving active treatment by a health care provider. Examples may include Alzheimer's,

severe stroke and the terminal stages of a disease.

5. Any period of absence to receive multiple treatments, including periods of recovery from treatments, by a health care provider or by a provider of health services under orders of or referral by 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 of more than three (3) calendar days in the absence of medical intervention or treatment, such ascancer chemotherapy or radiation treatment, severe arthritis (physicaltherapy) and kidney disease (dialysis).

6. In the case of substance abuse, only the time absent from work due to treatment is qualifying FMLA leave. A period of incapacity resulting from use of the substance is not considered a covered illness. Also, an employee with a substance abuse problem is not protected under FMLA from disciplinary action resulting from such substance abuse. When an agency has a non-discriminatory policy that provides for an employee's termination for substance abuse under certain circumstances and this policy has been communicated to all employees, an appointing authority may terminate the employee, whether or not the employee is on FMLA leave. The appointing authority cannot, however, take action against the employee for exercising his or her right to take FMLA leave for treatment of the substance abuse.

D. Definition of Health Care Provider

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices;

2. Podiatrists, dentists, clinical psychologists, optometrists, or chiropractors. A chiropractor is limited to treatment consisting of manual manipulation of the spine to correct a dislocation demonstrated by x-ray. These professionals must be licensed in the state and performing within the scope of their practice as defined by state law;

3. Nurse practitioner, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under state law and are functioning within the scope of their practice as defined by state law;

4. Christian Science Practitioners listed with the First Church of Christ, Scientists in Boston, Massachusetts;

5. Any health care provider from whom the state or Benefits Administration will accept certification of the existence of a serious health condition to substantiate a claim for benefits; or

6. Any health care provider listed above who practices in a country other than the United States who is authorized to practice in their country and is functioning within the scope of practice as defined by the laws of that country.

D. When an employee is absent from work due to pregnancy, prenatal care or due to a chronic health condition, leave taken qualifies as FMLA leave even if the employee or family member does not receive treatment from a health care provider during the absence and even if the absence lasts less than three (3) days.

For example, an employee with asthma may be unable to report to work due to onset of an asthma attack he or she can treat at home. Even though the employee did not visit a health care provider and was absent for less than three days, the time off qualifies as FMLA leave.

Another example is an employee unable to report to work due to severe morning sickness resulting from pregnancy. Although this absence was less than three (3) days and the employee did not need to visit a health care provider, this time off qualifies as FMLA leave.

6.07 - MILITARY CAREGIVER LEAVE

A covered employer must grant an eligible employee who is a spouse, son, daughter, parent, or next of kin of a covered service member with a serious injury or illness up to a total of twenty-six (26) work weeks of job-protected leave during a single twelve (12) month period to care for the service member. The employee shall use accrued annual, sick, or compensatory leave before entering into a leave without pay status.

A covered service member is: (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave tocare for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

A serious injury or illness for a current service member includes injuries or illnesses that existed before the beginning of the member's active duty and were aggravated by service in the line of duty on active duty in the Armed Forces. A serious injuryor illness for a covered veteran means an injury or illness that was incurred or aggravated by the member in the line of duty on active duty in the Armed Forces and manifested itself before or after the member became a veteran, and is: (1) a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the service member's office, grade, rank, or rating; or (2) a physical or mental condition for which a covered veteran has receiveda VA Service Related Disability Rating (VASRD) of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; or (3) A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; or (4) an injury, include psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

The single twelve (12) month period for leave to care for a covered service member with a serious injury or illness begins on the first day the employee takes leave for this reason and ends twelve (12) months later, regardless of the twelve (12) month period established by the employer for other types of FMLA leave. An eligible employee is limited to a combined total of twenty-six (26) work weeks for leave for any FMLA-qualifying reason during the single twelve (12) month period. (Only twelve (12) of the twenty-six (26) weeks total may be for a FMLA-qualifying reason other than to care for a covered service member.)

6.08 - MILITARY QUALIFYING EXIGENCY LEAVE

An eligible employee may take FMLA leave while the employee's spouse, son, daughter, or parent (the military member or member) is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty). Covered active duty or call to covered active duty status means duty during the deployment of the member with the Armed Forces to a foreign country or to a foreign country under a Federal call or order to active duty in support of a contingency operation. Eligible employees may take qualifying exigency leave for any of the following reasons:

- To address issues arising from a covered military member who is notified of an impending call or order to active duty in support of a contingency operation seven (7) or less calendar days before deployment;

- To attend certain military functions, such as an official ceremony, program, or event sponsored by the military that is related to the active duty or call to active duty status of a covered military member. This may also include attendance at any family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to active duty or callto active duty status of a covered military member;

- To arrange for certain childcare and related activities when the active duty or call to active duty status of a covered military member necessitates a change in the existing childcare arrangement, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member;

- To make or update financial and legal arrangements to address a covered military member's absence;

- To attend counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military

member, the need for which arises from the active duty or call to active duty status of the covered military member;

- To spend time, up to fifteen (15) days, with a covered military member who is on short-term, temporary, rest and recuperation leave during deployment;

- To attend certain post-deployment activities, including arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of ninety (90) days following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered member; or

- To address other events that the employee and employer agree is a qualifying exigency or that the United States Secretary of Labor appropriately determines to be a qualifying exigency.

- To care for a military member's parent who is incapable of self-care when the care is necessitated by the member's covered active duty. Such care may include arranging for alternative care, providing care on an immediate need basis, admitting or transferring the parent to a care facility, or attending meetings with staff at a care facility.

6.09 - LEAVE ENTITLEMENT - LIMITATIONS ON LENGTH AND DURATION

Except in the case to care for a covered service member with a serious injury or illness, an eligible employee's FMLA leave entitlement is limited to a total of twelve
(12) work weeks of leave during a twelve (12) month period.

This twelve (12) work week limit is equivalent to sixty (60) workdays, including holidays. The initial twelve (12) month period starts on the date the employee's FMLA leave first begins and extends twelve (12) months forward from that date. A new twelve (12) month period would begin the first time FMLA leave is taken after completion of any previous twelve (12) month period. However, an eligible employee who takes leave to care for the covered service member with a serious injury or illness begins on the first day the employee takes leave for this reason and ends twelve (12) months later, regardless of the twelve (12) month period

established by an agency for other types of FMLA leave.

An eligible employee's leave is limited to a total of twenty-six (26) work weeks of leave during a single twelve (12) month period to care for a covered service member with a serious injury or illness. If an employee receives twenty-six (26) work weeks of leave for military reasons, the employee is not eligible for additional FMLA leave during the same period. If an employee combines leave for caring for an eligible service member and another qualifying FMLA leave, only twelve (12) work weeks may be used for leave unrelated to the care of a covered service member.

6.10 - LIMITS ON LEAVE ENTITLEMENT FOR BIRTH, ADOPTION, AND FOSTER CARE

Leave entitlement for the birth of a child or for adoption or foster care placement expires at the end of the twelve (12) month period beginning on the date of the birth or placement. FMLA leave for these reasons must be concluded within this time period.

6.11 – INTERMITTENT LEAVE OR REDUCED LEAVE SCHEDULE

An eligible employee may take intermittent FMLA leave or have a reduced work schedule over a twelve (12) month time period for any of the qualifying reasons for FMLA leave.

When FMLA leave is granted on an intermittent or reduced leave schedule basis, the leave shall be accounted using an increment no greater than the shortest period of time that is used to account for other forms of leave, provided that it is not greater than one hour and provided further that an employee's FMLA leave entitlement may not be reduced by more than the amount of leave actually taken.

If an employee requests intermittent leave or leave resulting in a reduced work schedule, based on the need for planned medical treatment for the employee, a family member or a covered service member, including a period of recovery from a serious health condition, the appointing authority may require that the employee transfer temporarily to another position for which the employee is qualified and which better accommodates the employee's need for recurring leave

periods. This temporary position must have equivalent pay and benefits, but need not have equivalent duties. Under no circumstances shall an appointing authority transfer an employee to an alternative position with the intent of discouraging the employee from taking leave or causing hardship to the employee.

If an employee is required to work overtime (mandatory overtime) but, is unable to do so because of an FMLA-qualifying reason, the hours in which the employee would have been required to work will be counted against the employee's FMLA entitlement.

6.12 – COORDINATION WITH ACCRUED LEAVE

An employee on FMLA leave is required to use any accumulated compensatory, sick, or annual leave. This will run concurrently with the employees FMLA entitlement. An employee on FMLA leave must use all accrued leave prior to being eligible for unpaid leave. Employees will be allowed to save the necessary time for Sick Leave Bank purposes. Notice of intent to save the requisite day(s) for Sick Leave Bank purposes must be made when requesting FMLA leave. An employee with no accumulated sick, annual, or compensatory leave balances must take his or her FMLA leave as unpaid.

6.13 - COORDINATION WITH WORKERS' COMPENSATION

Workers' compensation leave, to the extent permitted by law, shall be designated as FMLA leave when qualifying conditions are met. If an employee's injury qualifies as FMLA leave, the employee cannot be forced to return to light duty work before the leave expires. If the employee freely accepts light duty work before the twelve (12) weeks of FMLA leave expire, the employee still has the right to return to his or her original or an equivalent position within twelve (12) weeks from the date FMLA leave began.

6.14 - COORDINATION WITH PARENTAL LEAVE

Under the parental leave law, an employee is entitled to up to four (4) months leave for adoption, pregnancy, childbirth and nursing an infant ("parental leave"). If leave qualifies for both FMLA leave and parental leave, the leave used counts against the employee's entitlement under both laws. Parental leave and FMLA leave shall run

concurrently to the extent permitted by law. Once the twelve (12) week FMLA entitlement is completed, this employee is still eligible to take the additional time to complete the four (4) months leave for adoption, pregnancy, childbirth and nursing an infant. However, the state is under no obligation to provide health insurance benefits during this period, should the leave be without pay.

6.15 - EMPLOYEE NOTIFICATION REQUIREMENTS

When the need for unpaid leave is foreseeable, an employee must provide at least thirty (30) days advance notice prior to the date the leave is to begin. In situations where thirty (30) day notification is not possible because the employee has no knowledge of the exact time when the leave will need to begin or because of change or circumstance or medical emergency, notice must be given as soon as practicable, normally within one (1) or two (2) business days of when the employee knows the date leave will be needed.

Employees should request FMLA leave in Edison through Employee Self Service by navigating to HCM > Self Service > Time Reporting > Report Time > Request FMLA Leave. Employees are required to provide the need for the leave and the anticipated timing and duration of the leave.

In instances where the employee does not enter the request in Edison, but instead notifies the supervisor of the need for leave under the FMLA, the supervisor shall refer the employee to the agency FMLA Coordinator. The FMLA Coordinator w i l l request additional information to determine if the employee is requesting FMLA leave specifically, obtain the necessary details of the leave being taken, and enter the request in Edison.

Absent unusual circumstances, employees failing to provide notice of the need for FMLA leave within the required time frames may be subject to disciplinary action; however, they may not be denied the leave.

6.16 – EMPLOYEE NOTIFICATION PRIOR TO RETURN TO WORK

An employee may not be required to take more leave than necessary to address circumstances resulting in the need for leave. If an employee is returning to work

sooner than expected, the employee must give the FMLA Coordinator two (2) business days' notice of the changed circumstances before the appointing authority is required to restore the employee to his or her former or comparable position.

6.17 - MEDICAL CERTIFICATION REQUIREMENTS

The FMLA Coordinator may require that an employee's request for leave be supported by certification from a health care provider in situations where the leave is requested to care for the employee's seriously ill spouse, son, daughter, parent, or next of kin for qualified military leave, or due to the employee's personal serious health condition. The FMLA Coordinator must give written notice to the employee of the requirement to provide medical certification each time certification is required.

When the need for leave is foreseeable, the employee should provide medical certification before the leave begins. When this is not possible the employee must provide this information within the time frame requested by the FMLA Coordinator. At least fifteen (15) calendar days must be allowed for the employee to provide requested medical certification unless this is not possible under the circumstances, such as an employee's personal health condition preventing his or her ability to obtain the necessary information in a timely manner.

Any request for medical certification should be made at the time the employee requests leave or within two (2) business days. If the leave was unforeseen, the certification should be requested within two (2) business days after the leave has begun. If the FMLA Coordinator has reason to question the appropriateness of the leave or its duration, certification may be requested at a later date. An employee should be advised of the consequences of not providing medical certification at the time the certification is requested.

The FMLA Coordinator may request <u>only</u> the following information from a health care provider certifying an employee's personal serious health condition or that of a son, daughter, parent, or next of kin. A sample form is provided on the Department of Human Resources' website and should be used to obtain this information:

A. A statement or description of the appropriate medical facts regarding the patient's health condition for which leave is requested.

B. The approximate date the serious health condition began and its probable duration, including the probable duration of the patient's present incapacity, whether it will be necessary for the employee to take intermittent leave or work a reduced schedule and the probable duration of such a schedule. The certification may state if the condition is pregnancy or a chronic condition, whether the patient is presently incapacitated and the likely duration and frequency of periods of incapacity.

C. If additional treatments will be required for the condition and an estimate of the probable number of treatments. If the patient's incapacity will be intermittent or require a reduced work schedule, an estimate of the probable number of and interval between such treatments and period required for recovery. If any of the treatments listed above will be provided by another provider of health services and the nature of the treatments. If a regimen of continuing treatment by the patient is required under the supervision of the health care provider and a description of the regimen.

D. If medical leave is required because of the employee's own condition, information may be requested on whether the employee is unable to perform any one or more of the essential functions of the position, including a statement of the essential functions the employee is unable to perform. If the employee is able to perform work of any other kind and if the employee must be absent from work for treatment.

E. If the leave is required to care for a family member, information may be requested on whether the patient requires assistance for basic medical or personal needs or safety, or for transportation or, if not, whether the employee's presence to provide psychological comfort would be beneficial to the patient or assist in the patient's recovery. The employee must provide information on the care provided and an estimate of the time period involved. If the employee's family member will need care only intermittently or on a

reduced leave schedule, the probable duration of the need.

F. If the employer deems a medical certification to be incomplete or insufficient, the employer must specify in writing what information is lacking, and give the employee seven (7) calendar days to cure the deficiency.

Once an employee has submitted a complete and sufficient medical certification document signed by the employee's or family member's health care provider, the FMLA Coordinator may not request any additional information from that health care provider. The employee's FMLA Coordinator may only contact the employee's health care provider to verify the authenticity of or to clarify the medical certification.

6.18 - GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008 (GINA)

The Genetic Information Nondiscrimination Act of 2008 (GINA) requires a disclaimer be included on all communications to medical providers. The act sets forth the following safe-harbor language to meet this requirement and should be provided to all employees when requesting medical certification:

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual except, as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. Genetic information, as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

6.19 - MILITARY LEAVE CERTIFICATION REQUIREMENTS

An employee requesting leave for a qualifying exigency must submit a copy of the

covered military member's active duty orders and certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought. This information may include contract information if the leave involves meeting with a third party.

If the qualifying exigency involves rest and recuperation leave, the employee must submit a copy of the military member's rest and recuperation orders, or other documentation issued by the military setting forth the dates of the military member's leave.

An employee requesting leave to care for a covered service member with a serious injury or illness must submit a certification form completed by an authorized health care provider or a copy of an Invitational Travel Order or Invitational Travel Authorization issued to any member of the covered service member's family.

6.20 - EMPLOYEE FAILURE TO PROVIDE MEDICAL CERTIFICATION

An employee who fails to provide certification within the requested allowable time frame (minimally fifteen (15) calendar days) may be denied leave until certification is provided if the leave was foreseeable.

When the need for leave is unforeseeable, an employee must provide certification within a reasonable period of time determined by the FMLA Coordinator based on the particular medical circumstances. An employee failing to provide certification within this time frame may be denied leave continuation.

6.21 – DESIGNATING LEAVE AS FMLA LEAVE

The FMLA Coordinator shall designate leave as FMLA leave as soon as possible after sufficient information is available to determine that the leave requested is for a reason covered by FMLA guidelines. Once sufficient information has been obtained, the FMLA Coordinator must notify the employee within five (5) business days that the leave will be designated as FMLA leave and counted toward the twelve (12) week entitlement.

The employee may initially be notified of the FMLA designation either orally or

in writing. If notified orally, however, the FMLA Coordinator must follow up with written notification no later than the following payday. If the next payday is less than one (1) week after the oral notice, the FMLA Coordinator must notify the employee no later than the subsequent payday.

FMLA leave designation should be made before the leave period begins, unless the FMLA Coordinator does not have enough information at the time to make this determination.

Neither the employer nor the employee have the option to delay or decline FMLA designation if the employee is eligible and the leave otherwise qualifies for FMLA leave.

6.22 - RETROACTIVE DESIGNATION OF FMLA LEAVE

If an employer has enough information to determine that the leave is being taken for an FMLA-qualifying reason, but does not notify the employee whether the leave will be designated as required, the employer may not retroactively designate leave as FMLA leave. However, the employer and employee can mutually agree in writing that leave be retroactively designated as FMLA leave. If the employer learns that paid leave is for FMLA reasons after the start of the leave period, the entire or some portion of the leave may be retroactively counted as FMLA leave to the extent that the leave period qualified as FMLA leave.

The FMLA Coordinator may only designate leave as FMLA leave after an employee has returned to work in the following circumstances:

A. The FMLA Coordinator does not learn that an employee's absence was due to FMLA reasons until the employee returns to work. If the FMLA Coordinator notifies the employee of the leave designation within two (2) business days of the employee's return, the leave may be designated retroactively. If an employee returning to work did not inform the FMLA Coordinator prior to the leave period that the leave was for FMLA reasons and he or she wants the leave designated as FMLA leave, the employee must notify the FMLA Coordinator within two (2) business days of returning to work of the reason for the leave.

If the FMLA Coordinator knows the reason for the leave but has not been able to confirm that the leave qualifies under FMLA, or medical certification or second or third opinions have been requested but not yet received, the FMLA Coordinator should make a preliminary designation and notify the employee of this designation at the time the leave begins. When information arrives confirming that the leave used is for FMLA reasons, the preliminary designation then becomes final. If the requested information fails to confirm that the leave needed is for FMLA reasons, the FMLA Coordinator must withdraw the designation in writing.

6.23 – TIME AND LABOR WHILE ON FMLA LEAVE

An employee on continuous FMLA will not need to key his or her time in Edison during the designated period. Edison will automatically populate the time into the employee's timesheet for each pay period during the approved FMLA designation period.

If an employee is on intermittent FMLA leave, the employee will be responsible for keying the hours worked along with the hours used toward FMLA on his or her timesheet. Supervisors shall ensure that employees enter their time in Edison and shall approve payable time for their employees before payroll deadlines. *Recordkeeping: Employee timesheets should be coded as Family Medical Leave (FMLLV).*

6.24 - REQUESTING SECOND AND THIRD OPINIONS

If there is reason to question the validity of the medical certification or if the employee refuses to grant permission to contact his/her health care provider concerning the medical certification, the employee may be required to obtain a second opinion from another health care provider at the agency's expense. Although the agency may select the health care provider to provide the second opinion, the provider selected cannot be employed by the State of Tennessee on a regular basis or be under any contract or agreement with the state to provide second opinion services, in most circumstances.

If the opinions of the employee's and agency's health care providers differ, the agency may obtain another certification from a third health care provider at the agency's expense. This health care provider must be one agreed upon by both

parties and the third provider's opinion is considered final and binding.

Pending receipt of the second or third opinions, the employee is provisionally entitled to FMLA leave and the agency must pay for any reasonable out-of-pocket travel expenses. If the certifications do not establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as paid or unpaid leave under established leave policies.

The agency is required to provide the employee with a copy of the second and third opinions, where applicable, upon request by the employee. Requested copies shall be provided within five (5) business days of the request, unless extenuating circumstances prevent this from being possible.

Second and third opinions and recertification are not permitted for certification of a covered service member's serious injury or illness or a qualifying exigency. A health care provider, a human resource professional, a leave administrator, ora management official, but not the employee's direct supervisor, may be usedto authenticate or clarify a medical certification of a serious injury or illness, oran Invitational Travel Order or Invitational Travel Authorization. Additionally, the individual or entity named in a certification of leave for a qualifying exigency may be contacted for purposes of verifying the existence and nature of the meeting.

6.25 - REQUESTING RECERTIFICATION OF MEDICAL CONDITIONS

The FMLA Coordinator may request recertification of a medical condition as considered necessary. For most situations, the intervals between these requests can be no less than thirty (30) days, except in situations, where: (1) the employee requests an extension of leave; (2) circumstances described in the original certification have changed significantly, or (3) the FMLA Coordinator has obtained information conflicting with the validity of the certification.

In the case of pregnancy, chronic or permanent long-term medical conditions, the FMLA Coordinator may request recertification no more than once every thirty (30) days, unless: (1) circumstances described in the previous certification have changed significantly, or (2) the FMLA Coordinator receives information which casts doubt on the employee's stated reason for the absence. If the minimum

duration of the period of incapacity specified on the medical certification is more than thirty (30) days, the FMLA Coordinator may not request recertification until that minimum duration has passed, unless one of the conditions set forth aboveis met. When FMLA leave is taken intermittently by an employee who is pregnant or who has a chronic or permanent long-term medical condition, the FMLA Coordinator may not request recertification in less than the minimum period specified on the certification as necessary for such leave unless one of the conditions in the first paragraph of this section is met. However, in all cases, an employer may request recertification of a medical condition every six (6) months in connection with an employee's absence. This request for recertification applies to medical conditions that require continuous leave as well as intermittent leave.

6.26 - HEALTH BENEFIT REQUIREMENTS

For the duration of FMLA leave, the state shall maintain an employee's health coverage under the Group Insurance Plan under the same conditions coverage would have been provided if the employee continuously worked during the leave period. Policy information regarding health insurance coverage in relation to the provisions of FMLA is available by contacting the Division of Benefits Administration in the Department of Finance and Administration.

The FMLA Coordinator shall communicate approval of FMLA leave to the Agency Benefit Coordinator (ABC). The ABC is responsible for notifying Benefits Administration (BA) of leave status changes for an affected employee. Agencies will continue to be billed for the agency/employer portion of the premium monthly, and the employee will be billed at their home address for their portion of the premium due. If the employee does not pay their portion, twenty percent (20%),of the premium, the coverage is subject to suspension from the last paid period. Per federal regulations, Benefits Administration (BA) may no longer cancel an individual's medical coverage due to non-payment of premiums when the employee is on approved family medical leave. The agency should try to make arrangements with the affected employee to pay premiums before the employee goes out on FMLA to prevent an interruption in service. If premiums are not received timely, BA will suspend the coverage until the affected employee returns to work or once the premiums are paid in full.

The agency's ABC should also notify the employee that premiums in arrears will be deducted from their payroll once the employee returns to a positive pay status, unless BA receives written notification that the employee wishes to change the effective date of coverage to the first of the month following their return from FMLA absence.

Benefits Administration will send notices to employees who are identified on approved FMLA and are more than thirty (30) days past due that their coverage will be suspended if payment is not received by the end of that month. BA will not notify agencies when an employee has not paid their premiums. It is the employee's responsibility to ensure the premium payment is received timely in order to prevent the suspension of coverage, and continue receiving medical services.

If Benefits Administration suspends coverage due to an employee's non-payment, the coverage can be reinstated when the employee returns from leave. The reinstatement can be effective retroactively to the date of suspension or the first of the month following the return from leave. This will be the employee's choice. If they choose to retroactively reinstate the coverage once payment is received in full, claims for the period of suspension can be resubmitted for reimbursement or payment. If they choose to have the coverage effective after the return from leave, Benefits Administration will refund the agency any premiums that were deducted during the suspension.

6.27 - JOB RESTORATION REQUIREMENTS

Upon return from FMLA leave, an employee must be restored to his or her original position or to an equivalent position, which is *virtually identical* in terms of pay, benefits and other employment terms and conditions. This includes restoration to a position having the same or substantially similar duties and responsibilities and having substantially equivalent skill, effort, responsibility and authority.

An employee returning from FMLA leave is entitled to any general increases that all other state employees have received during the period the employee was on leave. The employee is also entitled to shift or work schedule assignments equivalent to those in effect prior to the beginning of the leave period and to a work location assignment geographically close to the one where previously

employed.

If an employee can no longer perform the essential functions of the position, the employee has no rights to job restoration under FMLA provisions. However, the employee may have certain rights under the Americans with Disabilities Act Amendment Act, which must be taken into consideration. Please make sure to discuss these considerations with agency legal counsel.

In situations where an employee notifies the FMLA Coordinator that he or she is not returning to work, the obligation to restore the employee to a position and to maintain health benefits (subject to COBRA requirements) ends. Should the employee indicate he or she is unable to return to work but continues to want to return, restoration requirements and health benefits remain in effect through the end of the twelve (12) week FMLA leave period.

An employee has no greater right to job restoration with equivalent benefits and conditions of employment than he or she would have had if continuously employed. Thus, if a work location is closed, a shift eliminated, overall work hours for an entire unit reduced, or positions abolished through a reduction in force, the employee is only entitled to conditions that would have been in effect for the employee if the leave had never been taken.

> *For example, if an employee's shift is eliminated while the employee is on leave, the employee is not entitled to assignment to the previous shift's work hours or to shift differential pay when that employee returns from leave that other employees formerly on the shift no longer receive. However, the employee is entitled to employment in a position meeting all other previous employment conditions.*

In layoff situations, obligations to continue an employee's period of FMLA leave end with the effective date of the layoff.

6.28 - JOB RESTORATION FOR EMPLOYEES LEASED FROM A TEMPORARY AGENCY

If an agency utilizes an employee from a temporary agency and that employee goes on FMLA leave, the employee is entitled to return to the same assignment as the

one held before beginning the FMLA leave period if the agency is still using temporary services at the point the employee is ready to return to work.

6.29 - PROHIBITION AGAINST DISCRIMINATORY PRACTICES AND ENFORCEMENT

Provisions of FMLA prohibit interference with an employee's rights to family and medical leave under the law and from discrimination against an employee using family and medical leave. FMLA makes it unlawful for any employer to: (1) interfere with, restrain, or deny the exercise of any right provided under FMLA; and (2) discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA. Each agency's FMLA Coordinator should review existing internal practices to ensure compliance.

An employee may file an FMLA-related complaint with their agency's human resources division, the Department of Human Resources EEO/ADA Division, or the U.S. Department of Labor. The employee may also bring a private lawsuit against an employer. For additional information: 1-866- 489-9243 or www.wagehour.dol.gov.

The FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any Federal or State law which provides greater family or medical leave rights.

6.30 - REQUIREMENTS FOR NOTIFYING EMPLOYEES OF FMLA RIGHTS

Notices shall be posted in each agency explaining the FMLA provisions and providing information on how to file a complaint (or complaints) for violations of the FMLA. These notices must be posted in conspicuous places where employees and applicants can easily access the information provided.

The FMLA Coordinator must provide written guidance to the employee regarding his or her rights and obligations every time the employee is notified of the FMLA leave designation.

The FMLA Coordinator must also provide the employee with written notice detailing specific employee obligations and consequences of failure to meet these obligations. This information must be provided no less than once each six (6) month period that an employee gives notice of the need for FMLA leave. The following information must be included: (1) that the leave will be counted against the employee's FMLA leave entitlement; (2) any requirements for furnishing medical certification of a serious health condition and information regarding the consequences of not providing this information; (3) the employee's option to substitute paid leave in specific situations and conditions related to the substitution; (4) the requirement for the employee to make health insurance premium payments, procedures for making these payments and possible consequences of failing to make these payments in a timely manner; (5) any requirement to present medical certification as a condition of job restoration following conclusion of the leave period; (6) the employee's right to job restoration upon return from leave; and (7) the employee's potential liability for the employer's portion of the health insurance premium payments should the employee fail to return to work after taking FMLA leave.

The notice must be given within a reasonable time after the employee notifies the FMLA Coordinator of the need for FMLA leave, preferably between one (1) and two (2) business days. If the leave has already begun, the notice should be mailed to the employee's address of record.

If the specific information originally provided in the notice changes due to a subsequent period of FMLA leave, the FMLA Coordinator must notify the employee within two (2) business days of receiving notification of the need for additional FMLA leave of any changes that are being made to the original information provided.

> *For example, if the initial leave period was paid and the subsequent leave period is unpaid, the employee must be notified of the need to pay his or her portion of the insurance premium.*

If the initial notice to the employee and the agency's handbook or other written documentation clearly indicate the agency's requirements for the employee to provide medical certification or fitness for duty information, then subsequent

notification to the employee of these requirements is not necessary. If, however, this information has never been provided to the employee, then any requirements for medical certification or fitness for duty information must be provided in writing to the employee every time the employee notifies the FMLA Coordinator of the need for leave.

If the FMLA Coordinator does not provide the employee with required notices, no action can be taken against the employee for failure to comply with the employee's obligations. If an employee suffers individualized harm because the employer failed to follow the notification rules, the employer may be liable.

6.31 - RECORD-KEEPING REQUIREMENTS

Each FMLA Coordinator is responsible for maintaining required records for all employees using FMLA leave for at least three (3) years. In addition to basic payroll and employee data and policy documentation, the following records are required:

A. Dates FMLA leave is taken by each employee and clear designation of this time as FMLA leave.

B. Hours of leave taken, if the amount is less than one (1) full day.

C. Copies of employee notices of FMLA leave sent to the FMLA Coordinator, if in writing, and copies of general and specific notices given to employees as required under FMLA guidelines.

D. Records of any dispute between the employee and the agency regarding the designation of leave as FMLA leave.

E. Any work schedule agreed upon by the agency and employee, in situations where intermittent leave or leave on a reduced work schedule has been approved.

F. Medical certification, recertification, and medical history documentation. All

medical information must be maintained separately from other personnel information.

G. Military orders.

6.32 – ADDITIONAL RESOURCES

Additional information about the FMLA, including employee and supervisor resources, FAQs, and information from the Department of Labor's website, can be found on the Department of Human Resources' website.

Authority:
Title 29, Part 825 of the Code of Federal Regulations
Tenn. Code Ann. § 8-30-104
Department of Human Resources Rule 1120-06-.21

CHAPTER 7
HOLIDAYS

7.01 LEGAL HOLIDAYS

The General Assembly, by law, establishes legal holidays which are observed by the closing of State offices. The Governor, upon request by the Commissioner of Human Resources, may also establish additional time off for the observance of holidays. The Governor may, at his/her discretion, substitute the day after Thanksgiving as a holiday for Columbus Day. This decision will be made each year.

7.02 LIST OF HOLIDAYS

The following days have been designated by the General Assembly as legal holidays:

New Year's Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
Presidents' Day	Third Monday in February
Good Friday	Friday before Easter
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Veterans' Day	November 11
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

When a holiday falls on a Saturday, the Friday before the holiday will be observed. When the holiday falls on a Sunday, the Monday following the holiday will be observed.

7.03 HOLIDAY CREDIT FOR EXEMPT-EXECUTIVE LEVEL EMPLOYEES

Executive level employees regularly scheduled to work on a holiday and who perform job duties on a holiday may have the holiday time rescheduled.

7.04 EMPLOYEE ELIGIBILITY FOR HOLIDAY BENEFITS

A. In determining eligibility for holidays, employees must be in an active pay status for the scheduled workday immediately preceding a holiday in order to be eligible for the benefits of that holiday.

B. Hourly employees who are scheduled at least one thousand, six hundred (1,600) hours and are eligible to accrue annual and sick leave are eligible to receive holiday pay. Part- time or seasonal employees whom are ineligible to accrue sick and annual leave are not eligible for holiday pay.

C. Emergency employees, interim employees, and temporary employees who are employed on a full-time basis will be eligible to take the holiday with pay when they have worked their scheduled work period immediately preceding the holiday.

D. Employees on special leave without pay, educational leave without pay, parental leave without pay, military leave without pay, and Division of Claims Administration status will not take or be paid for that holiday as it occurs or at a later date. Employees on educational leave with pay will be paid for the holiday, but the leave will be coded as educational leave rather than holiday pay. Employees paid through the Sick Leave Bank will be paid for the holiday as one of their regularly approved days from the bank.

E. Employees granted special leave without pay effective the day immediately after holiday will be paid for the holiday, but only if the employee worked the preceding day immediately prior to the holiday.

F. Retiring employees will not be paid for the holiday unless terminal leave extends at least one tenth (0.1) of one (1) hour into the next workday following the holiday. Terminating employees whose last day worked is prior to the holiday and receives a lump sum payment of accrued leave are not eligible to receive holiday pay.

G. Employees transferring to a state service agency from a state college or university the next working day after a holiday are not eligible for holiday pay, unless the holiday is paid by the college or university.

7.05 ACCOUNTING FOR HOLIDAY TIME FOR EMPLOYEES ON IRREGULAR WORK SCHEDULES

Due to the variety of state services, some agencies and their employees are not able to observe holidays. Work schedules make it necessary for some employees to work on holidays based on the needs of the agency. **When possible, the employee must revert to a normal work week.**

A. An employee who is scheduled to work on a holiday will receive compensatory overtime on an hour-for-hour basis for time actually worked up to the number of hours scheduled, regardless of the number of days scheduled in the work week.

B. If the time spent actually working on a holiday exceeds a non-exempt employee's regular schedule, the non-exempt employee may be due cash overtime at the end of the work week, in addition to the compensatory time, up to scheduled hours on the holiday.

C. An employee who has an irregular work schedule and is scheduled to work on a holiday but did not work due to the office being closed in observance of the holiday will receive holiday time on an hour-for-hour basis for time scheduled. This employee should be returned to a regular schedule if at all possible.

D. If a holiday falls on an employee's regularly scheduled day off, the employee will receive compensatory overtime. This would apply to any employee who is regularly scheduled to work less than five (5) days per week or whose work schedule is something other than Monday through Friday. These employees will be given seven and one half (7.5) hours or eight hours (8.0) hours of compensatory time, depending on the employee's schedule.

E. If an employee is scheduled to work on a holiday and has an excused absence for which compensatory or annual leave is approved, that day will be charged as holiday time. This would be considered as the employee's approved holiday compensation; therefore, the employee should not receive any overtime or compensatory time for this holiday.

However, if the employee requests sick leave to be charged, sick leave may be granted, and compensatory time allowed for the holiday. If the employee presents a doctor's statement, sick leave must be granted.

F. If an employee is scheduled to work seven and one-half (7.5) hours or more on a holiday and only fulfills part of that scheduled day, the balance of the day is to be charged as holiday time and the employee will be given compensatory time for hours actually worked.

G. Any unexcused absences may be charged as leave without pay and the employee should not receive any compensatory time for the holiday.

H. Employees on a thirty-seven and one-half (37.5) hour work week must be compensated at least seven and one-half (7.5) hours on the holiday and employees on a forty (40.0) hour work week must be compensated at least eight (8.0) hours on the holiday, when the eligibility requirement is met.

Authority:
Tenn. Code Ann. §§ 8-30-104, 8-30-406 and 15-1-101
Rules of the Department of Human Resources 1120-06-.15

CHAPTER 8
CIVIL LEAVE

8.01 LEAVE USE

Civil leave may be used by any state employee who is subpoenaed or otherwise directed to serve as a juror in any court of the United States or the State of Tennessee. Any employee (including part-time) scheduled to work on the day the employee is called for jury duty is eligible for civil leave. If the employee is not scheduled to work, then the employee is not eligible for civil leave. Upon receiving a summons to report for jury duty, the employee shall, on the next day of the employee's employment, exhibit the summons to the employee's immediate supervisor. Civil leave will be granted for any day or days an employee is required, by summons, to report for jury duty, provided such responsibility for jury duty exceeds three (3) hours during the day for which the excuse is sought. If the employee serves less than three (3) hours per day, the time served will be coded as civil leave and the employee must return to work or use compensatory or annual leave for the remaining work hours. Civil leave includes the time required to travel to and from jury duty.

8.02 NIGHT SHIFT

If an employee summoned for jury duty is working a night shift or is working during the preceding hours before court is in session, the employee shall be granted civil leave from the employee employment for the shift immediately preceding the first day served. After the first day served, when the employee's responsibility for jury duty exceeds three (3) hours during a day, the employee shall be granted civil leave from the employee's next scheduled work period if such schedule occurs within twenty-four (24) hours of jury duty. If the employee serves less than three (3) hours per day, the time served will be coded as civil leave (if the leave occurs during normally scheduled working hours) and the employee must report to work or use compensatory or annual leave for their next regularly scheduled shift. Questions surrounding whether an employee's shift is applicable to this provision shall be conclusively determined by the trial judge of the court to which the employee has been summoned.

8.03 PAYMENT FOR SERVING

The employee may retain any compensation received for jury duty from the courts. However, the employer is not required to compensate the employee for more time than was actually spent serving and traveling to and from jury duty.

8.04 EMPLOYMENT STATUS

An employee's employment status must remain intact upon return to work from jury duty. No employer shall discharge or in any manner discriminate against any employee for serving on jury duty if the employee, prior to taking the time off, gives the required notice to their supervisor. Any employee who is discharged, demoted, or suspended because the employee has taken time off to serve on jury duty is entitled to reinstatement and reimbursement for lost wages and work benefits caused by such acts of the employer. Any employer who willfully refuses to rehire or otherwise restore an employee or former employee commits a Class A misdemeanor.

8.05 GOVERNMENT WITNESS

An employee who serves as a government witness in an official job capacity will be considered on duty and not charged leave. When the employee serves less than three (3) hours per day, the employee must return to work or use compensatory or annual leave for the remaining work hours.

8.06 PRIVATE LITIGATION WITNESS

An employee must take compensatory, annual or leave without pay if subpoenaed in private litigation to testify not in an official capacity.

8.07 EMPLOYEE INVOLVED IN CRIMINAL OR CIVIL TRIAL

An employee who is personally involved in litigation and is absent from duty will be charged with compensatory, annual or leave without pay.

Authority:
Tenn. Code Ann. §§ 22-4-101, 22-4-103, 22-4-106, 22-4-107 and 8-30-406
Rules of the Department of Human Resources 1120-06-.16

CHAPTER 9
EXTENDED LEAVE

Extended leave addresses situations in which employees are in an extended leave without pay status. The policy pertains both to employees who use leave prior to going on leave without pay status and those who choose to retain leave balances.

9.01 REQUEST FOR EXTENDED LEAVE

An employee must make a written request to his or her appointing authority for approval of special leave, parental leave, educational leave, and personal educational leave. Employees may also be on extended leave when using leave through the Sick Leave Bank or Division of Claims Administration leave.

The granting of extended leave gives the employee the right to return to the employee's position in accordance with provisions of the written approval granted by the appointing authority, provided the position still exists. However, if an employee's job is so unique that the agency cannot, after reasonable efforts fill the position temporarily, then the agency shall not be liable under this section for failure to reinstate the employee at the end of the leave period.

9.02 LEAVE USE

An employee must use his or her accumulated leave balance balances (compensatory, annual, and sick) before being approved for leave without pay, except in cases of military or Division of Claims Administration leave. An employee on military or Division of Claims leave may be approved to use all or part of his or her accumulated annual and sick leave (where appropriate) before beginning the period of leave without pay. The employee may also be approved to retain any accumulated annual and sick leave balances.

Employees must be notified of the way in which a period of extended leave without pay may impact insurance coverage. Any exceptions to the above policy must be requested in advance to the Department of Human Resources.

9.03 ACCOUNTING FOR EXTENDED LEAVE

Instances for which extended leave may be approved include special leave, parental leave, educational leave, personal educational leave, Division of Claims Administration leave, Sick Leave Bank leave and military leave. In determining the beginning date for extended leave, the effective date will be the first full day the employee is without pay. A copy of the appointing authority's approval or, if applicable, a copy of the military orders must be submitted to the Department of Human Resources.

9.04 RETURNING FROM EXTENDED LEAVE

Employees failing to return two (2) days after the end of an approved special leave period shall be considered to have resigned in accordance with Tennessee Code Annotated § 8-30-316, absent extenuating circumstances beyond the control of the employee causing the employee's absence or preventing the employee's return. An employee deemed to have resigned under these circumstances shall have the right to appeal such action pursuant to the appeal procedure described in Tennessee Code Annotated § 8-30-316.

9.05 RETURNING FROM EXTENDED LEAVE FROM MILITARY DUTY

Any employee shall be granted a leave of absence for the purpose of being inducted or otherwise entering military duty. If not accepted for such duty, the employee shall be reinstated in such position without loss of seniority or status or reduction in rate of pay. During such period, the employee shall for all purposes be considered to have rendered service and to have been compensated therefore at the employee's regular rate of pay.

9.06 EFFECT ON PROBATIONARY PERIOD, SERVICE AND SALARY INCREASES

An employee on extended leave without pay for a major portion of a calendar month does not accumulate sick or annual leave for that month. The expiration date of the probationary period and the anniversary date for service, longevity pay, and salary policy adjustments will be changed accordingly.

Authority:

Tenn. Code Ann. §§ 4-21-408, 8-30-104, 8-30-316, 8-33-101, 8-33-105, and 8-50-901 et seq.
Rules of the Department of Human Resources, Chapter 1120-06 and 1120-09-.02

CHAPTER 10
EDUCATIONAL LEAVE

10.01 EMPLOYEE ELIGIBILITY FOR EDUCATIONAL LEAVE WITH PAY

Any full-time, regular employee may be eligible for educational leave if the education and training is directly applicable to the needs of the agency and/or to the position the employee holds or for which s/he is being trained. The employee may be eligible for continuing education from higher education, vocational, and professional institutions.

10.02 PURPOSE

The purpose of educational leave with pay for state employees is:

A. To provide opportunities for education and training which will increase the proficiency of state employees in carrying out their present duties and responsibilities, as well as improving the quality of service to customers and stakeholders;

B. To assist state employees in meeting required qualifications in occupational and professional fields where critical shortages exist; and

C. To provide opportunities for continuing education and advanced study on a full-time basis and training for the purpose of maintaining course with rapid technological changes.

Employees, in consultation with the agency, who have identified a specialized technical need, may select one of the following continuing education options: full-time education, part-time education, short-term learning, or after work hours education or learning. For more information, see Department of Human Resource Rule 1120-08.04.

10.03 COMPENSATION

An employee may receive a maximum of seventy-five percent (75%) of the employee's salary during the period of full-time education and training. When the state requires an employee to acquire additional formal education to accomplish the employee duties, the employee may be compensated at full salary with prior approval of the Commissioner of the Department of Human Resources and the Commissioner of the Department of Finance and Administration.

If an employee receives salary assistance through fellowships, grants, or other outside sources, the employee's salary during the education and training period shall not exceed the employee's regular salary. A notarized statement of salary funding and sources must be submitted to the Commissioner of the Department of Human Resources and the Commissioner of Finance and Administration for approval.

10.04 SERVICE CREDITS TOWARD SALARY INCREASES DURING EDUCATIONAL LEAVE

Time served by a state employee while on educational leave will be counted on a month-for-month basis in determining the date which an employee will be considered eligible for earned salary increases.

10.05 EFFECT OF EDUCATIONAL LEAVE ON SERVICE TIME AND LONGEVITY

During the period of absence on educational leave, the employee shall retain any accumulated annual and sick leave. The employee will continue to earn time toward longevity credit, if applicable, and for total years' service. An employee on educational leave is considered to be on active pay status and eligible for longevity, if applicable, when due.

10.06 EFFECT OF EDUCATIONAL LEAVE ON ANNUAL LEAVE AND SICK LEAVE

An employee on educational leave with pay is not required to use his or her accrued leave nor does the employee accrue annual or sick leave during the period the employee is on educational leave.

10.07 EDUCATIONAL LEAVE WITHOUT PAY

An employee may request leave without pay to continue the employee's education on a full-time basis. This leave must be approved in advance by the agency's appointing authority. Educational leave without pay will advance the employee's probation date (if applicable), as well as service and longevity anniversary dates.

Authority:
Tenn. Code Ann. §§ 8-30-104, 8-30-105
Rules of the Department of Human Resources 1120-06-.17, 1120-08-.04, 1120-08-.05

CHAPTER 11

MILITARY LEAVE

The State of Tennessee is proud to support the service of its employees who are also members of the reserve components of the Armed Forces of the United States, including members of the Tennessee National Guard. Federal law provides certain employment related rights to these individuals under the Uniformed Services Employment and Reemployment Rights Act (USERRA). The State of Tennessee provides additional statutory rights and benefits to servicemembers.

11.01- MILITARY LEAVE

Military leave shall be granted to uniformed servicemembers who are absent from their position because of the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority. Such circumstances include, but may not be limited to:

- Active duty and active duty for training
- Initial active duty for training
- Inactive duty training
- Full-time National Guard duty
- Absence from work for an examination to determine a person's fitness for any of the above types of duty
- Funeral honors duty performed by National Guard or Reserve members
- Duty performed by intermittent employees of the National Disaster Medical System (NDMS), which is part of the Department of Health and Human Services, when activated for a public health emergency, and approved training to prepare for such service (added by Pub. L. 107-188, June 2002)(See Title 42, U.S. Code, Section 300hh-11(d))
- Activation by the Governor under Tennessee Code Annotated, § 58-1-108

11.02 – ADVANCE NOTICE

Under USERRA, employees (or an appropriate officer of the uniformed service in which such service is performed) are required to provide advance written or verbal notice of such service to their employer, with the following exceptions:

A) Military necessity[1] prevents the giving of notice; or

B) The giving of notice is otherwise impossible or unreasonable

11.03 – MILITARY LEAVE WITH PAY

A leave of absence with pay, not to exceed twenty (20) regularly scheduled workdays per calendar year, will be granted to all employees who are members of the reserve components of the Armed Forces of the United States, including members of the Tennessee National Guard, for all periods during which they are engaged in the performance of duties or training activities in the service of the State or the Federal Government while under competent orders.[2] Military leave with pay will be granted for regularly scheduled monthly training for reservists and national guardsmen. Holidays and scheduled off duty days do not count toward the twenty (20) workdays allowed. Following the twenty (20) working days of full compensation, employees may use up to five (5) days of sick leave in lieu of annual leave for the purposes of not having to take leave without pay.

United States Air Force Auxiliary Civil Air Patrol:
A leave of absence with pay, not to exceed fifteen (15) working days, in any one calendar year, will be granted to employees who are members of the United States Air Force Auxiliary Civil Air Patrol and who participate in a training program for the civil air patrol, or in emergency and disaster services, as defined in Tennessee Code Annotated § 58-2-101, if the leave of absence is at the request of the employee's wing commander or the wing commander's designated representative in accordance with Tennessee Code Annotated § 42-7-102.

[1] "Military necessity" for purposes of the notice exception is defined as "a mission, operation, exercise or requirement that is classified, or a pending or ongoing mission, operation, exercise or requirement that may be compromised or otherwise adversely affected by public knowledge." See Department of Defense Instruction 1205.12.

[2] In order to avail oneself of the paid leave benefit, the servicemember must provide the employer sufficient, credible documentation of the military service, such as competent orders, as soon as possible or practicable.

Call to Active State Duty with the Tennessee National Guard:
The Governor has the power to order into active service all or any part of the Tennessee National Guard (under Tennessee Code Annotated § 58-1-106 or §58-1-108). Employees involuntarily called into active state duty by the Governor pursuant to Tennessee Code Annotated § 58-1-106 shall receive leave with pay for the duration of the orders. In addition, the employee shall incur no loss of service time and continue to receive regular annual leave and sick leave. While on active duty, the employee's absence should not count against leave provided under Tennessee Code Annotated § 8-33-109. The employee shall not lose benefits to which he or she is otherwise entitled. An employee returning from a period of state active duty under a call to active state duty as defined herein shall be reinstated to his or her previous position.

11.04 - REPORTING BACK TO WORK

An employee must be available to return to work within certain time limits following the conclusion of their service, depending upon the length of their service. These time limits are set forth in 20 C.F.R. § 1002.115. Management and supervisory personnel should always consult with human resources personnel and legal counsel, as appropriate, in order to ensure compliance with the law which intentionally affords certain flexibility for servicemembers upon their return from military service:

A) For military service of one (1) to thirty (30) days or for a period of any length for the purpose of a fitness examination, the employee must report back to work by the beginning of the first regularly scheduled work period on the first calendar day following the completion of service, after allowance for safe travel home from the military duty location and an eight (8) hour rest period.

B) For military service between thirty-one (31) and one hundred eighty (180) days, the employee is expected to submit an application for reemployment (written or verbal) no later than fourteen (14) days after completing service.

C) For military service greater than one hundred eighty (180) days, the employee shall be allowed ninety (90) days to submit an application for

reemployment (written or verbal).

This time may be extended as necessary to accommodate circumstances beyond the employee's control that make reporting within the time period impossible or unreasonable.

For applications for reemployment following service in excess of thirty (30) days, the employee may be requested to provide documentation to establish that the reemployment application is timely, the employee has not exceeded the five (5) year limit on the duration of service (subject to exceptions), and the employee's separation or dismissal from service was not disqualifying.

> NOTE: The above provision does not apply if the employee is requesting military leave with pay, the employee MUST provide appropriate documentation showing completion of military service, regardless of the length of time. See 11.03 – Military Leave with Pay.

Regardless of the employee's responsibility to provide documentation, the agency must promptly reinstate the employee upon application for reemployment pursuant to 20 C.F.R. §1002.180-181.

A. Appointing Authority's Responsibility

It is the appointing authority's responsibility to determine the employee's eligibility for military leave without pay. The employee shall be advised of the employee rights, responsibilities and benefits under this provision. Final separation forms shall be submitted to the Department of Human Resources if the employee exceeds the time limitation for reemployment as set forth in Tennessee Code Annotated § 8-33-102 or 38 U.S.C. § 4312.

B. Retention and Continuation of Benefits

During the period of leave without pay for military service, the employee shall retain the terms and conditions of employment-based benefits he or she had on the date uniformed service began, plus any terms and conditions of employment-based rights and benefits the employee would have attained if he or she had remained continuously employed in accordance with 20 C.F.R. §1002.210, included but not limited to all accumulated annual and sick leave, retirement status, and continue to earn service credit toward seniority and retirement. Time served on military leave without pay also

counts as service time under the longevity program, if applicable. Continuation in the insurance program, if elected, shall be granted immediately and without conditions not in effect at the commencement of military leave.

Federal law provides that service members must, at their request, be allowed to use any annual leave that had accrued before the beginning of their military service instead of unpaid leave. The supervisor, however, cannot force the employee to use annual leave for military service (38 U.S.C. § 4316(d)).

C. Reinstatement After Completion of Military Service

If the employee's service was less than ninety-one (91) days, the employee is entitled to reemployment in the job position that he or she would have attained with reasonable certainty if not for the absence due to service (known as the escalator position).

If the employee's service was more than ninety (90) days, the employee must be reemployed in the escalator position or a position of like seniority, status, and pay. The employee must be qualified for the position, and the employer must make reasonable efforts to help the employee become qualified.

D. Additional Leave Related to a Service-Connected Disability

In addition to the sick leave granted under T.C.A. § 8-50-802, an employee veteran with a service-connected disability of thirty percent (30%) or more shall receive thirty-six (36) hours of leave each year to be used to attend appointments related to the service-connected disability.

Such leave remaining at the end of the year may not be carried forward to the subsequent year. The year for leave under this provision will run from July 1st to June 30th of each year.

To receive approval, employees requesting such leave shall provide to their agency human resources office information related to the service-connected disability and documentation related to the service-connected disability appointments.

Recordkeeping: Employee timesheets for sick leave under this chapter should be coded as Veterans Sick Leave (VSL).

11.05 - MILITARY FUNERAL

Excused absence up to four (4) hours per day may be granted to an employee who is a veteran to participate in a military funeral service as a pallbearer, member of a firing squad or Honor Guard. For this purpose only, a veteran is defined as one who has been separated from military service under honorable conditions and who served at least six (6) months during a period of war or presidential declaration necessitating mobilization of armed forces.

Service members who are authorized to perform funeral honors duty under 10 U.S.C. § 12503 or 32 U.S.C. § 115 shall be eligible for military leave to perform those duties, not limited to four (4) hours, and under the same conditions as any other type of military service as provided for in 20 C.F.R. § 1002.55.

11.06 - DUTIES PERFORMED IN RECOGNITION OF "THE OPERATION"

Employees called to active duty in support of a military operation undertaken in response to the terrorist attacks that occurred on September 11, 2001, and for all orders issued for operations Enduring Freedom, Joint Endeavor, Noble Eagle, New Dawn, and any subsequent operations ordered by the President or Governor, shall be entitled to special leave with partial pay for a period not to exceed one (1) year pursuant Executive Order. To the extent possible, partial pay shall be the difference between the employee's regular state salary and the employee's full time base military salary, with a minimum monthly amount sufficient to keep in full force and effect, all benefits that the employee had on the date of call to active military duty. This provision may be extended, restricted, or amended by Executive Order.

Authority:

Tenn. Code Ann. §§ 8-33-101, 8-33-109, 8-33-110, 42-7-102, 58-1-106, 58-1-108
Rules of the Department of Human Resources 1120-06-.18
38 U.S.C. § 4312, 20 C.F.R. § 1002,
U.S. Department of Labor Guide to Uniformed Services Employment and Reemployment Rights Act

CHAPTER 12
SPECIAL LEAVE WITHOUT PAY

Special leave is leave without pay that is greater than the major portion of one (1) month. Special leave without pay may be granted to an employee at the discretion and upon recommendation of the appointing authority. Special leave must be requested in writing and be approved in advance by the appointing authority, where practical. If a request cannot be submitted and approved, the employee must receive verbal approval. Upon returning to work, the employee must submit a written request explaining the nature of the absence and provide, if requested, a physician's statement. This approval must be submitted to the Commissioner of the Department of Human Resources as a matter of record. Leave without pay, which constitutes a period of less than the major portion of a month, may be delegated by the appointing authority to the immediate supervisor and requires no special notification to the Commissioner of the Department of Human Resources. However, if the special leave is intermittent and constitutes the major portion of a month, a memorandum of explanation must be submitted to the Commissioner of the Department of Human Resources for approval.

General examples for which special leave without pay may be granted are:

A. Extended Illness – An employee must exhaust all accumulated annual, sick, and compensatory leave before going on special leave in this situation.

B. Special Work Assignment - In cases of emergency or when the state and/or other governmental agency will profit by experience gained or the work performed, a state employee may be granted special leave without pay for special work assignments.

C. Vacation - An employee may be granted special leave without pay for vacation purposes if approved by the appointing authority. However, the employee must exhaust all accumulated annual, sick, and compensatory leave before going on special leave in this situation.

D. Seasonal - Seasonal leave is an enforced leave of absence without pay during a recess period from a permanent position which does not require the services of an employee for the entire year.

E. Leave of Absence for Officer of Employee Associations - The chief elected officer of any employee association that has payroll deductions for association dues shall be allowed up to two (2) years leave of absence without pay to perform the duties of such office. This leave of absence shall not apply to a chief elected officer who is under the executive grade pay plan or to state physicians or dentists. At the option of such officer, the officer may be paid for any accrued annual leave or any accrued annual leave may be carried forward to such time as the officer returns to their position in state government. In the event the officer elects to be paid for annual leave, the period of time for leave of absence without pay shall be accordingly reduced.

At the end of the period of leave, any officer who has taken such leave shall be entitled to return to the officer's former position at the same place of employment in the same class or rank in the division or department which such officer held prior to taking such leave. Any leave granted under this section shall not diminish any employee rights, including accrued but unused leave, longevity, or those arising from longevity or time in grade.

Furthermore, an officer or an employee who belongs to any employee association which is qualified for payroll deduction for association dues as set forth in § 8-23-204 and who is a member of the official board of such association shall be entitled to receive administrative leave days in order to attend board meetings to conduct business of the association; provided, that such leave shall not exceed twelve (12) days in any calendar year.

F. Leave for Athletic Competition - See Chapter 4, Leave of Absence for Participation in Certain Athletic Competitions.

G. Family and Medical Leave - See Chapter 6.

Authority:
Tenn. Code Ann. §§ 8-30-104, 8-50-109, 8-50-801, and 8-50-110
Rules of the Department of Human Resources 1120-06-.14

CHAPTER 13

PARENTAL LEAVE

13.01 - PARENTAL LEAVE ELIGIBILITY

Any employee who has been employed in state service for at least twelve (12) consecutive months as a full-time employee may be absent from employment for a period not to exceed four (4) months for adoption, pregnancy, childbirth, and nursing the infant. The four (4) month period shall include leave required before and after the birth of a child. With regard to adoption, the four (4) month period shall begin at the time an employee receives custody of the child.

Any employee who has less than one (1) year of service may be granted parental leave for a period not to exceed thirty (30) workdays following the birth of a child.

Leave may be taken continuously or intermittently. However, leave entitlement expires at the end of the twelve (12) month period beginning on the date of the birth or placement. Parental leave for these reasons must be concluded within this time period.

13.02 - EMPLOYEE NOTICE REQUIREMENTS

An employee must provide at least thirty (30) days advance notice prior to the date the leave is to begin. In situations where thirty (30) day notification is not possible because the employee has no knowledge of the exact time when the leave will need to begin or because of change or circumstance or medical emergency, notice must be given as soon as practicable, normally within one (1) or two (2) business days of when the employee knows the date leave will be needed. An employee who gives at least thirty (30) days advance notice of their anticipated date of departure for parental leave, length of parental leave, and intention to return to full-time employment after parental leave shall be restored to their previous or a similar position with the same status, pay, lengthof service credit and seniority, whenever applicable, as of the date of leave.

Employees should request parental leave in Edison through Employee Self

Service by navigating to HCM > Self Service > Time Reporting > Report Time > Request FMLA Leave. Employees are required to provide the need for the leave and the anticipated timing and duration of the leave.

In instances where the employee does not enter the request in Edison, but instead notifies the supervisor of the need for parental leave, the supervisor shall refer the employee to the agency FMLA Coordinator. The FMLA Coordinator will request additional information to determine if the employee is requesting parental leave specifically, obtain the necessary details of the leave being taken, and enter the request in Edison.

Benefits and rights provided shall not be forfeited if the employee is prevented from giving advance notice due to a medical emergency which necessitates the parental leave beginning earlier than anticipated or if the notice of adoption was received less than thirty (30) days in advance.

If the employee's position is so unique that, with reasonable effort, the position cannot be filled temporarily, as determined by the Commissioner, or if the employee has utilized the period of parental leave to actively pursue other employment opportunities or has worked part-time or full-time for another employer, reinstatement is not required. In such case, the employee shall be notified of the decision not to reinstate.

13.03 - COORDINATION WITH FAMILY AND MEDICAL LEAVE (FMLA)

If leave qualifies for parental leave and FMLA leave, the leave used counts against the employee's entitlement under both laws. Parental leave and FMLA leave shall run concurrently to the extent permitted by law.

13.04 - TYPES OF LEAVE PERMISSIBLE FOR PARENTAL LEAVE

A. Annual Leave
A state employee may use annual leave for parental leave absences for a period not to exceed the state employee's accumulated sick leave and annual leave balance, or twelve (12) weeks, whichever is less.

B. Compensatory Time
Compensatory time may be used during a parental leave of absence.

C. Sick Leave
A state employee may use sick leave for parental leave absences for a period not to exceed the state employee's accumulated sick leave and annual leave balance, or twelve (12) weeks, whichever is less. In order to be eligible to use sick leave, the state employee must provide written notice with a statement from the attending physician indicating the expected date of confinement. Use of sick leave prior to and 12 weeks after delivery is subject to ordinary rules regarding the use of sick leave, i.e., the employee must be unable to work or must be using sick leave to care for a sick or disabled family member. Sick leave may be used during a parental leave of absence for adoption up to 12 weeks after the employee receives custody of the child. All sick leave used during a parental leave of absence is coded as Parental Sick Leave (**MPSL**) in the attendance and leave reporting system.

D. Parental Leave Without Pay
Special leave without pay may be used during a parental leave of absence only when an employee has exhausted all other sick, annual, or compensatory leave.

E. Family and Medical Leave
See Chapter 6, entitled FAMILY AND MEDICAL LEAVE ACT.

Authority:
Tenn. Code Ann. §§ 4-21-408, 8-30-104, 8-30-105, 8-50-802, and 8-50-806
Rules of the Department of Human Resources 1120-6-.20

CHAPTER 14
DIVISION OF CLAIMS ADMINISTRATION ABSENCE

14.01 - ELIGIBLE EMPLOYEES

An employee injured while on duty has the option of being placed immediately on leave without pay and upon approval drawing lost time compensation through the Division of Claims Administration or using sick and/or annual leave and then drawing lost time compensation.

14.02 - ELIGIBILITY FOR LOST TIME COMPENSATION

To be eligible for lost time compensation from the Division of Claims Administration, an employee must be in a without pay status due to injury or job-related illness for more than seven (7) calendar days. If the employee is unableto work after more than fourteen (14) calendar days, lost time compensation from the Division of Claims Administration will be paid effective from the first day the employee is in a without pay status following the injury. Employees may elect to use sick, annual, or compensatory time in lieu of lost time. If the employee elects to use accrued time they will be unable to, at a later date, buy back the time they have used for Division of Claims Administration Absence.

14.03 - RETURN FROM LEAVE

When the employee is no longer compensated by the Division of Claims Administration and returns to normal work duties, the agency must return the employee to active status and submit documentation to adjust the employee service and longevity dates along with a doctor's statement stating that the employee is able to return to work.

14.04 - EFFECT ON ANNIVERSARY DATES

Employees should be given credit for time compensated by the Division of Claims Administration as if the employee were in an active pay status. Even though time served should not advance the employee's longevity (if eligible), salary, or service anniversary date, these dates are automatically advanced each month that the employee is not in active pay status the major portion of the month. When the

employee returns to active status, documentation must be submitted to the Agency Resource Center of the Department of Human Resources to correct these dates.

14.05 - DISABLING ASSAULT INJURIES IN THE LINE OF DUTY

Retention on regular payroll - conditions are as follows:

A. If an employee is injured in the line of duty as a result of an assault and the injury results in the employee's inability to perform regular duties, whether such disability is temporary or permanent, the appointing authority, with prior approval of the Commissioners of Finance and Administration and Human Resources, shall retain the injured employee on the regular payroll for a period not to exceed twenty-eight (28) calendar days without requiring the employee to use any sick leave benefits. *[Recordkeeping: This leave should be coded as Assault Pay (ASSLT) on the employee's attendance and leave record.]*

B. The length of time an injured employee will be permitted to remain on the regular payroll shall be based upon a written statement from the attending physician that the employee is unable to perform regular duties. However, in no event shall the employee's period exceed twenty-eight (28) calendar days from the date of the injury.

C. In circumstances where an injured employee makes a claim for compensation for the injury to the Division of Claims Administration (Division), the appointing authority is authorized to compensate the employee for the difference between the employee's weekly salary at the time of the injury and the weekly compensation for such injury as determined by the Division for the period of time between the date of the injury and the effective date of the action of the Division. In no case will this compensation exceed ninety (90) calendar days. This provision shall not apply to employees who have failed to file a claim with the Division within ten (10) calendar days after the date of the injury causing the temporary or permanent disability. The agency continues to pay the employee on the regular payroll and the Division will reimburse the agency for the period between twenty-eight (28) and ninety (90) days. Assault pay may be used intermittently for up to the ninety (90) calendar day limit.

D. In the event that the injured employee receives any monetary recovery from or settlement with a third party where the state receives any part of the recovery in compensation for payments made, the state shall pay a pro rata share. This share will be based on the percentage of the recovery received, and of any attorney's fees paid or agreed to by the injured employee that were made to secure such settlement or recovery.

E. Nothing in this section shall be construed to prevent an injured employee from requesting permission to use any sick leave benefits.

F. Whenever a commissioned member of the Tennessee Department of Safety, a driver's license examiner, commissioned instructor employed at the Tennessee law enforcement training academy, correctional officer, or youth service officer is injured in the line of duty and such injury disables him or her from performing the assigned duties of the position, whether such disability is temporary or permanent, it shall be lawful for the appointing authority with the approval of the Governor and the Attorney General ofthe State, to retain such injured disabled employee upon the regular payroll until the employee claim for compensation for such disability is determined by the Division of Claims Administration.

Authority:
Tenn. Code Ann. §§ 4-6-148, 4-7-109, 8-50-111, and 68-102-402
Rules of the Department of Human Resources 1120-6-.22

CHAPTER 15
TERMINAL LEAVE FOR RETIREES AND DEATH BENEFITS OF DECEASED EMPLOYEES

The unused, accrued annual leave balance of a retiring employee is called terminal leave.

15.01 ELIGIBLE EMPLOYEES

When an employee retires from state service, s/he is eligible to receive payment for the unused portion of their annual leave, except in the case of termination for gross misconduct. Any employee who is dismissed or terminated from state service for gross misconduct, who retires from state service to avoid termination for gross misconduct, or who was guilty of gross misconduct prior to leaving state service is ineligible to receive compensation for any accrued annual leave as terminal leave, including in a lump sum payment.

In this situation, however, the employee must be paid for all accumulated compensatory leave in a lump sum payment.

15.02 EMPLOYEES SUBJECT TO STATE RETIREMENT

All employees who are members of the state retirement system through the Tennessee Consolidated Retirement System and who are entitled to terminal leave, must be compensated for their terminal leave prior to the effective date of the employee's retirement.

15.03 BEGINNING OF TERMINAL LEAVE

Terminal leave begins the workday immediately following the employee's last full workday. If the employee has a compensatory leave balance, this balance must be paid first. Terminal leave will begin once the compensatory leave is exhausted. Employees on an irregular work schedule should revert to a regular work schedule.

15.04 SATURDAYS, SUNDAYS AND OFFICIAL HOLIDAYS

In establishing an employee's terminal leave period, credit must be allowed during the terminal leave period for Saturdays, Sundays and holidays in the same manner as though regular annual leave was being considered.

15.05 DETERMINING THE END OF THE TERMINAL LEAVE PERIOD

The effective date of retirement will be the day after the employee exhausts all terminal leave.

15.06 PAYING FOR A HOLIDAY WHILE ON TERMINAL LEAVE PERIOD

In order for an employee to receive pay for a holiday while on terminal leave, there must be at least a balance of one tenth (.1) hour of terminal leave on the first workday immediately following the holiday.

15.07 PAYING FOR EXCESS TERMINAL LEAVE

Employees accumulate leave in excess of the maximum allowable accrual for their service group for up to 12 months before the leave transfers to sick leave. The transfer date directly follows completion of the employee's hire month. Compensatory leave is considered work time and must be exhausted prior to the transfer date. If the employee separates (i.e., begins a terminal leave period) prior to this transfer the employee must be paid for the total amount of leave in the form of terminal leave.

15.08 LONGEVITY PAYMENT ON TERMINAL LEAVE

Retiring employees who are receiving compensation on their longevity anniversary date are eligible for longevity payments, if eligible, even if they are on terminal leave.

15.09 MANDATORY LUMP SUM PAYMENT OF DEATH BENEFITS

The payment of unused, accrued annual, sick and compensatory leave balances for deceased employees will be made in lump sum. Deceased employees should be

separated from the payroll and personnel systems. Deceased employees will not be placed on terminal leave, allowing leave balances to diminish; rather, agencies should submit a supplemental request for lump sum payment of death benefits to the Department of Human Resources Agency Resource Center.

Deceased employees will receive service credit and their beneficiaries or estates will be paid for holidays and longevity (if applicable), as if the deceased employees' annual and compensatory leave had been allowed to continue as terminal leave. Retirement credit will be granted for the sick leave balance accrued prior to death if the surviving beneficiary is due a benefit.

If the deceased employee was under a State Health Insurance Plan at the time of their death, the employee's surviving eligible dependent(s) who were covered under the State Health Insurance Plan at the time of the employee's death will continue to receive the same coverage for six (6) months at no cost to the dependent(s)or to agencies. At the end of the six (6) month period, the dependent(s) will automatically receive notification of eligibility to be insured through the Consolidated Omnibus Budget Reconciliation Act (COBRA).

Employee wages earned through the time of death should be processed on payroll as regular wages paid to the deceased employee. In accordance with state law, the State of Tennessee is authorized to provide payment of up to $10,000 in wages to a surviving spouse of a decedent, but if none are identified, then to the surviving children of the decedent as tenants in common. The $10,000 payment should be paid if funds are available from the wages earned through the time of death. This payment cannot be made from accumulated leave balances. Calculations should be made to determine if the payment can be made. A signed and notarized request for payment must be made prior to the processing of the payroll for the pay period in question. Tenn. Code Ann. § 30-2-103

15.10 BENEFICIARY FOR LEAVE BALANCES

An employee may designate a beneficiary to receive payment for unused, accrued sick, annual and compensatory leave balances upon the employee's death. The beneficiary for leave balances will be the same person designated as the beneficiary for receipt of retirement benefits under the Tennessee Consolidated Retirement System, unless the employee designates a different person.

An employee wishing to designate a beneficiary to receive the unused, accrued leave balances should prepare a written statement indicating who should receive payment upon the employee's death. The statement should be signed by the employee, notarized, and returned to the employee's agency human resources department. The written statement will become part of the employee's personnel file. Tenn. Code Ann. § 8-50-808

If there is no designated beneficiary, the payment of last wages will be made to the employee's estate or in accordance with state law. Tenn. Code Ann. § 30-2-103 TERMINATION OF BENEFITS

During the period of terminal leave, an employee will not:

A. Be in a leave accruing status on the date that terminal leave begins.

B. Be eligible for salary increases or salary adjustments. The salary rate in effect on the last day worked will be used in determining terminal payment.

Authority:
Tenn. Code Ann. §§ 8-50-807, 8-50-808, and 30-2-103
Rules of the Department of Human Resources 1120-06-.23 and 1120-06-.24

CHAPTER 16
TEMPORARY EMPLOYMENT OF RETIRED STATE EMPLOYEES

Retired employees may return to temporary employment under certain conditions as outlined in the temporary employment form obtained from the Retirement Division, Treasury Department. The retired employee may accept employment with a covered employer for up to one hundred and twenty (120) days during a twelve (12) month period.

The appointment type will be part-time. Appointments will be at an hourly rate of pay. Employees must be separated after one hundred and twenty (120) working days in positive pay status or after twelve (12) consecutive months, whichever comes first.

Retired employees are not eligible for longevity payments, with the exception of the retired employees who are eligible for longevity payments under the authority of Tennessee Code Annotated § 8-23-206, if initially hired prior to June 30, 2015.

Authority:
Tenn. Code Ann. §§ 8-23-206 and 8-36-805
Rules of the Department of Human Resources 1120-02-.11

CHAPTER 17
OVERTIME

Overtime is approved time worked in excess of the employee's normal work week schedule for which extra compensation is authorized. Depending on the number of hours physically worked in the work week and the type of work the employee performs, overtime compensation may be in the form of cash at the employee's regular rate of pay, cash at the employee's premium rate of pay (one and one-half (1.5) times the regular rate) or in equivalent time off (compensatorytime).

17.01 OVERTIME AUTHORIZATION

When it becomes necessary for employees to work overtime, the appointing authority for that agency, or officially designated supervisors and managers, may authorize overtime work in addition to the employee's regular work schedule. The employee is expected to work overtime when the job requires this extra work and the supervisor gives a reasonable job assignment. If an employee refuses to work overtime in this situation, he or she may be subject to disciplinary action.

17.02 NON-EXEMPT EMPLOYEE OVERTIME ELIGIBILITY

Non-exempt employees (employees covered by the overtime provisions of the Fair Labor Standards Act) must be paid in cash for all overtime, with the following exceptions:

A. Compensatory time may be awarded in lieu of cash, at the request of the appointing authority and approval of the Commissioner of Human Resources, if sufficient funds are not available to pay cash. In this situation, an agreement or understanding with the affected employees to accept compensatory time in lieu of cash must be reached prior to the performance of work. This agreement or understanding must be communicated in writing and must be documented by the agency.

B. Non-exempt employees may request compensatory time in lieu of cash payment. A written request from the employee approved by the employee's supervisor is required. Employees requesting this exception cannot change

back and forth from cash to compensatory time more frequently than once per week. An agency's appointing authority may have internal policies that further restrict the number of times employees may change back and forth between cash and compensatory time.

Non-exempt employees are paid at their regular hourly rate for hours actually worked in excess of their regular thirty-seven and one-half (37.5) hour weekly schedule up to forty (40.0) hours in a work week. Employees are paid at the premium rate (one and one-half times the regular rate) for hours actually worked in excess of forty (40.0) in a work week. Non-duty time spent on paid leave will be counted as compensable hours earned but will not be counted as hours actually worked. An employee must physically work forty (40.0) hours in the work week before premium overtime is due. Overtime cannot be paid until the work week is completed. This applies even in work weeks split between two different pay periods.

When compensatory time is granted in lieu of cash, non-exempt employees receive hour-for-hour time off (regular compensatory time) for overtime hours worked between thirty-seven and one-half (37.5) and forty (40.0) in a work week and one and one-half times the number of hours worked (premium compensatory time) for all hours worked in excess of forty (40.0) in a work week.

17.03 EXEMPT EMPLOYEE (NON-EXECUTIVE LEVEL) OVERTIME ELIGIBILITY

Exempt employees are those whose primary duties are classified as executive, administrative, professional or outside sales by the Fair Labor Standards Act. Employees performing these duties are exempt from Fair Labor Standards Act overtime provisions requiring premium cash compensation for overtime hours worked over forty (40.0) in a work week.

Exempt employees not categorized as executive level by the Commissioner may be granted hour-for-hour compensatory time for all hours in excess of their regular thirty-seven and one-half (37.5) hour weekly schedule in a work week.

Exceptions must be approved by the Departments of Finance and Administration and Human Resources.

17.04 EXEMPT EMPLOYEE (EXECUTIVE LEVEL) OVERTIME INELIGIBILITY

Exempt employees categorized as executive level by the Commissioner are ineligible to receive overtime. However, when an executive level employee is scheduled to work on a holiday, the holiday may be rescheduled.

17.05 INCLUDING LONGEVITY PAY IN CASH OVERTIME CALCULATIONS

All non-exempt employees must be credited with the hourly equivalent amount of the most recent longevity payment received during their current period of employment. Employees hired after June 30, 2015 are not eligible for longevity payments. This is part of their total compensation and will be included in premium cash overtime payments.

This longevity amount will be added to the premium overtime rate automatically if the overtime is processed normally on the attendance and leave record. The computer system will extract data on the current longevity payment to be paid to the employee and add that hourly equivalent rate to the regular hourly rate. An exempt employee receiving compensatory time is not covered under FLSA. There is no need to compute additional costs since the employee is receiving straight hourly compensation, even if it is paid to the employee when he or she leaves state service.

17.06 OVERTIME FOR TRAVELING OUTSIDE THE REGULARLY SCHEDULED WORKDAY

Traveling Outside the Normal Schedule on a Scheduled Workday

Employees traveling to and from meetings at which attendance is considered a work assignment on a scheduled workday will receive compensatory time or cash (depending on their exempt or non-exempt status) equal to one hundred percent (100%) of the time traveled outside the regular workday, less the actual time required to travel from the work station to the employee's home. Documentation of actual home to work travel time will be required prior to any employee being awarded compensatory time. The provisions of this policy shall apply to all employees who are currently eligible to receive cash or accrue compensatory time under policy or law.

Traveling on an Unscheduled Workday

Employees traveling to and from meetings at which attendance is considered a work assignment on an unscheduled workday will receive compensatory time or cash (depending in their exempt or non-exempt status) equal to one hundred percent (100%) of the time traveled. The provisions of this policy shall apply to all employees who are currently eligible to receive cash or accrue compensatory time under policy or law.

17.07 OVERTIME FOR PERFORMING EMERGENCY SERVICES

Employees called from their homes at unusual hours to handle emergency situations will receive compensatory time or cash (depending on their exempt or non-exempt status) equal to one hundred percent (100%) of the actual travel time spent performing these duties, provided these duties are outside of the regularly scheduled workday.

72-Hour Notice Overtime

Employees who are given less than seventy-two (72) hours' notice of the requirement to work prior to beginning approved annual or compensatory leave, or employees who are given less than seventy-two (72) hours' notice of the requirement to work on a holiday shall be paid at a rate equal to one and one half (1.5) times their regular hourly rate for those hours required to work. Employees who are notified to return to work while they are on approved annual or compensatory leave shall be paid at a rate equal to one and one half (1.5) times their regular hourly rate for all hours they are required to work, even though they may have been given more than seventy-two (72) hours' notice.

Under this policy, employees are paid at their regular hourly rate for working and will receive the additional one- half (.5) time amount as a supplemental payment. The additional one-half time amount is the difference between the employee's regular overtime rate and premium overtime rate including longevity. To be eligible under this policy, the employee must have been approved for a full day of annual and/or compensatory leave on the day(s) affected or have been scheduled to be off the entire day(s) on a holiday. Employees called back into work on a holiday may receive additional compensation for all hours worked on the holiday, regardless of scheduled hours for that day. This policy does not

allow employees to receive additional compensation if the hours worked are already paid at the premium rate, whether those hours are paid as cash or compensatory time.

Executive level employees (exempt employees who receive no overtime compensation) and part-time employees, scheduled to work less than 1,600 hours in a fiscal year, are not eligible. In addition, employees do not receive additional compensation if the hours worked are already paid at the premium rate (time and a half), whether those hours are paid as cash or compensatory time.

A letter signed by the employee and the supervisor documenting the hours worked without seventy-two (72) hours' notice shall be approved by the appointing authority and then forwarded to the Commissioner of Human Resources within ten (10) working days after the time worked under this policy.

On-Call Time

Employees not required to remain on the employer's premises and free to engage in their own pursuits, subject only to the understanding that he or she give information as to how to be reached, are not considered working while on- call. When these employees are called to a job assignment, only the time actually spent responding to the call (including one hundred percent (100%) travel timeto and from the work site) should be counted as hours worked. If the on-call conditions are so restrictive that employees are not realistically free to use the intervening periods effectively for their own benefit, they may be considered working.

17.08 REQUIRED BUDGETARY APPROVAL OF AGENCY OVERTIME

The Department of Finance and Administration, Division of Budget, reviews and approves each agency's annual cash overtime budgetary request. Requests for additional cash overtime during each fiscal year must be submitted to the Division of Budget for approval. All requests for overtime should include the reasons for overtime and the agency's plan to fund the request.

17.09 EXTRA SERVICES (HOLDING TWO STATE JOBS)

No officer or employee in the several departments and agencies of the state government employed at fixed compensation shall be paid for any extra services, in an ex-officio or other capacity, except for qualified interpreters of the deaf or except when such officer's or employee's total annual income, including overtime payment, derived from the primary employment is less than eight thousand dollars ($8,000). That officer or employee may hold a part-time position that requires no more than four (4) hours of active duty per working day or as herein provided.
All time worked for the state is considered working for the same employer as a single unit even if the work is performed in different departments. Thus, a non-exempt employee working a second state job is due premium overtime pay when that employee physically works over 40.0 hours in a work week.

Nothing in this chapter shall be construed to prohibit a state employee from obtaining employment with another employer so long as no conflicts exist between such additional employment and the employment schedule of the state employee.

17.10 MEMORANDUM OF AGREEMENT (DUAL SERVICE CONTRACT)

Employees may perform services for other state departments, agencies and institutions of state government for which employees receive compensation under certain conditions. The following are conditions which affect employee's attendance, leave and compensation:

A. No employee shall receive any compensation for such services unless the work is performed at times when the employee is not on duty in the employee's regular position.

B. It is state policy that a full-time employee of an agency of state government should devote the employee's full working time to the employee's position. An arrangement shall, therefore, not be approved if it will diminish the time an employee will have available for the performance of regular duties.

C. The funds shall be payable through the human resource system of the employee's agency and be shown on the records as additional earnings.

D. Payment shall be authorized by a supplemental pay authorization, subject to the additional earnings to income tax, social security and retirement deductions.

E. If the employee's agency makes a contribution for social security and retirement, the amount of that contribution shall be included in the reimbursement between the two agencies.

Additional information is available by contacting the Department of Finance and Administration.

Authority:
Tenn. Code Ann. §§ 4-4-105, 8-23-201, 8-30-104, 8-30-405, and 8-50-801
Rules of the Department of Human Resources 1120-06-.02, 1120-06-.03, 1120-06-.04, and 1120-06-.05

CHAPTER 18
COMPENSATORY TIME

Compensatory time is time off with pay earned by an exempt, non-executive level employee (or by a non-exempt employee whose overtime is not compensated in cash) for time actually worked in excess of the employee regular thirty-seven and one-half (37.5) hour or forty (40) hour weekly schedule, depending on schedule. Overtime claimed as compensatory time must have been worked at the request of the employee's supervisor. Compensatory time is accrued on a weekly basis and is not transferable to any type of leave.

18.01 USE OF COMPENSATORY TIME

The use of earned compensatory leave is subject to approval of the department, agency head, designated manager, or supervisor. When an employee requests annual leave and compensatory leave is available, the compensatory leave shall be used first, unless the accumulated annual leave balance at the beginning of the pay period is within two (2) days of the maximum accrual rate for the employee's service group. When an employee is within two (2) days of the maximum, annual leave may be used until the balance falls below the (2) days of the maximum at that point the employee must use compensatory leave for the remainder of the leave used for that pay period. Any employee whose annual leave balance is not within the two (2) day maximum at the beginning of a pay period must use compensatory leave during the entire pay period. The term "two days" shall mean fifteen (15.0) hours for thirty-seven and one-half (37.5) hours per week employees, sixteen (16.0) hours for forty (40.0) hours per week employees, oras approved by the Department of Human Resources for public safety employees on other authorized work cycles.

Service groups change on the first day of the month. Therefore, to determine an employee's ability to use annual leave before compensatory leave, the group maximum identified at the first of the month must be used.

Supervisors can schedule employees to use compensatory leave in order to reduce an employee's compensatory balance. Before the compensatory leave is scheduled, the agency must have a written policy or handbook detailing situations when this will occur and the policy or handbook must be available to employees

for review before the policy can be implemented. This requirement only applies to premium compensatory time earned by non-exempt employees in lieu ofcash payment. This requirement does not apply to holiday compensatory time or regular compensatory time. Supervisors cannot schedule employees to use compensatory leave if employees are within two (2) days of the maximum accrual rate for their service group.

Employees may use compensatory leave for any reason as long as the leave does not interfere with their duties.

An employee may use compensatory leave to perform military duty while directly receiving pay from the federal government.

18.02 COMPENSATORY TIME TRANSFERABLE

Compensatory time is transferable between the agencies of state service. If an employee in a state service agency transfers to another state agency outside the state service that will not accept the employee's compensatory balance, the forme r state service agency must compensate the transferring employee for the value of the employee's compensatory time balance.

18.03 VALUE OF COMPENSATORY TIME

The value of compensatory time accrued by a non-exempt employee is calculated at a rate not less than the employee's average rate over the last three (3) years of employment or the employee's regular hourly rate in the state service agency at the time of the transfer, whichever is higher. The value of the compensatory time accrued by an exempt employee is calculated based on the employee's regular hourly rate in the state service agency at the time of transfer.

18.04 COMPENSATORY TIME PRIOR TO TERMINAL LEAVE

Compensatory time earned must be taken prior to the beginning of a retiring employee's terminal leave, taken prior to separation if the retiring employee has no terminal leave, or paid in a lump sum at separation if the retiring employee so requests. Employees terminated for gross misconduct must be paid for all accumulated compensatory time.

18.05 MAXIMUM ALLOWABLE COMPENSATORY TIME ACCRUAL

Compensatory time may be accrued up to a maximum of four hundred and eighty (480) hours. Overtime earned above four hundred and eighty (480) hours must be paid in cash.

Any variation to this maximum accrual limit must be approved in advance by the Commissioners of Human Resources and Finance and Administration.

18.06 REGULAR AND PREMIUM COMPENSATORY OVERTIME LIMITS

Non-exempt employees are eligible to receive premium compensatory overtime in lieu of premium cash overtime for hours worked over forty (40.0) in a work week. The maximum allowable premium compensatory overtime accumulation for non-public safety employees is two hundred and forty (240) hours. Public safety employees may earn up to a maximum of four hundred and eighty (480) hours of premium compensatory overtime.

Totals for regular and premium compensatory overtime will be added together and no employee will be allowed to exceed a total accumulation of both regular and/or premium compensatory overtime over four hundred and eighty (480) hours unless approved by Department of Human Resources and Department of Finance and Administration.

Overtime in excess of maximum allowed accruals must be paid in cash. The hours should be turned in as compensatory overtime hours and the computer system will automatically pay as cash.

Any compensatory time used by an employee will be deducted automatically from the premium compensatory overtime balance first. When that balance is exhausted, any additional compensatory time used will be charged to regular compensatory overtime.

18.07 COMPENSATORY TIME FOR EXEMPT EXECUTIVE LEVEL EMPLOYEES

Earned compensatory time may be retained and used when an employee becomes executive level, with the exception of limited term appointees. Executive level employees are prohibited from earning compensatory time.

Authority:

Tenn. Code Ann. §§ 8-23-201, 8-30-104, and 8-50-801
Rules of the Department of Human Resources 1120-06-.02, 1120-06-.03, 1120-06-.04, and 1120-06-.05

CHAPTER 19
FLSA ADMINISTRATIVE LEAVE WITH PAY FOR EXEMPT EMPLOYEES

Employees who are exempt under the Fair Labor Standards Act (FLSA) are not covered by overtime rules and regulations; however, the method for determining pay reductions of an exempt employee must comply with the salary basis provisions in the FLSA, Title 29, Part 541 of the Code of Federal Regulations, Section 541.602. Generally, an exempt employee who works less than a full day duringa workweek shall be paid for the entire day subject to certain exceptions, without regard to the number of days or hours worked. The workweek for most state employees is generally from 12:01 A.M. Sunday to the following Sunday at 12:01 A.M.

An exempt employee may enter a leave without pay status for a partial day if the employee:

- does not work during an entire workweek;
- is absent from work for one or more full days for personal reasons other than sickness or disability;
- is absent from work for one or more full days due to sickness or disability, if reductions are made under a bona fide plan, policy or practice of providing wage replacement benefits for these types of absences (e.g. use of sick leave, etc.);
- has received payment for jury or witness fees, military pay or similar fees/pay such as workers comp, pay from a third party in lieu of the employee's state salary;
- has violated a major safety rule and penalties are imposed as a result;
- receives a suspension of one or more full days imposed in good faith for

violations of workplace conduct rules and/or policies and procedures;

- worked a partial week during the first and/or last weeks of employment, the employee is to be paid for the actual hours worked;

- needs to hold a day of leave pursuant to DOHR Sick Leave Bank Rules and Regulations concerning the annual donation requirement; or

- has taken unpaid leave under the Family Medical Leave Act or has taken part time extended periods of leave without pay related to the employee's FMLA when allowed by State policy (see DOHR policy "Extended Periods of Leave without Pay".)

If none of the above situations apply, an exempt employee who does not have an accrued leave balance and who only works a portion of a workday must be paid for the full day. In no instance can an employee with a leave balance opt to take leave without pay.

Recordkeeping: Employee timesheets should be coded Fair Labor Standards Act Pay (FLPAY).

For audit and compliance purposes, agency HR and/or Payroll staff will work with DOHR using Edison queries to review instances of exempt employee leave in which the employee has exhausted leave balances. Improper leave approvals and leave abuse may require disciplinary action.

Supervisors shall not approve partial day leave requests if an exempt employee has exhausted all of his or her balance, regardless of whether the employee provides a doctor's statement. A partial day of unpaid leave is only allowed as listed in the exceptions above or as required by other federal and state law. Supervisors may only approve leave requests as allowed within the state's attendance and leave manual and will consult with their agency's Human Resource Office when an employee requests leave and does not have sufficient leave balances to cover the time requested.

An employee who believes incorrect deductions have been made to their paycheck should immediately report this information to their agency's Human Resource and/or Payroll Office. A review of the employee's pay records is to be completed and the results reported back to the employee. If the employee is still uncertain, the employee may contact the Department of Human Resources. If it is determined that the employee's pay is incorrect, a pay correction will be made as soon as practical.

Authority:
Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq.
Fair Labor Standards Act, Salary Basis, 29 C.F.R. § 541.602
Tenn. Code Ann. §§ 8-30-104, 105.
Rules of the Department of Human Resources 1120-04-.16

CHAPTER 20
RESCHEDULING THE WORK WEEK

The system automatically reschedules hours worked and leave taken within the same work week to eliminate excessive overtime payment. Overtime expenses are reduced by ensuring overtime pay is applied on a weekly rather than a daily basis.

Rescheduling of sick leave will be allowed in all circumstances, including situations where a doctor's note has been provided.

Example: If an employee has a regular work schedule of 7.5 hours per day, Monday through Friday, the employee is scheduled to work a 37.5- hour work week. If this employee works 10.5 hours on Monday, 7.5 hours on Tuesday, 7.5 hours on Wednesday, 7.5 hours on Thursday, and takes a day of sick leave on Friday, the employee has actually worked 33.0 hours of a 37.5- hour work week. The system will automatically apply the 3.0 extra hours worked on Monday to the amount of leave taken later in the week to reduce the sick leave taken on Friday to 4.5 hours. No overtime pay is paid for the work week since the employee did not work over 37.5hours.

Authority:
Tenn. Code Ann. §§ 4-4-105, 8-23-201, 8-30-104, 8-50-801 and 8-50-802
Rules of the Department of Human Resources 1120-06-.02, 1120-06-.03, 1120-06-.04, and 1120-06-.05

CHAPTER 21
PREVIOUSLY ACCRUED LEAVE USED IN A NON-ACCRUING POSITION

An employee in a leave accruing position who is transferred with a leave balance to a non-accruing position may use leave as explained below:

A. An employee in a non-leave accrual status at separation shall be paid for any annual and compensatory leave balances at the employee's regular hourly rate at the time of separation. A supplemental pay request form and a C-7 form must be submitted to the Department of Human Resources.

B. A part-time employee scheduled to work certain days each week can use accrued leave only on the scheduled days to work. Enter and document on the leave record (e.g., in Edison) the number of hours used as hours worked. A C-7 form must be submitted to the Department of Human Resources to deduct this leave.

C. A part-time employee scheduled to work certain days each week, but called in when needed, may not use any type of accrued leave until the employee transfers back to a leave accruing position.

Authority:
Tenn. Code Ann. § 4-4-105, 8-23-201, 8-30-104, 8-50-801 and 8-50-802
Rules of the Department of Human Resources 1120-06-.02, 1120-06-.03, 1120-06-.04, and 1120-06-.05

CHAPTER 22
LEAVE RECORDS

22.01 PROCEDURES FOR LEAVE RECORDS

Leave reports are prepared at the end of the pay period for all employees using leave or working overtime. Each supervisor should take the following procedures to assure correct time reporting for each employee:

A. Determine the employee's work schedule.

B. Determine the employee's daily shift (the actual time of day the employee is scheduled to begin and end work). When an employee's shift begins on one day and ends on another, this time should be shown on the time sheet for the day on which the majority of the time falls.

C. Determine that the employee's actual work performed as shown on the time sheet is correct.

D. Provide for any unscheduled absences or any extra time worked to be accurately recorded.

E. Provide for coding of absences.

F. Provide for a timekeeper for each reporting unit.

G. When reporting attendance and leave for a pay period, the end of a pay period and the end of a work week may not necessarily be the same; i.e., a work wee k could be started in one pay period and concluded in the next pay period.

H. New employees are to be paid for actual time worked during their first pay period, regardless of his or her work schedule.

I. Separating employees are to be paid for actual time worked during their last pay period, regardless of his or her work schedule.

J. Employees going on, or returning from, extended leave are to be paid for

actual time worked for affected pay periods.

K. Provide for a centralized audit of records for pay purposes. The agency's central human resource office or appointing authority's designated representative should audit and maintain files on all time sheets. These must be maintained for a period of at least three (3) years, or until audited by the Comptroller of the Treasury.

L. Audit of Records -- All employees' time sheets are subject to review and audit at any time by the Office of the Comptroller of the Treasury or the Department of Human Resources.

M. Records -- Excused absences will not be reported to the Department of Human Resources; however, records of such leave must be maintained by the various departments and agencies.

22.02 ATTENDANCE AND LEAVE RECORDS AND REPORTS

If an employee does not submit his/her time into Edison, a hard copy time sheet for each employee who used leave or worked overtime ***must*** be submitted to the proper audit authority at the end of each pay period. This record must be signed by both the employee and the employee's supervisor, verifying the accuracy ofthe hours scheduled, hours worked, and leave taken.

Authority:

Tenn. Code Ann.§§ 8-30-104 and 10-7-504

Rules of the Department of Human Resources 1120-6-.26

GLOSSARY

1. **Accrue** - To earn annual or sick leave for each month of service or major fraction thereof.

2. **Active Pay Status** - Term applied to an employee who is actually working or who is using paid leave, other than paid terminal leave or sick leave bank grants.

3. **Administrative Leave** - Leave with pay when an employee is removed from normal duties at the discretion of the appointing authority.

4. **Agency** - An entity that employs and exercises authority over any employee in state service in the executive branch.

5. **Annual Leave** - Paid time away from work considered to be personal time. The amount accrued is based on the employee's length of state service.

6. **Appointing Authority** - A commissioner or executive director of a state agency, officer or agent having power to make appointments to, and separations from, positions in state service.

7. **Appointment** - The official designation of a person to fill a position in state service as an employee.

8. **Assault Pay** - Full pay for a total of ninety (90) calendar days granted to an employee injured in the line of duty as a result of an assault which results in the employee 's inability to perform job duties. This pay is a combination of regular payroll and Division of Claims Administration compensation.

9. **Audit** - To examine and verify amounts of leave and/or requests for payment.

10. **Bereavement Leave** - Three (3) days of paid leave, not taken from sick or annual leave, granted in the event of death of an employee's spouse, children, stepchildren, parents, grandparents, grandchildren, siblings, stepparents, foster parents or parents-in-law.

11. **Brother-in-law** - (1) Brother of one's spouse or (2) husband of one's sister.

12. **C-7 Form (Attendance and Leave Adjustment)** - Form used to make leave balance corrections.

13. **Civil Leave** - Leave allowing an employee to be absent from work on the day or days required while serving as a juror in any court of the United States or the State of Tennessee.

14. **Commissioner** - The Commissioner of the Department of Human Resources.

15. **Compensatory Leave** - Leave credit earned by an exempt or non-exempt employee when hours are worked beyond the employee's regular schedule and not compensated in cash.

16. **Compressed Work Schedule** - A 37.5 or 40.0 hour scheduled work week worked in four or fewer days.

17. **Credit** - A deduction from an existing balance, such as subtracting leave on a C-7 form.

18. **Creditable Service** - Any month which was part of a sixteen hundred (1,600) hour or greater yearly schedule in which an employee exceeds fifty percent (50%) of his regularly scheduled monthly working hours by one-tenth (0.1) of one hour shall be creditable for maximum accumulation purposes. When extended leave without pay has been taken to the extent that an employee did not work for a month or a major portion thereof, that month shall not be included in computing state service.

19. **Division of Claims Administration Leave** - Leave without pay granted to an employee who has incurred an injury in the line of duty and is receiving compensation through the Division of Claims Administration.

20. **Educational Leave** - Leave with pay, normally at a reduced amount, granted and supported by an agency for full-time continuing education and learning and approved by the Department of Human Resources. Educational leave pay may also be requested by an employee to continue his education on a full-time basis.

21. **Emergency Appointment** - The appointment of a person in the preferred service

position, for a period not to exceed one hundred twenty (120) days, in the event of an emergency.

22. **Executive Level Employee** - An exempt employee ineligible to receive compensation for overtime hours worked. The Commissioner designates an employee in this category by job classification.

23. **Executive Service** - All positions in the state service not subject to the preferred service provisions of Tennessee Code Annotated, Title 8, Chapter 30.

24. **Exempt Employee** - Employee exempt from the overtime pay requirements of the Fair Labor Standards Act (FLSA).

25. **Extended Leave** - Leave without pay for the major portion of a month. Instances for which extended leave may be approved include special leave without pay, parental, educational, personal educational, Division of Claims Administration, military, and sick leave bank grants.

26. **Flex-Time** - A work schedule which deviates from the normal 8:00 a.m. to 4:30 p.m. workday but is still within general guidelines authorized in advance by an appointing authority.

27. **Family and Medical Leave Act (FMLA)** - Federal government regulations setting requirements for granting leave for family and medical reasons, for providing insurance coverage during the leave period and for reinstating employees to the same or an equivalent position when the leave period has ended.

28. **Foster Parent** - Person who has performed the duties of a parent to the child of another person by rearing the child as his own child.

29. **Fair Labor Standards Act (FLSA)** - Federal government regulations setting minimum wage and overtime pay requirements.

30. **FMLA Coordinator** - The Appointing Authority or individual designated to handle FMLA leave by the Appointing Authority.

31. **Full-time** - A position or employee budgeted for or scheduled to work a full-time

schedule as defined by the Commissioner and the Commissioner of Finance and Administration, usually one thousand nine hundred and fifty (1,950) hours or more per year.

32. **Gross Misconduct** - Any job-related misconduct which may subject an employee to criminal prosecution.

33. **Initial Probation** - The first probationary period an employee serves in an agency in a continuous period of employment prior to becoming a preferred service employee in that agency.
34. **Interim Appointment** - The appointment of a person to a position for a period notto exceed one (1) year.

35. **Irregular Work Schedule** - Any work schedule totaling 37.5 or 40.0 hours per week other than the regular Monday through Friday schedule.

36. **Limited Term Appointment** - The governor, the governor's cabinet, and members of boards, commissions, agencies and authorities receive limited executive service appointments. Limited term appointments do not require the use of eligible lists.

37. **Longevity Pay** - Lump sum payment intended to reward employees for service to the state and encourage those employees to remain employed by the state if hired prior to June 30, 2015.

38. **Major Portion of a Month** - One-tenth (0.1) of one (1) hour over fifty percent (50%) of the regularly scheduled working hours.

39. **Military Leave With Pay** - Leave of absence with pay, not to exceed twenty (20) working days in any one calendar year, for any reserve component of the armed forces of the United States to engage in performance of duties or training in the service of the State of Tennessee or the United States.

40. **Non-Duty-** Time spent on paid or unpaid leave during a workday.

41. **Non-Exempt Employee** - Employee subject to the overtime pay requirements of the Fair Labor Standards Act (FLSA). A non-exempt employee is eligible for cash compensation for time actually worked over 37.5 hours per week.

42. **Overtime** - Authorized time worked in excess of the employee's normal work week schedule for which extra compensation is received.

43. **Part-Time** - A position or an employee budgeted or scheduled to work a part- time schedule as denied by the Commissioner and the Commissioner of Finance and Administration, usually less than fifteen hundred and sixty (1,560) hours per year.

44. **Preferred Service** - All offices and positions of employment in the state service that have been placed under the preferred service provisions of Tennessee Code Annotated, Title 8, Chapter 30.

45. **Premium Overtime** - Work time compensated at one and one-half times an employee's regular rate of pay for hours worked in excess of 40 in a work week.

46. **Regular Appointment** - Appointment of a person to a regular position in either the preferred or executive service for an indeterminate period of time.

47. **Regular Overtime** - Work time compensated at an employee's regular rate of pay for hours actually worked in excess of his regular 37.5 hour weekly schedule up to 40.0 hours in a work week.

48. **Rescheduling of Work Week** - Assigning different working hours within the work week so an employee works the standard number of hours during the period when the work is needed. The rescheduling of working hours for a specific day in a work week should be approved in advance by the employee's supervisor before the work is performed.

49. **Seasonal Appointment** - A part-time appointment of a person for an indeterminate period of time and generally not exceeding sixteen hundred (1600) hours per year.

50. **Service Anniversary Date** - Projected date in the future (based on an employee's total creditable state service) when the employee will change service group codes and begin accruing annual leave at a higher rate. Any break in service may cause a change in this date.

51. **Sibling** - One of two or more persons having at least one parent in common.

52. **Sister-in-law** - (1) Sister of one's spouse; or (2) Wife of one's brother.

53. **Service Group** - Group identifying an employee's rate for annual leave accrual and maximum allowable annual leave accumulation based on the employee's total years of active service in a leave accruing status.

54. **Sick Leave** - Leave accrued by an employee at the rate of one (1) day for each month or major portion of a month of active service which may be used for illness of the employee or illness or death of an employee's family member.

55. **Special Leave** - Leave without pay of a specific duration which must be requested in writing and recommended in advance by the appointing authority for approval by the Commissioner.

56. **State Service** - All officers and positions of trust or employment in the executive branch and all boards, commissions and agencies in state government except those specifically excluded by Tennessee Code Annotated, Title 8, Chapter 30.

57. **Temporary Appointment** - Appointment of a person to a preferred service position for a temporary period, not to exceed six (6) months, until an appropriate list has been established by the Department.

58. **Terminal Leave** - The annual leave balance of a retiring employee. Any leave balance remaining after the employee's last actual workday is considered terminal leave.

59. **Workday** - A scheduled day of work exclusive of holidays or other authorized leave days.